



## Case Summary: **Pell v The Queen [2020] HCA 12**

On Tuesday 7 April 2020 the High Court of Australia handed down a unanimous decision quashing Cardinal George Pell's convictions for child sexual assault.

The High Court of Australia's judgement is significant, not only due to the high profile nature of the Applicant (Cardinal Pell, a high ranking Catholic Church Official) but because it affirms [essential principles](#) of the rule of law. The rule of law is at the heart of Australia's legal system and holds that:

- All persons and organisations including those in power are subject to and accountable to the law.
- The law is clear, known, and enforced.
- The Court system is independent and resolves disputes in a fair and public manner.
- All persons are presumed innocent until proven otherwise by a Court.
- No person shall be arbitrarily arrested, imprisoned, or deprived of their property.
- Punishment must be determined by a Court and be proportionate to the offence.

### Case Citations & Procedural History

#### **Victorian County Court**

*DPP v George Pell [2019] VCC 260*

<https://www.countycourt.vic.gov.au/news-and-media/news-listing/2019-03-13-sentencing-remarks-dpp-v-george-pell>

- Jury Trial, convicting Pell of one charge of sexual penetration of a child under 16 years and four charges of committing an act of indecency with or in the presence of a child under the age of 16 year.
- This was the second trial of these charges as the jury in the first trial was unable to agree on its verdicts, resulting in a hung jury.
- Pell was sentenced by His Honour Chief Judge Kidd to 6 years in prison.

## **Victorian Court of Appeal Judgement**

*George Pell v The Queen [2019] VSCA 186*

<https://www.supremecourt.vic.gov.au/case-summaries/court-of-appeal-proceedings/george-pell-v-the-queen>

- Pell appealed the decision in Victoria's County Court on the grounds that the verdicts were unreasonable and could not be supported by the evidence.
- Before the 3 judges, the majority, Ferguson CJ and Maxwell concluded that the jury had not been compelled to entertain a doubt as to Pell's guilt. Weinberg JA dissented and concluded that in light of the unchallenged evidence, the jury ought to have had reasonable doubt as to Pell's guilt.[5] &[6]
- Original verdict of guilty upheld.

## **High Court of Australia**

*Pell v The Queen [2020] HCA 12*

<http://eresources.hcourt.gov.au/showCase/2020/HCA/12>

- Pell sought leave to appeal the judgement of the Victorian Court of Appeal.
- The submissions were made before a full bench of the High Court of Australia. A full bench of the High Court of Australia means all 7 Justices decide the case.
- Unanimously, the High Court of Australia ordered that the appeal be allowed, and Pell's convictions be quashed and judgements of acquittal be entered in their place.

*Note that in the below Case Summary, items in square brackets [ ] refer to paragraphs in the High Court of Australia's judgement.*

## **Context of the Complaint**

In June 2017 Pell was charged with historical child sexual abuse. It was alleged that the abuse occurred at St Patrick's Cathedral, East Melbourne after Sunday Mass in the late 1990s.

There were two complainants in the cases against Pell. Complainant A and Complainant B were both choirboys at St Patrick's Cathedral when the alleged crimes took place. By the time Complainant A made his complaint to the police in 2015, Complainant B had passed away. As a result, Complainant B never gave a statement or provided any evidence to the police regarding the alleged crimes.

## **Evidence before the Victorian County Court**

As the High Court of Australia said

*"the function of the court of criminal appeal in determining if a verdict of the jury is unreasonable or cannot be supported having regard to the evidence is to...examine the record to see whether, either by reasons of inconsistencies, discrepancies, or other inadequacy; or in light of other evidence – the court is satisfied that the jury, acting rationally, ought nonetheless to have entertained a reasonable doubt as to proof of guilt". [39]*

The High Court reviewed the evidence put before the Victoria Court of Appeal to assess whether they accurately did this.

### **Complainant A's Recorded Evidence**

An audio-visual recording of A was used as evidence as direct testimony under s379(b)(i) of the *Criminal Procedures Act 2009* (Vic).

A's evidence included detailed knowledge of the interior layout of the priests' sacristy. The Court of Appeal majority viewed this knowledge as supporting A's evidence and enhancing A's credibility of his account as someone who was "telling the truth" and whose answers appeared to be "entirely authentic". [40]

There is no requirement that a complainant's evidence be corroborated or supported by other witnesses' evidence, for a jury to return a guilty verdict. However, it is not correct to say that the evidence A gave regarding his knowledge of the priests' sacristy can be used as independent support for A's allegations. [53]

The High Court concluded "*the Court of Appeal majority did not err in holding that A's evidence of the first incident did not contain discrepancies or display inadequacies, of such a character as to require the jury to have entertained a doubt as to guilt.*" [118]

### **Applicant's denials**

Pell did not give evidence in the trial, however a video recorded interview with the police was used in evidence where Pell emphatically denied the allegations. [26]

In the video recorded interview the applicant said that he and his master of ceremonies were at the front of the Cathedral after Mass "as I always did" and that the sacristan and his assistant would have been in the sacristy cleaning up and bringing out the vessels and other items from the Mass.

### **Opportunity witnesses**

It is the prosecution's obligation to call witnesses whose evidence is necessary to give a complete account of material events. The prosecution proposed to call 23 witnesses who were involved in the conduct of Mass at the Cathedral at the time of the alleged offences. [27]

The issue for the prosecution with calling the 23 witnesses was that several witnesses were expected to give evidence of strict practices that existed at the time of the alleged offending, which would be inconsistent with the offending having occurred.

The prosecution was granted leave under s 192A of the *Evidence Act 2008* (Vic) to cross-examine a number of their witnesses. This meant the prosecution could question the witnesses on topics such as whether the applicant was always in the company of another when he was robed and whether the applicant always greeted congregants on the steps of the Cathedral following Sunday Mass. [29]

The High Court stated that the honesty of the opportunity witnesses was not in question and Pell's Master of ceremonies evidence was unchallenged. [101]

### **The applicant's forensic disadvantage of evidence**

During the trial, the jury was informed of the significant forensic disadvantaged Pell faced being charged 20 years after the alleged crimes took place. The jury was instructed to take the forensic disadvantage into account when considering evidence. Such disadvantages in this case included: the lost opportunity to make inquiries that may have provided additional evidence to support denials, opportunity witnesses could have given evidence of occurrences on specific dates rather than general routine/practices, witnesses may no longer present "lucid and coherent evidence of younger men", the inability to fully test complainants evidence, and the other alleged victim may have been able to give evidence. [31]

### **The High Court's Judgement**

The High Court of Australia concluded differently to the Victorian Court of Appeal. They quashed Pell's convictions and ordered a judgement of acquittal be entered.

The Disposition stated:

*For the reasons to be given, it is evident that there is "a significant possibility that an innocent person has been convicted because the evidence did not establish guilt to the requisite standard of proof."* [9]

This means that the prosecution failed to prove on the evidence that the charges against Pell could be proven beyond reasonable doubt.

#### **1. Presumption of innocence**

The presumption of innocence is the principle that a person is considered to be innocent and not guilty until the prosecution proves guilt beyond a reasonable doubt. In a criminal case, the prosecution is required to prove the case [beyond all reasonable doubt](#) and if there is any evidence that would raise doubt, then the accused cannot be convicted. The prosecution is not required to prove the guilt of the accused "beyond any possible doubt" but beyond reasonable doubt.

Pell contended that although the Court of Appeal correctly stated the standard and burden of proof, "their Honours reversed it by asking whether there existed the reasonable possibility that A's account was correct. Rather than whether the prosecution had negated the reasonable possibility that it was not". [54]

"Their honours said, in relation to the second incident occurring the "the evidence once again falls well short of establishing impossibility" [122]

The Court of Appeal, instead of requiring the prosecution to eliminate all reasonable doubt, required Pell to prove the offending was impossible.

As the High Court said, “*The majority in the Court of Appeal’s judgement proceeded by asking in relation to each piece of evidence that was inconsistent with A’s account, whether it was nonetheless realistically possible that that account was true*”. [41]

This was an error by the Court of Appeal majority because the burden of proof is on the prosecution to, as dissenting Judge Weinberg noted, “exclude the reasonable possibility that the applicant did not commit the offences”. [42]

The High Court found that even though the Court of Appeal consistently stated that the prosecution had the burden of proof, their method of reasoning and the process they adopted to arrive at their decision did in fact reverse the burden of proof.

## 2. Reasonable doubt

### a. A’s evidence seen as credible and reliable

The jury in the Court of Appeal assessed A’s evidence as thoroughly credible and reliable. [119] This was accepted by the High Court. [118]

Therefore the issue for the Court of Appeal was “*whether the compounding improbabilities caused by the unchallenged evidence required the jury, acting rationally, to have entertained a doubt as to the applicants guilt.*” [119]

### b. Compounding Improbabilities

To accept A’s account of the first incident, would also require acceptance of a number of compounding improbabilities arising at the same point. These being:

- (i) “*contrary to the applicants’ practice, he did not stand on the steps of the Cathedral greeting congregant for ten minutes or longer;*
- (ii) *contrary to long-standing church practice, the applicant returned unaccompanied to the priests’ sacristy in his ceremonial vestments;*
- (iii) *from the time A and B re-entered the Cathedral to the conclusion of the assault, an interval of some five to six minutes, no other person entered the priests’ sacristy.*” [57]

### c. Unchallenged evidence

The Court of Appeal majority acknowledged:

“*there was general consistency and substantial mutual support in the account of the opportunity witnesses, as to what occurred after Sunday solemn Mass in the period when the applicant was archbishop*” and that “*a defining feature of religious observance is adherence to ritual and compliance with established practice*”. [5]

The Court of Appeal majority concluded that “*not only was it possible that the applicant was alone and robed in contravention of centuries-old church law, but that the evidence of the witnesses to the contrary did not raise a reasonable doubt as to the applicants guilt.*” [94]

The High Court stated that the honesty of the opportunity witnesses was not in question and Pell's Master of ceremonies evidence was unchallenged. [101]

They concluded for the first incident that *"it remains that the evidence of witnesses, whose honesty was not in question,*

- (i) *placed the applicant on the steps of the Cathedral for at least ten minutes after Mass on 15 and 22 December 1996;*
- (ii) *placed him in the company of Portelli when he returned to the priests' sacristy to remove his vestments' and*
- (iii) *described continuous traffic into and out of the priests' sacristy for ten to fifteen minutes after the altar servers completed their bows to the crucifix"*[118].

The High Court concluded for the first incident that when you consider the compounding improbabilities caused by the unchallenged evidence summaries in (i), (ii) and (iii) required the jury, acting rationally, to have entertained a doubt as to the applicant's guilt. [119]

The High Court stated that A's evidence of the second incident *"suffers from the same deficiency as the evidence of the assaults involved in the first incident"*. [125]

*"The unchallenged evidence of the applicant's invariable practice of greeting congregants after Sunday solemn Mass, and the unchallenged evidence of the requirement of the Catholic church practice that the applicant always be accompanied when in the Cathedral, were inconsistent with acceptance of A's evidence of the second incident."*[127]

This evidence, High Court said *"ought to have caused a jury, acting rationally, to entertain a doubt as to the applicant's guilt of the offence charged in the second incident."*

For those reasons, the High Court gave the following orders:

1. Special leave to appeal granted.
2. Appeal treated as instituted and heard *instanter* and allowed.
3. Set aside order 2 of the orders of the Court of Appeal of the Supreme Court of Victoria made on 21 August 2019 and, in its place, order that:
  - a) the appeal be allowed; and
  - b) the appellant's convictions be quashed and judgements of acquittal be entered in their place.