

**IN THE HIGH COURT OF AUSTRALIA  
SYDNEY OFFICE OF THE REGISTRY**

No. S<sup>70</sup> of 2014

**BETWEEN:**



**PHILIP DOYLE**  
Applicant

**AND:**

**THE QUEEN**  
Respondent

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**APPLICATION FOR SPECIAL LEAVE TO APPEAL**

1.1 The applicant applies for special leave to appeal from the whole of the judgment of the Court of Criminal Appeal in the matter of *Doyle v R* [2014] NSWCCA 4 given on 20 February 2014.

**Grounds:**

20 2.1 The Court of Criminal Appeal should have held that the trial miscarried by virtue of the failure to direct the jury as to impermissible uses of the tendency evidence admitted in the trial, namely:

(a) that when looking at 'the evidence related to all of the charges' in determining whether the Crown had proved tendency, it must not rely on any charged act to support a finding of tendency on that same charged act (cf. CCA [130]-[131], [135]);

30 (b) that it must not use the evidence to reason that having regard to similarities in the events or circumstances in which they occurred, it is improbable that the events occurred coincidentally ('coincidence reasoning' cf. ss95, 98 *Evidence Act* 1995 (NSW), CCA [148]-[149]);

(c) that contrary to the directions of the trial judge, it must not use several of the acts in the tendency notice (which the CCA held could not establish the tendency on their own) in proof of a tendency (cf. CCA [143]).

2.2 The Court of Criminal Appeal should have held that the trial miscarried as a result of the failure of the trial judge to direct the jury:

40 (a) as to how the evidence of good character was relevant to the issue of tendency (cf. CCA [153]);

Uther Webster and Evans  
Level 2, 235 Clarence Street  
Sydney NSW 2000  
DX 141 SYDNEY

Tel: (02) 9290 1177  
Fax: (02) 9290 1181  
Ref: Ms Vivian Evans

(b) in accordance with *R v Markuleski* (2001) 52 NSWLR 82 (cf. CCA [155]).

2.3 The Court of Criminal Appeal should have held that there was a miscarriage of justice in the trial on account of the directions on ‘complaint’ evidence, namely that:

(a) “if the evidence of complaint was accepted this evidence supports the credibility of the complainants as witnesses”, where there had been no complaint by three of the five complainants ( CCA [186], [187], cf CCA [212], s66 *Evidence Act* 1995);

10 (b) that evidence of a general complaint was evidence of the truth of the fact of all counts in relation to either a single complainant or all complainants (CCA [186]-[187]; cf. CCA [211]-[212], s66 *Evidence Act* 1995 )

(c) that evidence of making statements to the police approximately 6 years (in the case of MH), 17 years (in the case of ML) and 19 years (in the case of KM) after acts the subject of charge were said to have taken place was “complaint evidence” (CCA [187]; cf. [211]-[213], s66 *Evidence Act* 1995 (NSW) ).

## 20 Orders sought

3.1 The applicant is granted an extension of time in which to apply for special leave to appeal.

3.2 Special leave to appeal is granted.

3.3 The appeal is allowed.

3.4 The orders of the Court of Criminal Appeal are set aside.

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3.5 The appellant’s conviction is quashed.

3.6 A new trial is ordered.

**DATED:** 28th day of March 2014



40 Solicitor for the Applicant

**To the solicitor for the Respondent:**

Solicitor for the Director of Public Prosecutions  
265 Castlereagh St  
Sydney NSW 2000  
DX 11525  
Sydney Downtown

**AND to:**

The Registrar  
Court of Criminal Appeal  
Law Courts Building  
Level 4, Queens Square  
Sydney

10 **TAKE NOTICE:** Before taking any step in the proceedings you must, within 14 DAYS after service of this application, enter an appearance in the office of the Registry in which the application is filed, and serve a copy on the applicant.

The Applicant's Solicitor is: Ms Vivian Evans  
Uther Webster Evans  
Level 2, 235 Clarence St  
Sydney 2000  
DX 141 SYDNEY

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