



HIGH COURT OF AUSTRALIA

7 May 2025

MATHEW CUCU BRAUN v THE KING
[2025] HCA 20

Today, the High Court unanimously allowed an appeal from a judgment of the Court of Appeal of the Supreme Court of South Australia. The central question in the appeal was whether, where it has been shown that there was an error or irregularity in a criminal trial, in order to establish a miscarriage of justice it must be shown that the error or irregularity was material.

After a trial by jury in the District Court of South Australia, the appellant was convicted of an offence of maintaining an unlawful sexual relationship with a child under the age of 17 years. The principal issue at the appellant's trial was whether the perpetrator was the appellant or another adult member of the complainant's community. According to one witness, the complainant said that she was abused by her "uncle". Like other children in her community, the complainant referred to elder males within that community, including the appellant's father ("X"), as "uncle".

Soon after the appellant was sentenced, counsel for the prosecution disclosed to the appellant's legal representatives that X had previously been charged with sexual offences against a child. The appellant appealed his conviction on the basis that the failure by the prosecution to make proper disclosure of the charges against X had resulted in a miscarriage of justice. The Court of Appeal found that the prosecution breached its common law duty of disclosure by failing to disclose to the appellant and his legal representatives that X had been charged with the sexual offences during a period that overlapped with the period of the indictment. However, the Court of Appeal held that there was no miscarriage of justice because it had not been demonstrated that, had that disclosure been made prior to or during the appellant's trial, the appellant's defence either "would" or "might" have been conducted differently.

In allowing the appeal, the High Court held that, where it has been shown that there was error or irregularity in a criminal trial, such as the breach of the prosecution's duty of disclosure that occurred in this case, to establish a miscarriage of justice it must be shown that the error or irregularity was material in the sense that the error or irregularity could realistically have affected the reasoning of the jury to its verdict. The Court held that the non-disclosure denied the appellant the opportunity, or at least the enhanced opportunity, to point to X as an alternative possible perpetrator. The Court of Appeal erred to the extent that it required that it be demonstrated that the appellant's defence would have been conducted differently but for the error or irregularity and erred in failing to conclude that a miscarriage of justice was demonstrated. Accordingly, the appellant's conviction was set aside and a new trial ordered.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.