

Uncorroborated Evidence

Murray v The Queen (1985) 159 CLR 507

In many criminal matters, the prosecution rely on a single, uncorroborated witness to prove an element of the offence. In these cases, the jury must carefully scrutinize that witness's evidence and be convinced beyond a reasonable doubt. This proposition is now found in the Murray direction. Every defence lawyer needs to understand this direction in order to represent their clients effectively.

The Direction

The Criminal Trial Bench Book provides the following text at [3-610]:

The Crown seeks to prove the guilt of the accused with a case based largely or exclusively on the evidence of witness X. Accordingly, unless you are satisfied beyond reasonable doubt that witness X is both an honest and accurate witness in the account they have given, you cannot find the accused guilty. Before you can convict the accused, you should examine the evidence of witness X very carefully to satisfy yourselves you can safely act upon that evidence to the high standard required in a criminal trial.

The direction is derived from *R v Murray* (1987) 11 NSWLR 12 where Lee J said at 19(E):

In all cases of serious crime it is customary for judges to stress that where there is only one witness asserting the commission of the crime, the evidence of that witness must be scrutinised with great care before a conclusion is arrived at that a verdict of guilty should be brought in; but a direction of that kind does not of itself imply that the witness' evidence is unreliable.

The High Court has held that a Murray direction should be given in appropriate cases where there is a perceptible risk of miscarriage of justice if the jury is not warned of the need to scrutinise the evidence of a complainant with care before arriving at a conclusion of guilt.¹ The direction emphasises that, if the Crown case relies upon a single witness, then the jury must be satisfied that the witness is reliable beyond reasonable doubt.²

In general, Murray directions are required in domestic violence matters because they tend to occur in private. When the case is one person's word against the other, without any corroboration, then the onus of proof requires that the jury must carefully scrutinize the complainant's evidence. Only if the jury accepts the complainant's evidence beyond reasonable doubt can they find the defendant guilty.

¹ *Robinson v The Queen* (1999) 197 CLR 162 at [25]–[26]

² *Smale v R* [2007] NSWCCA 328 at [71] per Howie J

Corroboration

This does not mean that the direction is automatically required where there is one principal witness in the Crown case. If that witness' evidence is corroborated by other evidence in the trial, such as documentary evidence, forensic evidence or other physical evidence (for example, DNA results implicating the accused) there is no basis for a direction.³

Prescribed Sexual Offences

Now for the bad news. The Murray Direction is specifically prohibited in prescribed sexual offences. Section 294AA Criminal Procedure Act provides:

- (1) A judge in any proceedings to which this Division applies must not direct a jury, or make any suggestion to a jury, that complainants as a class are unreliable witnesses.*
- (2) Without limiting subsection (1), that subsection prohibits a direction to a jury of the danger of convicting on the uncorroborated evidence of any complainant.*
- (3) Sections 164 and 165 of the [Evidence Act 1995](#) are subject to this section.*

Sex offences have dismally low rates of conviction. The best and easiest way to lift the rate is for the police to stop charging innocent people. If only guilty people are charged, then you would expect the rate to be 100%. Instead, the parliament has attempted to increase the rate by forbidding judges to warn juries about the dangers of acting on uncorroborated evidence. This has certainly lifted the rate of convictions. The problem is that it has also lifted the rate of false convictions.

Sir Owen Dixon stated in *Briginshaw*⁴ (referring to the civil standard) that 'reasonable satisfaction' depends on the nature of the allegation, the inherent unlikelihood of the allegation and the consequences that would flow from the finding of fact. *Briginshaw* related to the civil standard but the rule should have universal application.

In prescribed sexual offences, the allegation is always serious and the consequence of a finding of guilt is that the accused person will be sentenced to years in prison. Common sense dictates that parliament should intervene to raise the bar rather than lowering it, to prevent false convictions, not to encourage them.

I'm available everyday if you have any interesting issues.

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³ *Gould v R* [2021] NSWCCA 92 at [134], [136]; cf *Ewen v R* [2015] NSWCCA 117 at [104]

⁴ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362