The Pell legacy: lessons for cops, courts and all those who serve God and justice

David Hardaker

There was a time in the not-so-distant past when a priest was the first person you would believe. Now? Not so much.

The royal commission into, among others, the Catholic Church and Cardinal George Pell, has killed that off. Then-prime minister Julia Gillard's decision to bring it on in 2012 triggered an eight-year unravelling which reached its endpoint with the judges of the High Court and the royal commission now delivering their final verdicts.

In the space of four weeks, we've learnt there was a "significant possibility" that Pell was innocent of charges that he committed child sex abuse, but that he was most guilty of allowing predator priests to keep abusing children under the church's care.

The High Court found a jury had not been acting "rationally". A royal commission found Pell's versions "implausible". All in an era where a priest is only innocent because no victim has yet come forward.

With all this wreckage of lives and the damage to faith, who knows what to believe any more? And where does it leave the justice system if the highest court in the land says a jury isn't capable of working out what it should believe?

A judge's message for police and prosecutors

Victorian Court of Appeal judges Justice Mark Weinberg has effectively blown the whistle on the quagmire of truth, half-truth and fantasy that juries confront when it comes to claims of historic child sex abuse in an era when anything can be believed.

His is a call aimed primarily at police and prosecutors to smarten up their act.

Last year Weinberg raised the cautionary tale of UK man Carl Beech, who made lurid allegations of child sex abuse by a VIP paedophile ring operating in Westminster.

Beech was ultimately revealed as a fantasiser and convicted of making false allegations of historical sexual abuse. Australia's *60 Minutes* also covered the case in detail, including claims that children were killed to cover up for the VIP ring.

"The police clearly regarded Beech as a credible and reliable witness," Weinberg warned, "notwithstanding the fact that there was no independent support at all for any of his allegations."

He continued: "Some of those allegations were inherently improbable, bordering on the preposterous. Yet, various media organisations took up Beech's cause, broadcasting his claims on national television, and clearly implying that they should be taken as truthful and reliable."

Weinberg sat on two appeals, one after the other, which picked over the modus operandi of the state's public prosecution office and Victoria police's taskforce SANO, established to investigate allegations of child sex abuse arising from the royal commission.

The Pell case was one. The other was the prosecution of Christian Brother John Tyrrell.

A tale of two cases

The two cases had much in common. Both started in 2015. Both prosecutions relied on the word of one complainant, with little or no corroboration. Both Pell and Tyrrell were found guilty by a jury and both cases went to the Victorian Court of Appeal. The Tyrrell appeal was decided in March last year — crossing paths with the Pell appeal which came along three months later.

In the first case, the three-judge Court of Appeal unanimously acquitted Tyrrell who had been found guilty of offences stretching back 50 years. The judges described the sole accuser's evidence as "improbable", "inconsistent", and as "straining credulity". Dates were wrong. Places were wrong. Some events simply could not have happened.

A key part of the prosecution's case crumbled when the complainant admitted that a vivid scene he described as real — when he violently confronted his abuser — could not have occurred and must, in fact, have come from one of his nightmares.

In historic child sex abuse cases, juries are instructed to cut the complainant some slack on dates and details, but the Tyrrell case went too far.

Weinberg referred to the Tyrrell prosecution when giving his judgement in the Pell appeal a few months later. The Tyrrell decision, he said, was "a classic illustration of an apparently compelling witness whose account had to involve a substantial measure of complete fantasy".

"In that case, the fact that the prosecution was brought more than 50 years after the alleged offending was, in itself, a portent of unreliability. Such a prosecution would never have been brought even as recently as 20 or so years ago and, if it had, it would have stayed as an abuse of process," the judge said.

© Provided by Crikey

The Pell prosecution, too, had relied on the uncorroborated word of one witness, Witness J. This witness claimed Pell committed four sex acts on two boys in the space of five minutes having just delivered Sunday mass. One of the boys was no longer alive to give evidence and had denied when he was alive that he was ever abused.

When it came to the Pell case, Weinberg, the dissenting voice on the three-judge appeal panel, zeroed in on the question of just how compelling Witness J was. He noted the prosecution's reliance on his recollection.

Weinberg cited the fact that the first jury in the Pell trial had not been able to reach even a majority verdict, forcing the trial to be held a second time.

"That might suggest that [the prosecutor] Mr Boyce's submission as to the unanswerably compelling nature of the complainant's evidence might be something of an overstatement," the judge noted.

Weinberg found that Witness J "seemed almost to 'clutch at straws'" when he was questioned to "minimise inconsistencies in the evidence". "There were inconsistencies, and discrepancies, and a number of his answers simply made no sense," the judge found.

"The complainant's allegations against [Pell] were, to one degree or another, implausible," he wrote. "In the case of the second incident, even that is an understatement," he said of the prosecution's allegation that Pell, dressed in full ceremonial garb had accosted the young choirboy and violently squeezed his testicles in full view of a 40-strong choral procession.

"The complainant's account of the second incident seems to me to take brazenness to new heights, the like of which, I have not seen," the judge wrote. "I would have thought that any prosecutor would be wary of bringing a charge of this gravity against anyone, based upon the implausible notion that a sexual assault of this kind would take place in public, and in the presence of numerous potential witnesses."

It has since emerged that SANO task force detectives failed to interview eyewitnesses to that account including Father Brian Egan who was in procession with Pell at the time.

Weinberg's step in finding that the prosecution case should not have satisfied a jury beyond a reasonable doubt was unusual — and not just for him, but for appeal court judges full stop. Appeal judges are loath to overturn jury decisions on fact grounds alone because they accept that jurors have a unique advantage: they can observe a witness weigh up if they are truthful and reliable.

Last year Weinberg attested to his faith in jury verdicts: "I have said previously in judgments that juries almost always get it right," he said. "But the word is almost."

According to research by Melbourne University law academic Jeremy Gans, in the three years before the Tyrell and Pell cases, Weinberg had ruled only two jury verdicts unsafe out of 17 applications — a rate of one in nine. This was far lower than the Court of Appeal's average rate of one in four.

For Weinberg to twice find a jury finding unsafe in the space of four months was extraordinary by his own standards. Weinberg is a former federal director of public prosecutions, a one-time dean of Melbourne Law School and arguably Australia's most experienced criminal law jurist. That both of his recent decisions findings relate to the modus operandi of Victoria's Office of Public Prosecutions and police taskforce SANO should ring alarm bells.

What now?

The Office of Public Prosecutions declined to answer *Inq*'s questions on its decision to proceed, or the cost involved in taking on Pell all the way from a Magistrates' Court to the High Court. Ditto the Victorian police and its much-vaunted SANO taskforce.

The police or public prosecutions office are unlikely to face pressure from the Victorian government. There's no public clamour to right law fare wrongs against the likes of Pell who, they might reason, has played the justice system against victims for years.

And besides, the royal commission dismantling of the Catholic Church and Pell is a made in Victoria affair. Gillard, who established the commission, is from Victorian Labor. Victoria's Attorney-General Jill Hennessy, a former lawyer with Labor-leaning law firm Holding Redlich, counts Gillard as a close colleague. The third member of the powerful Victorian trio is Viv Waller, a leading lawyer and campaigner for church victims who once worked with Gillard at Slater and Gordon. It is Waller who represents Witness J, the key witness in the Pell prosecution.

Premier Daniel Andrews' only public comment has been to victims: "I see you. I hear from you. I believe you." Never mind that it is the utter reliance on one victim's word which has arguably led to the collapse of the high-profile prosecution of Pell — a case so heavy with symbolism that sex abuse survivor groups have needed to reassure victims that they shouldn't give up hope.

According to the Blue Knot Foundation's president Dr Cathy Kezelman, telephone counsellors with the advocacy organisation received a large increase in calls from abuse victims in the wake of the High Court decision.

"And not just the number. There was a depth of hopelessness and despair that they had not experienced before," said Kezelman, who has her own harrowing but contested story of childhood abuse.

"There had been so much legal process and it had taken enormous courage [for Witness J] to speak out against an alleged perpetrator of such power. People were asking what is the point of speaking out?

https://www.msn.com/en-au/news/australia/the-pell-legacy-lessons-for-cops-courts-and-all-those-who-serve-god-and-justice/ar-BB13SSgQ?ocid=spartandhp