



When can multiple criminal charges be tried together?

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Under Queensland's *Criminal Code*, charges in the higher courts (the District and Supreme Courts) are contained on a document called an indictment. The general rule is that an indictment must only contain one offence. In this article, we look at when multiple criminal charges can be tried at the same time. We also look at a case where multiple charges were joined on the same indictment, however, the court found this should not have occurred.

When can multiple charges be joined?

When a person is charged with multiple [criminal offences in Queensland](#), the charges may be joined on the same indictment against the same person only if all charges are based on the same facts or form part of a series of offences of the same or similar character, or a series of offences committed in the prosecution of a single purpose.

How can charges be separated?

It is the prosecution who initially decides how many charges are joined on an indictment.

If the defendant objects to the joining of any of those charges (i.e. objects to them being heard together), they can apply to the court for separate trials (or to "sever the indictment"). Doing so usually involves demonstrating to the court that the defendant would be unfairly prejudiced by the charges all being heard together.

A recent example of charges that should have been separated

These principles were recently considered in some detail by the Queensland Court of Appeal in the case of [R vs Smith \[2021\] QCA105](#), delivered on 14 May 2021.

Background

- Smith (the defendant) was charged with a series of sexual offences against a 12 year old girl and the murder of her mother. He also faced two counts of stealing.
- All the charges were joined on the same indictment and were tried accordingly.
- All offences were said to have occurred within a short space of time within a house where the defendant was staying with the deceased and her daughters.
- It was alleged that during the night, the defendant woke up and raped the 12 year old daughter. When she threatened to tell her mother, the defendant replied "OK, you do that".
- The defendant then left the premises, stealing certain items as he went.
- The complainant did go to tell her mother but found her dead, due to either strangulation or drug overdose (those causes of death were the competing theories argued at trial).

The plea

On the 11th day of the trial, after all the evidence had been heard, the defendant decided to plead guilty to all charges except the murder. He was convicted of that charge the following day.

The appeal

On appeal, the defendant's (new) lawyers argued that the failure to sever the count of murder from the other counts on the indictment gave rise to a miscarriage of justice.

The court considered the application of the joinder (joining all the charges under the one indictment) and separate trial provisions of the *Criminal Code* in the context of this case.

The court's considerations

The court set out a number of principles relevant to the consideration of when to join and when to separate multiple charges:

1. When charges are joined as being based "on the same facts", that phrase should not be narrowly construed. The offences need not have arisen contemporaneously (that is, occurred during the same time period), nor involve precisely the same facts. All that is necessary is for them to be traceable, either in time, place or circumstance, to common events.
2. When evidence on one count is inadmissible (i.e. cannot be used) on another count, then even if the counts are properly joined, if the inadmissible evidence might improperly prejudice the defendant and thereby result in an unfair trial, there should be separate trials.
3. Even where the risk of prejudice exists, an application for separate trials can be refused if grounds exist to favour the joining of the charges, and the risk of prejudice can be alleviated by appropriate directions to the jury.

4. It is a general principle that, in a criminal trial, evidence of the commission of offences other than the offence charged, is inadmissible because such evidence has a tendency to erode the presumption of innocence. It may wrongly be regarded by a jury as being more probative of (i.e. tending to prove) an accused's guilt than it deserves to be and therefore prejudicial to the defendant.
5. Admission of prejudicial evidence is exceptional, however, where it is permitted, that evidence must not be merely relevant, it must have "a really material bearing on the actual issues to be decided".

The court's conclusions

In Smith's case, the court concluded that evidence of the stealing offences was directly relevant to the murder count (to prove the defendant's presence in the house), and the risk arising from that evidence was not so great that it could not be removed by an adequate direction to the jury by the trial judge.

However, the risk of prejudice from the evidence about the sexual offences was very high. The evidence concerning the sexual offences could have been excluded without rendering the narrative of the night's events concerning the murder unintelligible.

Consequently, the court held that the sexual offence counts should have been tried separately from the murder and stealing counts. Smith's murder conviction was set aside and the court ordered he undergo a new trial for murder.

Get help from a criminal lawyer

If you've been charged with multiple criminal offences and the prosecution intends to join all charges in the one indictment, you should [seek legal advice from an experienced criminal lawyer](#) to ensure your rights at trial are protected.

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