



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN:

THE KING
Appellant

and

RYAN CHURCHILL
Respondent

RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS

Part I: This outline is in a form suitable for publication on the internet.

Part II: Outline of propositions to be advanced in oral argument

The need for additional directions on the facts of this case

1. On the facts of this case, for the reasons identified by the Court of Appeal (COA), the COA was correct to conclude that the trial judge was required: (a) to caution the jury that evidence of distress is generally of limited weight; and (b) to direct the jury that, before evidence of distress can be used to support the complainant's account, the jury must be satisfied that the distress was caused by the alleged offending (R[49]-[50], [54]-[57]).
2. Ms Russo's evidence of the complainant's demeanour when reporting alleged offending at the Children's Court was liable to be over-valued or misinterpreted.
 - a. There were other plausible causes of the complainant's distress associated with her attendance at the Children's Court (R[67]).
 - b. There were gaps in the evidence about when and where the complainant's meltdown began and how far into the meltdown the complainant reported the alleged offending (R[68]).
 - c. The complainant's distress, described to the jury as a "meltdown", was observed as part of a mental health episode (R[33], [71]).
 - d. The complainant's distress was observed some 12 months after the alleged offending, during which time any number of intervening and unrelated events

had occurred (R[69]).

- e. The jury was relying on an account of the complainant's out of court demeanour given 16 years later, with shortcomings of Ms Russo's memory (R[72]).
- f. The distress evidence was given prominence by the content and structure of the charge (R[6], [10], [41], [50]).

The framework of the JDA

3. The prosecutor requested a "distress direction" under JDA, s 12. There was no requirement for the trial judge to be satisfied under s 16 of the JDA that substantial and compelling reasons existed for giving particular components of a direction that was otherwise requested (R[18]; cf A[46]-[48]).
4. Alternatively, the COA was correct to conclude that, if a distress direction was to be given, the failure to give the additional directions identified occasioned a substantial miscarriage of justice and, therefore, that there were substantial and compelling reasons for giving the directions in the absence of a request (R[19]).

The limitations of distress evidence

5. The COA was correct to observe that evidence of distress will generally be of limited weight (R [32]-[38]).
 - a. Evaluating and interpreting demeanour, particularly evidence of out of court demeanour, is difficult and imprecise (R[32]-[35]).
 - b. Contemporary understandings about the behaviour of sexual assault complainants reinforce the need for caution in the use of distress evidence (R[36]-[38]).
 - c. Evidence of distress may be overvalued because it is sympathetic evidence (R[39]).
 - d. The appearance of independence from the complainant creates a risk of overvaluing by reliance on unarticulated bootstraps reasoning (R[39]-[41]).
6. The appellant's contention that a direction about the generally limited weight of distress evidence would impinge on the constitutional role of the jury (A[51]-[54]) is wrong. It is a direction of an orthodox kind (R[42]-[46]).
7. Neither *Bauer* nor *IMM* address whether distress relied on as circumstantial evidence in and of itself of the occurrence of sexual offending carries significant weight or, more particularly, ought to be the subject of directions to a jury (R[40], R[53], fn84).

The need for a causal link

8. For the reasons set out at [2] above, the complainant's distress at the Children's Court was intractably neutral (**R[55], [59]-[60]**).
9. Alternatively, if it was open to the jury acting rationally to rely on evidence of the complainant's distress as circumstantial evidence "indicative of the trauma of having been sexually penetrated by the accused", the jury needed to first be satisfied that the distress was caused by the alleged offending as distinct from another cause, and directed accordingly (**R[55], [59]-[60]**).
10. It is not contended that the trial judge ought to have directed the jury that they had to be satisfied of the cause of the complainant's distress beyond reasonable doubt (cf **Reply[15]-[16]**).

The respondent's objection

11. It is of no moment that counsel for the respondent did not after the closing addresses object to the trial judge's charge (cf **A[22]**). Her earlier objection to the prosecutor's request for a distress direction was cut short and, in effect, overruled (**R[8]; A[20]**).
12. While counsel for the respondent did not reference s 136 of the *Evidence Act* in terms, she did object to use of the distress evidence as circumstantial evidence of the alleged offending (**R[8]**).

Dated: 14 February 2025



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