



HIGH COURT OF AUSTRALIA

2 April 2025

THE KING v RYAN CHURCHILL (A PSEUDONYM)
[2025] HCA 11

Today, the High Court unanimously allowed an appeal from a decision of the Court of Appeal of the Supreme Court of Victoria. The appeal concerned whether, in a trial of a sexual offence governed by the *Evidence Act 2008* (Vic) and the *Jury Directions Act 2015* (Vic), where evidence that the complainant was distressed at the time of making a pre-trial complaint was relied upon by the prosecution to support the complainant's version of events, there are "substantial and compelling reasons" for the trial judge to warn the jury that: (1) before the evidence of distress could be used for that purpose the jury had to be satisfied that there was a causal link between the distress and the alleged offending; and (2) such evidence generally carries little weight.

Following a trial in the County Court of Victoria in September 2022, the respondent was found guilty of two offences of incest contrary to s 44(2) of the *Crimes Act 1958* (Vic) relating to a single complainant. There was evidence at trial of distress on the part of the complainant when she first complained about the offences to her mother. The trial judge gave a circumstantial evidence direction in relation to the evidence of the complainant's distress.

The Court of Appeal granted the respondent leave to appeal and allowed the appeal on the basis that the trial judge's directions in relation to the use the jury could make of the evidence of the distress of the complainant when making the complaint to her mother gave rise to a substantial miscarriage of justice. The Court of Appeal held that if a distress direction of the kind given by the trial judge was to be given, it required the trial judge to direct the jury specifically about the need for the jury to be satisfied that there was a rational causal link between the distress and the alleged offending; and also to warn the jury of the fact that distress evidence generally carries little weight. In consequence, the Court of Appeal quashed the respondent's convictions and ordered a retrial.

The High Court unanimously held that the Court of Appeal of the Supreme Court of Victoria was wrong to hold that such directions were required. The Court held that where evidence of distress accompanying a pre-trial complaint is admitted as indirect or circumstantial evidence of the offending conduct, it is for the jury to determine whether to accept the evidence and the weight to be given to that evidence. The use of such evidence as indirect or circumstantial evidence can be addressed by appropriate general directions as to the drawing of conclusions and the distinction between direct and circumstantial evidence. Where there is no request for such a direction, then the trial judge is only obliged to so direct a jury if the trial judge considers there are substantial and compelling reasons for doing so in the particular case. The fact that the evidence is evidence of pre-trial distress cannot alone constitute substantial and compelling reasons. Accordingly, the orders of the Court of Appeal allowing the respondent's appeal and quashing his convictions were set aside and in place of those orders, the respondent's appeal to the Court of Appeal was dismissed.

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.