



## HIGH COURT OF AUSTRALIA

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### JUSTIN PATRICK LIBKE v THE QUEEN

A Brisbane man convicted of sexual offences against an intellectually disabled woman was not disadvantaged by the trial judge's directions to the jury about the woman's capacity to give consent and his trial was not unfair, the High Court of Australia held today.

The woman was 18 at the time but had a mental age of eight to 10 with an IQ of 61. Mr Libke, 43, was charged with three counts of rape, one count of indecent dealing with an intellectually impaired person, and one count of sodomy of an intellectually impaired person in 2002. The first count of rape arose from an incident in a park where he first met the woman while walking their dogs. Mr Libke allegedly digitally penetrated the woman. Some days later he telephoned the woman and arranged to come to her house where they had sex. Mr Libke denied any anal penetration and denied being aware that she was intellectually impaired.

At the trial in the Queensland District Court, the main issues concerned consent and whether he reasonably believed the woman was not intellectually impaired. Mr Libke was convicted of the count of rape involving digital penetration. He was acquitted of the other counts of rape, and the counts of sodomy and indecent dealing, but was found guilty of three alternative lesser offences: two of unlawful carnal knowledge with an intellectually impaired person and an offence of exposing such a person to an indecent act. Mr Libke was sentenced to eight years' imprisonment. The Court of Appeal cut the sentence to five years but dismissed the appeal against conviction.

Mr Libke appealed to the High Court, alleging that the prosecutor's cross-examination was unfair and that Judge Milton Griffin gave incorrect and insufficient directions to the jury. He said many of the cross-examiner's questions were confusing, harassing, oppressive and repetitive and that the prosecutor expressed inappropriate comment about his answers. Mr Libke said Judge Griffin failed to give adequate directions on consent as it related to cognitive capacity and intellectual impairment; that he failed to tell the jury that if Mr Libke honestly and reasonably believed that the woman's capacity for communication, social interaction and learning was not substantially reduced, or that he believed that she did not need support, he was entitled to be acquitted; and that flow charts given to the jury as part of Judge Griffin's directions were inadequate.

The High Court, by a 3-2 majority, dismissed the appeal. It held that the prosecutor's conduct did not result in an unfair trial. The Court held that Judge Griffin did not make errors in his directions. In particular, he adequately instructed the jury about the defences available to Mr Libke.

- *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.*