



## HIGH COURT OF AUSTRALIA

Public Information Officer

6 August, 2003

### RODNEY NATHAN KING v THE QUEEN

Mr King was convicted in the Western Australian District Court in December 1999 of aggravated burglary involving breach of a restraining order and deprivation of liberty, after holding his wife, Sandra King, captive for several hours. He was sentenced to seven years' jail.

The prosecution case alleged that at the time of the offences in November 1998, the couple were separated. Mrs King had obtained a restraining order. Despite the order, she met her husband several times so he could see their children, then aged eight, five and three. After time at a women's refuge, Mrs King and the children moved to a house in Forrestfield, Perth, without telling her husband. Mr King discovered where she was living a week later and gained entry by saying he was a neighbour. When Mrs King opened the door, he knocked her to the ground then pulled her to her feet and slapped her. She ran from the house screaming but returned to the children. When she made a dash to the living room to call police he dragged her back to the kitchen, leading to the deprivation of liberty charge. Mr King took his family to two service stations for milk and cigarettes and to his workplace to collect his pay. Mrs King was eventually able to call police when he went outside to his son who had fallen off his bicycle.

Mr King told police Mrs King had called him to ask him to fix her car so was at her house with her consent, but in a tape-recorded call from prison after his arrest he said another person had given him Mrs King's address. Mr King, who was mostly unrepresented at his trial, gave no evidence. Judge Peter Nisbet told the jury the prosecution bore the onus of proof and must satisfy the jury beyond reasonable doubt that Mr King's claim that he had Mrs King's consent was false. Judge Nisbet did not mention a consent defence under section 62 of WA's Restraining Orders Act under which Mr King may have borne the onus of proof on the balance of probabilities, had he been charged with that offence. On appeal, this was argued to be a misdirection.

The Court of Criminal Appeal held that Judge Nisbet erred in not directing the jury on section 62 but held that there was no miscarriage of justice. Mr King appealed to the High Court.

The High Court unanimously dismissed the appeal. Four members of the Court held that there was no error on the part of Judge Nisbet, and one held that there would have been no miscarriage of justice in any event.

- *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.*