



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: M47/2023
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Important Information

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN:

The King
Appellant

and

Anna Rowan – A Pseudonym
Respondent

APPELLANT’S REPLY

Part I: Internet publication certificate

1. The appellant certifies that this submission is in a form suitable for publication on the internet.

Part II: Reply

2. The respondent would countenance the law of duress applying where an accused was unable “to point to a particular state of mind in the principal offender”.¹ Here, the principal offender is JR.
3. Whether described as a “standing threat” or “duress of circumstances”, the position adopted by the respondent in this respect — for the reasons already articulated — must be viewed as an extension in principle concerning the law of duress. This development cannot be explained away simply as a question of evidence.²
4. But the respondent’s refashioning of duress is opportune because — again, for the reasons already explained — it was entirely speculative in this case what was in JR’s mind when the respondent joined with him in the sexual abuse of the couple’s children.

¹ The Respondent’s Submissions (“the RS”) at 6.36.

² See, for instance, the RS at 6.8.

5. No evidence is pointed to revealing that JR had ever before sought that the respondent take such a step. Likening the position of the respondent to the Jewish Sonderkommando at Auschwitz is inapt.³
6. But that is not to say that — taking the respondent’s case at its highest — the respondent did not perceive a threat and one that had some basis in objective reality. The point is, however, that the existence of this threat can only have been inferred from the objective circumstances in which she found herself: what the Court below characterised as a “continuing or ever present threat”.
7. If this Court holds that the Court below erred in deciding that the respondent could avail herself of the defence of duress, there ought be no remitter so that consideration may be given to a different defence not relied upon by the respondent in the trial court⁴ or in the Court below.

Dated: 15 September 2023



Christopher B. Boyce KC

Senior Crown Prosecutor

Telephone: 0467 344 963

Email: Chris.Boyce@opp.vic.gov.au



Stephanie Clancy

Crown Prosecutor

Telephone: 0475 228 782

Email: Stephanie.Clancy@opp.vic.gov.au

³ The RS at 6.25.

⁴ And, thus, was not the subject of ruling by the trial judge.