HIGH COURT OF AUSTRALIA

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Details of Filing

File Number:	S111/2025
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Important Information

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Form 27D—Respondent's submissions
Note: See rule 44.03.3.

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN: **The King**
Appellant

and

AR
Respondent

RESPONDENT'S SUBMISSIONS

Part I: Certification

1. These submissions are in a form suitable for publication on the internet

Part II: Statement of issues

2. The issues as framed by the appellant do not arise. It is uncontroversial and well-established that it is open to the prosecution to rely on charged acts as tendency evidence (Appellant's Submissions (**AS**) at [2], [47]). However, this is subject to the way in which the tendency is framed and the rules of admissibility, as well as appropriate directions as to how the jury may use the evidence as tendency evidence. The second issue identified by the appellant does not arise in the circumstances of this case having regard to the New South Wales Court of Criminal Appeal's (**CCA**) reasoning (see AS at [3], [47]). The CCA did not hold, and it is not contended by the respondent, that where charged acts are relied upon to prove a tendency it is necessary to describe the tendency "only in general terms". Nor is such a proposition a necessary implication of the CCA's reasoning.

3. The issue in this case is: Was a miscarriage of justice occasioned by a misdirection of law in circumstances where the jury were directed to make findings:
    a. in terms of the charged conduct,
    b. in order to determine if a tendency expressed in the same terms as the charged conduct was established,
    c. in circumstances where the tendency was to be proved by reference only to (a very limited number) of charged acts?

Part III: Notice

4. The respondent considers that no notice pursuant to s78B of the *Judiciary Act 1903* is required.

Part IV: Material facts

5. This appeal does not involve contentious factual issues. The appellant's summary of facts outlined at AS [6]-[20] is accepted.

Part V: Argument

<u>The issue at trial, the tendency as alleged and the trial judge's directions</u>

6. The circumstances in which tendency evidence is relevant and admissible in proof of a charge or charges depends on the particular circumstances of the case and the nature of the tendency evidence. It is protean in the sense that evidence supporting an alleged tendency in any given case can be drawn from different sources and different acts for example, it can be deployed where there are past convictions, where there are multiple complainants, where there is a single complainant and multiple allegations or where there are charged and uncharged acts. Identification of the relevance of the tendency evidence and the process of reasoning to guilt guides both the admissibility and the directions to be given in respect of the use of the evidence and the reasoning process. Both the admissibility stage and the framing of the directions have the overarching aim to guard against the risk of a miscarriage of justice. The risk of miscarriage can arise by virtue of the jury using impermissible reasoning in relation to the evidence, giving the evidence too much weight or by the jury's understanding of the requirement for the offence(s) to be proved beyond reasonable doubt.

7. This case involved a single complainant and allegations of three incidents alleged to have occurred over a short period of time during the September/October 2020 school holidays. In each incident, the respondent allegedly sexually assaulted the complainant by penetrating her vagina with his fingers when she had fallen asleep beside him while watching a movie. The incident constituting counts 1/2 allegedly occurred at the respondent's home, at West Gostford (**the West Gosford incident**). The other two incidents (counts 3-4 and 5-7) allegedly occurred at the complainant's home. These two incidents are referred to as the **First and Second Narara incidents**.

8. The respondent was acquitted of the counts relating to the West Gosford incident. The evidence in respect of these counts was very frail. The complaint was first made approximately one year and nine months after the first complaint in circumstances where the complainant said she remembered the allegations relating to count 1/2 following a 'vivid dream' (CCA [17]-[20]; [26] Core Appeal Book (**CAB**)). The first complaint to police was made one month after the alleged incidents when the complainant alleged the incidents the subject of counts 3-7 but did not refer to any incident relating to count 1/2.

9. The Crown case depended entirely on acceptance of the complainant's evidence of the alleged offences. The defence case was that the alleged offences did not occur. The evidence of the alleged offences derived solely from the complainant. The complainant's reliability and credibility were in issue in the trial.

10. Regardless of tendency, the complainant's evidence of the alleged offences was cross-admissible as circumstantial evidence, as relationship and context evidence, because it had the capacity to bear on the credibility of the complainant. This is particularly so given that the Narara incidents occurred in a close period of time, in similar circumstances and where the appellant had opportunity to commit the offences. No standard of proof issue arises in respect of the use of the evidence of charged acts as relationship and context evidence nor does the use of the evidence in this way require any intermediate findings to be made.

11. The complainant's evidence of the alleged offences was also admitted as tendency evidence. The tendency identified in the tendency notice and ultimately left to the jury was a tendency to:
    a. have a particular state of mind namely, a sexual interest in [the complainant]; and
    b. to act on that interest by penetrating her vagina with his fingers and/or sexually touching her when she had fallen asleep beside him watching a movie (CCA [30] CAB 167, SU 58 CAB 67).

12. The tendency identified in (b) above was the very conduct and circumstances of counts 1, 3 and 5 (and the alternative sexual touching charges 2, 4 and 6). Count 7 (the respondent placing his hand on the top of the complainant's hand which was on the respondent's penis) was alleged to have occurred during the same incident as count 5.

13. The tendency notice identified the evidence that proved the alleged tendency as "the evidence with respect to the counts for each of those three occasions (represented by Counts 1-2, Counts 3-4 and Count [sic] 5-7) as tendency evidence in respect to Counts representing the other occasions" (Appellant's Book of Further Materials (**ABFM**) at 218; CCA [31] CAB 167). No further evidence was relied upon as supporting the tendency alleged by the Crown. Accordingly, it can be seen that the only evidence the Crown relied upon to prove the tendency was the complainant's evidence of the charged acts and the alleged tendency was described in the same terms as the conduct (and circumstances) the subject of the charged acts (CCA [90] CAB 187).

14. Acceptance of the complainant's evidence beyond reasonable doubt was critical to a finding of guilt. The probative value of the evidence (as tendency evidence) was its capacity to support the credibility of the complainant's account (*IMM v The Queen* (2016) 257 CLR 300 at [62]). Given that the evidence was otherwise interadmissible the additional contribution of this same evidence as tendency evidence was limited.

15. The prosecution's decision to frame the alleged tendency in the way it did, and rely solely on the evidence of the charged acts and circumstances, had ramifications for the directions to be given to the jury. If the tendency is framed in this way in the circumstances of this case that would mean that if the tendency was in fact established that would potentially have a high degree of probity on guilt (*Hughes v The Queen*

(2017) 263 CLR 338 (***Hughes***) at [64]). That is to say, the existence of the tendency identified in (b), if proved, significantly increased the likelihood that the appellant committed the alleged offences to the point of being conclusive. This, however, requires attention to be given to how that tendency is proved and used so as not to undermine the necessity for proof of the elements of the charge beyond reasonable doubt (*Director of Public Prosecutions v Benjamin Roder (a pseudonym)* (2024) 98 ALJR 644 (***Roder***) at [28]).

16. The trial judge directed the jury on more than one occasion to decide what conduct occurred when determining whether the alleged tendencies existed (SU 58-60 CAB 67-69, CCA [34] CAB 168-169). The trial judge also specifically directed the jury that when considering the alleged conduct as tendency evidence, "you are not … considering whether those episodes of misconduct have been proved beyond reasonable doubt" (SU 59 CAB 68, CCA [34] CAB 169).

The CCA's reasoning

17. The CCA held there was a misdirection of law, namely the direction to make findings of the charged conduct - in order to determine if the tendency expressed in the same terms as the charged conduct is established - and this misdirection occasioned a miscarriage of justice (CCA [105] CAB 191). The CCA found that that the tendency direction, viewed in the context of the summing up as a whole, "did not adequately direct the jury and it was likely that the jury's attention would be deflected from applying the requisite standard of proof in respect of the offences charged." (CCA [105] CAB 191).

18. The CCA found that the directions given to the jury to decide what conduct occurred when determining whether the alleged tendencies were established was "at odds with *Roder* at [37]" (CCA [87] CAB 186). The appellant accepts that this conclusion of the CCA was correct and the direction given to the jury did not accord with *Roder* (AS at [33]). The appellant also accepts that the CCA correctly acknowledged that the depature from *Roder* in the directions did not necessarily mean there was a miscarriage of justice (AS at [33], [57]; CCA [88] CAB 187).

19. The CCA concluded that the jury were not adequately directed and "it was likely the jury's attention would be deflected from applying the required standard of proof in

respect of the offences charged" (CCA [105] CAB 191). This conclusion followed from the CCA's analysis of the way in which the alleged tendency was described and the evidence relied upon by the Crown in support of the tendency (see CCA [89]-[99]). The CCA stated that the direction given in the circumstances of this case was "likely to encourage, if not require, the jury to enage in the impermissible circular reasoning identified in *JS v R* [2022] NSWCCA 145 (***JS***) at [43] and *Roder* at [25]-[26]" (CCA [98] CAB 189). The CCA also concluded that the directions "could not adequately … address the difficulties that arose as a result of the tendency being expressed in precisely the same terms as the acts relied upon to establish the tendency and relied upon to establish … guilt" (CCA [99] CAB 189).

20. Contrary to the appellant's submissions, the CCA did not hold that no directions could fairly be given or that no direction could be given (in the circumstances of this case) that did not invite impermissible circular reasoning (AS at [34],[35](b), [46] citing CCA [90]-[92] CAB 187-188, [98]-[99] CAB 189 and [102] CAB 190). The CCA's reasoning does not have the effect that evidence of charged acts is inadmissible to prove a tendency that is expressed in a manner that reflects similar detail to the charged acts (cf. AS at [58], see also AS at [47], ground (b) CAB 202). Nor does the CCA's reasoning have the effect that in a single complainant case where the tendency evidence is based exclusively on charged acts the tendency can only (ever) be described in general terms and cannot be described with specificity (cf. AS at [47]).

21. Rather, the CCA's reasoning was directed to why the trial judge's directions to the jury (which it had found to be inconsistent with *Roder*) risked undermining the standard of proof to be applied by the jury by reason of the way the Crown chose to describe the alleged tendency and the evidence the Crown chose to rely upon to prove the tendency (see CCA [98] CAB 189, CCA [102] CAB 190). The CCA doubted whether a direction in accordance with *Roder* at [37] would suffice to guard against the risk that the jury could misapply the standard of proof in circumstances where the alleged tendency was described in the same terms as the charged acts and where the evidence relied upon to prove the tendency was the charged acts (CCA [90]-[92] CAB 187-188). This further observation was of no significance to the CCA's conclusion at [105] that the directions given by the trial judge were a misdirection that occasioned a miscarriage of justice.

The CCA's reasoning accords with principle

22. The appellant contends that the CCA's reasoning is "irreconcilable" with High Court authority in respect of the admissibility and use of tendency evidence (AS at [36], [51]). However, the CCA's reasoning accorded with established principle in this Court about the admissibility and use of tendency evidence as articulated by this Court in *Roder*, *Hughes* and *The Queen v Bauer (a psyudonym* (2018) 266 CLR 56 (***Bauer***).

23. In *Roder*, the Court reiterated at [24] the explanation of the reasoning process involved in evaluating tendency evidence given in *Hughes* at [16], that the trier of fact "reasons from satisfaction that a person has a tendency to have a particular state of mind, or to act in a particular way, to the likelihood that the person had the particular state of mind, or acted in the particular way, on the *occasion in issue*." (emphasis added). The majority in *Hughes* went on to say at [16] that the "starting point … requires identifying the tendency and the fact or facts in issue *which it is adduced to prove*" (emphasis added).

24. The Court in *Roder* outlined, at [24], that the process involved in tendency reasoning "is similar to the manner in which an assessment of the significant probative value of the evidence is undertaken by the trial judge for the purpose of determining admissibility, namely, by first assessing the strength of the evidence in establishing the tendency and then considering "the extent to which the tendency makes more likely the elements of the offence charged" (citing *Hughes* at [64]). This also reflects the "juridical basis of cross-admissibility of evidence of charged acts and of the admissibility of evidence of uncharged acts" that "ordinary human experience that, where a person is sexually attracted to another and has acted on that sexual attraction *and the opportunity presents itself to do so again*, he or she will seek to gratify his or her sexual attraction to that other person by engaging in sexual acts of various kinds with that person" (*Bauer* at [51], emphasis added).

25. In *Roder* at [28], the Court noted the risk identified by Basten A-JA in *JS* at [40] as to the "risk of undermining the jury's understanding of the necessity for proof the elements of the charge beyond reasonable doubt" and that "one means of minimising the risk was to avoid giving a tendency direction that invited the jury to make findings as to the conduct relied on in proof of the charge".

26. The Court in *Roder* said at [37] that, where charged and uncharged acts are relied upon, a tendency direction "should not direct or invite the jury to make findings in respect of charged conduct, but instead should indicate the evidence relied on to support the alleged tendency, direct the jury to consider whether they are satisfied of the alleged tendency and then advise the jury that, if they are so satisfied, they can use that tendency in considering whether it is more likely that the accused committed the specific offences with which he or she is charged".

10 27. The CCA's conclusion that the direction given in this case did not comply with *Roder* at [37] accorded with *Roder* and *JS*, as the appellant accepts (CCA [87] CAB 186, AS at [33]). The Court, as the appellant also accepts, correctly went on to consider whether the deficiency occasioned a miscarriage of justice (CCA [88] CAB 187, AS at [33], [57]). The CCA ultimately concluded that the direction did occasion a miscarriage on the basis that the direction was not adequate and meant "it was likely that the jury's attention would be deflected from applying the required standard of proof in respect of the offences charged" (CCA [105] CAB 191). This conclusion also accorded with the reasoning in *Roder* at [28] and *JS*. The Court in *Roder* recognised at [28] the risk that the jury's understanding of the necessity for proof of the elements of the charge beyond
20 reasonable doubt could be undermined by a tendency direction where that direction invited the jury to make findings as to the conduct said to prove the tendency where that conduct was charged. The appellant appears to accept that the authorities recognise that there is a risk the standard of proof may be misapplied where charged acts are relied on as tendency evidence (AS at [54]).

28. The CCA's conclusion that the jury's attention would likely be deflected from applying the required standard of proof in respect of the offences charged was correct in circumstances where there was a single complainant, the tendency was described in the same terms as the alleged offences and circumstances of the alleged offences, and the
30 evidence proving that tendency were only the charged acts (of which there were 2 or at most 3). This also accorded with authority and the reasoning process identified in *Roder*, *Hughes* and *Bauer* above whereby one looks at the evidence supporting the alleged tendency and assesses whether and how much it makes more likely that the person had a particular state of mind or acted in a particular way on the occasion in issue, i.e. the

count on the indictment under consideration. In circumstances where there was a single complainant, a limited number of charges, the Crown described the tendency in the same terms as the alleged offences and relied on the same evidence, the reasoning process meant that it was likely the jury's reasoning process would be deflected from applying the correct standard of proof.

29. There are material differences between the circumstances in *Roder* as compared to the circumstances in this case. In *Roder*, the Court prefaced the appropriate directions to be given to the jury with a qualifier at [37] namely, "in a case where the prosecution relies on both uncharged and charged acts to establish an alleged tendency of the kind under consideration here". In *Roder*, there were multiple complainants (two stepdaughters of the respondent) and a significant number of charged acts (a total of 27). The prosecution also relied on 6 uncharged acts in proof of the alleged tendency. Several tendencies were alleged which went beyond "an improper sexual interest" in the respondent's step children and "a willingness to act on that interest 'by engaging in sexual activity'" and included several features of the circumstances of the alleged offending.

30. The CCA was correct to observe that in circumstances where the tendency was framed in the same terms as the charged acts (and relied upon those charged acts in proof of the tendency) the jury was required to consider the evidence of the charged acts to determine the existence of the alleged tendency (CCA [91], [98] CAB 187, 189).

31. The CCA's conclusion that the direction given was "likely to encourage, if not require, the jury to engage in the impermissible circular reasoning identified in *JS* at [43] and *Roder* at [25]-[26]" (CCA [98] CAB 189) was also correct given that the alleged tendency was described in precisely the same terms. This conclusion accorded with High Court authority insofar as *Roder* identifies the reasoning process as the same as what occurs when assessing the probative value of the evidence for the purposes of admissibility in accordance with *Hughes*. The reasoning process described in *Hughes* (set out above) requires regard to be had to the extent to which the evidence establishes the asserted tendency and then the extent to which the asserted tendency makes it more likely that the accused committed the offence under consideration (cf. *JS* at [43]; *Roder* at [27]; cf. AS at [52]-[54]).

32. *Roder* (and *JS*) rejected the proposition that the process of tendency reasoning necessarily involved circular reasoning where the evidence relied upon in support of the tendency involved charged acts (see *Roder* at [26]-[27]). Both decisions nevertheless recognise the risk in undermining the standard of proof to be applied (see *Roder* at [27], *JS* at [40]; see AS at [54]). The standard of proof may be undermined by engaging in a staged reasoning process that has different aims because a finding as to the occurrence of the conduct may be necessary in order to find the tendency and as such the process is conflated. The "somewhat artificial distinction between the tendency and the conduct underpinning it will be more difficult to maintain where a finding has been made as to that conduct" (*New v R* [2025] NSWCCA 32 at [296] per Dhanji J, Mitchelmore JA agreeing, Fagan J not deciding, see also at [297]). In *New*, Dhanji J at [276] (Mitchelmore JA aggreeing) observed that a lower number of charges may exacerbate the problem:

> … directions requiring the jury to make findings of fact where there are two acts relied on for a tendency purpose, each of which is one of two counts on the indictment may be more problematic. Clearly, in such a case, the evidence relied on to establish an offence forms a substantial part of the tendency evidence. It may be more difficult for a jury to separate a finding as to that conduct for the purposes of the tendency given the weight that it will have been given in finding the tendency (particularly when it is then likely to be considered at the second stage in conjunction with the established tendency). By contrast, in a case with twenty separate acts, many of which are also relied upon in proof of an offence, individual acts will have a reduced significance in finding the tendency proved. In these circumstances, an antecedent finding made for the purposes of proving the tendency may be less likely to interfere in the process of reasoning when considering guilt with respect to the particular offence.

33. The CCA were correct to express some doubt about whether the directions in *Roder* adequately addressed the issue that arose in the circumstances of this case (CCA [91] CAB 187). This is because the directions said to be appropriate in *Roder* at [37] related to a case where the prosecution relies on both charged and uncharged acts to establish a tendency of the kind under consideration in that case. As set out above, there are material differences between the circumstances of this case and the circumstances of *Roder*. In *Roder* there was no circularity because the jury were considering a large

number of charged acts against two complainants as well as several uncharged acts and so the jury were engaging in a process of reasoning whereby they could look at the whole of the evidence, as part of a holistic process, in order to establish an intermediate fact namely, the existence of the alleged tendency and then employ the existence of the alleged tendency in considering guilt beyond reasonable doubt.

34. In the present case, there was one complainant, the evidence supporting the alleged tendency was the very limited number of charged acts and the tendency matched the description of the charged acts. In these circumstances the risk of conflation and consequential undermining of the standard of proof was most acute. The reasoning process in such a case can only ever be "linear" (*Roder* at [26]). This is because in such a case satisfaction of the existence of the alleged tendency as per *Roder* at [37] necessarily requires the jury to consider whether the charged acts supporting that tendency occurred. In these circumstances the distinction drawn in *JS* at [43] between making findings as to conduct and making findings as to tendency falls away completely.

The CCA's treatment of *Kanbut v R* [2022] NSWCCA 259 (***Kanbut***)

35. The appellant argues that the CCA erred in wrongly finding that the tendency was framed in a way that coincided precisely with the offending behaviour and wrongly applied *Kanbut* (AS at [35](a), [42]-[47]). The appellant submits that this misapplication of *Kanbut* informed the erroneous conclusions that the alleged tendency in this case was "inconsistent with the nature of tendency evidence" and created "intractable problems" in fairly directing the jury (AS at [46]). However, the CCA's conclusion that the directions in this case caused a miscarriage of justice was not dependent on any application (or misapplication) of *Kanbut*. Rather, the CCA reasoned that the directions caused a miscarriage because "it was likely that the jury's attention would be deflected from applying the required standard of proof in respect of the offences charged." (CCA [105] CAB 191). That conclusion was based on the correct application of *Roder* and *Hughes* as set out above. In any event, there was no misapplication of *Kanbut* by the CCA.

36. Contrary to the appellant's submission at AS [35](a) and [45], as the CCA explained at [89] CAB 187 the alleged tendency as framed was the same thing the prosecution sought

to prove in relation to each count. In light of the appellant's decision to frame the tendency in this way, the observation of Beech-Jones CJ at CL (as his Honour then was) was apposite namely, that implicit in [41] of *Hughes*, was that the tendency is not to be "expressed in precisely the same terms as the facts making up the charged offence" (*Kanbut* at [64], referred to by the CCA [92] CAB 187-188). As Beech-Jones CJ at CL went on to explain in *Rassi v R* [2023] NSWCCA 119 (***Rassi***) at [11], where the tendency is formulated in the same terms as the facts making up the charged offence, and where the evidence relied on in support of that tendency is the acts of the accused that form the basis of the charges, such a tendency invites circular reasoning because the jury must determine whether the charges have been committed in order to find the tendency has been established.

37. The same reasoning applies to the circumstances of this case and the CCA did not err in its treatment of *Kanbut* particularly in circumstances where the jury had been directed to first consider whether the conduct occurred. That reasoning did not apply in *Rassi* in circumstances where there were 4 incidents giving rise to five charges and the Crown relied on seven uncharged acts and where the alleged tendency was described in general terms (*Rassi* at [28]-[29], [81]). Further, the CCA was correct to conclude, applying *Kanbut*, that the direction to the jury to put the tendency evidence to one side if they were not satisfied that any of the conduct the Crown relied upon occurred was confusing and illogical (CCA [95]-[96] CAB 188-189). As recognised in *Kanbut* at [68], if the jury were not satisfied that any of those acts occurred they were obliged to find the respondent not guilty.

Framing the tendency in general terms

38. The appellant submits that an issue that arises in this case is whether it is necessary to describe the tendency in only general terms in order to avoid describing the tendency in a way which replicates the detail of the charged allegations (AS at [3]). The appellant argues that the effect of the CCA's reasoning at [89]-[99] CAB 187-189 is to "improperly preclude the Crown from framing an asserted tendency to reflect particularity where it exists" (AS at [51]). This is not the effect of the CCA's judgment and the appellant's argument on this subject does not address the additional feature of this case namely, that the evidence relied upon in support of the tendency was the evidence of the charged acts (and no other evidence). As set out above, this was critical

to the CCA's reasoning in relation to miscarriage. The appellant does not address how this alleged error affected the CCA's conclusion (or reasoning towards) a miscarriage of justice in this case (particularly in circumstances where it accepts the direction given was not in accordance with *Roder* insofar as the jury were directed to make findings as to whether charged acts occurred when determining whether the alleged tendency had been established). Moreover, the fact that the appellant in this case described the alleged tendency with a high degree of particularity (and in the same terms as the charged conduct) increased the risk that the jury misapplied the standard of proof given that it elevated significantly the potential probative value of the alleged tendency (*El-Haddad v R* (2015) 88 NSWLR 93 at [72] per Leeming JA).

Miscarriage of justice

39. The appellant contends that the directions to the jury did not occasion a miscarriage of justice notwithstanding that they did not accord with *Roder* (AS at [57]-[63]). However, the appellant also appears to acknowledge that there is a risk that the burden of proof is undermined where a jury considers the same evidence (of charged acts) at the tendency stage and at the verdict stage (as set out in *Roder* at [28] and *JS* at [40], AS at [54]). It is difficult to envisage a case where the risk was more acute than this case given the description of the alleged tendency and the evidence relied upon in proof of the alleged tendency consisted solely of the complainant's account of a very limited number of charged acts.

40. The appellant submits that the "mixed verdicts …stand ..against the CCA's conclusion that the jury's attention would have been deflected from applying the required standard of proof in respect of the offences charged" (AS at [62]). However, this submission does not acknowledge the extent of the frailties of the evidence relating to counts 1/2. The CCA found the acquittals to be explicable by the nature of the reliability issues of the evidence concerning them (CCA [102] CAB 190). Counts 1/2 were seriously problematic given the highly unusual circumstances of the complainant recalling the allegations, at a much later time, following a vivid dream. The acquittals in relation to the weaker charges are not a reliable indicator that the anterior findings in relation to the balance of the counts did not infect the jury's reasoning process (by undermining the standard of proof to be applied) in relation to the counts which resulted in convictions. In the circumstances of this case the only way of explaining the verdicts of

the jury is that the evidence concerning counts 1/2 was simply put to one side when the jury came to consider the question of tendency. As such, the acquittals on counts 1/2 increased the risk that the standard of proof would be undermined in the circumstances of this case because the jury would have been with only two incidents, both the subject of the charges, as evidence of the tendency.

Part VI: Notice of contention/cross appeal – N/A

Part VII: Estimate

41. It is estimated the respondent's oral argument will take 1 hour to present.

Dated 9 October 2025

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ANNEXURE TO RESPONDENT'S SUBMISSIONS

No	Description	Version *eg: Version 26 (1 July 2020 to 24 March 2024)*	Provision(s)	Reason for providing this version *eg:* • *Act in force on the date of the offence;* • *date of judgment in Court of Appeal;* • *for illustrative purposes only*	Applicable date or dates (to what event(s), if any, does this version apply) *eg: 21 April 2018: date of Minister's decision*

The respondent adopts the annexure to the appellant's submissions which identifies the relevant legislative provisions.