



## HIGH COURT OF AUSTRALIA

18 June 2025

MDP v THE KING  
[2025] HCA 24

Today, the High Court allowed an appeal from the Court of Appeal of the Supreme Court of Queensland.

After a trial by jury, the appellant ("MDP") was convicted of sexual offences against his stepdaughter. At trial, the Crown adduced evidence from the complainant's sister that MDP smacked the complainant "on the bum" when "[w]e weren't doing anything wrong" ("the smacking evidence"). MDP's trial counsel did not object to the admission of the smacking evidence. In summing up, the trial judge directed the jury that they could only use the smacking evidence if they were "satisfied beyond reasonable doubt that [MDP] did act as the evidence suggests, and that that conduct does demonstrate that he had a sexual interest in the complainant and was willing to pursue it", and that "[i]f you do not accept that this other evidence proves to your satisfaction that [MDP] had a sexual interest in the complainant, then you must not use the evidence in some other way". MDP's trial counsel did not oppose the giving of the direction or seek a redirection.

The Court of Appeal dismissed MDP's appeal against his convictions. MDP appealed to the High Court, contending that the admission of the smacking evidence and the trial judge's direction about the smacking evidence gave rise to a miscarriage of justice and constituted a wrong decision on a question of law.

The High Court unanimously held that a wrong decision on a question of law involves a wrong determination or response to a question of law by the trial judge that has legal effect in the trial, and that a wrong decision on a question of law, other than one that is "fundamental", cannot result in an appeal being allowed unless the appellant can establish that the wrong decision could realistically have affected the reasoning of the jury to the verdict of guilty that was returned in the trial that occurred. The High Court unanimously held that no decision on a question of law occurred when the smacking evidence was admitted without objection. The High Court unanimously held that the trial judge made a wrong decision on a question of law in directing that it was open to the jury to treat the smacking evidence as evidence of MDP having a propensity to have a sexual interest in the complainant, notwithstanding the failure of MDP's counsel to oppose the giving of the direction. By majority, the High Court held that the trial judge's direction could realistically have affected the reasoning of the jury to the verdicts of guilty that were returned in the trial that occurred, and that it had not been demonstrated that no substantial miscarriage of justice actually occurred. Accordingly, MDP's convictions were set aside and a new trial ordered.

*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.*