



HIGH COURT OF AUSTRALIA

8 April 2026

THE KING v AR
[2026] HCA 10

Today, the High Court by majority allowed an appeal from a judgment of the New South Wales Court of Criminal Appeal.

The respondent was tried in the District Court of New South Wales on an indictment charging him with committing seven sexual offences against the complainant, GC. The seven charges arose out of three separate occasions in 2020 when the respondent allegedly committed sexual offences against GC. At the respondent's trial, the Crown contended that the evidence in support of the charged acts established a tendency on the part of the respondent to have a sexual interest in GC and to act on that sexual interest by committing a particular sexual act against her when she had fallen asleep beside the respondent while watching a movie.

The trial judge directed the jury in terms that identified the evidence said to support the alleged tendency as being the evidence of the charged acts, and told the jury that, if established, the tendency could be used in considering whether it was more likely that the respondent had committed the charged acts ("the tendency direction"). The tendency direction also invited the jury, in determining whether the Crown had established the tendency, to make findings in respect of the charged acts to a lesser standard than the criminal standard.

On appeal, the Court of Criminal Appeal relevantly held that a miscarriage of justice was established because the tendency direction was likely to have "deflected [the jury's attention] from applying the required standard of proof in respect of the offences charged". In so concluding, the Court held that the formulation of the tendency in a manner that "replicated the detail of how the offences were allegedly committed" was "inconsistent with the nature of tendency evidence" and that the tendency direction "encourage[d], if not require[d], the jury to engage in ... impermissible circular reasoning".

The High Court by majority held that the formulation of the alleged tendency and the Crown's reliance on the evidence of the charged acts to establish the alleged tendency was not inconsistent with the nature of tendency evidence. A majority of the High Court further concluded that neither the alleged tendency nor the tendency direction encouraged or required the jury to engage in impermissible circular reasoning and that, in the context of the trial judge's summing up as a whole, there was not a real risk that the jury's understanding of the necessity that the elements of the charges on the indictment be proved beyond reasonable doubt was undermined.

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.