



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: B18/2020  
File Title: GBF v. The Queen  
Registry: Brisbane  
Document filed: Form 27F - Outline of oral argument-Appellant  
Filing party: Appellant  
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IN THE HIGH COURT OF AUSTRALIA  
BRISBANE REGISTRY

BETWEEN:

GBF  
Appellant  
and  
The Queen  
Respondent

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**APPELLANT'S OUTLINE OF ORAL SUBMISSIONS**

**Part I: Certification**

1. I certify that this outline is in a form suitable for publication on the internet.

**Part II: Outline**

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2. The Trial Judge's statement to the jury that the absence of sworn evidence from the appellant would "make it easier" wrongly permitted the jury to reason to guilt from the appellant's exercise of the right to silence.

3. The Court of Appeal was wrong to conclude that:

- a. The risk of improper reasoning was removed because of other inconsistent directions given to the jury; and
- b. The failure of defence counsel to object meant that no miscarriage of justice occurred.

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4. The Court of Appeal was wrong to assess the "miscarriage of justice" question by asking whether the appellant had been denied a "real chance of an acquittal" because such an approach is inconsistent with *Weiss v The Queen*<sup>1</sup> and *Kalbasi v Western Australia*.<sup>2</sup>

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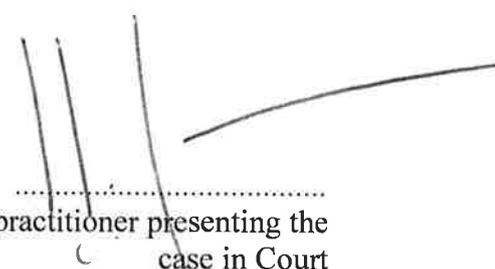
<sup>1</sup> (2005) 224 CLR 300.

<sup>2</sup> (2018) 264 CLR 62.

5. Whether assessed as a “miscarriage of justice” or by applying the proviso or by any other criterion, the appeal should be allowed:

- a. The error was fundamental in that it gave the jury permission to reason in a way at odds with the accusatorial nature of a criminal trial; and
- b. The error went to the assessment of the credibility and reliability of the critical prosecution witness.

10 Dated: 9 September 2020



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Senior legal practitioner presenting the  
case in Court

Name: Saul Holt QC  
Tel: (07) 3369 5907  
Fax: (07) 3369 7098  
Email: [sholt@8pt.com.au](mailto:sholt@8pt.com.au)

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.....  
Name: Matt Jackson  
Tel: (07) 3369 8011  
Fax: (07) 3369 7098  
Email: [mjackson@8pt.com.au](mailto:mjackson@8pt.com.au)