



HIGH COURT OF AUSTRALIA

Public Information Officer

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DIRECTOR OF PUBLIC PROSECUTIONS FOR THE NORTHERN TERRITORY v WJI

The High Court of Australia today upheld the directions to the jury of NT Supreme Court Justice Trevor Riley in relation to consent in WJI's rape trial, and agreed with a decision of the NT Court of Criminal Appeal on the appropriateness of the directions.

In May 2001 WJI was found not guilty of sexual intercourse with a female without her consent. Justice Riley had told the jury the charge had three elements: that WJI had sexual intercourse with TRR at Palmerston on or about 27 January 1988; that TRR did not give her consent; and that WJI intended to have sexual intercourse with TRR without her consent. Justice Riley directed that if WJI had mistakenly believed that TRR consented to sexual intercourse, he will not have intended to have sex with her without her consent. Therefore the Crown must prove beyond reasonable doubt that WJI had no mistaken belief about consent.

The DPP contended that the prosecution was only required to establish that WJI intended to have sex with TRR, but was not required to establish that he intended to have non-consensual sex. The DPP said that WJI may have been able to use the excuse that he had an honest and reasonable, but mistaken, belief that TRR was consenting. The prosecution would then have needed to negate this excuse to establish the third element.

The NT Court of Criminal Appeal dismissed an appeal from the DPP by a 4-1 majority. The DPP then appealed to the High Court.

The Court held that the absence of consent was a part of the deed which attracted criminal responsibility. Criminal responsibility only arose if there was intent to have sexual intercourse without consent. An intention to have sexual intercourse was not sufficient to establish criminal responsibility.

The Court held that Justice Riley's directions were correct and dismissed the appeal by a 4-1 majority.

- *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.*