

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

40 In his summing up – closing address, the prosecutor identified four lies which
he – sorry, I will withdraw that. That was quite wrong, not four lies. He
identified four reasons given by the accused for entering Parliament House
and the prosecutor submitted to you that you might find that three of them
were lies. The first was what he said before they went into Parliament House
45 on the evening of the alleged assault and you will recall the recording you
heard:

Hey mate, Bruce Reynolds here with ...

sorry:

Bruce Lehrmann here with Reynolds ...

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Not suggesting he was with Linda Reynolds but it is, 'I am from her office':

... we've been asked to collect some documents.

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The second version was what was said to Fiona Brown and Minister Reynolds and it was corroborated by [REDACTED] about going in to drink whisky, to keep drinking, and then the third and fourth propositions both come from the record of interview, that the accused told police he went into Parliament House to collect his keys and secondly, that while he was there he did some work on question time folders. The prosecutor invites you to conclude that apart from the drinking whisky, that all of those reasons were lies and you can take lies into account in your assessment of the credibility of an account given by a person.

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As I have reminded you in the present case, you do not have sworn evidence by the accused but you have his record of interview. You are obliged to have regard to that as his account of what happened on the evening and the prosecutor invites you to have regard to those representations that he says were lies in your assessment of that account. As to what was said to police in the record of interview, however, it can be put in an additional way and taken into account by you in an additional way but only if certain conditions are met and that is the direction that I am about to give you.

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That in some circumstances, a lie can be part of all of the evidence that you take into account from which you might conclude that the lie revealed a consciousness of guilt on behalf of the accused person. I want to be very clear about the limited circumstances in which you can have regard to a lie, if you find it to have been a lie, as consciousness of guilt and I must emphasise in this context that Mr Whybrow addressed you on the basis that if there was any untruth in any of the reasons the accused gave for entering Australian Parliament House that night, it was the time he said he went to drink whisky which he suggested might have been said out of panic and concern about a further security incident.

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But if you, when you have considered all of the evidence in its context, conclude that the reason given:

I went to drink more whisky

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was the truth and the other reasons were lies, then here is the direction that you need to apply in relation to what was said in the record of interview. First, you must be clear about what a lie is. A lie is to say something untrue,

5 knowing at the time of making the statement that it is untrue. If a person says something which is untrue but does not realise at the time that it is untrue then it is not a lie, so it must be a deliberate lie not something about which a person is mistaken or confused. To be a lie, the person must say something the person knows at the time of making the statement is untrue.

10 If you find that any of the four reasons I have just outlined constituted a lie told by Mr Lehrmann, then I must direct you about the care with which you must approach the task of deciding what significance, if any, you will place on that lie. You may take it into account as evidence of Mr Lehrmann's guilt but you can only do that if you find two further things which I am going to come to shortly, and when I say you could take it into account as evidence of his guilt I am not suggesting that on its own it would constitute evidence of his guilt. A lie on its own could not prove his guilt.

15 But what I am saying is it could be one of a number of factors you might take into account in assessing all of the evidence, in determining whether the prosecution has discharged its onus of proving the case beyond reasonable doubt, and the prosecution does not suggest that if you found Mr Lehrmann told a lie that that finding on its own could prove his guilt. Apart from the fact if you find there to have been a lie, that the lie was told, before you can use it as evidence of Mr Lehrmann's guilt you must find two further matters.

20 First, you must find that the lie relates to an issue that is relevant to the offence the prosecutor alleges was committed. That is, that it is a lie relevant to the material question whether sexual intercourse without consent took place in Parliament House. It must relate to some significant circumstance or event connected with that offence.

25 The prosecution case is that it is significant because if he lied to people as to the reason he had gone into Parliament House, you might infer that he knew, that he had some consciousness of guilt as to what actually happened in Parliament House and if he did not have that consciousness, he would not have lied.

30 The second thing is that you must find that the reason that Mr Lehrmann told the lie is because he feared that telling the truth might reveal his guilt in respect of the charge he now faces. In other words, that he feared that telling the truth would implicate him in the commission of the offence. As I have said, the prosecutor says you would be satisfied of that because – well, the prosecution case is that you would be satisfied of that because if nothing untoward happened, then why would he lie about the reason for entering the building? He would just say, 'We went back and had a drink,' or 'I went back to spend more time with Ms Higgins,' if nothing untoward had happened with her.

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The prosecution case is he tells the lie that he went in to get his keys and do some work on the question time folders because he knew that if said, 'Well, we went back for more drinks,' that that would implicate him in the offence itself.

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You need to be careful there because he might, you might think, have lied about drinking because that of itself was inappropriate, an inappropriate reason for entering Parliament House. So you would need to exclude the possibility that he was lying out of fear of being implicated for something other than the offence with which he is charged.

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You must remember, members of the jury, that people do not always act rationally and that conduct of this kind, of telling a lie, can sometimes be explained in other ways. The person can have a reason for lying quite apart from trying to conceal his guilt, such as out of panic as suggested to you by Mr Whybrow or to escape some other accusation such as entering Parliament House to drink whisky in the small hours of the morning which in itself might have been frowned upon.

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If you think that the lie might have been told for some other or lesser reason than to avoid being implicated in the commission of the sexual assault, then it cannot be used as evidence of his guilt and in that case you should put it to one side and focus on the other evidence in the case.

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So let me summarise what I have just said. Before you can use a statement made by Mr Lehrmann which you are satisfied is a lie, as something which points towards his guilt, you must be satisfied that he lied deliberately. You must find that the lie related to some material circumstance or event connected with the alleged offence. You must find that the reason the lie was told was because Mr Lehrmann feared that the truth would implicate him in relation to the commission of the offence for which he now stands trial.

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■ [REDACTED]

■ [REDACTED]

■ [REDACTED]