



HIGH COURT OF AUSTRALIA

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JOSEPH ANTOUN v THE QUEEN
ANTOINE ANTOUN v THE QUEEN

A trial judge had demonstrated apprehended bias during the course of the trial of the Antoun brothers, the High Court of Australia held today.

The Antouns were jointly charged with demanding money with menaces from Michael Savvas, who owned a nightclub at Darling Harbour in Sydney. Antoine Antoun approached him in March 2001 to offer security services but Mr Savvas said he was happy with his current security firm. Mr Antoun made further visits in the next three months. He claimed the Antouns had an arrangement with the security firm under which Mr Savvas owed the pair \$8,000. Mr Savvas denied owing them money and found the conversations increasingly threatening. In June 2001 a group of youths visited the nightclub and destroyed furniture. The police were called and they intercepted phone conversations that were capable of implicating both appellants. Antoine Antoun called Mr Savvas to ask whether he had received the warning. Two days later, Joseph Antoun, accompanied by a group of men, visited Mr Savvas demanding payment. In the coming days Mr Savvas, wearing a concealed listening device, met with both Antouns who made further threats and demands for more money. In the NSW District Court, Judge Terence Christie held that the evidence revealed that the brothers were operating a protection racket. The Antouns claimed that they had an honest claim of right made in good faith and believed they had a legal entitlement to the money.

The trial was conducted by Judge Christie sitting without a jury. During the trial, counsel flagged that at the end of the Crown case they would apply for a ruling that the Antouns had no case to answer. Judge Christie said such an application would be refused. Counsel asked the judge to disqualify himself but he refused and the next day again stated that an application for no case to answer could not succeed. He rejected a second application that he disqualify himself. Counsel then made their no case submissions in writing. Judge Christie adjourned to consider the submissions then rejected the application. After Antoine Antoun gave evidence Judge Christie said he proposed to revoke bail for both brothers. Counsel again asked him to disqualify himself but he refused.

Both brothers were convicted. Joseph Antoun was sentenced to six years' imprisonment with a non-parole period of four years and six months. Antoine was sentenced to three years and six months' imprisonment with a non-parole period of two years and six months. They appealed unsuccessfully to the Court of Criminal Appeal on the ground of apprehended bias on the part of Judge Christie. They then appealed to the High Court.

The Court unanimously allowed the appeal, quashed the Antouns' convictions and ordered a new trial. It held that although the no case to answer submission, when argued, was without substance, the manner in which Judge Christie dealt with it was inappropriate and gave rise to an appearance of lack of impartiality. The Court held that even though the case against the Antouns appeared strong, they were still entitled to a fair hearing. A judge must hear submissions from the parties with an open mind and avoid any appearance of prejudgment. The Court held that Judge Christie's conduct did present an appearance of prejudgment.

- *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.*