



HIGH COURT OF AUSTRALIA

13 August 2014

ANTHONY CHARLES HONEYSETT v THE QUEEN

[2014] HCA 29

Today the High Court unanimously allowed an appeal brought by Anthony Charles Honeysett against his conviction for armed robbery.

In 2011, Mr Honeysett was convicted following a trial by jury in the District Court of New South Wales of the armed robbery of an employee of a suburban hotel. The robbery was recorded by closed-circuit television cameras ("CCTV"). The head and face of one of the robbers ("Offender One") was covered, as was the remainder of Offender One's body, save for a small gap between sleeve and glove. At trial, over objection, the prosecution adduced evidence from an anatomist, Professor Henneberg, of anatomical characteristics that were common to Mr Honeysett and Offender One. Professor Henneberg's identification of these characteristics was based on looking at the CCTV footage of the robbery and at images of Mr Honeysett taken while he was in police custody.

Mr Honeysett appealed against his conviction to the Court of Criminal Appeal of the Supreme Court of New South Wales, submitting that Professor Henneberg's evidence was inadmissible evidence of opinion. The Court of Criminal Appeal agreed with the trial judge that Professor Henneberg's evidence was admissible because it was evidence of an opinion that was wholly or substantially based on his "specialised knowledge" within the meaning of s 79(1) of the *Evidence Act* 1995 (NSW). The Court accepted that Professor Henneberg's specialised knowledge was based on his study of anatomy and his experience in viewing CCTV images.

By special leave, Mr Honeysett appealed to the High Court. On the hearing of the appeal, the prosecution did not maintain that Professor Henneberg had specialised knowledge based on his experience in viewing CCTV images. The prosecution relied solely on Professor Henneberg's knowledge of anatomy. The Court held that Professor Henneberg's opinion was not based wholly or substantially on his knowledge of anatomy: his opinion regarding each of the characteristics of Offender One was based on his subjective impression of what he saw when he looked at the images. As Professor Henneberg's opinion did not fall within the exception in s 79(1), the Court held that it was an error of law to admit the evidence. The Court quashed Mr Honeysett's conviction and ordered a new trial.

- *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.*