



HIGH COURT OF AUSTRALIA

16 November 2016

CASTLE v THE QUEEN;
BUCCA v THE QUEEN

[2016] HCA 46

Today the High Court unanimously allowed two appeals from the orders of the Court of Criminal Appeal of the Supreme Court of South Australia dismissing the appellants' appeals against conviction for the murder of Adrian McDonald.

The prosecution case at trial was that Castle lured the deceased to a meeting at which he was fatally shot by Bucca. The appellants' case was that the shooter was a man named Gange, who had died prior to the trial. Bucca and Gange both entertained hostility towards the deceased. Both had been looking for the deceased in the hours before the killing. The prosecution relied on the evidence of Gange's partner, M, to establish the agreement between the appellants to lure the deceased to the meeting and to prove that Gange had been at home with M at the time of the shooting. The prosecution also relied on the evidence of Pascoe that after the shooting she had heard Bucca say to her father: "he didn't mean to do it". Pascoe's evidence was left for the jury's consideration as capable of constituting an admission by Bucca that he was the shooter.

The appellants appealed against their convictions to the Court of Criminal Appeal. The Court of Criminal Appeal found that Pascoe's answers in cross-examination and in re-examination unequivocally established that Bucca had been referring to a third person in his statement to her father. The Court said that the evidence was incapable of being viewed as an admission; its only effect was exculpatory and the trial judge erred in failing to so direct the jury. Nonetheless, the Court of Criminal Appeal dismissed the appeals, holding that the error had not occasioned a substantial miscarriage of justice. The Court of Criminal Appeal considered that the other evidence "overwhelmed" the "admission", which was a minor part of the evidence and unlikely to have had any influence on the verdicts. The Court of Criminal Appeal was satisfied that the appellants' guilt had been proved beyond reasonable doubt.

By grant of special leave, the appellants appealed to the High Court. The High Court held that the question the Court of Criminal Appeal should have asked itself was not whether the circumstantial case against the appellants overwhelmed the weight of the "admission", which properly understood was an exculpatory statement, but whether the jury might regard the statement as itself a sufficient basis to entertain a doubt as to the strength of the circumstantial case. The Court of Criminal Appeal's conclusion that guilt had been proved beyond a reasonable doubt relied on acceptance of M's disputed oral evidence. The natural limitations of an appellate court proceeding on the record of the trial precluded that conclusion. Accordingly, there had been a substantial miscarriage of justice. The appellants' convictions were quashed and new trials ordered.

- *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.*