



## HIGH COURT OF AUSTRALIA

21 June 2017

### THE QUEEN v DICKMAN [2017] HCA 24

Today the High Court unanimously allowed an appeal from the Court of Appeal of the Supreme Court of Victoria.

The respondent was convicted following his trial in the County Court of Victoria, of intentionally causing serious injury and making a threat to kill contrary to ss 16 and 20 of the *Crimes Act 1958* (Vic). The offences related to an incident on 27 September 2009. The victim, a German tourist, claimed he was a member of the Hells Angels Motorcycle Club in order to gain entrance to a Melbourne nightclub. The victim then accompanied members of the Hells Angels Motorcycle Club to a clubroom in Thomastown, where he was violently assaulted. The Crown case was that it was the respondent who assaulted the victim.

In October 2009, the police showed the victim a photoboard and the victim identified a person other than the respondent as the man who had assaulted him. Following an investigation by police, it was accepted that the man identified by the victim had an alibi. The police informed the victim that his initial identification had been mistaken. In August 2011, the police showed the victim a second photoboard and the victim identified the respondent ("the August 2011 identification").

The respondent appealed against his conviction to the Court of Appeal, which allowed the appeal. The majority concluded that the trial judge had erred by failing to exclude the August 2011 identification under s 137 of the *Evidence Act 2008* (Vic) ("the Act"). Section 137 states that the court must refuse to admit evidence adduced by the prosecutor if its probative value is outweighed by the danger of unfair prejudice to the accused. The majority of the Court of Appeal concluded that any probative value that the August 2011 identification had was so low as to be outweighed by the risk of unfair prejudice, and that as such the evidence should have been excluded. The majority considered that this error had occasioned a substantial miscarriage of justice. The convictions were set aside and a new trial ordered.

By grant of special leave, the appellant appealed to the High Court. The principal issue in contention was the correctness of the conclusion of the majority of the Court of Appeal that the probative value of the August 2011 identification was outweighed by the danger of unfair prejudice to the respondent. An additional question raised was whether, if the admission of the August 2011 identification was in error, it resulted in a substantial miscarriage of justice.

The High Court held that the admission at trial of the August 2011 identification was not erroneous, because the trial judge was correct to conclude that the danger of unfair prejudice was minimal and could be adequately addressed by directions to the jury. Even if there had been an error in admitting the evidence, the Court concluded that there had been no substantial miscarriage of justice because the prosecution case against the respondent was overwhelming and his conviction inevitable. The Court allowed the appeal and remitted the proceedings to the Court of Appeal for determination of the respondent's pending application for leave to appeal against sentence.

- *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.*