



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: B19/2023
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Important Information

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IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

BETWEEN:

BRENT MALCOLM HUXLEY
Appellant

and

THE QUEEN
Respondent

APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

Part I: Certification

1. I certify that this outline is in a form suitable for publication on the internet.

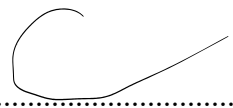
Part II: Propositions to be advanced

2. The directions the subject of this appeal, as to the use of Greer's evidence, had a substantial detrimental effect upon the case for the appellant:
 - a. First, the testimony was capable of raising a possibility that the deceased was fatally assaulted at the unit in the absence of the appellant.
 - b. Secondly, that fatal assault was capable of raising a possibility that no confessional statements were made to Hess.
3. If the jury, in accordance with the direction, were not satisfied of the truth, accuracy and reliability of the evidence beyond reasonable doubt there was bare evidence of an assault, but there was no evidence of the effect of the assault at the unit upon the deceased.

4. That aspect of the appellant's case, that the deceased was fatally assaulted at the unit, was put to the jury in strenuous terms by the appellant's trial counsel. However, before the jury could use that evidence of Greer in the way urged upon them by the appellant's counsel, the jury would need to overcome the significant barrier placed before them by the subject direction – the need to be satisfied beyond reasonable doubt of the truth, reliability and accuracy of Greer's evidence.
5. The appellant thus lost a reasonable chance of acquittal that was open on the evidence, to the effect that Greer witnessed a potentially grave assault upon the deceased that occurred when the appellant was not present.
6. That Greer saw the aftermath of a serious assault is consistent with the evidence:
 - a. There were multiple sites of the deceased's blood in the unit aside from where Greer saw the deceased on the ground. The deceased was thus not incontrovertibly assaulted in the position he was seen by Greer (that is face down).
 - b. The deceased, although making noises, was otherwise inarticulate.
 - c. There was pooling of blood around the deceased's nose and mouth. This observation was consistent with the facial injuries the deceased suffered that could be causative of his death.
 - d. The deceased was immobile when seen by Greer, the deceased was observed to not move after being prodded (and kicked).
 - e. The deceased was required to be carried from the apartment with his feet dragging behind.

7. The other critical evidence, the evidence of Hess, is not sufficiently strong to displace the reasonable possibility that the deceased was gravely assaulted at the unit. Further, the evidence of Greer, if able to be used conventionally by the jury, was capable of further diminishing the strength of the evidence of Hess.
8. The other directions, that the respondent refers this Court to, do not diminish the nature and effect of the error. The trial judge focused the jury as to the satisfaction the jury would have to have as to the quality of her evidence before it could be used at all by the jury in the appellant's case. Further, the crown prosecutor made forensic use of the effect of the direction in their closing remarks to the jury.
9. The Court of Appeal was wrong to find that the other evidence of an assault occurring at the unit was sufficient to overcome the forensic effect upon the appellant of the direction. This is because in the absence of Greer, there was no admissible evidence as to the severity of the assault at the unit upon the deceased. In the absence of that additional evidence from Greer, the possibility there was a causal link between that assault and the death, was denied to the appellant.
10. The remedy for the appellant is a re-trial, according to law.

Dated: 6 September 2023


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Andrew Maxwell Hoare
Counsel for the Appellant