



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: B50/2022
File Title: HCF v. The Queen
Registry: Brisbane
Document filed: Form 27F - Appellant's Outline of oral argument
Filing party: Appellant
Date filed: 13 Apr 2023

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10 IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

BETWEEN:

HCF
Appellant

and

The Queen
Respondent

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APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

I. Certification

1. It is certified that this submission is in a form suitable for publication on the internet.

II. Propositions to be advanced

2. The Sheriff's report,¹ particularly the responses of Jurors "A" and "B",² justified the conclusions reached by the Court of Appeal about what had occurred.³
- 30 3. The jury's conduct contravened straightforward directions given by the trial judge.⁴ The issues raised by what occurred are not confined to bias, but also include questions about compliance generally.
4. It is almost inevitable that, had the judge learned of the conduct during the trial, the whole jury would have been discharged. Even if the trial might possibly have continued after strong judicial admonition, no such antidote was actually administered. (cf *Webb v The Queen*, although that case only involved a single juror)

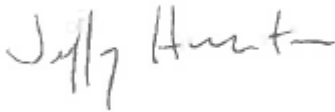
¹ Appellant's book of further materials at p 332

² Ibid 336-337

³ *R v HCF* [2021] QCA 189, [28]-[33]; Core appeal book, p 93

⁴ ABFM, pp 34.09-.25; 35.01-.30

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5. The collective misconduct raises a legitimate (and non-speculative) concern about the jury's willingness to obey judicial directions. That concern is not dispelled by:
- a. the responses of only five of the jurors who delivered the verdicts;
 - b. such limited illumination of the deliberations as is provided by the various redirections sought – none of which touched on any of the more complicated directions of law that the jury had been given.
6. That being so, what occurred was a miscarriage of justice, either as a serious departure from prescribed trial process, or an irregularity that might well have made a difference. The Court of Appeal was wrong to conclude otherwise.
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7. A miscarriage of justice concerning a jury's willingness to obey judicial direction will almost inevitably merit the descriptor "substantial". Hence the common form proviso could not apply.



Jeffrey Hunter KC

Counsel for the appellant

13 April 2023