



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: B50/2022  
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IN THE HIGH COURT OF AUSTRALIA  
BRISBANE REGISTRY

BETWEEN:

**HCF**  
Appellant

and

**The Queen**  
Respondent

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APPELLANT’S SUPPLEMENTARY SUBMISSIONS

1. These submissions address the decision of this court in *Smith v Western Australia* (2014) 250 CLR 473.
2. The issue similarly is not one between the parties but a question as to the integrity of the trial process. There has been “a serious breach of the presuppositions of the trial.”<sup>1</sup>
- 20 3. The juror’s letter, and the subsequent investigation by the Sheriff, raise a reasonable suspicion that:
  - a. The subject juror initially indicated that he would determine the verdict on the basis of his own bias, rather than the evidence;
  - b. The subject juror subsequently committed a contempt by ignoring the trial judge’s directions about independent research; and
  - c. The balance of the jury compounded that contempt by ignoring the trial judge’s direction that they were to report any such conduct, and arguably thereby committed a separate contempt.

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<sup>1</sup> *Smith v Western Australia* [2014] 250 CLR 473 at [52] and [53]

4. Collectively, those suspicions raise a further reasonable suspicion that the jury might not have discharged its duty to determine the matter according to the evidence and in compliance with judicial direction.
5. The conduct that was revealed cannot be described as merely “irresponsible behaviour by a [single] juror, careless of his or her oath.”<sup>2</sup> Rather, this was collective misconduct by the whole jury in the face of clear and repeated judicial direction. The conduct of independent research by jurors is a blight on the administration of criminal justice. Jurors should not have any expectation that they may, with impunity, decide for themselves that only some of a trial judge’s instructions will be treated by them as binding.<sup>3</sup>
6. It has not been contended that the letter or the results of the Sheriff’s investigation are not, given what they reveal, admissible on this appeal. Although *Smith* was concerned with conduct that amounted to a criminal offence, here the conduct involved what would, if proved, amount to a contempt. Furthermore, subsection 70(7) of the Jury Act 1995 authorises the conduct of an investigation by the Sheriff when the suspected conduct is “bias, fraud or an offence.” Although the Act does not go on to provide for the use might be made of the fruits of any such investigation, by analogy with *Smith*,<sup>4</sup> evidence of conduct such as was revealed in this case should fall outside the ambit of the exclusionary rule.
7. On the basis that the letter and investigation findings are admissible, the question is then whether they have probative value.<sup>5</sup> Unlike in *Smith*, where the evidence came from a single juror, here there is evidence from at least two of the jurors who responded to the effect that the subject juror did demonstrate bias, and subsequently informed the balance of the jury about the research. The evidence therefore grounds the reasonable suspicion about the collective conduct of the jury set out above in paragraph 3. Unless that suspicion can be dispelled, the convictions cannot be permitted to stand.<sup>6</sup>

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<sup>2</sup> *Smith v Western Australia* [2014] 250 CLR 473 at [46]

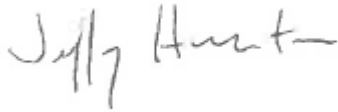
<sup>3</sup> *Ibid* at [37]

<sup>4</sup> *Ibid* at [48]

<sup>5</sup> *Ibid* at [57]

<sup>6</sup> *Ibid* at [59]

8. For the reasons advanced in the appellant's outline of submissions filed on 2 December 2022, and during oral argument, neither the responses of only 5 jurors out of the 12 who participated in the verdicts nor such clues as may be garnered from the course of deliberations dispel that suspicion.

A handwritten signature in black ink that reads "Jeffrey Hunter". The signature is written in a cursive, slightly slanted style.

**Jeffrey Hunter KC**  
Counsel for the appellant

10 2 June 2023