



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: B50/2022
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Filing party: Respondent
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Important Information

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BETWEEN:

HCF
Appellant

and

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THE QUEEN
Respondent

RESPONDENT'S SUBMISSIONS

Part I: Certification

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

20 Part V: Statement of Respondent's argument

5.1 To use the language in *Smith v Western Australia*, the conduct of Juror X, and the subsequent disobedience by the jury, was capable of casting a 'shadow of injustice over the verdict'.¹ The Question posed by the Court in *Smith v Western Australia* in considering whether there exists a miscarriage of justice is whether it is possible to dispel the shadow of suspicion.² *Smith v Western Australia* emphasises that dispelling the shadow of suspicion is assisted by reference to the test applied in *Webb*, that is, does 'it give rise to a reasonable apprehension or suspicion on the part of a fair-minded and informed member of the public that the juror or jury has not discharged or will discharge its task impartially'.³ The appeal should be allowed unless there is other evidence that 'puts the integrity of the verdict beyond question'.

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¹ At 486.

² *Ibid.*

³ *Ibid.*

- 5.2 The respondent's contention that an inquiry into the nature and effect of the impugned conduct is not inconsistent with that approach because it seeks to examine the evidence that is capable of dispelling any potential shadow of suspicion. The 'evidence' said to support the integrity of the verdict included that advanced during the oral hearing: the nature of the jury deliberations and communications, the mixed verdicts that were complicit with the directions given by the trial judge and that each juror affirmed the verdicts as true for them all. Further, the responses of the Sheriff's report highlighted that the deliberations were not truly impacted by Juror X's demonstration of bias, and could not have been, in circumstances where the verdicts of guilt contradicted the stated bias to the interests the accused. It is the combination of all of those features that, to again use the language of *Smith v Western Australia*, dispels the shadow of suspicion.
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- 5.3 Importantly, *Smith v Western Australia* is not authority for the proposition that the presence of potential juror misconduct is incapable of a proper assessment as to its true nature and effect. Put another way, the misconduct is not always determined to be a breach of the fundamental presuppositions of trial such that the appeal should be allowed. On the contrary, the decision categorically endorses an enquiry of the circumstances, including the jury members themselves.⁴

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Dated: 1 June 2023



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⁴ At 488-489.