



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 16 Mar 2022 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: S146/2021
File Title: Hoang v. The Queen
Registry: Sydney
Document filed: Form 27F - Outline of oral argument
Filing party: Respondent
Date filed: 16 Mar 2022

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

QUY HUY HOANG

Appellant

and

THE QUEEN

Respondent

10

RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS

Part I: Certification

1. The respondent certifies that this outline is in a form suitable for publication on the internet.

Part II: Outline of propositions

Ground 1(a)

- 20 2. “[C]onduct that constitutes an offence” against s 68C for the purposes of s 53A(2)(a) of the *Jury Act (1977)* (NSW) must be conduct done for the “purpose” specified in s 68C(1).
Section 53A(2)(a) does not focus on a juror’s physical acts to the exclusion of the juror’s state of mind.
 - a. In the absence of the relevant state of mind, the juror’s conduct would not “constitute[]” an offence: Respondent’s Submissions filed 26 November 2021 (**RWS**) [31]-[32], [39], [54].
 - b. The natural and ordinary meaning of “conduct” is not limited to physical acts alone: **RWS** [30].
 - 30 c. It does not follow from a legislative purpose of preventing unfairness to an accused arising from the discovery of extraneous information by jurors that s 53A(2)(a) should be understood as rendering irrelevant the juror’s stated intention or purpose for making an inquiry. Where a juror discovers prejudicial extraneous information despite having a permissible purpose for making an inquiry, the risk of a substantial miscarriage of justice is addressed by discharge under s 53(2)(a)(b): **RWS** [34]-[38].

Ground 1(b)

3. The Court of Criminal Appeal (CCA) did not hold that to satisfy s 53A(2)(a) the juror's inquiry must have been made with the sole or specific intention or purpose of obtaining information relevant to the trial: RWS [45], [47]. Rather, the Court held that there was no evidence of any purpose other than Juror A's personal purpose of "satisfy[ing] her own curiosity as to why she herself, a retired teacher, had never obtained a Working with Children Check": CCA [98], [99], [121].

Ground 1(c)

- 10 4. The information that Juror A sought to obtain was why she personally had not been subject to a Working with Children Check: CCA [48], [98], [121]. The applicability of that requirement to Juror A was not a matter relevant to the trial: CCA [139]; RWS [57], [72].
5. If Juror A is understood as seeking to obtain information about the general requirements for a Working with Children Check, that was still not a matter relevant to the trial. At the time that Juror A undertook the inquiry, the position established by the evidence was that the appellant did not have a Working with Children Check, but that this was not unusual: CCA [32], [33], [35]. In the circumstances, the fact that the appellant did not have a Working with Children Check could not have rationally affected any fact in issue in the jury's deliberations: CCA [36]; RWS [64]-[65].

20 *Ground 2*

6. If Ground 1 is rejected and Juror A did not engage in misconduct, there was no failure to comply with a mandatory requirement of the *Jury Act* by virtue of the trial judge not discharging Juror A before taking the verdicts on Counts 4 and 6 to 12. The mandatory force of s 53A(1)(c) depends upon there being misconduct: CCA [140].
7. Further, and in any event:
 - a. the trial judge did not reach a conclusion that there was misconduct that required Juror A to be discharged before taking the verdicts on Counts 4 and 6 to 12: CCA [137]; and
 - 30 b. a failure to discharge a juror immediately upon forming an erroneous view that the juror engaged in misconduct is an error to which the proviso should apply: RWS [80], [82].

Orders

8. If the appellant succeeds on either ground, his convictions on Counts 4 and 6 to 12 should be quashed and a re-trial ordered. There is no warrant to quash the jury's verdicts on Counts 1 and 5 which were received after Juror A's discharge: CCA [23]; RWS [84]-[85].

Dated: 16 March 2022



D Kell SC

10 Crown Advocate of New South Wales
P: (02) 8093 5503
E: David.Kell@justice.nsw.gov.au



E S Jones

P: (02) 8915 2686
E: ejones@sixthfloor.com.au