



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: B19/2023  
File Title: Huxley v. The Queen  
Registry: Brisbane  
Document filed: Form 27F - Outline of oral argument  
Filing party: Respondent  
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#### Important Information

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BETWEEN:

BRENT MALCOLM HUXLEY  
Applicant

and

THE QUEEN  
Respondent

### **RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS**

#### **Part I: Certification**

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

#### **Part II: Outline of the propositions that are to be advanced in oral argument.**

[2] The appellant's argument in this Court invites focus on the precise language of the direction in isolation, and divorced of context. Such an approach is apt to obscure the true nature of the assessment to be undertaken. Instead, the directions properly understood made clear to the jury that they were to consider, separately, the respective case against each accused. While the evidence overlapped, including the evidence of Ms Greer, its capacity for use differed.

[3] Given the features attending Ms Greer's evidence, the learned trial Judge properly drew a number of observations to the attention of the jury which would assist in assessing her evidence generally. Beyond these Ms Greer's evidence possessed a unique quality in the case against Mr Rewha alone. It is for that reason a direction of the kind given was necessary.

[4] The task therefore confronting this court is an analysis of not only the impugned direction itself, but the directions understood in context and as a whole. Such an assessment demonstrates that the impugned direction was not capable of being understood by the jury in the way advanced by the appellant.

*The impugned direction itself*

[5] The clear language of the direction given revealed the proper approach to be taken in the assessment, and use of, Ms Greer's evidence in the case against Mr Rewha. This was distinct from the use to be made of her evidence in the case against the appellant. The direction itself, including that which immediately followed in respect of Mr Hess' evidence, therefore focused attention on a situation where the evidence was to be acted upon in support of a conviction. Such a direction was consistent with all similar directions given on each occasion his Honour addressed the case against Mr Rewha. It was not replicated in the case against the appellant.

*The context of the impugned direction*

[6] If what his Honour said, considered in isolation, had the capacity itself to amount to a misdirection it was nevertheless corrected by the lengthy directions that followed.

[7] Throughout the lengthy directions his Honour repeatedly drew distinction between the case against each accused. This was especially so towards the conclusion of the directions. In that context his Honour, in dealing with the case against the appellant, instructed the jury of seven essential matters that were to be proved beyond a reasonable doubt. One matter of central importance was the ability to exclude the fatal injury having occurred at the Burnda Street unit. It was the objective evidence of an assault at the Burnda Street unit which established the nature of that episode, supplemented by the evidence of Ms Greer. In consideration of this, his Honour properly instructed the jury on the way in which they were to approach the circumstantial evidence.

[8] The resultant effect of the combined directions therefore made clear that in order to convict the appellant the jury had to exclude, beyond a reasonable doubt, the fatal assault having occurred without involvement by the appellant. It was this hypothesis Ms Greer's evidence was said to support.

[9] The directions therefore did not deflect the jury from its proper task, that is whether they could exclude all reasonable hypotheses consistent with innocence before they could act on the evidence of Mr Hess and convict. That the directions as a whole were so understood is amply supported by the absence of any request for redirections.

*A miscarriage occasioned?*

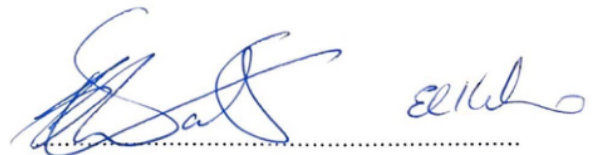
[10] If the court concludes the impugned direction was understood in the way the appellant advances, it nevertheless did not amount to a miscarriage of justice. This is so because it could not have operated to the prejudice of the appellant. That is, it occasioned no practical injustice nor was it capable of affecting the verdict in any way.

[11] The objective evidence, summarised to the jury, disclosed a hypothesis consistent with innocence, namely that the fatal injury was occasioned at the Burnda Street unit without the appellant being involved. At all times the jury were directed of the need to exclude this hypothesis beyond a reasonable doubt before they could accept the evidence of Mr Hess. To that end, his Honour properly directed the jury that the true extent of the event was unknown and was not disclosed, even on Ms Greer's evidence. As such, even faced with the binary choice advanced by the appellant, rejection of Ms Greer's evidence (the verdict in the case against Mr Rewha not being determinative of this) could not in any way, have affected the operation of the hypothesis on the jury's task.

[12] However, Ms Greer's evidence if accepted in any way, had the capacity to diminish the nature of that event at the Burnda Street unit, and further operated to support the reliability of Mr Hess. In this regard, it was the evidence of Ms Greer which suggested that at the time the deceased was taken from the unit, he was still alive.

[13] As a result, acceptance of Ms Greer's evidence had the capacity to support the prosecution case where rejection did not operate in the same way. As a consequence no prejudice was occasioned to the appellant by the direction.

Dated: 07 September, 2023



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