



HIGH COURT OF AUSTRALIA

12 February 2014

MARK SHARNE SMITH v THE STATE OF WESTERN AUSTRALIA

[2014] HCA 3

Today the High Court unanimously allowed an appeal against a decision of the Court of Appeal of the Supreme Court of Western Australia, which had held that a note found in the jury room after the jury had delivered its verdict could not be admitted as evidence. The note suggested that one juror may have been physically coerced by another juror into arriving at the verdict of guilty.

On 17 January 2012, the appellant was convicted upon the verdict of a jury in the District Court of Western Australia of two counts of indecently dealing with a child under the age of 13 years. The following day, the trial judge informed counsel that a note in an envelope addressed to the judge had been found on the table in the jury room after the jury had been discharged. The note, which did not identify its author, was in the following terms: "I have been physically coerced by a fellow juror to change my plea to be aligned with the majority vote. This has made my ability to perform my duty as a juror on this panel [sic]". The trial judge was of the opinion that, because the verdict had already been entered, he could not do anything about the note. His Honour did, however, remark that there were a number of unusual factors surrounding the delivery of the verdict, including that one male juror seemed somewhat upset.

The appellant appealed to the Court of Appeal on the ground that his trial had miscarried due to a juror being physically coerced into changing his verdict to guilty. The Court of Appeal unanimously dismissed the appeal, holding that the note was inadmissible and that no order should be made directing the Sheriff to make inquiries concerning the allegations raised in the note.

By special leave, the appellant appealed to the High Court, arguing that the Court of Appeal failed to appreciate that the general rule which renders evidence of the conduct of jury deliberations inadmissible does not operate to preserve the secrecy of criminal conduct. The High Court held that, because the note was capable of giving rise to a reasonable apprehension or suspicion on the part of a fair-minded and informed member of the public that a juror did not discharge his task because of unlawful coercion, the Court of Appeal should have allowed the appellant's appeal. The High Court remitted the matter to the Court of Appeal to be heard and determined according to law.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*