



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: Appellant
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

**APPELLANT’S
 OUTLINE OF ORAL SUBMISSIONS**

Part I: This is outline is in a form suitable for publication on the internet.

Part II: Oral Outline

Ground 1

Construction of s53A(1)(c) and (2)(a) of the *Jury Act 1977* (NSW)

20

1. The text, context and purpose of the provision and *Jury Act* support the appellant’s construction that “misconduct” is focused on “conduct” which the legislature has deemed so inimical to the trial process as to call for mandatory discharge (Joint Book of Authorities (**JBA1**) 29-30; *Zheng v R* (2021) 104 NSWLR 668 at [65]-[67] **JBA2** 246-7; Appellant’s Submissions (**AS**) [33]-[34], [36]-[39]; Appellant’s Reply (**AR**) [3]-[4], [9]; cf. Respondent’s Submissions (**RS**) [30]-[32]). Section 53A(2)(a) does not define misconduct as an offence against the Act. Section 53A(2)(b) captures “any other conduct” and is not directed to other purposes (cf. CCA [105] Core Appeal Book (**CAB**) 397). Conduct prohibited by s68C is making the inquiry on a matter relevant to trial except in the proper exercise of the juror’s functions (**JBA1** 40).

30

2. Section 53A(1)(c) and (2)(a) of the *Jury Act* is concerned with addressing irregularities striking at the integrity of the trial process not criminal liability (AS [35], [40]; AR [5]). The context of the *Jury Act* and the legislative history of relevant provisions (Parts 7A, 8-10 (s68C, 55DA and 75C)) support the appellant’s construction (**JBA1** 29-49; AS [44]; cf. RS [36]-[39]).

3. The appellant's construction of s53A(1)(c) and (2)(a) facilitates multiple fundamental purposes including public confidence and the integrity of the trial proceedings in the jury system, open justice and procedural fairness (AS [35], [46]; CCA [120] Core Appeal Book (**CAB**) 401; AS [43], [56]; AR [6]). There are significant practical difficulties if a juror's stated purpose including personal curiosity excludes the application of s53A(1)(c) and (2)(a) of the *Jury Act* (AS [39], [46], [57]; AR [7]; cf. RS at [39]).

The Court of Criminal Appeal reasoning

4. The majority erred in:
 - 10 a. failing to consider the statutory context and the purpose of s53A (AS [38], [43]);
 - b. holding the juror's stated motive for conducting the inquiry was the critical consideration in whether there had been misconduct when the provision was directed to the juror's conduct (CCA [97]-[98], [102]-[103], [121] **CAB** 395, 396, 401; AS [38]); and
 - c. concluding that there was no misconduct for the purposes of s53A(1)(c) and (2)(a) of the *Jury Act* (CCA [123] **CAB** 401, AS [38]).

Campbell J was correct at CCA [4] **CAB** 375.

In the alternative, the relevant purpose was present

- 20 5. A juror's motivation for making an inquiry (as defined) does not necessarily exclude the presence of the relevant purpose in s68C (*Zaburoni v The Queen* (2016) 256 CLR 482 at [17], [19] **JBA2** 130-131; *Roy v O'Neill* (2020) 95 ALJR 64 at [20], [29], [38], [45], [90] **JBA2** 107, 108, 109-10, 111, 120; AS [48]-[49]; CCA [6] **CAB** 375).
6. The application of s53A(1)(c) and (2)(a) of the *Jury Act* is not defeated by a juror's stated subjective "purpose" being for personal curiosity (cf. CCA [121], [139], **CAB** 401, 405-406) Campbell J was correct at [4]-[5] **CAB** 375 (AS [49], [51]).
- 30 7. The majority erred in concluding that the trial judge failed to take into account the need for the purpose of the inquiry to be the obtaining of information relevant to the trial rather than for personal reasons (CCA [121], [139] **CAB** 401, 405-406; AS [47], [49]; AR [11]-[12]; cf. RS [45]). The majority erred in concluding there was no evidence of any other purpose for the inquiry (CCA [98], [99], [121] **CAB** 395, 401; AS [49]-[50]). The hypotheticals addressed by the majority do not support its

conclusions (CCA [103]-[104] **CAB** 396-7, see AS [52]-[54]). Campbell J's reasoning at [4]-[6] **CAB** 375 was correct.

Section 53A(1)(c) was engaged

8. The trial judge was correct to discharge the juror as s53A(1)(c), (2)(a) applied (AS [41], [50], AR [15]; see Campbell J CCA [3]-[6] **CAB** 374-5; see also prosecutor's concession **CAB** 270, 273; **CAB** 309 AR [8]; cf. RS [48]-[76]). The trial judge was correct to conclude that the inquiry was made for the purpose of obtaining information about a matter relevant to the trial (Judgment 5, 13 **CAB** 309, 317; CCA [52]-[53], [66] **CAB** 385, 388-9; AS [50], [58]-[59]). The matter was relevant to the trial (CCA [135], [139] **CAB** 404-406; *R v K* (2003) 59 NSWLR 431 at [88] **JBA2** 180; AS [58], AR [15]; cf. RS at [53])

Ground 2

9. The trial judge expressly held she was satisfied of the breach on reading MFI 99 (**CAB** 309). At that time the trial judge should have discharged the juror. The verdicts were impugned (Campbell J [7], [8], [11] **CAB** 375-6; AS [60]-[63]; *Smith v R* at [26] **JBA2** 227; cf. CCA [2], [137] **CAB** 374, 406; cf. RS [81]-[82]).

10. The trial judge's failure to discharge the juror despite satisfaction as to misconduct prior to the verdicts being taken meant that the jury was not properly constituted when the verdicts were taken and there was a fundamental failure to observe the requirements of the *Jury Act* (AS [65]; AR [17]-[18]; *Smith* at [40] **JBA2** 229; see also prosecutor's concession as to the proviso at CCA [71], **CAB** 389, [80] **CAB** 391, [93] **CAB** 394).

Appropriate orders

11. The convictions should be quashed and a re-trial ordered. Specifically, counts 1 and 5 should be quashed due to the tendency and coincidence directions given to the jury (**CAB** 86-92, AS [66]).

Dated: 16 March 2022



30 Gabrielle Bashir



David Carroll



Georgia Huxley