SMITH v THE QUEEN (B18/2015)

Court appealed from: Supreme Court of Queensland (Court of Appeal) [2014] QCA 277

Date of judgment: 7 November 2014

Special leave granted: 17 April 2015

On 24 February 2014 the Appellant was convicted of rape following a jury's majority verdict (in circumstances where it could not reach a consensus and was given a *Black* direction). He was later sentenced to five years imprisonment, which was suspended after two and a half years. The Appellant appealed on the ground that his conviction was "unsafe and unsatisfactory".

The events which formed the subject of the charge occurred in 1989. (The Appellant however was not formally charged until March 2011 because the Complainant did not make a complaint to the police until 2007.) As the Appellant admitted during his trial that sexual intercourse had in fact occurred, the jury was only required to determine the issues of consent and the possibility of mistake.

At 11:14am on Friday 21 February 2014 the jury retired to consider its verdict, with the Court later adjourning until the following Monday morning. At 12:31pm on Monday 24 February 2014, the jury returned to Court for re-directions before again resuming its deliberations. Two hours later it advised the Court that it could not reach a consensus. It was then given a *Black* direction, before retiring once more to consider its verdict.

At 4:20pm another note was received in which the jury said that it was having difficulty in agreeing. The trial judge then advised the parties' counsel that that note disclosed the members' voting pattern, which he did not intend to reveal. He then observed that, due to the time that had passed without a unanimous verdict, it was open for the jury to seek a majority guilty verdict.

At 4:25pm the trial judge asked the jury whether a majority verdict, as agreed by 11 of its number, might resolve the impasse. The jury then retired afresh, returning 20 minutes later with a majority verdict.

The Appellant appealed on the ground that, having received the jury note containing the jury's voting pattern, the trial judge erred in:

(a) not discharging the jury of his own motion;

(b) determining the "prescribed period" under s 59A(6)(b) of the *Jury Act* 1995 (Qld) ("the Jury Act"); and

(c) in asking the jury to reach a majority verdict under s 59A(2) of the Jury Act without disclosing the jury's voting pattern to the Appellant.

The Court of Appeal (Holmes JA, Philippides and Dalton JJ) unanimously dismissed the Appellant's appeal. In relation to the majority verdict, the Court

relevantly agreed that failure to disclose the voting figures had no relevance to the judge's determination of the prescribed period for the purpose of s 59A(6) of the Jury Act. The Court also found that there was no denial of procedural fairness to the Appellant in not disclosing the jury's voting numbers before exercising the discretion to ask the jury to reach a majority verdict. Nor was there any need for the trial judge to discharge the jury simply because he did not propose to make the disclosure.

The grounds of appeal are:

- The Court of Appeal erred in concluding that:

    a) The voting information in the jury's note to the trial judge was neither relevant nor capable of influencing the trial judge's exercise of discretion to permit a majority verdict;

    b) There was no denial of procedural fairness to the applicant by the trial judge in not disclosing to his counsel the jury's voting numbers before exercising the discretion to ask the jury to reach a majority verdict;

    c) There was no need for the trial judge to discharge the jury if he did not propose to disclose the voting information.