



HIGH COURT OF AUSTRALIA

26 October 2011

ADAM JOHN HARGRAVES v THE QUEEN
B28/2011

DANIEL ARAN STOTEN v THE QUEEN
B24/2011

[2011] HCA 44

Today the High Court dismissed appeals by Adam John Hargraves and Daniel Aran Stoten against the decision of the Court of Appeal of the Supreme Court of Queensland, which had upheld each appellant's conviction for conspiracy to dishonestly cause a loss to the Commonwealth contrary to s 135.4(3) of the *Criminal Code* (Cth) ("the Code"). The High Court rejected the appellants' argument that the judge at trial had misdirected the jury by inviting it to assess the appellants' credibility as witnesses by reference to their interests in self-protection.

Mr Hargraves and Mr Stoten were each charged with one count of conspiracy to defraud the Commonwealth contrary to ss 29D and 86(1) of the *Crimes Act* 1914 (Cth) ("the Act") and one count of conspiracy to dishonestly cause a loss to the Commonwealth contrary to s 135.4(3) of the Code. Each appellant held shares in Phone Directories Company Pty Ltd ("PDC"). It was alleged that each of the appellants and others had conspired to defraud the Commonwealth by making false representations about the amount of allowable deductions that were to be made from the assessable income of PDC.

At trial each appellant was convicted of the offence charged in the second count but acquitted on the first count. In the course of summing up, the trial judge gave directions to the jury on a number of subjects related to "the process of assessing evidence and assessing credibility". On the subject of "Interest" the judge relevantly said: "Does the witness have an interest in the subject matter of the evidence? For example, friendship, self-protection, protection of the witness's own ego."

Each appellant appealed to the Court of Appeal against his conviction. The Court of Appeal held that the trial judge had misdirected the jury about how to assess the appellants' evidence but, applying the proviso in s 668E(1A) of the *Criminal Code* (Q), dismissed the appeals because there had been no substantial miscarriage of justice.

Each appellant then appealed to the High Court alleging that the Court of Appeal was wrong to conclude that there had been no substantial miscarriage of justice, and further alleging that application of the proviso in the circumstances of the case contravened s 80 of the Constitution, which provides that "[t]he trial on indictment of any offence against any law of the Commonwealth shall be by jury". The prosecution as respondent argued that the trial judge had not misdirected the jury.

The High Court unanimously dismissed the appeals. The High Court considered that the Court of Appeal was wrong to hold that the trial judge had misdirected the jury. Read as a whole, the instructions which the trial judge gave were not such as would deflect the jury from its task of deciding whether the prosecution had proved its case beyond reasonable doubt. The impugned directions given by the trial judge did not occasion a miscarriage of justice on any ground. Accordingly, it was not necessary for the High Court to consider whether the proviso had been applied correctly, and the constitutional issue which the appellants sought to raise was not reached.

- *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.*