



HIGH COURT OF AUSTRALIA

5 March 2014

SAMUEL JAMES v THE QUEEN

[2014] HCA 6

Today the High Court, by majority, dismissed an appeal from a decision of the Court of Appeal of the Supreme Court of Victoria upholding the conviction of Samuel James. Mr James was convicted following trial in the Supreme Court of Victoria of intentionally causing serious injury to Khadr Sleiman. Mr Sleiman suffered multiple injuries as the result of being struck by a vehicle driven by Mr James.

The prosecution's case at trial was that Mr James deliberately struck Mr Sleiman intending to cause him serious injury. In the alternative, the prosecution charged that Mr James recklessly caused serious injury to Mr Sleiman. The defence case was that Mr Sleiman was struck accidentally as Mr James manoeuvred his vehicle in reverse.

While the jury was deliberating the prosecutor raised, for the first time, the question of whether the jury should be instructed of the availability of a further alternative verdict that Mr James intentionally caused injury, as opposed to serious injury, to Mr Sleiman. The trial judge declined to do so because the prosecution had not run its case on that basis and because the introduction of an alternative verdict might have deprived Mr James of the possibility of acquittal. Mr James' counsel at trial made no submission on that issue and for this reason was taken to have agreed with the trial judge.

Mr James appealed against his conviction to the Court of Appeal contending that the trial judge's failure to instruct the jury of the availability of alternative verdicts had occasioned a substantial miscarriage of justice. The Court of Appeal dismissed Mr James' appeal.

Mr James was granted special leave to appeal to the High Court. By majority, the High Court held that the trial judge's duty with respect to leaving to the jury alternative verdicts is to be understood as part of the duty to secure a fair trial to the accused. The question of whether the failure to leave an alternative verdict had occasioned a miscarriage of justice is answered by consideration of what justice to the accused required in the circumstances of the particular case. This consideration takes into account the real issues at the trial and the forensic choices made by trial counsel.

The High Court held that the central issue at the trial was whether the prosecution had excluded the reasonable possibility that Mr James had struck Mr Sleiman inadvertently. To have instructed the jury about lesser alternative offences which had not been relied upon by the prosecution or the defence might have blurred that central issue and jeopardised Mr James' chances of acquittal. The Court held that fairness to Mr James did not require that the trial judge direct the jury on the uncharged alternative verdicts.

- *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.*