



6 December 2023

HIGH COURT OF AUSTRALIA

HUXLEY v THE QUEEN [2023] HCA 40

Today, the High Court dismissed an appeal from a judgment of the Court of Appeal of the Supreme Court of Queensland. The appeal concerned whether there had been a "wrong decision of any question of law", within the meaning of s 668E of the *Criminal Code* (Qld), or a miscarriage of justice, in the appellant's conviction for murder. The alleged error arose from a direction given by the trial judge that the jury could only act on the evidence of a certain witness if they were satisfied beyond reasonable doubt that the witness' evidence was truthful, reliable and accurate.

The appellant was charged with the murder of Mr McCabe. He was tried with two co-accused, including Mr Rewha, who was charged with the assault occasioning bodily harm of Mr McCabe. The Crown case was that Mr McCabe was assaulted by Mr Rewha in a unit in Townsville. A witness, Ms Greer, gave evidence about this assault that was central to the Crown case. The Crown alleged that Mr McCabe was taken from the Townsville unit and later murdered by the appellant in or around the area of Crystal Creek.

In his summing-up to the jury, the trial judge referred to Ms Greer's evidence and directed them that "[i]n particular, consistent with the directions I will give you in relation to the case against Mr Rewha, as a matter of law, you should only act upon her evidence if you are satisfied beyond reasonable doubt that her evidence is truthful, reliable and accurate. If you are not satisfied beyond reasonable doubt that the evidence of Ms Greer is truthful, reliable and accurate, then you should disregard it." In the Court of Appeal and the High Court, the appellant submitted that the direction, while correct in relation to the case against Mr Rewha, limited the use of Ms Greer's evidence in his defence, specifically his argument that Mr McCabe could have died as a result of the assault in the Townsville unit. To be satisfied of his innocence, the jury only had to be convinced that this theory was a reasonable possibility. As such, the appellant submitted that the direction was contrary to law.

A majority of the High Court (Gordon, Steward and Gleeson JJ) found that the direction would not have been understood by the jury to apply to the appellant's defence and held that there was no wrong decision of a question of law and no miscarriage of justice. The majority reasoned that the entirety of the summing-up made it clear that the impugned direction was directed only to the use of Ms Greer's evidence in the Crown case against Mr Rewha. The other Justices (Gageler CJ and Jagot J) considered that the direction involved legal error. Their Honours found that the direction would have been understood by the jury as an instruction that they could not accept Ms Greer's evidence generally, and in relation to the appellant's case, unless they were satisfied beyond reasonable doubt that Ms Greer's evidence was truthful, reliable and accurate.

- *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.*