



HIGH COURT OF AUSTRALIA

14 August 2024

STEVEN MOORE (A PSEUDONYM) v THE KING
[2024] HCA 30

Today, the High Court unanimously dismissed an appeal from a decision of the Court of Appeal of the Supreme Court of Victoria. The principal issue in the appeal was whether, in hearing an interlocutory appeal concerning a trial judge's refusal to exclude evidence under s 137 of the *Evidence Act 2008* (Vic), the Court of Appeal was required to apply the principles in *House v The King* (1936) 55 CLR 499 or the "correctness" standard.

The appellant is due to stand trial in the County Court of Victoria for seven offences alleged to have been committed against the complainant in her home. The complainant later passed away in circumstances unrelated to the alleged offending. After her death, the respondent served a notice under s 67 of the *Evidence Act* notifying its intention to adduce at the appellant's trial evidence of representations made by the complainant to various persons, including to police officers during the day following the alleged offences, under the exception to the hearsay rule provided for in s 65. Section 65 "applies in a criminal proceeding if a person who made a previous representation is not available to give evidence about an asserted fact". The appellant objected to the admission of the evidence of these representations. The trial judge ruled that the evidence satisfied s 65 of the *Evidence Act* and declined to exclude the evidence of the representations under s 137.

The appellant sought leave to appeal the trial judge's ruling. The Court of Appeal granted the appellant leave to appeal on limited grounds but upheld the trial judge's ruling. The Court observed that it was "well-established" that *House v The King* principles apply in relation to an interlocutory appeal from a trial judge's decision addressing whether to exclude evidence under s 137.

On appeal to the High Court, the appellant contended that the Court of Appeal erred in reviewing the trial judge's refusal to exclude the evidence of the representations under s 137 by reference to *House v The King* principles, as opposed to applying the correctness standard. The appellant also contended that the Court of Appeal erred in its assessment of the danger of unfair prejudice that would result from the admission of the evidence of the representations, especially such danger of prejudice that would follow from the appellant's inability to cross examine the complainant.

The High Court held that, in hearing an interlocutory appeal concerning the trial judge's refusal to exclude evidence under s 137, the Court of Appeal was obliged to apply the correctness standard. The Court also held that the danger of unfair prejudice to the appellant from the admission of the evidence of the representations did not outweigh the probative value of that evidence. Other than matters affecting the credibility of the complainant which could be the subject of evidence and submissions, there was no basis for concluding that the inability to cross examine the complainant will substantially affect the ability of the trier of fact to rationally assess the weight to be attached to the evidence of the representations. The trial judge was correct not to exclude the evidence under s 137 of the *Evidence Act*.

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.