



Supreme Court of New Zealand

26 April 2013

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

SHANE DANIEL HANNIGAN v THE QUEEN
SC 20/2012
[2013] NZSC 41

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

The appellant, Shane Hannigan, was found guilty of arson following a trial in the District Court. The Crown alleged that he had started a fire in the kitchen of his house on 21 June 2009 to generate an insurance claim which he hoped would fund its replacement. There were two earlier fires (on 14 June and 20 June 2009) which the Crown maintained he had also started. The evidence in respect of the earlier fires was led as part of the Crown case.

The appeal related to evidence given by the appellant's wife, Kirsty Hannigan, as to what had happened prior to the second fire on 20 June. In a formal interview with police on 26 June 2009, she said that on a visit to the property before the fire, she had stayed in the car while the appellant had gone inside the house. At trial, her evidence in chief was equivocal as to whether the appellant had gone into the house (as opposed to just onto the property). But

in cross-examination, she said that the appellant had only checked the house from the outside and that she had sat in the car and retained the keys. This gave the appellant an alibi in respect of the second fire. Given the inconsistency between Mrs Hannigan's statements to the police and her evidence at trial, the Judge permitted the prosecutor to re-examine Mrs Hannigan on the 26 June statement. There was no determination of hostility.

The prosecutor took Mrs Hannigan to the 26 June statement and asked her to explain the inconsistency between her evidence in cross-examination and the statement. Her responses included the suggestion that she may have been mistaken in her evidence in cross-examination. She was then, however, further cross-examined and in response to questions from the appellant's counsel was adamant that the appellant had not gone into the house.

The appellant argued that the questions asked by the prosecutor were in the nature of cross-examination and also amounted to an attack on the veracity of Mrs Hannigan and thus should not have been permitted in the absence of a determination of hostility. Reliance was placed on ss 94 and 37(4) of the Evidence Act 2006.

The Court of Appeal dismissed an appeal by the appellant against his conviction. His further appeal to the Supreme Court has been dismissed in a majority decision, with the Chief Justice dissenting.

The Court has held that the Judge was entitled to permit the prosecutor to examine Mrs Hannigan on the 26 June statement under s 89(1)(c) of the Act and that the questioning did not require a determination of hostility under s 94. Once Mrs Hannigan gave evidence which was inconsistent with what she had told the police in her 26 June statement, the statement became directly admissible as to the truth of its contents and it was open (and appropriate) for the Judge to permit the prosecutor to lead its contents from Mrs Hannigan and to ask her to explain the inconsistency between those contents and her evidence in cross-examination.

On the second issue, the majority has concluded that in questioning Mrs Hannigan on her previous inconsistent statements, the prosecutor was not challenging her veracity. Rather, he was challenging the accuracy of her evidence and putting before the jury the substance of what she had said to the police in her prior statement. The restriction in s 37(4) was thus inapplicable. The majority has also held that even if the questioning had challenged Mrs Hannigan's veracity and had thereby apparently engaged the restriction in s 37(4)(a), the questioning was permissible under s 37(4)(b) which permits a party to lead evidence which is inconsistent with the evidence of a witness called by that party. The majority is also of the view that the exclusionary provisions which form part of the veracity rules are not applicable to evidence which is directly relevant to facts in issue in a trial.

Contact person: Gordon Thatcher, Supreme Court Registrar (04) 914 3545