

***R v Ashley* [2014] NTSC 26 (15 July 2014) – Northern Territory Supreme Court**

‘Admissibility of evidence’ – ‘Hearsay’ – ‘Jury’ – ‘Murder’ – ‘Presumption of innocence’

Charge: Murder

Proceeding: Reasons for rulings given during trial as to admissibility of evidence, discharge of jury member

Facts: The accused was charged with murdering his ex-partner. He denied any involvement with her death and told police he believed another man or bikies associated with him likely murdered the victim. During the course of the trial, several witnesses were asked what they knew of the other man and his association with the victim and the accused. The prosecution sought to partially exclude evidence of three witnesses about what the accused had told them about people, including the other man, behaving suspiciously around him.

During the trial Blokland J received a note from a juror that alleged three of the other jurors considered the accused guilty until convinced otherwise (*Ashley v R* [2016] NTCCA 2, [10]). The accused’s Counsel requested the jury be discharged.

Issues:

- Was the evidence of the three witnesses admissible?
- Should the jury be discharged because of the juror’s note?

Decision and reasoning:

- The evidence of the three witnesses was hearsay. However, it was admissible as the exception in s 66 of the *Evidence (National Uniform Legislation) Act 2011* (NT) applied. While an accused is not competent to give evidence as a witness for the prosecution, they are ‘available’ for the purposes of s 66 to give evidence in their own case. However, subsequent to this ruling during the trial the accused’s Counsel advised the court that the accused would not give evidence. Therefore, the jury were directed to disregard the evidence initially admitted under s 66.
- Blokland J refused to discharge the jury and rather provided directions to the jury reminding them of the presumption of innocence, the need to remain impartial and the duty to keep an open mind when hearing the evidence.

NB: The ruling not to discharge the jury was held to be an error on appeal in *Ashley v R* [2016] NTCCA 2. The conviction was quashed and a retrial was ordered.