

CRAIG v THE QUEEN (B24/2017)

Court appealed from: Queensland Court of Appeal
[2016] QCA 166

Date of judgment: 21 June 2016

Special leave granted: 7 April 2017

Mr Ronald Craig was charged with having murdered his partner, Ms Kylie Hitchen, in January 2011. Ms Hitchen died from multiple stab wounds to her upper body, wounds which Mr Craig claimed were the result of a drunken domestic dispute.

Mr Craig had initially sought to plead guilty to manslaughter, but that plea was rejected by the prosecutor. At his trial (at which Mr Craig did not testify), his counsel (Mr R Taylor) submitted that Mr Craig had neither intended to kill Ms Hitchen, nor to cause her grievous bodily harm. Allied to this issue was the contested issue of whether he was intoxicated at the time. A partial defence of provocation was raised which, if successful, would have required a verdict of manslaughter only. A jury later found Mr Craig guilty of murder and he was subsequently sentenced to life imprisonment.

The only ground of appeal common to both the Court of Appeal and to this Court is whether Mr Craig's trial miscarried due to his counsel's inaccurate advice. Relevantly, this concerned the issue of whether Mr Taylor had correctly advised Mr Craig not to give evidence due to the likelihood that this would lead to him being cross-examined as to his criminal history.

On 21 June 2016 the Court of Appeal (Fraser, Gotterson & Morrison JJA) unanimously held that, while it was correct for Mr Taylor to avert to the prospect of Mr Craig being cross-examined as to his previous criminal history if he testified, this was more of a *possibility* rather than a probability. The issue therefore was whether that error occasioned a substantial error of justice.

The Court of Appeal noted that Mr Craig had instructed Mr Taylor that he did not wish to be cross-examined about his previous criminal history *or* the sequence of events on the night in question. He gave those instructions after Mr Taylor had advised him with respect to the probability of his being cross-examined on both issues. That advice was not correct with respect to the former, but it was in relation to the latter. Had Mr Craig been cross-examined on his varying accounts of what happened on the night in question, it would have undoubtedly had an adverse impact on his credibility. It would have also severely undermined the scope for the defences of accident or self-defence.

The Court of Appeal held that there was a sound forensic reason for Mr Craig not to testify and that he was correctly advised by Mr Taylor accordingly. His decision not to testify, insofar as it was justified by that advice, was not therefore the consequence of having been misled by any incorrect advice. That he did not give evidence in these circumstances did not therefore result in a miscarriage of justice. The fact that he was given an additional, inaccurate,

reason not to testify did not therefore, of itself, give rise to any miscarriage of justice.

The ground of appeal is:

- The Court of Appeal erred in finding that incorrect advice given by trial counsel to Mr Craig that he was likely to be cross-examined about his previous convictions if he gave evidence did not result in a miscarriage of justice.