

PRESLEY v THE DIRECTOR OF PUBLIC PROSECUTIONS (A17/2015)

Court appealed from: Court of Criminal Appeal, Supreme Court of South Australia [2015] SASCFC 53

Date of judgment: 28 April 2015

Date matter referred to Full Court: 12 February 2016

The applicant was found guilty by unanimous jury verdict of the murder of Clifford Hall. The incident the subject of the charge occurred at about 11.00 pm on 12 December 2012 at Grant Street, Elizabeth Park. Mr Hall was assaulted near his home by a group of men including the applicant and the co-accused Joshua Betts, Everard Miller, and Wayne Smith. A number of weapons were used in the assault, including a baseball bat, a shovel and a bottle. Mr Hall was stabbed with a knife to his back, penetrating his chest cavity, lung and heart. It was not disputed at trial that this wound, which was fatal, was inflicted by Betts. The prosecution case was that the applicant, Betts, Miller and Smith were part of a joint enterprise that had as its object, or within its contemplation, an attack on Mr Hall with weapons accompanied by an intention to cause grievous bodily harm.

The applicant, when interviewed by police, admitted attending Grant Street armed with a baseball bat and in the company of at least Smith, whom he said was also armed. The prosecution case was that the applicant hit a friend of Mr Hall with the baseball bat – to which he pleaded guilty – and joined in the attack on Mr Hall, also hitting him with the bat.

In his appeal to the Court of Criminal Appeal (Gray, Sulan and Blue JJ), the applicant submitted that the trial judge had erred in his directions in his description of the elements of murder under the doctrine of extended joint enterprise. It was submitted that only a participant to a joint enterprise who actually foresees a murder as a possible incidental crime is liable for murder under extended joint enterprise and that the accused must have foresight of a possibility that the victim might be killed with murderous intent and not merely that the victim might sustain really serious harm. The Court rejected that argument, finding that the relevant foresight is of someone acting with the necessary intention for murder, namely, either an intent to kill or an intent to cause grievous bodily harm, citing the judgment of this Court in *McAuliffe v The Queen* (1995) 183 CLR 108.

The applicant further submitted that the directions given by the trial judge on intoxication were inadequate. He contended that directions were required to properly instruct the jury as to how their findings of fact on the evidence on intoxication affected ten matters concerning his awareness of those facts and his intention. Those matters included: his awareness of the scope of any joint enterprise; whether he was subjectively aware of the intentions of other participants; whether he turned his mind to possible consequences of participation; whether he was aware Betts was carrying a knife; his comprehension of or agreement to the level of violence; whether he intended that a person sustain grievous bodily harm; whether he was aware of a possibility that someone might be murdered; and whether he was aware of a possibility that someone might be killed in circumstances falling short of murder, that is, how intoxication could affect his liability for extended joint enterprise

manslaughter. The Court noted that the judge gave general directions on the topic of intoxication, and specific directions on that subject with respect to the applicant. Those directions addressed the relevance of intoxication with respect to murder, manslaughter, whether the applicant entered into the relevant joint enterprise and, where relevant, what he might have foreseen. The Court considered that the summing up of the trial judge with respect to intoxication and the applicant could not be fairly criticised. The jury was made well aware of the relevance of intoxication by general directions, and the facts concerning the applicant's possible intoxication and their relevance to the particular issues in the case put against the applicant were adequately addressed.

The proposed ground of appeal is:

- The court below ought to have found, on the evidence that the applicant's consciousness would have been impaired by intoxication to such an extent that there was a reasonable doubt about whether the applicant could foresee the possible consequences of another person's actions, or form the *mens rea* necessary for murder under the doctrine of joint enterprise or extended joint enterprise.

The applicant has filed a summons seeking leave to amend his proposed grounds of appeal to add the following further ground:

- The court below erred in finding that liability for murder under the common law doctrine of extended joint criminal enterprise requires foresight only of the possibility of someone acting with the necessary intent for murder, namely either an intent to kill or an intent to cause grievous bodily harm.

This application is listed together with the application by Smith, which is also referred, and the appeal by Miller.