



## HIGH COURT OF AUSTRALIA

14 November 2012

### BRADLEY DOUGLAS COOPER v THE QUEEN

[2012] HCA 50

Today a majority of the High Court allowed an appeal by Mr Bradley Douglas Cooper against the decision of the Court of Criminal Appeal of the Supreme Court of New South Wales to uphold his conviction for murder.

The appellant was charged with murder. Post mortem examination showed that the deceased had four wounds to the head. At trial, the prosecution presented two alternative cases. The prosecution alleged that either the appellant alone hit and killed the deceased or the appellant's partner struck and killed the deceased as part of a joint criminal enterprise with the appellant to kill the deceased. The appellant was convicted of murder.

The appellant appealed to the Court of Criminal Appeal of the Supreme Court of New South Wales. That Court held that there had been an error in the trial because there was no evidence of a joint criminal enterprise, and so the jury should not have been directed to consider that alternative case. But the Court of Criminal Appeal upheld the appellant's conviction on the basis that the error did not result in a "substantial miscarriage of justice" under s 6(1) of the *Criminal Appeal Act 1912* (NSW). By special leave, the appellant appealed to the High Court.

A majority of the Court allowed the appeal. The majority concluded that, on the evidence admitted at trial, an appellate court could not be satisfied beyond reasonable doubt that only one weapon had been used or that the appellant struck the blow which caused the deceased's death. An appellate court could not therefore be satisfied beyond reasonable doubt that the appellant was guilty of murder. The Court quashed the appellant's conviction and ordered a retrial.

- *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.*