



HIGH COURT OF AUSTRALIA

13 August 2014

DANIEL GLENN FITZGERALD v THE QUEEN

[2014] HCA 28

On 19 June 2014, the High Court unanimously allowed an appeal against a decision of the Court of Criminal Appeal of the Supreme Court of South Australia, which had upheld the appellant's convictions for murder and aggravated causing serious harm with intent to cause serious harm contrary to ss 11 and 23(1) respectively of the *Criminal Law Consolidation Act 1935* (SA). The High Court allowed the appeal, quashed the appellant's convictions and directed that a judgment and verdict of acquittal be entered. Today, the High Court delivered reasons for making those orders.

On 19 June 2011, a group of men forced their way into a house in Elizabeth South in South Australia and attacked two of the occupants with weapons including a gardening fork and a pole. One victim died four days after the attack and another sustained serious brain injuries. After a trial before a judge and jury in the Supreme Court of South Australia, the appellant was convicted and was sentenced to a term of life imprisonment with a non-parole period of 20 years.

At the appellant's trial, the prosecution contended that the appellant was a member of the group that had forced entry into the house armed with weapons and was a party to a common plan to cause grievous bodily harm to persons inside the house. There was no direct evidence that the appellant inflicted harm on the deceased or the other victim. The prosecution relied on DNA evidence obtained from a sample taken from a didgeridoo found at the crime scene to establish the appellant's involvement in the attack. The prosecution's circumstantial case was that the DNA in the sample derived from the appellant's blood and was transferred by him to the didgeridoo at the time of the attack. The appellant argued that alternative hypotheses consistent with his innocence were open on the evidence. One such hypothesis was that a member of the group who was present at the crime scene had transferred the appellant's DNA onto the didgeridoo, after the two men shook hands the night before the attack.

The appellant appealed unsuccessfully against his convictions to the Court of Criminal Appeal, arguing that the verdicts were unreasonable and could not be supported by the evidence. By special leave, the appellant appealed to the High Court.

The High Court unanimously held that the prosecution's main contention, that the appellant's DNA in the sample obtained from the didgeridoo derived from his blood, was not made out beyond reasonable doubt. Further, the recovery of the appellant's DNA from the didgeridoo did not raise any inference about the time when or circumstances in which the DNA was deposited there. The Court held that it could not be accepted that the evidence relied on by the prosecution was sufficient to establish beyond reasonable doubt that the appellant was present at, and participated in, the attack. The jury, acting reasonably, should have entertained a reasonable doubt as to the appellant's guilt. As the evidence was not capable of supporting the appellant's conviction for either offence, no question of an order for a new trial arose.

- *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.*