

CASTLE v THE QUEEN (A24/2015)

Court appealed from: Court of Criminal Appeal, Supreme Court of South Australia [2015] SASCFC 180

Date of judgment: 3 December 2015

Date special leave granted: 25 May 2015

The appellant was found guilty of the murder of her former partner, Adrian McDonald, after a trial by a jury in the Supreme Court of South Australia. On 3 February 2013 McDonald was shot dead at the Big Bucket Car Wash in Parafield. Shortly before he was shot Mr McDonald got into the front passenger seat of a car parked in the grounds of the car wash. CCTV footage from the carwash showed that the appellant was the driver. The prosecution case was that McDonald was shot by the co-accused, Bucca, who had concealed himself in the rear of the car. At trial, the appellant gave evidence that she was the driver of the car but that another man, Wesley Gange, was the shooter and that she did not know that Gange's intention was to kill McDonald or cause him serious harm. Bucca did not give evidence at trial. Gange died before the trial.

The prosecution case included evidence of telecommunication records which showed that between midnight on 2 February 2013 and the shooting of McDonald, Bucca's mobile phone and the appellant's mobile phone moved around the north eastern suburbs of Adelaide and the vicinity of the Big Bucket Car Wash in "lock step with each other" and that Gange's phone was located almost 16 minutes driving time from the Big Bucket Car Wash, at the time of the shooting. The prosecution also led evidence of what was claimed to be an admission, overheard by a witness, made by Bucca to the witness's father, and evidence of an admission made by Bucca to a police officer that he had been with the appellant for 95% of the 24 hour period preceding 3.30pm on 3 February 2013.

The appellant's appeal to the Court of Criminal Appeal was dismissed. Although the Court found that the trial judge erred in not directing the jury that the purported admissions by Bucca were inadmissible against the appellant, they applied the proviso. The Court was satisfied beyond reasonable doubt that the appellant knew that Bucca was in the car and that he was armed and intended to confront the deceased with a gun in order to detain him, and that she foresaw that the gun might be used to kill McDonald, or cause him grievous bodily harm. This was based on evidence which satisfied the Court that Bucca was the shooter, and on the inherent probability that the appellant would either have seen the gun or would have been told about it in the time she spent with Bucca before arriving at the car wash; the appellant's movements towards the boot of the car while waiting for Mr McDonald; her refusal to meet McDonald in his car; and texts sent and phone call made by her after the shooting.

The Court held that the admissions were a minor part of the evidence and were so overwhelmed by the circumstantial evidence against the appellant that it was unlikely they had any influence on the jury's verdict, so there was no substantial miscarriage of justice. The Court applied the proviso and dismissed the appeal.

The grounds of appeal include:

- The trial judge erred in directing the jury that the appellant could be found guilty of murder in accordance with the principle of extended common purpose (or extended joint enterprise) described in *McAuliffe v The Queen* (1995) 183 CLR 108. The principle of extended joint enterprise is not part of the common law of Australia and the appellant could not lawfully be convicted of murder on the basis of that principle.
- The Court of Criminal Appeal erred in holding that although the trial judge failed to direct the jury that evidence of admissions made by the co-accused Bucca could not be used as evidence in the prosecution case against the appellant, the proviso applied.