

IRWIN v THE QUEEN (B48/2017)

Court appealed from: Queensland Court of Appeal
[2017] QCA 2

Date of judgment: 3 February 2017

Special leave granted: 18 August 2017

In May 2016 Mr Michael Irwin was tried before a jury on an indictment containing two counts, relating to a broken hip suffered by Mr Lloyd Ross after an altercation between the men. Count 1 was that Mr Irwin had inflicted grievous bodily harm on Mr Ross. Count 2 was that Mr Irwin had assaulted Mr Ross and caused him bodily harm.

The altercation occurred at a shopping centre in July 2012, when Mr Irwin pushed Mr Ross (and, on the latter's account, attempted to punch him), causing Mr Ross to fall to the ground. Mr Irwin then kicked Mr Ross at least twice, in or near his right hip. Mr Ross later required surgery on his right hip, which was broken in three places. The orthopaedic surgeon who had operated on Mr Ross testified that the fractures had most likely been caused by Mr Ross's fall on to the shopping centre floor rather than by any kick he had received.

Section 23(1)(b) of the *Criminal Code* (Qld) ("the Code") relevantly provides that a person is not criminally responsible for an event (such as Mr Ross's broken hip) "*that an ordinary person would not reasonably foresee as a possible consequence.*"

The jury found Mr Irwin guilty of the Count 1 charge and not guilty of Count 2, whereupon Judge Reid sentenced him to a suspended sentence of 18 months' imprisonment.

An appeal by Mr Irwin against his conviction was unanimously dismissed by the Court of Appeal (Margaret McMurdo P, Gotterson JA & Mullins J), which found that the jury's verdict was not unreasonable. The President, with whom Justices Gotterson and Mullins agreed, found that although it was open to the jury to consider that a person in Mr Irwin's position could not reasonably have foreseen that Mr Ross might suffer a fractured hip, "*[i]t was equally open to the jury on the evidence to reach the contrary conclusion, that an ordinary person in the position of [Mr Irwin] could have foreseen that [Mr Ross] might suffer a serious injury such as a fractured hip from such a forceful push.*" The President also referred to the surgeon's evidence having indicated that Mr Irwin had pushed Mr Ross "*with a considerable degree of force*".

The ground of appeal is:

- The Court of Appeal erred in finding that the verdict of guilty on Count 1 was not unreasonable.