

SMITH v THE QUEEN (A22/2015)

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 Johnas Presley. 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 Presley 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. It was alleged that the applicant hit Mr Hall with a shovel and a bottle. The prosecution contended that the applicant lied to the police about his whereabouts at the time of the incident, and this lie was capable of being used as an item of circumstantial evidence of his presence and participation in the attack. There was evidence that the applicant had been drinking throughout the day on which the murder took place, although a blood sample taken about 24 hours after the event showed a zero blood alcohol concentration.

In his appeal to the Court of Criminal Appeal (Gray, Sulan and Blue JJ) the applicant submitted, inter alia, that the verdicts were unreasonable or could not be supported having regard to the evidence. The Court concluded that there was sufficient evidence to leave it open to the jury to find that the applicant was present at the scene and participated in the attack with the necessary intent. In his application for special leave, the applicant contends that although the issue of intoxication was not specifically raised on appeal, the Court should have referred to the effect of the evidence of intoxication on the ability of the applicant to foresee the possibility that one of the co-offenders might unlawfully kill or inflict grievous bodily harm on the deceased with the requisite intent.

The proposed grounds of appeal include:

- The Full Court should have held that the convictions were unreasonable and not supported by the evidence because there existed a reasonable possibility on the evidence that the appellant's state of intoxication was such that his thought processes were impaired to the point where he was not able to foresee or predict the consequences of his own conduct or the conduct of others.

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

- The appellant's trial miscarried as liability for murder was left for consideration by the jury on bases including the principle enunciated in *McAuliffe v The*

Queen (1995) 183 CLR 108, known as extended joint enterprise, upon which basis the appellant may have been convicted.

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