

COOPER v THE QUEEN (S135/2012)

Court appealed from: New South Wales Court of Criminal Appeal
[2011] NSWCCA 258

Date of judgment: 5 December 2011

Special leave granted: 11 May 2012

On 22 March 2003 Mr Dale Muldoon was murdered in the home of Mr Bradley Cooper and Mr Cooper's partner, Ms Julie-Ann Quinn, after a drunken altercation between the two men. Mr Muldoon had been hit on the head with a metal baseball bat and then with a hatchet. One of the wounds ("the star-shaped wound") on Mr Muldoon's head, which might have caused his death, was probably inflicted by the baseball bat. Another wound, which also might have caused his death, was probably inflicted by the hatchet. A witness to the disposal of Mr Muldoon's body, "C", gave evidence that Ms Quinn had told her that she (Ms Quinn) had struck Mr Muldoon with the hatchet because she feared that he was about to kill Mr Cooper. Ms Quinn was tried separately from Mr Cooper and was acquitted.

Mr Cooper pleaded guilty to a charge of perverting the course of justice (by disposing of Mr Muldoon's body in a forest), but not guilty to murder. In Mr Cooper's trial, his defence was that Ms Quinn had struck Mr Muldoon with the hatchet after he had overpowered Mr Cooper. The prosecution's primary case was that Mr Cooper had struck all blows with both implements. The prosecution's alternative case was that Mr Cooper had been involved in a joint criminal enterprise with Ms Quinn. That alternative case was based upon C's evidence that Ms Quinn had confessed to having hit Mr Muldoon with the hatchet.

On 15 June 2005 a jury found Mr Cooper guilty of murdering Mr Muldoon. On 5 September 2005 Justice Buddin sentenced him to 22 years imprisonment, with a non-parole period of 17 years. In appealing against his conviction, Mr Cooper complained about his counsel's failure to lead evidence of certain mental health service records which indicated that Mr Muldoon suffered from a psychosis which could be exacerbated by the consumption of alcohol and drugs. He also complained about his counsel's failure to cross-examine a certain witness concerning Mr Muldoon's mental health.

On 5 December 2011 the Court of Criminal Appeal (Beazley JA, Hidden & R A Hulme JJ) unanimously dismissed Mr Cooper's appeal. Their Honours held that Justice Buddin's directions to the jury concerning joint criminal enterprise, defence of another and Ms Quinn's alleged confession to C had not been inadequate. The Court of Criminal Appeal found however that Justice Buddin had erred in leaving joint criminal enterprise to the jury as a basis for Mr Cooper's liability for murder. Their Honours also found that there was no reasonable explanation for his counsel's failure to tender medical records of, or to cross-examine concerning, Mr Muldoon's mental health. The Court of Criminal Appeal held however that these shortcomings had not given

rise to a miscarriage of justice. This was in light of the evidence indicating that Mr Cooper had struck the blow that caused the star-shaped wound.

The grounds of appeal include:

- The Court of Criminal Appeal erred in applying the proviso to s 6(1) of the *Criminal Appeal Act 1912* (NSW).
- The Court of Criminal Appeal erred in holding that defence counsel's failure to adduce relevant evidence in relation to the deceased's mental condition and the related failure to cross-examine the deceased's grandmother did not occasion a miscarriage of justice.