



HIGH COURT OF AUSTRALIA

Public Information Officer

13 December 2006

CELIA KATHLEEN CLAYTON v THE QUEEN
JOHN DOUGLAS HARTWICK v THE QUEEN
LISA JANE HARTWICK v THE QUEEN

The High Court of Australia declined to reopen its earlier decisions on the law relating to what is sometimes called “extended common purpose” in determining criminal responsibility.

Three people were convicted of murdering Steven John Borg and intentionally causing serious injury to Mr Borg’s girlfriend, Paula Michelle Rodwell, on 23 May 2001. Ms Rodwell lived in the same street as Lisa Hartwick in Frankston in Melbourne. Lisa and John Hartwick were divorced but Mr Hartwick stayed often and they both knew Mr Borg and Ms Rodwell. Ms Hartwick, accompanied by her friend Celia Clayton, had a verbal dispute with Ms Rodwell, accusing her of calling Mr Hartwick a “dog”, or police informer. The matter was resolved, but when Ms Rodwell related it to Mr Borg he became angry. He drove to Ms Hartwick’s house in a stolen car and smashed his car into the back of Ms Clayton’s rented car. Both cars were seriously damaged and some damage was done to the house. The Hartwicks and Ms Clayton armed themselves with metal poles, wooden poles and a carving knife and went to Ms Rodwell’s house. There is dispute over exactly what happened but the injuries to Mr Borg were consistent with a prolonged attack in which he was severely beaten and stabbed a number of times. One stab wound was fatal.

The prosecution’s case at trial was that, although it could not identify who inflicted the fatal stab, each was guilty on one or other of three bases. These were either a joint enterprise through a plan to cause Mr Borg very serious injury; extended common purpose in which each agreed to assault him using weapons and reasonably foresaw the possibility of death or serious injury; or liability as an accessory, that is, aiding and abetting the person who inflicted the fatal wound by helping, encouraging or conveying assent to that person. The Victorian Court of Appeal ordered a new trial on the intentionally causing injury charge but dismissed appeals against the murder convictions.

The three applied for special leave to appeal to the High Court. Their applications were referred to the whole Court on the limited ground of inviting the Court to reconsider its 1995 decision in *McAuliffe v The Queen* and its 2003 decision in *Gillard v The Queen* which affected the extended common purpose basis put by the prosecution. At the end of oral argument on the *McAuliffe* and *Gillard* issue, the Court announced it would not reconsider the two decisions and refused each application for special leave. The Court, which refused special leave by a 6-1 majority, today delivered its written reasons. The majority held that it was not demonstrated that the application of the principles in *McAuliffe* and *Gillard* had led to any miscarriage of justice in this case or in other homicide cases. Even if the three had not intended the death of Mr Borg, they were guilty of murder if they intended only to do serious injury to him but he instead died. If a party to a joint criminal enterprise foresees the possibility that someone might be assaulted with an intention to kill or cause really serious injury to that person and, despite that foresight, continues to participate in the venture, the criminal culpability lies in the continued participation.

- *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.*