



HIGH COURT OF AUSTRALIA

24 August 2016

MILLER v THE QUEEN; SMITH v THE QUEEN; PRESLEY v THE DIRECTOR OF PUBLIC PROSECUTIONS

[2016] HCA 30

Today the High Court allowed three appeals from a decision of the Court of Criminal Appeal of the Supreme Court of South Australia. The appellants and a man named Betts were convicted of murder following a trial in the Supreme Court of South Australia. There was evidence that the four were involved in an altercation in which Betts fatally stabbed the deceased. The liability of the appellants for the murder was left for the jury's consideration on bases which included the doctrine of extended joint criminal enterprise as enunciated in *McAuliffe v The Queen* (1995) 183 CLR 108; [1995] HCA 37: each appellant would be guilty of murder if he was a party to an agreement to commit an assault and he foresaw that in carrying out that agreement one of his co-venturers might kill or inflict really serious bodily injury intending to do so and, with that awareness, he continued to participate in the agreed criminal enterprise.

Each of the appellants had been drinking alcohol in the hours leading up to the fatal altercation. They appealed to the Court of Criminal Appeal contending that the verdicts were unreasonable in light of the evidence of the extent of their intoxication. The Court of Criminal Appeal dismissed this ground of appeal in each case without reviewing the sufficiency of the evidence to support the conviction.

Prior to the hearing in the High Court, the Supreme Court of the United Kingdom in *R v Jogee* [2016] 2 WLR 681; [2016] 2 All ER 1 held that the doctrine of extended joint criminal enterprise should no longer be a basis for the imposition of criminal liability. The appellants were granted leave to argue that, consistent with *Jogee*, the decision of the High Court in *McAuliffe* should be reopened and overruled. After consideration of the history and basis of the doctrine, the majority held that the law in Australia should remain as stated in *McAuliffe*.

The High Court held, by majority, that the appeals should be allowed in circumstances in which the Court of Criminal Appeal had failed to review the sufficiency of the evidence to sustain the appellants' convictions. The proceedings were remitted to the Court of Criminal Appeal for determination of the ground that the verdicts were unreasonable and could not be supported by the evidence.

- *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.*