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IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 139/2023
[2024] NZSC 25

BETWEEN	REUBEN WAYNE HIRA GIBSON–PARK Applicant
AND	THE KING Respondent

Court: Glazebrook, Ellen France and Miller JJ

Counsel: T Epati for Applicant
Z R Johnston for Respondent

Judgment: 9 April 2024

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Gibson-Park, along with his co-defendant Mr Patuwai, was convicted after a jury trial of the murder of Mr Raymond Neilson. Mr Gibson-Park was also convicted of arson. His appeal against conviction was dismissed by the Court of Appeal on 4 December 2023.[1] He now applies for leave to appeal to this Court.

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1 *Gibson-Park v R* [2023] NZCA 615 (Brown, Peters and Mander JJ) [CA judgment].

Background

[2] Mr Neilson was subjected to a fatal beating in his house. The first part of the attack on the front deck of the house was witnessed by two associates of Mr Patuwai and Mr Gibson-Park. Their evidence was that both Mr Patuwai and Mr Gibson-Park punched and kicked Mr Neilson and Mr Gibson-Park also used a baseball bat.[2]

[3] After the two associates had left, the attack continued inside the house. There was evidence from a neighbour of what she thought was the sound of a person being hit repeatedly and two people's voices. She also heard what sounded like a person shouting for help.[3]

[4] Mr Neilson's house was set on fire subsequently. It was the Crown's case that Mr Gibson-Park had returned to light the fire.[4]

[5] The Crown's contention was that Mr Gibson-Park and Mr Patuwai had acted together in administering the fatal beating to Mr Neilson and that their murderous intent could be inferred from its sustained nature and the level of force that had been used.[5]

[6] Mr Gibson-Park's defence was that Mr Patuwai had administered the majority of the violence. He accepted he was guilty of manslaughter but denied having murderous intent. He denied any knowledge of or involvement with the arson. He maintained he was at the beach in the presence of his then girlfriend when the arson was committed.[6]

[7] Mr Gibson-Park had not made a statement to police but gave evidence at trial. He admitted punching Mr Neilson several times and striking him in the face with his elbows in order to keep him from getting up. He also admitted using a baseball bat to strike Mr Neilson. However, he said he only did this three times, and the blows were to the deceased's legs, buttocks and rib area for the purpose of preventing him from

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2 CA judgment, above n 1, at [3]–[8]. One of the associates admitted also hitting Mr Neilson.
3 At [9].
4 At [9].
5 At [14].
6 At [15]–[16].

getting up. Mr Gibson-Park's evidence was that inside the house the bulk of the violence was committed by Mr Patuwai, including Mr Patuwai using a blunt instrument (possibly an air gun) on Mr Neilson and stomping on his chest and head. Mr Gibson-Park said he stepped in to prevent further injuries.[7]

[8] Mr Patuwai's statement to police was admitted at trial. In it he admitted hitting Mr Neilson numerous times but said Mr Gibson-Park hit him many more times than he did and that Mr Gibson-Park had also used a baseball bat.[8]

Court of Appeal decision

[9] Among other grounds of appeal, Mr Gibson-Park maintained on appeal to the Court of Appeal that a miscarriage of justice had occurred because his counsel had pursued a defence that was not available and because of the admission of Mr Patuwai's statement.

[10] The Court of Appeal said that trial counsel appeared to be of the mistaken view that this was a case where the jury had to be unanimous on which acts caused death. In the context of a joint and ongoing attack, the Court of Appeal held that this was misconceived.[9]

[11] The Court, however, held that Mr Gibson-Park's defence that he did not have murderous intent was fully advanced at trial. To the extent trial counsel:[10]

> … may have been labouring under the misapprehension that a causation defence was available to him, it is not apparent from the trial record that this was pursued to any great extent, nor, moreover, that it in any way detracted from his defence of not having a murderous intent, or prejudiced Mr Gibson-Park.

[12] Nor did the Court accept that it affected Mr Gibson-Park's decision to give evidence.[11] The Court concluded:[12]

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7 At [15]–[16].
8 At [11].
9 At [26].
10 At [36].
11 At [32]–[34].
12 At [40].

> We therefore do not consider there was any risk that the approach taken by trial counsel in exploring a possible causation defence at trial, misconceived as it may have been, affected the outcome of the trial or rendered the verdicts unsafe.

[13] In terms of Mr Patuwai's statement, the Court commented that it was unsurprising no application for severance had been made in this case given the contention that it was a joint attack. Mr Patuwai's statement was the only part of the evidence that was inadmissible against Mr Gibson-Park and it was "easily ring-fenced as only being admissible against Mr Patuwai".[13] Unambiguous directions were given that Mr Patuwai's statements were inadmissible against Mr Gibson-Park. The Court commented that in any event Mr Patuwai's "motivation for providing an account that embellished Mr Gibson-Park's role and minimised his own conduct would have been readily apparent to the jury".[14]

[14] The Court of Appeal said:[15]

> Here, the Crown was able to rely upon the evidence of two eyewitnesses and other evidence, including of a forensic nature, that supported Mr Gibson-Park's having, together with Mr Patuwai, taken a leading role in the attack on Mr Neilson. This was not a case where the weight of the inadmissible evidence, as compared with the admissible evidence, meant it would be unfair or unrealistic to expect the jury to be able to put the former to one side. The balance of the evidence against Mr Gibson-Park was considerable and, as earlier observed, the inadmissible material was well able to be isolated.

Grounds of proposed of appeal

[15] The first proposed ground of appeal is that the Court of Appeal erred in holding that trial counsel's error relating to a "misconceived" defence of causation did not risk affecting the outcome of the trial.

[16] The second proposed ground of appeal is that the Court of Appeal erred in finding orthodox directions to the jury cured the undue prejudice arising from the extensive police statement of the co-defendant, Mr Patuwai, which contained inadmissible and unfairly prejudicial references to Mr Gibson-Park's actions and state

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13 At [50].
14 At [53].
15 At [58] distinguishing the case from *Williams v R* [2011] NZCA 245.

of mind, as well as to irrelevant matters and alleged offending with which Mr Gibson-Park, but not Mr Patuwai, was charged (arson). It is further submitted that the co-defendant's statement was the subject of impermissible cross-examination by trial counsel (a further error).

[17] The Crown opposes the application for leave. It is submitted that trial counsel's understanding as to the law of causation did not result in a miscarriage of justice. It was pursued only as a secondary defence. The main defence was lack of murderous intent which was put squarely, and adequately, before the jury. Prejudice arising from Mr Patuwai's statement was addressed by strong jury directions and separate trials were not in the interests of justice. No miscarriage of justice resulted.

Our assessment

[18] Nothing raised by Mr Gibson-Park throws doubt on the Court of Appeal's analysis that his primary defence (lack of murderous intent) was clearly before the jury and that the misconceived pursuit of a causation defence did not detract from this. Nor does anything raised throw doubt on the Court's conclusions on the effect of the directions given. As this was a joint attack and the defendants were effectively running cutthroat defences, there is no plausible argument for severance.

[19] In these circumstances there is no apparent risk of a miscarriage of justice and it is accordingly not in the interests of justice to grant the application for leave to appeal.[16]

Result

[20] The application for leave to appeal is dismissed.

Solicitors:
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent

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16 Senior Courts Act 2016, s 74(1) and (2)(b).