

IN THE SUPREME COURT OF NEW ZEALAND

SC 76/2016
[2016] NZSC 128

BETWEEN STEVEN RAY CHURCHIS
Applicant
AND THE QUEEN
Respondent

Court: Glazebrook, O'Regan and Ellen France JJ
Counsel: W C Pyke for Applicant
J E L Carruthers for Respondent
Judgment: 28 September 2016

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

Introduction

[1] Mr Churchis was convicted of murder. His appeal against conviction on that charge was dismissed by the Court of Appeal.¹ He applies for leave to appeal against that decision to this Court. He wishes to challenge the trial judge's directions as to intent and submits that there was a failure to summarise the defence case in that regard.²

¹ *Churchis v R* [2016] NZCA 264 (Stevens, Woodhouse and Wylie JJ) [Court of Appeal judgment].

² At trial there were also issues of causation and self defence.

[2] The victim was Mr Linder, a homeless man. He was assaulted by Mr Churchis and sustained head injuries. Some days after the assault he died of pneumonia, which had been contracted as a result of the head injuries.

[3] The trial judge, Venning J, directed the jury that they were to consider Mr Churchis' state of mind at the time he assaulted Mr Linder.³ The evidence of the pathologist was that a subdural haematoma around the brain was the primary injury to Mr Linder and that it was likely to have occurred as a result of an accelerated fall to the ground.

[4] It is submitted, on behalf of Mr Churchis, that the jury should have been instructed that they had to be sure about the intention of Mr Churchis at the time he struck the blows that likely led to death – ie at the time he struck the blow that caused Mr Linder to fall to the ground. It was not sufficient to refer generally to Mr Churchis' intent at the time of the assault, which carried on after that point.

[5] There was conflicting evidence at trial as to when exactly Mr Linder fell to the ground. The defence case at trial was that a single kick to the chest was the most likely cause of Mr Linder falling to the ground⁴ and therefore of the brain injury that led to his death. It was submitted that this was similar to a “one punch” scenario and that Mr Linder was more susceptible to injury because of a previous head injury.

[6] The Crown contended in closing that the description of the attack given by Mr Churchis in his police interview was likely to be the most accurate account of the attack. On this account, a kick and several punches had preceded Mr Linder falling down.⁵ It was contended that any difference in the evidence as to whether there had

³ This direction was effectively repeated in an issues sheet the jury were given to assist in their deliberations and in answer to a jury question.

⁴ One witness, Mr Dalton, said that Mr Churchis kicked Mr Linder in the chest and knocked him to the ground. He then kicked Mr Linder in the head while he was on the ground and stomped on his face and forehead up to 10 times.

⁵ In his police interview, Mr Churchis said that he had kicked Mr Linder in the head, landed probably three or four punches and elbowed him in the eye. Mr Linder then fell over, whereupon Mr Churchis punched him three or four more times until stopped by one of the companions, Mr Spiers. Mr Churchis said that, if Mr Spiers had not been there, he probably would have killed Mr Linder. By contrast, Mr Spiers said that it was a woman who got Mr Churchis to stop. Mr Dalton maintained that it was him.

been stomping⁶ did not matter because on any account it was a “sustained and brutal attack”.

The decision of the Court of Appeal

[7] The Court of Appeal said that the assault took approximately three minutes and involved a flurry of continuous uninterrupted blows, consisting of a combination of kicks, punches and possibly some stomps aimed at Mr Linder’s head.⁷ The Court considered that there was no evidential basis for suggesting that the state of mind or purpose of Mr Churchis varied in any significant way during the assault on Mr Linder.⁸ It was thus not necessary for the trial judge to direct the jury in the manner suggested.

[8] After analysing Mr Churchis’s police interview,⁹ the Court said that there was no foundation or narrative for segregating the acts of violence inflicted on Mr Linder.¹⁰ The Court therefore considered that it was “entirely appropriate” for the Judge to have directed about intention “at the time the defendant assaulted Mr Linder.”¹¹ Given the short time frame between the blows inflicted by Mr Churchis, it would have been artificial to regard the blow or blows before Mr Linder fell to the ground as separate incidents. Further, the jury were entitled to consider the blows inflicted after Mr Linder fell to the ground when determining his state of mind at the time of the assault.¹²

⁶ Mr Spiers said that Mr Churchis threw a punch at Mr Linder’s jaw that knocked him off his feet and his head fell back into the wall. Mr Churchis then punched Mr Linder 10 or 11 times in the face and stomped on his head half a dozen times. In re-examination, Mr Spiers said that Mr Churchis kicked Mr Linder in the chest and then started punching him and stomping on his face, although he was unclear when Mr Linder fell down.

⁷ Court of Appeal judgment, above n 1, at [27].

⁸ At [40].

⁹ At [41]–[44].

¹⁰ At [45]. The Court had earlier referred to *R v McKeown* [1984] 1 NZLR 630 (CA) at 632–633; *R v Peters* [2007] NZCA 180 at [44]; and *R v Warren* CA 315/00, 20 November 2000. The Court distinguished *R v Ramsay* [1967] NZLR 1005 (CA) and *R v Dixon* [1979] 1 NZLR 641 (CA), which had been relied on by Mr Pyke.

¹¹ At [48].

¹² At [52].

Our assessment

[9] Mr Pyke points in his submissions to passages in Mr Churchis' police interview that he says provide an evidential foundation for there being a possible difference in Mr Churchis' intent during the course of the assault.

[10] We do not accept this submission. At most, the passages provided some evidential foundation for there being no murderous intent – the “one punch” contention referred to above. The jury must have rejected that contention.

[11] Further, the jury can have been under no misapprehension as to the defence case relating to intent. The trial judge reminded the jury of the defence submission that there was no intent to kill and no appreciation that Mr Linder could die from the assault. He also reminded the jury to consider Mr Churchis' youth and state of intoxication when considering his state of mind.

Result

[12] The applicant's submissions have not pointed to any error of principle in the Court of Appeal's approach. Nor do the matters highlighted, taken in the context of the evidence as a whole, show any risk of a miscarriage of justice.

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

Solicitors:
Crown Law Office, Wellington for Respondent