

**HUYNH v THE QUEEN (A30/2012); SEM v THE QUEEN (A32/2012);  
DUONG v THE QUEEN (A31/2012)**

Court appealed from: Court of Criminal Appeal of the Supreme  
Court of South Australia  
2011] SASFC 100

Date of judgment: 31 August 2011

Date special leave granted (Huynh): 7 September 2012

Application referred  
into a to Full Court (Sem & Duong): 17 October 2012

Kiet Huynh, Rotha Sem and Chansya Duong (“the accused”) were convicted of the murder of Thea Kheav after a trial by jury in the Supreme Court of South Australia. Kheav was fatally stabbed in the course of a brawl that erupted at the end of a birthday party on 2 December 2007 at a house in Parafield Gardens (“the Nguyen house”). Huynh, Sem and Duong were involved in the brawl, although the extent of their participation in it was a matter of dispute.

In their appeals to the Court of Criminal Appeal (Doyle CJ, Vanstone and Peek JJ), the accused submitted, inter alia, that the trial judge erred in failing to direct the jury that an essential step in the proof of guilt was proof that each of them participated in some way in the joint enterprise, if the jury were satisfied that there was a joint enterprise. In rejecting that argument, the Court found that there was no risk at all that the jury found any one of the accused guilty without finding that that accused participated in the joint enterprise to kill or to cause really serious bodily harm to Thea Kheav. The three accused travelled to the Nguyen house together. There was evidence that each of them was armed, and in different ways joined in the brawl. There was evidence linking them with an attack on Thea Kheav on the roadway outside the house. There was evidence before the jury linking each of the accused closely with the stage of the attack at which Thea Kheav was stabbed.

The case was based on the conduct of the three accused from which the jury might infer an arrangement or understanding to kill Thea Kheav or cause him serious bodily harm, and the carrying out of that arrangement. The issue was whether, from what the accused did, the jury were prepared to find that the necessary arrangement or understanding was made. Any such finding was necessarily based on evidence that amounted to proof of the making of the arrangement or understanding and participation in it. The Court held that participation in any agreement or arrangement was not the issue in this case. The real issue was what the jury made of the conduct of the accused, and whether that conduct established the relevant agreement or arrangement. If it did, it did it by establishing conduct that amounted to participation.

The accused also made submissions regarding the contents of a document containing directions of law that the trial judge gave to the jury, at the request of the jury, after they had retired to consider their verdict. The Court of Appeal did not uphold any of the grounds of appeal relating to the written directions.

The grounds of appeal are:

- The Court below erred in holding that the provision of a written direction, in response to a question by the jury for redirections in relation to all the critical legal issues in the case, was not fatally flawed where it omitted an essential ingredient of joint enterprise liability and it failed to apply the substituted legal directions to the evidence against the [accused].
- The Court below erred in law in not holding that the trial judge erred in failing to direct that liability by way of “joint criminal enterprise” required proof of an act of participation in the joint enterprise by the applicant.