



HIGH COURT OF AUSTRALIA

Public Information Officer

2 February 2009

THE QUEEN v FRANCIS ROBERT KEENAN

Even if a man did not anticipate that his friend would use a gun on someone who owed him money, he was still guilty of grievous bodily harm as it was open to the jury to find that the shooting was the kind of offence that was a probable consequence of a plan to cause the victim harm, the High Court of Australia held today.

Francis Keenan, Stephen Booth and Dion Spizzirri were charged with attempted murder of Darren Coffey and alternatively with doing grievous bodily harm with intent. The jury found Mr Keenan not guilty of attempted murder but guilty of causing grievous bodily harm. The three, along with Jeramie Jupp, had planned to assault Mr Coffey after he failed to pass on \$7000 collected for Mr Keenan. Mr Keenan left threatening messages for Mr Coffey on the mobile phone of his niece, Vonda Muir, who was Mr Coffey's girlfriend. Mr Coffey was located by Mr Jupp at Hope Island in south-eastern Queensland where he and Ms Muir were living in a van. The four men went to the site in two cars. Mr Keenan's passenger was Mr Booth who was carrying a small baseball bat. During the confrontation, Mr Spizzirri allegedly produced a sawn-off gun and shot Mr Coffey several times in the spine. Mr Coffey was left a paraplegic. There was no evidence that using a gun had been discussed beforehand. Mr Booth was found not guilty. The jury could not reach a verdict on Mr Spizzirri who was retried and found not guilty.

The case against Mr Keenan did not depend upon conviction of a principal offender. Section 8 of the Queensland *Criminal Code* provides that when two or more people form a common intention to carry out an unlawful purpose together, and in doing so another offence is committed of such a nature that it was a probable consequence of the prosecution of such purpose, then each of them is deemed to have committed the offence. The trial judge, Chief Justice Paul de Jersey, instructed the jury that they had to be satisfied that there was a common intention to prosecute an unlawful plan, that the offence of attempted murder or alternatively intentional grievous bodily harm was committed in carrying out that purpose, and that any offence committed was of such a nature that its commission was a probable consequence of the prosecution of that purpose.

The Court of Appeal acquitted Mr Keenan and held that a jury, properly instructed, could not have excluded an inference that Mr Spizzirri was acting independently of the common planned intention with respect to the attack on Mr Coffey. It held that misdirections by Chief Justice de Jersey resulted in a miscarriage of justice. The Crown appealed to the High Court.

The Court unanimously allowed the appeal, although one Justice did so only to substitute an order for a retrial. Four Justices ordered that Mr Keenan's conviction should be restored. They agreed that if a miscarriage of justice had resulted from misdirection the Court of Appeal should have ordered a retrial. However the majority held that Chief Justice de Jersey did not misdirect the jury so that no miscarriage of justice occurred. It held that section 8 of the Code required the jury to consider what the common purpose was, then whether the shooting was an offence of such a nature that its commission was a probable consequence of carrying out that purpose. They concluded that an inference that the unlawful purpose was to inflict serious physical harm on Mr Coffey was open to the jury. That purpose was achieved and whether it had been achieved with a gun or a baseball bat did not matter in the circumstances of the case. The question was not whether the actual shooting was a probable consequence but whether the act of shooting was an offence of such a nature that its commission was a probable consequence. The Court remitted the case to the Court of Appeal to determine Mr Keenan's application for leave to appeal against his sentence.

- *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.*