

## ***R v McDonald* [2015] SASCFC 99 (29 July 2015) – Supreme Court of South Australia (Full Court)**

‘Contemporaneity between intention and action’ – ‘Directions and warnings for/to jury’ – ‘Evidence’ – ‘Intent’ – ‘Murder’ – ‘Physical violence and harm’

Charge/s: Murder.

Appeal type: Appeal against conviction.

Facts: The appellant was convicted by a jury of murdering his de facto partner. It was not in dispute that he inflicted the blows that caused her death. The pathologist’s view was that the appellant inflicted at least 50 blows. The injuries were inflicted over several hours, possibly intermittently. The issue at trial was whether he had inflicted these blows with the requisite intent to cause death or grievous bodily harm. The appellant was highly intoxicated at the time of the incident.

Issue/s:

1. Whether the verdict was unreasonable and not supported by the evidence.
2. Whether the trial judge erred by not directing the jury of the following - that it is necessary that the intention to cause death or grievous bodily harm exists contemporaneously with the infliction of the injuries that caused the victim’s death.

Decision and Reasoning:

1. This argument was dismissed – see at [4].
2. The Court agreed that parts of the judge’s directions amounted to an error of law. A correct direction was initially given by the trial judge. This was – *‘The prosecution must prove that at the time that McDonald struck any collection of blows the combined effect of which was to cause a degree of internal bleeding...which caused LT’s death, he intended to kill her or cause her grievous bodily harm’* (see at [29]). However, the judge then gave subsequent directions to the jury. These directions stated that it was sufficient that the appellant formed an intention to kill or cause grievous bodily harm when any of the blows were struck, even if that particular blow (struck with the requisite intent) did not contribute to or cause the internal bleeding that led to her death. Other directions given by the judge were not capable of correcting this error. However, the appeal was dismissed pursuant to the proviso.

See also at [33] where Kourakis CJ (with whom Sulan J and Parker J agreed) noted that the inference of intention, *‘overwhelmingly supported as it is by the evidence of the beating, is reinforced by the evidence of the prior violence to which the appellant subjected LT in their relationship and his admission that he was enraged at the time. The appellant is more likely by reason of those related circumstances to have formed an intention to cause grievous bodily harm relatively early on in the course of the beating.’*