

***Morton v The Queen* [2020] NTCCA 2 (25 May 2020) – Northern Territory Court of Criminal Appeal**

‘Application for leave to appeal against conviction’ – ‘Judicial error’ – ‘Miscarriage of justice’ – ‘Murder’ – ‘Physical violence and harm’ – ‘Substance misuse’ – ‘Weapons’

Offences: Murder

Proceedings: Application for leave to appeal against conviction

Ground: The trial judge erred in directions that were given to the jury bearing on the burden and standard of proof.

Facts: The female victim and male applicant had been in a domestic relationship for a number of years and were staying together at the applicant’s mother’s home the night before the offending. On the morning of the offending, the applicant and victim were alone together at the house. The applicant beat the victim and caused at least 28 injuries, many of which required severe force, including impacts to the scalp and face, impacts to the trunk (corresponding to three fractured ribs), impacts to the arms (causing a complete break in one arm), and impacts to the legs (including stab wounds). Afterwards, the applicant went to a neighbouring house to get help, telling the neighbour that the applicant’s wife was in pain and had been hitting herself. The neighbour took the applicant to the nurse’s residence where the applicant told the nurse that his wife had been drinking, had a sore arm and felt sick. The nurse told the applicant to bring his wife to the clinic at 8:30am as it was not an emergency. The neighbour dropped the applicant back at the house before going back there himself where he saw that the victim was not moving. They fetched the nurse who confirmed that the victim had died.

When police arrived, the applicant told them that his wife "went crazy" after drinking alcohol and hit herself on the head with rocks. He also told them that she started to go a bit crazy and make him angry so he "picked up a knife and stabbed her in the bum and the leg and her hand" and "grabbed [his] axe and hit her on the arm, the leg and the top of the head" [7]-[8]. An axe and knife were found in the applicant’s bedroom. The applicant was found guilty of murder (but argued at trial that it should only have been manslaughter). He appealed this conviction on the ground that the trial judge erred in directions that were given to the jury bearing on the burden and standard of proof.

Judgment: The court dismissed the appeal, finding that the specific directions given by the trial judge were not attended by error nor did they give rise to any miscarriage of justice. The court found that at trial, defence counsel did not raise any query in relation to the first impugned direction and held that "The direction was not at that time considered inconsistent with or inimical to the legal and forensic basis of the defence case" [24]. Furthermore, while the court found that it may have been appropriate to remind the jury, at the point the direction was made, that the prosecution had to prove beyond reasonable doubt that the applicant intended to cause the victim at least serious harm and in that context that the jury should take into account all of the evidence, the court considered that it was unnecessary to do so because of the directions given elsewhere [30].

The court further held that no error was made in relation to the second impugned direction. The court held that it was open to the jury to make no conclusive finding on the issue of whether the applicant thought he was hitting the victim with a stick and still nonetheless be satisfied beyond reasonable doubt that the applicant meant to cause serious harm, simply because of the prolonged nature of the beating and the multiple impacts involved [36].

The court also held that no error was made in relation to the third impugned direction, finding that "the trial judge's summing up adequately conveyed to the jury that the ultimate question was whether, in the light of the evidence of intoxication and all other relevant circumstances, the prosecution had proven beyond reasonable doubt the intent necessary for the crime of murder" [47].