

NOT
RECOMMENDED

NZLR.
~~15/11~~ 26/11

IN THE COURT OF APPEAL OF NEW ZEALAND

C.A.359/92

THE QUEEN

2126

v

SAMUEL JAMES WALTERS

Coram: Gault J
Holland J
Henry J

Hearing: 22 November 1993

Counsel: P E Dacre for Appellant
A J F Perkins for Crown

Judgment: 22 November 1993

JUDGMENT OF THE COURT DELIVERED BY HOLLAND J

The appellant appeals against his conviction in the High Court at Auckland of the murder of his brother. The deceased was stabbed and according to the pathologist died from blood loss from a severed artery arising from a stab wound.

The appellant had spent the afternoon with his brother and friends playing cards and consuming alcohol and marijuana. The appellant lost money at cards and became involved in three incidents involving either fights with, or assaults on, his brother the deceased. In the last incident the appellant had obtained a kitchen knife and was seen with the knife in his hand when fighting in the street. The appellant left the scene and went to a tavern before returning home.

The appellant made a statement to the police and gave evidence admitting the fights and that on the last occasion he had a knife in his hand. He denied any intention of deliberate stabbing and said that he was acting in self-defence and had no criminal intention.

The issue was one of credibility. There was evidence from a number of witnesses of aggressive behaviour and assaults by the appellant on his brother during the day. On the occasion of the last and fatal assault the aggression of the appellant was noted by an independent witness. If the Crown evidence was believed there is ample evidence for the jury to be satisfied that the appellant meant to cause bodily injury known to him to be likely to cause death and was reckless whether death ensued or not. The only evidence to the contrary was that of the appellant and that evidence was clearly rejected by the jury.

In his notice of appeal the appellant has raised a number of issues. Everything has been said on behalf of the appellant by Mr Dacre that could be said and indeed Mr Dacre has explored the possibility of there being any other grounds of appeal and has responsibly rejected them.

The first issue raised by the appellant is that of insanity. It is unfortunate that there is evidence showing a severe dysfunctional element and psychological disturbance in the appellant. After serving some considerable part of his sentence it was necessary for him to be removed first into the Mason Clinic, a psychiatric unit in a hospital in Auckland, and later he was transferred to Lake Alice. We are told he is now back at Auckland Maximum Security Prison. Equiries have been made from those who have been medically advising and dealing with the appellant and no grounds exist for a defence of insanity to be raised.

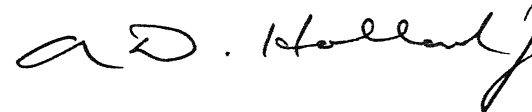
The second ground raised by the appellant was that the prosecutor in his view misled the jury. This allegation has been enquired into by Mr Dacre and he recognises that the Crown did emphasise the Crown evidence as of course is the role of the Crown prosecutor before the jury. There is nothing in that.

The third ground is the unreliability of witnesses coupled with the fourth, the hostility of those witnesses. That allegation by the appellant is of course dependent on his version being accepted whereas his evidence was rejected by the jury. There is no doubt that there are discrepancies in the evidence of the witnesses as one would expect particularly on occasions like this when the majority of the witnesses were drinking and smoking marijuana. There is nothing however of any substance in those inconsistencies. The hostility according to the appellant arose because they gave evidence contrary to that given by him.

There is also the suggestion that the witnesses were not able to recollect all of the events and the order in which they occurred. That also is not a surprising matter with witnesses giving evidence in circumstances such as this.

Other possible grounds of appeal have been considered by Mr Dacre and there is nothing he has been able to find that gives us any cause for concern as to the verdict.

The appeal against conviction is dismissed.



Solicitors
Crown Solicitor, Auckland, for Crown