



HIGH COURT OF AUSTRALIA

Public Information Officer

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KEVIN WAYNE GILLARD v THE QUEEN

The High Court of Australia today ordered a new trial for a man deprived of the possibility of a verdict of manslaughter in a South Australian murder trial.

Mr Gillard and Gerald David Preston were convicted of the murder in 1996 of two men and attempted murder of a third. A man named Tognolini and/or the Hell's Angels allegedly wanted one of the murdered men, Leslie Knowles, killed in relation to his involvement in police investigations into drug dealing. Mr Preston allegedly agreed to perform the contract killing for \$10,000.

Mr Gillard stole a van for Mr Preston and drove him to Mr Knowles's car repair workshop. Mr Preston walked into the workshop and shot dead Mr Knowles and an employee and injured a mechanic. Mr Gillard then drove Mr Preston away and later destroyed the van. Mr Gillard denied knowing Mr Preston was armed. He also asserted that he believed they went to the workshop to rob Mr Knowles.

The SA Supreme Court trial judge directed the jury that, for a murder conviction, the prosecution must prove Mr Gillard and Mr Preston shared a common purpose to kill Mr Knowles and had to exclude the possibility that his purpose was to participate in a robbery. The prosecution argued at trial and before the Full Court of the Supreme Court that, even on the robbery hypothesis, the jury should have been told that the facts could be consistent with murder, and that they could convict Mr Gillard of manslaughter. The Full Court unanimously upheld his conviction.

The High Court held that on the robbery hypothesis Mr Gillard was party to a common design involving the hostile use of a loaded gun. If he foresaw as a possible incident of carrying out the common design that Mr Preston might shoot Mr Knowles with intent to kill or cause grievous bodily harm then he was guilty of murder. If he foresaw that Mr Knowles might shoot Mr Knowles during a robbery, but without foreseeing such intent, then he was guilty of manslaughter.

The Court unanimously allowed the appeal and held that the trial judge's refusal to leave a case of manslaughter to the jury was an error of law. The Court also held that it was not possible to say that despite this error there was no miscarriage of justice. It was not inevitable that a jury, properly instructed and given manslaughter as an alternative to consider, would find that Mr Gillard foresaw that Mr Preston intended to kill or cause grievous bodily harm. The Court ordered that his convictions be quashed and that there be a new trial.

- *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.*