SUPREME COURT OF QUEENSLAND

CITATION:	*R v Hall* [2003] QCA 481
PARTIES:	**R** **v** **HALL, Timothy Brian** (appellant)
FILE NO/S:	CA No 234 of 2003 SC No 572 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED EX TEMPORE ON:	3 November 2003
DELIVERED AT:	Brisbane
HEARING DATE:	3 November 2003
JUDGES:	McMurdo P, Davies JA and Mullins J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application for leave to appeal against conviction dismissed**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – PARTICULAR GROUNDS – UNREASONABLE OR INSUPPORTABLE VERDICT – where appellant convicted of murder – where sentenced to life imprisonment - whether jury verdict unsafe and unsatisfactory *Criminal Code*, s 28
COUNSEL:	A J Rafter for the appellant C Heaton for the respondent
SOLICITORS:	Legal Aid Queensland for the appellant Director of Public Prosecutions (Queensland) for the respondent

THE PRESIDENT: Upon arraignment on murder the appellant pleaded not guilty, but guilty of manslaughter, a plea not accepted by the prosecution. It was common ground that because of the appellant's plea of guilty to manslaughter self defence was not relevant and it was not in issue that the appellant stabbed and killed the deceased. The sole question at the trial became whether the prosecution could prove beyond reasonable doubt that the appellant intended to cause death or grievous bodily harm at the time he stabbed the deceased. The appellant contends that the jury verdict is unsafe and unsatisfactory. Although in his grounds of appeal he contended that his counsel had not followed his directions at trial, no material has been placed before this Court to support that claim and it is not pursued in the written or oral argument before us. The appellant was convicted of murder after a four day trial.

To consider the sole ground of appeal, it is necessary to review the evidence. The deceased a 46 year old man lived at Norman Park. His nephew had lived with him for about six years. The deceased was killed in his home on the evening of 15 March 2002 from a stab wound to the right chest. The appellant was a cousin of the deceased's nephew, but was not a blood relation to the deceased. The appellant came to live in the deceased's home towards the end of 2001. The deceased was a frail man weighing only 46 kilograms at the time of his death. His nephew described the deceased's general health as "not good" and that he suffered from asthma and alcoholism. The deceased's nephew described a violent episode late in 2001

between the appellant and the deceased in which the appellant inflicted a knife injury to the deceased's hand. The appellant subsequently apologised to the deceased who allowed him to return to live in his home. The deceased's nephew strongly denied that he had ever sodomised or sexually assaulted the appellant or ever threatened him with a knife and said the appellant did not claim to him to have been sodomised by the deceased. The deceased's nephew admitted that he drank alcohol and took amphetamines.

Independent witnesses heard noises consistent with an argument in the house in the early evening of 15 March. The next door neighbours heard yelling and some loud banging and crashing and a sound similar to a cutlery drawer being thrown on the floor. One neighbour heard a male voice, which in the context of all the evidence must have been the appellant's, saying: "You're such a fucking idiot, I can't believe you're such a fucking idiot." Another neighbour heard the person who she said was later taken away by the police, that is the appellant, say on two occasions, "You're going to fucking die."

Another witness who was jogging with her boyfriend and dog saw a young man whom she had previously seen in the front yard of the deceased's home running towards the house yelling: "I'm going to kill. I'm going to kill. You are dead man." Her boyfriend also heard the man yell out, "I'm going to kill you." The tone was aggressive and the speech slurred. She said, "It was loud, screaming like anger."

The prosecution case was that this all occurred prior to the killing and there was no evidence to the contrary. It seems that after the appellant stabbed the deceased he went to the home of another neighbour asking for help. He was very distressed and speaking quickly. He said, "I've stabbed my mate in the chest in the left ventricle." This neighbour phoned for an ambulance. As she was a nurse she gave him first-aid instructions pending the arrival of the ambulance. She watched him return to the house. The police and ambulance arrived very quickly. As he ran back to the house he yelled, "Oh my God, he's dead, I've killed him, oh my God."

Other neighbours heard the appellant say, "I've stabbed him. He's going to die", and "Half his lung has filled with blood."

The ambulance received the neighbour's call at 6.52 p.m. and an ambulance was despatched immediately.

Police officers attached to the Dog Squad arrived at the premises shortly after. Police Officer Hodgson approached the appellant with his fire arm drawn. The appellant said, "I did it. I did it. I killed him. I killed him." When the ambulance officers came to attend to the deceased, who was then still alive but gravely injured, the appellant became agitated and police decided to remove him from the room. Two police officers said the appellant then ran towards the deceased and stomped on his head. This observation was not noted by the ambulance officers, although one ambulance

officer said the appellant stepped on the deceased's crutch as he walked out and it seemed that this was deliberate.

The appellant was placed in a police vehicle and the tape recorded conversations that followed were tendered at the trial. The appellant was apparently intoxicated and was often agitated, incoherent and uncooperative. He said, "I fucking stabbed him in the left fucking rib, I didn't kill him straight out because I fucking harassed him." During his ramblings the appellant at times said he did not want to kill the deceased and at other times expressed great relief that the deceased was dead. At one stage he seemed to allege the deceased had sodomised him and perhaps also attacked him with a knife and he acted in self defence. His ramblings included, "He's dead I hope"; a claim that he was sodomised by both the deceased and the deceased's nephew and that they took pornographic photographs of him; a claim that the appellant was an alcoholic and that he had his last drink only 20 minutes beforehand, although the police pointed out that he had been in their custody for more than 20 minutes. He later denied that anybody had raped him recently, stating that this had happened years ago adding, "Then it happened again the second time and it's just fresh now." He referred to "those fucking bestiality photos" and said "that's why I killed the fuckhead."

The appellant was examined by a government medical officer and treated for a dog bite. An anal examination showed no

abnormality but the doctor gave evidence that this did not indicate that anal intercourse had not occurred.

Police Officer Best who waited with the appellant in the police vehicle claimed the appellant said to her, "I set out to kill him. I hope he fries, I hope he dies" and that he continually repeated the words "I hope he dies." This conversation was not recorded and was disputed in cross-examination. The Judge warned the jury appropriately of the caution with which this evidence should be treated and there was no complaint about those directions.

A blood sample taken from the deceased showed that his blood alcohol level was .363 per cent. The post mortem examination showed that the cause of death was a stab wound to the right chest and the resulting blood loss and obstruction of the airways due to bleeding in the airways. Other contributing factors were coronary artery disease and bruising around the pancreas with severe alcoholic intoxication as a third contributing factor. At least moderate force was needed to cause the stab wound. The deceased also had tram track bruising on his back and the severity of this bruising and the appearance of its tram track features suggested that at least moderate and possibly severe force would have been needed to cause these injuries which did not, however, cause or contribute to the death.

The Government Medical Officer described the appellant's probable level of intoxication at the time of killing, based

on a blood sample taken after his arrest, at .238 at the time of the killing. He described this as very high; that alcohol is a drug which depresses the central nervous system and affects sensory input such as sight and hearing and it also affects cognition but adversely affects decision making, mood and behaviour. There would be changes from normal mood and behaviour to inappropriate behaviour and mood, restlessness, slurred speech, poor physical coordination, a false sense of security, irresponsibility, recklessness, disregard for the law and disregard for what he would normally have due regard for.

The appellant did not give or call evidence.

No complaint was raised at trial or on this appeal as to the learned primary Judge's directions to the jury on intention and the relevance to it of intoxication and s 28 Criminal Code or indeed on any other issue.

After considering their verdict the jury asked for and were given a redirection relating to the evidence of the pathologist about the bruising to the back, chest, arm pit and upper arms. This redirection was unexceptional and nothing arises from it except that it suggests the jury were interested in the objective evidence of the degree of force used by the appellant when he stabbed the deceased, an issue relevant to intention.

The learned primary Judge fully and fairly placed before the jury the question for their determination, namely, whether the prosecution had satisfied them beyond reasonable doubt that, although heavily intoxicated, the appellant at the time of the stabbing intended to kill or cause the deceased grievous bodily harm.

His Honour very fairly put the defence case to the jury, namely, that the stabbing was an unintentional serious injury by a surprised and confused man who, after stabbing only once, dropped the knife and ran for help, asking for an ambulance to be called. Having sought medical help he returned to the house to wait for assistance. With the clear evidence from the Government Medical Officer of the effect of alcohol on the appellant, the jury could not be satisfied beyond reasonable doubt of a relevant intent to kill or do grievous bodily harm and the appellant's counsel submitted they would find the accused guilty of manslaughter only.

The question of the appellant's intention was entirely a matter for the jury, having received proper instructions as to the law and a fair summation of the prosecution and defence cases. The jury had the obvious advantages of observing the witnesses. Their application for a redirection suggests that they carefully considered the relevant issues and were interested in the degree of force used in the attack other than for the single, fatal stab wound. The evidence of the injuries to the deceased suggest not just one unintended stabbing but a forceful attack upon him, inconsistent with the

appellant's case of being too drunk to form an intention to kill or cause grievous bodily harm and consistent with the prosecution case that the appellant intended to kill or do grievous bodily harm to the deceased at the time of the stabbing.

Although the evidence was not all one way, there was ample evidence to support the prosecution case and the jury verdict based on it, that the appellant intended to kill or do grievous bodily harm to the deceased at the time of the stabbing: M v The Queen (1994) 181 CLR 487; MFA v The Queen (2002) 77 ALJR 139.

It follows that I would dismiss the appeal against conviction.

DAVIES JA: I agree.

MULLINS J: I agree.

THE PRESIDENT: That is the order of the Court.