

## **KOANI v THE QUEEN (B20/2017)**

Court appealed from: Queensland Court of Appeal  
[2016] QCA 289

Date of judgment: 11 November 2016

Special leave granted: 6 April 2017

Mr Christopher Koani was charged with murdering his de facto partner, Ms Natalie Leaney, with a single gunshot wound to the head on 10 March 2013. At the commencement of his trial he pleaded not guilty to murder, but guilty to manslaughter. The prosecution however refused to accept that plea. The prosecution's case was that Mr Koani shot Ms Leaney in the course of an argument, during which he was handling a modified shotgun. After a six day trial, Mr Koani was convicted of murder and sentenced to life imprisonment.

Mr Koani later appealed against that conviction on two grounds, only one of which is relevant for present purposes. That being, whether it is open to the jury to consider whether a person is guilty of murder through a negligent act or omission.

Relevantly, s 289 of the *Criminal Code* (Qld) ("the Code") imposes a duty on a person in charge of a dangerous thing (such as a gun) to also take reasonable care so as to avoid any danger arising from its use. The person in charge of that thing is therefore held to have caused any consequences (such as a death) by reason of any omission to perform that duty.

On 11 November 2016 the Court of Appeal (Gotterson JA & Atkinson J, McMurdo P dissenting) dismissed Mr Koani's appeal. The majority held that there was no difficulty in the trial judge directing the jury to consider s 289 if they were not satisfied that the prosecution had established that Mr Koani had killed Ms Leaney by a willed act. It also followed that the trial judge could direct the jury that, if they were satisfied that the duty in s 289 had been breached, then they should consider whether the unlawful killing was either murder or manslaughter by reference to the element of intent.

President McMurdo however held that a breach of the duty as required by s 289 of the Code can only support a conviction for manslaughter. To convict for murder, the prosecution was required to prove beyond reasonable doubt that Mr Koani's willed act discharged the gun thereby killing Ms Leaney and that he contemporaneously either intended to kill or do her grievous bodily harm. Her Honour held that the trial judge was wrong to direct the jury that, if the prosecution failed to prove beyond reasonable doubt that the discharge of the gun was a willed act, but it did prove beyond reasonable doubt his criminal negligence under s 289 of the Code (and a contemporaneous intent to kill or do bodily harm), then they could convict of murder.

The ground of appeal is:

- The majority of the Court of Appeal erred in holding that a breach of s 289 of the Code could found a conviction of murder, rather than only manslaughter.