



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: B32/2020
File Title: Peniamina v. The Queen
Registry: Brisbane
Document filed: Form 27F - Outline of oral argument
Filing party: Respondent
Date filed: 14 Oct 2020

Important Information

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BETWEEN:

ARONA PENIAMINA
Appellant

and

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THE QUEEN
Respondent

RESPONDENT'S OUTLINE OF ORAL ARGUMENT

Part I:

1. I certify that this submission is in a form suitable for publication on the internet.

20 **Part II:**

The Issues on Appeal:

2. The primary contention of the appellant is that in relying upon section 304 (1) of the *Criminal Code* (Qld), the appellant was not then obligated to also prove section 304 (3) of the *Criminal Code* (Qld). The appellant contends that, in any event, there was no evidence upon which any party could rely upon the provisions of section 304 (3) of the *Criminal Code* (Qld).
3. The resultant direction that allowed application of section 304 (3) of the *Criminal Code* (Qld) was a misdirection and a new trial ought to be had.

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The Respondent's Contentions:

4. It is submitted that it was incumbent upon the learned trial judge to direct in accordance with section 304 (3) of the *Criminal Code* (Qld).

5. The factual features in this trial raised both sections 304 (1) and sections 304 (3) for consideration by the jury. These arose from statements the appellant made by the appellant.
6. The amendment which saw the introduction of section 304 (3) was a tightening of the operation of section 304 (1). One of those significant amendments was the reversal of onus upon the appellant. The common law position as to provocation in Queensland was retained and thereby embraced a wider approach to the ambit of provocation¹.
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7. In this case, there remained a factual avenue for the jury's consideration that was concordant with the provisions of section 304 (3) of the *Criminal Code* (Qld). This was irrespective of the lack of reliance upon the same by the appellant².
8. The nature of the statutory provision and its parliamentary intention further support the proposition advanced by the respondent that the applicability of section 304 (3) is wider in context³.
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9. The alleged use of the knife by the deceased was within a wider factual context, which was based at the very least on a belief by the appellant that the relationship had changed, was changing or had ended. That was a factual matter which required a resolution by the jury and thus direction, if a finding was so made.
10. It is that focus ~~which is~~ statutorily entrenched in section 304 (3), as a precondition to the applicability of section 304 (1).

¹ *Moffa v The Queen* (1977) 138 CLR 601; *Masciantonio v The Queen* (1995) 183 CLR 58; *Pollock v The Queen* (2010) 242 CLR 233.

² *Van den Hoek v The Queen* (1986) 161 CLR 158; *Pollock v The Queen* (2010) 242 CLR 233; *Braysich v The Queen* (2011) 243 CLR 434

³ *Stingel v The Queen* (1990) 171 CLR 312; *Lindsay v The Queen* (2015) 255 CLR 272. Explanatory Notes to the *Criminal Code and Other Legislation Bill* 2010; Queensland Law Reform Commission "A Review of the excuse of accident and the defence of provocation", Report No 64, September 2008.

11. The trial judge fairly dealt with the factual argumentations by the appellant and the Crown in applying section 304 (3) of the *Criminal Code* (Qld) and retained the argument for the appellant with respect to the scope and applicability of section 304 (3) of the *Criminal Code* (Qld).

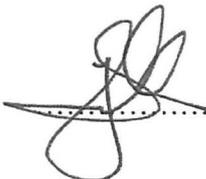
The majority of the Court of Appeal did not err in its disposition of the appeal:

12. In the circumstances of this case, Morrison JA was correct to find that the directions given to the jury were not in error⁴.

10 13. Applegarth J was correct to find that the evidence obliged the trial judge to direct in accordance with section 304 (3) of the *Criminal Code* (Qld)⁵.

Dated: 14 October 2020

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⁴ *R v Peniamina* [2019] QCA 273 at [39];

⁵ *R v Peniamina* [2019] QCA 273 at [197] to [199].