

## **PENIAMINA v THE QUEEN (B32/2020)**

Court appealed from: Queensland Court of Appeal  
[2019] QCA 273

Date of judgment: 29 November 2019

Special leave granted: 5 June 2020

The Appellant brutally killed his wife and was convicted of her murder. The issue at trial was whether he had proven the partial defence of provocation. The conduct of the deceased, which the Appellant claimed had caused his loss of self-control, was her cutting of his hand with the knife she was using to defend herself.

The Appellant suspected that his wife was planning to leave him. On the night that she was killed, he had tried to speak with her. Things then escalated violently, with the Appellant hitting his wife in the face. She then obtained a knife from the kitchen, presumably to defend herself. The Appellant then grabbed its blade and received a deep cut on his hand in the process. He became enraged and then inflicted the horrific and fatal injuries on his wife.

Upon appeal, the main issue was whether the trial judge had correctly dealt with the issue of the partial defence of provocation. On 29 June 2019 the Court of Appeal (Morrison JA & Applegarth J; McMurdo JA dissenting) dismissed the Appellant's appeal, with the majority holding that the trial judge had not erred in this regard.

The partial defence of provocation contained in section 304(1) of the *Criminal Code Qld* ("the Code") is only available in the limited circumstances outlined in s 304(3). Relevantly, there must be a domestic relationship in which one party kills the other and whereby the act of provocation must be done by the deceased to change (or end) the relationship. Justice Applegarth, with whom Morrison JA broadly agreed, held that the Appellant had failed to establish that the trial judge had erred in directing the jury that the defence had to prove, on the balance of probabilities, that the provocation was not based on s 304(3)(c). This is in circumstances where the defence case did not rely on a sudden provocation consisting of a thing referred to in s 304(3)(c).

Justice McMurdo however would have allowed the appeal. His Honour held, *inter alia*, that the trial judge erred in leaving to the jury the question of whether the knife wound inflicted by the wife was done to change the relationship. His Honour found that such an inference was not open. During the altercation which culminated in her death, the wife had done many things which made it clear that the relationship had either ended or changed. The only realistic view of the evidence therefore was that the wife's use of the knife was for self-defence. His Honour held that this misdirection may have therefore deprived the Appellant of the chance of an acquittal.

The grounds of appeal include:

- The majority of the Court of Appeal erred in concluding that s 304(3) of the Code was not confined in its operation to the provocative conduct identified by the accused as causative of a loss of control.