IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

No. B20 of 2017

BETWEEN:

CHRISTOPHER CHARLES KOANI
Appellant

and

THE QUEEN
Respondent

APPELLANT'S REPLY

Part I INTERNET PUBLICATION

1. The appellant certifies that this submission is in a form suitable for publication on the internet.

Part II REPLY TO THE ARGUMENT OF THE RESPONDENT

2. The respondent's submissions fail to engage with the directions that were given to the jury in this case.

3. The pathway to conviction for murder by criminal negligence only arose if the prosecution failed to negate the possibility that the 'death causing act' occurred independently of the will of the appellant. In this case, the potential unwilled 'death causing act' that the jury were left to consider was a slip of a finger causing the discharge of the firearm.

4. The respondent contends at RS [18] that the appellant "pursued a course of conduct directed at killing (or causing grievous bodily harm to) the deceased." That was not a finding that the jury directions required in order for the jury to return a verdict of guilty of murder.

5. Based on *Murray v The Queen*[1], there could have been argument by the prosecution at trial that the identification of the death causing act should have been left to the jury to determine, and that the jury might consider that the death causing act was wider than just a slip of a finger. That, however, was not the way in which the jury were instructed. In that regard, see AS [25]-[27].

6. At RS [20] the respondent argues that "[o]nce the appellant's conduct is considered as a series of purposeful acts directed at achieving a particular result,

[1] (2002) 211 CLR 193

Submissions in reply filed on behalf of the appellant
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namely the death of the deceased, it becomes artificial to consider only the final act as relevant to a consideration of the appellant's intention at the time of the discharge of the gun." The difficulty with that proposition is that the jury were not directed that to convict of murder they had to find that the appellant had engaged in "a series of purposeful acts directed at achieving ... the death of deceased."

7. All that the directions to the jury required for them to return a verdict of guilty of murder by criminal negligence was that there had been some breach of the duty of care established by s 289 that caused the deceased's death and that at the split second that the appellant's finger slipped and (unwilled by him) the gun discharged, he coincidently held a murderous intent.

8. The respondent attempts at RS [21] to distinguish *Murray* on the basis that in that case "there was evidence of something properly occurring independently of the exercise of the will of that appellant." It is unclear what the respondent means by "properly occurring"; either an act is independent of a person's will or it is not.

9. A similar attempt to distinguish *Murray* is made at RS [23] where it is said that the appellant was "wholly responsible for" the discharge of the weapon. It was not argued at trial that the appellant was anything other than "wholly responsible" for the discharge of the weapon due to his failure to take the care required of him by s 289. That does not alter the fact that this pathway to conviction for murder only arose if the prosecution failed to prove that the discharge of the firearm was a willed act. There is no way in which the present case differs factually from *Murray* that would in any way affect the discussion of principles in *Murray* that are relied upon by the appellant.

10. The respondent relies upon the decision of *R v MacDonald and MacDonald*[2] as precedent permitting a conviction for murder by criminal negligence. The first observation about that case as a precedent is that (until the present case) no record could be found of it having been followed in the 110 years since was it was decided.

11. The nature of duty under s 285 of the Code (which was relied upon in *MacDonald and MacDonald)* is different from the duty in the present case. Section 285 places a duty upon certain persons to provide the necessaries of life for those under their care and who are unable to care for themselves. The facts of *MacDonald and MacDonald* were that a child was terribly mistreated by the offenders over a long period of time. The child was in a relatively remote location and was unable to sustain herself without the offenders providing her with the necessities of life. The facts set out in the decision reveal that the offenders deliberately caused the child to die from a combination of deliberately poorly treated or untreated injury, malnutrition and exposure. The facts reveal that there was a deliberate (rather than merely incompetent or neglectful) course of conduct towards the child that seemed to be motivated to secure her small inheritance and life insurance.

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[2] [1904] St R Qd 151

12. *MacDonald and MacDonald* is the sort of case that turns on its own facts. If it is authority for anything beyond its own facts, it is that a deliberate (willed) course of conduct, by a person who has a helpless person in their care, that is designed to cause the death of that person may be murder.

13. *MacDonald and MacDonald* was not a case where there was any question of unwilled acts to which s 23(1)(a) could apply. It is therefore not authority for the proposition advanced by the respondent in this case that death caused by an unwilled act constituting criminal negligence can result in a conviction for murder under s 301(1)(a).

Dated: 16 June 2017

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