

R v Woods & Williams [2011] NTSC 24

PARTIES: THE QUEEN

v

WOODS, Graham

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
TERRITORY EXERCISING
TERRITORY JURISDICTION

FILE NO: 20912126

PARTIES: THE QUEEN

v

WILLIAMS, Julian

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
TERRITORY EXERCISING
TERRITORY JURISDICTION

FILE NO: 20912166

DELIVERED: 25 MARCH 2011

HEARING DATE: 24 MARCH 2011

JUDGMENT OF: REEVES J

REPRESENTATION:

FILE NO: 20912126

Counsel:

Plaintiff:	Mr RP Noble
Defendant:	Mr J Tippett QC Mr R Goldflam

Solicitors:

Plaintiff:	Office of the Director of Public Prosecutions
Defendant:	Northern Territory Legal Aid Commission

FILE NO: 20912166

Counsel:

Plaintiff:	Mr RP Noble
Defendant:	Mr J Dickinson SC Mr EJ Sinoch

Solicitors:

Plaintiff:	Office of the Director of Public Prosecutions
Defendant:	Central Australian Aboriginal Legal Aid Services

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

R v Woods & Williams [2011] NTSC 24
No. 20912126

BETWEEN:

The Queen
Plaintiff

AND:

Graham Woods
Defendant

No. 20912166

BETWEEN:

The Queen
Plaintiff

AND:

Julian Williams
Defendant

CORAM: REEVES J

REASONS FOR JUDGMENT

(Delivered 25 MARCH 2011)

INTRODUCTION

- [1] Graham Woods and Julian Williams are both charged upon indictment with the crime of murder.

- [2] The Crown alleges that the accused Woods struck the fatal blow to Edward Hargrave thereby causing his death. It alleges that the accused Williams aided and abetted the accused Woods to commit the alleged murder.
- [3] In the course of my summing up, an issue arose as to whether I should direct the jury that they could find the accused Woods guilty of murder and the accused Williams guilty of manslaughter. After hearing submissions, I concluded I should give such a direction to the jury and proceeded to do so. These are my reasons for that decision.

CONTENTIONS

- [4] Mr Sinoch for Williams submitted that s 43BG of the *Criminal Code* (NT) imposed criminal liability on a person who aided and abetted a principal offender to commit an offence. He submitted that section did not itself create an offence, but merely imposed liability on the person who aided and abetted the principal offender. On this aspect, he relied upon the decision of New South Wales Court of Criminal Appeal in *R v Kaldor*¹ (“*Kaldor*”). He submitted that the words “that offence” and “the offence” in subsections 43BG(1) and (2) respectively referred unambiguously to the offence that had been committed by the principal offender. Thus, he submitted that the secondary offender cannot be found criminally liable for aiding and abetting the commission of an offence which the principal offender did not commit. It followed, so he submitted, that the jury could

¹ (2004) 150 A Crim R 271; [2004] NSWCCA 425

not find the accused Woods guilty of murder and the accused Williams guilty of aiding and abetting manslaughter.

- [5] Mr Noble for the Crown submitted that s 43BG(3) provided for a secondary offender to be found guilty of aiding and abetting “... any offence ... of the type ...” which the principal offender committed. He submitted that this would extend to manslaughter as an alternative offence to murder. He also relied upon the decision of the Queensland Court of Appeal in *R v Box and Martin*² (“*Box*”) to demonstrate that course was open.

CONSIDERATION

- [6] It is appropriate to begin with the provisions of the *Criminal Code* (NT) that create the offences of murder and manslaughter. The elements of the offence of murder are set out in s 156(1) of the *Criminal Code* as follows:

A person is guilty of the crime of murder if:

- (a) the person engages in conduct; and
- (b) that conduct causes the death of another person; and
- (c) the person intends to cause the death of, or serious harm to, that or any other person by that conduct.

- [7] The elements of the offence of manslaughter are set out in s 160 of the *Criminal Code* as follows:

A person is guilty of the crime of manslaughter if:

- (a) the person engages in conduct; and

² [2001] QCA 272

- (b) that conduct causes the death of another person; and
- (c) the person is reckless or negligent as to causing the death of that or any other person by the conduct.

[8] It follows that, with the offence of manslaughter, the intention to cause death or serious harm to a person that is a necessary element in the offence of murder is replaced with the less stringent requirement of acting recklessly, or negligently, in causing the death of another person.

[9] Section 316(1) of the *Criminal Code* provides that upon an indictment charging a person with murder, he may be found guilty alternatively of manslaughter.

[10] Section 43BG of the *Criminal Code* provides:

- (1) A person who aids, abets, counsels or procures the commission of an offence by another person is taken to have committed that offence and is punishable accordingly.
- (2) For the person to be guilty:
 - (a) the person's conduct must have in fact aided, abetted, counselled or procured the commission of the offence by the other person; and
 - (b) the offence must have been committed by the other person.
- (3) For the person to be guilty, the person must have intended that:
 - (a) the person's conduct would aid, abet, counsel or procure the commission of any offence (including its fault elements) of the type the other person committed; or
 - (b) the person's conduct would aid, abet, counsel or procure the commission of an offence and have been reckless about the commission of the offence (including its fault elements) that the other person in fact committed.
- (4) Subsection (3) has effect subject to subsection (7).

- (5) A person cannot be found guilty of aiding, abetting, counselling or procuring the commission of an offence if, before the offence was committed, the person:
 - (a) terminated his or her involvement; and
 - (b) took all reasonable steps to prevent the commission of the offence.
- (6) A person may be found guilty of aiding, abetting, counselling or procuring the commission of an offence even if the principal offender has not been prosecuted or has not been found guilty.
- (7) Any special liability provisions that apply to an offence apply also to the offence of aiding, abetting, counselling or procuring the commission of that offence.

[11] It is not disputed that s 43BG does not create an offence in itself. Its exclusion from the provisions of s 43BJA, which deal with references to offences in Acts, and the footnote to that section, make that clear. In *R v Kaldor*, Howie J described the equivalent provision of the *Criminal Code Act 1995 (Cth)* (at [77]) as “one that merely states a way in which a person may commit an offence even though not falling within the terms of ...” an offence provision.

[12] However, I do not consider that means s 43BG has to be construed in the way Mr Sinoch contends. To begin with, I consider the words “that offence” in s 43BG(1) are referring to the offence the secondary offender aided and abetted the primary offender to commit. I do not agree that those words are referring to the particular offence with which the principal offender has been charged. That is so because s 43BG(6) makes it clear that the secondary offender can be found guilty even though the principal offender has not been prosecuted or charged.

- [13] Furthermore, that subsection also provides that the secondary offender can be found guilty even though the principal offender has not been found guilty. It follows, in my view, that a corollary of that must be that where the principal offender has been found guilty of an offence, and the secondary offender has aided and abetted elements of that offence that constitute the commission of a lesser offence, the secondary offender can be found guilty of aiding and abetting that lesser offence.
- [14] This can obviously apply to murder and manslaughter where the principal offender may be found to have the necessary intention to commit the offence of murder, but the secondary offender may only be found to have the necessary intention to aid and abet the principal offender to commit the lesser and alternative offence of manslaughter.
- [15] As Mr Noble points out, there is also support for this construction in s 43BG(3)(a) of the *Criminal Code*, which provides that it is sufficient if the secondary offender, intended his or her conduct would aid and abet "... any offence ... of the type ..." the principal offender committed.
- [16] Similarly, s 43BG(3)(b) of the *Criminal Code* draws a distinction between the offence that the secondary offender intended his or her conduct would aid and abet and the offence that the principal offender "... in fact committed".
- [17] For present purposes, I consider both of these provisions allow for the principal offender to be found guilty of the offence of murder and the

secondary offender to be found guilty of the alternative offence of manslaughter.

[18] It is for these reasons that I decided to direct the jury that they could find the accused Woods guilty of murder and the accused Williams guilty of aiding and abetting the offence of manslaughter committed by the accused Woods.

[19] As a postscript to these reasons, I note that, while the decision of the Queensland Court of Appeal in *Box* dealt with the provisions of the Queensland Criminal Code, the three members of the Court of Appeal considered that such a direction was open to the trial judge even though they differed as to whether the absence of a direction to that effect amounted to a miscarriage of justice: see at [15] per McMurdo P, [21] per Moynihan J and [66] per Dutney J.
