

CITATION: *The Queen v Rolfe (No 9)* [2022] NTSC 22

PARTIES: THE QUEEN

v

ROLFE, Zachary

TITLE OF COURT: SUPREME COURT OF THE NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory jurisdiction

FILE NO: 21942050

DELIVERED: 30 March 2022

HEARING DATE: 7 February 2022

JUDGMENT OF: Burns J

REPRESENTATION:

Counsel:

Crown: P M Strickland SC with S Callan SC and J Poole

Accused: J D Edwardson QC with L Officer

Solicitors:

Crown: Office of the Director of Public Prosecutions

Accused: Tindall Gask Bentley

Judgment category classification: C

Judgment ID Number: Bur2204

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

The Queen v Rolfe (No 9) [2022] NTSC 22
No. 21942050

BETWEEN:

THE QUEEN

AND:

ZACHARY ROLFE

CORAM: BURNS J

REASONS FOR JUDGMENT

(Delivered 30 March 2022)

Introduction

- [1] The indictment against the accused on which the Crown proposes proceeding to trial contains 3 Counts. Count 1 is a charge of murder. Count 2 is a charge of manslaughter and is pleaded as an alternative to Count 1. Count 3 is a charge under s 161A of the *Criminal Code Act 1983* (NT) of engaging in a violent act causing the death of the deceased. The “violent act” alleged by the Crown, as I understand it, is the discharge of a firearm. Count 3 is pleaded as a further alternative to Counts 1 and 2.
- [2] The accused seeks an order that Count 3 be severed from the indictment, and that he proceed to trial on an indictment containing Counts 1 and 2 only.

[3] The submission made by the accused is that the events which give rise to the present charges are remote from those contemplated by the legislature when it introduced s 161A. The accused submits that it was never contemplated by the legislature that this provision would have any application to a police officer exercising his powers as a police officer to effect an arrest in the course of which his firearm is discharged resulting in the death of the person being apprehended.

[4] In support of that proposition, learned senior counsel for the accused has taken me to the Second Reading speech made by the responsible Minister when introducing the Bill which, when passed, introduced s 151A into the *Criminal Code*.

[5] By reference to that speech, the accused submits that the offence found in s 161A was intended to be a stand-alone charge where the Director of Public Prosecutions accepted that no charge of murder or manslaughter could reasonably be made against an accused. The responsible Minister said in his speech:

There is space for this new offence in our Criminal Code to cover unique cases where a violent act causes death and the Director of Public Prosecutions does not consider that there is a reasonable prospect of conviction of murder or manslaughter.

[6] The accused submits that the Director obviously considered that there are reasonable prospects for convicting the accused of murder or manslaughter because those charges have been included on the indictment against the accused.

- [7] The accused also referred to the examples of the type of offending that might fall within the provision as stated by the Minister in his speech. These included one punch attacks at pubs, clubs and sporting activities. The accused submits that the Minister's speech focused on violent attacks that occur in and around licensed premises and the like.
- [8] The accused also submitted that the inclusion of Count 3 is apt to unnecessarily complicate the trial. In that regard, he submits that the defences he has indicated will be run at trial will apply to all three offences, so that if any one of those defences is successful he must be acquitted of all three charges. The addition of Count 3 will therefore unnecessarily complicate directions to the jury.
- [9] The Crown opposes the application on the grounds:
- (a) firstly, that severance of Count 3 will have no effect in substance because the offence found in s 161A is, by virtue of s 316 of the *Criminal Code*, a statutory alternative verdict to murder and manslaughter;
 - (b) secondly, Count 3 is founded on the same facts as Counts 1 and 2, as required by s 309 of the *Criminal Code*, and by virtue of that provision it may be included on the indictment; and

- (c) thirdly, the Court should decline the accused's invitation to look behind the decision of the director to include Count 3 by reference to the suggested purpose of the offence provision.

Consideration

[10] This application raises a question of statutory interpretation, being the appropriate interpretation of s 161A and whether that interpretation permits the Crown to charge that offence against the accused in the circumstances of the present alleged offence. The application is largely based upon statements made by the responsible Minister in the Second Reading speech. In my opinion, I am not entitled to take into account that material in interpreting s 161A.

[11] Section 62B(1) of the *Interpretation Act 1978* (NT) provides that extrinsic material, including a Minister's Second Reading speech, may only be used in ascertaining the meaning of a provision in order to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision, or to determine the meaning of the provision where the provision is ambiguous or obscure or the ordinary meaning conveyed by the text of the provision, taking into account its context in the Act and the purpose or object underlying the Act, leads to a result that is manifestly absurd or unreasonable. In other words, where the text of a provision is not ambiguous or obscure, reference to extrinsic material is not permitted for the purpose of casting doubt on the otherwise clear meaning of the text.

[12] In my opinion there is no ambiguity or obscurity in the text of s 161A.

Applying the ordinary meaning conveyed by the text does not lead to a result that is manifestly absurd or unreasonable.

[13] I also note that the provisions of s 316 of the *Criminal Code* specifically envisage a charge under s 161A being an alternative charge to both murder and manslaughter.

[14] For these reasons, I decline to make an order that Count 3 be severed from the indictment.
