

[2] Ms Kaitai now appeals her conviction on three grounds, all relating to the Judge's summing up.² In particular, it is argued that the summing up lacked neutrality, failed to properly put the whole defence case and left the jury with the impression Ms Kaitai bore the onus of proof. The combination of errors is said to have resulted in a miscarriage of justice.

Background

[3] The deceased and Ms Kaitai were known to each other. Two days prior to his death there had been an altercation between them during the course of which Ms Kaitai had presented a gun at Mr Kana and made statements that amounted to a threat to kill him.³

[4] On the day of his death, 10 May 2020, Mr Kana was in the garage of a property playing darts with two friends, a Mr Lewis and a Mr Mihaere. Ms Kaitai arrived carrying a gun with her which she put on top of a bar table hidden under a jacket or bag.

[5] She and Mr Kana began to argue and it became heated. Ms Kaitai grabbed the gun, loaded it and told Mr Kana to get back. She pointed the gun at him with her finger on the trigger. Moments later the gun discharged into the centre of Mr Kana's torso. He immediately fell to the ground and could not be revived.

[6] Ms Kaitai fled and threw the gun onto the roof of a neighbouring property.

[7] The two friends (being the only other people present in the garage at the critical time) were interviewed by police. Mr Mihaere said he was looking in the wrong direction to have been able to see anything. He heard an argument and when he turned around he saw Mr Kana fall to the ground.

[8] In a video interview with police on the day of the shooting, Mr Lewis said that when the gun was presented at Mr Kana, Mr Kana tried to grab it but that Ms Kaitai

² An appeal against the sentence of life imprisonment with a minimum parole period of ten years and nine months was also filed but not pursued.

³ As mentioned Ms Kaitai was convicted of the offence of threatening to kill arising from this incident and is not appealing that conviction.

pulled it up out of his reach and then brought it down again pointing it right at Mr Kana and pulling the trigger at close range. At the time the shot was fired, Mr Kana had his hand on the barrel. That was the only time he had his hand on the gun.

[9] Police interviewed Ms Kaitai the following day. She was reluctant to talk to them but did say that Mr Kana had punched her in the face. She also claimed she tried to push him off her but vehemently denied having shot him. She also stated she was sick of men attacking her.

The trial

[10] At trial, a key issue was causation, namely what was the cause of the gun discharging.

[11] Both Mr Mihaere and Mr Lewis were called by the Crown and both gave evidence that was inconsistent with aspects of the statements they had made to police in the immediate aftermath of the shooting. Contrary to his police interview, Mr Lewis said that when the gun was pulled up, it was Mr Kana who pulled it down and then both Mr Kana and Ms Kaitai wrestled with it before the gun went off. Mr Mihaere said he had seen Mr Kana with both hands on the gun and that there was a struggle.

[12] The Judge granted the Crown permission to put to both men the statements they had made previously.

[13] The Crown also called a police armourer who had tested the gun. He found it had a heavy trigger and that significant force (5 kg of pressure on the trigger) was required to discharge the gun. He opined that it was not prone to accidental discharge. In cross-examination he could not however discount the possibility of accidental discharge if someone else were to pull on the barrel end of the gun.

[14] In his closing address, the prosecutor invited the jury to accept what Mr Lewis had told police on the day and to reject the suggestion that there was some kind of struggle. The prosecutor submitted the reality was that Mr Kana could only have got his hand on the gun when it was already aimed at him. Having regard to his strength

compared to Ms Kaitai's, had he been able to grab it any earlier, he would have been able to re-direct it.

[15] As regards the elements of the offence of murder, the Crown told the jury that its case was that Ms Kaitai had caused Mr Kana's death by an unlawful act, namely presenting a loaded gun at him and recklessly pulling the trigger. She did so intending to cause him bodily injury knowing that death might result but being reckless as to whether it did or not.

[16] As a fallback position, the Crown also told the jury that even if they considered it a reasonable possibility that something else (that is, something other than Ms Kaitai pulling the trigger) had set the gun off but were also sure that Ms Kaitai had contributed to cause the discharge by her careless handling of the firearm, including having her finger on the trigger, then she would still have caused Mr Kana's death by an unlawful act. However, the Crown conceded that in this "careless handling" scenario, subject to considerations of self-defence, the proper verdict would be manslaughter, and not murder.

[17] The defence's primary position was that Ms Kaitai was not guilty of either manslaughter or murder. Trial counsel argued it had been an accidental/involuntary discharge and caused entirely independently of Ms Kaitai as a result of Mr Kana's own actions. It was his action of pulling the gun initially down but ultimately towards himself that caused the trigger to release. His actions were an intervening act which broke the chain of causation. It was his act which was the immediate cause of death. Counsel also argued that it was no answer for the Crown to say no person in their right mind would do that given there was evidence of a reasonably high level of methamphetamine found in Mr Kana's system.

[18] The defence submitted further that even if Ms Kaitai did contribute to cause the discharge, Mr Kana's death was not caused by an unlawful act because she was acting in self-defence.

[19] As both parties recognised, self-defence was relevant in two ways. It was relevant to causation because even if the actions taken by Ms Kaitai contributed to

Mr Kana's death, they still needed to be unlawful acts and they would not be unlawful if they were acts done in self-defence. Or to put it another way the Crown could not rely on initial acts done in self-defence (such as the loading of the gun) as operative causes of death. Secondly, self-defence was relevant in the usual way as a defence to the charge.

[20] The jury returned a verdict of guilty on the murder charge.

[21] We now turn to address each of the three grounds of appeal.

The summing up on causation was unfair

The argument

[22] On behalf of Ms Kaitai, Ms Epati submitted that the summing up on causing death by unlawful act lacked the required neutrality and fairness and did not fairly present the defence case. In support of this central contention, she advanced three inter-connected complaints.

[23] The first two related to the examples the Judge gave of an intervening act and his advice to the jury not to adopt too refined an analysis of causation. The impugned comments are contained in the following passages from the summing up:

[97] Identification of the act or acts causing death is a factual inquiry for you the jury. The law is clear that it is for the jury to determine what act or acts were done by the accused and whether they or any one of them caused death. What is necessary is that the unlawful act or acts are a substantial and operative cause of death. They do not need to be the main or the only cause of death. But they must have played a part which was not insubstantial or insignificant. That said, it is possible for the chain of causation to be broken by some intervening and unanticipated event. For example, despite someone loading and pointing a gun at a person and putting their finger on the trigger, if the person at whom it is pointed is then hit by a bolt of [lightning] or someone else then takes the opportunity to discharge a gun at them in that moment, you would be likely to find the chain of causation broken. But those are extreme examples and the further you come back from these extremes, so progressively more difficult the job of the fact-finder – you the jury – becomes.

[98] In this case my advice is to be careful about too refined an analysis of the "act" causing death. It is a matter entirely for you but even if the Crown has not excluded the reasonable possibility that activation of the trigger was caused by Mr Kana grabbing the barrel and pulling it, you might also wish to

consider, to the extent you think it is relevant, the fact that the gun had already been uplifted by Ms Kaitai from the table, loaded, the safety switch at some stage disengaged, the gun pointed at Mr Kana before being lifted over Ms Kaitai's shoulder and then returned to face Mr Kana (that is, of course, if it ended up in that position by Ms Kaitai's free action rather than being pulled there from a vertical position by Mr Kana, which is a key issue for you).

[99] Whether these actions were a substantial and operative cause of Mr Kana's death is, however, for you and for you alone. I intend in no way to lead you to any particular conclusion just by referencing some of the issues you might wish to consider in that analysis.

[24] Ms Epati contends that by using the very factual issue the jury needed to determine as part of an example of what does (and, by clear implication, what does not) constitute an intervening act, the Judge effectively removed any consideration of the defence case that the act causing death was the actions of Mr Kana. In her submission, there was a risk the jury would have been so over-awed by the Judge's extreme examples, they might well have been under the impression there was really nothing for them to decide on the issue of causation because, unless there was a bolt of lightning, the defence case on causation must fail.

[25] Ms Epati further argued that despite, as she put it, "bookending" the direction with a reminder that the facts were for the jury to determine, the jury may well have interpreted the direction as being in reality a direction on the law as to what constitutes a break in the chain of causation.

[26] Further, in her submission, the overall impact of the direction was to dissuade any proper consideration of the defence case and this was compounded by the Judge also advising the jury to be careful not to adopt too refined an analysis of the act causing death.

[27] The third complaint about the direction on causation is that the unfairness to the defence was further compounded by the Judge failing to cover self-defence as it related to an unlawful act. Yet, this was a critical part of the defence case.

Analysis

[28] We are not persuaded that these complaints are justified and agree with the Crown that when the summing up is read as a whole and in particular alongside the question trail, the defence was fairly presented.

[29] The summing up was divided into three parts. The first part was general directions. In the second part, which contains the passages quoted above, the Judge gave directions regarding legal issues with the assistance of the question trails. It is clear from the trial record that the question trails had been the subject of extensive consultation and agreement with counsel. As the Judge went through the question trail, he referred to the competing positions on the various issues and the evidence relied on.

[30] In the third part of the summing up, the Judge summarised the Crown and defence cases. He did so extensively and again by reference to the items of evidence on which each relied as well as by reference to the specific elements of the charge. Significantly no issue is taken with the accuracy and fairness of the following summary of the defence case on causation:

[197] Turning to the specific elements of the charge of murder. Mr Jenkins said that Mr Kana's death was not the result of an unlawful act because the Crown cannot disprove the reasonable possibility that the discharge of the weapon only occurred as a result of it being grabbed by Mr Kana. The defence position is that the pressure on the trigger of the firearm was applied by Mr Kana grabbing the end of the barrel, pulling it while Ms Kaitai's finger was on the trigger.

[198] The defence says that Mr Kana broke the chain of causation. It says that when she had the firearm pointed away from Mr Kana, over her shoulder and he then proceeded to grab it and pulled it back down, and then towards him, that was a break in the chain of causation. In other words, the defence says it was the intervening act by Mr Kana in grabbing the barrel and pulling on it which caused the trigger to be pulled. The discharge was accidental and not a willed act by Ms Kaitai. The defence says that the Crown has not disproved this possibility and that you cannot be sure there was no reasonable possibility that this is the way the firearm discharged. Mr Jenkins addressed firmly the subject of the burden of proof in that respect and did so correctly.

[199] The defence says the sole motive in presenting the firearm was protection. The defence stresses that at the moment she presented the firearm there was no suggestion that she was threatening to kill him, as in respect of the previous charges. Instead, evidence indicates that she was just simply saying, "leave me alone, get away from me".

[200] Putting the actual discharge to one side, the lead-up to the events to that discharge – the retrieval of the firearm, the loading and the pointing of it – could all, according to the Crown, amount to unlawful causes of death. However, the defence stresses that if you consider those initial acts were done in self-defence, they cannot be unlawful, and the Crown cannot rely on them as substantive and operative causes of death.

[31] As regards the question trail for the murder charge, that identified the first issue as being “was the death the result of an unlawful act by Ms Kaitai” and asked:

1. Are you sure that, on the afternoon of 10 May 2020, Ms Kaitai did something which was a substantial and operative cause of Mr Kana’s death?

Notes: A substantial and operative cause does not have to be the main or the only cause of death but it must have played a part which was not insubstantial or insignificant.

In this case there is no issue that Mr Kana was shot and killed by a gun held by Ms Kaitai. The issue is whether the Crown has disproved the reasonable possibility that the gun was fired involuntarily by reason only of it being grabbed by Mr Kana.

If **NO**, find Ms Kaitai not guilty.

If **YES**, [go] to question two.

[32] In our view, the question and the notes neatly encapsulated in a straightforward and clear way what the jury was required to decide. In particular, it fairly captured the defence of involuntary/accidental discharge. As already mentioned, that defence was repeated by the Judge orally as he took the jury through the question trail and again when in the third part he summarised the respective cases.

[33] We consider that little would have been served by confusing the jury with the legal complexities of causation. The example of a lightning bolt was extreme but the Judge expressly told them that. It was something graphic so they could immediately grasp the basic principle. We are not persuaded there was any realistic chance of the jury being misled into thinking that they needed to find a lightning bolt had occurred before being able to acquit Ms Kaitai.

[34] The second question in the question trail under the same heading “was the death the result of an unlawful act by Ms Kaitai?” asked:

2. Are you sure that Ms Kaitai caused the death of Mr Kana by an unlawful act?

Notes: If you consider that Ms Kaitai was acting in self-defence in retrieving, loading and presenting the firearm at Mr Kana, then these actions would not be unlawful.

The elements of self-defence are set out in the next section of the question trail.

If **NO**, find Ms Kaitai not guilty.

If **YES**, go to Issue 2, self-defence.

[35] As for the relevance of self-defence to causation, we acknowledge that the Judge did not specifically address that in part two of his summing up. However, as will be apparent, the question trail required the jury to address it as part of the causation analysis. Further, although the elements of self-defence were not specifically detailed under issue one, there was a cross reference to a list of the elements on the same page. The jury was also given a detailed oral exposition of the various elements of self-defence.

[36] Having regard to all of the above, we conclude that the jury was properly directed on the issue of causation.

Insufficient directions on intent and unintentional discharge

The argument

[37] The second ground of appeal concerns the sufficiency of the directions on murderous intent. The central contention is that more was required to ensure the jury understood how the defence’s case that Mr Kana’s death was accidental related to intent.

[38] The question trail about intent read as follows:

ISSUE THREE: INTENT

1. Are you sure that, when Ms Kaitai shot Mr Kana:

(a) Ms Kaitai intended to cause Mr Kana bodily injury that was more than minor in nature;

AND

(b) Ms Kaitai knew (that is, consciously appreciated) that there was a real risk that shooting Mr Kana could cause his death;

AND

(c) Ms Kaitai consciously ran the risk that Mr Kana would die as a result of shooting him?

Notes:

(1) *Bodily injury is harm that is more than trifling or transitory and which affects the health or comfort of the victim.*

(2) *“Knew” means that Ms Kaitai had an actual or conscious appreciation that death was likely.*

(3) *“Likely” means that death could well happen or was a real risk.*

If **YES**, find Ms Kaitai guilty of murder.

If **NO**, find Ms Kaitai not guilty of murder, but guilty of manslaughter.

[39] Approximately two hours after the jury had retired to consider its verdict, the jury asked if they could have “the outline of Murderous Intent provided by the judge in his [summation]”.

[40] After consulting with counsel, the Judge provided the jury with the following paragraphs from his summing up as a standalone document:

[126] I think, Mr Foreman and members of the jury, I'll cover this off now and then we'll take a break before I get to the summaries of the respective cases.

[127] I come then to Issue Three, page 5 of the question trail – intent. This is an issue you will only consider if you find that [the] Crown has proved beyond a reasonable doubt that the death occurred as a result of an unlawful act and the defence of self-defence does not apply. Your task at this point will be to decide whether Ms Kaitai is guilty of murder or manslaughter. What transforms manslaughter to murder, is murderous intent.

[128] In this case the Crown relies on a particular type of murderous intent, recognised in section 167(b) of our Crimes Act. As a shorthand Mr Macklin calls this reckless homicide.

[129] There are three elements to this type of homicide (each of which again you must be satisfied of beyond a reasonable doubt). These are that Ms Kaitai

intended to cause Mr Kana bodily injury; that Ms Kaitai knew there was a real risk her actions would cause Mr Kana's death; and that Ms Kaitai consciously ran the risk that Mr Kana would die as a result. If you are satisfied beyond a reasonable doubt of all three elements, you must find Ms Kaitai guilty of murder.

[130] It is often, I think, something of a surprise to juries that there can be this type of murderous intent. I think when most people think about murder they think about someone who has decided to kill another person, perhaps arming themselves with a weapon then going out and finding that person and intentionally killing them. But there is another way the law recognises murderous intent – that is when a person intends to cause bodily injury that they know is likely to cause death and are reckless as to whether that happens or not. That is because the law does not allow a person to say, “I meant to cause the victim bodily injury by doing A, B or C and I knew that A, B or C was likely to cause their death but hey, I didn't actually intend that they die. I just willingly took the risk and went ahead and I'm sorry that he or she died”. In the eyes of the law that would still sound in murder.

[131] The three elements I have identified require some further explanation, I am sorry. In terms of the first element – whether Ms Kaitai intended to cause bodily injury to Mr Kana – bodily injury is harm that is more than trifling, transitory or passing, which affects the health and comfort of the victim. In this case, of course the bodily injury in issue is a shotgun wound to the chest.

[132] The second question is whether Ms Kaitai knew that the bodily injury was likely to cause death. It is Ms Kaitai's actual knowledge that you are concerned with here and because she did not give evidence this is to be inferred from all of the other evidence that you have seen and heard. It is her state of mind at the time she shot Mr Kana which is relevant. To know, means to consciously appreciate. At the time of the shooting Ms Kaitai must have had in her mind an actual conscious appreciation that what she was doing was likely to cause death.

[133] When I say, “likely to cause death”, Ms Kaitai has to have known that there was a real and substantial risk that her actions would cause death. It is not just a “maybe” or a “possibility”. It is more than that. It is something that could well happen. However, it need not be more likely than not.

[134] The third question is whether Ms Kaitai consciously ran the risk that Mr Kana would die as a result, that is whether she was reckless whether the death ensued or not.

[135] You should bear in mind that murderous intent does not require any premeditation or planning. It can be unplanned, it can be impulsive and it can be instantly regretted.

[136] I also need to go back at this point to the question of whether the gun was discharged as a result of what Mr Jenkins calls an “unintentional act” and in that context, whether you regard it as a reasonable possibility that the gun discharged as a result of Mr Kana pulling the barrel towards him while Ms [Kaitai] had her finger on the trigger. Even if you were to decide that, viewed in the context of everything that preceded activation of the trigger, Ms Kaitai had committed an unlawful act causing death, if you nevertheless thought it was a reasonable possibility that the gun went off as a result of

Mr Kana pulling the barrel towards him, then that would clearly be an issue relevant to whether, at the time the gun discharged, Ms Kaitai intended to cause bodily injury which she knew was likely to cause death. So, you have to come back to consider those issues again.

[137] In summary, the Crown says that you can be sure all the elements of a reckless murder are proven. Mr Macklin relies on a lot of the points I have already summarised. He says that when you shoot someone at close to point blank range with a 12-gauge shotgun, of course you intend to cause them bodily injury and when you do that into someone's chest how could you not be alert to the fact it was likely to cause death as firearms are designed to kill when discharged at a person's chest.

[138] So, he says, this was a reckless murder. But if you don't accept that, he says it was nevertheless an unlawful act (careless use of a firearm), that self-defence does not apply and Ms Kaitai is, at a minimum, guilty of manslaughter, which, as he correctly says, is included within the charge of murder.

[139] By contrast, Mr Jenkins says there was no recklessness in what Ms Kaitai did and therefore no reckless murder. She was confronted by an angry violent meth-fuelled man who wouldn't leave her alone and who then attacked her with his fist. She armed herself for protection but never intentionally discharged the weapon. The fact that she pulled it away and up into the air when Mr Kana initially went to grab it and didn't discharge the gun at that point is, he says, telling, as is her emotional reaction in the immediate aftermath and he referred you to all of the evidence in that respect.

[41] On appeal, Ms Epati says that having received the jury question, the Judge needed to elaborate on the relevance of unintentional discharge to murderous intent and not just effectively repeat what he had said before.

[42] He had, she argued, previously dealt with the issue in only one paragraph and by introducing the subject with the words "I ... need to go back". By prefacing his discussion with those words, the Judge ran the risk his comments on causing death by unlawful act would be imported into the jury's consideration of murderous intent. That was unfortunate because not only did the directions on causation lack balance, the inquiry on murderous intent was different and separate and a robust direction was needed to ensure the jury understood this.

[43] Ms Epati further submitted the Judge should have included a direction that even if Ms Kaitai caused Mr Kana's death by careless use of a firearm, it was still possible the shooting was accidental in that she did not intend to cause bodily injury. In addition the Judge needed to explain that accidental discharge subsumed two separate inquiries – intent and reckless knowledge – and could negate either.

Analysis

[44] For the reasons already traversed in relation to the first ground of appeal, we do not accept the causation direction was unbalanced and therefore reject the premise of the submission that more was required because of the way the Judge had directed on causation.

[45] Further, in our assessment, the concept of an accident would have been well understood by the jury and in the circumstances of this case (as opposed to others cited to us by Ms Epati) did not require further elaboration.⁴ More detailed instructions of the sort suggested were in our view unnecessary and potentially confusing.

[46] We are not persuaded there was any error in the way the Judge summed up on intent.

Unfair comments on Ms Kaitai's right to silence

[47] Ms Kaitai did not give evidence. In the summing up, the Judge referred to this in three passages.

[48] In the first passage, the Judge addressed Ms Kaitai's refusal to give a videotaped police interview and her election not to give evidence at trial:

Out of Court statements by the defendant, Ms Kaitai

[28] Ms Kaitai chose to give a videotaped police interview. Although the interview was not given on oath or subject to cross-examination, it is nevertheless part of the evidence for you to assess and give such weight to it as you think appropriate. What weight you choose to give is entirely a matter for you. You can accept some of it, all of it or none of it and you can view it as favourable to Ms Kaitai or unfavourable. It all depends how you assess it.

...

The absence of evidence by the defendant in this trial

[30] Ms Kaitai did not give evidence in this trial. She had no obligation to do so. That she did not do so does not add to the case against her in any respect at all. It is for the Crown to prove her guilt and she does not have to prove her

⁴ See for example *Primeau v R* 2017 QCCA 1394, 41 CR (7th) 22 and *M (CA688/2012) v R* [2013] NZCA 134, (2003) 26 CRNZ 196.

innocence. Likewise, it is for the Crown to disprove her defence of self-defence, not for Ms Kaitai to prove it.

[49] Ms Epati acknowledged that this was an orthodox and entirely appropriate direction and took no issue with it. However, she contended that later in his summing up, when addressing the issues of self-defence and intent, the Judge made two further comments on the right to silence which were inappropriate.

[50] The impugned comments were as follows:

[107] Now, as I have said so many times already, as is her right, Ms Kaitai has not given and, as I have also said, you are not to make any adverse inference at all in that respect, but she has not given evidence. But the result is you do not have her sworn evidence of what she believed was happening at the time. So, you have to look at all of the other evidence to make your best assessment of what Ms Kaitai was thinking and perceiving when the fatal shotgun wound was inflicted. Clearly, what she thought or perceived at the time will be influenced by all that occurred in the run-up to that event and clearly what she said to Detective Luke John will be part of what you will need to consider.

...

[132] The second question is whether Ms Kaitai knew that the bodily injury was likely to cause death. It is Ms Kaitai's actual knowledge that you are concerned with here and because she did not give evidence this is to be inferred from all of the other evidence that you have seen and heard. It is her state of mind at the time she shot Mr Kana which is relevant. To know, means to consciously appreciate. At the time of the shooting Ms Kaitai must have had in her mind an actual conscious appreciation that what she was doing was likely to cause death.

[51] Ms Epati submitted that in the circumstances of this case, the Judge's comments were unnecessary and unfair for three key reasons:

- (a) Ms Kaitai had denied any intention to hurt Mr Kana or anyone else in her statements to police;
- (b) it was not a situation where the only evidence of self-defence or lack of murderous intent came from Ms Kaitai's limited out of court statement. There was other evidence to back that up from the two eyewitnesses and forensic evidence. And thus the situation identified by decisions of

this Court where a balanced comment might be appropriate did not apply;⁵ and

- (c) the qualitative difference between sworn evidence and an out of court statement had already been identified by the Judge and did not require repeating.

Analysis

[52] Section 33 of the Evidence Act 2006 allows a judge to comment on the fact that a defendant has not given evidence at trial. It is a discretion that must be exercised sparingly and very carefully so as to preserve the integrity of the right to silence and the onus of proof.⁶

[53] The question for us to determine is whether the comments made by the trial Judge in this case were capable of carrying the connotation that if Ms Kaitai were innocent she would have given evidence.

[54] In both passages, the comments were made in the context of explaining how the jury should go about its task of determining Ms Kaitai's actual knowledge and actual intentions despite the absence of any sworn evidence from Ms Kaitai herself on those topics. In effect, the Judge was explaining that despite the absence of evidence from Ms Kaitai, the jury was still able to conduct a full subjective inquiry. Importantly in the course of the explanation, the Judge fairly identified what evidence would be relevant to that inquiry including the evidence of Ms Kaitai's out of court statements and he also repeated what he had said earlier about the jury not drawing any adverse inferences from her failure to give evidence.

[55] In those circumstances, we are not persuaded that the Judge's comments were improper or created the risk of a miscarriage of justice.

⁵ *R v McRae* (1993) 10 CRNZ 61 (CA); *Davis v R* [2011] NZCA 380.

⁶ *R v Wheatley* [1968] NZLR 1135 (CA) at 1143, citing *Waugh v R* [1950] AC 203 (PC) at 211–212. See also *R v C* (2003) 20 CRNZ 775 (CA) at [22].

[56] It follows from all of the above that in our assessment, whether viewed individually or collectively, the matters raised by Ms Kaitai do not warrant appellate intervention.

Outcome

[57] The appeal against conviction is dismissed.

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