



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

28 May 2024

MEDIA RELEASE

MOETU KAITAI v THE KING

(SC 59/2023)

Hearing in the Supreme Court Thursday 11 July 2024

CASE HISTORY SYNOPSIS

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court.

Background

On 10 May 2020, Ms Kaitai presented a loaded gun at Kelvin Kana during the course of an argument. Some evidence given at trial suggested that Ms Kaitai was pointing the gun away from Mr Kana until he grabbed the barrel, drew it towards him and caused it to go off. Mr Kana died.

Ms Kaitai was charged with murder under s 167(b) of the Crimes Act 1961, which required the Crown to prove beyond reasonable doubt that she meant to cause a bodily injury that she knew was likely to cause death and that she was reckless about whether death ensued from that bodily injury. The Crown argued that Ms Kaitai recklessly and voluntarily pulled the trigger. Alternatively, if the jury thought it was a reasonable possibility that something else caused the gun to go off, Ms Kaitai was nonetheless guilty of manslaughter by carelessly handling the firearm and contributing to Mr Kana's death.

At trial, Ms Kaitai argued that Mr Kana's death was the result of an accident. That argument had two components:

- (a) First, she argued that she had not caused Mr Kana's death. Instead, Mr Kana pulling the gun towards himself was an intervening act that broke the chain of causation. In other words, the *actus reus* (physical conduct) of the gun firing was involuntary. This would mean she could not be found guilty of murder or manslaughter.
- (b) Second, she argued that she lacked the *mens rea* (intent) to be convicted for murder. That is, at the time the gun discharged as a result of an unintentional act, Ms Kaitai did not intend to injure him, did not consciously appreciate the risk of death, and did not choose to run that risk.

Even if the jury determined beyond reasonable doubt that Ms Kaitai caused Mr Kana's death, she argued that she had not done so by an unlawful act. This was because she claimed to have

acted in self-defence when retrieving, loading and presenting the firearm at Mr Kana, and also if she caused the gun to fire.

However, the jury found Ms Kaitai guilty of murder and also threatening to kill Mr Kana. On 23 September 2022, the High Court Judge sentenced her to life imprisonment with a minimum period of imprisonment of 10 years and nine months.

Ms Kaitai appealed her conviction to the Court of Appeal. She argued, among other things, that the High Court Judge was unfair in his summing up to the jury as to how the concept of an accident relates to the elements of causation and murderous intent.

On 22 May 2023, the Court of Appeal dismissed the appeal.

This appeal

Ms Kaitai applied for leave to appeal the decision of the Court of Appeal. On 22 December 2023, the Supreme Court granted leave to appeal in part.

The approved question is whether the Court of Appeal was correct to dismiss the appeal against conviction, so far as it was based on defences of accident (in other words, involuntary *actus reus*) and lack of intent. The Supreme Court has declined leave in relation to comments made by the High Court Judge to the jury regarding Ms Kaitai's decision not to give evidence.

Viewing of hearing

The courtroom is open to the public.

This hearing of the appeal will be livestreamed. Details about access to the live-stream and the conditions of access will be posted on the [Courts of New Zealand website](#) shortly before the hearing. No recording is permitted.

The panel

The Hon Justice Williams	The Hon Justice Glazebrook	The Rt Hon Chief Justice Winkelmann	The Hon Justice Ellen France	The Hon Justice Miller
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Judges as seen from the public gallery

Counsel

- Moetu Kaitai (Appellant): *T Epati and M D N Harris*
- The King (Respondent): *Z R Johnston and B J Thompson*

Sitting hours

Court will begin at 10:00am and conclude at 4:00pm with adjournments taken from 11:30am to 11:45am and from 1:00pm to 2:15pm. There is no afternoon adjournment.

Enquiries

Any enquiries about the hearing should be directed via email to supremecourt@justice.govt.nz. While attending the hearing, enquiries can also be directed to the Court Registry, which is located outside the main courtroom in the Supreme Court foyer.

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2023\] NZCA 184](#) (22 May 2023)

Supreme Court leave decision: [\[2023\] NZSC 169](#) (22 December 2023)

