

## **GRAHAM v THE QUEEN (B14/2016)**

Court appealed from: Supreme Court of Queensland, Court of Appeal  
[2015] QCA 137

Date of judgment: 24 July 2015

Special leave granted: 11 March 2016

Mr Mark Graham and Mr Jacques Teamo, members of different bikie gangs, met unexpectedly in a shopping complex on 28 April 2012. After eyeballing each other for a time, Mr Teamo asked Mr Graham what he was looking at. The two then yelled at each other and postured aggressively. As Mr Graham strode towards Mr Teamo, the latter produced a flick knife and the former produced a hand gun. As Mr Teamo backed away, Mr Graham fired his gun at close range. The bullet struck Mr Teamo in the arm. As Mr Teamo started running away, Mr Graham fired a second shot at him. That bullet however struck a nearby shopper.

Mr Graham was charged with four counts, namely:

1. attempted murder of Mr Teamo;
2. wounding Mr Teamo with intent to maim him (as an alternative to count 1);
3. wounding the shopper with intent to wound Mr Teamo; and
4. unlawful possession of a hand gun.

Mr Graham pleaded guilty to count 4 and was tried before a jury on counts 1, 2 and 3. At the trial, the jury had to determine which weapon was drawn first and whether the prosecution had successfully excluded the possibility that Mr Graham had acted in self-defence to an assault committed on him by Mr Teamo. The three forms of self-defence available were those set out in ss 271(1), 271(2) and 272(1) of the *Criminal Code* (Qld).

The jury found Mr Graham guilty of counts one and three. Justice Wilson then sentenced him to imprisonment for 12 years and 3 months.

Mr Graham appealed against his conviction, contending that the prosecutor's address to the jury had been misleading and that directions given by Justice Wilson had not properly dealt with it. Mr Graham submitted that the prosecutor should not have told the jury they might conclude that the confrontation was consensual and therefore could not involve an assault. Rather, the jury should have been told only that the potential assault relevant to whether Mr Graham had acted in self-defence was Mr Teamo's drawing of the knife.

The Court of Appeal (Morrison JA, Atkinson & Applegarth JJ) unanimously dismissed the appeal. Their Honours found that Justice Wilson had fairly and correctly directed the jury as to the issue of assault, including the relevance of Mr Teamo's drawing of the knife. As the prosecutor had correctly pointed out that lack of consent was an element of the offence of assault, there was no need for Justice Wilson to further address that aspect of the issue.

The grounds of appeal include:

- In light of the case put by the Crown to the jury on the issue of self-defence, the Court of Appeal should have held that the trial judge:
  - 1) failed to properly identify the “assault” to which self-defence was made namely the threatened application of force constituted by the production of the flick knife;
  - 2) failed to properly and adequately direct the jury on the issue of “consent” to the assault to which Mr Graham made self-defence, and in particular the trial judge:
    - a) failed to direct the jury that the issue was not whether Mr Graham had consented to some threat of violence antecedent to the relevant “assault”; and
    - b) failed to direct the jury that consent arose as an issue only in relation to consent to the particular assault to which self-defence was made.