



HIGH COURT OF AUSTRALIA

20 July 2016

GRAHAM v THE QUEEN

[2016] HCA 27

Today the High Court dismissed an appeal from the Court of Appeal of the Supreme Court of Queensland arising out of the appellant's convictions of attempted murder and unlawful wounding with intent to maim. A majority of the High Court held that the trial judge had not erred in directions given to the jury regarding self-defence.

On 28 April 2012, the appellant was involved in a confrontation with another man, Jacques Teamo ("Teamo"), at a shopping centre on the Gold Coast. The men were members of rival motorcycle clubs. In the course of the confrontation, Teamo produced a knife and the appellant produced a gun and fired two shots. One of the bullets struck Teamo in the arm and the other bullet struck and injured an innocent bystander. The appellant was charged with, relevantly, attempted murder and unlawful wounding with intent to maim.

At trial, the appellant raised the defence of self-defence. Under the applicable provisions of the *Criminal Code (Q)*, the person who is claiming the benefit of the defence must have been "assaulted". A threat by one person to apply force to another can constitute an assault. The defence is not available if the threatened application of force was done with the consent of the person threatened. During his closing address to the jury, the prosecutor suggested that Teamo's production of the knife could be considered part of a "consensual confrontation" between Teamo and the appellant and, therefore, was not an assault. Counsel for the appellant did not address this submission in his closing address. In summing up to the jury, the trial judge gave the jury a list of 10 questions setting out the sequence of matters to be found and, in redirections, gave the jury detailed written directions on self-defence. The trial judge referred orally to the prosecutor's closing address and his reference to the term "consensual confrontation" but the trial judge described this as a matter of "interpretation, construction and argument". No redirection was sought on this point. The appellant was convicted of both offences.

The appellant appealed to the Court of Appeal on the basis that the prosecutor's reference to a "consensual confrontation" was wrong and misleading and that the trial judge had erred in failing to deal properly with that submission. In particular, it was argued that the trial judge should have directed the jury that the alleged assault to which the appellant made self-defence was the production of the knife and that there was no evidence of consent on the part of the appellant to that assault. The Court of Appeal dismissed the appeal, holding that the trial judge had correctly directed the jury.

By grant of special leave, the appellant appealed to the High Court. The High Court held, by majority, that there was no misdirection by the trial judge. The relevant legal tests were put before the jury. In light of what were considered to be the real issues in the trial, no further elaboration on the issue of consent was required.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*