



HIGH COURT OF AUSTRALIA

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN:

BIANNCA EDMUNDS

appellant

and

THE KING

Respondent

APPELLANT’S SUBMISSIONS

PART I: CERTIFICATION AS TO PUBLICATION

1. These submissions are in a form suitable for publication on the internet.

PART II: CONCISE STATEMENT OF ISSUES

2. The appellant was found guilty of murder on the basis that she was complicit in the murder of Michael Caposiena (MC hereinafter) which was carried out by her late husband Glen Cassidy (GC hereinafter) who died in the same transaction. Because the prosecution was predicated on her complicity in GC’s actions it was necessary, in order to convict the appellant, to show that the principal offender committed murder. The appellant sought to raise the possibility that the principal offender may have been acting in self-defence, but she was not permitted to raise the point before the jury.
3. At its most basic, the intermediate appellate Court found that the principal offender could not have availed himself of self-defence because the ‘evidence never suggested a reasonable possibility’ that he believed it was necessary to shoot MC.¹
4. But at the time the principal offender shot MC, he had been stabbed by him at least four times, ultimately fatally. To state the obvious: where a person in a violent physical struggle has been mortally wounded, that must be itself evidence from which an inference could be drawn that the person might have believed it necessary to defend

¹ *Edmunds v The King* [2025] VSCA 31, at [257].

themselves. The person was – as a matter of objective fact – in a circumstance in which they did need to defend themselves – they were being, and ultimately were, killed. An inference can reasonably be drawn that they might have believed this state of affairs to be true.

5. The Court below, therefore, plainly erred in its conclusion that there was no evidence that suggested the principal offender had the requisite belief. It is submitted that this error likely emerges from the implicit conceptual framework with which the Court approached the question of self-defence. Namely, that the Court relied heavily upon the common law principles associated with the original aggressor rule, and that the Court assumed or considered that the state of mind required for self-defence must be a pure and singular one. That is, that self-defence requires the accused not merely to act in self-defence but to act *only* in self-defence and not for any mixture or combination of purposes or beliefs.
6. It is submitted that both are fundamental errors in the construction of the law of self-defence in Victoria. The three theses of this appeal are therefore:
 - a. That the original aggressor rule has been abrogated by the statutory codification of self-defence in Victoria and replaced with the concept of a response to lawful conduct;
 - b. That there is no requirement that the belief requisite to self-defence be held exclusive to all other states of mind; and
 - c. That the Court of Appeal erred in finding that the evidence never suggested a reasonable possibility that GC thought it necessary to shoot MC in self-defence.

PART III: NOTICE OF CONSTITUTIONAL MATTER

7. No constitutional matter arises from this appeal.

PART IV: AUTHORISED REPORT CITATION

8. The decision below is not reported. The medium neutral citation is [2025] VSCA 31. (Reasons).

PART V: FACTS

A THE FACTUAL BACKGROUND AND THE FATAL EVENTS

9. The appellant was charged on indictment with murder on the basis of having either agreed with GC to kill MC, or having encouraged, assisted or directed him to do so.²
10. The appellant and MC were previously in a relationship and shared a son, born after the end of their relationship, who was in the sole care of the appellant. MC had been uninvolved in the child's life for at least the first year but was in the process of establishing a relationship with the child who was two years and nine months old at the time. GC was the appellant's new husband and the effective step-father of the child. He treated the child as his own and there was evidence that both the appellant and GC were displeased with the involvement of MC in the life of the child. There was evidence suggesting GC's antipathy (on his own part and/or in support of the appellant) against MC and evidence of, at least, the contemplation of killing him.
11. The appellant and GC lived with the appellant's children in Shepparton and MC lived in Westmeadows with his partner, Silvana Silva.
12. On 12 March 2016, GC attended at the Westmeadows house. Through the front lounge room windows, Silva had seen GC approach the house carrying a plastic bag. She told MC who went to the kitchen and armed himself with the largest knife available. He then went to answer the front door. The entryway comprised an inner wooden front door and an outer wire mesh screen door. It connected to the lounge room through an archway piercing a dividing wall. MC partially opened the wooden door inwards, with the knife concealed in his left hand behind it. The security door remained closed and the two men had a conversation through it.
13. Silva witnessed this interaction from the living room. She was able to see the front door through the archway between the living room and the front entrance hall. The two men did not raise their voices through the screen door. At some point there was discussion of shaking hands and MC unlocked and opened the door to GC and the two men shook their right hands. Both men were, in fact and probably unknown to each

² *DPP v Edmunds* [2023] VSC 581, at [41].

other, left-handed. MC held the large knife in his left hand, behind the main door. GC had in his left hand a plastic bag that contained a firearm, a knife and some tape.³

14. Upon the two men shaking hands, GC pushed his way inside the front hallway and the two men tussled and wrestled with each other within Silva's view. At this point, they moved along the hallway, out of Silva's sight and behind the wall separating the hall and dining area from the living room. To this point, Silva had not seen GC produce any firearm. A short time later, the two men became visible to Silva again through a second archway in the wall a few metres along. When she saw the two men again, Silva observed that they were still grappling with one another. At this point, GC had the firearm already raised to MC's head and pulled the trigger. The medical evidence indicates that MC would have died instantly. This was the first time Silva saw the firearm.
15. Silva only saw this small snapshot of time between when the two men appeared in the second archway and when the trigger was pulled. At no time, either through the first archway or the second, did she see MC stabbing GC.
16. Thus two essential events occurred whilst the two men were behind the wall and Silva could not see them: MC stabbed GC four or five times with the kitchen knife – with ultimately fatal results and GC produced the firearm. Both of these events occurred whilst the two men were concealed from her sight behind the wall as they moved from the area of one archway to the other. There is, as a result, a perfect absence of evidence as to which occurred first.
17. Upon MC collapsing after being shot, GC turned his attention to Silva and seriously assaulted her. Neighbours attended the house, in particular witness Garry Walker, who intervened. Walker gave evidence that GC said, 'she stabbed me, she stabbed me'.⁴ He died shortly afterwards from blood loss caused by the wounds he received.

B THE COURSE OF THE TRIALS

18. The appellant faced three trials – the first jury was unable to reach a verdict, the second was discharged at a late stage for unrelated reasons and the third jury convicted her. At

³ The bag, tape and a knife were located at the scene close to MC's body. See Appellant's Book of Further Materials, page 2-3

⁴ *DPP v Edmunds (Ruling No 3)* [2022] VSC 327R, at [10].

all three trials, the defence sought to rely upon the possibility that, as the events had unfolded, GC may have shot MC in self-defence.

19. Some argument was raised in advance of the first trial, and then again at the conclusion of the evidence. The learned trial judge refused to allow self-defence to be put before the jury. At each of the subsequent trials, the defence re-agitated the matter, but there was no further argument of substance. The learned trial judge made it clear that unless the evidence fell in a substantially different way, his ruling with respect to the first trial would remain. Although there were small details that differed between trials, it was never suggested that the import of those details changed the factual matrix in any significant way.
20. The learned trial judge refused to leave the question of self-defence to the jury in each trial.
21. His Honour held that in the circumstances of this case self-defence by GC was precluded by section 322L of the *Crimes Act 1958* because GC was responding to lawful conduct.⁵
22. It can be seen that the learned trial judge based that conclusion on the fact that GC had gone to MC's premises for the purpose of killing him and that in the course of a very quick and dynamic struggle between GC and MC there was no change in the dynamic which altered who the aggressor was.⁶
23. His Honour also indicated that he would have found that in the circumstances of this case, section 322K(2)(a) would have precluded self-defence for GC.⁷
24. He did so on the apparent acceptance of the evidence that was given by witness Gary Walker that GC believed he had been stabbed by Ms Silva rather than MC.⁸

C THE COURT OF APPEAL

25. The Court of Appeal found that the learned trial judge had erred in deciding that self-defence for GC was precluded by section 322L of the *Crimes Act 1958*.⁹

⁵ Ibid, at [18].

⁶ Ibid.

⁷ Ibid, at [17] – [18].

⁸ Ibid at [18](g).

⁹ *Edmunds v The King* [2025] VSCA 31, at [249] – [252].

26. The Court of Appeal also found that the learned trial judge would have been in error if he had decided that section 322K precluded self-defence for GC on the basis that the evidence established that GC thought he had been stabbed by Ms Silva.¹⁰
27. However rather than allowing the appeal, the Court of Appeal went on to decide this case on a different basis.
28. In doing so, the Court held that the common law principles with respect to the ‘original aggressor’ rule applied with the same or similar force despite the codification of self-defence.¹¹ It is plain that this consideration underpinned the Court’s analysis.

PART VI: ARGUMENT

A. THE ORIGINAL AGGRESSOR RULE HAS BEEN ABROGATED BY STATUTE

29. The *Crimes Amendment (Abolition of Defensive Homicide) Act 2014* abolished the common law defence of self-defence in Victoria and replaced it with a statutory regime.¹² This was an explicit statutory abolition of the common law defence. It had already been implicitly abolished in homicide cases by the *Crimes (Homicide) Act 2005*.¹³ Whilst it can be seen that some of the language used in the self-defence provisions¹⁴ was based in language used in *Zecevic*,¹⁵ it can also clearly be seen that, as a whole, these self-defence provisions were not simply enacted in an attempt to restate the preexisting common law.¹⁶
30. At common law, an accused could not rely on self-defence if they were the ‘original aggressor’ unless there had been either a cessation of that initial aggression, or an escalation by the original (and ultimate) victim. Notably, there was no requirement that

¹⁰ Ibid, at [309] – [311].

¹¹ Ibid, at [202].

¹² *Crimes Act 1958*, s 322N and Divisions 1 and 2 of Part IC.

¹³ *Babic v The Queen* [2010] VSCA 198.

¹⁴ *Crimes Act*, Section 322K(2)(a)

¹⁵ *Zecevic v the Queen* [1987] 162 CLR 645.

¹⁶ *Dayney v The King* (2024) 98 ALJA 857, at [12]; *Brennan v The King* (1936) 55 CLR 253, at 263; *Stuart v The Queen* (1974) 134 CLR 426, at 437.

the victim's conduct towards the accused be unlawful before the defence became available.¹⁷

31. The statutory codification of self-defence changed this landscape. In particular, the *Crimes Amendment (Abolition of Defensive Homicide) Act 2014* introduced the concept of a response to lawful conduct.¹⁸ That is, from the institution of the statutory regime, an accused could not rely on self-defence where they were responding to the lawful conduct of the victim. If, therefore, the victim was responding lawfully to the accused's conduct and the accused knew that such response was lawful – if for example the victim's conduct was in self-defence – then the accused could not rely on self-defence. This was a change to the common law position: prior to this, pursuant to *Zecevic*, an accused could rely on self-defence against lawful conduct.
32. The briefest reflection on common experience will reveal that examples of 'original aggressor' circumstances will almost always fall under this new rubric in any case. However, a certain class of cases will fall outside the new test that would previously have been eligible for self-defence. As a matter of logic, it appears tolerably clear that the intention of the new regime must have been to replace the chronologically-based and artificial 'original aggressor' rule with a rule founded in the legality of the relevant conduct. It was a rationalisation of the law. It follows that the intention of Parliament was to abolish the 'original aggressor' rule and replace it – not to retain and supplement it.
33. Although it could be said that this aspect of self-defence was preserved after the 2005 statutory amendment of self-defence in homicide cases, from 2014 two matters tell against the preservation of the original aggressor rule:
 - a. The explicit abolition of common law self-defence in all circumstances;¹⁹ and
 - b. The creation of the new category of responses to lawful conduct that would, in almost all respects, cover the ground previously occupied by the original aggressor rule.
34. The only available inference is that it was Parliament's intention to abrogate the rule. Obviously, the facts that underlie an example of what would have been an 'original

¹⁷ *Zecevic*, at [20].

¹⁸ As now contained in s 322L. The concept had been previously approved in *Viro*.

¹⁹ *Crimes Act 1958*, s 322N.

aggressor' circumstance will be deeply relevant to an assessment of whether or not the self-defence conduct was in response to lawful conduct under s 322L, but the assessment will be only and entirely under the rubric of lawfulness, as laid out in s 322L.

35. Whilst the intermediate appeal Court agreed that s 322L did not prevent the appellant from relying on self-defence, the doctrine of the original aggressor fundamentally underlaid the Court's analysis of whether GC might reasonably have had a belief in the need to defend himself.

B. THERE IS NO REQUIREMENT THAT THE BELIEF REQUISITE TO SELF-DEFENCE BE HELD EXCLUSIVE TO ALL OTHER STATES OF MIND

36. The Court adopted a black and white, mutually exclusive, approach to the question of whether the principal offender was acting in self-defence. That is, the Court found that the principal offender was not acting in self-defence because he was acting in pursuit of an original design to kill MC.
37. There are two problems with this:
 - a. Firstly, the law requires only that the principal offender hold the relevant belief – not that the principal offender hold only the relevant belief and no other; and
 - b. Secondly, the Court presumed a continuity or persistence of that criminal intent notwithstanding an extraordinary intervening fact: the mortal wounding of the principal offender by MC.
38. The Court's presumption of a singular, continuous and exclusive state of mind does not reflect the inquiry that the statute requires. Section 322K renders self-defence available if 'the person believes that the conduct is necessary in self-defence.'²⁰
39. The fact that a principal offender might simultaneously harbour antipathy, animosity, even rising to hatred, towards a victim does not directly inform the basal question of whether the person – at the time of the conduct – believed that the conduct was necessary in self-defence. The statute does not require spiritual or moral purity or any purity, exclusivity or singularity of state of mind. The availability of self-defence is not

²⁰ *Crimes Act 1958*, s 322K(2)(a). There is of course the additional element of reasonable response in s 322K(2)(b).

predicated on the person being motivated only by their belief in the necessity of defending themselves; the only requirement is that it is reasonably possible that they did believe it was necessary to defend themselves. A principal offender does not deprive themselves of the defence because they also contemporaneously hate or loathe the victim. Provided that they reasonably might in fact believe that what they do is necessary in self-defence – whether concurrently, or in combination, with other states of mind or not – the defence will be available to them.

40. And if there is evidence that suggests the reasonable possibility²¹ that they held such a belief, the question must be left to the jury.
41. As the Court of Appeal recognised, section 322L identifies a combination of circumstances in which self-defence would not be available.
42. However, that combination of circumstances can be contrasted with the circumstances set out in the self-defence provisions which fell for consideration by this Court in *Dayney*.²²
43. It can be seen that the self-defence provisions in Victoria do not exclude the availability of self-defence for an accused who has caused death or really serious injury in circumstances where:
 - a. that accused has formed an intention to kill or cause really serious injury to the alleged victim prior to any need for responsive action by that accused;
 - b. that accused has attempted to kill or cause really serious injury to the alleged victim prior to any need for responsive action by that accused; or
 - c. that accused has failed to retreat (where practical to do so) or failed to remove their blameworthiness (where practical to do so) before taking responsive action.²³
44. If, as the Court of Appeal determined should have occurred in the Appellant's case, the availability of self-defence for an accused is not excluded by s 322L, then the question that is to be asked is therefore simply: is it reasonably possible that the principal offender believed, at the time of committing the charged conduct, that their conduct was necessary in self-defence? The Court below did not ask this question. It did not even ask: why did the principal offender engage in this conduct? Rather, the Court

²¹ *Crimes Act 1958*, s 322L.

²² (2024) 98 ALJA 857.

²³ Cf. *Dayney*, at [17]-[30].

below appears to have asked the improper question: did the principal offender believe their conduct was necessary in self-defence *or* did the principal offender act in pursuit of a criminal purpose? And the Court allowed itself only a binary choice between those two mutually exclusive options.

45. The Court of Appeal's syllogistic reasoning appears to have been as follows:
 - a) The principal offender was the original aggressor;
 - b) There was no cessation of that aggression;
 - c) Therefore the principal offender was pursuing his original murderous design;
 - d) Therefore he did not believe that he needed to defend himself.
46. As to b., it seems that the Court of Appeal proceeded on an understanding of the original aggressor rule that required a cessation in the original aggression/design.
47. The Court of Appeal's reference to the part of the judgment of Gibbs J in *Viro* should be seen in this light.²⁴
48. The fact that the Court of Appeal when referring to the case of *Anandan*²⁵ omitted to make any reference to the first sentence of the relevant paragraph, from the judgment of Nettle JA (as he then was), should not be seen as an oversight.²⁶
49. The Court of Appeal's emphasis on GC being irretrievably fixed on a course of conduct to kill MC; and being committed to fatally shooting MC is consistent with such an understanding of the original aggressor rule.
50. When the Court of Appeal spoke of GC having to have 'broken off his murderous resolve', they were using the very words of Gibbs J in *Viro*.²⁷
51. In this context, the Court of Appeal's reasoning that the actions of MC in stabbing GC four times and stabbing him fatally were inconsequential to GC's ultimate act in shooting MC dead, seems remarkable.
52. The suggestion that there was no time available for GC to have developed a self-defence mindset would seem to completely fail to allow for the presence of the most basic of human instincts.

²⁴ *Edmunds v The King* [2025] VSCA 31 at [293]; *Viro* at [117].

²⁵ *Anandan v. The Queen* [2011] VSCA 413 at [19].

²⁶ *Edmunds* at [204].

²⁷ *Ibid*, at [279]; *Viro* at [117].

53. The Court of Appeal seemed to proceed on the basis that whilst there was time for MC to stab GC at least four separate times with an obviously potentially lethal weapon (with a 20cm blade) there was no time for GC to consider he now needed to shoot MC in order to survive.
54. Whilst being repeatedly and fatally stabbed the statutory self-defence regime did not require GC to 'break off' his original design to kill MC.
55. Rather the statutory self-defence regime required, that in the face of that unlawful and fatal stabbing, there was evidence of the reasonable possibility that GC believed it had now become necessary to kill MC in self-defence.
56. It is plain that there is no logical connection between c. and d., above, unless a principle is deemed to exist that required exclusivity in mental states.
57. It is further apparent that the connection between b. and c. took no account of the fact that the principal offender had by this stage been mortally wounded.

C THE COURT OF APPEAL ERRED IN FINDING THAT THE EVIDENCE NEVER SUGGESTED A REASONABLE POSSIBILITY THAT GC THOUGHT IT NECESSARY TO SHOOT MC IN SELF-DEFENCE

58. Nowhere in the Court of Appeal's reasoning on the basal test of s 322K did it meaningfully, properly or adequately confront or account for the uncontested fact that, shortly before shooting MC, the principal offender was himself mortally wounded by him. That is, at the time he pulled the trigger, GC had been viciously attacked and was in the process of bleeding to death, whether or not he knew that would in fact be the ultimate consequence.
59. The finding of the Court of Appeal that the 'evidence never suggested a reasonable possibility' that GC believed it was necessary to shoot MC in self-defence, in circumstances where there is an incontestable, inextinguishable possibility that he had just been mortally wounded at the time he actually came to produce the firearm and to use it to kill MC, is unsustainable and unreasonable.²⁸

²⁸ *House v The King* (1936) 55 CLR 499.

60. When it came to (a) the s 322L question of whether MC was acting lawfully or unlawfully and (b) the question of whether, pursuant to s 322K, GC could have formed the view he needed to protect himself from MC because he thought he had been stabbed by Silva, the Court of Appeal correctly identified the need for a trial judge to avoid trespassing into the constitutional role of the jury to determine questions of fact that necessarily (albeit even weakly) arise on the evidence.²⁹
61. However, in the circumstances of this case, the Court of Appeal's finding that there was no evidence that suggested a reasonable possibility (even a weak one) that GC formed a belief that it was necessary to take responsive action to save his own life, as he was being repeatedly stabbed to death with a lethal weapon represents an unacceptable intrusion into the constitutional role of the jury.

D CONCLUSION

62. In most cases amenable to the 'original aggressor' rule, there is an understandable scepticism towards the claim of self-defence where the claim is made post-hoc that the initiator of a confrontation needed to defend themselves. In this case, it is objectively true that the principal offender did find himself in a circumstance where he needed to defend himself. Indeed, his inability to perfect that defence of himself resulted in his death. Any such scepticism that attends most such cases is here quite misplaced.
63. Unless therefore the 'original aggressor' rule (a) survived intact the statutory codification of self-defence in Victoria as a discrete rule of law (rather than merely a relevant consideration); and (b) operates as a strict legal bar to any claim of self-defence where the principal offender was the initial aggressor,³⁰ the question of whether the principal offender might have acted in self-defence ought have been one for the jury.
64. In this case, both the learned trial judge and the intermediate appellate Court did not meaningfully include the evidence of the fatal violence done to GC in their consideration of whether there existed evidence that suggests the reasonable possibility of self-defence. This is an extraordinary oversight that could only be occasioned by an

²⁹ *Edmunds*, at [7], [170] – [171], [248] and [310]; *Zecevic*, at 665.

adherence to the ‘original aggressor’ rule – which, it is submitted, no longer exists as a rule of law.

65. The thesis of this appeal is that the errors with respect to principle that have been argued above militate towards an explanation for the manifest error of the Court of Appeal’s finding on the subject of s 322K(2)(a). The only explanation for such an elision seems to be that the approach by the Court was improperly influenced by an inflexible adherence to the original aggressor rule and that the Court took it for granted that the possible states of mind it ought consider were mutually exclusive and unchanging: those being the two complaints as to principle made above.
66. But even if the Court’s error with respect to those questions of principle were not established, and even if those errors were not accepted as an explanation for the erroneous finding that there was no evidence that suggested a reasonable possibility that GC believed he had to defend himself, this would do nothing to remove or ameliorate that plain error. The intermediate appellate Court, and the learned trial judge, would still have erred in a substantial and unreasonable way in that finding.
67. Having regard to the law, and the facts in this case, the question of self-defence ought always to have been left to the jury.

PART VII ORDERS SOUGHT

68. The appellant seeks orders that:
 - a. The appeal be allowed;
 - b. The order made by the Court below refusing the appellant’s application for leave to appeal against conviction be set aside; and,
 - c. In its place, it be ordered that the application for leave to appeal against conviction be granted, the appellant’s conviction be set aside and there be a new trial.

PART VIII ESTIMATE FOR ORAL ARGUMENT

69. The appellant seeks up to 3 hours for oral argument, including reply.

Dated: 25 June 2026

A handwritten signature in blue ink, appearing to read 'Dermot Dann'.

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ANNEXURE TO APPELLANT'S SUBMISSIONS

<i>No</i>	<i>Description</i>	<i>Version</i>	<i>Provision(s)</i>	<i>Reason for providing this version</i>	<i>Applicable date or dates (to what event(s), if any, does this version apply)</i>
1	<i>Crimes Act 1958</i>	Compilation No. 260 (1 December 2015 to 2 May 2016)	Sections 322I, 322K, 322L and 322N.	In force at all material times.	All material events — no amendments.