



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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Form 27E – Appellant’s reply

Note: see rule 44.05.5.

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN:

BIANNCA EDMUNDS
Appellant

and

THE KING
Respondent

APPELLANT’S REPLY**PART 1: CERTIFICATION AS TO PUBLICATION**

1. This reply is in a form suitable for publication on the internet

PART II: CONSCISE REPLY TO THE ARGUMENT OF THE RESPONDENT

2. It is not proposed to reply to the response of the respondent in full. The appellant relies upon her written outline of argument in that respect. This document replies to the notice of contention and the new point the respondent raises.¹
3. The respondent contends that the Court of Appeal erred in its assessment that there was in fact evidence that suggested the reasonable possibility that the deceased’s actions were unlawful.²
4. The respondent poses two questions in furtherance of its contention of error:³
 - a. Whether the Court of Appeal identified evidence – as opposed to the absence of evidence excluding an alternative hypothesis – capable of suggesting MC’s conduct was unlawful; and
 - b. Whether the Court of Appeal’s own findings about the evidence compelled the opposite conclusion.

¹ Respondent’s Notice of Contention, 27 May 2026

² Ibid; Respondent’s Submissions, Part VI.

³ Respondent’s Submissions, [43].

5. The respondent proposes they must be answered ‘no’ and ‘yes’, respectively. It is submitted this contention is flawed. The correct answers are: the first question is misconceived, or alternatively ‘yes’, and the answer to the second question is ‘no’, for the reasons that follow.

A. Evidence as Opposed to an Absence of Evidence

Possibility

6. It is submitted that the prosecution has fundamentally misconceived the ordinary meaning of the word ‘possibility’. A possibility is something that potentially is; that is not impossible, and the existence of which cannot be excluded or negated.
7. It is important to recall that Section 322I requires the accused, in order to raise self-defence, to point to evidence that ‘suggests a reasonable possibility of the existence of facts that, if they existed, would establish self-defence...’⁴
8. The prosecution approach, on the other hand, would implicitly require the accused to demonstrate evidence that directly suggests (or posits) the existence of facts themselves, rather than the reasonable possibility thereof, as the statute requires. If this had been the case, the legislature would have required the accused to point to evidence that suggests the existence of facts, or at least evidence that suggests the ‘likelihood’ of the existence of facts, rather than the ‘reasonable possibility.’
9. There is, in a real sense, no such thing as direct or positive evidence of a possibility, as the prosecution implicitly purports to require.⁵ It is perhaps useful to canvass the facts in question in this scenario. It is submitted the accused need point to evidence that suggests the reasonable possibility of the following facts in order to render self-defence available:
 - a. That MC stabbed GC before GC had produced the firearm;
 - b. That at the time MC stabbed GC he did not believe the stabbing was necessary to defend himself from death or really serious injury;⁶ and

⁴ *Crimes Act 1958*, s 322I(1).

⁵ Respondent’s Submissions, at [51].

⁶ *Crimes Act 1958*, s 322K(3). Even if MC had believed it was necessary to defend himself in a general sense, this would not render his conduct lawful unless his belief was that he was liable to be killed or really seriously injured.

- c. That, when the knife was produced and used against him, GC formed the view that it was necessary to defend himself.
10. It is true there is no *direct* or *positive* evidence one way or the other as to any of these facts. If there were, however, it would not be evidence of the *possibility* of the existence of that fact – it would be evidence of the existence of that fact. So, for example, if witness Silva had given evidence that she saw MC stab GC before GC produced the firearm, that would not be merely evidence that ‘suggests a reasonable possibility of the existence’ of that fact – it would be evidence of that fact.
11. As a matter of logic, pointing to evidence of a reasonable possibility can mean no more than to point to circumstances that reasonably allow for such a possibility.

The Facts in This Case

12. The facts at issue on this point are not far-fetched. Indeed, the facts the possibility of which need to be determined are strictly limited binary choices: either MC stabbed GC before GC produced the firearm or not. Either MC believed he needed to defend himself from death or really serious injury or not.⁷ Either GC believed he needed to defend himself from death or really serious injury or he did not. There is nothing fanciful in these. Each option is a patent and reasonable *possibility*: one, and only one, of each of them unquestionably occurred.
13. The circumstances of this event, drawing inferences from the evidence of Silva and the physical evidence at the scene, suggest that there is a reasonable, rational, not far-fetched, possibility that MC stabbed GC before MC saw the firearm. To say otherwise is to torture both ordinary and statutory language.

Positive Facts from which an Inference May be Drawn

14. Further, to the extent that any positive facts were needed to found a process of inferential assessment pursuant to s 322I, the accused simply notes the positive evidence that:

⁷ Pursuant to s 322K(3).

- a. MC attended the front door with the largest knife available to him;
 - b. MC stabbed GC at least 4 times, resulting in his death shortly afterwards;
and
 - c. All of the stab wounds were administered before GC shot MC dead.
15. It is submitted those positive facts are amply sufficient to suggest the ‘reasonable possibility’ that GC acted in self-defence.
16. The first question the prosecution pose is fundamentally misconceived. If it is not then, having regard to the immediately preceding paragraphs, the correct answer is ‘yes’.

B. The Evidence Compelled the Opposite Conclusion

17. The respondent poses the question whether the Court of Appeal’s own findings compel a conclusion that MC’s actions must have been self-defence and could not have been otherwise.
18. The respondent’s argument on this point is focussed on an alleged inconsistency between the Court’s factual findings at [243] and the Court’s conclusion at [244]. The criticism focusses on the circumstances of the event that would support MC’s holding a fear for his safety, but stops short of addressing the production of the firearm. The appellant takes this to indicate that the argument on this point proceeds on the acceptance by the Court of Appeal that the fatal stabbing may have occurred before the production of the firearm.
19. Critically, the respondent fails completely to advert to, or account for, section 322K(3) of the *Crimes Act 1958* anywhere in its argument on the Notice of Contention.
20. All of the facts and factual findings from the Court below do indeed make out a good basis, on MC’s behalf, for ordinary self-defence pursuant to s 322K(2).
21. Critically though, because MC *killed* GC, and plainly intended him at the very least really serious injury when he fatally stabbed him, any hypothesis of a lawful defence for MC’s actions must hinge on s 322K(3) involving the heightened belief that he was exposed to a threat or death or really serious injury, not merely that he needed to defend himself from some risk of harm. The Court of Appeal were well

aware of this. Although they did not advert to it directly in their ultimate (correct) finding on that point, at [242] – [250], that passage must be understood following from [241] where the Court below adverted to the heightened standard for the application of self-defence on behalf of MC.

22. Once this is appreciated, the reasonableness, and indeed correctness, of the Court of Appeal's finding on this point becomes ineluctably clear: if the firearm had not been produced at the time MC conducted his fatal assault on GC, then there is a reasonable (if weak) possibility this use of lethal force did not stem from a belief he himself was in danger *of death or really serious injury*. Such a question is paradigmatically and constitutionally a matter for a jury.
23. The second question must be answered 'no'.

Dated: 13 August 2026



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