



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: M52/2026
File Title: Edmunds v. The King
Registry: Melbourne
Document filed: Form 27F - Respondent's Outline of oral argument
Filing party: Respondent
Date filed: 16 Sep 2026

Important Information

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN:

BIANNCA EDMUNDS

Appellant

and

THE KING

Respondent

RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS

Part I: Certification

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

Part II: Outline of propositions

2. The appellant's liability was complicit. The prosecution had to prove that Cassidy (GC) murdered Caposiena (MC). The primary question is whether the evidence at the third trial satisfied the evidential onus in s 322I(1) of the *Crimes Act 1958* (Vic) so as to require self-defence to be left for GC's shooting of MC. It did not: RS [2], [9].
3. The appellant advances three grounds. Grounds 1 and 2 are advanced as an explanation for the error alleged in ground 3: AS [65]–[66]. Each attacks reasoning that the Court of Appeal did not adopt. Ground 3 fails on the evidence. If any ground is made good, the notice of contention is a further and complete answer.

Ground 1: Original aggressor reasoning was relevant to s 322K test

4. The ground contends that the "original aggressor rule" was a freestanding rule of law capable of abolition. It was not. *Zecevic* treated the original aggressor situation as raising "only evidentiary matters", by contrast with the code States, where it is treated as raising matters of law: *Zecevic*, 663 (JBA 381). Section 322N abolished a source of law, not a mode of reasoning about the formation of belief: RS [22]–[25].
5. Abolishing the common law as a source does not empty the replacing language of its historical context: *Rohan*, 302 [25], 315–316 [66]–[67] (JBA 219, 232–233). *Brennan*, 263 (JBA 187) and *Stuart*, 437 (JBA 250) apply where a statute departs from the common law formulation, not where it adopts it.

6. The Court answered the question posed by s 322K(2). In so doing the Court was assisted by the reasoning in *Zecevic* relating to original aggressors. So much is apparent from the Court's discussion from J [198]–[215] (CAB 181–184). That approach is consistent with the Explanatory Memorandum (JBA 659) and Second Reading Speech (JBA 683).
7. The contrast with s 272(2) of the Queensland *Criminal Code* drawn at AS [42]–[43], citing *Dayney* (JBA 468), does not assist the appellant. Section 272 is one of the code provisions *Zecevic* identified as treating original aggression as a matter of law. Parliament adopted the *Zecevic* formulation, not the code formulation. There is, accordingly, nothing to carve out.

Ground 2: The question was responsiveness, not exclusivity of belief

8. The respondent does not contend that s 322K(2)(a) requires a belief held to the exclusion of all other states of mind, and the Court of Appeal did not so hold. Rather, the Court concluded that GC's act was not a *response* to anything MC did: J [312] (CAB 196); RS [26]–[30]. The Court drew upon all of the relevant facts and circumstances in reaching the conclusion that GC's conduct was not a necessary response to anything that MC did, but instead a continuous, uninterrupted, murderous assault on MC.
9. Responsiveness is a statutory requirement and not a gloss: ss 322K(2)(b), 322L and 322I(2): J [210]–[211] (CAB 183); *Zecevic*, 662 (JBA 380). Self-defence cannot be used as a pretext to carry out a criminal purpose: *Nguyen* (JBA 582); *Massey* (JBA 480); *Lawson* (JBA 514); J [212] (CAB 183).

Ground 3: No evidence the shot was responsive to the stabbing

10. GC's intention was fixed before he reached the house: the “to-do” list recording “getting him alone”, “one bullet”, “body”, and “transport”, the borrowed car, the earlier surveillance, the hand-drawn map, and the loaded sawn-off rifle, two knives and gaffer tape. The finding that he was “irretrievably fixed on a course of conduct to kill” MC is not challenged: J [259]–[262] (CAB 190–191); RS [31]–[35].
11. The attack was single, short and continuous. There is no evidence that GC paused, recoiled or retreated, and within seconds of shooting MC he turned the rifle on Ms Silva: J [69], [274], [277]–[280] (CAB 162, 192–193).
12. That GC was mortally wounded (AS [4], [58]–[59]) is not evidence of what he believed, or to what his act was responsive. The wound locations tell against a threat he could see and assess: J [87] (CAB 165). An inference rising “no higher than speculation or surmise” cannot satisfy s 322I: *Robertson* (JBA 599); J [294] (CAB 194); RS [36]–[38].

13. The only direct evidence of GC's state of mind is his statement "she stabbed me", which indicates that he believed Ms Silva, and not MC, had stabbed him: J [297], [307] (CAB 194–195). The Court's conclusion, however, did not turn on this. The Court held that *even if* GC realised MC had stabbed him, he shot in pursuit of his original plan: J [312]–[313] (CAB 196).
14. The threshold determination under s 322I(1) is not an intrusion on the jury's role. It exists so that juries are not invited to speculate.

Notice of contention: MC's conduct was lawful conduct (s 322L(a))

15. If MC's use of the knife was "lawful conduct", s 322L(a) excluded self-defence for GC as a matter of law: J [188]–[190] (CAB 180). The trial judge so held. The Court of Appeal held that there was a reasonable, if weak, possibility that MC was not acting lawfully: J [248]–[251] (CAB 189). That holding was in error.
16. The Court's own findings identify the circumstances giving rise to MC's need to resort to lawful force in response to GC's obvious aggression: forced entry, immediate violence, an unquestionable indication that GC intended to do real harm, an entitlement in MC to defend himself, a need to react instantly to obviously imminent danger, and no expectation of calm reflection: J [243] (CAB 188–189). The conclusion at J [244] (CAB 189) does not follow from that reasoning, and the two were never reconciled.
17. MC armed himself with "the largest knife available" (AS [12]) *before* he opened the door, having been told that GC was approaching, in what the appellant accepts was a recent historic context of known hostility: AS [10]; RS [45]–[48], [55]. Those facts provide an ample evidentiary foundation for the conclusion that MC's apprehension of *at least* really serious injury was formed independently of when the rifle became visible.
18. The Court's consideration of s 322L only through the prism of whether MC may not yet have been aware of the firearm was, respectfully, an oversimplification and is apt to distract from the question the statute poses, which is whether, *in all of the circumstances*, MC's conduct was lawful. Those circumstances include the matters at J [243] which, taken collectively, required the answer that MC's resistance of GC was lawful conduct for the purposes of s 322L(a), so that GC could not have relied on s 322K.

Dated: 16 September 2026



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Jeremy McWilliams