IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 67/2024
[2024] NZSC 118

BETWEEN	LAYNE BRENT FORD Applicant
AND	THE KING Respondent

Court: Glazebrook, Kós and Miller JJ

Counsel: A J Bailey for Applicant
A J Ewing for Respondent

Judgment: 18 September 2024

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Ford and two other members of the Mongols gang visited Mr Geels, a member of the Road Knights gang, at his home. They brought with them a shotgun, intending to intimidate him. Their plan went awry. Mr Geels attacked them physically and drove them off his property. In the course of that counterattack, Mr Geels received a gunshot wound to his hip. A police search of the grounds later turned up a broken machete.

[2] Mr Ford and his co-defendant were tried and convicted for wounding with intent to cause grievous bodily harm. Mr Geels refused to give evidence; Mr Ford and his co-defendants elected not to do so. Nor did they give evidential interviews to the police. Mr Ford did however sign a statement that suggested two thin wounds to his torso had been caused by the machete. The sole witness who saw the incident did not

see the machete in Mr Geels' hands. Forensic evidence did not link the machete to the applicant.

[3] Judge O'Driscoll refused to leave self-defence to the jury.[1] He said there was no evidence that Mr Ford shot Mr Geels in self-defence. And if one of the co-offenders shot Mr Geels because he was attacking Mr Ford, there needed to be a plausible, credible narrative that they had done so because they were acting in self-defence. There was however no evidence by which it could be inferred that any of the defendants were acting in self-defence, as opposed to discharging the firearm in pursuance of the common agreement to intimidate Mr Geels. Accordingly, the Judge did not think there was a plausible and credible narrative to allow self-defence to be placed before the jury, for any of the defendants.

[4] The Court of Appeal agreed he was right not to do so, saying that the defence is not to be put if it requires the jury to speculate.[2] It relied on its prior decisions in *R v Tavete* and *R v Kerr*:[3]

> The general principle is not in doubt. Self-defence should be put to the jury where, from the evidence led by the Crown or given by or on behalf of the accused, or from a combination of both, there is a credible or plausible narrative which might lead the jury to entertain the reasonable possibility of self-defence.

[5] The applicant had argued there was an available narrative that the shot was fired in response to Mr Geels striking him with the machete. The Court considered that rested upon speculation. The location of the machete did not indicate one way or another its use when the appellants were at the property. While the evidence did not exclude the possibility that Mr Geels had used the machete, nor did it exclude the possibility that he had not. In the Court's view that simply left a gap in the evidence about whether the machete had anything to do with the discharge of the firearm, which was not met by any evidence actually led.[4]

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1 See *R v Wheeler* [2023] NZDC 9152 at [6] and [59]–[60].
2 *Ford v R* [2024] NZCA 239 (Mallon, Lang and Moore JJ) [CA judgment] at [45].
3 At [39] citing *R v Tavete* [1988] 1 NZLR 428 (CA) at 430. See also *R v Kerr* [1976] 1 NZLR 335 (CA) at 340 as cited in *Tavete*, above n 3, at 430–431.
4 CA judgment, above n 2, at [43]–[44].

[6] The applicant wishes to argue in this Court that the possibility that the machete had been used by Mr Geels was sufficient to require self-defence to be put to the jury.

Our assessment

[7] The criteria for leave are not made out in this application. We do not consider that what are now well-established principles relating to foundation for self-defence to be put to a jury require reconsideration by this Court.[5] No matter of general or public importance accordingly arises.[6] Nor do we consider there is a realistic prospect of this Court concluding that the Courts below misapplied those principles on the facts of this case so as to give rise to a miscarriage of justice.[7]

[8] A defendant seeking to rely on self-defence must identify evidence logically pointing to a particular threat, triggering a use of force which the jury might find objectively reasonable in the perceived circumstances. That depended here on the applicant pointing to evidence placing the machete in Mr Geels' hands prior to the shot being fired at him, in circumstances where that action could tenably amount to a reasonable use of force in response. Neither the Crown nor defence cases offered up such a narrative on which the defence might legitimately have been put to the jury. In those circumstances it is not necessary in the interests of justice for this Court to hear and determine a second appeal.[8]

Result

[9] The application for leave to appeal is dismissed.

Solicitors:
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5 See *Kerr*, above n 3, at 340; and *Tavete*, above n 3, at 430–431; and see for example *R v Wang* [1990] 2 NZLR 529 (CA) at 533–540; *R v Te Moni* [1998] 1 NZLR 641 (CA) at 650; *R v Karaitiana* [2007] NZCA 47 at [13]; *R v Sila* [2009] NZCA 233 at [28]; and *Herewini v R* [2023] NZCA 519 at [43]–[48].
6 Senior Courts Act 2016, s 74(2)(a).
7 Section 74(2)(b).
8 Section 74(1).