In the Supreme Court of New Zealand

I te Kōti Mana Nui o Aotearoa

SC19/2025

Between	**Manu Hori Iongi**
	Appellant
And	**The King**
	Respondent

Respondent's submissions on appeal

Date: 2 October 2025

Next event: 22 October 2025

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COUNSEL FOR THE RESPONDENT CERTIFIES THAT, TO THE BEST OF THEIR KNOWLEDGE,
THESE SUBMISSIONS CONTAIN NO SUPPRESSED INFORMATION AND ARE SUITABLE FOR PUBLICATION.

Contents

Respondent's submissions on appeal

May it please the Court:

1 Summary

1.1 The appeal concerns the sufficiency of evidence that resulted in Manu Iongi being found guilty of the manslaughter of Meliame Fisi'ihoi in the early hours of 15 January 2020.[1]

1.2 The Court is also asked to consider the jury directions, in particular whether the summing up of the defence case for the appellant, and the directions given on inferences, were adequate.

1.3 The Court of Appeal dismissed the appellant's appeals against conviction and sentence.[2] This Court granted leave for a second appeal (against conviction only) on the question of whether the Court of Appeal was correct to dismiss the appeal against conviction.[3]

1.4 The respondent submits the circumstantial evidence provided an entirely sound basis for the appellant's conviction for manslaughter and the directions given by the trial Judge were appropriate.

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1 The appellant's co-defendants (and cousins), Falala'anga Iongi (**Falala**) and Viliami Iongi (**Viliami**) were convicted of murdering Mrs Fisi'ihoi. They were also convicted of reckless discharge of a firearm with intent to cause grievous bodily harm and wounding with intent to cause grievous bodily harm in relation to a connected shooting on 4 December 2019. In keeping with naming conventions in proceedings to date, the appellant's co-defendants are referred to in these submissions by their first names, along with the witness, Havea Iongi (**Havea**).

2 *Iongi v R* [2024] NZCA 522. Volume 1 — Supreme Court Casebook (**SC Casebook**) at 8-57.

3 *Iongi v R* [2025] NZSC 73. SC Casebook at 6-7.

2 The evidence[4]

2.1 Falala, Viliami and the appellant were all members of a sub-group of the Crips gang called the "Three-Six" or "36" faction.[5] Another member was Stephen Fisi'ihoi, the deceased's eldest son.

Tensions between Falala, Viliami and Stephen Fisi'ihoi

2.2 Towards the end of 2019, tensions arose between Falala and Stephen Fisi'ihoi following a dispute over the exchange of methamphetamine for a gun. As a result of this dispute Falala and Viliami were involved in two confrontations at Stephen Fisi'ihoi's address of 73 Calthorp Close, Favona (where he lived in a portable cabin on the front lawn of the family home). After the first confrontation,[6] Stephen Fisi'ihoi sent a video of himself to Falala — in the video he was armed with a firearm and threatened to shoot Falala if he returned.[7] Despite this, on 4 December 2019, Falala and Viliami returned in Falala's black BMW. In the confrontation that day, Viliami shot at and seriously injured George Vuna (an associate of Stephen Fisi'ihoi's), and shot at Stephen,

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4 For a more fulsome summary of the evidence see the transcription of the Crown closing at Volume 9 — Court of Appeal Additional Materials (Vol. 2) (**AMs 2**) at 12-146. The respondent notes that the typed version of the Crown closing included from 557 of Volume 2 — Court of Appeal Case Book (**CoA**) is not a final version of the closing as delivered (it was provided to the trial Court to assist with transcription of the closing which was not completed until closer to the Court of Appeal hearing). However, the typed version may prove useful in assisting with any transcription errors identifed in the transcription of the closing in AMs 2.

5 Volume 4 — Court of Appeal Evidence (**NoE**) at 203 (Havea's evidence) and 462-463 (Stephen Fisi'ihoi's evidence).

6 The first confrontation involved Falala, Viliami and an associate Mapa Vuna visiting 73 Calthorp Close. On that occasion after Viliami "blind shot" Stephen Fisi'ihoi (hitting him in the back of the head), Stephen ran back into his cabin retrieved a baseball bat, and went outside and hit Viliami with it. Falala and Viliami drove off in Falala's black BMW: see NoE at 476 (Stephen Fisi'ihoi's evidence).

7 NoE at 478 (Stephen Fisi'ihoi's evidence).

missing him but smashing the glass on the front of his portable cabin instead.[8]

2.3 When spoken to by Police later that night, Stephen Fisi'ihoi did not provide the names of Falala and Viliami due to "gang code".[9] After a day or two, Stephen Fisi'ihoi went "on the run" and had no further contact with Falala or Viliami in the lead up to the death of his mother on 15 January 2020.[10]

2.4 The appellant is the first cousin of Falala and Viliami (their fathers are brothers). They lived near each other in Flat Bush.[11] Although the appellant was not involved in the shooting at 73 Calthorp Close on 4 December 2019, he joined Falala and Viliami on 15 January 2020 when they returned there a third time.

The killing of Mrs Fisi'ihoi

2.5 At 2:28am on 15 January 2020, Falala, Viliami and the appellant left Flat Bush and drove to Stephen Fisi'ihoi's address in Falala's BMW.[12]

2.6 With the exception of a stop lasting around five minutes at the Manukau Memorial Gardens (the cemetery in which Falala and

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8 As set out in fn 1, Viliami and Falala were also convicted of reckless discharge of a firearm with intent to cause grievous bodily harm and wounding with intent to cause grievous bodily harm in relation to these events. The respondent notes that Stephen Fisi'ihoi also gave evidence that Falala Iongi was carrying something during this altercation but he could not make out what it was: NoE at 485. Arbaaz Sheikh gave evidence that Falala (the driver) was also carrying a black shotgun (shorter than the one carried by Viliami) during the incident: NoE at 635-637.

9 NoE 492 (Stephen Fisi'ihoi's evidence).

10 NoE 493-494 (Stephen Fisi'ihoi's evidence).

11 Falala and Viliami lived 240 metres away from the appellant: CoA at 397 – Agreed Facts: Defendants at [16]-[18].

12 NoE at 1053 (DS Faga's evidence). Falala's cellphone was on flight mode during all relevant times of the evening. See evidence of Paulene Solofa Leota (NoE at 1230) and the total absence of data from Falala phone between 9.47pm on 14 January and 4.06am on 15 January 2020 (see the evidence of Detective Fox, NoE at 1365).

Viliami's mother and the aunt of the appellant was buried),[13] they proceeded directly to 73 Calthorp Close.[14]

2.7 At 2.42am Falala's black BMW was seen on CCTV on Robertson Road, shortly before the entry to Calthorp Close (a few minutes' drive from Stephen Fisi'ihoi's address).[15] At 2.48am a 111 call was made by Calthorp Close resident Alfred Lilo reporting he had heard a gunshot one minute earlier.[16]

2.8 The evidence at trial from neighbours established that a vehicle stopped near 73 Calthorp Close and two of its occupants got out. The vehicle's handbrake was pulled on, but the engine stayed running. A neighbour heard someone ask, "Are you home?" before hearing a gunshot. After the gunshot, two sets of footsteps were heard running back to the vehicle, a man was heard to say "hurry up", two car doors were heard to close, and the car then took off at pace.[17]

2.9 The fatal shot was fired from a shotgun, at a distance of 1-2 metres (between the muzzle of the gun and the window of the main dwelling).[18] The ammunition used was a blue coloured 12-gauge shotshell containing colourless Maxim Brand wadding, and size 7 to 7.5 led pellets. The shooter was likely standing between

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13 CoA at 397 – Agreed Facts: Defendants at [19]. For a relevant overview map of vehicle sightings as this time see Volume 5 — Court of Appeal Exhibits (**Exhibits**) at 463 and the evidence of DS Faga at NoE, 1060-1063. This evidence is summarised in the Crown closing, AMs 2 at 26-27.

14 See overview map of first and second sightings of Falala's BMW, Exhibits at 451; and accompanying evidence of DS Faga, NoE at 1052-1072.

15 NoE at 995 (DS Faga's evidence).

16 CoA at 399. The transcript to the 111 call is at 318-323 of Exhibits.

17 For a detailed summary of the evidence of the neighbours on Calthorp Close and the Crown position on the inferences to be drawn from their evidence when considered together, see the Crown closing, AMs 2 at 28-45; and the evidence of Jacinta Niulevaea, NoE at 94-95; Bertha Cooper, at 87; Vivicah Aumua, at 75-76; Lily Fa'aili, at 100; Ali Nasilai, at 69; and Alfred Lilo, at 29.

18 NoE at 937 (Angus Newton's evidence).

the edge of the portable cabin and a concrete path in front of the window.[19] No spent shot shell was found at the scene.

2.10 Mrs Fisi'ihoi's body was found on the couch below the window, her face just below the hole caused by the gunshot, her hand still holding the curtain ajar.[20]

2.11 At the same time as Mr Lilo's 111 call at 2.48am, the black BMW was picked up again by CCTV cameras travelling at pace on Robertson Road. The vehicle was tracked to Ōtara and the address of the defendants' cousin, Havea. The vehicle completed what Police estimated to be a 14 minute drive, if travelling at the speed limit, in only 9 minutes and 16 seconds, and was observed running red lights and overtaking vehicles. However, the driver remained forensically aware, slowing down for a speed camera on Great South Road, meaning no ticket was issued and no photograph was taken of the registration of the vehicle.[21]

Havea Iongi

2.12 At this point, the evidence of Havea, a cousin of all three defendants who lived in Ōtara, assumed prominence, as the Court of Appeal recorded:[22]

> [13] …[S]ometime between 3 and 4 am on 15 January, [Havea] and his partner were woken by Viliami Iongi who signalled to Havea to accompany him. Havea followed Viliami outside where he saw Falala Iongi in the driver's seat of his black BMW and Manu

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19 NoE at 938 (Angus Newton's evidence). See Exhibits at 126 for the photograph. A reconstruction carried out by Police on 13 February 2020 suggested a figure of a person standing inside the window would have been "clearly identifiable" to the shooter: NoE at 157-166 (DS Bull's evidence).

20 NoE at 929 (Angus Newton's evidence). Photographs of Mrs Fisi'ihoi's body are at 124-125 of Exhibits. There were occasions when Mrs Fisi'ihoi would stay up very late in the lounge, watching television or playing video games. On the night of 14 January 2020, her husband last saw her in the lounge sometime after 9:00 pm before he went to bed: NoE at 16-18 (Manase Fisi'ihoi's evidence).

21 See Exhibits at 473-479 and the evidence of DS Faga, NoE at 1009-1035. This evidence is summarised in the Crown closing, AMs 2 at 45-49.

22 SC Casebook at 13.

> Iongi in the front passenger seat. He described being asked by Falala to hold onto something, at which point Viliami, who was by this stage in the backseat, handed Havea a gun wrapped in a towel.[23] Havea said the barrel of the gun was hot like a "hot cup of tea". Havea also told the police the Iongi brothers looked panicked and that Manu Iongi was very quiet.

2.13 In particular, Havea gave the following evidence about the appellant:[24]

> A. He just, he was just, oh he just kept looking forward, quiet, um, yeah, was a bit, bit weird, yeah.
>
> Q. Does he not normally do that?
>
> A. Nah.
>
> Q. How was he normally around you?
>
> A. He normally says something.
>
> Q. Did he say "Hi" or anything like that to you?
>
> A. Nah, he was just quiet.

2.14 Inside the house, Havea saw that the gun he had been handed by Viliami was a black, sawn-off shotgun which looked "new" but also had a screwdriver sticking out of it.[25] He recognised it from an earlier occasion at Falala and Viliami's address in around October 2019.[26]

2.15 For a 10-minute period coinciding with the visit to Havea's address in Ōtara, the BMW was not seen on CCTV footage. It was next detected travelling back towards Flat Bush, and at 3:11am was captured on a camera on Donegal Park Drive (the street where the appellant lived).[27] The round trip took 43 minutes (including the

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23 Havea also said there was a screwdriver sticking out of the gun and that Falala asked him to watch out for the meakai (ammunition) that was wrapped in the towel: NoE at 221.

24 NoE at 222-223.

25 NoE at 221 and 227.

26 NoE at 229. This was a time when Havea was drinking with Falala and Viliami (and others) at their address. At a certain point Falala, Viliami and a number of others left but returned soon afterwards. Viliami had a shotgun and Falala had a bag with about 30 blue shotgun shells in it — see NoE at 244-247.

27 See overview map, Exhibits at 507; and the evidence of DS Faga, NoE at 1039-1051. This evidence is summarised in the Crown closing, AMs 2 at 48-51.

brief pause at the cemetery, the shooting, and the detour to Havea's house afterwards). For context, it was not until 3.15am that the first armed responders began approaching 73 Calthorp Close to investigate the reports of a gunshot (none of Meliame Fisi'ihoi's family in the address had woken up from the shot or discovered her body).[28]

2.16 The next morning Havea heard a news story about someone being shot in Māngere.[29] Concerned that the gun dropped off the night before was involved in the shooting, Havea messaged Falala asking him to pick up "his stuff".[30] Falala replied saying he could keep it.[31] However, about 15 minutes later, the appellant arrived (unannounced) and said that someone[32] had told him to come "pick it up".[33]

2.17 Havea went and got the gun from where he had hidden it in the ceiling.[34] While doing so, Havea saw some ammunition (one shotgun shell and four black and gold bullet shells taped together) fall from the towel that was wrapped around the gun.[35]

2.18 The appellant took the gun from Havea, said goodbye ("laters"), got into the passenger side of the "family van" he had arrived in, then drove off.[36]

2.19 Other evidence given by Havea relevant to the case against the appellant was:

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28 NoE at 122-144 (evidence of Constable Sparey).
29 NoE at 233.
30 NoE at 235-236.
31 NoE at 236.
32 The notes of evidence record "inaudible" where Havea said the name of the person who instructed the appellant. From the context, the respondent suggests it must have been Falala and observes this aligns with the evidence in Havea's formal written statement. See Court of Appeal Additional Materials – Pre Trial 07 at 81.
33 NoE at 238-239.
34 NoE at 239.
35 NoE at 239-241.
36 NoE at 242-243.

(a) Photographs taken from a TikTok video (the exact date of the video was unknown, but it was dated before 23 December 2019)[37] showed the appellant holding a black sawn-off single barrelled shotgun wrapped in a towel.[38] At trial, Havea identified the shotgun and towel in the photographs as the same as those he was handed by Viliami on 15 January 2020.[39]

(b) Havea recognised 5 rounds of black and gold coloured 0.38 ammunition (located by Police at the appellant's address on 11 August 2020) as being the same as black and gold ammunition wrapped in the towel.[40]

(c) Similarly, he recognised a blue shotgun shell (seen in a photograph found on the appellant's phone) as the "same" ammunition which Falala was carrying in a bag in around October 2019 (the same occasion referred to above at fn 26).[41]

Defence evidence

2.20 The appellant did not give or call evidence at trial. Both Falala and Viliami gave evidence but neither was cross examined by the appellant's trial counsel.

2.21 Falala and Viliami gave broadly consistent evidence. They denied any involvement in the shooting and said Havea was lying about them dropping off a shotgun to him. They said they had been

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37 NoE at 894 (Detective Sionepulu Chan's evidence).
38 NoE at 966-967 (Evidence of Police Armourer Daniel Millar).
39 NoE at 250-251. Photographs of the TikTok Havea was shown are at 343 of Exhibits.
40 NoE at 243-244. The photograph in question is at 346 of Exhibits.
41 NoE at 247-248. The photograph in question is at 345 of Exhibits. The photographs was of a live Eley Olympic 12-gauge shot shell of the type used in the shooting on 4 December and possibly also in the fatal shooting: see NoE at 968 (Evidence of Police Armourer Daniel Millar) and NoE at 941-942 (Evidence of firearms expert Angus Newton).

dealing drugs which was the purpose of their travels that evening and of their visit to Havea's address. They denied going to Calthorp Close or having a falling out with Stephen Fisi'ihoi. Importantly, as it was in stark contrast to Havea's evidence, both claimed the appellant had not been in the vehicle with them that night.[42]

3 First ground of appeal – unreasonable verdict

3.1 The appellant contends the jury's verdict was unreasonable because even if the jury accepted Havea's evidence (as it must have) that he was with Falala and Viliami in Falala's BMW after the shooting. The inference was not available that he was guilty of manslaughter. However, the inference plainly was available.

3.2 A verdict will be deemed unreasonable where, having regard to all the evidence, no jury could reasonably have reached the standard of beyond reasonable doubt.[43]

3.3 It is well-settled, and not questioned in this appeal, that in making that enquiry, an appellate court:[44]

(a) performs a review function — it does not substitute its own view of the evidence;

(b) must give appropriate weight to the advantages the jury may have had, especially in assessing the honesty and reliability of witnesses; and

(c) should recognise that the weight to be given to individual pieces of evidence is a jury function and that reasonable minds may disagree on matters of fact.

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42 Evidence of Falala Iongi: NoE at 1432-1452. Evidence of Viliami Iongi: NoE at 1566-1578.
43 *Owen v R* [2007] NZSC 102, [2008] 2 NZLR 37 at [15].
44 At [13].

3.4 The circumstantial evidence led at trial provided an entirely sound factual basis for the appellant's manslaughter conviction. It could be reasonably inferred from the evidence that the appellant was a knowing and willing participant in a planned retaliatory shooting at the Fisi'ihoi family home. The central evidence in support of this was:

(a) The appellant was in Falala's BMW with Falala and Viliami when they left Flat Bush at 2.28am and travelled to Calthorp Close. He will have heard, or been part of, all conversations in the car.

(b) With the exception of a brief stop near the Manukau Memorial gardens, it was a direct trip, arriving outside Calthorp Close at approximately 2.45am.

(c) There was a loaded shotgun and other ammunition in the vehicle.

(d) The last time Falala and Viliami had been to the address was in the early evening of 4 December 2019. On that occasion they parked the BMW on the road and both got out of the car to confront Stephen Fisi'ihoi. Viliami then shot and seriously wounded a visitor to the address, and fired shots at Stephen Fisi'i'hoi, but missed him, damaging the portable cabin where he lived instead.

(e) On 15 January 2020, when the BMW pulled up outside the address at about 2:45am, it did so slowly, leaving the car engine running and one of three occupants inside.[45]

[45] NoE at 94 (evidence of Jacinta Niulevaea).

(f) Two of the occupants left the vehicle, one carrying the loaded shotgun.

(g) One of the two who approached the portable cabin was heard to ask, "Are you home?"

(h) Moments later, at approximately 2:47am, the single fatal shot was fired through the living room window and Ms Fisi'ihoi was killed instantly.

(i) The two men ran back to the vehicle (one telling the other to "hurry up") and once they had shut their car doors, the vehicle took off at pace.

(j) They arrived at Havea's address in Ōtara around ten minutes later to drop off the murder weapon. Havea was summonsed to come out of the address by Viliami, and when he did, he saw the appellant was in the front passenger seat of the vehicle with Falala in the driver's seat. Havea was told to take the shotgun from Viliami (who was in the back seat behind Falala). Havea noticed all three of his cousins were out of sorts.

(k) Havea hid the gun in the ceiling and his cousins returned to Flat Bush.

(l) The appellant returned the next day to collect it.

3.5 In summary, the evidence supported the inference that following the failed attempt to shoot Stephen Fisi'ihoi on 4 December, the shooting on 20 January was a carefully planned response. The appellant's involvement was deliberate — only someone trusted by Falala and Viliami would have been included in the third trip to 73 Calthorp Close in such circumstances.

3.6 The following evidence provided further support for the Crown case that the appellant was a knowing and willing participant in the plan to carry out a retaliatory shooting at 73 Calthorp Close that evening, and not a passive bystander or unwitting occupant:

(a) His familial and gang connections with Falala and Viliami.

(b) His possession of a comparable shotgun (as seen in the TikTok video) at some point before 23 December 2019, which Havea considered to be the same as the one he had been given for safekeeping on the night, and which the appellant casually collected from him the next day.

(c) The photograph of a single live blue Eley Olympic 12-gauge shot shell on the appellant's phone[46] (which was consistent with the type of ammunition used in the 4 December shooting, and likely also the fatal shooting).[47]

(d) Police locating ammunition at the appellant's address in August 2020 (which to Havea resembled some of the ammunition wrapped in the towel with the murder weapon).

3.7 This evidence gave rise to three possible scenarios (and no more):[48]

(a) The appellant got out of the car and shot Mrs Fisi'ihoi.

(b) The appellant got out of the car but did not shoot Mrs Fisi'ihoi.

(c) The appellant remained in the car.

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46 NoE at 968 (Daniel Millar's evidence).

47 NoE at 941 (Angus Newton's evidence).

48 When more than one person is alleged to have been involved in the same homicide, it is not necessary for the evidence to show the "precise part" played by each defendant, so long as it shows each must have been criminally involved — see *Witika v R* (1991) 7 CRNZ 621 (CA) at 5.

3.8 The jury's verdict suggests it rejected [3.7](a) — or else it would have convicted the appellant of murder.[49] In each remaining scenario, there was a sound basis for the jury to find the appellant guilty of manslaughter (as a party).

3.9 In order to do so, it had to be satisfied beyond reasonable doubt that:

(a) under s 66(1) of the Crimes Act 1961, he:

(i) intentionally helped, encouraged or otherwise procured one of his cousins to fire a shotgun at Mrs Fisi'ihoi; and

(ii) when he did so, he knew that the shooter would cause more than trivial harm; or

(b) under s 66(2):

(i) he formed a plan with Falala and/or Viliami to fire a shotgun at a person at the address and to assist each other in carrying out that plan;

(ii) he agreed with Falala and/or Viliami to help each other achieve that plan;

(iii) Falala and/or Viliami shot Mrs Fisi'ihoi in the course of carrying out that plan; and

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[49] A possible and logical pathway to this conclusion would be that the positioning of the appellant and his co-offenders in the car when it arrived at Havea's (Falala driving, the appellant in the front passenger seat, Viliami in the back with the shotgun) was the same as when it left Calthorp Close. In turn, this would suggest the jury likely considered that the appellant got of the car (along with Viliami) but did not shoot Mrs Fisi'ihoi. This was the basis upon which Powell J sentenced the offenders — see SC Casebook at 61-62 ([15]-[16]). The question trail did not allow for the possibility that the jury could find any of the defendants guilty of manslaughter as the principal offender (that is, the one who fired the shotgun) — see CoA at 828-839. This was appropriate — given the close range of the shooting and the nature of the firearm. The one who shot Mrs Fisi'i'hoi must have done so with murderous intent.

(iv) when this happened, he knew a probable consequence of the plan was that the shooter would inflict more than trivial harm.

3.10 Returning to the elements of s 66(1), if the appellant remained in the car, an inference was available to the jury that he did so to assist in the offending: either as a getaway driver, lookout or further muscle if needed.

3.11 And if (as seems more likely based on the evidence) the appellant was the one who got out of the vehicle with the shooter, the jury could readily have found him to have intentionally assisted the shooter by his presence "allow[ing] the principal to proceed more effectively with his criminal plan"[50] in the same way that Falala had been a party to the shootings at Calthorp Close carried out by Viliami on 4 December 2019.

3.12 There was a clear basis for the jury to conclude that, by his presence in the car and at the scene, the appellant was not merely a passive bystander but intentionally encouraged or emboldened the shooter, thereby allowing him to proceed more effectively with his plan.[51] Even if he said nothing, the jury could have drawn the simple inference (as Powell J did in sentencing the appellant)[52] that the appellant's presence was intended to provide "muscle", should anything go awry in the plan[53] to shoot someone at the address.

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50 *Larkins v Police* [1987] 2 NZLR 282 (HC) at 288.

51 See for example the comments of the Court of Appeal in *R v Duncan* [2008] NZCA 365 at [10], [12] and [15] about what a jury may be able to infer from the voluntary and deliberate presence of a party.

52 At [50] of Powell J's sentencing notes: SC Casebook at 77.

53 As had happened in the first confrontation at Calthorp Close in 2019 when after Viliami had "blind shot" Stephen Fisi'ihoi from behind, Stephen Fisi'ihoi had retrieved a baseball bat and struck him: NoE at 476 (Stephen Fisi'ihoi's evidence).

3.13 The appellant contends it was a reasonable possibility that he was nothing more than a passive bystander.[54] However, it was not unreasonable for the jury to reject that submission. This was not a case like *Kuru v R* where a weak Crown case presented two equally available inferences to the jury.[55]

3.14 As the Court of Appeal observed, the suggestion that the appellant was a passive bystander is difficult to reconcile with the wider circumstances of the offending.[56] Unlike, in *Kuru v R*, there was no evidence supporting the suggestion that the appellant was at the scene by chance.[57] By contrast, the evidence that all three defendants had travelled to the address in the early hours of the morning, armed with a shotgun and against the backdrop of hostilities with Stephen Fisi'ihoi, provided a clear evidential basis for the jury to be sure that this was a planned retaliatory attack, which all three men were aware of and participated in. The appellant's continued involvement by collecting the murder weapon the next day provided strong further support for the Crown case that he had been a knowing and willing participant, not somebody who had been caught in the wrong place at the wrong time. The jury was entitled to be sure that the inferences the Crown invited them to draw were the correct ones. These

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54 The appellant relies on *R v Newton* [2024] NZHC 1411 as support for the proposition that inaction by one present at the scene of an assault could not amount to encouragement. However, that case rested on a very different factual basis to this one. At [17] Mander J observed there could have been sufficient evidence to draw the inference that the defendant intended to abet the assault if he had been part of the group [of other defendants] that arrived together at the address where the assault took place. His Honour also highlighted the importance of the evidence that Mr Newton did not remain involved in the alleged offending after the assault by leaving with the other defendants when they took the deceased away from the scene at [20].

55 *Kuru v R* [2024] NZSC 184, [2024] 1 NZLR 985 at [284].

56 *Iongi v R* [2024] NZCA 522 at [90] — SC Casebook at 38.

57 *Kuru v R* [2024] NZSC 184, [2024] 1 NZLR 985 at [286]-[288] where there was evidence that Mr Kuru could have been in the vicinity of the offending after leaving his home address due to an appointment at a nearby school.

inferences were logical conclusions based on the evidence and were not, as the appellant contends, the product of speculation.[58]

3.15 Finally on the first ground, the jury's verdict of manslaughter (not murder) did not result in any sort of logical fallacy. It was reasonable for the jury to find the appellant had joined in a plan to fire a shotgun at someone at Calthorp Close, without being sure they foresaw a killing with the necessary mens rea.[59]

3.16 To find the appellant guilty of murder as a party the jury had to be sure that he either knew the shooter meant to cause bodily injury to that person knowing their actions were likely to cause death (s 66(1)) or that a probable consequence of carrying out the plan was a fatal shooting and that the shooter would kill someone with murderous intent (s 66(2)).[60] This is a high standard and it is not unreasonable that the jury were sure the appellant was a willing participant in a plan to fire a shotgun at a person at 73 Calthorp Close but not sure that he had the necessary high level of foresight/knowledge required to convict him of murder as a party. Relevant evidence that could have influenced the jury's decision on murderous intent includes:

(a) First, the appellant was not previously involved in the dispute between Falala and Viliami and Stephen Fisi'ihoi (in particular, the earlier shooting in December 2019).

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[58] The respondent further submits the suggestion that the jury was speculating (or not carefully considering the task before them) is undermined by the obvious careful consideration they gave to the appellant's mens rea in finding him not guilty of murder but guilty of manslaughter.

[59] The respondent notes in this regard that the jury had heard evidence that in the shootings on 4 December 2019, Mr Vuna was shot and wounded but not killed, and the shot meant for Stephen Fisi'i'hoi did not hit him but struck his portable cabin instead.

[60] See the question trail — CoA at 838.

(b) Second, the appellant was younger (18) than his co-offenders — Viliami was 20 and Falala 27. This was something emphasised in counsel's closing address on his behalf.[61]

3.17 Through its verdict of manslaughter, the jury was sure that the appellant knew the shooter would cause more than trivial harm (s 66(1)) or that a probable consequence of the plan to fire a shotgun at a person at the address was that the shooter would inflict more than trivial harm (s 66(2)).[62]

3.18 As the Court of Appeal found, the verdict may have been generous to the appellant.[63] That does not mean it was unreasonable or based on any fallacy of logic.

4 Second ground of appeal – deficiency in summing up

Ground A – insufficient summary of the appellant's case

4.1 Powell J's summing up did not involve distinct summaries of each side's case. Rather his Honour, in taking the jury through the question trail, set out each party's position in respect of the key enquiries the jury had to make. In the context and circumstances of this case this was an appropriate course of action and a more detailed summary of the appellant's case was not required.

4.2 Where a summing up is challenged on appeal, its adequacy must always be assessed as a whole[64] and in the context of the trial and the issues that arose.[65]

4.3 In summing up, a trial Judge is required to clearly and fairly put the contentions of either side — each case should be summarised

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61 See, for example, CoA at 770.
62 See the question trail at CoA at 839.
63 At [98], SC Casebook at 40.
64 *R v Wanhalla* [2007] 2 NZLR 573 (CA) at [27], citing *Walters v R* [1969] 2 AC 26 at 30.
65 *Ahsin v R* [2014] NZSC 153, [2015] 1 NZLR 493 at [167].

at least as to their broad form in a balanced and clear way.[66] The level of detail in a summing up should be a matter for the trial Judge, and it is unnecessary for the Judge to effectively repeat closing addresses.[67] As the Court of Appeal commented in *R v Keremete*:[68]

> [18] … A judge's summing up must identify the fundamental facts in issue, be balanced in its treatment of opposing contentions with respect to those facts, and leave the jury in no doubt that the facts are for them and not for the judge. Rival contentions with respect to the factual issues will normally be summarised … but there is a wide discretion as to the level of detail to which the judge descends in carrying out that task. Treatment of matters affecting the cogency of evidence is not required as a matter of law …
>
> (Citations omitted)

4.4 It was permissible for the Judge to give a general overview of the defence case rather than a granular analysis in a case of this nature.[69] In the circumstances of this case, it is difficult to see how the Judge could have summarised the cases of the parties more fulsomely without repeating simply the closing addresses, which he was not required to do.

4.5 The prosecution case relied on multiple threads of circumstantial evidence (distilled from a lengthy Police investigation) led against three defendants across several weeks of hearing time.

4.6 In closing, counsel for the appellant vigorously challenged the reliability and credibility of Havea's evidence and contended that, even at its highest, it could not support the inference that he was involved in the killing of Mrs Fisi'ihoi (merely that he was in the BMW).

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66 *Waters v R* [2018] NZCA 84 at [7] and [9].
67 *McGhee v R* [2012] NZCA 345 at [18].
68 *R v Keremete* CA247/03, 23 October 2003.
69 SC Casebook at 43-44.

4.7 The real contest between the parties was on the inferences that could be drawn from the evidence. The prosecution set out a number of factual assertions, the threads of its circumstantial case, and encouraged the jury to draw particular inferences from those factual assertions. Other than the evidence of Havea, the appellant did not challenge those factual assertions per se. Rather, his defence was that the inferences the respondent sought to draw were not available. If all of counsel's submissions in this regard were repeated by the Judge it would also have been necessary to summarise all of the corresponding threads of the Crown's evidence which formed the basis of its circumstantial case. Due to the factors set out above, to take that approach would have risked the appearance of imbalance between the cases for the Crown and the appellant.

4.8 Furthermore, in a case where the appellant did not give or call evidence, positing a series of hypotheticals in his favour (which the appellant suggests the Judge should have done) would have risked inviting the jury to speculate. Speculation in aid of a defendant is no more permissible than for the prosecution.

4.9 In any case, it will be clear to this Court that it was the evidence of Havea which formed the lynchpin of the case against the appellant. His evidence was thoroughly challenged in both cross-examination and closing addresses. Powell J squarely addressed this dispute in his summing up, providing a balanced and concise summary of the key battleground between the parties at paragraphs [123] and [124] of the summing up.[70]

[70] CoA at 817 (at [123]-[124]). His Honour also summarised the competing narratives advanced by Falala and Viliami as to why they visited Havea that evening at [125].

4.10 Given this, and the contents of the closing addresses, the jury would have been in no doubt as to what the competing contentions of the parties were. It could scarcely be said that Powell J's summing up favoured one side over the other.

4.11 The appellant's defence, and in particular the theory that the jury could not exclude the reasonable possibility that he was a passive bystander, received further emphasis after the summing up. Shortly after releasing the jury, at the request of the parties and with their agreement as to the content - Powell J reemphasised the thrust of the appellant's defence.[71]

> [4](b) Secondly, and likewise, those summaries that I gave you also apply in the same way to Manu Iongi but in the event that you reject Havea Iongi's evidence that Manu Iongi was in the BMW there is no other evidence of involvement. Alternatively, even if Havea Iongi 's evidence was accepted and Manu Iongi was found to be in the car, I remind you of Ms Hogan's submissions that there is otherwise no evidence by which Manu Iongi could be inferred as being anything other than a "passive bystander", and that in any event, there was insufficient evidence to support any conclusion or inference that Manu Iongi had the necessary intention in terms of any of the alternatives in Question 11. What I am doing is just setting out, again, in a slightly more detailed way the summary of Manu Iongi's position on that issue and as I said throughout my summing up, I was not intending to go through in detail the detailed submissions that all counsel made about all of the issues.

4.12 Given the totality of the directions given, Powell J's summing up, which sketched out the inferences the respondent invited the jury to draw and repeated the appellant's assertion that there was an insufficient basis for the same, was balanced and an appropriate summary of the case.[72]

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[71] CoA at 826-827 (at [4](b)). As shown in Bench Note 5 (AMs 2 at 8-9) there were two chambers discussions after the jury retired, and before they were recalled by Powell J. In that time, Powell J circulated a draft of the proposed addendum to counsel, before delivering it to the jury – counsel identified no issues with it: see, in particular, AMs 2 at 163-164.

[72] The addendum focussing on the "passive bystander" branch of the appellant's defence ensured there was no risk of the error that the Court of Appeal identified in *R v Shipton* [2007] 2 NZLR 218 (CA) at [54]-[55] of the defences of all defendants being simply rolled into one. The addendum ensured the different footing of the one part of the defence for the appellant was clearly isolated and identified for the jury in the summing up.

Ground B – insufficient directions on circumstantial evidence and inferences

4.13 The appellant submits insufficient directions were given on circumstantial evidence and the summing up gave the impression that the jury were required to choose between the inferences suggested by the Crown (and convict) or the inferences suggested by the defence (and acquit).

4.14 The appellant therefore submits that a *Hodge* direction should have been given to ensure that the jury understood that if they considered it was a reasonable possibility that Manu Iongi was merely a passive bystander he must be acquitted.[73]

4.15 The respondent submits that the standard directions given by Powell J on the burden of proof, circumstantial evidence and inferences were adequate, further direction was not required and the established approach to directions on circumstantial inferences should not be altered by this Court.

The directions on inferences in this case

4.16 The directions in summing up on the burden and standard of proof were clear and in line with *R v Wanhalla*.[74] The directions were further affirmed in short form later in the summing up when working through the question trail.[75] The direction included the direction that if the jury considered the defence argument was "reasonably possible" then they would not be satisfied beyond

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[73] *R v Hodge* (1838) 2 Lew CC 227. The direction as set out at [6.11] of the appellant's submissions is that the jury must be satisfied "not only that those circumstances were consistent with his having committed the act, but they must also be satisfied that the facts were such as to be inconsistent with any other rational conclusion than that the prisoner was the guilty person".

[74] *R v Wanhalla* [2007] 2 NZLR 573 (CA). CoA at 796-797. The tripartite direction was also given in relation to Falala and Viliami giving evidence at trial: CoA at 809-810.

[75] CoA at 812.

reasonable doubt, and that they "must give the benefit of [a] reasonable possibility to [the] defendant".[76]

4.17 His Honour also gave standard directions on circumstantial evidence and inferences.[77] The Judge made it clear the Crown was inviting the jury to rely on inferences and that the case "derives its force from the presence of a number of strands of evidence".[78] It was clearly explained to the jury that inferences are not guesses or "speculation" but "conclusions that you draw from facts that you accept as reliably established".[79] The direction further reaffirmed that "ultimately you need to be persuaded beyond a reasonable doubt … if you are to convict all or any of the defendants of all or any of the charges they face".[80]

4.18 Later in his summing up his Honour directed the jury that a person is only criminally liable (as a party, under s 66(1)) if they "intentionally helped, encouraged or otherwise procured" the relevant act, and that "being a mere passive bystander is insufficient" (with specific reference to counsel for the appellant's submission on this point).[81]

4.19 His Honour also referred to the defence position that the evidence was insufficient to draw the inferences on intention advocated for by the Crown,[82] and the appellant's submission that there was insufficient evidence to support any conclusion or inference that he had the necessary intention.[83]

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76 CoA at 767.
77 CoA at 804-805 at [66]-[70].
78 CoA at 805 at [69].
79 CoA at 804-805 at [67], [68] and [69].
80 CoA At 805 at [70].
81 CoA at 814 at [110].
82 CoA at 820 at [134].
83 CoA at 821 at [140].

4.20 As set out above the addendum to the summing up was a reminder about the appellant's submission that there was insufficient evidence to infer he was anything but a passive bystander and that the evidence was insufficient to show he had the necessary intention.

4.21 The appellant's trial counsel indicated they were content with this addendum, noting that it "sufficiently encapsulate[d] the case" in the in-chambers discussions before it was delivered to the jury.[84]

4.22 Similarly, the Crown closing emphasised that inferences are not speculation or guesswork, but logical conclusions borne from facts they found proven and reminded the jury of the burden and standard of proof.[85] The Crown also explained that the defence would likely disagree (strongly) with the inferences the Crown was asking the jury to draw,[86] and referred to the possible defence theory of the appellant being "brought along for the ride", "surprised by the shooting" or "unaware of the purpose of the trip".[87]

4.23 In a comprehensive closing address, counsel for the appellant also explained:[88]

(a) The burden and standard of proof.

(b) That even if the jury were sure the appellant was in the BMW at Calthorp Close that evening, they could not be sure he was anything more than a passive bystander and therefore had not committed the necessary acts of assistance or

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84 AMs 2 at 169.
85 AMs 2 at 16-18, 127 and 128.
86 AMs 2 at 17.
87 AMs 2 at 143 and 145.
88 CoA at 763-778.

encouragement and did not have the necessary intention and knowledge.

(c) That inferences may be drawn only from proven facts if they follow logically from those facts; and that speculation and guesswork were not allowed.[89] That where two inferences of equal weight were open, to draw either one would amount to guesswork and was impermissible.[90]

(d) There were two inferences that the appellant said *could* be drawn from Havea's evidence, taken at its highest — that the appellant got into the car and that he stayed in the car.[91]

4.24 Counsel concluded her closing address by reminding the jury that the appellant could not be found guilty unless they were sure he was more than a passive bystander, and of the need not to speculate:[92]

> Even if you believe Havea you certainly cannot be sure or certain that Manu was involved in the murder. Remember you have to be sure beyond reasonable doubt that he undertook a criminal act.
>
> Mere presence in the vehicle is not enough. To be guilty of murder, Manu had to do something, be the shooter, do a helpful act, such as drive, join a plan to shoot and if he was helping or joined a plan for murder, he also had to know a shooting was going to happen and for manslaughter he also had to know harm was going to be caused to someone. You cannot speculate you cannot guess.
>
> There is no evidence upon which you can be sure beyond reasonable doubt that Manu committed a criminal act and that at that time he had the requisite intention and knowledge. In summary, I ask you to find Manu not guilty of this charge. Not guilty of murder, not guilty of manslaughter. Manu was not involved in the tragic killing of Ms Fisiihoi.

4.25 The jury therefore received repeated reminders about the appropriate approach to drawing inferences from the evidence,

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89 CoA at 770 and 772.
90 CoA at 772.
91 CoA at 773-778.
92 CoA at 788-789.

the burden and standard of proof and the central planks of the case for the appellant. They were reminded not only of the submission that they could not rely on the evidence of Havea but also of the submission for the appellant that even if Havea's evidence was accepted, the Crown could not exclude the inference that the appellant was merely a passive bystander along for the ride that evening.

Standard directions on circumstantial evidence

4.26 In general, the position has been to discourage detailed jury directions on circumstantial evidence.[93] And the central focus has been on ensuring the jury "received practical and fair assistance as to how particular parts of the evidence may help or tell against or even positively exclude the proof of a case beyond reasonable doubt".[94]

4.27 Given the need to focus the jury on the facts of the case at hand, the simple direction that the jury is "entitled to draw inferences, but that such inferences should be logical inferences from proven facts, not mere speculation or guesswork" has long been preferred.[95] As set out above, Powell J's inference directions met this requirement.

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93 *R v Puttick* (1985) 1 CRNZ 644; *R v Hart* [1986] 2 NZLR 408 (CA) at 413; *Do v R* [2024] NZCA 97 at [23]-[25]. The central concern being that elaborate and/or abstract directions risk confusing, rather than assisting, the jury.

94 *R v Hart* [1986] 2 NZLR 408 (CA) at 413.

95 *R v Puttick* (1985) 1 CRNZ 644 at 647. The respondent notes that the Criminal Jury Trials Bench Book at [7.26.2] recommends the term "established" facts is used as there is no standard of proof required for individual pieces of circumstantial evidence. A further important principle in this area is that it is the combined effect of the individual items of evidence that is important, and it is in relation to this combined effect of the evidence as a whole that the jury will be directed in relation to inferential reasoning: see for example *H (CA267/2022) v R* [2022] NZCA 294 at [35]. See also *Dunn v R* [2025] NZCA 216 at [68]-[73] and the recent discussion of the proof required for individual strands of circumstantial evidence in *Watson v R* [2025] NZCA 455 at [475]-[482] and [937]-[939].

Choosing between inferences suggested by the Crown and defence

4.28 There is nothing out of the ordinary or unduly complex about the jury being asked to draw different inferences from established evidence, as they were by the Crown and defence in this case. As the Court of Appeal in *Hutchins v R* found, it is open to the jury to conclude that only one inference is reasonably open on its assessment of the evidence, or that one inference is of much greater weight. The "possibility of drawing two different inferences from competing facts does not preclude the jury from drawing any inference at all".[96]

> [31] .... The important point is to be clear to the jury that it must only draw logical conclusions from proven facts and must not speculate or guess...

4.29 Likewise, the Court of Appeal in *R v Seekamut*[97] emphasised that "the mere fact that some of the circumstances might arguably permit an inference inconsistent with guilt is not enough [to acquit]".[98] It is for the jury to "assess the whole of the evidence and in so doing may conclude that a suggested alternative is not reasonably tenable".[99]

4.30 This was not a weak Crown case where choosing between inferences involved impermissible speculation.[100] Once the jury accepted Havea's evidence that the appellant was in Falala's BMW that night, there was no leap in logic to concluding he was also willingly and knowingly involved in the planned shooting. The jury

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[96] *Hutchins v R* [2016] NZCA 173 at [31]; leave to appeal declined *Hutchins v R* [2016] NZSC 117, although the ground regarding directions on inferences does not appear to have been pursued in the application for leave.

[97] *R v Seekamut* CA82/03, 10 July 2003; adopted more recently in *Gladwin v R* [2014] NZCA 165 at [33]-[35].

[98] *R v Seekamut* CA82/03, 10 July 2003 at 21.

[99] *R v Seekamut* CA82/03, 10 July 2003 at 21.

[100] *Kuru v R* [2024] NZSC 184, [2024] 1 NZLR 985 at [284].

were entitled to prefer the inferences advocated for by the Crown and to find he was not a passive bystander in such circumstances.[101]

Was a Hodge direction required?

4.31 Although further direction on the burden of proof or inferences was not sought at trial, the appellant now submits that a *Hodge* direction was required.[102] Such a direction would have told the jury that the Crown was required to prove the facts were consistent with the appellant's guilt and were also inconsistent with the conclusions the defence invited the jury to reach.

4.32 The general approach to the use of a *Hodge* direction in New Zealand was recently summarised by the Court of Appeal in *Dunn v R*.[103] The Court of Appeal has referred to this direction as being "desirable in certain circumstances" but no New Zealand court has found it is required as a matter of law and that "it appears since 1986 the direction has seldom, if ever, been given".[104] The purpose of the direction seems to be to provide assistance in the application of the burden and standard of proof and to prevent the jury from engaging in speculation. Neither issue was engaged in this case.

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[101] The respondent rejects the submission at fn 103 of the appellant's submissions that the Crown's reference in closing to the implausibility of any of the defendants being a passive bystander given all of facts of this case was improper. The Crown was invoking standard circumstantial reasoning drawing on the many strands of its circumstantial case and the submission did not engage the risks identified in the cases/literature on the prosecutor's fallacy cited by the appellant. The respondent notes that the specimen direction on circumstantial evidence in the Criminal Jury Trials Benchbook at [7.3.3] states (as at 29 September 2025) "the logic of a circumstantial case is that the defendant is either guilty or is the victim of an *implausible* and unlikely series of coincidences" [emphasis added].

[102] *R v Hodge* (1838) 2 Lew CC 227. As identified by the appellant at [6.17] the Criminal Jury Trials Bench Book does not include reference to a *Hodge* direction.

[103] *Dunn v R* [2025] NZCA 216. Mr Dunn has applied for leave to appeal to the Supreme Court (SC 64/2025). A decision on the leave application has not yet been made.

[104] *Dunn v R* [2025] NZCA 216 at [74]-[78].

4.33 As identified in *Dunn*, the *Hodge* direction can be seen as "a rephrasing of the concept of reasonable doubt in the language of consistency".[105] Given the clear and complete directions on the burden of proof given by Powell J, a *Hodge* direction would have added little, if anything, and would have risked confusing the jury. The risk of speculating[106] was already adequately addressed by the standard directions given by the Judge.[107] Accordingly, the respondent submits that this is not one of the elusive category of cases referred to by the Court of Appeal in *R v Hart* in which a *Hodge* direction is appropriate.[108]

4.34 The jury's verdict — that the appellant "intentionally helped, encouraged or otherwise procured one of the other defendants to fire a shotgun at a person at 73 Calthorp Close" or "formed a plan with the other defendants to fire a shotgun at a person at 73

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[105] The respondent notes the suggestion at [75] that the *Hodge* direction is a rephrasing of the concept of reasonable doubt. This suggestion is supported by comments in the Judicial College of Victoria Criminal Charge Book [3.6] "Circumstantial Evidence and Inferences". Paragraph [8] listing a possible *Hodge* direction is cited in the appellant's submissions at [6.23] during an overview of the approach in Australia to directions on circumstantial evidence, however the explanation of those directions at [9] states that "these directions stem from the general requirement that guilt must be proved beyond reasonable doubt. They simply convey the meaning of "beyond reasonable doubt" in cases involving circumstantial evidence. They do not reflect a separate rule that operates in such cases". The Criminal Charge Book of Victoria at [32] further notes that "while there is little case-law on the need for these directions, the model direction in this Charge Book includes these warnings as part of the explanded direction on circumstantial evidence".

[106] As set out by the appellant, the concerns identified in *R v Hodge* (1838) 2 Lewin 227, 168 ER 1136 were "the proneness of the human mind to look for – and often slightly to distort the facts in order to establish such a proposition [guilt] – forgetting that a single circumstance which is inconsistent with such a conclusion, is of more importance than all the rest, inasmuch as it destroys the hypothesis of guilt".

[107] Reinforced by both Crown and defence closings. As in *Cameron v R* [2010] NZCA 411 at [85], the concerns underlying a *Hodge* direction were met in this case by the orthodox directions on circumstantial evidence and the Judge's firm direction on the need for proof beyond a reasonable doubt. In relation to statement in *Cameron* (at [85]) that there are "two potential lines of authority on whether or not a *Hodge* direction is required" the respondent with respect submits that only the line represented by the decision of the Court of Appeal in *R v Hart* [1986] 2 NZLR 408 (CA) at 413 referred to above dealt in any depth with the appropriateness of a *Hodge* direction in summing up to the jury. In the remaining decisions cited, a *Hodge* direction was referred to incidentally as part of a discussion of the test for unreasonable verdicts more generally. See for example *R v Ramage* [1985] 1 NZLR 392 (CA) at 393 which is cited in *R v Manu'ula* [2007] NZCA 82 at [8].

[108] The respondent notes that the Court in *R v Hart* [1986] 2 NZLR 408 (CA) was considering a *Hodge* direction in a very different context than now exists where the more fulsome directions on the burden of proof outlined in *R v Wanhalla* [2007] 2 NZLR 573 are given to juries.

Calthorp Close and to assist each other in carrying out that plan" — necessarily involved a firm rejection of the reasonable possibility that he was passive bystander only.[109] There was no risk that the jury did not understand that to reach this conclusion, they needed to find the alternative conclusion contended for by the appellant was not a reasonable possibility.

Approaches in other jurisdictions

4.35 The appellant provides a summary of authorities and benchbook guidance on the approach to directions on inferences in the United Kingdom, Australia and Canada.[110] A degree of flexibility and discretion is available to the trial Judge in all jurisdictions, provided that in a circumstantial case: the central inferences contended for by each party are understood; the burden of proof is adequately explained to the jury; with a direction that inferences must only be logically drawn from established facts; and there is a direction not to speculate. Powell J's directions in this case accorded with those fundamental requirements.

4.36 The respondent notes that no jurisdiction *requires* that a *Hodge* direction be given in cases involving circumstantial evidence. While there may be slight differences in judicial practice,[111] the respondent submits they are not such to justify a change to the established approach in New Zealand.[112]

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[109] A defence submission that was reinforced to the jury by Powell J in the addendum to his summing up immediately before they retired to deliberate.

[110] Appellant's submissions at [6.18]-[6.28].

[111] It appears that is a high level of consistency of practice across the jurisdictions canvassed. The respondent also notes the comments in *Mahomed v R* [2011] NZSC 52, [2011] 3 NZLR 145 at [80] that New Zealand appellate courts have been less prescriptive than their Australian and Canadian counterparts regarding summings up and "in particular, far less enthusiastic about requiring particular forms of direction to be given in respect of commonly occurring issues".

[112] Encompassing the directions in *R v Wanhalla* and the standard directions on inferences.

4.37 The respondent therefore submits the summing up in this case was adequate and the established approach to directions on circumstantial evidence and inferences should not be altered by this Court.

5 Conclusion

5.1 The respondent submits that the appeal should be dismissed.

Date: 30 September 2025

Signature: .....

N E Walker | H D Benson-Pope | T C T Riley
Counsel for the respondent

To: The Registrar at the Supreme Court of New Zealand

And to: K E Hogan | T Hu
Counsel for the appellant