
IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC108/25

BETWEEN

JULIUS TE HIVAKA

Appellant

AND

THE KING

Respondent

RESPONDENT SUBMISSIONS ON APPEAL AGAINST CONVICTION

30 June 2026



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INTRODUCTION

1. On the morning of 3 June 2022 Mr Te Hivaka and Mr Dodds went to Harold Moodey Park for one purpose: to rob Mr McIntosh, a busy low-level drug dealer who had recently won money at the pokies.
2. The defendants stayed up all night planning to rob Mr McIntosh. His estranged partner, Ms Baker, assisted the planning. She may not have known all the details of the robbery, but the two men did. Before meeting Mr McIntosh at the park, Mr Dodds and Mr Te Hivaka had with them a large sawn-off rifle to ensure Mr McIntosh's compliance. In the course of the robbery, Mr Dodds shot and killed Mr McIntosh. That was not an unforeseen consequence, but the exact outcome they foresaw could well happen when a loaded firearm is used to threaten and rob a drug dealer in the close confines of his own car.
3. Mr Dodds and Mr Te Hivaka were both found guilty of murder following trial by jury. One of the routes to murder for Mr Te Hivaka was common purpose liability pursuant to s 66(2) of the Crimes Act 1961 ("the first route"). No complaints are made about the other routes on this appeal.
4. Justice Lang gave unimpeachable directions on the first route: s 66(2) and s 167(b), *reckless murder*, OR, s 66(2) and s 168(1)(a), *murder by causing grievous bodily injury for the purpose of committing the offence of robbery*. The fact this Court's decision in *Burke* was released after the jury's verdicts changes nothing affecting this conviction.
5. The statutory definitions for murder are specific and exacting. *Burke* was a manslaughter case where the directions to the jury were not as clear as they needed to be and where, as a matter of evidence, the jury were not necessarily sure the appellant knew about the presence of a weapon. On the facts and on the way that case was put, knowledge of the knife needed to be treated differently. Those issues do not arise here and *Burke* is not engaged. In considering this appeal, the Court should be guided by long-established doctrinal principles and the plain words of the statute. That approach demonstrates that no risk of a miscarriage arises and the Court of Appeal was right to dismiss the conviction appeal.

Summary of respondent's submissions

6. The Judge's directions on common purpose liability, and knowledge of the weapon, must be understood in the context of the trial evidence. These submissions therefore start by addressing the appellant's second ground of appeal.
7. Evidence sufficient to satisfy the jury it could be "sure" there was a plan to rob Mr McIntosh, and that the men knew about the gun and therefore foresaw harm of the type that occurred "could well happen" in the prosecution of the plan, comes from:
 - 7.1 Numerous discrete details and pieces of evidence from the evening and early morning before the shooting;
 - 7.2 All of the Hillsborough address evidence. This includes CCTV of the two men leaving the house to get in the car to go to the robbery;
 - 7.3 All of the evidence of communications and activities around the immediate time of the shooting and in days following it.
8. The firearm was either in the car all along, or was taken to the car from Mr Dodd's mother's house, "the Hillsborough address", shortly before the killing. Unknown to the Crown when it opened, Mr Dodds gave evidence he alone knew about the gun; in secrecy he had retrieved it from his bedroom at the Hillsborough house; and in secrecy he took it to the park to meet Mr McIntosh. The CCTV footage is clear. When Mr Te Hivaka and Mr Dodds left to go to the robbery, only Mr Te Hivaka is carrying a bag. The only way the gun could get to the car is in that bag. Alternatively, the gun had been in the car with both men for many hours as they carried out activities in the lead-up to the robbery.
9. In light of all the evidence produced at trial showing the joint and carefully orchestrated preparations for the robbery, with his close friend and "cuz", it was open to the jury to reject Mr Te Hivaka's and Mr Dodd's evidence and to be sure that Mr Te Hivaka did know about the gun. The jury's job is to apply its collective common sense and life experience in assessing all of

the evidence in the trial. The verdicts were not unreasonable on the evidence.

10. Ground 1 - the directions: The Crown case was that the three defendants planned a robbery (the common purpose), and before attending the robbery Mr Dodds and Mr Te Hivaka had possession of a gun. Mr Te Hivaka's knowledge of the gun was the key piece of evidence the Crown relied on to demonstrate he foresaw either a reckless killing (s 167(b)) or the intentional infliction of grievous bodily injury for the purpose of facilitating the robbery (s 168). Justice Lang gave legally correct oral directions that reflected the way the case was run at trial and the evidence. The question trail was then, in the normal way, limited to an accurate statement of the core factual propositions relating to the elements of the offence. The jury could not have found Mr Te Hivaka guilty unless it was sure he knew about the gun. No miscarriage arises.
11. Grounds 3 and 4: the Judge was not required to direct that Mr Te Hivaka needed to have 'foresight of death'. Indeed, to do so would be contrary to law. That proposition was expressly rejected by this Court in *Burke*. There was also no error in defining the principal's intention in relation to s 168. The distinction the appellant makes is, in practice, meaningless.

BACKGROUND

The Crown case: a plan to rob

12. The Crown case was that Mr Dodds, Mr Te Hivaka and Ms Baker had formed a plan over the evening of 2 June 2022 and/or the early hours of the next day to rob Mr McIntosh of drugs and cash.
13. The three were together for a lengthy period that evening – at least three to four hours.¹ The relationship between Ms Baker and Mr McIntosh was fraught.² The defendants had run out of methamphetamine and wanted more. Mr McIntosh was "an easy target".³

¹ Timeline booklet, pages 4-8, [[04 Exhibits at 514-518]].

² See Judge's summing up at [112], [[02 CoA Casebook at 178]].

³ [[02 CoA Casebook at 100]] (Crown closing).

14. Mr Te Hivaka contacted Mr McIntosh under the guise of organising a legitimate drug deal.⁴ But he had no intention of paying for the drugs. Before meeting Mr McIntosh, Mr Te Hivaka and Mr Dodds went to Mr Dodds' mother's address at 287A Hillsborough Road. On Mr Dodd's evidence, he retrieved a gun. Mr Te Hivaka is seen on CCTV carrying the bag containing that gun to the car at 6.15 am.⁵ Mr Dodds is carrying nothing.⁶
15. The Crown case was that the men simply would not have taken a gun unless their object was to rob Mr McIntosh. And, Mr Te Hivaka would have known that in taking a firearm to the robbery, a reckless killing or the intentional infliction of grievous bodily injury for the purpose of committing the robbery was just the kind of thing that could well happen.⁷
16. Mr McIntosh arrived at Harold Moodey Park around 7.47 am. Mr Te Hivaka got into the front passenger seat, and Mr Dodds got into the back with the gun. A struggle ensued that led to Mr Dodds intentionally shooting Mr McIntosh. The bullet entered the back of his shoulder, exited the top of the left shoulder, before entering his head.⁸
17. As planned, they took Mr McIntosh's strap bag, which held his drugs.⁹ Mr Dodds left town, but Mr Te Hivaka carried on with his life as normal.¹⁰

The defence case: a drug deal gone wrong

18. The defendants presented a starkly different narrative. Both Mr Dodds and Mr Te Hivaka gave evidence there was no plan to rob. They went to Harold Moodey Park for a "normal" drug deal. The shooting was an

⁴ Mr Te Hivaka initially reached out in the early hours of 3 June 2022 (between 1.22 am and 2.58 am): [\[\[04 Exhibits at 408-409\]\]](#). He then called him again at 7.14 am, initiating the alleged drug deal: Message reference 74266, [\[\[04 Exhibits at 409\]\]](#).

⁵ They attended the robbery in a Ford Territory vehicle, with the registration ETS578, that belonged to Mr Dodds' brother.

⁶ [\[\[04 Exhibits at 141\]\]](#). The bag can be seen in the middle photo. The full CCTV footage was played to the jury several times at trial.

⁷ Crown opening at [55] [\[\[02 CoA Casebook at 82-82\]\]](#); and Crown closing [\[\[02 CoA Casebook at 124\]\]](#).

⁸ [\[\[03 Notes of Evidence \[NOE\] at 149-151\]\]](#). All three bullet wounds (the entry and exit in the shoulder, and the entry in the bottom of the head) can be seen in photo 8 of the postmortem examination booklet.

⁹ Mr Dodds accepted he took that strap bag. It was not found during the course of the investigation.

¹⁰ [\[\[02 CoA Casebook at 119\]\]](#) (Crown closing).

accident. Mr Te Hivaka had no idea there was even a gun present until it went off.

19. Mr Dodds gave an explanation for the presence of the gun. He said Mr McIntosh had threatened his friend's mother with a gun.¹¹ Hearing they were going to meet 'Decoy' (Mr McIntosh's nickname) he decided, independently, to bring the gun along to scare Mr McIntosh.¹² He retrieved the gun from his bedroom secretly.¹³ He took all care to make sure there were no bullets in the gun,¹⁴ and then put the gun in his bag with some clothes.¹⁵ He said *he* brought the gun to the car before they left.¹⁶
20. At the park Mr Dodds discretely retrieved the gun and got into the backseat of Mr McIntosh's car, cutting off Mr Te Hivaka and Mr McIntosh's conversation. He threatened Mr McIntosh. Mr McIntosh turned quickly, Mr Dodds lunged for him and the gun accidentally went off.¹⁷
21. Mr Te Hivaka gave evidence that the shooting came as a complete surprise to him. He was shocked,¹⁸ and in the days that followed felt "pretty shit" about what happened.¹⁹ His behaviour afterwards was a panic reaction.
22. Whether this was a planned robbery, or not, was "one of the most important issues you will need to determine in the trial because the question is hotly contested".²⁰ If the jury accepted the defendants' evidence (or it left them with a reasonable doubt) that was a complete answer to the charge of murder.²¹ The jury's verdicts mean they rejected the defence evidence.

¹¹ [[03 NOE page 517, lines 30-34]].

¹² [[03 NOE page 458, line 11]]. He decided for the first time to do this when they were at the Hillsborough address: [[03 NOE page 547, lines 12-25]].

¹³ [[03 NOE page 552, line 2]].

¹⁴ [[03 NOE page 553, line 14-18 and page 556-558]].

¹⁵ [[03 NOE page 559, line 9-11]].

¹⁶ [[03 NOE page 564, lines 4-11]]. He specifically denied that Mr Te Hivaka carried the gun: [[NOE page 655, lines 7-10]].

¹⁷ [[03 NOE page 575, line 14-19]]. Mr Dodds said he did not deliberately pull the trigger: [[03 NOE page 577, line 21-25]].

¹⁸ [[02 CoA Casebook at 149]] (Defence closing): "... he had no idea and was as shocked as anyone when the firearm was pulled out".

¹⁹ [[03 NOE page 728, lines 13-14; and page 729, line 25]].

²⁰ Judge's summing up at [57], [[02 CoA Casebook at 164]].

²¹ Judge's summing up at [14], [[02 CoA Casebook at 154]].

Routes to murder

23. The Crown did not suggest the defendants intended to kill Mr McIntosh.²² The jury was left with three routes to find Mr Te Hivaka guilty of murder:²³
- 23.1 Option A – party to murder (pursuant to ss 167(b) or 168) committed whilst carrying out a common unlawful purpose (s 66(2)).²⁴
- 23.2 Option B – s 66(1) party to murder pursuant to s 168.
- 23.3 Option C – s 66(1) party to murder pursuant to s 167(b).
24. No challenge is made to either routes B or C. The issues on appeal all relate to common purpose liability and to the first route.

CROWN SUBMISSIONS

Ground 2: Sufficiency of the evidence – the jury’s verdict was not unreasonable

25. The appellant accepts in this Court there was sufficient evidence for the jury to find there was a plan to rob.²⁵ The case that Mr Te Hivaka knew about the gun, and therefore had the required foresight, relied on classic inference reasoning from many strands of evidence. Either Mr Te Hivaka is the victim of an unfortunate and unlikely series of coincidences, including deception by his good friend, or alternatively, he is guilty. The jury was well placed to make that decision.
26. The appellant’s account of the ‘bag’ evidence is misleading, and ignores the other evidence at trial, as summarised below.

Legal principles on unreasonable verdicts

27. As this Court stated in *Kuru v R*, the test for unreasonable verdicts is straightforward: “A verdict will be ... unreasonable where it is a verdict that, having regard to all the evidence, no jury could reasonably have reached to the standard beyond reasonable doubt.”²⁶ That is a high

²² Crimes Act 1961, s 167(a).

²³ See question trail, [[02 CoA Casebook at 197]].

²⁴ The Crown puts no particular weight on it, but notes that at sentencing Lang J considered the jury concluded there was a common purpose to rob Mr McIntosh, Mr Te Hivaka knew about the gun, and that a reckless shooting was a probable consequence of the implementation of the plan: *R v Te Hivaka* [2024] NZHC 1421 [Sentencing notes] at [13] and [18], [[02 CoA Casebook at 205]].

²⁵ Appellant submissions at [83].

²⁶ *Kuru v R* [2024] NZSC 184, [2024] 1 NZLR 985 at [205], quoting *R v Munro* [2007] NZCA 510, [2008] 2 NZLR 87 at [87],

threshold. This Court has repeatedly endorsed the relevant principles from the Court of Appeal’s decision of *R v Munro*, including that the appellate court is performing a review function, not substituting its own view of the evidence, and that the weight to be given to individual pieces of evidence is a jury function.²⁷

28. In a circumstantial case, a verdict may be unreasonable when “there was no rational basis for the jury to have rejected the defence inference ... as a reasonable possibility”.²⁸ That uncontroversial proposition concerns the inference that is ultimately drawn as to guilt, or about an essential ingredient/element of the offence.

The bag evidence – relevant to inferring knowledge of a gun

29. All evidence bearing on knowledge of a gun was relevant to the foreseeability of a shooting. The Crown closed on the basis the bag carried by Mr Te Hivaka to the car before the men left for the robbery “contained the firearm and Mr Te Hivaka knew it was in there”.²⁹ It was more than open for the jury to agree.³⁰ The jury – who watched the relevant piece of CCTV several times – was best placed to consider this issue.
30. A motion capturing CCTV camera operated at the Hillsborough address and captured all the comings-and-goings that night. It showed Mr Dodds, Mr Te Hivaka, Ms Dodds, and Mr Dodds’ brother arrived home at 5.18 am on 3 June 2022 in a Ford Territory vehicle (registration ETS578). They went inside. It then showed Mr Dodds and Mr Te Hivaka leaving at 6.15 am.³¹ The only person who carried anything back to the car in that period is Mr Te Hivaka, who has a black duffel bag. The Crown said the firearm – a

as approved in *R v Owen* [2007] NZSC 102, [2008] 2 NZLR 37 at [15], and quoted in *longi v R* [2025] NZSC 191, [2025] 1 NZLR 900 at [61].

²⁷ *Owen v R*, above n 26, at [13], referring to *R v Munro*, above n 26, and cited in *Kuru v R*, above n 26, at [206] and in *longi v R*, above n 26, at [62].

²⁸ *longi v R*, above n 26, at [91].

²⁹ [[02 CoA Casebook at 110]] (Crown closing).

³⁰ *Te Hivaka v R* [2025] NZCA 451 [Court of Appeal decision] at [37(a)], [[01 SC Casebook at 8]].

³¹ Between this period, Mr Dodds and Ms Dodds both briefly go outside to the car. However, neither put anything in the car during these trips.

680 mm sawn-off rifle³² – was carried in that bag. The gun was too big for Mr Dodds to conceal in his clothing.³³

31. The only evidence it was Mr Dodds, not Mr Te Hivaka, who brought the gun is the defendants' evidence at trial.³⁴ It was entirely open for the jury to reject or accept all or parts of their evidence. Credibility is a matter for the jury. The guilty verdicts necessarily mean the jury was sure the defendants were not telling the truth on key points: an accidental shooting, with a secret gun; no joint purpose, let alone a plan to rob.³⁵ Then there is evidence *supporting* the Crown's inference about the bag: Mr Dodds' evidence he carried the gun to the car, and Mr Te Hivaka's denial of carrying the gun, do not match the CCTV footage. On Mr Dodd's case the gun somehow needed to be transported to the car. As the Crown said in closing:³⁶

... you can see on the footage there's only one bag that was put in the car and that was Mr Te Hivaka putting it in the vehicle and there's been no further explanation for the gun in the bag.

32. The narrative that Mr Dodds carried the gun to the car would have required the jury to go against their own common sense. It is irrelevant whether or not different black bags could be seen at other points in CCTV footage. It follows there was an available inference that Mr Te Hivaka *knew* he was bringing a gun to the robbery. The gun weighed 2.46 kilograms.³⁷
33. Finally, this point is the key distinction between Mr Te Hivaka and Ms Baker. Ms Baker was dropped home around 4.30 am. She never went to the Hillsborough address, she did not spend those last few hours with Mr Dodds, and she did not deliver the firearm to the car. The Crown said she was part of the plan to rob her former boyfriend,³⁸ but did not allege

³² [[03 NOE at page 395, lines 22-26]].

³³ Mr Dodds also always referred to it being in a bag: he packed it in a bag [[03 NOE page 559, lines 7-11]], and retrieved it from a bag at Harold Moodey Park [[03 NOE page 572, lines 4-21]].

³⁴ Mr Dodds says it was him who brought the gun [[03 NOE page 564, lines 4-11]]. Mr Te Hivaka denies the gun was in the bag he was carrying: [[03 NOE 763, lines 1-3]].

³⁵ The appellant has now accepted there was sufficient evidence of a plan to rob Mr McIntosh. That is inconsistent with both defendants' account and in itself would be enough to undermine the credibility of the defendants.

³⁶ [[02 CoA Casebook at 110-111]] (Crown closing). The Crown replayed the relevant parts of the CCTV footage in closing to show no other bag went into the car: page 113.

³⁷ [[03 NOE page 404, lines 11-14]]. As a result, it would not have felt like a bag of only clothes.

³⁸ [[02 CoA Casebook at 100, 108 and 114]] (Crown closing); and Judge's summing up at [112] [[02 CoA Casebook at

she was a party to murder. The way Ms Baker was charged has no bearing on the reasonableness of the verdict in relation to Mr Te Hivaka.

Total evidence going to knowledge that a shooting was a probable consequence of the plan to rob Mr McIntosh

34. The CCTV footage of the bag was one part of the entire body of evidence relevant to whether Mr Te Hivaka foresaw a shooting could well happen. It is one, albeit important, piece of evidence that bears on whether he knew there was a gun and cannot be seen in isolation. When approached that way (as the jury would have done) the only rational conclusion is that, as the Crown said, it is “incomprehensible that Mr Te Hivaka would not have known that an integral part of the plan was to take a loaded firearm to the place the robbery was to occur”.³⁹
35. The Crown highlights four areas of evidence that supported the Crown case that Mr Te Hivaka *must* have known about the gun.
36. First, the context of the robbery itself:
 - 36.1 Mr Te Hivaka admitted that he, Mr Dodds and Ms Baker were all addicted to methamphetamine.⁴⁰ Mr Te Hivaka had purchased half a gram from Mr McIntosh at around 7 pm on 2 June 2022.⁴¹ They had smoked this earlier in the evening. Mr Te Hivaka and Mr Dodds’ willingness to take extreme lengths must be seen in the context of this addiction and the drugs they had taken that night.
 - 36.2 None of the defendants had money.⁴² Mr Te Hivaka’s evidence that he was going to *buy* drugs is implausible. He was unemployed and had not been working for the past few months.⁴³ Police found no wallet or source of money when they arrested Mr Te Hivaka.⁴⁴ Earlier in the evening of 2 June 2022, Mr Te Hivaka had told

³⁹ 178]].

³⁹ Judge’s summing up at [132], [[02 CoA Casebook at 185]].

⁴⁰ [[03 NOE at page 736, lines 18-26]].

⁴¹ [[03 NOE at page 762, lines 11-14]].

⁴² Mr Dodds admitted he has no money: [[03 NOE at page 635, lines 16-17]]. Ms Baker had sent a Facebook message earlier that morning saying she had no money: Message reference 72417, [[04 Exhibits at 416]].

⁴³ [[03 NOE at page 733, lines 19-20]].

⁴⁴ [[03 NOE at page 733, lines 13-18]].

Ms Baker he was trying to find a way “to make some money”.⁴⁵ He had already spent \$200 on methamphetamine earlier that evening.⁴⁶ Another gram would cost him \$350.⁴⁷ Mr Te Hivaka was at the time smoking a gram every other day.⁴⁸ Mr Te Hivaka and his associates had no means of paying for methamphetamine on the morning of 3 June. He was engaging an expensive habit that he had no means to support.

36.3 There was then an added bonus to robbing Mr McIntosh that particular day: the group knew that Mr McIntosh had won the jackpot at the pokies that evening. Mr Te Hivaka was at the bar when this happened.⁴⁹ Mr McIntosh had also told Ms Baker that he had won \$850⁵⁰ who must have shared it with the rest of the group in the long period they spent together. That knowledge would only have increased the incentive to rob Mr McIntosh. As the Crown said in closing, he was an easy target.⁵¹

36.4 The group had already shown a willingness to betray Mr McIntosh earlier in the night. Mr McIntosh had gone to Ms Baker’s address sometime around 11 pm.⁵² Mr Dodds was polling very close to Ms Baker’s address at 11.10 pm,⁵³ and was seen on CCTV footage at the address at 12.40 am.⁵⁴ The Crown’s position was Mr Dodds’ was at the address and tried a stand over.⁵⁵ That is consistent with the comments Mr McIntosh made immediately afterwards. At 11.26 pm, Mr McIntosh sent Ms Baker a text telling her to “tell ur

⁴⁵ Message reference 68933, [\[\[04 Exhibits at 439\]\]](#).

⁴⁶ [\[\[03 NOE at page 761, lines 10-18\]\]](#).

⁴⁷ [\[\[03 NOE at page 762, lines 11-19\]\]](#).

⁴⁸ [\[\[03 NOE at page 762, lines 20-22\]\]](#).

⁴⁹ Mr Te Hivaka’s phone was polling near the Richardson’s Restaurant and Bar between 7.25 pm and 7.32 pm. Mr McIntosh texts Ms Baker telling her about the win at 7.42 pm. Timeline booklet, page 3, [\[\[03 Exhibits at 513\]\]](#).

⁵⁰ He sent her a Facebook message at 7.47 pm stating, “Yeah i just one jakpot 850 i still here tht fulla kees was here wen gt hereand rania and some other seedy characters hope i gt out with my money”: Message reference, [\[\[04 Exhibits at 412\]\]](#).

⁵¹ [\[\[02 CoA Casebook at 100\]\]](#) (Crown closing).

⁵² Timeline booklet, page 4 (11 pm), [\[\[04 Exhibits at 514\]\]](#).

⁵³ [\[\[03 NOE at page 495, line 20 – page 496, line 4\]\]](#). Mr Dodds is polling at the corner of Westcoast and Great North Road, which can be seen on the location map produced at trial: [\[\[04 Exhibits at 537\]\]](#).

⁵⁴ Timeline booklet, page 3, [\[\[04 Exhibits at 514\]\]](#).

⁵⁵ [\[\[02 CoA Casebook at 121\]\]](#) (Crown closing).

new bf come try and take my shit anytime fuking clown tryna lookmtuff in front of u".⁵⁶ Mr McIntosh later told his flatmate he had been at Ms Baker's and "they were trying to ... get something out him". The flatmate understood he was referring to drugs.⁵⁷

36.5 Mr McIntosh had access to the CCTV cameras at Ms Baker's house, and was watching what occurred there after he left. He told a friend he had seen something "disturbing" on that camera involving Ms Baker, Mr Dodds and Mr Te Havaka.⁵⁸

37. Mr Te Hivaka and his associates were motivated to steal from Mr McIntosh. Mr Dodds had already been unsuccessful, and they needed means to convince Mr McIntosh to hand over the drugs and cash. Mr Dodds and Mr Te Hivaka had good reason to obtain the gun.⁵⁹

38. Second, the nature of Mr Te Hivaka and Mr Dodd's relationship. Mr Dodds and Mr Te Hivaka had a very close relationship. They referred to each other as cousins and had known each other since they were kids.⁶⁰ They were "family"⁶¹ and trusted each other.⁶² They had also spent the entire evening together. They had been together when Mr Te Hivaka originally purchased methamphetamine. They then went to Ms Baker's address sometime between 11 pm and midnight,⁶³ had spent time there and driving around West Auckland,⁶⁴ before arriving together at the Hillsborough address at 5.18 am.⁶⁵ They spent an hour there together before leaving for the robbery at 6.15 am. Mr Te Hivaka took another hour before he contacted Mr McIntosh at 7.15 am,⁶⁶ and the meeting at Harold Moodey Park did not

⁵⁶ Message reference 71003, [\[\[04 Exhibits at 415\]\]](#).

⁵⁷ [\[\[03 NOE at page 79, lines 11-27\]\]](#).

⁵⁸ [\[\[03 NOE at page 199, line 30 – page 200, line 5\]\]](#).

⁵⁹ In addition to the meeting at around 11 pm on 2 June 2022 at Ms Baker's address, Mr Dodds and Mr Te Hivaka dropped Ms Baker off at her address where they knew Mr McIntosh was at around 4.40 am. If they were not waiting to obtain the gun, they could have executed the robbery then: see Timeline booklet at page 7-8, [\[\[04 Exhibits at 517-518\]\]](#). See also the Crown closing [\[\[02 CoA Casebook at 123-124\]\]](#).

⁶⁰ [\[\[03 NOE at pages 514-515\]\]](#) (Dodds); and [\[\[page 1-19\]\]](#) (Te Hivaka).

⁶¹ [\[\[03 NOE at page 546, line 18\]\]](#).

⁶² [\[\[03 NOE at page 637, lines 1-14\]\]](#).

⁶³ Timeline booklet, page 4, [\[\[04 Exhibits at 514\]\]](#).

⁶⁴ The group are captured on CCTV footage Z Waikumete at 3.42 am: Timeline booklet, page 5, [\[\[04 Exhibits at 515\]\]](#).

⁶⁵ Timeline booklet, page 9, [\[\[04 Exhibits at 519\]\]](#).

⁶⁶ Timeline booklet, page 11, [\[\[04 Exhibits at 521\]\]](#): "Yo I'm just on my way from Palamino now dub, fucking, if you got any, if you still got any fuckin drinks cuz lease save me a dose. Ha."

occur until around 7.47 pm (meaning the pair spent around an hour and a half together in that car before the robbery).⁶⁷

39. In all the circumstances, it would have be strange and incredibly unlikely for Mr Dodds to hide the presence of the gun from his longtime friend, particularly when they were never apart across the evening.
40. Third, the timing of the robbery is quick and seamless, suggesting there was nothing unexpected about how events played out. Mr Dodds and Mr Te Hivaka left Harold Moodey Park two minutes after Mr McIntosh arrived.⁶⁸ The meeting was so quick the engine and lights of Mr McIntosh's car were still on.⁶⁹ Mr Te Hivaka then dropped off Mr Dodds at the Hillsborough address at 8.12 am. Two minutes later, Mr Dodds, his mother and his brother left in a different car and leave the city.⁷⁰ That timing does not reflect a plan that has gone wrong – with an unexpected shooting – but rather that the group always anticipated the presence and risk of a firearm.
41. Fourth, the actions after the robbery do not suggest Mr Te Hivaka is at all surprised by what has occurred. While Mr Dodds rushed out of town, Mr Te Hivaka started to collect debts on behalf of Mr Dodds.⁷¹ The jury was entitled to infer it was strange for Mr Te Hivaka to be happy to help out Mr Dodds so quickly after the shooting, if Mr Te Hivaka was truly shocked and outraged by what Mr Dodds had done.
42. Mr Te Hivaka sent audio messages to the associates he was debt collecting from. Mr Te Hivaka sent the following message at 12.15 pm:⁷²

Jonesy my brother (inaudible) what are you up to ow? (inaudible). Stick to your word my bro. *Me, me and the cuz have um, me and the cuz have been actively, active as fuck this morning.* It's just me and 'Mirah at the moment. Jones, it's fucken um, just fucken come front,

⁶⁷ Timeline booklet, page 11-13, [\[\[04 Exhibits at 521-523\]\]](#).

⁶⁸ Timeline booklet, page 12, [\[\[04 Exhibits at 523\]\]](#). Mr McIntosh drives a friend's car with the distinctive numberplate RYNLDs. Mr Dodds and Mr Te Hivaka are driving Mr Dodds' brother's Ford Territory car.

⁶⁹ See formal statement of Mark Burton dated 3 June 2022: [\[\[03 NOE at 21\]\]](#). Mr Burton is the groundman who found Mr McIntosh just after 8 am.

⁷⁰ Timeline booklet, page 15, [\[\[04 Exhibits at 525\]\]](#). Mr Te Hivaka's phone data shows he had two phone calls with Ms Dodds' between leaving Harold Moody Park and dropping of Mr Dodds. These were only 15 seconds and 2 seconds – not enough time to explain what had occurred and organise next steps if the firearm had been an unexpected part of the robbery. Ms Dodds was also on a curfew, and her swift willingness to breach curfew strongly indicates a prior plan: see [\[\[02 CoA Casebook at 108 and 162\]\]](#) (Crown closing).

⁷¹ [\[\[02 CoA Casebook at 126\]\]](#) (Crown closing). See also Timeline booklet, page 17, [\[\[04 Exhibits at 527\]\]](#).

⁷² Transcript from 3 June 2022 at 12.15 pm, [\[\[04 Exhibits at 471\]\]](#).

come and see my cousin about the fuckin bill cuz, okay cos otherwise I have no shit and I have no fucken, I'll be gone. I'll be gone up north by tonight my bro. I've got wheels, I got shit, I'm on. What are you up to?

43. Mr Te Hivaka did not appear distressed; he is “in fact getting on with his life”.⁷³ He adopted the shooting as his own, “bragging about what they did”,⁷⁴ because he was part of the plan to use the firearm in the first place. As the Crown said in closing, “he’s talking about them, not ‘the cuz has done this’, it’s ‘me and the cuz have’”.⁷⁵
44. At 8.48 pm, Mr Dodds sent a video message to Mr Te Hivaka telling him, “I’m going to smoke your half of the bag if you don’t get here in the next 36 minutes”.⁷⁶ The reasonable inference is that Mr Dodds is referring to the drugs taken from Mr McIntosh, and that Mr Te Hivaka is entitled to half as it was a joint effort. Mr Te Hivaka reunited later that evening with Mr Dodds at a petrol station, showing no indication anything was amiss.⁷⁷ They greeted each other with “hugs, fist pumps or handshakes, they were proud of what they had done”.⁷⁸
45. Taken in isolation, each piece of this evidence yields inferences compatible with multiple interpretations, including with innocence.⁷⁹ But that is not the task. No single strand of this evidence needs to be proven to any legal standard.⁸⁰ The united force of the evidence is cohesive, compelling and sufficient to satisfy the jury of the essential elements of the offence.

⁷³ [[02 CoA Casebook at 119]] (Crown closing).

⁷⁴ [[02 CoA Casebook at 126]] (Crown closing).

⁷⁵ [[02 CoA Casebook at 123]] (Crown closing).

⁷⁶ Timeline booklet, page 19, [[04 Exhibits at 529]].

⁷⁷ CCTV at a Mobil petrol station in Mt Wellington captures Mr Dodds, Ms Dodds, Mr Shackley, Mr Te Hivaka and Ms Baker reuniting. All return to 287A Hillsborough Road together: Timeline booklet, page 21-22, [[04 Exhibits at 531-532]]. See also [[02 CoA Casebook at 109]] (Crown closing): “... all three defendants lacked any empathy for others and it’s evident ... from listening to Mr Te Hivaka yesterday when messages he had left for his mates were played. It’s patently [obvious] that Mr Te Hivaka and Mr Dodds what they thought about killing Mr McIntosh when you saw they had met up at Mobil on the early hours of 4 June 2022 about 18 hours after Mr McIntosh was shot”.

⁷⁸ [[02 CoA Casebook at 127]] (Crown closing).

⁷⁹ *R v Hillier* [2007] HCA 13, (2007) 228 CLR 618 at [48], citing *Chamberlain [No 2] v R* (1984) 153 CLR 521 (HCA) at 535; and *R v Gibson* 2021 ONCA 530, (2021) 157 OR (3d) 597 at [76].

⁸⁰ The Judge directed the jury to consider inferences in light of “reliably established evidence”: Judge’s summing up at [37], [[02 CoA Casebook at 160]].

Circumstantial evidence cannot be considered piecemeal

46. The appellant’s position relies largely on a criticism of one strand of the Crown case, for which he offers an alternative interpretation – the CCTV footage of Mr Te Hivaka carrying the black bag. Pulling apart the individual strands of a circumstantial case fails to recognise the nature of such a case and is wrong in principle. As it was put by the Court of Appeal in *Watt v R*, in the context of an unreasonable verdict appeal:⁸¹

There may be evidence in a circumstantial case which, if relied on standing alone, would require the jury to speculate but which, when considered along with the other evidence at trial, would give rise to no doubt at all. As William Young P put it for this Court in *R v Guo*, applying *Thomas* and the strands of a rope analogy, “each individual component of the relevant circumstances is required to be assessed not just on its own, but also in the context of the case as a whole (circumstances relied on by the defence)”.

47. Most criminal cases are largely circumstantial. Direct evidence especially of *mens rea* is rarely available to the Crown. Internationally, numerous judgments and academic commentaries confirm there is nothing inherently weak or second class about circumstantial cases⁸² – they can be equally as probative as a case founded on direct evidence.⁸³ Indeed, they can often be stronger because of the multiplicity of evidential strands. The logic that underpins a circumstantial case is that a defendant is “either guilty or is the victim of an implausible and unlikely series of coincidences”.⁸⁴
48. It is not each strand alone that is determinative, but rather what counts is “the combined weight of the evidence”⁸⁵ and “how well those strands cohere”.⁸⁶ The question of whether guilt has been proved beyond

⁸¹ *Watt v R* [2014] NZCA 459 at [13] (footnotes removed), citing *Thomas v R* [1972] NZLR 34 (CA); and *R v Guo* [2009] NZCA 612. See also *Milner v R* [2014] NZCA 366 at [15].

⁸² See for example *R v Hillier*, above n 79, [2007] HCA 13, (2007) 228 CLR 618; *McGreevy v Director of Public Prosecutions* [1973] 1 WLR 276 (HL) (“no distrust of circumstantial evidence has been shown by English Law”, quoting *Kenny’s Outlines of Criminal Law*); and I H Dennis *The Law of Evidence* (8th ed, Sweet & Maxwell, London, 2024) at [1-0008]: “There is no distinction in principle between direct and circumstantial evidence as a means of proof of facts in issue. Neither form of evidence is considered superior to the other although it is recognised that circumstantial evidence may present more difficulties of evaluation”.

⁸³ *Nieuwenhuijsen v R* [2013] NZCA 207 at [21]. See also *Pue v R* [2014] NZCA 273 at [27]; and *Webb v R* [2013] NZCA 666 at [22].

⁸⁴ *Benbow v R* [2023] NZCA 344, (2023) 31 CRNZ 12 at [45].

⁸⁵ *Webb v R*, above n 83, at [22]; *Dunn v R* [2025] NZCA 216 at [72].

⁸⁶ *Nieuwenhuijsen v R*, above n 83, at [21].

reasonable doubt “is answered by reference to the evidence as a whole”.⁸⁷ Accordingly, individual facts from which the Crown seeks to draw inferences do not need to be proved beyond reasonable doubt,⁸⁸ only the essential elements of the charge need to be proved to that standard.⁸⁹

49. Circumstantial cases require the jury to use inferential reasoning. The appellant asserts the Judge erred because he did not direct on inferences in the way suggested by *longi* (based on the Court of Appeal’s earlier decision in *R v Maxwell*).⁹⁰ However, Lang J gave orthodox inference directions.⁹¹ *longi* and *Maxwell* concern single issues, critical to verdict, that depended on one particular inference.⁹² *longi* does not require a Judge to direct the jury the Crown inferences are the only reasonable possibility in relation to *each* piece of circumstantial evidence. It is the essential elements of the offence that matter.⁹³ As discussed below, the Judge gave clear directions on these essential elements and told the jury if it was not sure Mr Te Hivaka had the required foresight of a shooting it could not find him guilty of murder under the first route. Moreover, unlike in *longi*,⁹⁴ Lang J thoroughly (and distinct from his co-defendants) summarised Mr Te Hivaka’s position on the essential issues in dispute.⁹⁵
50. Ultimately, the sufficiency of a Judge’s directions is case dependent.⁹⁶ It is not whether a judge has followed a particular formula, but whether the

⁸⁷ *Tamihere v R* [2024] NZCA 300 at [58], citing *Guo v R*, above n 81, at [50]. See also *R v Hillier*, above n 79, at [46], citing *Shepherd v R* (1990) 170 CLR 573 (HCA) at 579; and *R v Gibson*, above n 79, at [78].

⁸⁸ *Watson v R* [2025] NZCA 455 at [476]. Clarity of language is important for this distinction. Elements of the offence, or ingredients, are often called “facts” or “legal facts” – these do need to be proven beyond reasonable doubt.

⁸⁹ *Tihi v R* [2016] NZCA 211 at [23], citing *Thomas v R*, above n 81, at 38; and *R v Puttick* (1985) 1 CRNZ 664 (CA) at 647. This Court declined leave to appeal in *Tihi v R* [2017] NZSC 143.

⁹⁰ Appellant submissions at [82].

⁹¹ See Judge’s summing up at [39]-[40], [[02 CoA Casebook at 160]], advising the jury inferences are “logical, rational and reasonable conclusions” not “guesswork”. Extensive jury directions on inferences are discouraged: *R v Puttick*, above n 89, at 647; and *R v Hart* [1986] 2 NZLR 408 (CA) at 413, recently cited in *Do v R* [2024] NZCA 97 at [24].

⁹² In *longi* the issue was whether Manu longi’s presence in the car was sufficient to support the inference he was part of the common purpose, the key ingredient at issue. In *Maxwell* the issue was whether the appellant’s presence in a police cell supported an inference he was in “lawful custody” (for a charge of escaping lawful custody): *R v Maxwell* (1988) 3 CRNZ 644 (CA).

⁹³ *longi v R*, above n 26, at [107]. See also *McGreevy v Director of Public Prosecutions*, above n 82, at 281: “provided it contains what must on any view be certain essential elements”, the particular form and style of a summing up is case dependent. See also *R v Hillier*, above n 79, at [64]: “a case, whether circumstantial or not, against an accused must be proved beyond reasonable doubt, which means that *each element* but *not necessarily every circumstance of relevant to guilt*, must be proved, and a jury instructed accordingly” (emphasis added).

⁹⁴ *longi v R*, above n 26, at [113].

⁹⁵ Judge’s summing up at [146], [[02 CoA Casebook at 191]].

⁹⁶ *longi v R*, above n 26, at [106].

jury had been adequately directed as to the case before it and the proper execution of its role.⁹⁷ The jury here was properly directed on inferences.

Ground 1: The jury was properly directed in relation to the weapon

51. The correct way to understand the directions and Crown case on the relevance of knowledge of a firearm is as follows. Mr Te Hivaka must be proven beyond reasonable doubt to have:

51.1 Legal fact/element: Agreed with Mr Dodds on an unlawful common purpose. In this case that was presented by the Crown and Judge as an agreed plan to rob Mr McIntosh. *(The firearm is relevant as part of the evidence to prove they planned a theft with at least threats of violence, as opposed to planning a willing exchange of drugs for money.)*

51.2 Legal fact/element: Foreseen, as a probable consequence of the robbery, either a reckless killing or the intentional infliction of grievous bodily injury for the purpose of committing the robbery. *(These outcomes are foreseen if the Crown can prove Mr Te Hivaka foresaw an intentional shooting of Mr McIntosh could well happen. Knowledge that the plan involved a firearm is critical evidence to prove that he foresaw these outcomes could well happen.)*

52. There was no error in Lang J's oral directions, and the question trail did not have to refer to the Crown needing to prove Mr Te Hivaka's knowledge of a weapon. A question trail is an aid to the jury in approaching its task. Justice Lang quite properly kept the question trail focussed on the essential factual propositions necessary to establish each legal element in light of the way the case was presented by the Crown. There is no requirement for question trails to replicate all oral directions given by a Judge in summing up or to address matters of evidence. The role and centrality of

⁹⁷ *Longi v R*, above n 26, at [109], citing *Do v R*, above n 91, at [6]; *Wanhalla* [2007] 2 NZLR 573 (CA) [52]; *Wilson v R* [2019] NZCA 485 at [3].

Mr Te Hivaka’s knowledge of the weapon was addressed correctly in the summing up, *as it applied to* the question trail.

The role of a ‘weapons direction’ in common purpose liability cases

53. It is unwise in common purpose liability cases to “stray too far from the actual words of s 66(2)”.⁹⁸ The principles and elements of s 66(2), as articulated by this Court in *Ahsin v R*,⁹⁹ are settled.
54. There is no reference in the text of s 66(2) requiring knowledge of any weapon used nor, more broadly, any requirement that the prosecution must state the unlawful common purpose in any particular way. It is for the prosecution to frame the scope of the common purpose, and in appropriate cases knowledge of a weapon then becomes a matter of *fact* and *evidence*, which will be relevant depending on the circumstances. Where a particular weapon is used to commit murder in a joint enterprise (or manslaughter) there is no stand-alone *legal* requirement that common purpose liability requires a party to know that one or more members of his or her group were armed with weapons.¹⁰⁰
55. There are some circumstances, however, where a knowledge-of-the-weapon direction should be “part of the Judge’s discussion of the evidence.”¹⁰¹ Typically this is when knowledge of the weapon is key evidence to show either a specific common purpose existed, or that the party recognised the commission of the offence was a probable consequence of prosecuting the common purpose.¹⁰² Knowledge-of-the-weapon does not, however, become a further legal element; it remains a, or even *the*, critical means of satisfying the elements.¹⁰³ This has been the clear position in New Zealand since this Court’s unanimous decision in

⁹⁸ *Burke v R* [2024] NZSC 37, [2024] 1 NZLR 1 at [141]; and *Edmonds v R* [2011] NZSC 159, [2012] 2 NZLR 445 at [47].

⁹⁹ *Ahsin v R* [2014] NZSC 153, [2015] 1 NZLR 493 at [102], as approved in *Burke v R*, above n 98, at [31].

¹⁰⁰ *Edmonds v R*, above n 98, at [47], cited in *Burke v R*, above n 98, at [70].

¹⁰¹ *Edmonds v R*, above n 98, at [48].

¹⁰² *Edmonds v R*, above n 98, at [50]. The Court in *Edmonds* does not consider it necessary in all cases. For example, where the common purpose is to inflict serious or potentially life-threatening violence then a party could still be found guilty of murder when an unexpected weapon is used: at [50(b)]. See, for example, *R v Vaihū* [2009] NZCA 111 at [45] per Chisholm and Heath JJ.

¹⁰³ This is the same principle as referred to in United Kingdom Supreme Court decision in *Regina v Jogee* [2016] UKSC 8, [2017] AC 387 at [98]: “knowledge or ignorance that weapons generally, or a particular weapon, is carried by D1 will be evidence going to what the intention of D2 was, and may be *irresistible evidence* one way or the other, but *it is evidence and no more*” (emphasis added).

Edmonds, and *Burke* did not change the law.¹⁰⁴ *Edmonds* emphasises that the material question is whether the defendant knew that the ultimate result was a probable consequence of the common unlawful purpose.¹⁰⁵

56. The Crown accepts that Mr Te Hivaka’s knowledge of the gun was a necessary evidential plank for the jury to be satisfied of guilt. It was highly relevant evidence to prove a plan to rob. More importantly, if Mr Te Hivaka did not know about the gun, there was insufficient other evidence for the jury to conclude he foresaw, as a probable consequence of the robbery, either a reckless killing or the intentional infliction of grievous bodily injury for the purpose of committing the robbery. The Crown never shied away from that evidential burden, rather it was the crux of its case. The prosecutor opened on the basis that “the use of a firearm was anticipated by both [Mr Dodds and Mr Te Hivaka] in carrying out the plan”.¹⁰⁶ It was critical to foresight of what could well happen during the robbery – namely, that Mr McIntosh might *intentionally* be shot. No party proposed the jury could convict if Mr Te Hivaka did not know about the gun.

Justice Lang’s directions

57. Justice Lang’s directions correctly related the evidence to the legal issues in the case. He took the jury through the question trail (in terms of both content and sequence) relating the evidence to the specific legal facts or propositions it needed to consider. He was correct in his explanation of how the jury should consider the evidence of Mr Te Hivaka’s (disputed) knowledge of the firearm when looking at the legal elements of the offence. There is no error in his summing up.

Definition of the common purpose in this case

58. It is for the Crown to pitch the common purpose.¹⁰⁷ The Crown consistently pitched it as a “plan to rob”. It closed the case on the following basis: “are

¹⁰⁴ Court of Appeal decision at [16], [[01 SC Casebook at 14]].

¹⁰⁵ This Court in *Edmonds* stated that “[a]ll that is necessary is that the level of appreciated risk meets the s 66(2) standard”: at [47]. See Amy Hill “Knowledge of the Weapon in Party Liability Cases: An Analysis of *Edmonds v R*” (2013) 44 VUWLR 167 at 171-172.

¹⁰⁶ Crown opening address at [55], [02 CoA Casebook at 82-83]]. The prosecutor goes on to say: “[g]iven the plan, the shooting of Mr McIntosh would have been known by them to be a probable consequence of the common purpose”.

¹⁰⁷ *Edmonds v R*, above n 98, at [49]; and *Burke v R*, above n 98, at [52].

you sure that they agreed to rob Mr McIntosh”.¹⁰⁸ The Crown never used the language of ‘armed robbery’. It is open to the Crown, evidentially conservative, and entirely orthodox, to put the case this way.¹⁰⁹ The Crown could have pitched the common purpose more broadly, but there was certainly no error. As *Edmonds* notes, the more narrow the common purpose the more work needs to be done by the Crown to prove the particular outcome was foreseen as being within the scope of prosecuting the common purpose.¹¹⁰

59. A robbery is a theft using violence or threats of violence.¹¹¹ While the gun was not part of the how the Crown *defined* the common purpose, it was important *evidence* to show the planned intention to use violence and/or threats of violence. That was stated clearly in the Judge’s oral directions:¹¹²

So the unlawful purpose that the Crown alleges here is an agreement between Mr Dodds and Mr Te Hivaka to rob Mr McIntosh – that will be plain to you from what you’ve heard... The Crown says they reached an agreement that they would steal cash and/or drugs from Mr McIntosh at the park. So the first question “Are you sure that Mr Dodds agreed with Mr Te Hivaka to rob Mr McIntosh?” ... To rob means simply to steal property using violence or threats of violence to obtain the property. And of course the Crown says here they agreed that they would take along a firearm and the presentation of a firearm amounts of itself to a threat of violence, so anything stolen using such a threat would amount in law to robbery. ...

60. The suggestion the Judge, as in *Burke*, presented a “different, lesser common purpose” – and by implication, set the jury up wrongly from the outset¹¹³ – misrepresents the trial. Justice Lang consistently, without any departure, referred to the common purpose as having the same scope the Crown gave it, namely, a plan to rob.

Sequence of the direction on knowledge of the firearm

61. The Judge directed about knowledge of the gun as critical evidence to establish an element of Question 4 (Mr Te Hivaka’s foresight of probable

¹⁰⁸ [[02 CoA Casebook at 100, 108, 114, 123]] (Crown closing).

¹⁰⁹ One of the specified offences in s 168(2)(k) is robbery *per se*, not aggravated robbery.

¹¹⁰ *Edmonds v R*, above n 98, at [49].

¹¹¹ Crimes Act, s 234.

¹¹² Judge’s summing up at [56], [[02 CoA Casebook at 164-164]]. The Judge gave this direction when going through Mr Dodds question trail. His Honour directed as to the similarity in the question for Mr Te Hivaka: Judge’s summing up at [81], [[02 CoA Casebook at 170]]. See also [93] of the Judge’s summing up as to the close linkage of the trails.

¹¹³ See Appellant submissions at [41]-[42].

consequences).¹¹⁴ The Crown says those directions and their place in the sequence cannot be faulted.

62. The appellant submits that the Judge should have directed the jury to consider knowledge of the weapon *before* considering whether the shooting happened *in the course of* the common purpose. That submission is based on *Burke*. The Court there was concerned it was not clear what the unlawful common purpose required in terms of knowledge at the point the offenders made the agreement; that lack of clarity may have followed through to subsequent elements of s 66(2). The Court recognised that in “most cases” it would be obvious that in the course of the common purpose does not just mean “at the same time as”.¹¹⁵ But that may not have been the case in *Burke* “given the inconsistency between the jury’s apparent [factual] findings”.¹¹⁶ That background led the Court to conclude the jury needed to consider knowledge of the weapon earlier.
63. That issue does not arise here. Knowledge of the firearm was not required to establish the common purpose of robbery – there was no confusion there.¹¹⁷ The verdicts mean the jury must have rejected Mr Dodd’s account of bringing a gun to threaten Mr McIntosh for an unrelated matter (not in furtherance of the common purpose). Moreover, as discussed below, unlike in *Burke* there was no prospect of the jury convicting if they were not sure Mr Te Hivaka knew about the gun. *Burke* turns on its own facts.
64. The present case is on all fours with the Court of Appeal’s decision in *Ford v R*.¹¹⁸ In *Ford*, the jury were directed to consider whether the appellants knew one of the others had a firearm *after* considering whether the shooting happened in the course of their common goal of intimidating the victim. The Court of Appeal distinguished *Burke* on this point. *Ford* was not a case where there was a risk the jury might have convicted the appellants

¹¹⁴ See Judge’s summing up at [83]-[84], [\[\[02 CoA Casebook at 171-172\]\]](#).

¹¹⁵ *Burke v R*, above n 98, at [74].

¹¹⁶ At [74]. Namely the finding that the stabbing happened in pursuit of the common purpose may have been inconsistent with the finding that Mr Burke did not know Mr Webber had a knife.

¹¹⁷ Notably, Ms Baker was said to be part of the plan to rob but did not necessarily know of the firearm.

¹¹⁸ *Ford v R* [2024] NZCA 239.

if they did not know about the firearm,¹¹⁹ including because the firearm was part of the Crown's case on the common purpose of intimidation.¹²⁰ The sequence of the direction did not matter.¹²¹ That is consistent with *Edmonds* where the Court took no issue with a weapons direction being given alongside the 'foresight of probable consequences' element.¹²²

The weapons direction itself

65. Justice Lang set out the final element in the question trail as follows:¹²³

4. Are you sure that Mr Te Hivaka knew EITHER:

(a) that the reckless killing of Mr McIntosh; OR

(b) that the intentional infliction of grievous bodily injury on Mr McIntosh for the purpose of committing the offence of robbery.

were probable consequences of carrying out the agreement to rob Mr McIntosh?

66. As the Judge explained, the Crown's position on this element was:¹²⁴

... if you take a loaded firearm to a place where you know you're going to rob someone in or around a vehicle, then a reckless killing or an attempt to hurt the person badly for the purpose of committing the robbery, were just the kind of thing that could happen when you take such a firearm to a robbery.

67. There was no other route proposed by any party to show that Mr Te Hivaka had the required foresight other than knowledge of the firearm.

68. When directing on this element in the summing up, Lang J gave an appropriate direction on the evidential relevance of the firearm. He was clear that to convict the jury would need to find Mr Te Hivaka had knowledge of the weapon. He said:¹²⁵

[83] And you might think that a critical element here in considering this question for Mr Te Hivaka is whether he knew that Mr Dodds was taking a firearm with him if you conclude that they

¹¹⁹ At [56].

¹²⁰ At [54].

¹²¹ At [57].

¹²² *Edmonds v R*, above n 98, at [11]. While this Court considered knowledge of the weapon *could* be relevant to whether the offence occurred in the course of the common purpose, if the common purpose is pitched right it was "difficult to conceive" of what those situations would be: at [51].

¹²³ [[02 CoA Casebook at 198]].

¹²⁴ Judge's summing up a [63] [[02 CoA Casebook at 165]]. See also the Judge's summing up at [122] and [124] [[02 CoA Casebook at 182-183]].

¹²⁵ [[02 CoA Casebook at 171-172]].

decided to rob because a reckless killing or a intentional infliction of really serious injury for the purpose of committing the offence of robbery would be a highly unlikely of Mr Te Hivaka's knowledge of those potential consequences would be very hard to establish [if] he didn't know a firearm was to be taken to the scene. If he knew, yes, that they were going there to rob him but just for threats of violence or fists or something like that. Then it would be very difficult for the Crown to prove that he knew that there was going to be a reckless killing or there was a probable consequence. Or that the intentional infliction of really serious bodily injury for the purpose of committing the offence of robbery was a probable consequence. So I suggest to you that if you get this far, a key element is whether you are sure that Mr Te Hivaka knew that Mr Dodds had taken the firearm with him for the purposes of threatening or intimidating Mr McIntosh so they could carry out the robbery.

[84] Now, if you're not sure on that element, you're going to go to Question 5. But if you are sure of that element, you would find Mr Te Hivaka guilty of murder and your deliberations in relation to him would end at that point. But you're sure, you will go to Question 5.

...

69. There is no miscarriage from the tenor of his Honour's language. Any "conditionality", was "counter-balanced" by the "specific language" used.¹²⁶ The Judge adopted the beyond reasonable doubt standard and tells the jury to consider, "whether you are *sure* Mr Te Hivaka knew that Mr Dodds had taken a firearm". He then told the jury that question was a "key element" and then went further by stating "if you're not sure on that element, you're going to go to Question 5". Together the words here were not a mere suggestion. There was no way the jury could have found Mr Te Hivaka guilty of murder if they were not sure he knew about the gun.

The question trail did not need to include knowledge of the weapon

70. Nothing turns on the fact that the oral directions, but not the question trail, referred to knowledge of the weapon.
71. In *Edmonds*, the Court stated there will be circumstances where the Judge will have to make a knowledge-of-the-weapon direction "as part of the Judge's *discussion* of the evidence".¹²⁷ That is what Lang J did. It was open to him to include the weapons directions – an evidential matter – in his oral direction but not in the question trail (which was limited to legal elements,

¹²⁶ Court of Appeal decision at [24]. The conditional language was "merely a recognition of the orthodox position that it was for the jury – not the Judge – to determine the facts".

¹²⁷ *Edmonds v R*, above n 98, at [48] (emphasis added).

and not evidential directions). The Court of Appeal said this was “unsurprising and could not give rise to a miscarriage”. Knowledge of the weapon was not an essential element and the “question trail is a jury aid, not a substitute for judicial directions”. The focus must be on those oral directions.¹²⁸

72. That “the question trail is a jury aid, not a substitute for judicial directions” is an unquestioned orthodoxy.¹²⁹ Their purpose is to “supplement” the judge’s oral summing-up, and distil in written form the issues for determination “in a series of logical steps”.¹³⁰ In considering whether there has been a miscarriage of justice, the question trail and the summing-up must be considered together”.¹³¹

73. The appellant cites the comments of the majority in *Ahsin v R* that:¹³²

... If a written question trail is given to the jury they are likely to focus on it in their deliberations rather than on the judge’s oral directions. It is therefore important that the question trail be both accurate and appropriately comprehensive.

74. That comment should be considered in context. This Court was considering whether the Judge correctly directed on the four legal elements of s 66(1)(b). The third element was included in the summing up but not the question trail.¹³³ The Judge then erred in his oral direction about the fourth element. The question trail *was* correct on that point, but that insufficient to ameliorate the error.¹³⁴ It was overall the deficiencies on the legal elements in both the oral summing up and the question trail that meant the jury was not adequately directed and a miscarriage occurred.

75. This Court in *Ashin* did not suggest the question trail is to be elevated above a Judge’s oral directions. As the majority in *Ahsin* acknowledged, the question trail was provided as it “supplemented” the Judge’s address.¹³⁵

¹²⁸ Court of Appeal decision at [23].

¹²⁹ See, most recently, *X (CA795/2014) v R* [2026] NZCA 152 at [76], citing *Singh v R* [2014] NZCA 306 at [29]; *Perez v R* [2015] NZCA 267 at [43]; and *Peruman v R* [2025] NZCA 226 at [29].

¹³⁰ *Singh v R*, above n 129, at [1]. See also *Tuhaka v R* [2015] NZCA 540 at [50].

¹³¹ *Singh v R*, above n 129, at [12].

¹³² *Ahsin v R*, above n 99, at [86] per McGrath, Glazebrook and Tipping JJ.

¹³³ At [86].

¹³⁴ At [87].

¹³⁵ At [84].

The case law that has developed in the Court of Appeal since *Ahsin* is entirely consistent with the Court’s decision here.¹³⁶

76. In addition to there being no error in the directions, it must be recognised that the trial was suffused with the issue of why the gun was brought to the park and whether Mr Te Hivaka knew of its existence.¹³⁷ The Crown and defence cases both stressed the significance of Mr Te Hivaka’s knowledge about the gun. In summing up, the trial Judge reminded the jury that the Crown case was centred around Mr Te Hivaka’s knowledge of the firearm.¹³⁸ Equally, Mr Te Hivaka’s case was a “very simple” one: he “did not know ... that Mr Dodds was taking a loaded firearm to the park”.¹³⁹ This was a point Mr Te Hivaka’s counsel repeatedly emphasised, from the first words of his opening address,¹⁴⁰ to the end of his closing address.¹⁴¹ As stated by the Court of Appeal, Mr Te Hivaka’s knowledge of a weapon was a “pervasive element of his trial as a whole”.¹⁴²
77. Considering the Judge’s directions and question trail in the broader context of the trial is not a matter of resorting to counsel’s submissions to “save the day”.¹⁴³ It is rather to show that on the way this case was presented there was no risk of any confusion.¹⁴⁴
78. Finally, unlike *Burke* and *Edmonds*, the present case relates to murder rather than manslaughter. The required mens rea that Mr Te Hivaka needed to foresee – a reckless killing or intentional inflection of grievous

¹³⁶ For example, in *W v R* the trial Judge did not include the full definition of consent in the question trail. Despite that being the trial issue, the Court did not accept a miscarriage occurred since the full direction was provided in summing up: *W (CA556/2023) v R* [2024] NZCA 455 at [59] and [61]. It is also consistent with the approach in England where written directions have not supplanted the importance of oral directions. Each case is fact specific and a failure to provide written directions “does not render the verdicts unsafe” in the context of no other errors in the oral directions: *R v Grant* [2021] EWCA Crim 1243, [2022] QB 857 at [49].

¹³⁷ As the Court of Appeal stated there were “other reasons why the jury would have been left in no doubt that Mr Te Hivaka’s knowledge of the weapon was critical”: Court of Appeal decision at [26]-[35].

¹³⁸ Judge’s summing up at [132], [02 CoA Casebook at 185]]. See Court of Appeal decision at [27].

¹³⁹ Judge’s summing up at [146], [02 CoA Casebook at 191]]. See Court of Appeal decision at [28].

¹⁴⁰ [02 CoA Casebook at 68]] (Defence opening): “Madam Foreperson, members of the jury, he didn’t know that there was a firearm and he didn’t know that it might be used. He just didn’t know. That’s the simplicity of the truth.”

¹⁴¹ [02 CoA Casebook at 149-150]]. See Court of Appeal decision at [30].

¹⁴² Court of Appeal decision at [31].

¹⁴³ Appellant submissions at [63].

¹⁴⁴ *Haunui v R* [2020] NZSC 153, [2021] 1 NZLR 189 at [67] citing *Misa v R* [2019] NZSC 134, [2020] 1 NZLR 85 at [48]. While this Court did not give weight to the Crown and defence focus on knowledge of the knife in *Burke*, that was in the context of the appeal proceeding on the basis the sentencing Judge had *explicitly* found knowledge of the knife was not proven.

bodily injury for the purpose of facilitating the robbery – is much higher and more exacting than in a manslaughter case. Practically, there was no way for the jury to be satisfied the specific legal test was met on these facts *unless* they were sure that Mr Te Hivaka knew about the gun. The Judge directed to these exacting legal standards.¹⁴⁵

79. For the jury to have reached a guilty verdict without establishing Mr Te Hivaka had knowledge of a weapon, it would have had to consider the question trail in an abstract fashion divorced from the realities of the trial – ignoring the trial Judge’s oral directions as well as the Crown and defence cases. There was no possibility it could have answered ‘yes’ to question four (and so convicted Mr Te Hivaka of murder) *unless* the Crown had established Mr Te Hivaka knew about the gun.¹⁴⁶

Ground 3: Foresight of death is not required for murder

80. The appellant’s key propositions are:
- 80.1 For s 66(2) liability under *either s 167 or s 168* a defendant must know that death (a culpable homicide) is a probable consequence.¹⁴⁷ His argument goes on to focus on s 168.¹⁴⁸
 - 80.2 The rationale: if death is not foreseen, then ss 66(2) and s 168 “untether moral culpability from legal liability”.¹⁴⁹
 - 80.3 Culpable homicide is “a constituent element of the offence of murder”, and the actus reus for s 168 murder is culpable homicide.¹⁵⁰
81. These sweeping interconnected propositions conflict with fundamental principles of criminal law. The short answer is that foresight of death is not required for s 66(2) party liability for murder under s 168 (nor for the

¹⁴⁵ Judge’s summing up at [83]-[84] [[02 CoA Casebook at 171-172]].

¹⁴⁶ Court of Appeal decision at [35].

¹⁴⁷ Appellant submissions at [89]. Note, even under what is often seen as the most culpable form of murder for a principal, s 167(a), intent to kill, foresight that death could well result is *not* required.

¹⁴⁸ If Mr Te Hivaka foresaw a reckless killing (s 167(b)) then on that option he necessarily had foresight of death: see this Court’s comments in *Edmonds v R*, above n 98, at [29].

¹⁴⁹ Appellant submissions at [90]. However, the point of the “felony murder rule” is that malice is “constructive”: see *Timoti v R* [2005] NZSC 37, [2006] 1 NZLR 323 at [25].

¹⁵⁰ Appellant submissions at [94] and [104].

principal), nor is it required for any form of manslaughter. The Court of Appeal cases the appellant relies on for this ground have long been clarified in our law, most recently by the Supreme Court decisions in *Edmonds* and *Burke*.

82. As to first principles, culpable homicide¹⁵¹ is the umbrella term; it is not an element of murder. Instead, murder is a form of culpable homicide. Culpable homicide is either murder or manslaughter (s 160),¹⁵² and murder is *only* murder if it meets the precise statutory definition in s 167 or s 168. Relevant specific states of mind for murder are found in four paragraphs in s 167, and in the “further definition of murder” in s 168.¹⁵³ Section 168 is a modified version of the common law’s felony murder rule, properly restricted to killings in the course of violent felonies.¹⁵⁴ The provisions in s 168 are precisely drafted. Foresight of death is expressly not required. The policy justification for moral culpability under the felony murder rule turns on the foreseen risks that come from a deliberate choice to engage in violent or dangerous crime.¹⁵⁵ Any culpable homicide not amounting to murder is manslaughter.¹⁵⁶ This will almost invariably depend on mens rea.
83. There are two distinct parts to every unlawful act culpable homicide (whether murder or manslaughter):¹⁵⁷ (1) an *unlawful act* that (2) *causes a killing*. The unlawful act is culpable and therefore must satisfy the full conduct elements of the offence¹⁵⁸ – accordingly, the *actus reus* and the *mens rea* must coincide. In addition, culpable homicide is a “result crime”, as opposed to a mere “conduct crime”. Result crimes require proof that

¹⁵¹ Homicide is a killing (s 158). The fact of causing death is not criminal; it is not an unlawful act per se – homicide/killing can be culpable or non-culpable (s 160). Under s 160(2) it is only culpable if it is caused by a relevant unlawful act (i.e. with the requisite statutory actus and mens rea for the specific unlawful act). The fact of death needs to be proved, but is a matter of causation: see fn 159 below.

¹⁵² Leaving aside infanticide.

¹⁵³ See A P Simester, W J Brookbanks and Neil Boister *Principles of Criminal Law* (5th ed, Thomson Reuters, Wellington, 2019) at [16.3]–[16.4].

¹⁵⁴ Simester, Brookbanks and Boister, above n 153, at [16.4.5], citing *Attorney-General’s Reference (No 3 of 1994)* [1998] AC 245 (HL) at 257–258.

¹⁵⁵ See, for example, *Arulthilakan v R* [2003] HCA 74, (2003) 203 ALR 259, quoting *Ryan v R* (1967) 121 CLR 205 (HCA) at 240–241.

¹⁵⁶ Crimes Act, s 171.

¹⁵⁷ Section 160(2)(a). No matter what route to murder is considered in this case, under s 160 the only type of homicide at issue is unlawful act homicide.

¹⁵⁸ For “unlawful act” commentary Simester, Brookbanks and Boister, above n 153, at [16.5.2(1)]; and David Ormerod *Blackstone’s Criminal Practice 2026* (36th ed, OUP, London, 2025) at [B1.6].

the defendant's conduct caused a certain outcome; in homicide that it caused the death of another. Death is critical, but is an element – part of the circumstances of the offence (the actus) – only in the sense that the fact of death must be proven beyond reasonable doubt *as a matter of causation*.¹⁵⁹

84. In New Zealand all parties are equally liable to conviction for an offence whether they acted as “principal” or some form of secondary party so long as the respective elements are met. The *essential elements* of codified offences do not change depending on whether the person charged is a principal or a party. To find otherwise in the context of s 168 would require the Court to create a novel party liability principle inconsistent with the above fundamental principles, and with Parliament's intent for s 168. There is no principled reason to do so. The ‘over-criminalisation’ submission is overstated. The Court's main guidance should be the words of the statute as previously interpreted by this Court.
85. The appellant's submission is the same argument made in *Burke* and rejected by the majority.¹⁶⁰ In *Burke* this Court held it was unnecessary to “expand the interpretation of the term ‘offence’ in the ‘probable consequence’ context of s 66(2) beyond the acts or omission of the principal offender”.¹⁶¹ While killing is an element of manslaughter:¹⁶²

... foresight of death is not required of the principal offender and should not be required of the secondary party. In a case where the principal offender's conduct has caused death, death is a result of the conduct, but not an ingredient that has to be foreseen by the secondary party. This approach aligns with the Canadian approach in *Jackson* and is consistent with the approach in s 168 cases, such as *Rapira*. It avoids the possible disjunct between the requirements for s 66(2) liability for manslaughter and murder.

¹⁵⁹ Simester, Brookbanks and Boister, above n 153, at [3.1]: “It is an essential part of our concept of murder, for instance, that someone dies. Thus the victim's death – a consequence – is a constitutive part of the actus reus of murder in the Crimes Act 1961. Such offences are sometimes called “result crimes” because they cannot be committed unless the defendant's actions cause the specified result or consequence actually to occur.” See also David Ormerod *Blackstone's Criminal Practice 2026* (36th ed, OUP, London, 2025) at [A1.2]. In the context of manslaughter Simester, Brookbanks and Boister refer to this feature as “strict liability for consequences”: above n 153, at [6.4.4(4)(c)].

¹⁶⁰ *Burke v R*, above n 98, at [146]. The appellant in *Burke* however uses the language of “unlawful killing”.

¹⁶¹ At [172].

¹⁶² At [172] (footnotes omitted).

86. This is similarly consistent with in the majority judgment in *Ashin*, where it addressed party liability to murder under s 66(1)¹⁶³ and, consistent with that, confirmed that a party under s 66(2) must foresee as a probable consequence “both the physical and mental elements of the essential facts of the offence”.¹⁶⁴
87. The cases criticised by the appellant were reviewed by the majority in *Burke*,¹⁶⁵ and no issue was taken with their correctness.¹⁶⁶ Instead, the Court endorsed the approach of the Court of Appeal in *Rapira*.¹⁶⁷ That was not a new position for the Supreme Court, who also endorsed it in *Edmonds*.¹⁶⁸

[26] The mens rea requirement for murder in New Zealand – customarily referred to as “murderous intent” – is not confined to an intention to kill... under s 168, an intention to inflict grievous bodily injury suffices where the violence was for the purpose of facilitating particular specified offences...

[27] “... under the Crimes Act... very limited mens rea (not extending to an appreciation that death is likely) is required to be established against a principal to justify a conviction for manslaughter. The same is true of a party who is prosecuted as an aider and abettor... Whether this is always the case in New Zealand under common purpose principles is unclear. *It certainly is where the principal has been found guilty of murder under s 168...*”

88. The risk of over-criminalisation is overstated and overlooks the policy justifications for the law’s approach. Briefly:

- 88.1 This argument was not accepted in *Burke* in the context of manslaughter. It would distort party liability principles, and the majority recognises not imposing a requirement to foresee death “avoids the potential for under-criminalisation if liability for a secondary party under s 66(2) require proof of foresight of a killing

¹⁶³ *Ahsin v R*, above n 99, at [82] per McGrath, Glazebrook and Tipping JJ – the party must know the “essential aspects” of the principal’s conduct. “What is essential includes both physical and mental aspects of that person’s conduct, that is, the actions to be taken and the intention with which they are to done.”

¹⁶⁴ *Ahsin v R*, above n 99, at [102(e)].

¹⁶⁵ *Burke v R*, above n 98, at [154]-[158].

¹⁶⁶ The Supreme Court’s decision in *Burke* and *Edmonds* has the effect of overtaking, but more important clarifying, *R v Tomkins* [1985] 2 NZLR 253 (CA). In that case, both parties (the stabber and Mr Tomkins) had knives (Mr Tomkins was convicted of a separate charge of aggravated robbery that accompanied the homicide) and the very thing that happened (a stabbing) was undoubtedly in both of their contemplation. The appeal was dismissed and the Court of Appeal itself said its decision was never meant to “cover every case that may arise in this field”: at 256.

¹⁶⁷ *Burke v R*, above n 98, at [100]-[101].

¹⁶⁸ *Edmonds v R*, above n 98, (footnotes omitted) citing *R v Rapira* [2003] 3 NZLR 794 (CA) at [28]-[33].

in circumstances where no such requirement applies to the principal offender”.¹⁶⁹

- 88.2 The appellant suggests this Court in *Edmonds* raised concerns that liability of a secondary party under ss 66(2) and 168 could give rise to ‘over-criminalisation’. But that is not quite right. The Court was largely referring to “concern in England that rigorous application of [England’s common law “common purpose”] principles tends to over-criminalise the conduct of secondary parties”.¹⁷⁰ The felony murder rule was not in issue in the relevant English cases. Further, since *Edmonds*, the position in England has been addressed by the United Kingdom Supreme Court’s decision in *Jogee*. It recognised that English law had for many years taken a wrong turn by essentially substituting in dynamic group violence cases knowledge of a weapon/foresight of a weapon for what in law in fact needs to be proved, which is intent/*mens rea*. Knowledge of a weapon is of evidential value only.¹⁷¹ The same approach and error has not been taken by courts in New Zealand and the principles are codified.

Ground 4: No misdirection on intention in relation to s 168

89. The Crown understands the appellant’s concern is that the direction on Question 4 in the trial may have led the jury to conclude proof of a grievous bodily injury is sufficient, or that injury can occur in a way that does not involve the principal *meaning* to cause the grievous bodily injury.
90. Question 4 follows question 3. That sequence required the jury to have found that Mr McIntosh was “intentionally shot”. The prior directions on Mr Dodd’s case provide the context for this. It was for the jury to determine who had shot Mr McIntosh, and in what circumstances, but Mr Dodd’s had admitted the shooting, as the directions confirmed.¹⁷²

¹⁶⁹ *Burke v R*, above n 98, at [172].

¹⁷⁰ *Edmonds v R*, above n 98, at [28].

¹⁷¹ *Regina v Jogee*, above n 103.

¹⁷² It was for the jury to determine whether this was accidental or intentional: see the Judge’s summing up at [71], [[02 CoA Casebook at 167]].

91. An intentional shooting by Mr Dodd's was therefore established by the time the jury moved to question 4. At that point the trial correctly asked the jury if it is sure that Mr Te Hivaka knew:

... the intentional infliction of grievous bodily injury on Mr McIntosh for the purpose of committing the offence of robbery...[was] a probable consequence of carrying out the agreement to rob Mr McIntosh.

92. There is no practical difference between that and the words of s 168:

[The Principal] means to cause grievous bodily injury for the purpose of facilitating the commission of [the robbery].

93. 'Intentional' and 'means to' have identical meanings.¹⁷³ That is also illustrated by our day-to-day approach in directing on murder under s 167(a): "the offender means to cause the death of the person killed". Despite the use of 'means to', juries are directed to consider whether the defendant "intended" to kill the victim.¹⁷⁴ No issue has been taken, or could be, with that approach.

30 June 2026

M F Laracy | R G Buckman
Counsel for the respondent

TO: The Registrar of the Supreme Court of New Zealand.

AND TO: The appellant

¹⁷³ Mathew Downs (ed) *Adams on Criminal Law – Offences and Defences* (Thomson Reuters, online ed) at [CA167.05], citing *R v Juanetty* (2005) 200 CCC (3d) 116 (ONCA) at [20].

¹⁷⁴ That is the language in the specimen question trail in the bench book: "Are you sure that ... Mr Smith intended to kill Mr Jones": [\[5.7.2.6\]](#) (Question 3(a)).

List of authorities to be cited by Respondent

Statutes

1. Crimes Act 1961
2. Criminal Procedure Act 2011

Cases

New Zealand

Supreme Court

3. *Ahsin v R* [2014] NZSC 153, [2015] 1 NZLR 493
4. *Burke v R* [2024] NZSC 37, [2024] 1 NZLR 1
5. *Edmonds v R* [2011] NZSC 159, [2012] 2 NZLR 445
6. *Haunui v R* [2020] NZSC 153, [2021] 1 NZLR 189
7. *Longi v R* [2025] NZSC 191, [2025] 1 NZLR 900
8. *Kuru v R* [2024] NZSC 184, [2024] 1 NZLR 985
9. *Misa v R* [2019] NZSC 134, [2020] 1 NZLR 85
10. *R v Owen* [2007] NZSC 102, [2008] 2 NZLR 37
11. *Tihi v R* [2017] NZSC 143
12. *Timoti v R* [2005] NZSC 37, [2006] 1 NZLR 323

Court of Appeal

13. *Baker v R* [2015] NZCA 306
14. *Benbow v R* [2023] NZCA 344, (2023) 31 CRNZ 12
15. *Do v R* [2024] NZCA 97
16. *Dunn v R* [2025] NZCA 216
17. *Ford v R* [2024] NZCA 239

18. *Milner v R* [2014] NZCA 366
19. *Nieuwenhuijsen v R* [2013] NZCA 207
20. *Perez v R* [2015] NZCA 267
21. *Peruman v R* [2025] NZCA 226
22. *Pue v R* [2014] NZCA 273
23. *R v Guo* [2009] NZCA 612
24. *R v Hart* [1986] 2 NZLR 408 (CA)
25. *R v Maxwell* (1988) 3 CRNZ 644 (CA)
26. *R v Munro* [2007] NZCA 510, [2008] 2 NZLR 87
27. *R v Rapira* [2003] 3 NZLR 794 (CA)
28. *R v Tomkins* [1985] 2 NZLR 253 (CA)
29. *R v Vaihu* [2009] NZCA 111
30. *R v Puttick* (1985) 1 CRNZ 664 (CA)
31. *Singh v R* [2014] NZCA 306
32. *Tamihere v R* [2024] NZCA 300
33. *Thomas v R* [1972] NZLR 34 (CA)
34. *Tihi v R* [2016] NZCA 211
35. *Tuhaka v R* [2015] NZCA 540
36. *W (CA556/2023) v R* [2024] NZCA 455
37. *Wanhalla* [2007] 2 NZLR 573 (CA)
38. *Watson v R* [2025] NZCA 455
39. *Watt v R* [2014] NZCA 459

- 40. *Webb v R* [2013] NZCA 666
- 41. *Wilson v R* [2019] NZCA 485
- 42. *X (CA795/2014) v R* [2026] NZCA 152

England and Wales

- 43. *Attorney-General's Reference (No 3 of 1994)* [1998] AC 245 (HL)
- 44. *McGreevy v Director of Public Prosecutions* [1973] 1 WLR 276 (HL)
- 45. *R v Grant* [2021] EWCA Crim 1243, [2022] QB 857
- 46. *Regina v Jogee* [2016] UKSC 8, [2017] AC 387

Australia

- 47. *Arulthilakan v R* [2003] HCA 74, (2003) 203 ALR 259
- 48. *Chamberlain [No 2] v R* (1984) 153 CLR 521 (HCA) at 535
- 49. *R v Hillier* [2007] HCA 13, (2007) 228 CLR 618
- 50. *Ryan v R* (1967) 121 CLR 205 (HCA)
- 51. *Shepherd v R* (1990) 170 CLR 573 (HCA)

Canada

- 52. *R v Gibson* 2021 ONCA 530, (2021) 157 OR (3d) 597
- 53. *R v Juanetty* (2005) 200 CCC (3d) 116 (ONCA)

Texts

- 54. A P Simester, W J Brookbanks and Neil Boister *Principles of Criminal Law* (5th ed, Thomson Reuters, Wellington, 2019)
- 55. David Ormerod *Blackstone's Criminal Practice 2026* (36th OUP, London, 2025)

56. I H Dennis *The Law of Evidence* (8th ed, Sweet & Maxwell, London, 2024)
57. Mathew Downs (ed) *Adams on Criminal Law – Offences and Defences* (Thomson Reuters, online ed)

Articles

58. Amy Hill “Knowledge of the Weapon in Party Liability Cases: An Analysis of *Edmonds v R*” (2013) 44 VUWLR 167