

IN THE SUPREME COURT OF NEW ZEALAND

SC 134/2015
[2016] NZSC 19

BETWEEN DEUCE DERRICK JUNIOR EVO
SAVAGE
Applicant

AND THE QUEEN
Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: J C Gwilliam for the Applicant
M D Downs and J D Slankard for the Respondent

Judgment: 1 March 2016

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Savage was convicted of two counts of discharging firearms with intent to cause grievous bodily harm, one count of aggravated robbery and one count of demanding with menaces.

[2] His appeal against conviction and sentence was dismissed by the Court of Appeal.¹ He now seeks leave to appeal to this Court with regard to the convictions. He says that:

- (a) the verdict of demanding with menaces was unreasonable; and
- (b) there was an inadequate identification warning by the trial judge.

¹ *Savage v R* [2015] NZCA 550 (Harrison, Heath and Collins JJ).

Demanding with menaces

[3] It is submitted that the conviction on this charge cannot be sustained as, absent a duty to intervene, mere presence at the time of the threats (made by another person, Mr Ngahehu) does not suffice. It is submitted further that the Judge failed to direct the jury adequately on this point.

Decision of the Court of Appeal

[4] The Court of Appeal noted that Mr Savage had arrived at the victim's house shortly before Mr Ngahehu. The Crown case was that, while he did not make direct threats against the victim, his presence at the time of the threats was intended to act as an intimidating factor in order to assist Mr Ngahehu.² The victim's evidence was that he had felt intimidated by Mr Savage's "manner, size and the way he was standing against the wall with his arms folded, watching what was happening".³

[5] The Court of Appeal was satisfied that, when all the circumstances are taken into account, Mr Savage's presence provided an adequate evidential foundation for an inference that he was there to assist and encourage Mr Ngahehu.⁴

[6] As to the judge's direction the Court considered that the directions given were correct. The Court summarised the directions given as follows:⁵

[The Judge] identified it in the question trail as whether the jury was satisfied that Deuce Savage intentionally assisted and/or encouraged Mr Ngahehu to demand the sum of \$200 from [the victim] with intent to steal that sum. He emphasised that the jury must be satisfied that Deuce Savage knew what Mr Ngahehu was doing. He referred to the Crown case that Deuce Savage's bulk, muscle and presence, and the way that he stood in the room, provided the evidential foundation for the necessary inference. There was [the victim's] uncontradicted evidence that he felt intimidated not just by Deuce Savage's presence but by his manner, his size and the way he was standing against the wall with his arms folded, watching what was happening. The Judge also referred to the defence case that Deuce Savage's presence, on its own, was insufficient.

² At [4].

³ At [38].

⁴ At [39].

⁵ At [38].

Our assessment

[7] Nothing raised by Mr Savage suggest an error of principle in the Court of Appeal’s approach or the risk of a miscarriage of justice.

Identification warning

[8] As to Mr Savage’s contention that the trial Judge’s identification warning was lacking, the Court of Appeal was satisfied that the synonyms used by the Judge “a very grave injustice or miscarriage of justice” satisfied the purpose and spirit of the statutory requirements. The Court also considered that the Judge had left the jury in no doubt that it was to approach the evidence “with very real care and caution”.⁶

Our assessment

[9] The points raised by Mr Savage are essentially the same as those raised in the Court of Appeal. They relate to the application of settled principle to the particular circumstances and thus no issue of general or public importance arises. Further, nothing raised suggested that the Court of Appeal was wrong in its assessment or indicates a risk of a miscarriage of justice.

Result

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

Solicitors:
Main Street Legal Ltd, Upper Hutt for Applicant
Crown Law Office, Wellington for Respondent

⁶ At [41] and [43].