

**IN THE DISTRICT COURT  
AT WELLINGTON**

**CRI 2015-091-001265  
[2016] NZDC 3363**

**THE QUEEN**

v

**JOVAN EDMONDS**

Hearing: 15 January 2016

Appearances: Ms A van Echten for the Crown  
Mr J Miller for the Defendant

Judgment: 2 March 2016

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**DECISION OF JUDGE BA MORRIS**

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[1] Mr Edmonds shot his friend in the thigh. The Crown says he did that out of anger as his friend admitted having sexual contact with his ex partner. The Crown says Mr Edmonds' claim his friend pointed a rifle towards Mr Edmonds' head is false and the claim he shot him to defend himself is also false. Mr Edmonds admits that he shot the complainant in the leg with a gun. The issue in the trial is self defence.

[2] Should the jury know that a few years before this incident Mr Edmonds shot a relative in the thigh as he was angry about the way his then partner had been treated?

[3] The Crown says it supports the contention that Mr Edmonds is a man who, in an alcohol induced rage, is prepared to shoot people when the issue of his ex partner

comes up, even when in the company of “witnesses”. The Crown says it rebuts the claim of self defence.

[4] The defence says the evidence of the earlier shooting is irrelevant in this trial. The defence say the fact Mr Edmonds sought revenge against an unarmed cousin walking away from him tells us little about what occurred four years later when two drunken men with access to guns had an argument, at least in part, over the guns. It tells us nothing about whether the complainant, Mr Peters, had pointed a gun at Mr Edmonds.

### **The evidence relating to this trial**

[5] There are two scenarios presented: one by the complainant and the other by the defendant in his DVD interview.

### **Complainant**

[6] The complainant Mr Peters has known Mr Edmonds for about 10 years. He says Mr Edmonds and an associate arrived at his house on 9 June 2015 to drink beer. Mr Edmonds showed him the pistol that he brought with him and asked him to fix it which he did. He said Mr Edmonds test fired the gun into a couch. At some point Mr Peters went and got his own Winchester rifle.

[7] When Mr Edmonds had finished a second box of beer his demeanour changed he said. He would point his pistol at his friend and make threats. Mr Edmonds picked up Mr Peters’ rifle and had tried to put a .44 bullet but it wouldn’t fit. Mr Peters said he tried hard to get the gun off him as it was dangerous and he told Mr Edmonds he’d kill him if he didn’t give him his gun back. He said Mr Edmonds started to walk off with his gun and threatened to shoot him. He ran after him and “attacked”. They scuffled in the corner of the garage as he didn’t want him leaving with his gun. He said he had no weapons and was only using his fists and was trying to get the rifle off Mr Edmonds.

[8] Mr Edmonds then got his pistol out, dropped the rifle in the struggle and was standing with his pistol in his hand trying to load it and so he picked up, he said, a metal file tool. Mr Edmonds' associate also picked up a metal pair of vice grips. The associate that came with Mr Edmonds is not being called by the Crown.

[9] Mr Peters went on to say that they were all threatening each other. Mr Edmonds then loaded the pistol with his back turned to him and then pointed the pistol at his head telling him he was going to kill him. Mr Peters said he walked towards him and didn't care if he was shot in the head as he had lost the plot and didn't care anymore. They then started scuffling again. Mr Peters was trying to take the pistol off him as he didn't want him leaving with that gun either and then he was shot in the leg.

[10] He said if he had got the gun off him he would have shot him in the leg too. He then set his dog on Mr Edmonds as he was leaving. He said he yelled out that they were gutless and he would kill them for what they had done. He went back to the house and got the rifle. He said he stashed it before the Police arrived as he didn't want to lose it. He said he kept it hidden and dumped it out at sea about three weeks later when his leg had healed as he didn't want anyone else getting it and he thought it would be the safest thing to do.

[11] At no stage did Mr Peters indicate that Mr Edmonds had got angry with him because of a discussion with his girlfriend. I turn however to Mr Edmonds' account of the evening.

### **Defendant's interview**

[12] Mr Edmonds' account is less than clear and seems at times disjointed. He did say at one point in the interview "I haven't had my own head screwed on my own body properly" since he was released from prison. He told the Police however that he went around to the house as he wanted to get Mr Peters' gun off him as he was receiving threats from his family. I interpolate that that didn't seem to make a lot of sense given Mr Edmonds had his own pistol. However that was his explanation. He said that they had got drunk and things got out of hand when he wanted to take

Mr Peters' gun off him. He said both of them ended up at gun point and there was a tussle between them. He said Mr Peters had his big gun and he had his little one.<sup>1</sup> At one point he said he didn't know if the guns were loaded but later acknowledged that his was.

[13] At another stage in the interview he said things came up about the past which put him in a bad mood. Mr Peters, on enquiry, had admitted to having sexual intercourse with his ex partner. The interviewing Police officer asked whether that was when he lost it a bit and he agreed. He said there was a tussle and they held each other at gun point, pointing guns at each other and it started getting serious. He also was asked "Is this because of your girlfriend?" and he answered "Yes last time I went to jail was because of it too".<sup>2</sup>

[14] Later on in the interview he said he wanted to take Mr Peters' Winchester and that he didn't want him to. When asked whether that was what the argument was about he said "I think so".<sup>3</sup> The interviewer got a little confused and said "Right well you know cause it either has been or it hasn't so has it been about the ex girlfriend or has it been about the firearm?" and the answer was "A bit of both".

[15] The issue of why he fired the gun was returned to towards the end of the interview with the interviewing officer asking him "Why did you fire the gun?" and Mr Edmonds replied "Not sure, cause he had his one at me". "Whereabouts did you aim it?" The answer was: "A thigh shot". When asked how he was feeling he said he was imagining the bullet and that he wouldn't be there if Mr Peters had pulled the trigger.

### **Propensity evidence sought to be called**

[16] In December 2011 Mr Edmonds was at a house with his relatives and his then girlfriend. A large amount of alcohol was drunk in the afternoon and in the evening a fight developed amongst various members of the family including Mr Edmonds'

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<sup>1</sup> The small pistol was located in the bag carried by Mr Edmonds' associate at the time at which they were stopped. It seems Mr Edmonds' Winchester was not located.

<sup>2</sup> Page 20 Notes of Evidence (NOE)

<sup>3</sup> NOE page 35

girlfriend. Mr Edmonds was unhappy on seeing that his girlfriend beaten up and shouted that he was going to get his gun. He left the address and collected his .22 rifle, which was then in three parts, and ammunition. He then returned to the party.

[17] On the way back he saw a group of male family members who had been at the party previously and he called out to them. They didn't take him seriously which made him angry so as they were walking away from him he assembled and loaded his rifle, pointing it in the direction of the males and fired it. They ran away but he followed them to an intersection. He then knelt down and aimed the rifle towards the males again. It hit one of them partly through his thigh. It wasn't contended in the summary that he specifically aimed at that person or at his thigh but simply that he aimed it at the group. It did however hit one of the men's thighs. The defendant returned to the party and fired a warning shot to the gatherers there. A relative then took the gun off him.

[18] In explanation Mr Edmonds gave an account that was largely the same as that except he said he aimed at the ground behind them and he thought the person was joking when they yelled out that he had shot them.

[19] As a consequence of that set of events Mr Edmonds was charged with wounding with intent to cause grievous bodily harm; unlawful possession of a firearm; discharging a firearm near a dwelling house; and discharging a firearm in a public place. Mr Edmonds pleaded guilty to those offences. He was released from prison one year before these current allegations.

### **The law**

[20] Propensity evidence is defined in s 40 of the Evidence Act 2006 as meaning "evidence that tends to show a person's propensity to act in a particular way or to have a particular state of mind, being evidence of acts, omissions, events, or circumstances with which a person is alleged to have been involved ...".

[21] Section 43 of the Act provides that the prosecution can offer propensity evidence about a defendant only where the probative value of the evidence in

relation to the issue in dispute outweighs the risk that the evidence may have an unfairly prejudicial effect on the defendant. It also prescribes the factors that may be taken into account, including the issue in dispute, as follows:<sup>4</sup>

- (3) When assessing the probative value of propensity evidence, the Judge may consider, among other matters, the following:
  - (a) the frequency with which the acts, omissions, events, or circumstances which are the subject of the evidence have occurred:
  - (b) the connection in time between the acts, omissions, events, or circumstances which are the subject of the evidence and the acts, omissions, events, or circumstances which constitute the offence for which the defendant is being tried:
  - (c) the extent of the similarity between the acts, omissions, events, or circumstances which are the subject of the evidence and the acts, omissions, events, or circumstances which constitute the offence for which the defendant is being tried:
  - (d) the number of persons making allegations against the defendant that are the same as, or are similar to, the subject of the offence for which the defendant is being tried:
  - (e) whether the allegations described in paragraph (d) may be the result of collusion or suggestibility:
  - (f) the extent to which the acts, omissions, events, or circumstances which are the subject of the evidence and the acts, omissions, events, or circumstances which constitute the offence for which the defendant is being tried are unusual.

[22] These sections mean that I must assess whether the 2011 incident is propensity evidence. If it is then I must assess the probative value of it bearing in mind the issue, all the circumstances of a case including the matters set out in ss (3). I must then also assess the likely prejudicial effect of the evidence on the defendant and in particular whether that evidence is likely to unfairly predispose the jury against Mr Edmonds or whether they will tend to give disproportionate weight to this evidence in reaching a verdict. Finally I must attempt to place those two competing factors on the evidential scales to determine if the potential prejudice is outweighed by probity.

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<sup>4</sup> s 43(3) Evidence Act 2006

### **Crown's contentions**

[23] The Crown says the 2011 event demonstrates Mr Edmonds has a propensity to shoot people in the thigh when he is in an alcohol fuelled rage over issues to do with his ex girlfriend. It demonstrates too, the Crown says that he is prepared to do that even where there are other witnesses around at the time. The Crown points to the fact that there is a similarity of modus operandi and that in both cases he has fired when people are not taking him seriously or not responding to his threats and in both cases has loaded a gun during the altercation.

[24] The Crown says that this evidence assists the jury in determining the validity of Mr Edmonds' claim he was motivated by fear. It supports the Crown contention, the Crown says, that he was shooting out of anger not fear.

[25] The Crown says the Crown will be disadvantaged in the absence of this evidence as the jury may start with the premise that a person is unlikely to shoot a friend in the presence of a witness unless there is some powerful impetus, such as fear for one's life. With the 2011 evidence the jury will be able to assess that claim in the knowledge that Mr Edmonds is one who is prepared to shoot a friend or relative in front of others when issues surrounding his ex partner are raised and where there is no fear for his own safety.

### **Defence contentions**

[26] The defence say the sole issue in this case is whether Mr Peters held a gun up to Mr Edmonds' head. If he did there can be little doubt this is highly relevant to the issue of self defence. Mr Edmonds concedes that he had a gun, that it was loaded and that he used it to shoot Mr Peters in the leg. The fact that Mr Edmonds, some four years previously, had stalked an unarmed cousin would tell the jury little about how Mr Edmonds would respond in the current situation. It is accepted that both men were intoxicated and had access to firearms. The complainant accepts that he

attacked Mr Edmonds. The only issue is whether he had a gun and pointed it at the time of that altercation.

[27] The defence say it is simply not relevant let alone sufficiently probative to outcome an obvious and startlingly prejudicial effect.

### **Decision**

[28] If the issue in this trial had been whether it was Mr Edmonds who was in possession of a gun and who shot Mr Peters then I would have had little difficulty in determining this 2011 event was sufficiently probative to overcome the undoubted prejudicial impact on Mr Edmonds. How unlucky Mr Edmonds would have been to have someone pick him out as a person who was in an intoxicated rage about, in part, issues to do with his ex girlfriend to the point that he shot them in the thigh when by coincidence he had a year before, effectively, in an intoxicated rage about issues to do with his ex girlfriend shot another person in the thigh. Mr Peters is unlikely to have been lucky enough to make a false, or wrong, allegation of this nature about a person who had done that in the immediate past.

[29] The more nuanced issue however that I have to resolve is how probative is this evidence to the issue of self defence. How much does this evidence tell us about the likelihood of him being the defender and not the attacker on this occasion? And what is the extent of any prejudicial impact on the defendant if the jury gets to hear of this prior event?

[30] The defence say this is not relevant to the issue of self defence at all. I do not accept that. I agree with the Crown that it is evidence that is relevant to the issues to be determined in relation to self defence. Those issues are obviously whether Mr Edmonds was acting with the purpose or intent to defend himself and secondly whether the force that he used was reasonable given what he thought was happening at the time.

[31] I consider this evidence is relevant. It is probative, in the sense that a jury may start with the premise that a family member or friend of the family is unlikely to

get so angry about the issue of his ex girlfriend to the extent he would aim a gun and shoot friends while others are present. A shooting in defence of himself because Mr Peters has a gun pointed at him has more inherent plausibility about it. If the jury know however that Mr Edmonds has indeed been prepared to shoot an extended family member because of issues relating to his ex girlfriend then that makes the Crown contention in this case more plausible. I have considered too whether it demonstrates a certain strategic thinking of choosing to hit his victim in the thigh rather than a life threatening shot. However the summary of facts in relation to the 2011 incident does not allow such a conclusion to be drawn. The summary reveals he was simply aiming at a crowd of people and in the course of doing that hit the particular person, coincidentally, in the thigh.

[32] I consider it relevant too that Mr Edmonds certainly thought the events were related when he was asked “Was this because of your girlfriend?”, and he acknowledged that it was, he said “Last time I went to jail because of it too”. The Crown can submit that this demonstrates the real reason on this occasion to shoot, as it was on the last, was because he gets uncontrollably angry surrounding the topic of his ex girlfriend and accordingly reduces the likelihood of this occurring because of a need to defend himself.

[33] As for how relevant, how probative it is, I accept in so far as classic reasoning of propensity evidence, “this is how he operates”, one prior occasion dilutes such submission by the crown, even with unusual hallmarks. I also take into account that the Crown already has, from the defendant’s mouth, the concession that he was angry about his girlfriend. They are not left without a credible basis for the Crown contentions. Indeed it is only the defendant and not the complainant Mr Peters who mentions anything about this argument or any connection between the shooting and that issue.

[34] The probative value is weakened too in that, as the defence says, these are two different scenarios. In the 2011 incident the defendant, once he is angry, has gone to another address and then come across people walking away from him. They have run and scattered and even then Mr Edmonds has knelt down and taken aim at these unarmed people who at least at that point were not provoking him at all. In the

current trial matter it is acknowledged that there was a tussle between two intoxicated men and that certainly at some point they each had access to a gun. While the evidence remains probative it is somewhat weakened by that difference in the events.

[35] In conclusion on the issue of probative value while I accept that it is probative on the issue of self defence, it is not as probative as it would be on the issue of identity. The probative value in my view on this issue is less.

[36] So the real question is what likely prejudicial impact will this have on the jury and does that probative value I've found to exist, outweigh the prejudice in the balancing exercise? The events of 2011 involve a scenario of pre-mediated hunting down and shooting at a number of relatives. It seems to me that when a jury hears that Mr Edmonds had shot an unarmed cousin while he was running away, that will have a significant impact upon their view of Mr Edmonds. I find too it will affect their ability to listen to his explanation dispassionately. There is a real risk, even with direction, in my view that the jury will be unable to put that event into proper context. While it is hard to express and measure prejudice I am nevertheless sufficiently concerned about improper reasoning to look closely at the balancing exercise between the probative value and the prejudicial impact.

[37] My conclusion is that while I accept the evidence has probative value on the issue of self defence it does not lift the Crown case sufficiently to warrant the potential prejudice that the defendant will face once the jury have heard of the events of 2011. There is a real risk they will view Mr Edmonds through jaundiced lenses to the point they will not be able to make a dispassionate careful analysis of his explanation. That being my view I rule that the evidence is not admissible in this trial.

BA Morris  
District Court Judge