IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA160/2024
[2025] NZCA 607

BETWEEN	SEAN ANDREW HAYDE Appellant
AND	THE KING Respondent

Hearing:	9 October 2025
Court:	Cooke, van Bohemen and Gault JJ
Counsel:	B J Meyer and V Markova for Appellant E T Fletcher for Respondent
Judgment:	19 November 2025 at 3.30 pm

JUDGMENT OF THE COURT

The appeals against conviction and sentence are dismissed.

REASONS OF THE COURT

(Given by Cooke J)

[1] Following a jury trial, Sean Hayde was found guilty of murdering Wiremu Arapo-Ngapaku. He was also found guilty of attempting to pervert the course of justice by setting fire to a building to cover up the murder, and of representative charges of male assaults female and threatening to kill in relation to his ex-partner. He was sentenced to life imprisonment with a minimum non-parole period of 17 years, with concurrent sentences on the other charges.[1] Mr Hayde's co-defendant, Mr Hart,

1 *R v Hayde* [2024] NZHC 374 [sentencing notes].

was found guilty of manslaughter in relation to Mr Arapo-Ngapaku's death, and of attempting to pervert the course of justice. Mr Hayde now appeals against his conviction and sentence.

The offending

[2] The relevant offending is described by Venning J in the sentencing notes.

[3] Mr Arapo-Ngapaku was Mr Hayde's boxing instructor. Mr Arapo-Ngapaku introduced Mr Hayde to Ms McManus, with whom Mr Hayde then formed a sexual relationship, notwithstanding that Mr Hayde was living with the second victim, his partner at the time.[2]

[4] Mr Hart was Mr Arapo-Ngapaku's flatmate, and he knew Mr Hayde. The relationship between Mr Arapo-Ngapaku and Mr Hart had deteriorated for a number of reasons, and Mr Hayde's friendship with Mr Arapo-Ngapaku had also completely broken down. This was driven by Mr Hayde's relationship with Ms McManus, and his jealousy of Mr Arapo-Ngapaku's influence over her. A message from Mr Arapo-Ngapaku to Mr Hayde on 19 October 2020 was described by Venning J as a "tipping point".[3] Mr Hayde was aggravated to the point that he convinced Mr Hart to go with him to Mr Arapo-Ngapaku's property to give him a beating.[4]

[5] The following day, the two of them spent the afternoon drinking and then drove to Mr Arapo-Ngapaku's property to inflict the assault. In sentencing, Venning J said that Mr Hayde was the instigator and that Mr Hart assisted with a prolonged assault to Mr Arapo-Ngapaku's head and neck. Mr Arapo-Ngapaku died as a consequence. Venning J said that Mr Hayde may not have intended to kill Mr Arapo-Ngapaku at the outset, but given the extent and force of the injuries, he must have known that the assault would likely cause death.[5]

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2 At [4]–[5].
3 At [7].
4 At [4]–[7].
5 At [8]–[10].

[6] After he realised he had killed Mr Arapo-Ngapaku, Mr Hayde decided to set fire to the building in an attempt to cover up the crime. He and Mr Hart then pretended to assist first responders to get Mr Arapo-Ngapaku out of the property when they arrived. Mr Hayde and Mr Hart then lied to the police about the death and the fire.[6]

[7] At trial, Mr Hayde gave evidence that Mr Hart had killed Mr Arapo-Ngapaku. Venning J did not accept this at sentencing, saying that Mr Hayde was the instigator and that Mr Hart had assisted him.[7]

[8] The charges in relation to the second victim, his former partner, arose from events on 31 August 2020 when Mr Hayde assaulted her in a number of ways. During this assault, he threatened to kill his former partner by setting her house on fire and not letting her leave. This was two months before Mr Hayde killed Mr Arapo-Ngapaku. Mr Hayde was on bail for this offending when he killed Mr Arapo-Ngapaku.[8]

Grounds for appeal against conviction

[9] On appeal, Mr Hayde argues that:

(a) the Crown presented an unbalanced narrative, disproportionately focusing blame on Mr Hayde;

(b) speculative arguments and overreaching expert evidence were used to fill evidential gaps, resulting in prejudice;

(c) there was misuse of cross-propensity evidence to improperly bolster the Crown's case;

(d) trial counsel failed to challenge the most prejudicial aspects of this evidence as they should have; and

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6 At [11]–[12].
7 At [9].
8 At [13].

(e) Venning J's directions failed to adequately address or cure the cumulative prejudice arising from these issues.

[10] Mr Hayde contends that the appropriate remedy is to quash his convictions and order a retrial, or, alternatively, if the murder conviction is not set aside, that the Court should exercise its discretion to substitute a verdict of manslaughter.

[11] Under s 232(2)(c) of the Criminal Procedure Act 2011, the Court must allow an appeal if a miscarriage of justice has occurred. This will arise if something material has gone wrong with a trial that creates a real risk that the outcome of the trial was affected.[9] This will be the case if there is a reasonable possibility that another verdict would have been reached.[10] An appeal would also be allowed if a miscarriage of justice arises because of an unfair trial.[11] Not all departures from good practice will render a trial unfair, but if the departure is very significant, to the point that it is "so gross, or so persistent, or so prejudicial, or so irremediable", the appeal court has no choice but to find the trial was unfair and quash the conviction as unsafe.[12]

Conduct of the prosecution

[12] For Mr Hayde, Mr Meyer argued that the Crown's case had been presented in an inappropriate way, involving a disproportionate focus of blame on Mr Hayde, which he argued was reflected in a number of features of the prosecution case. As the Supreme Court reiterated in *R v Stewart (Eric)*, the basic proposition is that prosecutors are entitled to be firm and forceful in presenting the Crown's case but must not strive for a guilty verdict at all costs.[13] As a reflection of this principle, the prosecutor's opening address should remain factual and free of argument, and closing submissions must remain measured and respectful, even if there is a degree of rhetorical advocacy.[14]

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9 Criminal Procedure Act 2011, s 232(4)(a).

10 *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].

11 Criminal Procedure Act, s 232(4)(b).

12 *R v Condon* [2006] NZSC 62, [2007] 1 NZLR 300 at [78], quoting *Randall v The Queen* [2002] UKPC 19, [2002] 1 WLR 2237 at [28].

13 *R v Stewart (Eric)* [2009] NZSC 53, [2009] 3 NZLR 425 at [19]–[20], citing *R v Roulston* [1976] 2 NZLR 644 (CA) at 654 and *Hodges v R* CA435/02, 19 August 2003 at [20].

14 *R v Stewart (Eric)*, above n 13, at [22], citing *R v Mallory* 2007 ONCA 46, (2007) 217 CCC (3d) 266 at [338]–[341].

[13] We do not accept that the prosecutor here breached such obligations because of the way in which the prosecution focused more on Mr Hayde than Mr Hart in terms of responsibility for the offending, or in the way the prosecutor dealt with their respective liability for the offending.

[14] As Mr Fletcher for the Crown argued, Mr Hayde and Mr Hart had presented "cut-throat" defences — Mr Hayde said that Mr Hart was the murderer, and Mr Hart said it was Mr Hayde. In those circumstances it was necessary for the Crown to address these defences as part of its case. This would include explaining why it considered that both had committed the offending, and if one of the two had a more significant role, why the Crown advanced that allegation. In that context, there can be no criticism of the Crown's closing address, which Mr Meyer argued epitomised the inappropriate prosecution strategy by the prosecutor saying to the jury about their accounts: "Now both versions of events can't be true. Of the defence cases one of them is the murderer".

[15] This might have been an inappropriate argument if the prosecution had invited the jury simply to make that binary choice. But the Crown did not do so. It relied on the evidence that implicated each of the defendants, with the comment above being limited to the Crown's response to the defences that they were each advancing.

[16] Nor do we consider the prosecutor's language in closing to be overly emotive, or to be disproportionate in terms of the Crown cases against Mr Hayde and Mr Hart. In closing the Crown had referred to ten "black mark[s]" identifying their case against Mr Hayde. But the Crown was entitled to rely on the ten features to establish its case against Mr Hayde. And, as Mr Fletcher argued, the Crown also identified ten reasons why Mr Hart, too, was guilty. The fact the ten features were referred to as "black mark[s]" does not involve impermissible advocacy.

[17] We accept that the prosecutor used strong language when criticising Mr Hayde's defence and his evidence. But we do not accept that it involved emotive

and inflammatory language. In particular, in addition to the "black mark[s]", we reach the following conclusions on the language criticised:

(a) After reading out a text Mr Hayde had sent to Mr Hart in relation to Mr Arapo-Ngapaku, that Mr Hayde could "kick his teeth out" and "fuck him up", the prosecutor said that it was "fairly chilling … when you know what's just around the corner". This was an understandable submission to the jury given the content of that text and what the Crown contended subsequently transpired.

(b) The prosecutor's statement to the jury that "the Crown says that Mr Hayde's narrative was like a badly scripted Hollywood movie" was also a legitimate form of advocacy given the evidence Mr Hayde had given.

[18] We also accept Mr Fletcher's submission that there was a degree of similar rhetorical flourish in relation to Mr Hart's defence, as the prosecutor said to the jury that "Mr Hart's account was … no better. It has more holes in it than a sieve".

[19] It is significant that Mr Meyer did not, and could not, argue that the evidence did not support the contention that Mr Hayde had undertaken the primary role as the Crown alleged. The evidence relied on by the Crown provided a sound evidential foundation for the Crown's contention, and this was accepted by Venning J in sentencing, who said that Mr Hayde had convinced Mr Hart to join in the plan, that he was the instigator of the events, and that he was the principal offender.[15] Given the evidential foundation for the Crown's allegation, we see no valid criticism in the way in which the Crown presented its case to the jury, including in closing submissions.

Reliance on opinion

[20] Mr Hayde argues that speculative inferences were relied on by the Crown, with opinions lacking a proper forensic foundation advanced. Mr Meyer argued that a

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[15] Sentencing notes, above n 1, at [7]–[9], [11] and [16].

number of aspects of the Crown's evidence, including the expert evidence, involved such speculation.

[21] We do not accept these criticisms of the Crown case. We consider that the Crown was permitted to advance argument related to the inferences the jury could draw from established evidence.

[22] We do not agree that the Crown was not entitled to rely on Mr Hart's evidence that Mr Hayde was covered head to toe in blood and seemed to be washing himself at an outdoor tap. Mr Meyer submitted this was speculative given that the ESR analysis of the tap revealed no trace of blood. But the Crown was entitled to rely on Mr Hart's evidence, and the inferences that could be drawn from it, irrespective of the extent of verification from other evidence. Whoever the murderer was, given the extent of Mr Arapo-Ngapaku's injuries, blood would have been expected on their clothing. So the reference to Mr Hart's evidence was legitimate. We also see nothing inappropriate in the Crown arguing that the reason why Mr Hayde's t-shirt was not recovered was that it had been covered in blood and could have been thrown into the fire. It was permissible for the Crown to put that argument to the jury given Mr Hart's evidence that the fire had apparently been lit to hide evidence, and the fact that the t-shirt was not recovered.

[23] Similarly, we also see no valid criticism of the Crown's reliance on the fact that there was an empty petrol cannister found in the boot of Mr Hayde's car. The expert evidence was that there was petrol residue in this cannister. Moreover, Mr Hayde had purchased 1.016 litres of petrol using a petrol cannister two days beforehand. The Crown was entitled to rely on such circumstantial evidence to advance its case. The fact there was no other evidence, such as forensic evidence, linking petrol to the cause of the fire does not mean that the jury were not entitled to take into account such factors as evidence potentially linking Mr Hayde to the fire.

[24] There is a similar response to Mr Meyer's criticisms of the evidence of the Crown's fire expert, Mr Peter Wilding. Whilst accepting the evidence was admissible, Mr Meyer argued that there was no foundation for Mr Wilding's evidence that the fire was likely accelerated, given the lack of evidence of the existence of an accelerant.

Whilst a jury should not be presented with expert evidence that assumes the existence of facts that remain central to the jury's deliberation, we do not consider that is what occurred here.[16] All that Mr Wilding said was that the fire behaved in a manner that was consistent with an accelerated fire, and the use of an accelerant would be the most likely cause. We accept Mr Fletcher's argument that this was not a definitive opinion and that it was relevant expert evidence that could be put to the jury. We also accept that this opinion was consistent with the original fire report.

[25] We do not accept there is any validity in the criticisms of the Crown case more generally. Questions of fact are for the jury. A prosecutor is entitled to put forward primary facts and invite the jury to draw inferences from those facts. The standard direction to the jury, which was given in the present case, explained the difference between drawing inferences from established facts and guessing. We accept that the Crown's case did no more than invite the jury to draw inferences from established facts.

Propensity evidence

[26] While accepting the joinder of the charges involving his former partner with the murder-related charges, Mr Hayde nevertheless criticised the Crown's use of propensity evidence. Mr Meyer argued that the Crown's case was built almost entirely on circumstantial evidence with no forensic evidence identifying who inflicted the fatal injuries or who lit the fire. His former partner's allegations that Mr Hayde had previously threatened to kill her and commit arson were also not independently proven. The allegations concerning Mr Arapo-Ngapaku and those concerning Mr Hayde's former partner were nevertheless mutually reinforcing. It was circular and prejudicial to use that evidence in the way the Crown did, which had a bolstering effect similar to that which can arise when there are multiple complainant allegations.[17]

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16 *Pora v R* [2015] UKPC 9, [2016] 1 NZLR 277 at [27].
17 Citing *S v R* [2018] NZSC 124, [2019] 1 NZLR 408 at [29]–[30].

[27] We do not accept these criticisms. This Court has previously upheld the High Court's decision that Mr Hayde's former partner's evidence was admissible as propensity evidence.[18] As the Court held:

> [50] We agree with the Judge that the proposed evidence has high probative value in relation to these matters. While there are only two sets of offending, both are alleged to have occurred within a short timeframe. As already noted, there are obvious and significant similarities between the two sets of offending. There can be no question of collusion or suggestibility. We agree with the Judge that strangulation and arson are relatively unusual acts, notwithstanding that strangulation is not uncommon in family violence disputes. The strangulation does not however stand alone. It is the combination of the events the subject of each set of charges which heightens the unusualness of the proposed evidence and its probative value. As the Judge put it, it would be an extraordinary coincidence that Mr Hayde should be at the … property occupied by Mr Arapo-Ngapaku when Mr Arapo-Ngapaku was allegedly strangled and killed, then the home set alight, when only seven weeks earlier, [his former partner] attributed the same behaviour to Mr Hayde — strangulation to the point of unconsciousness and threats of death and arson in the context of family violence offending.

[28] At trial the Crown did no more than present exactly that argument to the jury. The allegations were, to a degree, mutually reinforcing. But the Crown was entitled to rely upon them — that is the very point of propensity evidence. Provided that the appropriate directions were given to the jury about the proper use of propensity evidence, there can be no legitimate complaint. As we address below, the instructions to the jury were both orthodox and appropriate.

Alleged trial counsel error

[29] Mr Hayde criticises his trial counsel for not challenging his former partner's evidence that Mr Hayde had threatened to kill her and burn down her house. Mr Hayde denied making that threat, but her evidence was not challenged and he was not asked about the threat in his evidence.

[30] We accept Mr Fletcher's argument that there is no substance to this criticism. Mr Hayde's trial counsel have filed evidence to indicate that the decision not to challenge his former partner was deliberate, as they were concerned that a direct challenge would reinforce the evidence. The defence strategy involved seeking to

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[18] *Hayde v R* [2023] NZCA 418.

undermine her evidence in more indirect ways. Their evidence was also that Mr Hayde agreed to this approach, which is confirmed by Mr Hayde signing a document dated 29 September 2023 stating the defence case was run in accordance with his instructions.

Inadequate trial Judge directions

[31] Mr Hayde contends that the trial Judge's summing up failed to adequately mitigate the prejudice arising from the Crown's unbalanced narrative based on speculation and the misuse of the propensity evidence. In relation to the propensity evidence, Mr Meyer argued that the general instruction on propensity lacked the specificity and clarity required.[19]

[32] We do not accept these criticisms. The trial Judge provided appropriate directions on all relevant issues. The jury were instructed that when there was more than one defendant, they needed to consider the case against each separately. In relation to the expert evidence, the Judge provided the standard directions about it not being trial by expert and that it was for them to decide what weight to put on the opinions provided. There was a fair summary of the expert evidence given from both sides. The jury were also instructed on the difference between drawing inferences and guessing. In relation to the propensity evidence the Judge provided the standard directions and also tailored his directions in relation to the particular aspects of Mr Hayde's former partner's evidence.

Matters considered cumulatively

[33] Finally, it was argued that the cumulative effect of the matters referred to above gives rise to a miscarriage. We do not accept this. None of the individual points has merit, and even when considered cumulatively they do not give rise to a material error in the conduct of the trial, or an unfair trial.

[34] For these reasons the appeal against Mr Hayde's conviction is dismissed.

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[19] Citing *Mahomed v R* [2011] NZSC 52, [2011] 3 NZLR 145; and *Taniwha v R* [2016] NZSC 121, [2017] 1 NZLR 116.

Substituting manslaughter

[35] Mr Meyer argued that even if Mr Hayde's murder conviction was upheld, the Court should exercise its discretion to substitute a verdict of manslaughter under s 234(1) of the Criminal Procedure Act. This was on the basis that a verdict of manslaughter was reasonably open to the jury, and the Crown's case did not exclude that possibility beyond reasonable doubt.

[36] We consider this submission to be misconceived. As Mr Fletcher argued, the way the Crown presented its case against Mr Hayde meant a verdict of manslaughter was not reasonably open. We are satisfied that the jury properly concluded that Mr Hayde killed Mr Arapo-Ngapaku with murderous intent.

Grounds for appeal against sentence

[37] In relation to sentence, Mr Hayde argues that a number of errors were made by Venning J, namely:

(a) misinterpreting or misapplying s 104(1A)(c) of the Sentencing Act 2002 in relation to home invasion, resulting in the 17-year minimum period of imprisonment;

(b) adopting differing methodologies for the different defendants, leading to inconsistent discounting; and

(c) incorrectly assessing Mr Hayde's culpability when measured against comparable case law, resulting in a manifestly excessive sentence.

[38] Under s 250(2) of the Criminal Procedure Act, an appeal against sentence should be allowed if there is an error in the sentence imposed and a different sentence should be imposed. The focus is on whether the sentence is within the available range rather than the process by which it was reached, and accordingly whether the end sentence is manifestly excessive.[20]

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[20] *Tutakangahau v R* [2014] NZCA 279, [2014] 3 NZLR 482 at [36]; and *Tamihana v R* [2015] NZCA 169 at [14].

Home invasion

[39] Mr Meyer argued that Venning J erred in concluding that the murder "involved the unlawful entry into, or unlawful presence in, a dwelling place" under s 104(1A)(c) of the Sentencing Act. This was because Mr Hayde was a regular visitor to Mr Arapo-Ngapaku's address, and Mr Hart was a lawful occupant of the property. He argued that interpreting the Sentencing Act to include any entry into a dwelling with an unlawful purpose risked capturing nearly every murder committed indoors.

[40] We do not accept these submissions. As with all legislation, the text of the enactment is to be interpreted in light of its purpose.[21] The evident purpose of the subsection is to recognise the sanctity of the home, and the greater sense of privacy, safety and security that should be occasioned to such places.[22] Whether the entry into a dwelling was unlawful is a matter of fact to be assessed in the circumstances of the case. The fact that an offender might have had a form of licence to enter a dwelling in normal circumstances does not mean that person has a licence to enter the dwelling in order to murder the occupant. The occupant's privacy, safety and security in their home is compromised in those circumstances. The unlawful purpose in the present case means any licence to enter was unauthorised. That is within the concept of "unlawful entry" under the subsection.

[41] Moreover, in the present case, Mr Hart's licence to occupy the premises as a tenant had been terminated. We consider it is unrealistic to contend that Mr Arapo-Ngapaku had granted either Mr Hart or Mr Hayde a licence to enter his dwelling in the circumstances. We are satisfied that the conclusion of the High Court was correct, and that s 104(1A)(c) applied.

Different methodologies

[42] Mr Hayde complains that in relation to Mr Hart's sentence, Venning J applied a percentage discount resulting in two years and two months being deducted from his sentence,[23] but in relation to his own sentence, discounts were expressed as fixed time

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21 Legislation Act 2019, s 10(1).

22 *Pahau v R* [2011] NZSC 88 at [4], affirming the approach taken in *Pahau v R* [2011] NZCA 147 at [67]–[74].

23 *R v Hart* [2023] NZHC 3364 at [27].

deductions — three months for personal circumstances and three months for the period of EM bail.[24] Mr Meyer argues that when co-defendants are sentenced together, consistency in approach is important to avoid unjustified disparities.

[43] We do not agree with these criticisms. What matters on any appeal is not the methodology employed by the sentencing court, but whether the end sentence is manifestly excessive.[25] Whilst the discounts for both defendants could have been expressed in percentage terms, the fact they were not reflects the fact that lower discounts were being given in Mr Hayde's case. The change in methodology does not itself result in an error in the end sentence. Disparity in treatment as between offenders can be a ground of appeal, but only where it "appears unjustifiable and is gross".[26] We do not consider that it was in this case. We also accept Mr Fletcher's submission that the discounts were appropriate given Mr Hayde's circumstances.

Manifestly excessive minimum period of imprisonment

[44] Finally, Mr Hayde says that the minimum period of imprisonment of 17 years is manifestly excessive compared with other comparable cases, including *R v Callaghan*, which involved a 15-year minimum term before discounts,[27] and *R v Heremaia*, which involved a 13.5-year minimum period of imprisonment before discounts.[28]

[45] We do not accept these submissions, and agree with the submission of Mr Fletcher that the cases are distinguishable. In *R v Callaghan*, where Venning J was also the sentencing Judge, there was no premeditation involved in the murder, the attack was less brutal and did not involve two assailants, and whilst the body was disposed of to avoid detection, this was not done by setting fire to a building in order to burn the body. *R v Heremaia* similarly did not involve planning of the murder, there were not two assailants and whilst the body was incinerated, the defendant admitted full responsibility for the offending.

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24 Sentencing notes, above n 1, at [43].
25 *Ripia v R* [2011] NZCA 101 at [15]; *Tutakangahau v R*, above n 20, at [36]; and *Tamihana v R*, above n 20, at [14].
26 *R v Rameka* [1973] 2 NZLR 592 (CA) at 594.
27 *R v Callaghan* [2012] NZHC 596.
28 *R v Heremaia* [2025] NZHC 892.

[46] We do not accept that the minimum period of imprisonment was manifestly excessive given the circumstances of this case and Mr Hayde's personal circumstances.

Conclusion

[47] For the above reasons, the appeals against conviction and sentence are dismissed.

Solicitors:
Crown Solicitor, Manukau for Respondent