

Direction where a defence is not raised by counsel but raised on the evidence

Commentary

A judge is obliged to instruct the jury about any defence (even one not raised or pressed by a party or indeed disclaimed by the parties) that fairly arises on the evidence and therefore needs to be considered by the jury in reaching their verdict: See *Stevens v The Queen* (2005) 227 CLR 319, *Fingleton v The Queen* (2005) 227 CLR 166; 79 ALJR 1250 at [77] – [80], *Murray v The Queen* (2002) 211 CLR 193 at [78.4], [151], and *Stingel v The Queen* (1990) 171 CLR 312 at 333-334.

Suggested Direction

I wish to say something to you about a further possible defence that arises for your consideration. It concerns the defence of [provocation etc]. It is my duty to direct you about all possible defences which arise and therefore need to be considered by you in reaching your verdict, even where they are not raised by defence counsel. However, the fact that I am mentioning this matter does not mean I have some particular view about it. It is for you to consider this additional matter, as with all matters. [Might need to add: You will not however need to consider it, should you find the defendant not guilty on the basis that the prosecution has not [eg excluded self-defence] beyond a reasonable doubt].