HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN: Steven Moore (a pseudonym)
Appellant

and

The King
Respondent

APPELLANT'S SUBMISSIONS

Part I: Certification

1. These submissions are in form suitable for publication on the internet.

Part II: Issues

2. The issues in this appeal are:

   (1) What is the standard of review on an interlocutory appeal against a decision to admit evidence under s 137 of the *Evidence Act 2008* (Vic) where that appeal is brought pursuant to s 295 of the *Criminal Procedure Act 2009* (Vic) (**CPA**)? Specifically, is it the *House v The King*[1] standard ordinarily applicable to appeals against discretionary decisions or is it the correctness standard from *Warren v Coombes*?[2]

   (2) In assessing, for the purposes of s 137, the danger of unfair prejudice to a criminal accused of the prosecution being permitted to adduce, for a hearsay purpose, evidence of previous representations of an unavailable witness:

      (a) Does it increase the danger of unfair prejudice if there are plausible lines of cross-examination that the accused would be unable to pursue or, as the Court of Appeal held at Judgment (**J**) [183], is any such unfair prejudice lessened or eliminated by the fact the accused can make submissions to the jury in closing address as to the matters they could have pursued in cross-examination?

      (b) Does it increase the danger of unfair prejudice if there is a large number of hearsay representations and those representations are repetitive or, as the Court of Appeal apparently held, is that irrelevant?

      (c) Must a Court assume, as did the Court of Appeal at J [187], that a jury will follow any and all directions given by a trial judge to protect against unfair prejudice or is an assessment required of the risk that the jury will—either consciously or subconsciously—not follow such directions?

Part III: Notice of constitutional matter

3. The Appellant does not consider that any notice is required under s 78B of the *Judiciary Act 1903* (Cth).

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1 *House v The King* (1936) 55 CLR 499, 504–5 (Dixon, Evatt and McTiernan JJ).

2 *Warren v Combes* (1979) 142 CLR 531, 552 (Gibbs ACJ, Jacobs and Murphy JJ).

Part IV: Reports of the judgments below

4. The judgment of the primary judge is not reported or published with a medium neutral citation. The judgment of the Court of Appeal is not reported but has the following medium neutral citation: *Moore (a pseudonym) v The King* [2023] VSCA 236.

Part V: Facts

5. The Appellant is charged with seven violent offences alleged to have been committed against the complainant on 30 and 31 August 2021 (CAB 5–6). He has pleaded not guilty to those charges. By his response to the summary of prosecution opening,[3] he has accepted that he was at the complainant's house and that they argued, but has denied that there was any violence on his part (CAB 20).

6. The Crown case relies in large part on the complainant's account. However, she passed away in January 2023 in circumstances unconnected to the allegations (CAB 48 [37]). Another central witness also passed away in unrelated circumstances, this being the witness to whom the complainant had first recounted the allegations (CAB 50 [16]).

7. The Crown filed a notice under s 67 of the *Evidence Act* on 3 February 2023, and then an amended notice on 9 June 2023 (ABFM 24–102), indicating that it intended to adduce, for a hearsay purpose, evidence of 84 of the complainant's previous representations pursuant to the exception in s 65 of that Act. The Crown ultimately did not press 14 of those representations, being the representations to Dr Phillipa Brook on 1 September 2021 (ABFM 33–4). The remaining 70 representations sought to be adduced by the Crown were made over five separate conversations on 31 August 2021:

   (1) five representations to the complainant's mother, given the pseudonym Julie Dwyer, ABFM 25 reproduced at J [88];

   (2) eight representations to a triple zero operator, ABFM 26 reproduced at J [99];

   (3) 22 representations made in a conversation with Senior Constable Stack at 1:05pm, ABFM 27–8 reproduced at J [108];

   (4) four representations made in a further conversation with S/C Stack at 1:30pm, ABFM 29 reproduced at J [121]; and,

   (5) 31 representations made in a statement taken by S/C Rinderhagen, ABFM 30–2 reproduced at J [132].

[3] Filed pursuant to s 183 of the *Criminal Procedure Act 2009* (Vic).

8. The Appellant objected to the admission of the evidence on the dual grounds that it did not fall within the exception in s 65 and, if it did, it was inadmissible by reason of s 137 because its probative value did not outweigh the danger of unfair prejudice to him.

9. The trial judge ruled that 67 of the 70 previous representations were admissible (three representations were ruled to be inadmissible opinion evidence: J [35], [108] fn 49). Having done so, the trial judge certified, under s 295(3) of the CPA, that the evidence, 'if ruled inadmissible, would eliminate or substantially weaken the prosecution case' (CAB 43). The effect of such certification was to entitle the Appellant to apply for leave to appeal to the Court of Appeal against the interlocutory decision: CPA, s 295(2).

10 10. The Appellant sought leave to appeal to the Court of Appeal on four grounds, the first three of which concerned s 65 and the last of which concerned s 137. The Court of Appeal granted the Appellant leave to appeal on grounds 2 and 4, but dismissed the appeal.

Part VI: Argument

11. The Court of Appeal's primary error was to apply the *House* standard of review in circumstances where the correctness standard applied. The Court further erred in its assessment of the danger of unfair prejudice for the purpose of s 137. The Court of Appeal ought to have concluded that the evidence the prosecution seeks to adduce on the Appellant's trial—or at least much of that evidence—is inadmissible by reason of s 137.

A Court of Appeal should have applied the correctness standard

20 12. The Court of Appeal applied the *House* standard of review in its consideration of the primary judge's decision under s 137 (see J [4(b)], [31], [52], [178], [179], [181], [187]). That was wrong because:

(1) A decision to admit evidence under s 137 permits only one correct answer;

(2) The correctness standard ordinarily applies to an appeal against such a decision (at least in the instance of an appeal in the strict sense or by way of rehearing);

(3) Parliament in Victoria ought not to be inferred to have departed from that ordinary approach. On the contrary, the text, context and purpose of s 295 of the CPA suggest that Parliament intended that the correctness standard would apply to interlocutory appeals against such decisions.

30 *Decision under s 137 permits only one correct answer*

13. A question of whether the probative value of evidence is outweighed by the danger of unfair prejudice to an accused is now well understood to permit only one correct answer.

In *R v Blick*, Sheller JA held that '[t]he correct approach is to perform the weighing exercise mandated [by s 137]. If the probative value of the evidence adduced by the prosecutor is outweighed by the danger of unfair prejudice to the defendant, there is no residual discretion. The evidence must be rejected.'[4] That position has come to be widely accepted, including in Victoria.[5] The same position has been reached in respect of decisions under the similar statutory criteria in ss 101(2)[6] and 135(a).[7]

Correctness standard ordinarily applicable to decisions that permit only one answer

14. The standard of review applicable on an appeal by way of rehearing or an appeal in the strict sense is ordinarily dictated by the nature of the first instance decision.[8] Decisions involving the exercise of discretion ordinarily attract the *House* standard whereas decisions admitting of only one correct answer ordinarily attract the correctness standard.[9]

15. The label 'discretionary' has been applied to decisions that depend on the application of a standard (rather than a rule), or involve 'value judgements' or 'evaluation' about which 'reasonable minds' might differ.[10] These labels are liable to confuse. For the purposes of discerning the applicable standard of review, this Court has emphasised that the operative distinction is whether a decision admits of only one 'uniquely right' answer.[11] Lower courts have adopted that discrimen,[12] and New Zealand has a similar approach.[13]

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4 *R v Blick* (2000) 111 A Crim R 326, [20] (Sheller JA, James and Dowd JJ agreeing).

5 *Norris v The Queen* [2018] VSCA 137, [44]–[45] (the Court).

6 *R v Ellis* (2003) 58 NSWLR 700, [95] (Spigelman CJ, Sully and O'Keefe JJ agreeing).

7 *Rogerson v The Queen; McNamara v The Queen* (2021) 290 A Crim R 239, [544] (the Court), not considered on further appeal: *McNamara v The King* (2023) ALJR 1.

8 *Minister for Immigration and Border Protection v SZVFW* (2018) 264 CLR 541, [49] (Gageler J). See also Thomas Prince, 'Recurring Issues in Civil Appeals – Pt 1' (2022) 96 *Australian Law Journal* 203, 212–6.

9 *Minister for Immigration and Border Protection v SZVFW* (2018) 264 CLR 541, [35]–[48] (Gageler J).

10 Chris Edmonds, 'Appeals from Discretions, Satisfactions and Value Judgments: Reviewing the House Rules' (2017) 41(2) *Melbourne University Law Review* 647, 670. For examples of the confusion, see *CDJ v VAJ* (1998) 197 CLR 182, [40] (Gaudron J); *R v Fletcher* (2005) 156 A Crim R 308, [35]–[36] (Simpson J, McLellan CJ at CL agreeing); *R v Riley* [2020] NSWCCA 283, [135] (Button J); M J Beazley, P T Vout and S E Fitzgerald, *Appeals and Appellate Courts in Australia and New Zealand* (2014)[5.21].

11 *Norbis v Norbis* (1986) 161 CLR 513, 517–8 (Mason and Deane JJ). See also *Dwyer v Calco Timbers Pty Ltd* (2008) 234 CLR 124, [39]–[40] (the Court); *Minister for Immigration and Border Protection v SZVFW* (2018) 264 CLR 541, [49] (Gageler J), see also [85], [87] (Nettle and Gordon JJ, Kiefel J agreeing), [150] (Edelman J); *R v Bauer (a pseudonym)* (2018) 266 CLR 56, [61] (the Court); *GLJ v The Trustees of the Roman Catholic Church for the Diocese of Lismore* (2023) 97 ALJR 857, [16] (Kiefel CJ, Gageler and Jagot JJ, Gleeson J agreeing), [89], [96] (Steward J). See also Francis Bennion, 'Distinguishing Judgment and Discretion' (2000) *Public Law* 368, 368–70, cited with approval in *R v Ellis* (2003) 58 NSWLR 700, [95] (Spigelman CJ, Sully and O'Keefe JJ agreeing); Thomas Prince, 'Recurring Issues in Civil Appeals – Part 1' (2022) 96 *Australian Law Journal* 203, 214.

12 See, eg, *Director of Public Prosecutions (NSW) v RDT* [2018] NSWCCA 293, [16] (Basten JA); *Sidaros v The Queen* (2020) 15 ACTLR 64, [38] (the Court).

13 *Austin, Nicholas & Co Inc v Stichting Lodestar* [2008] 2 NZLR 141, [16] (Elias CJ, for the Court); *Kacem v Bashir* [2011] 2 NZLR 1, [32] (the Court).

16. Consistently with that principled distinction, Basten JA in *R v Zhang* held, albeit in dissent, that the correctness standard applied on an appeal against a decision under s 98, even though such a decision 'involves a level of "evaluation and judgment"'.[14] Basten JA's reasoning has been cited with approval by this Court in *R v Bauer*[15] and in intermediate courts of appeal.[16]

17. In *L v Tasmania*, another decision cited approvingly in *Bauer*,[17] Underwood CJ endorsed Basten JA's approach, explaining:

> Whether or not evidence is admissible is a question of law. The determination of the question may require the trial judge to find certain facts, the existence of which constitute a condition precedent for the admission of the evidence. … In cases where the admission of evidence is dependent upon an evaluation process such as that imposed by the Act, ss97(1) and 98(1), the determination of the trial judge is … not an exercise of discretion, but a matter of judgment. … So too, if the judgment is that the evidence has significant probative value and also that that value substantially outweighs the prejudicial effect, it seems to me that no discretion arises. The only judgment is that the evidence is admissible. It is immaterial that different minds might have reached a different conclusion.[18]

18. In Victoria, Basten JA's reasoning (and that of Underwood CJ) was initially followed in *PNJ v Director of Public Prosecutions*, which concerned an interlocutory appeal against a decision under s 98 of the *Evidence Act*. There, the Court of Appeal held that once leave was granted the Court was to determine the question of admissibility for itself on the approach in *Warren v Coombes*, rather than on the *House* standard.[19] A number of other early Victorian decisions under the CPA also applied Basten JA's approach, including with this Court's apparent approval.[20]

19. The wrong turn in the Victorian authorities came with *KJM v The Queen (No 2)*, which applied the *House* standard in an interlocutory appeal concerning ss 97 and 101 of the *Evidence Act*.[21] The Court there followed the New South Wales decision of *DAO v The Queen*, which held that the *House* standard applied on an interlocutory appeal from a

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14 *R v Zhang* (2005) 227 ALR 311, [45], [47] (Basten JA, citation omitted), cf [139], [141] (Simpson J).

15 *R v Bauer* (2018) 266 CLR 56, [61] (the Court).

16 See, eg, *L v Tasmania* (2006) 15 Tas R 381, [51] (Underwood CJ, Tennent J agreeing).

17 *R v Bauer* (2018) 266 CLR 56, [61] (the Court).

18 *L v Tasmania* (2006) 15 Tas R 381, [52]–[53] (Underwood CJ, Tennent J agreeing, emphasis added).

19 *PNJ v Director of Public Prosecutions* (2010) 27 VR 146, [15]–[16] (the Court).

20 See the authorities cited in *Dibbs v The Queen* (2012) 225 A Crim R 195, [78], [80] (Harper JA, Weinberg JA and T Forrest AJA agreeing). *Dibbs* was cited approving in *R v Bauer* (2018) 266 CLR 56, [61] (the Court).

21 *KJM v The Queen (No 2)* (2011) 33 VR 11, [9]–[14] (the Court).

decision under s 97.[22] However it was significant in that case that the statutory test for admissibility in s 97 included the words 'the court thinks', which appeared to tend against the correctness standard of review (at least for Spigelman CJ and Allsop P).[23]

20. In any event, the tide of New South Wales authority has turned against *DAO* in the wake of this Court's decision in *Bauer*. In *Director of Public Prosecutions (NSW) v RDT*, Basten JA concluded that 'as a matter of both authority and principle' an interlocutory appeal against a decision to refuse to admit tendency evidence attracted the correctness standard.[24] In *R v Riley*, the Court explained that a decision under s 138 of the evidence act is 'binary' and thus admits of only one correct answer.[25] Were it necessary to determine, a majority of the Court would have held that an interlocutory appeal against such a decision would attract the correctness standard,[26] a view that has subsequently been adopted by the Crown.[27] In *Taylor v The Queen*, Bell P explained that 'at least if an appeal court departs from the trial judge's assessment of [probative value] … the s 101(2) weighing process must also be considered afresh by reference to the correctness standard'.[28] A similar conclusion was reached in *Rogerson v The Queen* in respect of a decision under s 135(a).[29]

21. Despite the apparent doubts in New South Wales as to the correctness of *DAO*, Victorian courts have continued to follow it, and also the Victorian decision in *KJM* that was built upon it. As a result, the *House* standard has been transposed (without a great deal of analysis) to interlocutory appeals against rulings under ss 65,[30] 137[31] and 138.[32] The error

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22 *DAO v The Queen* (2011) 81 NSWLR 568, [46]–[70] (Spigelman CJ, Kirby J agreeing), [83]–[101] (Allsop P, Kirby J agreeing), [166]–[177] (Simpson J, Schmidt J agreeing).

23 *DAO v The Queen* (2011) 81 NSWLR 568, [27]–[28] (Spigelman CJ), [101] (Allsop P).

24 *Director of Public Prosecutions (NSW) v RDT* [2018] NSWCCA 293, [24] (Basten JA).

25 *R v Riley* [2020] NSWCCA 283, [101], [111] (Bathurst CJ, Wilson J agreeing).

26 *R v Riley* [2020] NSWCCA 283, [112] (Bathurst CJ, Wilson J agreeing).

27 *Mann v The King* [2023] NSWCCA 256, [13] (Kirk JA, summarising the position of the parties).

28 *Taylor v The Queen* [2020] NSWCCA 355, [113] (Bell P).

29 *Rogerson v The Queen; McNamara v The Queen* (2021) 290 A Crim R 239, [542]–[548] (the Court), not considered on further appeal: *McNamara v The King* (2023) ALJR 1.

30 *Lewis (a pseudonym) v The Queen* [2018] VSCA 40, [45]–[46] (the Court); *Thomas (a pseudonym) v Director of Public Prosecutions* [2021] VSCA 269, [9] (the Court).

31 *Singh v The Queen* (2011) 33 VR 1, [26] (Almond AJA, Buchanan and Bongiorno JJA agreeing); *Lewis (a pseudonym) v The Queen* [2018] VSCA 40, [45]–[46], [50]–[51] (the Court); *Bray (a Pseudonym) v The Queen* (2014) 46 VR 623, [63]–[65] (Santamaria JA, Maxwell P and Weinberg JA agreeing); *Thomas (a pseudonym) v Director of Public Prosecutions* [2021] VSCA 269, [9] (the Court).

32 *Director of Public Prosecutions v MD* (2010) 29 VR 434, [27] (the Court); *Director of Public Prosecutions v Marijancevic* (2011) 33 VR 440, [13] (the Court).

in those decisions has been to treat a decision as entailing a discretion—and thus as attracting the *House* standard—because it entails the exercise of an evaluative judgment.

22. In *Kadir v The Queen*, this Court expressly left the question open[33] after it was raised by Bell J in argument at the special leave hearing, when her Honour observed: 'at the end of the day evidence is admissible or it is not admissible'.[34] The trend of lower court authority (much of it referred to in *Bauer*) is now decisively in favour of the idea that a decision which admits of only one answer will ordinarily attract the correctness standard.

Correctness standard better advances purpose of Victorian statutory scheme

23. Appeals are creatures of statute.[35] The standard of review applicable on an appeal is thus ultimately a question of statutory construction.

24. The answer to that question is properly informed by the approach historically taken by courts to appeals against 'discretionary' and 'non-discretionary' decisions. Given '[t]he principles enunciated in *House v. The King* were fashioned with a close eye on the characteristics of a discretionary order',[36] one would not lightly infer that Parliament intended such principles to apply to decisions for which they were not designed. As will now be explained, nothing in the text, context or purpose of the Victorian provisions suggests that Parliament intended that odd result.

25. While much of the CPA simply consolidated existing criminal procedures in Victoria, the provision for interlocutory appeals was without precedent in the State. The primary benefit that it was thought would flow from such appeals was that they would allow courts to 'deal with issues early in the proceedings that might otherwise result in a post-conviction appeal [or a DPP reference following acquittal]'.[37] In this respect, it was hoped that interlocutory appeals would: 'prevent guilty people being acquitted; prevent innocent people from being wrongly convicted; and prevent retrials because there was an error at the accused's trial.'[38] That, in turn, was thought to be 'of benefit in reducing the stress and trauma of court proceedings for victims, witnesses and the accused.'[39]

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33 *Kadir v The Queen* (2020) 267 CLR 109, [9]–[10] (the Court).
34 *Grech v The Queen; Kadir v The Queen* [2019] HCATrans 106, lines 90–91.
35 *Dwyer v Calco Timbers Pty Ltd* (2008) 234 CLR 124, [2] (the Court).
36 *Norbis v Norbis* (1986) 161 CLR 513, 518 (Mason and Deane JJ).
37 Victorian Parliament, Legislative Assembly, *Parliamentary Debates* (4 December 2008), 4986–7 (Hulls).
38 Victorian Parliament, Legislative Assembly, *Parliamentary Debates* (4 December 2008), 4987 (Hulls).
39 Victorian Parliament, Legislative Assembly, *Parliamentary Debates* (4 December 2008), 4987 (Hulls).

26. Similar objectives have been understood to underlie many interlocutory appeal schemes, of which it has been explained:

> it is not fair to the accused to make [them] … stand trial and expend resources and energy of all types – not to mention give away his defence – if the point is so important to the trial that, if it is got seriously wrong, any conviction is almost inevitably going to be quashed. It may also be unfair to the Crown, and through it the community which the system of criminal justice serves, to make it run the risk of an acquittal against which no appeal can be brought because a point that is important in the trial is wrongly decided against it.[40]

27. There was also an allied efficiency imperative in the introduction of interlocutory appeals in Victoria. The Explanatory Memorandum made clear Parliament's hope for the timely 'hearing [of] appeals that are genuinely likely to reduce overall delays'.[41]

28. Importantly, however, these admirable objectives were not pursued at all costs. The text of the new regime made clear that Parliament accommodated the well known concerns about the fragmentation of criminal proceedings by imposing limits on the ability to seek interlocutory appeals. In particular, Parliament intended to protect against 'frivolous applications and to enable the trial judge [and Court of Appeal] to control such applications'.[42] The way in which Parliament did so was by the imposition of a requirement for 'certification' before an appeal could be brought and by the familiar requirement for leave to appeal.

29. The premise of the certification procedure in s 295 of the CPA is that the question decided by the trial court is of such importance to 'justify it being determined' by the Court of Appeal before the trial continues (s 295(3)(b)). In the case of decisions as to admissibility, that is because the evidence, if ruled inadmissible, would eliminate or substantially weaken the prosecution case (s 295(3)(a)).

30. So understood, the balance struck by the scheme is between undesirable fragmentation (which is avoided except where the ruling is sufficiently important) and the undesirable injustice and public expense of permitting a prosecution to continue where the correct application of the rules of admissibility would 'eliminate or substantially weaken' the prosecution case (CPA s 295(2)(a)) or would otherwise increase the likelihood of a successful conviction appeal (CPA s 297(1)(b)(iv)).

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40 Greg Taylor, *Interlocutory Criminal Appeals in Australia* (2016) [4.90].

41 Explanatory Memorandum, Criminal Procedure Bill 2008 (Vic), 109.

42 Christopher Corns and Steven Tudor, *Criminal Investigation and Procedure: The Law in Victoria* (2009) p 409.

31. Thus it might be correct to say, as the Court of Appeal did in *KJM*, that: 'The clear legislative intention, however, is that interlocutory appeals on evidence should be strictly confined.'[43] However the question begged by that observation is *how* Parliament chose to give effect to its intention to confine interlocutory appeals. Nothing in the legislative context suggests that Parliament intended to do so by the imposition of an ill-fitting *House* standard on all appeals (whether from discretionary or non-discretionary decisions). Rather, the more obvious implication to draw from the text, context and purpose is that the means Parliament chose to confine interlocutory appeals were the certification procedure in s 295, and the requirement for leave to appeal.

10 32. Once the onerous certification and leave hurdles are met, there is no additional furtherance of Parliament's purpose by the imposition of a *House* standard on an appeal against an admissibility decision that permits only one correct answer.

33. To the contrary, the application of a *House* standard to such a decision might result in an interlocutory appeal being dismissed (on the basis the decision was 'open' in the *House* sense, albeit not correct in *Warren v Coombes* sense) but then an appeal against conviction subsequently being allowed even though the evidence at trial is exactly as was anticipated at the interlocutory ruling.[44] That possibility sits uncomfortably with one of the stated purposes of the interlocutory appeal regime, which was to 'prevent re-trials because there was an error in the accused's trial'.[45]

20 34. While attempts have been made to explain that apparent anomaly,[46] they are unpersuasive.[47] When on an interlocutory appeal against a decision on a question that permits only one answer the appeal Court is satisfied that the trial judge was wrong, the Court should give effect to that conclusion. To do otherwise is to 'perpetuate error' and would amount to 'a complete denial of the purpose of the appellate process'.[48] That is

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43 *KJM v The Queen (No 2)* (2011) 33 VR 11, [13] (the Court). See also *McCartney v The Queen* (2012) 38 VR 1, [51] (the Court).

44 *Lewis (a pseudonym) v The Queen* [2018] VSCA 40, [50] (the Court) and citing: *KJM v The Queen (No 2)* (2011) 33 VR 11; *McCartney v The Queen* (2012) 38 VR 1; *Bray (a pseudonym) v The Queen* (2014) 46 VR 623.

45 Victorian Parliament, Legislative Assembly, *Parliamentary Debates* (4 December 2008), 4987 (Hulls). See also Department of Justice (Victoria), *Criminal Procedure Act 2009 – Legislative Guide* p 272: 'The key advantage of interlocutory appeals is that they allow issues that might otherwise result in a successful post-conviction appeal to be dealt with early and thus avoid the need for lengthy and costly retrials.'

46 *DAO v The Queen* (2011) 81 NSWLR 568, [61] (Spigelman CJ); *KJM v The Queen (No 2)* (2011) 33 VR 11, [14] (the Court).

47 *Director of Public Prosecutions (NSW) v RDT* [2018] NSWCCA 293, [19]–[23] (Basten JA).

48 *Warren v Coombes* (1979) 142 CLR 531, 552 (Gibbs ACJ, Jacobs and Murphy JJ).

presumably why courts in at least the Australian Capital Territory and New South Wales apply the correctness standard on interlocutory appeals against decisions that permit only one answer, and why even the Victorian Court of Appeal has recently begun to do so.[49] There is no reason to think that the Victorian statutory scheme for interlocutory appeals requires any different standard for decisions under s 137.

Conclusion on standard of review

35. For the above reasons, it should be concluded that Parliament intended that interlocutory appeals against non-discretionary decisions be determined on the correctness standard. Given that a decision under s 137 admits of only one answer, the Court of Appeal ought to have applied the correctness standard. It did not: J [187].

36. If the foregoing is accepted, this Court can either allow the appeal and remit the matter or decide for itself whether, on the correctness standard, some or all of the previous representations should have been excluded. In the hope that the Court adopts the latter course, the Appellant relies upon the following submissions as to that issue.

B Probative value was outweighed by the danger of unfair prejudice to the accused

37. The Court of Appeal erred in a number of respects in assessing the danger of unfair prejudice. After revealing those errors, it will be necessary to address how this Court should address the evidence's probative value and the balancing of the two 'incommensurable considerations' required by s 137.[50]

Danger of unfair prejudice

38. Cross-examination has been described as the 'greatest legal engine ever invented for the discovery of truth'.[51] 'Cross-examination is the principal method by which the capacity of a witness to observe, recollect and narrate, and by which his or her honesty, credibility and reliability, can be tested.'[52]

39. The value the law ascribes to cross-examination explains why it has always been at the heart of the adversary trial process and is occasionally described as 'the *sine qua non* of

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49 See, eg, *DPP (Cth) v Knopp (a pseudonym) & Anor* [2023] VSCA 315, [159]–[178] (the Court); *Ballard (a pseudonym) v The King* [2024] VSCA 26, [42] (the Court); *Haris (a pseudonym) v The King [No 2]* [2024] VSCA 9, [58] (the Court); *Duncan (a pseudonym) v The King* [2024] VSCA 27, [29] (the Court).

50 *R v Shamouil* (2006) 66 NSWLR 228, [71] (Spigelman CJ, Simpson and Adams JJ agreeing).

51 John Henry Wigmore, *Evidence in Trials at Common Law* (James H. Chabourn ed., Little Brown 1974) § 1367, 32.

52 *Director of Public Prosecutions v Lenny Madina (a pseudonym)* [2019] VSCA 73, [50] (the Court), citing J D Heydon, *Cross on Evidence* (11th ed, 2017), [31020].

the adversary adjudicative process'[53] and 'of central significance to the adversarial system of trial'.[54] That is especially true in a criminal trial—where 'it is a long established principle of the English common law that … the defendant in a criminal trial should be confronted by his accusers in order that he may cross-examine them and challenge their evidence'.[55] It explains why s 137 provides additional protection to a criminal accused beyond that provided by s 65.

40. With that understanding, the *general* sense in which an accused suffers unfair prejudice when a Court admits incriminating hearsay evidence of an unavailable witness is simply that they are denied the opportunity of cross-examining that witness.[56] The more important the witness is to the Crown case, the greater the general prejudice of being denied the opportunity to confront one's accuser.

41. In the present case, the Court of Appeal accepted that general formulation of the danger of unfair prejudice (J [182]).[57] The Court of Appeal recognised that the Appellant 'will not be able to cross-examine the maker of the representations … they will be untested. That may result in the jury giving the representations undue weight' (J [182]). The Court of Appeal then erred, however, in its assessment of the more *specific* sense in which the Appellant was in danger of unfair prejudice. In particular, the Court of Appeal erred in failing to identify the circumstances of this case that increased the danger of unfair prejudice, and the limited ability of directions to protect against that danger

42. Plausible lines of cross-examination: There was a quite specific danger of unfair prejudice to the Appellant in this case because of the lines of cross-examination the Appellant could have explored with the complainant, had she been available. Those lines of cross-examination included that:

(1) she used to drink heavily and was presently medicated to overcome that addiction, which the Court of Appeal accepted was something that 'could have affected her ability to recall accurately the events she was recounting' (J [79], see also J [183]);

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53 Jules Epstein, 'Cross-Examination: Seemingly Ubiquitous, Purportedly Omnipotent, and "At Risk"' (2009) 14 *Widener Law Review* 427, 434.

54 *Lee v The Queen* (1998) 195 CLR 594, [32] (the Court).

55 *R v Davis* [2008] 1 AC 1128, [5] (Lord Bingham).

56 *Huici v The King* [2023] VSCA 5, [81] (the Court).

57 Note, however, that the Court of Appeal failed to recognise that the fact of the unavailable witness being the complainant, rather than merely a peripheral or corroborative witness, increased the danger of unfair prejudice.

(2) there was a period of unaccounted for time (approximately 6.5 hours) between the alleged offending and the complaint's first report of it, which the Court of Appeal accepted was 'in an abstract sense … sufficient for a person to concoct a story' (J [95], see also J [96] where the Court said 'it is true that the time that passed between the asserted facts and the representations was such that there was an opportunity for the complainant to decide what she would tell the police');

(3) the complainant had – in light of her refusal to answer her witnesses summonses at two separate pre-trial examinations[58] – demonstrated an unwillingness to be cross-examined on oath about her allegations, a matter about which the Court of Appeal offered no opinion;

(4) the complainant had resumed affectionate relations with the accused, writing to him in custody to express her love and affection for him, another matter that the Court of Appeal accepted could have been pursued in cross-examination (J [183]);

(5) there were inconsistencies between the complainant's accounts to different interlocutors, a matter which the trial judge (J [176]) and the Court of Appeal (J [183]) accepted could have been pursued in cross-examination; and

(6) the complainant's demeanour on body-worn camera (which was relevant to 26 representations) was not flustered, shaken or upset, a matter the Court of Appeal was apparently unimpressed by (J [117], [129], [184], but contrast the positive use of demeanour in the Court's reasoning at J [144]) but could nevertheless have properly been put to the complainant in cross-examination.

43. Thus, this was a case where the danger of unfair prejudice to the Appellant by having an unavailable witness's evidence admitted without cross-examination was not merely *general*. It was *specific* because there was 'fodder for a cross-examiner'.[59]

44. It is to be recalled that the ultimate unfair prejudice of admitting incriminating evidence without cross-examination is that it denies the accused the possibility of the witness recanting or qualifying their account under cross-examination. That possibility of recantation or concession is necessarily greater, and thus the unfair prejudice greater, where an accused can identify potentially productive lines of inquiry that could have been pursued in cross-examination. The Court of Appeal erred in failing to recognise as much.

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58 *Criminal Procedure Act 2009* (Vic) s 198B.

59 *R v Doolan* [2019] NTSC 53, [8] (Graham AJ).

45. Relatedly, the Court of Appeal was wrong to suggest at J [183] that the danger of unfair prejudice was lessened or eliminated by the fact an accused's counsel can make submissions to the jury as to the matters they would have pursued in cross-examination. In the first place, the significance of some of the inconsistencies – for instance, denying any previous relationship with the Appellant[60] and yet describing the assailant as her ex-partner[61] – is insusceptible of assessment without exploration of the reason for the inconsistency, such that submissions cannot substitute for cross-examination. Moreover, to deny the Applicant the right to make his case to the jury through cross-examination, and instead to require him to wait until closing address, puts him at a palpable persuasive disadvantage. That is what was acknowledged by the Court in the earlier case of *Huici v The King*, where Niall and T Forrest JJA said: 'the applicant will be denied an opportunity to put a version of events to the complainant from which an alternative hypothesis might emerge. That is especially so given he gave a no comment record of interview.'[62]

46. Volume and repetition of the representations: The Court of Appeal further erred in assessing the danger of unfair prejudice to the accused by failing to appreciate that the sheer volume of the representations, and the fact that a number were repetitive, increased that danger (J [186]). The law has long acknowledged the danger of a jury placing undue weight upon prior consistent statements,[63] hence directions warning juries 'against treating mere repetition as adding weight to [a] complainant's allegations'.[64] That is presumably why, in a different case, the Court of Appeal has said: 'we accept that there may be a question as to whether, in circumstances such as the present where the accused cannot test through cross-examination the truth of the consistent statements, there is some unfair prejudice to the accused person by reason of the repetitious nature of the statements'.[65] So too has it been acknowledged that the sheer volume of representations made by an unavailable witness may make it difficult for the jury to properly recognise

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60 ABFM p 81 (complainant's statement, [3]–[6]); ABFM p 27 (representations made to S/C Stack at 1:05pm, #2–4); ABFM p 71 (body-worn camera transcript p 26)

61 ABFM p 95 (Dr Brook's statement, p 2 [4]); ABFM p 41 (transcript of 000 call, p 2).

62 *Huici v The King* [2023] VSCA 5, [81] (the Court).

63 See eg, *R v Stoupas* [1998] 3 VR 645, 652 (Winneke P, Ashley JA agreeing), quoting *R v Doyle* (unreported, NSW Court of Criminal Appeal, 13 April 1993), 6 (Hunt CJ): '... evidence of complaint … is very easily mistaken by the lay person as being evidence which is independent of that of the complainant and, thus, supportive or confirmatory of her evidence that the crime was committed and committed by the appellant...'.

64 See eg, *Papakosmas v The Queen* (1999) 196 CLR 297, [31] and [42] (Gleeson CJ and Hayne J). In Victoria, a trial judge is no longer *obliged* to give such a direction (albeit it is still permitted): *Jury Directions 2015* (Vic), ss 44B, 44E; *Jacobs v The Queen* [2019] VSCA 285, [90] (the Court).

65 *Thomas (a pseudonym) v Director of Public Prosecutions* [2021] VSCA 269, [68] (the Court, emphasis added).

the limits inhering in the fact they are untested.[66] More generally, the sheer volume of prejudicial material has been said to be capable of 'overwhelming' directions.[67]

47. The generality of the hearsay evidence: The descriptions of the alleged conduct in the representations are frequently compendious, generalised, or unmoored from any particulars. Such generalised representations result in two forms of prejudice.

48. First, where an accused cannot cross-examine the principal witness against them, the defence case is often limited to a challenge to the plausibility or consistency[68] of the hearsay account of the witness. An account that is lacking in specific details is, to a significant degree, immunised from such a challenge, because assessments of the plausibility or consistency of the account inevitably turn on its particulars (which particulars are not known).

49. Second, in responding to such unparticularised allegations the accused is, effectively, limited to a generalised or 'bald' denial. The prejudice of that limitation, although arising in a different context and for different reasons, is well recognised.[69]

50. Unqualified assumption that jury will follow directions: The Court of Appeal's assessment of unfair prejudice proceeded almost immediately to the observation that 'the jury will undoubtedly be given a direction concerning the forensic disadvantage to the applicant by reason of the fact that the complainant cannot be cross-examined and her representations tested' (J [183]). The Court of Appeal also noted that it would be 'open' to the trial judge to give directions regarding the danger of placing too much weight on untested statements (J [183]) and that it was 'possible' that an unreliability direction might be given (J [183]).

51. The Court of Appeal shortly thereafter disposed of the assertion that s 137 required the exclusion of the evidence, observing '[i]t must be assumed that the jury will follow such directions' (J [187]). Such reasoning does not grapple with the 'futility' of warning the jury 'about the dangers of relying on untested evidence in circumstances when that evidence is almost the only focus of the Crown case'.[70]

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66 See, eg, *R v Doolan* [2019] NTSC 53, [9] (Graham AJ).

67 *Patel v The Queen* (2012) 247 CLR 531, [129] (French CJ, Hayne, Kiefel and Bell JJ).

68 Over time, or with other evidence.

69 See eg, *Hermanus v The Queen* (2015) 44 VR 335, [43] (Priest JA).

70 *R v Doolan* [2019] NTSC 53, [9] (Graham AJ).

52. As Nettle and Gordon JJ noted in *Alqudsi v The Queen*, the 'criminal justice system is not naive.'[71] While 'the law assumes the efficacy of the jury trial, it does not assume that the decision making of jurors will be unaffected by matters of possible prejudice' simply because they are warned as to the risks of same.[72] Similarly, as Hayne J observed in a different context, although '[j]udicial directions' may ameliorate the problem of receiving prejudicial evidence, they 'have not hitherto been seen, and should not now be seen, as *solving* that problem'.[73] If they did, there would be little need for many of the general exclusionary rules at all.[74]

53. Thus, while it is true that there are cases tending to suggest that courts will normally assume juries will follow directions,[75] this is not 'a foreclosing assumption'.[76] What is to be assumed is that the judge will *give* proper directions,[77] but it need not necessarily be assumed that such directions will wholly, or even substantially, avoid the prejudice that arises from the evidence. In other words, the likely directions are to be 'taken into account'[78] in the assessment of the danger of unfair prejudice – but that is all.

54. The correct approach was neatly stated by Sperling J over two decades ago:

> I do not assume that juries invariably implement instructions of that kind ... The confidence which one would have in such an instruction being followed will vary from case to case. Where, as in the present case, the potential prejudice is readily identifiable and can be made the subject of an appropriate instruction in a straight-forward way, there is reason to expect that a jury would understand and follow the instruction. In such a case, there is no serious risk that the case against the applicant would be immeasurably stronger by reason of the prejudicial material.[79]

55. Contrary to that orthodox approach, the Court of Appeal did not address the circumstances of this particular case that increased the danger of unfair prejudice (by increasing the risk that the jury would give the evidence undue weight) while simultaneously reducing the prospect that the jury would follow protective directions.

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71 (2016) 258 CLR 203, [195].

72 Ibid.

73 *HML v The Queen* (2008) 235 CLR 334, [116] (emphasis added).

74 Ibid.

75 *Director of Public Prosecutions v Crawford (a pseudonym)* [2023] VSCA 173, [68] (the Court); *Qadir (a pseudonym) v The King* [2023] VSCA 155, [35] (the Court) and authorities cited therein.

76 *R v GAC* [2007] NSWCCA 315, [87] (Giles JA, Hulme and Hislop JJ agreeing).

77 *R v Shamouil* (2006) 66 NSWLR 228, [72] (Spigelman CJ, Simpson and Adams JJ agreeing). See *R v BD* (1997) 94 A Crim R 131, 151 (Hunt CJ at CL).

78 *R v Shamouil* (2006) 66 NSWLR 228, [74] (Spigelman CJ, Simpson and Adams JJ agreeing).

79 *R v Georgiou* [1999] NSWCCA 125, [7] (Sperling J, emphasis added).

56. That error is apparent from the number and repetitiveness of the representations. The potential for prior consistent statements to be given undue weight (and thus cause prejudice) is well recognised. The prejudice is, essentially, the risk that a jury will think that the fact a person has said something twice makes it more likely to be true.[80] So too is it recognised that jury directions in respect of particular pieces of evidence become – as a matter of practical reality – harder to follow the larger the body of evidence to which the directions relate.[81]

57. Here, those two compounding dangers were raised by the repetitive statements of the deceased complainant. These dangers ought to have moderated the Court of Appeal's confidence that any and all directions would be followed.

Probative value

58. Probative value is to be assessed on the assumption that evidence is credible and reliable.[82] However, where the inherent 'limitations' of the evidence reveal that, even if it is accepted, it is incapable of supporting a high degree of satisfaction about a fact in issue the probative value may be appropriately moderated.[83] The classic example of the need for such realistic moderation is the statement of a witness that they could identify a person on a foggy night.[84] Another example more relevant to the present proceedings is the statement of a witness that they observed certain things happening while slipping in and out of consciousness.

59. Probative value can only be assessed in light of the issues in dispute in the proceeding.[85] The issues in dispute in a criminal trial in Victoria are identified by the Summary of Prosecution Opening and the Response to the same,[86] the purposes of which include to allow the parties and the Court time to litigate and determine any pre-trial 'issues of law,

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80 Aumyo Hassan and Sarah J Barber, 'The Effects of Repetition Frequency on the Illusory Truth Effect' (2021) 6 *Cognitive Research: Principles and Implications* 38.

81 *R v Doolan* [2019] NTSC 53, [9] (Doolan J).

82 *IMM v The Queen* (2016) 257 CLR 300. The authorities appear to assume that it is the hearsay representation itself, rather than the evidence of the person to whom the representation was made, that must be assumed to be credible and reliable.

83 *R v Dickman* (2017) 261 CLR 601, [43] (the Court). See also *Moreno (a pseudonym) v The King* [2023] VSCA 98, [57] (the Court).

84 *IMM v The Queen* (2016) 257 CLR 300, [50] (French CJ, Kiefel, Bell and Keane JJ).

85 *R v Lock* (1997) 91 A Crim R 356, 361 (Hunt CJ at CL).

86 *Director of Public Prosecutions (Cth) v JM* (2013) 250 CLR 135, [29] (the Court). See, eg, *DPP v Hazelwood Pacific Pty Ltd & Ors (Ruling 3)* [2019] VSC 872; *Alfarsi (a pseudonym) v The Queen* [2021] VSCA 283.

procedure and evidence' that become apparent upon the parties joining issue.[87] The Opening must identify the 'manner in which the prosecution will put the case' and 'acts, facts, matters and circumstances being relied on to support a finding of guilt'.[88] The Response 'must identify the acts, facts, matters and circumstances with which issue is taken and the basis on which issue is taken.'[89] These documents have statutory consequences, including limiting the way the parties' cases can be conducted and attracting adverse consequences for departure.[90]

60. In the present case, the statutorily-required documents reveal that it is not in issue that the Appellant attended the complainant's address, that there was an argument, and that by the next day she was presenting with injuries (the nature of the observed injuries also not being in issue: ABFM 20).

61. The matters that *are* most directly in issue in the proceedings are whether the Appellant:

(1) did the assaultive acts the subject of charges 1 and alternative 2, see the prosecution Opening at [1(a)(i)], [5(4)–(11)] (ABFM 6–7);

(2) engaged in the conduct the subject of charges 6 and alternative 7, see the prosecution Opening at [1(a)(iv)], [5(12] (ABFM 6–7);

(3) made the threats the subject of charges 3 and alternative 4, see the prosecution Opening at [1(a)(iii)], [5(13)(a)] (ABFM 6–7); and

(4) prevented the complainant from leaving her unit as alleged by charge 5, see the prosecution opening at [1(a)(ii)], [5(13)(b)–(c)] (ABFM 6–7).

62. It is against the background of those issues that the probative value of the evidence must be assessed.

Balancing the probative value and danger of unfair prejudice of each representation

63. Applying s 137 to hearsay evidence requires assessment of the probative value of *each* representation, and the unfair prejudice to the accused of admitting *it*.[91] Nevertheless, a very approximate categorisation is provided to assist the Court:

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87 Department of Justice, *Criminal Procedure Act 2009: Legislative Guide* (February 2010) p 180. See also Victoria, *Parliamentary Debates*, Legislative Assembly, 4 December 2008, 4985 (Hulls).

88 *Criminal Procedure Act 2009* (Vic) ss 182(2)(a) and (b).

89 *Criminal Procedure Act 2009* (Vic) ss 183(2).

90 *Criminal Procedure Act 2009* (Vic) ss 224(2), 225(2), 233 and 237.

91 See, in the s 65 context, *Sio v The Queen* (2016) 259 CLR 47, [57] (the Court).

(1) **Category 1:** Representations as to general or introductory matters, or matters not in dispute or matters that contradict the prosecution case on incidental matters;

(2) **Category 2:** Representations as to uncharged acts;

(3) **Category 3:** Representations describing a charged act in the terms alleged by the prosecution;

(4) **Category 4:** Representations describing a charged act in terms other than those alleged by the prosecution.

64. These submissions will now outline the matters relevant to each category, although the ultimate submission is that *all* of the representations (or at least a majority) offend s 137.

10 65. **Category 1:**[92] The hearsay notice contains representations as to a number of introductory matters, for example representations as to what the complainant was doing when the Appellant arrived at the house. The probative value of such representations is low and while they are rather anodyne, the inability to test them by cross-examination suffices to tip the balance against admission. Other representations go to matters not in dispute, for example, things said in an argument where the argument is not in dispute, or the injuries. While these might have some probative value by way of context, it is marginal and there is real prejudice in the Appellant's inability to cross-examine on them. Yet further representations appear to contradict the Crown case, for example the statement that the accused returned twice to the unit when the Crown Opening only alleges that he returned
20 once. Finally in this category, there are general statements such as that the complainant 'was bashed during the night' or that '[t]he offender had a knife'. These statements are of minimal probative value, but carry with them real danger of unfair prejudice, given the difficulty of the jury tying them to a specific charge.

66. **Category 2:**[93] The hearsay notice contains a number of representations going to uncharged acts such as that the Appellant 'hit her over the head with plates' and 'kicked her'. While such uncharged acts can sometimes have real probative value by providing a

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92 The Appellant submits that the following representations fall into category 1: ABFM p 26 (representations to triple zero #1, 2, 3, 7, 8); ABFM p 27–8 (representations to S/C Stack at 1:05pm #1–12 [note #5, 7 and 11 were excluded by the primary judge: CAB 37], 17, 18, 20, 21, 22); ABFM p 29 (representations to S/C Stack at 1:30pm #2); ABFM p 30–2 (representations to S/C Rinderhagen #1–12, last two sentences of 17, 20, 27, 28, 29, 30, 31).

93 The Appellant submits that the following representations fall into category 2: ABFM p 25 (representation to mother, given pseudonym Julie Dwyer, #4), ABFM p 26 (representations to triple zero #4, 6); ABFM p 27–8 (representations to S/C Stack at 1:05pm #14, 19); ABFM p 29 (representations to S/C Stack at 1:30pm #1).

context for the evaluation of other evidence,[94] here the charged acts include a course of conduct and thus there is little probative value, but great prejudice, by adding further uncharged acts into the mix.

67. **Category 3:**[95] The representations describing charged acts in the terms described in the prosecution Opening are highly probative of the facts in dispute in the trial. However, a number of these representations were repeated to different interlocutors. In this respect, even if their probative value is undiminished by the fact that they are merely repetitive,[96] the danger of unfair prejudice rises with the admission into evidence of each additional repetitive representation.

68. **Category 4:**[97] A number of representations in the hearsay notice describe what appear to be charged acts but in terms other than those alleged by the prosecution. For example, the offender 'jumped' (rather than stomped, as alleged in the prosecution Opening) on the complainant's back. The probative value of this evidence is lower than that in category 3, and the prejudice is high as the Appellant is unable to test the complainant about the inconsistencies in her descriptions of the charged acts.

Conclusion on s 137 exercise

69. It may be accepted that some of the complainant's previous representations were of high probative value, as the Court of Appeal concluded at J [179]. However, had the Court of Appeal properly assessed the danger of unfair prejudice it should have concluded that it was acute, and that it outweighed the probative value. Indeed, the Court of Appeal's repeated reference to the *House* standard suggests that it was this deferential standard that resulted in it affirming the trial judge's ruling. Had the Court of Appeal applied the correctness standard, and had it properly assessed the danger of unfair prejudice, it should have reached the opposite conclusion, as this Court should on the appeal.

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94 See, generally, *HML v The Queen* (2008) 235 CLR 334.

95 The Appellant submits that the following representations fall into category 3: ABFM p 25 (representations to mother, given pseudonym Julie Dwyer, #1, 2, 5); ABFM p 27–8 (representations to S/C Stack at 1:05pm #13); ABFM p 29 (representations to S/C Stack at 1:30pm #3, 4); ABFM p 30–2 (representations to S/C Rinderhagen #13–16, first three sentences of 17, 18, 19, 21–26).

96 As to which, see the discussion in *Aytugrul v The Queen* (2012) 247 CLR 170, [25]–[29] (French CJ, Hayne, Crennan and Bell JJ), [41]–[65] (Heydon J).

97 The Appellant submits that the following representations fall into category 4: ABFM p 25 (representation to mother, given pseudonym Julie Dwyer, #3); ABFM p 26 (representation to triple zero #5); ABFM p 27–8 (representations to S/C Stack at 1:05pm #16, 17).

Part VII: Orders sought

70. The Appellant seeks the following orders:

(1) The appeal be allowed.

(2) Paragraph 2 of the orders made by the Court of Appeal on 28 September 2023 be set aside, and in lieu thereof it be ordered that:

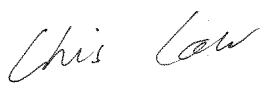
(a) The appeal be allowed; and,

(b) The decision of the County Court of Victoria on 3 July 2023 be set aside and in lieu thereof it be ordered that the evidence the subject of the Director of Public Prosecution's notice of 9 June 2023 under s 67 of the *Evidence Act 2008* (Vic) not be admitted in the accused's trial.

Part VIII: Estimate

71. The Appellant estimates that he will require 1.5 hours for oral argument.

Dated: 18 April 2024



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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN: Steven Moore (a pseudonym)
Appellant

and

The King
Respondent

ANNEXURE TO THE APPELLANT'S SUBMISSIONS

Pursuant to Practice Direction No. 1 of 2019, the Appellant sets out below a list of the constitutional provisions, statutes and statutory instruments referred to in his submissions.

No.	Description	Version	Provisions
1.	*Criminal Procedure Act 2009* (Vic)	Authorised Version No. 097 (6 September 2023 to 10 October 2023)	ss 198B, 182, 183, 224, 225, 233, 237, 295, 297
2.	*Evidence Act 2008* (Vic)	Authorised Version No. 026 (1 July 2020 to 24 March 2024)	ss 65, 67, 97, 98, 101, 135, 137, 138