

BETWEEN:

**DARIO STAKAJ**  
Appellant

and

**THE DIRECTOR OF PUBLIC  
PROSECUTIONS**  
Respondent



**APPELLANT'S REPLY**

20 **Part I: Publication**

1. The appellant certifies that this submission is in a form suitable for publication on the internet.

**Part II:**

Section 57 of the *Juries Act 1929* (SA)

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2. Contrary to paragraph [49] of the respondent's submissions, section 57(3) of the *Juries Act 1929* (SA) did not prevent the jury from proceeding, "... to consider the alternative charge of manslaughter in relation to any of the accused, unless and until it had either unanimously or by majority verdict determined to acquit the particular accused of murder."
  3. Section 57(3) of the *Juries Act 1929* (SA) required the jury to first consider whether an accused was guilty of murder before they turned to consider whether they were guilty of manslaughter, but it did not require the jury to decide upon a verdict for the murder charge before they could consider manslaughter. It required the jury to  
40 consider guilt of the more serious offence first – it proscribed the order of **consideration** of the offences only. The trial Judge directed the jury accordingly at page 103.6 of the summing up.
  4. The requirement that the jury return a verdict of not guilty on the charge of murder before they could validly return a verdict on the alternative offence of manslaughter comes from the common law – *Gammage v The Queen* (1969) 122 CLR 444 at 453; *Stanton v The Queen* [2003] HCA 29; (2003) 77 ALJR 1151 at [22]-[25], [27].

5. The appellant submits that the reasoning of Kourakis CJ at [46]-[48] of his judgment in the court below, about the effect of section 57 of the *Juries Act 1929* (SA), is correct.<sup>1</sup> The jurors' evidence admitted by the Full Court did not establish any breach of, or non-compliance with, the terms of section 57 of the *Juries Act 1929* (SA).

Comparison with the power to set aside a perfected judgment for fraud

- 10 6. The appellant submits there is no valid analogy, contrary to the respondent's suggestion at paragraph [70] of his submissions, between the accepted inherent power of a superior court to set aside a judgment based on fraud and the posited inherent power to set aside a jury's verdict of acquittal, and a perfected judgment of acquittal, based on a jury's mistake.

7. As Kourakis CJ stated in *Clone Pty Ltd v Players Pty Ltd (In Liq) & Ors*:<sup>2</sup>

20 "The public interest in finality necessarily entails tolerance of some judgments which events subsequently show to have been mistaken, but there is little or no public interest in allowing a litigant who has cheated justice to retain the fruits of his or her fraud. To do so would tend to bring the administration of justice into disrepute because it would lend the assistance of the compulsory processes of the Courts to the litigant who was the most effective fraudster."

8. The public interest in finality with respect to a jury's verdict in a criminal case is even greater, where the power of the State is deployed against an individual and their liberty itself is at risk. The principle against double jeopardy is engaged. Moreover, the constitutional role of the jury as the decider of guilt in serious criminal cases would be unacceptably compromised if the Courts possessed the inherent power to set a jury's verdict of acquittal aside whenever it was could be shown that the jury had made a mistake.

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Costs

9. In the event the appellant is successful, the appellant seeks the following costs orders:


- 9.1 The respondent is to pay the appellant's costs in the Full Court of the Supreme Court of South Australia relating to the respondent's application to set aside the jury's verdicts. The appellant notes the respondent does not oppose this order – paragraph [85(ii)] of the respondent's submissions.
- 40 9.2 The respondent is to pay the appellant's costs of the applications for special leave.
- 9.3 The respondent is to pay the appellant's costs of the appeal to this Court.

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<sup>1</sup> *Case Stated on Acquittal; R v Stakaj* (2015) 123 SASR 523

<sup>2</sup> [2012] SASC 12 at [97]

Dated 17 May 2016



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