HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN: **SEYYED ABDOLZADEH FARSHCHI**
Appellant

and

THE KING
Respondent

OUTLINE OF ORAL SUBMISSIONS OF THE RESPONDENT

PART I INTERNET PUBLICATION

This outline of oral submissions is in a form suitable for publication on the internet.

PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

1 The grounds of appeal depend on the proposition that if the impugned explanation ("a reasonable doubt is not … an unrealistic possibility") is given to a jury, the jury will "derive a false perception of the basis for deciding whether the Crown has proved its case", ***irrespective*** of the context in which the explanation is given: **RS [2], [20], [41]-[42]**, and see **AS [15], [21]**; cf **AS [13], Reply [4]**.

- *Criminal Code* (Cth), ss 3.1, 3.2, 13.1(1)-(2), 13.2(1)-(2) (**JBA v 1, Tab 4**)
- *La Fontaine v The Queen* (1976) 136 CLR 62 at 72 (**JBA v 4, Tab 21**)
- *R v Dookheea* (2017) 262 CLR 402 at [37] (**JBA v 5, Tab 30**)

Ground 1: Inconsistency with s 13.2 of the *Criminal Code* (Cth)

2 ***The meaning of "unrealistic"*:** The word "unrealistic" in s 64(1)(e) of the JD Act must be read in the context of the words "imaginary or fanciful doubt", which convey the sense in which "unrealistic" is used: **RS [28]**.

3 Further, the appellant accepts it is permissible for a trial judge to use the words "unreal possibility": **AS [31]**. There is no meaningful difference between an "unrealistic possibility" and an "unreal possibility": **RS [23]-[26], [28]**.

4 ***The jury's task*:** The appellant provides no explanation for his contention that a reference to "unrealistic possibility" impermissibly alters the jury's task whereas a reference to "unreal possibility" does not: **RS [33]**; cf **Reply [6]**.

5 The argument that a reference to "unrealistic possibility" erroneously invites jurors to subject their mental processes to objective analysis misunderstands *Green* and is inconsistent with *Dookheea*: **RS [29], [31]-[32]**.

- *Green v The Queen* (1971) 126 CLR 28 at 30-31, 33 (**JBA v 3, Tab 19**)
- *R v Dookheea* (2017) 262 CLR 402 at [29]-[30], [34]-[39] (**JBA v 5, Tab 30**)

6 ***Context of a trial*:** The meaning of the impugned explanation will necessarily be informed by the context of the trial in which it is given. As illustrated by this case, context may confirm that the jury would not derive a false perception of the basis for deciding whether the Crown has proved its case: **RS [10]-[15], [34]-[40]**.

- *La Fontaine v The Queen* (1976) 136 CLR 62 at 72-73 (**JBA v 4, Tab 21**)

Ground 2: Section 80 of the *Constitution*

7 The Court should refrain from deciding Ground 2 where the resolution of Ground 1 is dispositive of the appeal: **RS [45]**; cf **Reply [10]-[13]**.

- *Mineralogy v WA* (2021) 274 CLR 219 at [56]-[58], [60] (**JBA v 4, Tab 25**)

8 The appellant's case seems to be that it is an "essential characteristic" of a s 80 jury trial that the prosecution prove "its case" beyond reasonable doubt: **Reply [15]**. But the standard of proof applies only to the elements of an offence. The supposed "difference" between modifying the standard for an element and "uniformly diminishing the criminal standard" is neither principled nor supported by any authority: **RS [47]-[51]**.

10 9 The appellant's argument on Ground 2 is in tension with existing authority that permits the Commonwealth Parliament to reverse the onus of proof in respect of elements of an offence: **RS [52]-[59]**; cf **Reply [15]**.

- *Milicevic v Campbell* (1975) 132 CLR 307 at 316-317 (Gibbs J), 318-319 (Mason J), 320-321 (Jacobs J) (**JBA v 4, Tab 24**)
- *Kuczborski v Queensland* (2014) 254 CLR 51 at [240] (**JBA v 4, Tab 20**)

10 The appellant's argument on Ground 2 does not grapple with complexities in identifying the purpose of, and correct approach to, s 80: **RS [60]-[64]**; cf **Reply [13]-[14]**.



Raelene Sharp **Thomas Wood** **Julia Wang**

20 5 August 2025