



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: C2/2026  
File Title: O'Connell v. Director of Public Prosecutions  
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IN THE HIGH COURT OF AUSTRALIA  
CANBERRA REGISTRY

No. C2 of 2026

BETWEEN:

**MICHAEL O'CONNELL**

Appellant

And

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**DIRECTOR OF PUBLIC PROSECUTIONS**

Respondent

**OUTLINE OF ORAL SUBMISSIONS OF THE RESPONDENT**

**PART I INTERNET PUBLICATION**

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

**PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT**

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**The construction of “another verdict” in s 37O of the *Supreme Court Act* (RS [11]-[28])**

- 20 1. On the plain meaning of the words “another verdict”, s 37O(1)(d) permits substitution of an alternative verdict. This is supported by the text, context and legislative history. The respondent’s construction would read out the words entirely, inconsistently with orthodox principles of statutory construction: see *CDJ v VAJ* (1998) 197 CLR 182 at [110] (McHugh, Gummow and Callinan JJ) (**JBA Vol 4, Tab 22**); see also at [53] (Gaudron J) citing *Shin Kobe Maru* (1994) 181 CLR 404 at 420-421.
2. The “competing consideration” the appellant identifies (his non-constitutional right to trial by jury) is amply accommodated by the limiting principle that the Court of Appeal identified on substitution, that by its verdict the jury must have been satisfied of the facts constituting the alternative offence (*cf* **AR [4]**).
- 30 3. This approach is consistent with the line of authority in this Court on the construction of “spare” appellate provisions applicable in the Territory: *Stokes v The Queen* (1960) 105

CLR 279 (**JBA Vol 5, Tab 42**); *Chamberlain v The Queen (No 2)* (1984) 153 CLR 521 (**JBA Vol 4, Tab 23**) *R v Hillier* (2007) 228 CLR 618 (**JBA Vol 5, Tab 38**).

**Substitution in this case (RS [29]-[40])**

4. The verdict demonstrates the jury were affirmatively satisfied of facts which constituted the offence of manslaughter.
5. The “unlawful act” relied on by the Crown in proof of the third element of manslaughter was a common assault. The elements of that offence are: (a) the infliction of force on another person; (b) *the accused intentionally or recklessly inflicting that force*; (c) the other person not consenting to the infliction of force; and (d) the accused having no lawful excuse for the infliction of force. That is, proof of the *mens rea* for the assault was established by the accused’s *actual intention* by his act, to dislodge Ms Jordan and cause her to hit the roadway or his *foresight of the probability* that by his act, she would be dislodged and hit the roadway.
6. The only aspect of the verdict impugned by the majority decision was the appellant’s foresight that *death was probable*. The majority did not impugn that part of the verdict going to foresight of the probability Ms Jordan would **come off the bonnet and collide with the roadway** (CA [345] JCAB 144, see also CA [329]-[334] JCAB 141-142, CA2 [84] JCAB 166).

**The proper construction of s 297 of the Crimes Act (RS [41]-[55])**

7. The issue joined between the parties has narrowed (see AR [12]) to whether, having made orders setting aside the verdict of guilty and entering a verdict of acquittal, and reserving on the question of whether another verdict should be entered, the respondent had been “tried” within the meaning of s 297 of the *Crimes Act*. That was not the effect of the orders made on 27 June 2025, which expressly reserved the question of whether another verdict should be entered (**JCAB 146**).
8. In a case where there is a statutory alternative, an order entering a verdict of not guilty only partly determines the criminal proceedings against an accused (which include the appellate process): *AJS v The Queen* (2007) 235 CLR 505 at [19] (**JBA Vol 4, Tab 20**).

9. The appellant was entitled to a verdict of acquittal on the charge for murder, and that did not preclude either an alternative verdict being entered, or the making of an order for a new trial: *Smith v The King* [2025] NSWCCA 158 at [84]-[121] (**JBA Vol 6, Tab 51**).

**Dated: 12 May 2026**



**Victoria Engel SC**  
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