HIGH COURT OF AUSTRALIA

4 November 2026

O'CONNELL v DIRECTOR OF PUBLIC PROSECUTIONS
[2026] HCA 41

Today, the High Court unanimously allowed the Director of Public Prosecutions' ("DPP") appeal from a judgment ("the first judgment") of the Court of Appeal of the Supreme Court of the Australian Capital Territory, which set aside Mr O'Connell's conviction for murder and entered a verdict of not guilty. The High Court also unanimously dismissed Mr O'Connell's appeal against a further judgment ("the second judgment") of the Court of Appeal, which entered a verdict of guilty to manslaughter and remitted the proceedings for resentencing to the Supreme Court of the Australian Capital Territory.

At around 4.00 am on 15 April 2022, Mr O'Connell, who was in a relationship with the deceased, attempted to leave the deceased's home. To prevent him from doing so, the deceased placed herself on the bonnet of his car. At trial the prosecution contended that Mr O'Connell nevertheless drove off at speed, before the deceased fell from the bonnet and suffered fatal head injuries. Following a trial before a jury in the Supreme Court of the Australian Capital Territory, Mr O'Connell was found guilty of murder and sentenced to a substantial term of imprisonment.

Mr O'Connell appealed his conviction to the Court of Appeal on various grounds, including that the verdict was unreasonable, or could not be supported, having regard to the evidence ("the unreasonable verdict ground"). After initially reserving its judgment, the Court of Appeal invited submissions from the parties addressing, amongst other matters, whether the jury ought to have entertained a reasonable doubt as to Mr O'Connell's reckless indifference to the probability of death when he drove with the deceased on the bonnet of his car.

The majority of the Court of Appeal upheld the unreasonable verdict ground on the basis that they had a reasonable doubt as to whether the prosecution proved that Mr O'Connell was recklessly indifferent to the probability of causing death. The majority did not consider this doubt to be explainable by the jury's advantage in seeing and hearing the evidence at trial.

The DPP appealed from the first judgment to the High Court on two grounds. The first ground contended that the majority erred in allowing the appeal on a basis that was not raised at trial nor on appeal, and in relation to a hypothesis which was not open on the evidence. The DPP's second ground contended that the majority failed to make full allowance for the advantages enjoyed by the jury and failed to properly address the circumstantial case in respect of reckless indifference.

The High Court unanimously dismissed the first ground of appeal and upheld the second ground of appeal. There was no infringement of the adversarial process of an appeal arising from the Court of Appeal raising its concern with the parties after reserving judgment. However, the majority erred in two respects in upholding Mr O'Connell's unreasonable verdict ground: (1) in failing to make full allowance for all the advantages enjoyed by the jury; and (2) in failing to consider all the circumstances established by the evidence and to weigh them in determining whether an inference consistent with innocence was reasonably open on the evidence. As a result, the High Court set aside the orders of the Court of Appeal made in the first judgment. As the first judgment was the premise of the second judgment, the High Court also set aside the orders of the Court of Appeal made in the second judgment.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.

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