



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: M45/2022
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Important Information

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BETWEEN:

JOHN MICHAEL TAMBAKAKIS

Appellant

- and -

THE QUEEN

Respondent

APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

Part I: Certification

1. This outline is in a form suitable for publication on the internet.

Part II: Outline of the propositions to be advanced by the Appellant in oral argument

2. The Appellant's whole defence depended on his evidence.
Appellant's Submissions [9]
3. In the course of the Appellant's evidence a multitude of credit issues arose.
Appellant's Submissions [12]-[13]
4. The learned trial prosecutor, the Appellant's trial counsel, Mr Awad's trial counsel and Mr Kanati's trial counsel each made submissions to the jury about the suggested truth or untruth of the Appellant's evidence.
Appellant's Reply [13]-[16]
5. The jury's assessment of the Appellant's evidence was critical to the outcome of the trial. It went to the heart of the trial. As such, the prohibited direction went to the root of these proceedings. It constituted a fundamental departure from what the Parliament of Victoria has now laid down as the prescribed processes for a fair trial.
Appellant's Submissions [52]-[54]

6. Approaching the substantial miscarriage of justice question from another angle, the provision of the prohibited direction cannot be described as some innocuous error that could have made no difference to the outcome of the trial. The prohibited direction focusses on the motivation of an accused person in giving evidence in a criminal trial. This issue was raised in the final address of the learned trial prosecutor. The prohibited direction had the potential to undermine the presumption of innocence and the onus of proof. The prohibited direction stood apart from other directions on those issues. The jury were directed to keep this prohibited direction in mind when assessing the Appellant's evidence.

Appellant's Submissions [14], [42]

7. If ever there was a case where this prohibited direction was unlikely to balance itself out, this was the case.

Appellant's Submissions [47]-[48]

8. The resort to cases decided before this direction attained its status as a prohibited and problematic direction is misplaced. The fact that the prohibited direction went to the issue of the Appellant's credibility, which was so heavily in dispute, stands in the way of any finding that this prohibited direction was innocuous. That same fact would also stand in the way of any finding as to the inevitability of conviction given the natural limitations of proceeding on the record. As such, if this Court reaches the conclusion that the majority in the Court of Appeal erred in their approach to the substantial miscarriage of justice question, the correct order would be an order for a retrial rather than an order remitting the matter back to the Court of Appeal.

Appellant's Reply [32]-[34]



DERMOT A DANN
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Tuesday, 13 September 2022