



HIGH COURT OF AUSTRALIA

Public Information Officer

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AJS v THE QUEEN

AJS was entitled to be acquitted of a charge of incest and should face a trial on the alternative charge of committing an indecent act, the High Court of Australia held today.

In 2004 AJS was convicted of incest by digital penetration of his 13-year-old granddaughter. The Victorian Court of Appeal held that that verdict was not open on the evidence and ordered that the conviction be quashed and a new trial held. If the jury had found AJS not guilty of incest they could have considered the alternative charge of committing an indecent act with a child under 16. AJS appealed to the High Court, arguing that the Court of Appeal should have entered a verdict of acquittal on the charge of incest and ordered a new trial on the indecency charge.

The High Court unanimously allowed the appeal. It ordered his acquittal on the incest charge and ordered a new trial on the indecency charge. The Court held that a new trial would not be a second or subsequent prosecution but would be the continuation of so much of the original prosecution as remained alive after the Court of Appeal's determination of the appeal. While the charge of incest has been resolved in AJS's favour, the other lesser alternative offence remains unresolved. The Court held that no question of double jeopardy arises. Entering a verdict of acquittal on the incest charge does not found a plea that AJS has already been acquitted of the indecent dealing charge, just as a jury verdict of not guilty on the incest count would not have precluded the jury from going on to consider this alternative offence. The power to order a new trial extends to ordering a new trial for an offence for which AJS could have been convicted at the first trial.

- *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.*