

IN THE SUPREME COURT OF VICTORIA
COURT OF APPEAL
(CRIMINAL DIVISION)

IN RELATION TO Section 308 of the Criminal Procedure Act 2009

and

IN THE MATTER OF a reference by the Director of Public Prosecutions for the State of Victoria on a point of law arising in a trial on Indictment F12622673 before Justice Lasry (sitting in the Supreme Court) resulting in the acquittal of an accused person

DIRECTOR OF PUBLIC PROSECUTIONS REFERENCE No.1 of 2017

Date of document:	23 February 2017
Filed on behalf of:	Director of Public Prosecutions
Prepared by:	Solicitor's code: 7539
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NARRATIVE

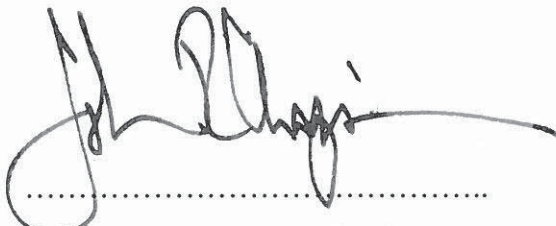
1. Indictment F12622673 filed in the Supreme Court charged that Gayle Michele Dunlop (the "accused") murdered John Reed (the "deceased") contrary to the common law.
2. A copy of the said Indictment is annexed herewith and marked "A".
3. On 15 November 2016 the accused was arraigned in the Supreme Court and entered a plea of not guilty to the relevant charge.
4. A jury was empanelled to hear the trial.
5. On 15 November 2016 the trial commenced before Justice Lasry.

6. On 22 November 2016, after calling a number of witnesses, the Prosecutor closed the case for the Crown.
7. Immediately after the close of the Crown case, counsel for the accused sought the administration of a *Prasad* direction to the jury.
8. On the morning of 23 November 2016 Justice Lasry informed the jury that as they had heard the whole of the Crown case they now had 3 choices:
 - the right to deliver verdicts of “not guilty” to murder and manslaughter; or
 - the right to deliver a verdict of “not guilty” to murder and an indication they wished to hear more evidence in respect of the charge of manslaughter; or
 - they could indicate they wished to hear more evidence in respect of both charges.
9. The jury retired to consider its decision. The jury returned that afternoon and advised Justice Lasry they they would like to hear more evidence in respect of both charges.
10. The trial continued with the accused calling and giving sworn evidence.
11. On 24 November 2016 Counsel closed the case for the accused.
12. Immediately after the close of the Defence case (and prior to closing addresses), the trial judge reminded the jury of the continuing operation of the *Prasad* direction and provided them with an opportunity to revisit their earlier decision.
13. On 24 November 2016 the jury returned a verdict of not guilty to the indictment.
14. Accordingly, I JOHN ROSS CHAMPION, Senior Counsel and Director of Public Prosecutions for the State of Victoria, set out below a point of law which has arisen in this case and which I refer to this Honourable Court for consideration and opinion pursuant to section 308 of the Criminal Procedure Act 2009.

POINT OF LAW

1. The direction commonly referred to as the "*Prasad* direction" is contrary to law and should not be administered to a jury determining a criminal trial between the Crown and an accused person.
2. I will seek leave of the Court to file a written submission on the above ground in support of this reference upon receipt of the transcript of the relevant ruling.

DATED this 23rd day of February 2017.

A handwritten signature in black ink, appearing to read 'John Ross Champion', written over a horizontal dotted line.

JOHN ROSS CHAMPION S.C.

Director of Public Prosecutions

"A"

IN THE SUPREME COURT
IN THE STATE OF VICTORIA
AT MELBOURNE

NO. F12622673

Court Reference: S CR 2016 0064

INDICTMENT

THE DIRECTOR OF PUBLIC PROSECUTIONS

-v-

GAYLE MICHELE DUNLOP

SUMMARY OF STATEMENT OF OFFENCE

<i>Offence</i>	<i>Number Of charges</i>	<i>Charge Numbers</i>
Murder	1	1

IMPORTANT NOTICE TO ACCUSED

Legal representation should be sought. You have the right, if eligible, to Legal Aid under the Legal Aid Act 1978. Victoria Legal Aid Criminal Division can be contacted on (03) 9269 0210 or 1800 677 402 (freecall for country areas).

NOMINATED ADDRESS ETC FOR SERVICE OF DOCUMENTS

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MELBOURNE 3000

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PARTICULARS
AND STATEMENT OF OFFENCE

CHARGE 1 The Director of Public Prosecutions charges that **GAYLE MICHELE DUNLOP** at Prahran in Victoria on the 20th day of July 2015 murdered **JOHN REED**.

Statement of Offence - Murder contrary to Common Law

SIGNED: N. ROGERS
DATE: 24 May 2016

CROWN PROSECUTOR

WITNESSES

Subject to the exercise of the prosecutor's discretion at the trial, the Director of Public Prosecutions proposes to call all witnesses except those whose names are marked with an asterisk (*).

Peter REDWOOD
Jennifer McLEISH
Richard JENKINS
Julie McCALL
David RANSON
Linda ILES
Mika DUNLOP
Rhonda DUNLOP
Richard CONTI
Peter ARENI
Lynette PHILLIPS
Lorna McCARTHY
Rebecca HOUGH
Melanie NOLAN
Peter HAMILTON
Penny BOWE
Joy KIRWAN
Fiona STEWART
Sarah SIMPSON
Michael PHILLIPS
Brenton WILLEY
Bruce HARROP
Peter VANDERMEERS
Joel MAGNO-THORNTON
Bethany CORRIGAN
Mark FOSTER
Matthew SLADE
Martin WILLIAMS
Evan HUMBER
Sarah BODYCOMB
Stuart HOUGH
Michael PUTSON
Jennifer McKENNA
Jason LEE
Michael YATES
Ryan COLLINS
Rachel KINGSTON-LEE
Bernadette BUENDIA
Tenille FURBOROUGH .../2

List of witnesses (cont)

Richard JIANG

Nicola WILSON

Petine TUHKAVA

Tim MILLER

Jodie HILL

Amanda MITCHELL

Kyle SIMPSON