

THE IMPETUS FOR REFORM

THE IMPETUS FOR REFORM: R V CARROLL (2002) HCA 55

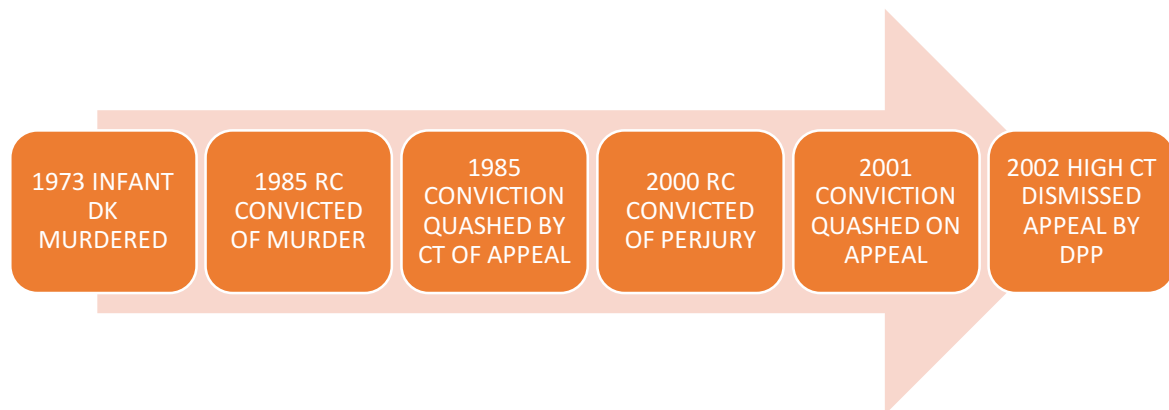
1973: an infant (DK) was taken from her home, sexually assaulted and killed.

1983: RC C charged with murder of DK. He testified to his innocence at trial. Was convicted by jury. Appeal was successful and he was acquitted.

Subsequently, fresh DNA evidence implicated C. Unable to charge him with murder again (autrefois acquit), the prosecution charged him with perjury (lying to the court at his first trial by stating that he was innocent). C appealed.

High Court: prosecution must be stayed because it would revisit the outcome of his earlier murder trial. High Ct held that, effectively, C was being re-tried for the murder. Abuse of process.

THE CARROLL CASE 1973 - 2002



REFORM OF THE RULE AGAINST DOUBLE JEOPARDY

CRIMINAL PROCEDURE AMENDMENT (DOUBLE JEOPARDY AND OTHER MATTERS) ACT 2011 (VIC)

THE PURPOSES OF THIS ACT ARE:

(a) to amend the Criminal Procedure Act 2009 -

(i) to provide **expectations** to the rule against double jeopardy that would permit a person to be tried or re-tried in certain circumstances despite a **previous acquittal**.

NEW CHAPTER 7A INSERTED IN CP ACT (S327A – S327S) – GENERAL FEATURES

1. May apply to an acquittal outside Victoria if the law of that place permits the acquitted person to be retried.
2. Generally, does not apply if a person is acquitted of the offence charged but is convicted of a lesser offence arising out of the same set of circumstances that gave rise to the charge.
3. Police require written authorisation of DPP to re-investigate case (question, search, pursue surveillance) where D has previously been acquitted: s327E (but in urgent situations, senior member of police force may authorise)
4. DPP files direct indictment (s327F) and Court of Appeal must authorise prosecution for it to proceed (s327o)
5. Presumption of bail:s327
6. DPP can only make one application for a re-trial: s327J

**DPP CAN NOW APPLY TO CT OF APPEAL FOR
AUTHORISATION TO PROSECUTE A PERSON PREVIOUSLY
ACQUITTED OF AN OFFENCE WHERE IT IS ALLEGED**

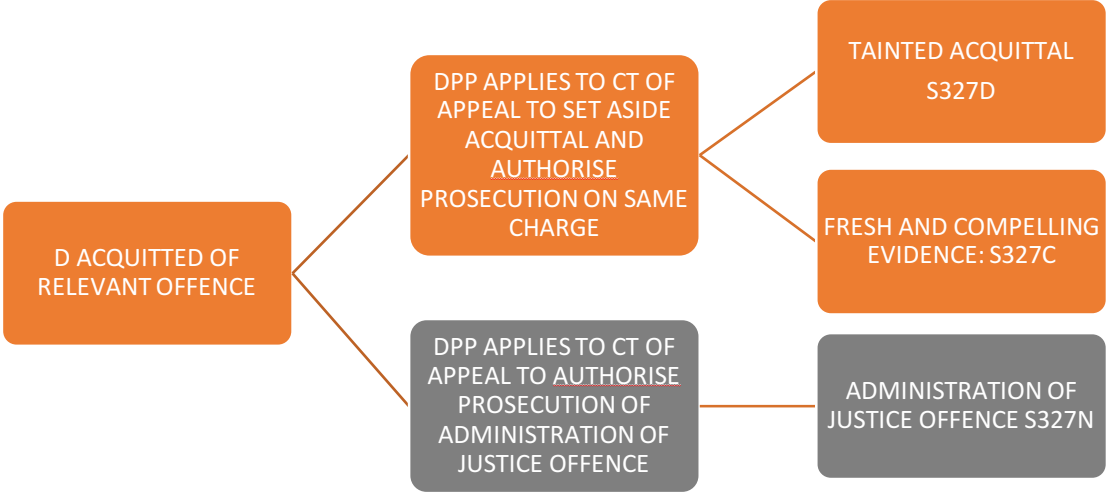
1. **That the previous acquittal was tainted** e.g juror intimidated or bribed, accused or other witness committed perjury AND if trial had not been tainted, accused would probably have been convicted
2. **'Fresh and compelling evidence' is available** eg DNA evidence, confession)
3. **An 'administration of justice' offence occurred in the trial in which the acquittal was obtained and prosecution wants to bring charges for that offence** eg accused committed perjury.

'FAIR'

Ct of Appeal may authorise new trial if the new trial is likely to be 'fair' →

- Length of time since the administration of justice offence is alleged to have been committed
- Whether there was failure on the part of the police or the prosecution to act with reasonable diligence or expedition in relation to making the application
- Any other matter that the court considers relevant.

THE REFORMS TO DOUBLE JEOPARDY - VIC



THE 'TAINTED ACQUITTAL' EXCEPTION

DPP MAY APPLY TO COURT OF APPEALS – S.327H

DPP MAY APPLY TO THE COURT OF APPEAL FOR AN ORDER—

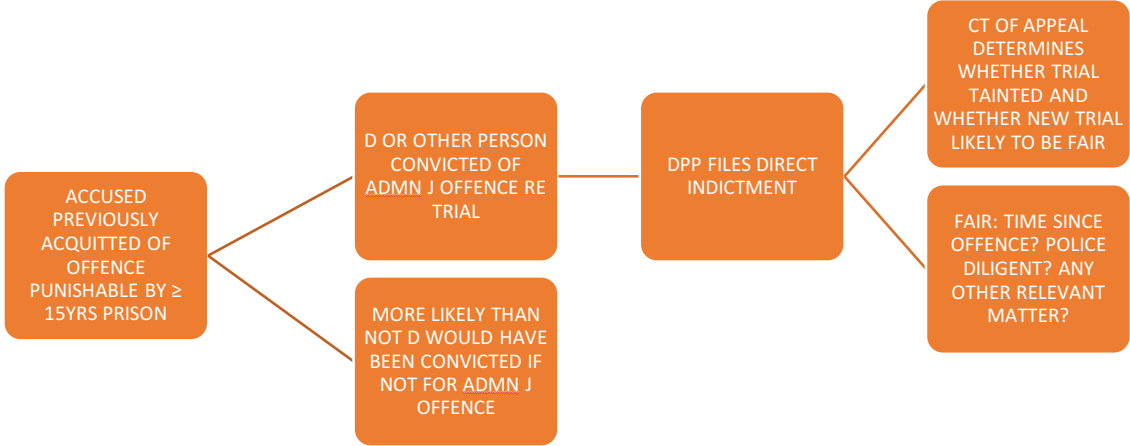
- a) Setting aside the previous acquittal of the accused or removing the previous acquittal as a bar to the accused being tried on the direct indictment; and
- b) Authorising the continuation of the prosecution of the charge in the indictment.

'TAINTED'

s327D *Meaning of tainted acquittal*
if at the trial of an offence a person is acquitted of the offence, the acquittal will be tainted if—

- a) the person or another person has been **convicted** (whether or not in Victoria) of an administration of justice offence in connection with the trial resulting in the acquittal;
- AND**
- b) it is **more likely than not** that, had it not been for the commission of the administration of justice offence, the person would have been convicted of the first mentioned offence at the trial.

RE-TRIAL ON BASIS OF TAINTED ACQUITTAL: S327L



EXAMPLE

- D charged with armed robbery and put on trial. Evidence against D is strong (fingerprints, eyewitness identification). D contacts three of the jurors, bribes them and gets them to oppose convicting him. D acquitted.
- D is subsequently convicted of bribing a juror.* (*= administration of justice offence)
- Prosecution can apply to Ct of Appeal for authorisation to re-try D on the same offence of armed robbery on the basis that his earlier acquittal was tainted.