

# **PUBLIC INTEREST DISCLOSURE: Victoria Police Misconduct Contempt of Court YOUR CASE = MALICIOUS PROSECUTION**

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Date Sunday, January 14th, 2024 at 05:51

**CONSPIRACY — General principles — Co-conspirator's rule — Relevant public interests - Balancing of public interests. Application for permanent stay — Forensic disadvantage — Whether fair trial possible — Whether stay should be granted**

**DISMISSAL IN THE INTERESTS OF JUSTICE — Meaning of interests of justice — Onus of proof — Nature of relief — Whether factors relevant to dismissal must be related to conspiracy charges — Aiding and abetting — Commission by proxy**

**STAY OF PROCEEDINGS — Abuse of process — Right to a fair trial — Deficiencies or malpractice in investigation — Accumulation of errors**

**CRIMINAL LAW — Evidence — Illegally obtained evidence — Discretion to exclude — Conspiracy to Commit a Crime - Aid and Abet**

**HUMAN RIGHTS - Right to fair hearing - Equality before the law — Right to liberty and security — Freedom from arbitrary interference with family — Protection of families and children — Limitations**

**JUDICIAL REVIEW — Decision of the Magistrates' Court of Victoria Whether magistrate's decision affected by jurisdictional error or error of law on the face of the record — Whether magistrate's reasons inadequate**

## **REFUSAL OF DUTY**

Delia [REDACTED] Reports breach of Family Violence Order on legal advice [Family Law] it was a breach. VICPOL state "not a breach" **VICTORIA POLICE. CORRUPT TO THE CORE**

## **Charter of Human Rights and Responsibilities Act**

Section 4 What is a public authority?

Section 8 Recognition and equality before the law

Section 10 Protection from torture or cruel treatment or punishment

Section 13 Privacy and reputation

Section 17 Protection of families and children

Section 21 Right to liberty and security of person

Section 22 Humane treatment when deprived of liberty [fractured ribs 2022 04 27]

Section 24 Fair hearing (1) A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Section 25 Rights in criminal proceedings

Division 4--Obligations on public authorities

Section 38 Conduct of public authorities

Section 39 Legal proceedings

**Section 276(1) of the Criminal Procedure Act 2009 (Vic)** provided that on an appeal against conviction the Court of Appeal must allow the appeal if (a) the verdict of the jury is unreasonable or cannot be supported having regard to the evidence; **(b) there has been a substantial miscarriage of justice as the result of an error or an irregularity in, or in relation to, the trial; or (c) for any other reason there has been a substantial miscarriage of justice.**

1. At Sent by: '<2021 09 04 - Reece reassure you about VICPOL req no adverse action to you.pdf>'
2. At Sent by: '<2021 09 23 to Minister Police Neville.pdf>'
3. At Sent by: '<2021 09 27 - Police Conduct to VOCAT proceedings 2017 1756.pdf>'
4. At Sent by: '<2021 11 17 [REDACTED] Reece Im on Call Cops [Start FVO Threat Property].pdf>'
5. At Sent by: '<2021 11 17 - Reece [REDACTED] has cut me out of [REDACTED] life.pdf>'
6. At Sent by: '<2021 11 27 The Originating circumstances.pdf>'
7. At Sent by: '<2021 12 08 - M12446367 FVO appl Inf Ricketts.pdf>'
8. At Sent by: '<2021 12 18 He hasnt been served with the order yet.pdf>'
9. At Sent by: '<2022 01 01 - License ID.pdf>'
10. At Sent by: '<2022 01 02 [REDACTED] [REDACTED] is moving out.pdf>'
11. **At Sent by: '<2022 01 10 - Camping VICPOL Unlawful interception of Comms for location.pdf>'**
12. At Sent by: '<2022 01 10 M12446367 FVO Order me.pdf>'
13. At Sent by: '<2022 02 28 - AFM [REDACTED] to HMC RE Reduce Current Order.pdf>'
14. At Sent by: '<2022 03 26 - to HMC Urgent Appl FVO AFM [REDACTED] safe at Grandparents.pdf>'
15. At Sent by: '<2022 03 30 - Urgent Appl HMC Assist Summary [AFM [REDACTED].pdf>'
16. At Sent by: '<2022 03 31 - from HMC at 1108 FVO Appl Practitioner support.pdf>'
17. At Sent by: '<2022 03 31 - from HMC at 1456 Refer Childrens Court Appl Practitioner.pdf>'
18. At Sent by: '<2022 03 31 - to HMC at 1302 Thanks a lot for what you did for us.pdf>'
19. At Sent by: '<2022 04 05 - from Childrens Court Appl Practitioner [FVO AFM [REDACTED] N10624956.pdf>'
20. At Sent by: '<2022 04 06 - AFM Father req PDF Copy of order made 01 04 2022 N10624956.pdf>'
21. At Sent by: '<2022 04 06 - AFM [REDACTED] N10624956 Resp El Massri.pdf>'
22. At Sent by: '<2022 04 19 - VICPOL King SMS.pdf>'
23. (2022/04/27) At Sent by: 'VICPOL Brief: Damage Property Div Van'
24. **I had no alcohol or drugs in my system nor was I withdrawing from illicit substances because I have not done so since November 2015.**
25. **At Sent by: '<2022 04 28 - N10829749 Inf Kerr (Shepparton) Remand to 2022 05 25 No app Bail made [Rep Ms Bowler].pdf>'**
26. **(2022/04/30) 'Metro Remand Medical Request + Notes'**
27. At Sent by: '<2022 05 01 - Dept Justice Property Release.pdf>'
28. At Sent by: '<2022 05 03 - Corrections Inter Prison Trns assessment.pdf>'
29. At Sent by: '<2022 05 03 - [REDACTED] Prison Medical\_Request\_+\_Notes.pdf>'
30. At Sent by: '<2022 05 03 - M12446367 Final FVO 'Farrara' was served with copy [dispute].pdf>'
31. At Sent by: '<2022 05 04 - Corrections MRC RN Review.pdf>'
32. At Sent by: '<2022 05 04 - to 2022 05 26 Corrections VIC Risk Plans Iso Cell.pdf>'
33. At Sent by: '<2022 05 05 - Corrections MRC assessments.pdf>'
34. At Sent by: '<2022 05 06 - Corrections Assessments.pdf>'
35. At Sent by: '<2022 05 12 - N10624956 AFM [REDACTED] S\_O My non appearance Remand.pdf>'
36. **(2022/05/13) At Sent by: [REDACTED] Received by: Delia [REDACTED] 'at 1547, 'I don't have a order and this is between Jake and the police sorry. I was called today by then for a statement and I said I don't want to give a statement without my statement they can't go further with charges I think ... the rest is between police and jake. I'm sick of these police involving dramas not getting involved.'**
37. (2022/05/13) Sent by: Snr Cons Chamberlain Claims 'VICPOL 43696 states Served FVO at MRC'

38. At Sent by: '<2022 05 15 - Corrections VIC Medical Req Pain relief Fracture ribs ADHD meds.pdf>',
39. At Sent by: '<2022 05 16 Corrections Xray claim no Fracture.pdf>',
40. At Sent by: '<2022 05 17 - 20 Corrections Assessments.pdf>',
41. At Sent by: '<2022 05 17 Mum Jake is not well at all remand at 1935 Corrections.pdf>',
42. At Sent by: '<2022 05 25 - N10383078 Not of Order Made [Shanahan Rep].pdf>',
43. At Sent by: '<2022 05 26 Case Number 202207382 Undertaking.pdf>',
44. At Sent by: '<2022 05 26 - CN 202207382 Not of Order Made.pdf>',
45. At Sent by: '<2022 05 26 Corrections Assessments.pdf>',
46. At Sent by: '<2022 05 26 - Corrections Discharge Summary 7 pgs.pdf>',
47. At Sent by: '<2022 05 26 Undertaking Case No 202207382.pdf>',
48. At Sent by: '<2022 06 06 - Austin ED RE Suicide by police.pdf>',
49. At Sent by: '<2022 06 29 to HMC N1569267 material to support position.pdf>',
50. At Sent by: '<2022 11 13 - to HMC Pls I need this to end.pdf>',
51. At Sent by: '<2023 01 08 P11271001 P11370782 M12446367 For Contested FVO Application and Adjournment.pdf>',
52. At Sent by: '<2023 02 14 FVO Appl Respondents CCd [fairness].pdf>',
53. At Sent by: '<2023 02 21 - from HMC [thread] Booked in Appl FVO.pdf>',
54. At Sent by: '<2023 02 21 FVO Application Annexure.pdf>',
55. At Sent by: '<2023 02 27 - HMC FVO Application.pdf>',
56. At Sent by: '<2023 02 27 to HMC See summary for appointment.pdf>',
57. At Sent by: '<2023 03 03 - to HMC Passive aggressive Court officer.pdf>',
58. At Sent by: '<2023 03 07 from HMC at 0747 RE Passive aggressive.pdf>',
59. At Sent by: '<2023 03 07 - to HMC at 1151 RE Passive aggressive response.pdf>',
60. At Sent by: '<2023 03 18 to HMC Appl [Leave] to revoke FVIO.pdf>',
61. At Sent by: '<2023 03 21 - Request Certs of Court files [outcomes].pdf>',
62. At Sent by: '<2023 03 22 from HMC at 0835 something specific there is a cost.pdf>',
63. At Sent by: '<2023 03 22 - to HMC at 1333 I was ordered into remand Judge did not ack me.pdf>',
64. At Sent by: '<2023 03 28 From HMC [Response] Appl [Leave] Revoke M12446367 New Appl P10658395.pdf>',
65. At Sent by: '<2023 03 30 MAG GoondiwindiPRF0061596 Decision Transcript [Support Credibility].pdf>',
66. At Sent by: '<2023 03 31 - to HMC Resp Appl Leave revoke M12446367 (sought therepeutic interventions only) P10658395.pdf>',
67. At Sent by: '<2023 04 03 - from HMC Response with finalised narrative.pdf>',
68. At Sent by: '<2023 04 12 at 1550 to HMC Amendment View court file Certs of outcome [never received].pdf>',
69. At Sent by: '<2023 04 13 at 0813 from HMC made appointment 20 April.pdf>',
70. At Sent by: '<2023 04 13 - at 0815 from HMC 0816 [Amend] made appointment [only in relation to FVO Apps.pdf>',
71. At Sent by: '<2023 04 13 - at 0815 from HMC [RECALL] made appointment 20 April.pdf>',
72. At Sent by: '<2023 05 03 from HMC 1359 Confirm case number searched our system unable to locate cases.pdf>',
73. At Sent by: '<2023 05 03 to HMC at 1248 Case Numbers.pdf>',
74. At Sent by: '<2023 05 03 - to HMC at 1309 Req Cert of Judgement\_Outcome.pdf>',
75. At Sent by: '<2023 05 03 to HMC at 1405 Screenshot has case numbers.pdf>',
76. At Sent by: '<2023 05 10 - from HMC at 1145 and 1332 we are unable to produce Req for ID.pdf>',
77. At Sent by: '<2023 05 10 to HMC at 0116 Follow up request Certs Outcome.pdf>',
78. At Sent by: '<2023 05 15 - to HMC at 0830 Att ID trying to org appt to view case files.pdf>',
79. At Sent by: '<2023 05 19 to HMC at 0052 Another req for certs of outcome view files.pdf>',

80. At Sent by: '<2023 05 24 - from HMC at 1051 Att copies sought clarify files cannot be released unless subp or order.pdf>',
81. At Sent by: '<2023 05 25 - CN 202207382 Not of Order made [Discharged].pdf>',
82. At Sent by: '<2023 05 25 to VIC Insp at 1906 Life destroying grievance.pdf>',
83. At Sent by: '<2023 06 01 - from HMC OPS Manager 1538 happy to discuss call 8488 6733.pdf>',
84. At Sent by: '<2023 06 01 to HMC RE View Court File confused how so many attempts records not found.pdf>',
85. At Sent by: '<2023 06 13 from HMC at 1644 form req to subp cert of service [Crim defence].pdf>',
86. At Sent by: '<2023 06 16 - Jan 19 The day VICPOL destroyed our lives.pdf>',
87. At Sent by: '<2023 06 27 P11370782 Not Order made Remand return 2023 07 18 [Rep Mr Campigli].pdf>',
88. At Sent by: '<2023 07 27 to HMC at 0753 Accused Submission P11271001.pdf>',
89. At Sent by: '<2023 09 12 - Form 31 Application signed.pdf>',
90. At Sent by: '<2023 09 13 from HMC at 1245 Request is not accepted.pdf>',
91. At Sent by: '<2023 09 13 - to HMC at 0037 Accused Form 31 Appl.pdf>',
92. Received by: Reference #: Attachment titles:
93. At Sent by: '<2023 09 13 - to HMC at 1118 Two Crim matters Bridged.pdf>',
94. At Sent by: '<2023 09 25 to HMC at 1345 This should be a Public interest Disclosure rendered mute.pdf>',
95. At Sent by: '<2023 09 26 - from HMC at 1157 Your correspondence will not be placed on the court file this occ.pdf>',
96. At Sent by: '<2023 10 11 - to VICPOL P11271001 P11370782 Directions from above.pdf>',
97. At Sent by: '<2023 10 17 - Gleeson CO Authority to Act.pdf>',
98. At Sent by: '<2023 11 13 - ATT Agt Heath VICPOL Appointment req.pdf>',
99. At Sent by: '<2023 11 14 - MLC13089\_2023 [Reece] Notice Admit.pdf>',
100. At Sent by: '<2023 11 23 - VOCAT 2017\_1756 Further Assistance.pdf>',
101. At Sent by: '<2023 11 30 - to GC Lawyer RE Cant stop Crying Thank you.pdf>',
102. At Sent by: '<2023 11 30 - to GC Lawyers RE Consistent with obstructive behaviour.pdf>',
103. At Sent by: '<2023 12 06 - DSP Psychiatry Endorsement MHFIT.pdf>',
104. At Sent by: '<2023 12 19 - FVIO Amendment Application.pdf>',
105. At Sent by: '<2023 12 21 - M12446367 Cert Extract Appl Ricketts Int Loc Appl adj.pdf>',
106. At Sent by: '<2023 12 21 - M12446367 Cert Extract Resp not served.pdf>',
107. At Sent by: '<2023 12 28 - M12446367 Cert Etract Inf Ricketts v Jacob FARRARA.pdf>',
108. At Sent by: '<2023 12 28 - M12446367 Not of Hearing Ricketts v FARRARA.pdf>',
109. At Sent by: '<2023 12 31 - [REDACTED] P11271001 and P11370782 URGENT.pdf>',
110. At Sent by: '<2024 01 03 - HMC RE\_ [REDACTED] M12446367 P11271001 P11370782.pdf>',
111. At Sent by: '<2024 01 08 - Liam Brown Character Reference.pdf>',
112. At Sent by: '<2024 01 08 - M12446367 Not Order Made [Rep Ms Malhotra].pdf>',
113. At Sent by: '<2024 01 08 - P11271001 Cert Extract Inf DAngelo.pdf>',
114. At Sent by: '<2024 01 08 - P11370782 Cert Extract Inf Cameron.pdf>',
115. At Sent by: '<2024 01 08 - Request Adjourn Self-Rep Accused.pdf>',
116. At Sent by: '<2024 01 09 - at 1402 to Lawyer Bowlerco [VICPOL Contempt of Court].pdf>',
117. At Sent by: '<2024 01 09 - at 1459 FWD VICPOL Contempt Court to Hdlbg Mag Court [Ben Luker].pdf>',
118. At Sent by: '<2024 01 09 - HDL BG Mag Private Practitioner Referral List [Bowler & Co].pdf>',
119. **Lawyer Ms Bowler confirms she did not represent me nor did she act on my behalf. CONTEMPT OF COURT**

## Mental Health and Wellbeing Act 2022

### Mental illness

Mental illness is defined under the Mental Health and Wellbeing Act 2022 as a medical condition where a person's thought, mood, perception or memory is significantly disturbed. Some examples are:

- depression
- schizophrenia
- anxiety disorders.

**You are not mentally ill just because you:**

- express or don't express your political, religious, philosophical or sexual beliefs, preferences, gender identity or sexual orientation
- are involved in or don't get involved in a particular political or religious activity
- are involved in sexual, immoral or illegal conduct
- have an intellectual disability
- behave in an anti social way
- have a particular economic or social status
- belong to a particular cultural or racial group
- are or have previously been involved in family conflict
- have previously been treated for mental illness
- use drugs or alcohol (however, if your mind or body is seriously affected by you taking drugs or alcohol this could be taken as a sign that you are mentally ill, whether the effect is permanent or temporary).
- Being diagnosed with a mental illness
- Only a doctor can decide whether you have a mental illness and only after a proper assessment.

## JURISPRUDENCE SUPPORTING COMPLAINT

### SARABORG v R [2020] VSCA 191; BC202007081

#### Charge

- 1 Misconduct in public office 2 months 1 month
- 2 Misconduct in public office
- 3 Making a false document
- 4 Using a false document
- 5 Causing unauthorised access to computer function with intent
- 6 Causing unauthorised access to computer function with intent

**[7] The appellant occupied a position of some responsibility. She started work as a Registrar at the Werribee Magistrates' Court on 13 October 2008.** Under the Magistrates' Court Act 1989, registrars have significant powers, including to issue any process; to administer an oath or affirmation; to extend bail; to issue certain warrants; to endorse a warrant to arrest; to issue a summons to give evidence or produce documents; to adjourn criminal proceedings; to recall and cancel a warrant; to refer civil proceedings for a pre-hearing conference; to issue certificates of order for the Supreme Court; and to perform other statutory functions.<sup>6</sup> Self-evidently, the position of registrar is one of great trust. Scrupulous performance by registrars of their duties is essential to the proper administration of justice by the Magistrates' Court and more widely.

**[54] Importantly, it does not appear that the appellant had anything to gain from her offending. There was to be no financial reward. Indeed, the offending that is the basis of charges 2 to 6 seems to have flown from sadly misguided altruism, influenced by the compromise to her judgment of which Mr Newton spoke. Further, when her misconduct was detected, she did not endeavour to defend her actions, pleading guilty at the earliest opportunity**

### ANDELMAN v R [2013] VSCA 25

**Criminal law — Appeal — Serious departure from prescribed processes — Failure of trial judge to provide self-represented accused with necessary information and assistance** — Whether substantial miscarriage of justice in accused's trial — Strength of Crown case not by itself a determinant factor — Whether conviction inevitable — Appeal allowed — Retrial ordered — Criminal Procedure Act 2009 (No 7) s 276(1). (7) The duty upon a trial judge to provide an unrepresented accused with necessary information and assistance was onerous, but it was essential in ensuring a fair trial. The judge's failure to raise the question of what warnings were necessary in relation to the alleged co-offenders' evidence was so fundamental that it might have been described, formerly, as going to the root of the trial. There had been a serious departure from the prescribed processes for trial. The prescribed process was for the unrepresented accused to be given such assistance as was necessary to enable him to test the evidence laid against him. [90]. *Isherwood v Tasmania* (2010) 20 Tas R 375 followed.

As Crawford CJ, Evans and Blow JJ said in *Isherwood v Tasmania*:55

... [T]he general rule is that the trial judge must advise the unrepresented accused person of any fundamental procedure or right which could be advantageous to the accused. A trial in which a judge allows an accused to remain in ignorance of such matters can hardly be labelled as fair.

#### **TOM KNOWLES (a PSEUDONYM)1 v R [2015] VSCA 141; BC201504842**

Held, allowing the appeal and ordering a retrial: —(1)The petitioner sought to have the court exercise its power under s 568(1) of the Crimes Act 1958 to allow an appeal "if it thinks ... that on any ground there was a miscarriage of justice". In *Ratten v R* (1974) 131 CLR 510, at p 516–20, Barwick CJ discussed three categories of cases in which there had been found to be a miscarriage of justice. Cases within the second of the categories mentioned by Barwick CJ were those where, **because of something which had occurred or which had not occurred in the course of the trial, the proceedings had been rendered unfair**. It was this type of miscarriage of justice which the petitioner primarily relied upon. Within this category of cases a miscarriage of justice could be produced by such a variety of circumstances that it was unhelpful to, seek to give any exhaustive description of them. If an appeal were allowed in a case within this category a new trial would be ordered. *Ratten v R* (1974) 131 CLR 510; 4 ALR 93, considered and applied. *Chamberlain v R* (1984) 51 ALR 225, referred to.

#### **Chhodaphea Kev v R [2015] VSCA 36; BC201501253**

**73 Returning briefly to Mallard, the undisclosed evidence, which was described as having been 'suppressed' by the Crown, was set out in detail by Kirby J under various heads. These include what his Honour termed the 'pig's head experiment', the 'salt-water experiment', the 'missing cap', the 'undisclosed sketches', the 'locking of eyes', and the 'man wearing a bandanna.' Kirby J summed up the cumulative effect of these nondisclosures in the following terms:**

Conclusion: material non-disclosures: A review of the foregoing and other evidence, which was not disclosed to the appellant's counsel at the trial, but which was in the possession of police and, at the least, available to the prosecution, suggests strongly that material evidence was not disclosed that bore upon the guilt of the appellant of the crime charged in the indictment. Whilst the non-disclosure of one or two of these items (eg items (4) and (6)), taken alone or perhaps together, might not have been sufficient to produce an unreasonable or unsupportable verdict, with a miscarriage of justice in the trial, a consideration of the totality of the unrevealed evidence raises a stark question as to the safety of the appellant's conviction. Of particular concern are the items in which evidentiary material, consistent with innocence and presenting difficulties for the prosecutor's hypothesis of guilt, were actually suppressed or removed from the material supplied to the defence. The important issue of legal principle in this appeal is whether such non-disclosures and suppression deprived the appellant of a fair trial.<sup>18</sup>

**R (on Application of Attorney-General of State of Victoria) v Slavski [2015] VSC 400 BC201507685**

**[83] Contempt of court is considered to consist of any act, in the course of proceedings, which interferes with, or tends to interfere with, the administration of justice**, as noted by McHugh J in *Witham v Holloway*:

13 Criminal contempts are acts or omissions that have a tendency to interfere with or undermine the authority, performance or dignity of the courts of justice or those who participate in their proceedings. Although criminal contempts take many forms, their characteristic attribute is an interference with the due administration of justice either in a particular case or as part of a continuing process. Defiance of the court or its procedures, publication of matters scandalising the court, actions calculated to prejudice the fair trial of a pending case, threats to parties or witnesses and misconduct within the court are examples of criminal contempts.[84]1 case The courts have determined that the tendency to which McHugh J refers is a tendency that must be determined objectively and one that must be assessed at the time of the act or acts in question. As stated in *R v David Syme & Co Ltd*:14(1)All publications (whether written or oral) which tend to pervert the course of justice or to prejudice the prosecution or defence in a pending trial constitute contempt of court.(2)The tendency to prejudice must be real and substantial.(3)The tendency of the publication must be judged as at the time of publication and is not determined by the fact that for some reason no harm as resulted.(4)The standard of proof that a contempt has been committed is proof beyond reasonable doubt.(5)Intention to interfere with the course of justice or to prejudice the prosecution or defence in a pending trial is not necessary to constitute the contempt.(6)The absence of any intention to prejudice is capable of relevance to whether and what punishment should be imposed.[85]1 case That decision cited with approval *Attorney-General v John Fairfax & Sons*. 15 From the New South Wales Court of Appeal in which they stated:It can be said that contempt will be established if a publication has a tendency to interfere with the due administration of justice in the particular proceedings. This tendency is to be determined objectively, by reference to the nature of the publication and it is not relevant for this purpose to determine what the actual effect of the publication upon the proceedings has been.

[86] This was confirmed in *Harkianakis v Skalkos*:16Where it was said that the requirement that there must be a real risk as opposed to remote possibility of interference with the course of justice that is an application of the ordinary de minimis principle. That is, there is no contempt if the possibility of influence is remote.

**MICHEL BAINI v R [2013] VSCA 157; BC201310466**

**He succeeded in an appeal to the High Court of Australia: (2012) 246 CLR 469. On the remitter for reconsideration of whether a substantial miscarriage of justice had occurred in consequence of the admission of inadmissible evidence.**

Held, dismissing the application: (1) The reasoning of the majority of the High Court proceeded by the following steps. [8]: (a) Ultimately, the question of what constitutes a miscarriage of justice for the purposes of s 276 of the Criminal Procedure Act 2009 ("the Act") is a question of statutory construction. Paraphrases of the statutory language are apt to mislead. They cannot and do not stand in the place of the words used in the statute.

(b) The possible kinds of miscarriage of justice with which s 276(1) of the Act deals include, although they are not limited to, cases like the present where there has been an error or an irregularity in or in relation to a trial but the Court of Appeal can be satisfied that the error or irregularity did not make a difference to the outcome of the trial.

(c) In determining whether there has been a substantial miscarriage of justice in such a case, the Court of Appeal must consider whether the verdict was inevitable, although an affirmative answer to that question will not always conclude the issue.

(d) So to say is not to reintroduce the proviso to the common form criminal appeal provision or impose on an appellant an onus of proving his or her innocence. Nor is it to say that "observations made in *Weiss v R* (2005) 224 CLR 300] about the application of the common form criminal appeal provision cannot apply to s 276 ..., but only if the statutory text so permits".



(e) The inquiry which must be made, however, is whether a guilty verdict was inevitable, not whether the verdict was open.

(f) If the Crown contends that a guilty verdict was inevitable, an appellant may meet the point by showing no more than that, had there been no error, the jury may have entertained a doubt as to his or her guilt.

(g) If the Crown contends that a guilty verdict was inevitable (which is to say a verdict of acquittal was not open), the Court of Appeal must decide that question on the written record of the trial recognising “the ‘natural limitations’ that exist in the case of any appellate court proceeding wholly or substantially on the record”.

(h) The fact that the jury has returned a verdict of guilty may assist in answering the question but, in cases like the present, where evidence has wrongly been admitted, and in cases where evidence has wrongly been excluded, the Court of

Appeal cannot fail to be satisfied that there has been a substantial miscarriage of justice unless it determines that it was not open to the jury to entertain a doubt as to guilt.

(i) In deciding whether it was not open to the jury to entertain a doubt as to guilt, the Court of Appeal must determine whether “the result at trial may have been different (because the state of the evidence before the jury would have been different) had the error not been made”.

(j) That determination is not to be made by “speculating about what a jury, this jury or a reasonable jury might have done but for the error”.

(k) “Nothing short of satisfaction beyond reasonable doubt will do”. The Court of Appeal “can only be satisfied, on the record of the trial, that an error of the kind which occurred in this case did not amount to a ‘substantial miscarriage of justice’ if the ... court concludes from its review of the record that conviction was inevitable”. Weiss v R (2005) 224 CLR 300; Bains v R (2012) 246 CLR 469; Andelman v R (2013) 38 VR 659 considered.

## **JASON JOSEPH ROBERTS v R BC202011015**

### **Police misconduct and manipulation of evidence – Crown’s duty of disclosure – Whether substantial miscarriage of justice as a result of non-disclosure –**

the High Court stated:<sup>26</sup>

... Kourakis CJ was not persuaded that a properly directed jury would necessarily have convicted the appellant at a trial at which Dr Manock’s dogmatic opinion as to the time of death was not in evidence.<sup>27</sup>

As the respondent submits, the latter conclusion is suggestive of the application of a less stringent test than applies to the determination of an appeal on fresh evidence under the common form criminal appeal provision.<sup>28</sup> Nonetheless, his Honour’s ultimate conclusion<sup>29</sup> was stated conformably with the test that commanded the support of the majority in *Mickelberg v The Queen*:<sup>30</sup> whether the court considers that there is a significant possibility that the jury, acting reasonably, would have acquitted the appellant had the fresh evidence been before it at the trial.

It is not in issue that the Full Court was right to hold that the question of whether there has been a substantial miscarriage of justice for the purposes of s 353A(3) is answered by applying the *Mickelberg* test.<sup>31</sup> As the majority observed, the presupposition for a second or subsequent appeal is that the accused has had a fair trial according to law on the available evidence. There is no reason why an appeal under s 353A should be determined by applying a less rigorous test than applies to an appeal against conviction on fresh evidence under s 353 of the [Criminal Law Consolidation Act].<sup>32</sup>

<sup>32</sup> In our view, a substantial miscarriage of justice may also be established by demonstration of a material error or irregularity in the trial process. The decision in *Van Beelen* was not directed to this issue and there are a series of considerations which, taken together, overwhelmingly support this conclusion.

<sup>33</sup> First, the term ‘substantial miscarriage of justice’ is, as a matter of ordinary language, apt to describe both procedural and substantive miscarriages of justice.



34 Secondly, the notion of miscarriage of justice has historically been understood to embrace both procedural and substantive miscarriages of justice. In *Davies v The King*,<sup>34</sup> the High Court addressed the concept as including: not only cases where there is affirmative reason to suppose that the appellant is innocent, but also cases of quite another description. For it will set aside a conviction whenever it appears unjust or unsafe to allow the verdict to stand because some failure has occurred in observing the conditions which, in the court's view, are essential to a satisfactory trial, or because there is some feature of the case raising a substantial possibility that, either in the conclusion itself, or in the manner in which it has been reached, the jury may have been mistaken or misled.<sup>35</sup>

35 Thirdly, the very same piece of legislation as that which contains s 326D uses the phrase 'substantial miscarriage of justice' in s 276(1)(b) in respect of first appeals, as extending to miscarriages arising from 'an error or an irregularity in, or in relation to, the trial'.

proof of guilt if the reliability of the evidence at trial is materially undermined by evidence which establishes irregularity at or in relation to the trial. The fresh evidence may demonstrate that the evidence at trial was not properly tested and that, as a result, it is difficult to evaluate.

37 Fifthly, in some cases the fresh evidence may establish that there has in effect been no trial on the evidence by jury at all as a result, for example, of a juror being suborned, or the jury acting improperly by way of undertaking its own investigations or otherwise. Likewise, fresh evidence may potentially demonstrate that the trial has fundamentally miscarried in other ways, eg where it demonstrates that an accused was not fit to plead or fit for trial.

38 Sixthly, in the passage we have quoted from *Van Beelen*, the High Court reasoned by reference to the improbability of it being intended that a different ultimate standard should apply on a second appeal to that applicable on a first appeal. We can see no sensible reason in principle to ascribe a narrower ambit to the notion of substantial miscarriage of justice on a second or subsequent appeal from that appropriate to a first appeal.

**DIRECTOR OF PUBLIC PROSECUTIONS v DAVID MAXWELL SELWAY [2007] VSC 244 BC200705681**  
**— “on the cards” test inappropriate — lawful listening device pursuant to s 4A Listening Devices Act 1969 (Victoria) — question of application of s 7 Telecommunications (Interception) Act 1979 (Commonwealth) — whether interception of communication passing over a telecommunications system.**

[11] The impugned conversations, principally between the accused and the wife of the deceased, occurred in residential premises at Phillip Island. They were received at a police listening post in Melbourne and there recorded. The defence subpoena seeks information as to the means of receiving and transmission of the sounds from Phillip Island to Melbourne for, so the defence submission goes, if that transmission was telephonic it was unlawful because no Commonwealth warrant had been obtained, or ever was obtained, pursuant to s 7 Telecommunications (Interception) Act 1979 (Commonwealth) authorising telephonic interception. Thus, it was submitted, the impugned material was unlawfully obtained and should be excluded from evidence at trial.

[14] The critical parts of the Commonwealth legislation set out in the previous paragraph are, first, by s 7 the proscription of interception; by s 6 the definition of interception; and by s 5 the definition of communication. Section 7 in its proscription of interception is plenary as to the actors, including permissive and delegated action. Section 6 is restrictive as to interception, confining it to “a communication in its passage over (the) telecommunications system”. And s 5 in its definition of communication is broad in ambit.

**COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS v BRADY [2016] VSC 334 BC201612274**  
**Overview of the allegations**

**[1104] The accused make the following general allegations. The AFP have set out to prove a preconceived theory, rather than properly investigating what actually happened. This has**

**manifested itself in a lack of objectivity, and a willingness to bend or break the rules in order to secure convictions. There has been a wilful abstention from obtaining oral and documentary evidence that might assist the accused. The biased selection of evidence that has been put forward by the AFP is further compromised by the unavailability of original and electronic documents. [1105] The accused allege that the following specific deficiencies or malpractice have occurred:**

(a) Misusing the ACC compulsory examinations; (b) Acting improperly in relation to witnesses; (c) Failing to obtain or include exculpatory evidence; (d) Failing to obtain evidence from Malaysia and Nepal; (e) Failing to properly investigate the boards of Security and NPA ("the company boards"); and (f) Failing to be aware of all relevant evidence.

**Bare v Independent Broad-Based Anti-Corruption Commission (2015) 48 VR 129; (2015) 326 ALR 198; [2015] VSCA 197; BC201507004**

[287] In other words, the evaluative exercise inherent in the procedural obligation demands more from a decision-maker than the bringing of human rights to one's attention; as Justice Kyrou observed, s 38(1) should enhance the standard of reasons for decision given by decision-makers.

**FELICE v COUNTY COURT OF VICTORIA [2006] VSC 12 BC200600337**

**[31] As the Trial Judge expressly acknowledged, by reference to the leading authorities, a warrant will not be issued in accordance with s 46A if its evidentiary basis is vitiated by fraud, misrepresentation, or a lack of good faith.** [32] His Honour cited the decision of the Full Federal Court in Price v Elder5: A warrant issued as a result of fraud or misrepresentation by an applicant is liable to be set aside. Further, an applicant for a warrant must act in good faith. A statement that is a half-truth, and thus misleading, may be treated as a misrepresentation such as to affect the validity of a warrant issued on the basis of that misrepresentation ... However, nothing has been advanced that would justify a finding that there has been fraud or misrepresentation in the present matters.



[Mailto:Reece.Storme@Protonmail.com](mailto:Reece.Storme@Protonmail.com)

Sent from Proton Mail mobile

----- Original Message -----

On 9 Jan 2024, 14:02, Reece Storme [REDACTED] <Reece.Storme@protonmail.com> wrote:

[Now I've spoken to you, ignore the tone you sound lovely]

1. In VICPOL watchhouse officer, "Your lawyer is here." In my despair, I didn't respond quickly enough before the remand officer left stating, "He's refused. "
2. An X ray of my chest reveals multiple fractures of the floating ribs on my right side during a reasonable

restraint made by a VICPOL officer during a hanging attempt in my cell.

3. I do not hold an issue with this officer his force was reasonable and an unfortunate outcome of his necessary action.
4. VICPOL and Corrections RN refused reasonable medical care and treatment for my broken ribs.
5. I was left screaming out in pain for hours, provided with only paracetamol and ibuprofen, then left to writh in pain and mocked. "There's no intervention for broken ribs"
6. On day of hearing before his Hon. Lennon, VICPOL prosecutor [standing alone at the bench] submitted application for remand, citing words to the effect of, "He refused legal representation." [would need to be confirmed by court recording]
7. His Hon. enacted an error of law as he:
  - a) did not acknowledge my presence on the audio video link visually, verbally or otherwise.
  - b) His Hon. did not communicate with me \*\*at all\*\* [as if the matter was heard exparte]
  - c) His Hon. granted the remand application on the "information alone" of the prosecutor, and in so doing, my right to liberty and freedom of movement was unlawfully and erroneously stolen by an error of law.
8. The submission made by the \*lovely\* mental health RN requesting medical admission for cPTSD [ex paramedic] was not considered, was ignored, or was not presented as evidence.
9. For the record, I have not touched an illicit substance or medicine without a valid prescription since November 2015. There is no evidence to the contrary that could be presented to prove otherwise.
10. Despite presenting with "mental health" issues, I was not assessed by the MH RN at GB police station that evening as being otherwise confused, withdrawing, or delusional.
11. I do not know who you are. I have never seen you in person. I have never spoken to you via any audio/visual method that evening, the day of the 28th of April, 2022, or at any time up to and only excluding this email to you this 9th day of January 2024.
12. I have concerns that this court record does not and \*will not\* reflect the audio/visual recording of the proceeding held by the court, intended to be subpoenaed in legal proceedings of a magnitude in my unlearned "friend of the court" capacity, as biblical.
13. As a licensed and registered legal practitioner, it would be expected that you have and retain all relevant documents and/or materials inclusive of phone calls emails, correspondence, and case conferences or similar with VICPOL prosecution.
14. As a starting point for these disputed events, please provide forthwith, a complete record as you have in your possession to me or a statement of your recollections, dealings, memory whatever you can provide [Now Ive spoken to you ignore the tone you sound lovely]
15. I have very unpleasant concerns that you have been unwittingly involved in my [now seven year and ongoing] corruption dispute with Victoria Police.
16. I am so sorry, but at the same time, I feel a severe sickness you feel when something is not right.

Thank you for your time



[Mailto:Reece.Storme@Protonmail.com](mailto:Reece.Storme@Protonmail.com)

Sent from Proton Mail mobile

**8.49 MB** 86 files attached

2022 04 28 - N10829749 Hlbg Mag LENNON Rep Ms Bowler.pdf 354.61 KB

2018 02 02 French No Action VICPOL.pdf 197.05 KB

publickey - EmailAddress(s=Reece.Storme@protonmail.com) - 0x60BFEDA3.asc 3.26 KB

Accused [REDACTED] to VICPOL [Flnal].docx 55.06 KB

Vic Judicial College Contempt Court.docx 107.66 KB

VLA Bail application.docx 18.78 KB

2023 10 10 - [REDACTED] voice messages to Robert.docx 21.77 KB

2023 09 20 [REDACTED] Can I talk to Jake WA0004.docx 19.06 KB

2016 05 24 - Transcript at 2226 [REDACTED] request me to call The best is I just kill myself.docx 47.11 KB

2023 06 24 - [REDACTED] Voice message put myself to bed again.docx 24.86 KB

2023 10 04 - Phone call prior to pick up [REDACTED] Neglect].docx 36.97 KB

2016 05 25 - Transcript Omeara Post Welfare Check.docx 46.88 KB

2023 08 23 - [REDACTED] Emotiona Abuse of [REDACTED] [Sleeping].docx 34.24 KB

2016 - 2018 VICPOL Interactions.docx 20.07 KB

2015 11 04 - at 1149 [REDACTED] And yes you are coming Back.docx 23.53 KB

2016 08 01 Original VICPOL Complaint.docx 52.23 KB

2016 05 20 - [REDACTED] Voice Message FVO G10189401.docx 34.04 KB

2016 03 20 - [REDACTED] Misreps Forced to work.docx 28.67 KB

2016 - Transcript Call Prof Standards RE Harris.docx 34.63 KB

2017 04 28 - [REDACTED] GHB Intox Denied talk to [REDACTED] 24 hrs.docx 21.07 KB

2016 05 24 - Transcript at 2226 [REDACTED] request me to call The best is I just kill myself.docx 47.11 KB

2014 08 10 - to 2014 09 19 [REDACTED] Jake Viber [Contents Page].docx 99.89 KB

2021 09 09 - VOCAT 2017\_1756 Transcript Part 004.docx 41.77 KB

2017 03 05 - [REDACTED] Breach FVO.docx 26.11 KB

2016 07 11 Audio recording at [REDACTED] RE Car Assault never did.docx 32.74 KB

2016 05 25 - Transcript Omeara Post Welfare Check.docx 46.88 KB

2016 10 21 Unlawful Assault Statement Context Manipulation.docx 111.49 KB

2020 03 01 - [REDACTED] Reece [Child Protection].docx 149.30 KB

2021 09 09 VOCAT 2017 1756 Transcript Part 001.docx 42.77 KB

2017 06 19 - [REDACTED] and Delia Pray next time successful June 19, 2017.docx 38.89 KB

2021 09 09 VOCAT 1756 2017 Transcript Part 7 [recording 6].docx 30.31 KB

2021 09 09 - VOCAT 2017\_1756 Transcript Part 005.docx 40.92 KB

2020 07 21 - [REDACTED] Im so over you playing the victim.docx 32.52 KB

2019 12 21 - Letter to [REDACTED] (2).docx 35.95 KB

2016 05 15 - Exhibit Journal Entry Psych Abuse Threat (2).docx 34.08 KB

2020 01 08 - Letter to [REDACTED] docx 49.26 KB

2016 05 23 - [Typed] Passport agreement.docx 14.83 KB

2016 10 21 - Typed [REDACTED] Ali Statement.docx 275.46 KB

2021 09 09 - VOCAT 2017\_1756 Transcript Part 003.docx 37.75 KB

2016 12 04 - to 2016 12 07 3 Days later you are back to him.docx 25.21 KB

2016 02 02 - to 2016 02 09 The cycles of abuse and the gaslighting "I never hit you!".docx 33.59 KB

2016 05 22 - at 1422 [Transcript] [REDACTED] I get you killed.docx 45.72 KB

2021 09 09 - VOCAT 2017\_1756 Part 002.docx 38.10 KB

2016 04 28 - to 2016 05 02 - "I will get the intervention order against you" threats and intimidation.docx 39.06 KB

2017 02 08 - to 2017 05 18 [REDACTED] Jake [Contents page].docx 79.84 KB

2021 09 09 VOCAT 2017\_1756 Recording Data.docx 34.54 KB

2016 05 22 at 12\_55 Phone Call Deb Harris.docx 43.21 KB

2016 05 26 Affidavit Submitted at Watchlist Order Application.docx 14.78 KB

2016 05 20 Exhibit RSF02xx Transcript No balls.docx 32.41 KB

2016 06 05 at 21\_54 Transcript You Bring me in Jail.docx 45.36 KB

2021 09 09 VOCAT 2017 1756 Transcript Part 006.docx 44.45 KB

2023 10 10 - [REDACTED] voice messages to Robert.docx 21.77 KB

2023 Family Law 2023 09 12 P117271001 Form 31 Application.docx 44.55 KB

VICPOL complaint.docx 38.46 KB

2023 Family Law 2021 Despite what you think I am not better than you.docx 35.25 KB

What is Child Abuse and Neglect 2018.docx 87.87 KB

[REDACTED] [REDACTED] and Seperation.docx 165.90 KB

2023 10 29 - [REDACTED] Whats going on papa.docx 23.38 KB

Threat Study.docx 54.68 KB

2023 Family Law - Messaging Day after unprovoked assault.docx 32.82 KB

2016 08 01 - VICPOL complaint [Reworked].pdf 157.32 KB

2022 01 04 - VICPOL [FVO] call\_00-30-32\_IN Kids not there [REDACTED] not in danger.docx 35.20 KB

2016 01 20 - [REDACTED] Breach Bail to VICPOL.pdf 59.76 KB

2016 01 22 - FVO Interim Resp [REDACTED] pdf 469.38 KB

2016 02 10 - "Why don't you just cancel them" ASgt Harris.pdf 191.49 KB

2016 02 26 - Lead up to PTSD Austin Admit.pdf 190.72 KB

2016 04 04 - FVO Final [REDACTED] Respondent.pdf 806.21 KB

2016 05 22 - from Fidler RE Liasing with Harri.pdf 187.81 KB

2016 05 15 - Exhibit RSFxxx Journal Entry Psychological Abuse Death Threat.pdf 191.74 KB

2023 10 08 - From [REDACTED] youre getting arrested tonight.pdf 26.01 KB

2023 10 08 - at 2033 [REDACTED] I fuck him up[96cc4653].pdf 44.13 KB

2023 10 09 - at 1810 Jake has to learn his place.pdf 81.06 KB

2023 10 08 - at 2024 Jake will lose parental Right.pdf 46.65 KB

2023 10 08 - at 2023 Cops will arrest him in 60 mins.pdf 41.87 KB

2016 05 25 VICPOL LEAP entries.pdf 91.88 KB

2016 05 26 Dr Khanna Cons Twinning [Full].pdf 204.84 KB

2016 05 26 - Call First Constable Twinning RE Threats No one Helping.pdf 458.91 KB

2016 05 22 Transcription [REDACTED] go Kill Yourself.docx 27.92 KB

2015 11 01 - [REDACTED] Threatens to go Back to [REDACTED] with [REDACTED].pdf 163.09 KB

2015 12 03 Exhibit [REDACTED] Agree Passprt.pdf 194.98 KB

2016 05 22 - Transcript phone conversation Snr Cons Wilkins.pdf 182.34 KB

2016 01 05 [REDACTED] Begins [REDACTED] Work.pdf 205.82 KB

2016 05 22 - Transcript at 12\_55 Phone Call Deb Harris.pdf 258.69 KB

2023 08 24 - [REDACTED] & [REDACTED] [die in jail].pdf 834.18 KB

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