

# Appeals Court Acquits Chris von Deutschburg of 1983 Murder That Didn't Occur

The Western Australia Court of Appeals ordered on March 1, 2013 that Chris von Deutschburg's 1983 second-degree murder conviction in Perth, Australia be set-aside and that a judgment of acquittal be entered.

On June 1, 1983 von Deutschburg was 18 and half-starved from being homeless for months in Perth, the largest city in Australia's state of Western Australia. (He was known in 1983 by his birth name of Christian Wilhelm Michael, but to avoid confusion he will be referred to by his current name of Chris von Deutschburg.) On June 1 he burglarized the home of 86-year-old Stavros Kakulas. During the burglary he scuffled with Kakulas before fleeing with some money and a radio.

Eighteen hours after the burglary Kakulas was examined at a hospital in Perth. The doctor determined he had several fractured ribs, and his arm, chest and right eye were bruised. Kakulas wanted to go home, but he gave in to the doctor who insisted that he be admitted. Seven days later Kakulas' condition began to deteriorate and his doctor determined he was bleeding internally. He died on the afternoon of June 8.

Dr. Donald Hainsworth performed an autopsy on Kakulas and determined his direct cause of death was internal bleeding into his intestine from an acute duodenal ulcer.

Von Deutschburg was arrested on June 12, 1983 and indicted on December 5, 1983 for burglary and murder. The murder charge was based on the prosecution's theory he intended to do Kakulas grievous bodily harm, and the scuffle caused mental stress to Kakulas that resulted in the bleeding ulcer that caused his death. That theory was based on a letter dated June 30, 1983 Dr. Hainsworth [wrote to the lead investigating officer](#):

"The direct cause of his death was bleeding into the intestine from acute duodenal ulceration -- i.e. a 'stress ulcer'. This ulcer had arisen after the injuries and was the result of the deceased having undergone physical & psychological stress. ... injuries which, of themselves would not have been fatal." (emphasis in original)

Von Deutschburg pled guilty to the bur-



Chris von Deutschburg  
(PerthNow, 2006)

Kakulas developed his fatal ulcer within a couple days of his death as a result of the stress the burglary caused him. They also presented evidence of von Deutschburg's admission to the burglary.

Von Deutschburg testified and admitted to the burglary and stealing money and a radio, and that he hit Kakulas a few times on the arm. He also testified he had no intention to harm Kakulas and that he only hit his arm a few times. Von Deutschburg's lawyer didn't present a medical expert to contest Dr. Hainsworth's testimony.

In summing up the case for the jury the trial judge emphasized that the [prosecution's argument](#) supporting the murder charge was "The medical evidence from Dr Hainsworth, and I agree that it is an opinion which the doctor has given---is that this form of duodenal ulcer was occasioned by the stress of the attack."

Three days after his trial began von Deutschburg was convicted of second-degree murder. He was sentenced to life in prison at hard labor.

Three years after his conviction Von Deutschburg obtained new medical evidence by Dr. Alistair Cowen who stated in an Affidavit dated November 4, 1986: "Is it likely beyond any reasonable doubt that the ulcer described by Dr. Hainsworth was a stress ulcer due to the injuries described by him at post mortem? The answer in my view is unequivocally NO." He also obtained similar new evidence by Dr. Barry Marshall who stated in an Affidavit "As a result of my own research and findings . . . I strongly believe that all statements to the effect that the ulcer which caused Mr. Kakulas's death was caused by stress are medically incorrect." (Source: Unjust McGinty website, [www.geocities.com/chris\\_it\\_tech/index.html](#) (2-10-2006), no longer available online.) It isn't known why, but von Deutschburg didn't pursue a petition to challenge his conviction.

Von Deutschburg was released on parole in early 1990 after almost 7 years of imprison-

ment from the time of his arrest in June 1983. A few months after his release he changed his legal name to Chris von Deutschburg.

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Dr. Cowen wrote in a March 12, 1992 letter to von Deutschburg:

"Mr. Chris von Deutschburg has written to me asking that I reaffirm my previous views, namely those stated in my Affidavit to the Supreme Court of Western Australia. I believe the medical evidence presented at Chris Michael's trial was quite erroneous, that there is absolutely no doubt that the vast majority of medical opinion would now support that the medical evidence was erroneous, and it is most likely that Christopher Michael would not have been convicted of murder had appropriate and correct medical evidence been tended.

I have been involved in this matter over a number of years and it is certainly in my view the worst miscarriage of justice based on erroneous medical evidence that I have observed." (Source: Unjust McGinty website, [www.geocities.com/chris\\_it\\_tech/index.html](#) (2-10-2006), no longer available online.)

In 1992 three other medical experts in Australia agreed with Dr. Cowen's assessment that the "ulcer" evidence presented during von Deutschburg's trial had been erroneous. However, again for reasons unknown, von Deutschburg didn't pursue a petition to challenge his conviction.

The jury foreman Cliff Boer learned about the new medical evidence and wrote von Deutschburg in a letter dated April 27, 1992:

"The defense attorney questioned whether or not the pathologist (Dr. Hainsworth), was sure of his diagnosis, but did not pursue with any vigor after the response was 'yes'."

"We were fairly unanimous that if there had been even a single medically qualified individual express some doubt, (possibly even a General Practitioner would have sufficed), we would have been compelled to bring down a verdict of NOT GUILTY." (Source: Unjust McGinty website, [www.geocities.com/chris\\_it\\_tech/index.html](#) (2-10-2006), no longer available online.)

The basis of von Deutschburg's conviction was severely undermined by the [awarding of the](#) Nobel Prize in Physiology or Medicine on October 3, 2005 to Dr. Marshall and Dr. Robin Warren for their research proving

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that ulcers are caused by bacteria.<sup>1</sup> This was the same Dr. Marshall who provided an Affidavit to von Deutschburg in 1986. Dr. Marshall's research directly supported that Kakulas died from natural causes and he would have died when he did even if von Deutschburg hadn't burglarized his house.

Dr. Marshall's Noble Prize created media interest in von Deutschburg's case, and *The Sunday Times* in Perth published an article about it on October 23, 2005 that explained the medical evidence establishing von Deutschburg didn't murder Kakulas.

In December 2005 von Deutschburg set-up a website called "Unjust McGinty" that provided details about his case.<sup>2</sup> He later added a page "Perjury and other Crimes" detailing the 'criminal' incompetence of his trial lawyers and perjury by several police officers during his trial.<sup>3</sup> When contacted by Justice Denied in August 2006 that his website was down Von Deutschburg stated, "I removed it after I felt threatened."<sup>4</sup>

Von Deutschburg was able to find a law firm to take his case *pro bono*, and in 2009 they filed a petition with the Attorney General for Western Australia seeking to quash his conviction as a miscarriage of justice under the Royal Prerogative of Mercy. The Attorney General did not act on the petition until Dr. Marshall wrote a letter to the Attorney General dated April 4, 2012 [that stated in part:](#)

"There is no likelihood that his (Mr. Kakulas's) injuries either worsened or contributed to the duodenal ulcer in question. My answers do not necessarily depend on my opinion that the duodenal ulcer already existed before the assault on 1st June 1983. The duodenal ulcer may have existed before then or may have developed after 1st June 1983. Obviously a duodenal ulcer is a recurring condition and in 1983 the aetiology of these recurrences was completely unknown. Therefore persons with duodenal ulcer disease have ulcers coming and going throughout their life. The injuries sustained by Mr. Kakulas did not contribute to the development, or accelerate the development of his duodenal ulcer."

Dr. Marshall's prestige in the world medical community was too much for the Attorney General to ignore. Three weeks after receiving Dr. Marshall's letter he [referred von Deutschburg's](#) petition to the Western

Australia Court of Appeals "for the whole case to be heard and determined as if it were an appeal by the appellant against the conviction for murder."

After his petition case was referred to the appeals court von Deutschburg [told a reporter](#) with *The Australian* newspaper, "During this crime I struggled with an old man. It was a crime without justification and I am deeply remorseful. The old man said 'Goodbye, son' as I left." Accepting his punishment for the burglary he added, "For the past 28-plus years I have experienced imprisonment, months of community service on parole, and years of work for the dole, as no one will employ a convicted murderer. For over 28 years I have been punished for a crime I did not commit."



Dr. Barry Marshall  
(University of Virginia)

Based on the medical opinions Dr. Marshall stated in his letter, in June 2012 the Office of the Director of Public Prosecutions requested Dr. Clive Trevor Cooke to provide an opinion about Kakulas' death. Dr. Cooke is Chief Forensic Pathologist in the Forensic Pathology section of [PathWest Laboratory Medicine](#) in Perth. Dr Cooke and a colleague, Dr. Priyanthi Kumarasinghe, a Gastroenterology Pathologist employed by PathWest, [independently concluded](#) "that the duodenal ulcer showed 'features of chronicity, and therefore existed [before](#) the assault which occurred seven days prior to ... Mr. Kakulas' death'" (emphasis in original).

Dr. Marshall provided an Affidavit dated July 31, 2012 that [stated in part:](#)

65. It is my opinion that the injuries sustained by Mr Kakulas on 1 June 1983 did not contribute to the development, or accelerate the development, of Mr Kakulas' ... duodenal ulcer.

66. The injuries sustained by Mr Kakulas on 1 June 1983 did not worsen Mr Kakulas' duodenal ulcer because the injuries were not especially severe. In fact he did not want to be admitted to hospital initially and after that was receiving excellent care.

67. Further, the injuries sustained by Mr Kakulas on 1 June 1983 did not contribute to the development, or accelerate the development of the bleeding of the duodenal ulcer because they were not of a severity to cause an ulcer.

The appeals court held a hearing on February 5, 2013 during which Western Australia's Director of Public Prosecutions Joe

McGrath [conceded that](#) von Deutschburg's appeal should be allowed.

The Court of Appeals issued [it's ruling](#) on March 1, 2013 in *Von Deutschburg v. The Queen* [2013] WASCA 57. They acknowledged that under the applicable statute and the court's precedents they could consider "the whole case," including "the whole of the evidence properly admissible, whether 'new', 'fresh' or previously adduced, in the case against, and the case for the appellant." (Quoting *Mallard v The Queen* [2005] HCA 68; (2005) 224 CLR 125) That included the unrebutted new medical evidence supporting that Kakulas' death was from a natural cause. The ruling concluded:

"... the only reasonable conclusion open is that Professor Marshall's and Dr. Cooke's evidence raises such a doubt that the appellant should not have been convicted of murder. If the jury had heard Professor Marshall's and Dr Cooke's evidence, in addition to the evidence adduced at trial, it must necessarily have entertained a doubt about the appellant's guilt. The medical evidence before this court is incapable of proving beyond reasonable doubt that the appellant's assault upon Mr Kakulas caused or materially contributed to his death. A miscarriage of justice occurred at the trial."

The Court ordered that von Deutschburg's conviction for murder be set aside and a judgment of acquittal be entered. The acquittal was more than 29 years after his conviction.

The jury foreman Boer was present when the ruling was announced, and he [told a reporter](#) the ruling lifted "a great weight off my shoulders" because the jurors "wrongly convicted" von Deutschburg. He said the jury had unanswered questions, but it was compelled to convict him by the judge's instruction to only consider the evidence presented at trial.

Von Deutschburg is now 48 and lives in a city in Victoria, Australia. After his acquittal he issued a statement that [stated in part:](#)

"Today I welcome the Court of Appeal making a decision in this matter ... in 1983 it took just three days to find me guilty, but some 30 years to finally accept my innocence. I served a life imprisonment with hard labour sentence, including years within Fremantle Prison, all based upon DPP trial evidence that simply never existed. This injustice spanning almost three decades has dev-

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## Josephine Greensill Acquitted Of Indecent Assaults Allegedly Committed in 1979

Josephine Mary Greensill has been acquitted on appeal of indecently assaulting two 8-year-old boys in 1979 who were students at the school where she taught near Melbourne, Australia. She was released after 2 years and 4 months of imprisonment.

In 1979 Greensill was a 28-year-old third-grade teacher at the Bayswater Primary School in Bayswater, a suburb of Melbourne. Her name at the time was Josephine Sumpton.

Twenty-eight years later in 2007, two of her



Josephine Greensill after her release from prison on November 22, 2012. (Joe Armao, *The Age* (Melbourne, Australia))

former students accused her of sexually assaulting them in 1979 when they were 8 years old. They are only identified as “Jim” and “Dan.”<sup>1</sup> The police statements of Jim and Dan were the basis of the indecent assault charges filed against Greensill.

Greensill’s trial began in May 2010. Jim and Dan testified that in 1979 she invited them to spend the night in a tent in the backyard of her house on a Friday or Saturday night, after a big bonfire party at a local park. They testified that after they went to sleep Greensill came into the tent while her husband and children were in the house. They testified that over a long period of time she masturbated them individually and at the same time, and that she also had oral sex and intercourse with them. Dan testified that during this orgy he told Greensill, “I don’t want to do this. I want to go and play.” Dan also testified that while Jim and Greensill were together in the tent he saw her husband when he went into the house and got a drink of water. The next day she took them home.

Relatives of Jim testified he had never mentioned that anything of a sexual nature had ever occurred between him and Greensill. Jim’s older sister testified that when she was 14 she babysat the Greensill’s children on several occasions and that Jim was usually there with her. The police statement of Jim’s ex-wife was read into evidence, and she made no mention he ever told her that he and Dan had spent the night at Greensill’s house and that they had sex with her. What she did state is that after they were married in 1995 [Jim told her](#) Greensill “had done wrong by him and had tried to frame him with a theft of money,” and that “from time to time [Jim] would say things to the effect of, ‘Maybe I should track this teacher down, take her to court, sue her.’”

Greensill’s husband worked for the railroad and died in 2007 as the result of an [accident at a train](#) crossing. There was evidence that Jim, who also worked for the railroad, had learned of the accident that would result in a death payout to Greensill. It was shortly after the accident that Jim contacted the police in October 2007 and made his complaint about the alleged sexual assaults in 1979.

Both Jim and Dan testified they had no contact from 1979 until after they gave their

police statements in 2007. However, Detective Ian Brown testified that after Jim gave his police statement he gave him Dan’s telephone number. Det. Brown testified it was only after Jim and Dan talked that Dan gave his statement.

Greensill, a mother of five, didn’t testify. Her defense relied on her denials in her police statement the alleged sleep over and sexual activity never occurred. Although Jim and Dan acknowledged Greensill’s husband was in the house during the orgy they described, because of his death she didn’t have the benefit of his testimony about the night of the alleged incident.

There was no evidence the alleged crimes occurred except for the testimony of Greensill’s two accusers, but after an 11-day jury trial she was convicted on June 9, 2010 of committing nine counts of indecent assault against Jim and Dan.

Greensill was taken into custody on July 21, 2010. During her sentencing hearing on August 10, 2010 her lawyer stated in response to the judge asking if Greensill had any remorse: “I say nothing about remorse. There’s no admission of guilt, there’s no remorse.” The judge said she had “poisoned and eroded” much of the two men’s lives and sentenced her to 5 years in prison. He also ordered that when released she register as a sex offender for life.

Greensill’s appeal argued that her conviction was a miscarriage of justice, based on both the trial evidence that wasn’t sufficient to support her conviction, and new evidence she obtained after trial. Key new evidence was that after her conviction Jim filed a victim compensation claim and was paid \$62,735<sup>2</sup>, which directly conflicted with [his testimony](#) during cross-examination, “I want none of your client’s money”, and that he “just wanted the truth to come out.” Other key new evidence was that when interviewed by psychiatrist Professor Lorraine Dennerstein to determine damages for his compensation claim, Jim “[gave no description](#) to Professor Dennerstein of penile-vaginal penetration having taken place. In stark contrast, however, [Jim] told Professor Dennerstein of other incidents [as a minor involving women other than Greensill] where he claimed that penile-vaginal penetration had occurred.” Greensill’s appeals lawyer argued the new evidence established Jim had a financial motive to fabricate the incident, and that since his testimony about his alleged intercourse with Greensill was a centerpiece of the prosecu-

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astated my life.

Thank you to Professor Marshall for his medical work of healing the sick, and saving the life of an innocent person persecuted by the State for some 30 years.”

Von Deutschburg also thanked jury foreman Boer for supporting him “all these decades and for visiting me while I was in Fremantle Prison, (and) RP and all those who have variously helped over these past 30 years.”

[Click here to read](#) the March 1, 2013 ruling in *Von Deutschburg v. The Queen* [2013] WASCA 57.

#### Endnotes:

- 1 In March 2013 Dr. Barry James Marshall is a Clinical Professor of Medicine and Microbiology at the University of Western Australia in Perth, and a Consultant Gastroenterologist at Sir Charles Gairdner Hospital. He is also the Co-Director of the Marshall Centre for Infectious Disease Research and Training.
- 2 Email from Chris von Deutschburg to Hans Sherrer at Justice Denied on December 4, 2005.
- 3 Email from Chris von Deutschburg to Hans Sherrer at Justice Denied on February 12, 2005.
- 4 Email from Chris von Deutschburg to Hans Sherrer at Justice Denied on August 29, 2006.

#### Sources:

- [Von Deutschburg v. The Queen](#) [2013] WASCA 57  
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[Chris von Deutschburg cleared](#) of 1983 ‘ulcer murder’, PerthNow (Perth, AUS), March 1, 2013  
[Dr. Barry Marshall](#) webpage, Nobelprize.org



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