

Jessica Silva Acquitted Of Manslaughter By Appeals Court In Stabbing Death Of Ex-Boyfriend

Jessica Silva has [successfully appealed](#) her manslaughter conviction for stabbing her abusive former boyfriend to death on Mother's Day 2012. The New South Wales Court of Criminal Appeal acquitted Silva on December 7, 2016.

Silva was 22 when in March 2012 she broke up with James Polkinghorne after about a four year relationship. They had a two-year-old son together, so Silva had to continue having contact with Polkinghorne, who was 28.

Polkinghorne was physically, verbally, and psychologically abusive during their relationship. Neighbors called the police several times in 2012 when they heard Polkinghorne yelling and Silva screaming. In January 2012 Silva audio recorded one of Polkinghorne's tirades during which [he said](#):

"I'll cave your f***ing head in c***. Look at me, I'm f***ing serious. ... I'll f***ing kill you c***. This is the last chance that I'll f***ing give ya. ... If you get your f***ing brother or something, I'll cave the c***'s head in."

Silva was so afraid of Polkinghorne's erratic behavior that she sent a copy of the recording to a friend "just in case" something happens to her.

Silva had reason to fear Polkinghorne and believe his threats apart from his violence towards her: he had told Silva and a number of other people that he had murdered a man in Sydney on March 22, 2012. Polkinghorne was a suspect in the crime, so the police had wiretaps on the mobile phones of both Polkinghorne and Silva. The police believed Polkinghorne was a drug dealer, and the murder was drug related. It was about the time of the murder that Silva split-up with Polkinghorne.

Silva and her son visited Polkinghorne at his apartment in Sydney on the evening of May 12, 2012. After Silva left she returned to her parent's house in Marrickville, a south-west suburb of Sydney. Silva moved in with her parents when she split-up with Polkinghorne.

Throughout the day on May 13, 2012 Polkinghorne



Jessica Silva on June 27, 2016 after a hearing in the NSW Court of Appeals. (AAP)

and her parents didn't let him in. At 9:04 p.m. Silva's brother Miguel Silva, called the emergency police number and reported that [Polkinghorne was](#) "kicking stuff and going crazy" outside. Immediately after that call Miguel and Silva went outside to try and calm down Polkinghorne.

Polkinghorne attacked Silva, punching her in the face and ripping her pants. Her brother Miguel began fighting with Polkinghorne. Silva went back into the house and came out with a large kitchen knife. While Polkinghorne was straddling and beating and choking Miguel, Silva stabbed him from behind.

A passing buses surveillance video recorded that at 9:09 p.m. Polkinghorne was lying on the road. Visible in the video is Silva, her father, brother and another person.

The entire incident lasted less than five minutes.

Silva said in [her police statement](#) that Polkinghorne called her while he was outside the house and said: "If you don't come out I'm going to kill you. In 30 seconds I'm going to come and rip the door down if you don't come out."

Silva was charged with murder in the death of Polkinghorne. She was released on bond pending her trial.

During her trial that began in November 2014, there was testimony that a post-mortem toxicology report showed significant



Police at the scene where James Polkinghorne was stabbed to death on May 13, 2012 (The Daily Telegraph, Surry Hills, NSW)

concentrations of amphetamine and methamphetamine in Polkinghorne's blood. There was expert testimony that the consumption of "ice" was capable of leading a person to rage, violence, and paranoia.

The jury heard testimony that Polkinghorne was a large man, well-muscled, and much larger than Silva. There was also testimony that Polkinghorne physically assaulted Silva throughout their relationship, and he even hit her repeatedly while she was pregnant with their son. In late 2009 police intervened while Polkinghorne was choking Silva on a public street.

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Polkinghorne's father Karl testified about his son's violence towards Silva. He even said that he kicked his son out of his house a couple weeks before his death, because he beat up Silva in the house.

There was police testimony that the wiretaps of Polkinghorne and Silva's mobile phones recorded him making numerous threats of violence against her and her family.

Miguel testified that while he was being beaten Polkinghorne said he was going to kill him. Silva did not testify.

A number of witnesses testified that Silva was hysterical and screaming during Polkinghorne's attack and immediately afterwards.

Polkinghorne's autopsy identified he had been stabbed five or six times in the back and the back of the head. That matched the evidence Silva stabbed him from behind as he was assaulting her brother while he was lying on the ground. Only one of the wounds was fatal.

The prosecution didn't dispute that Polkinghorne was physically violent, and verbally and psychologically abusive toward Silva for years, or that on the night of his death he viciously assaulted Silva and her brother without any provocation. The prosecution's contention was she didn't act in self-defense so his killing "was not lawful." The Crown's prosecutor Eric Balodis argued to the jury: "There are lawful ways to respond to domestic violence;" and, "She had other ways of dealing with Mr Polkinghorne." Prosecutor Balodis didn't explain what other option she had that night when Polkinghorne beat her, and he was beating and choking her brother to death.

After an 11 day trial, on December 3, 2014

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Jessica Silva cont. on p. 7

the jury acquitted Silva of murder, but found her guilty of manslaughter. The continued her release on bond pending her sentencing.

During her sentencing hearing on March 6, 2015, Judge Clifton Hoeben talked about the years of physical, verbal, and psychological abuse she had suffered at the hands of Polkinghorne, that she had no criminal record, she was a good mother, she believed she was acting in self-defence and had shown remorse for his death. Hoeben considered the exceptional of circumstances of Silva's case in sentencing her to 18 months imprisonment, which he suspended contingent on her good behavior.

Silva's appeal was based on a single issue: the prosecution's evidence didn't support her guilt of manslaughter beyond a reasonable doubt.

On December 7, 2016 the New South Wales Court of Criminal Appeal quashed Silva's conviction by a majority 2 to 1 vote, and ordered a judgment of acquittal. In *Silva v R* [2016] NSWCCA 284, Justice Lucy McCallum [wrote in her opinion](#):

95. My own assessment is that Ms Silva can only have perceived the deceased's attack on her that evening as urgent, life-threatening and inescapable. A blow by blow analysis of the events in the street cannot be divorced from the exchanges that preceded those events. It is difficult to describe in words the irrational, menacing rage exhibited by the deceased in his calls to Ms Silva in the period leading up to the time when he confronted her physically. Absent some act in self-defence, serious harm to Ms Silva, her brother or her father at the hands of the deceased must have seemed virtually certain.

96. The fact that, unbeknownst to her or the deceased, Ms Silva's phone was being intercepted by police means that there is, unusually, an incontrovertible record of unguarded exchanges between the two right up until that time. ... A curious feature of their exchanges is that, to Ms Silva, the most vile abuse and the most terrifying threats from the deceased had evidently become normalised, almost banal. In many calls, she listens quietly as he rages on, abusing her and blaming her for all that was wrong with the world.

97. One thing that is striking about the exchanges is the extent to which the

deceased's rage escalated within the last hour or so before the physical confrontation in the street. Over hours he repeatedly verbally abused Ms Silva. The word "rage" barely captures the emotion he was expressing. In a number of calls, he exhibited a degree of anger that is beyond my experience or comprehension. He swore, he ranted, he threatened. ... It cannot be doubted that he was significantly affected by the drug Ice at that point."

111. In my assessment, the evidence cogently established the reasonable possibility that resort to mortal force was reasonable in the circumstances as she perceived them. On any view of the evidence of the witnesses, there must remain a doubt as to the proof of the elements the Crown had to prove."

[Click here to read the appeals court's ruling](#) in *Silva v R* [2016] NSWCCA 284. The court took Silva's manslaughter case serious enough that its ruling is over 18,000 words long, and comprises 178 paragraphs.

An odd twist to Silva's case was that her brother Miguel was charged with being an accessory after the fact to the 2012 murder that Polkinghorne was believed to have committed as the result of a drug deal gone bad. Miguel was also charged with concealing a serious indictable offence.

During his trial in Sydney's District Court, the prosecution alleged that Miguel fled the scene of the murder, and later drove to pick Polkinghorne up and allowed him stay at his auto repair shop in Marrickville.

[On June 5, 2015](#) the jury found Miguel not guilty of both charges.

Sources:
[Silva v R](#) [2016] NSWCCA 284 (7 December 2016)
[Jessica Silva: Manslaughter conviction quashed](#) after stabbing death of James Polkinghorne, By Lucy Carter, ABC News, Dec. 7, 2016
[Jessica Silva's brother Miguel found not guilty](#) of concealing alleged murder carried out by her boyfriend James Polinghorn, By AAP and News Telegraph, news.com.au, June 5, 2015



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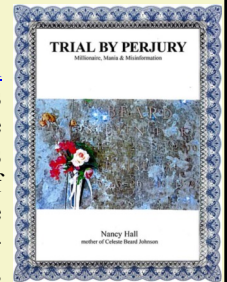
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Trial by Perjury: Millionaire, Mania & Misinformation

by Nancy Hall

This \$3.99 [Amazon Kindle e-book](#) book is

about how Celeste Beard Johnson was convicted in 2003 of capital murder in the death of her then husband Steven F. Beard, who died of natural causes in 2000. She was sentenced to life in prison.



While in bed at home in Oct. 1999, Steven was shot in his stomach with a shotgun. Tracey Tarlton, a woman who became infatuated with Celeste after they met in February 1999, admitted the shooting and she was charged with Injury to an Elderly Person. Steven recovered and was discharged from the hospital on January 18, 2000. The next day he was readmitted with a yeast infection and he complained of chest pains. Exams showed he had severe heart disease and other medical problems. He died four days later. Tarlton and Celeste were charged with murdering Steven. Tarlton pled guilty and agreed to testify against Celeste in exchange for a 10-20 year prison sentence. Celeste was convicted even though medical evidence showed Steven died of natural causes – not murder. Order for the Amazon Kindle for only \$3.99 from Amazon.com. (252 pgs)

Database of Japanese Cases

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