



# Double Jeopardy (Scotland) Act 2011

## 2011 asp 16

### *Other subsequent prosecutions*

#### **11 Eventual death of injured person**

- (1) This section applies where—
  - (a) a person (“A”) is, whether on indictment or complaint, convicted or acquitted of an offence (the “original offence”) involving the physical injury of another person (“B”),
  - (b) after the conviction or acquittal, B dies, apparently from the injury, and
  - (c) in a case where A was acquitted, the condition mentioned in subsection (3) is satisfied.
- (2) It is competent to charge A with—
  - (a) the murder of B,
  - (b) the culpable homicide of B, or
  - (c) any other offence of causing B’s death.
- (3) The condition referred to in subsection (1)(c) is that, on the application of the prosecutor and after hearing parties, the High Court is satisfied that it is in the interests of justice to proceed as mentioned in subsection (2).
- (4) Subsection (5) applies where—
  - (a) A was convicted of the original offence, and
  - (b) A is subsequently convicted of an offence mentioned in subsection (2).
- (5) The court may—
  - (a) on the motion of A made immediately on A’s being convicted, and
  - (b) after hearing the parties on that motion,quash A’s conviction of the original offence where satisfied that it is appropriate to do so.
- (6) A party may appeal to the High Court against the grant or refusal of a motion under subsection (5).

- (7) Where A was convicted of the original offence and is subsequently acquitted of an offence mentioned in subsection (2), A may appeal against the conviction under section 106(1)(a) or, as the case may be, section 175(2)(a) of the 1995 Act.
- (8) An appeal may be brought by virtue of subsection (7) despite the fact that A, before the acquittal mentioned in that subsection—
- (a) had appealed, or
  - (b) had been refused leave to appeal,
- against the conviction or against any other matter mentioned in section 106(1) or 175(2) of the 1995 Act in relation to the original offence.
- (9) Sections 121 and 193 of the 1995 Act do not apply in relation to an appeal under subsection (7).

## **12 Nullity of proceedings on previous indictment or complaint**

- (1) This section applies where—
- (a) a person has, whether on indictment or complaint, been charged with, and acquitted or convicted of, an offence, and
  - (b) the condition mentioned in subsection (3) is satisfied.
- (2) The person may be charged with, and prosecuted anew for, the offence.
- (3) The condition referred to in subsection (1)(b) is that, on the application of the prosecutor and after hearing parties, the High Court is satisfied that—
- (a) the proceedings on the indictment or complaint were a nullity, and
  - (b) it is in the interests of justice to proceed as mentioned in subsection (2).