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Green v The Queen 25 Years On: Was It Correctly Decided after All? (and Would – and Should – A Provocation Case Like Green's Be Left with a NSW Jury Today?) – *Andrew Dyer*

It is 25 years since the High Court of Australia delivered judgment in Green v The Queen (Green). The majority's decision in that case was highly controversial. It was also right. Academics have mischaracterised the evidence in Green, and have failed properly to engage with the legal issue that arose in it, namely, whether a jury could reasonably experience doubt about whether the appellant was acting under provocation when he killed the deceased. And I make two other claims here, too. First, despite reforms to New South Wales provocation law in 2014, if a case like Green were recur in New South Wales, a trial judge would probably leave the extreme provocation partial defence with the jury (though that "defence" would probably not succeed). Second, a defendant like Malcolm Green should have as good a chance of being partially excused today as Malcolm Green did in the 1990s. 206

Re-trials after Acquittals in Germany – *Greg Taylor*

The addition to the investigatory armoury of DNA-based evidence has caused the double jeopardy principle to be called into question in many countries. Germany is no exception, and as in some other European countries the principle also has constitutional status there, further complicating matters. A unique aspect of German discussion on the topic, however, is memories of what the Nazis did to double jeopardy as well as the precise wording and interpretation of the constitutional principle, to which there were already four unwritten exceptions that had nothing to do with DNA. After several false starts, in 2021 the Bundestag added a fifth by finally passing a law allowing for the re-opening of prosecutions when there is compelling new evidence. This note outlines the developments in Germany and the debate on its propriety. 234

Paying Attention to Attention Deficit Hyperactivity Disorder: An Examination of Cases in an Australian Supreme Court – *Lorana Bartels*

About 3-5% of the Australian adult population is estimated to have Attention Deficit Hyperactivity Disorder (ADHD), but this rises to nearly one in five people in prison. This article examines all criminal cases in the Australian Capital Territory Supreme Court in 2021 which mentioned ADHD. The article provides an overview of ADHD and a summary

of what has been described as the leading Australian case on this condition. This is followed by a thematic analysis of 32 cases, involving 34 individuals who had, or were suspected to have, ADHD. The key issues identified were the high preponderance of comorbidities; substance use issues; medication used to treat ADHD; cases in which ADHD was suspected, but not confirmed; issues with education; domestic and family violence; and the role of gender. The article considers the implications for the judiciary, legal practitioners, and the justice system more broadly. 245

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