SUPREME COURT OF QUEENSLAND

CITATION:	*R v Jade Michael Lacey* [2008] QSC 357
PARTIES:	**THE QUEEN** **(respondent)** **v** **JADE MICHAEL LACEY** **(applicant)**
FILE NO/S:	0920/08
DIVISION:	Trial Division
PROCEEDING:	Pre-trial hearing
ORIGINATING COURT:	Southport Magistrates Court
DELIVERED ON:	17 November 2008
DELIVERED AT:	Brisbane
HEARING DATE:	13 November 2008
JUDGE:	Byrne SJA
ORDER:	**Application dismissed**
CATCHWORDS:	CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – APPLICATION FOR PERMANENT STAY – where applicant to stand trial for murder - where applicant alleged to have "common intention" pursuant to s 8 Criminal Code – where application made under s 590AA Criminal Code for permanent stay of prosecution – whether case against applicant foredoomed to fail
	ss 8 and 590AA *Criminal Code Act 1899*
	R v Ferguson; ex parte Attorney-General of Queensland [2008] QCA 227 *R v Gesa and Nona ex-parte Attorney-General* [2001] 2 Qd R 72, 76 [18] *R v Smith* [1995] 1 VR 10, 14-16, 23, 24-29, 31-32, 40-42, 50 and 54 *Walton v Gardiner* (1993) 177 CLR 378, 373
COUNSEL:	Mr M Byrne with Ms C M Marco for the respondent Mr R Richter QC with him Mr N J Macgroarty for the applicant
SOLICITORS:	Crown Law for the respondent

Nyst Lawyers for the applicant

BYRNE SJA:

[1] The applicant, Jade Lacey, and his brother are to stand trial on charges that include that, on 6 May 2007, each murdered Kevin Palmer. The murder is alleged to have occurred in a Gold Coast unit.

[2] By this application (made pursuant to s. 590AA of the *Criminal Code – "the Code"*), the applicant seeks a permanent stay of the prosecution of the murder charge on the ground that a jury could not be satisfied of the matters necessary to establish his criminal responsibility for the killing under s. 8 of the *Code*.

[3] The s. 8 "common intention to prosecute an unlawful purpose" particularized is "an intention … to assault …", with a loaded firearm, a person in the unit if either brother considered such an assault desirable. (It was not suggested that the particulars do not state a "common intention" sufficient to attract s. 8).

[4] The application was, it seems, argued on a shared assumption and the applicant did not fire the fatal shot so that, at trial, his guilt will be sought to be established in reliance on s. 8.

[5] It is open to the jury to infer to the requisite standard of proof that the applicant and his brother entered the unit with the particularized common intention.

[6] The depositions indicate that, at trial, evidence should be available to prove these facts: that, on the night of 6 May 2007, the applicant and his brother entered the unit together, both armed with concealed, loaded hand guns. A few minutes later,

Mr Palmer was shot in the thigh region by the applicant. A moment later, his brother shot Mr Palmer through the heart, killing him. Neither the applicant nor his brother seemed surprised by what the other had done. Without offering aid to Mr Palmer, together and straight away, the two brothers walked calmly to a car and drove away.

[7] Those facts are an adequate foundation for the requisite inference.

[8] Other evidence may cast a different complexion on things at trial: for example, testimony that the brothers came to the unit to approach someone other than Mr Palmer and did not offer violence to that other man; and that the guns were not drawn until after Mr Palmer challenged the applicant to shoot him and moved towards him.

[9] But the prosecution does not admit the arguably exculpatory facts; cf *R v Gesa and Nona ex-parte Attorney-General* [2001] 2 Qd R 72, 76 [18]. And the jury might not accept as reliable such evidence as may be inconsistent with the prosecution case.

[10] So the s. 8 case is not "clearly foredoomed to fail": cf *Walton v Gardiner* (1993) 177 CLR 378, 393: cf *R v Smith* [1995] 1 VR 10, 14-16, 23, 24-29, 31-32, 40-42, 50 and 54. See also *R v Ferguson, ex parte Attorney-General of Queensland* [2008] QCA 227, [55], [61]-[64].

[11] The application is dismissed.