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Weekly Criminal Law

A Weekly Bulletin listing Decisions of Superior Courts of Australia covering criminal

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Executive Summary

Sayer-Jones v R (NSWCCA) - leave refused to appeal against the refusal of the trial judge to permanently stay a trial, where the application was brought after conviction and the applicant had a right to appeal against conviction, and where the trial judge had been correct in any event

R v Dumenil (QCA) - appeal against conviction allowed where the trial judge had failed to instruct that admissions made by a co-accused to police were not admissible against the appellant

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HABEAS CANEM

The scent on the breeze

Summaries With Link (Five Minute Read)

Sayer-Jones v R [2024] NSWCCA 54
Court of Criminal Appeal of New South Wales
Ward P, Kirk JA, & Garling J
Oppressive proceedings - the applicant had reached a plea deal with the DPP and pled guilty in the Local Court to two charges under s192G(b) of the Crimes Act 1900 (NSW) - those conviction were later set aside - the applicant was then tried on *ex officio* indictments in separate trials in the District Court for two offences contrary to s319 of the Crimes Act - the applicant was found guilty in the first trial and not guilty in the second trial - the trial judge in the first trial refused to permanently stay the proceedings on the basis that they were manifestly unfair and would bring the administration of justice into disrepute, as the DPP should be restrained from bringing the charges under the *ex officio* indictment where it had entered into the plea bargain, where the applicant had repeatedly raised the issue that the s192G(b) charges were defective - after conviction, the applicant sought leave to appeal against the refusal of a permanent stay - the Crown contended that the interlocutory decision had merged with the conviction and the Court therefore did not have jurisdiction - held: the common law principle of merger treats a legal action as extinguished once a determination of a Court of Record has been given upon it - while the doctrine of merger does have application in criminal proceedings, what is merging into the conviction is not any earlier decision as such, but, rather, the accused's liability (and the conduct that founded that liability) - in this respect, an accused's liability in criminal law is a neat analogy to a civil defendant's liability pursuant to a given cause of action - the Court had jurisdiction - for a permanent stay of proceedings, the test is whether, in all the circumstances, the continuation of the proceedings would involve unacceptable injustice or unfairness, or whether the continuation of the proceedings would be so unfairly and unjustifiably oppressive as to constitute an abuse of process - leave to appeal should be refused where there was clearly a forensic decision taken by the applicant not to challenge the permanent stay ruling until after the first trial had carried through to conviction (and the second had resulted in an acquittal) and the applicant is not deprived of his ability to appeal from conviction (and sentence) in due course in relation to his conviction - in any event, the reality was that the applicant chose (by challenging the guilty pleas) to depart from the plea agreement - the suggestion that the plea bargain involved nothing more than making the plea (with the intention of then challenging the conviction and undermining the integrity of the plea) was artificial, and to accept this argument would itself have the capacity to bring the administration of justice into disrepute - leave to appeal refused.
View Decision

R v Dumenil [2024] QCA 118
Court of Appeal of Queensland
Mullins P, Boddice JA, & Callaghan J
Jury directions - the appellant was a director of a company that recycled rubber into granules - he was allegedly involved with another person (K) in removing cocaine from a container shipped

to his company's warehouse from Columbia - K made statements to the police that were inadmissible against the appellant - the trial judge refused separate trials for the appellant and K, stating that it would be possible to give the jury instructions regarding relatively short and discrete parts of K's record of interview and the jury would be able to separately assess the body of evidence against the appellant independently of the parts they would be directed to exclude - the jury was unable to agree on a charge of importing a commercial quantity of border controlled drugs and found the appellant guilty of one count of attempting to possess a commercial quantity of unlawfully imported border controlled drugs - the appellant appealed - held: when K's police interviews were played to the jury, the trial judge at that stage had given no explanation that those interviews were admissible only in the trial against K - although the trial judge gave the jury certain instructions regarding the separate nature of the trials against the appellant and K, the trial judge did not direct the jury that the contents of K's interview were not admissible against the appellant - this error was properly characterised as a failure to observe the requirements of the criminal process in a fundamental respect, such that the conviction cannot stand - there could be no application of the proviso - the omission to give the required direction amounted to a failure to observe a condition that was a serious breach of the presuppositions that underpin a satisfactory criminal trial - appeal against conviction allowed and new trial ordered.
R v Dumenil

INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Moody v Netchoice (SCOTUS) - Lower court decisions upholding State statutes prohibiting social media companies from moderating content posted by third parties were reversed for failure to conduct proper First Amendment analysis

Summaries With Link (Five Minute Read)

Moody v Netchoice 603 US ___ (2024)
Supreme Court of the United States
The States of Florida and Texas enacted legislation that prohibited internet platforms from moderating third-party content based on content. The Supreme Court found serious First Amendment implications that the lower courts failed to properly consider. The cases were remanded to the courts below. The Court cited to *Miami Herald Publishing Co v Tornillo*, 418 US 241 (1974), where it was held that a Florida statute requiring newspapers to offer a right of reply violated the First Amendment because it consisted of compelled speech. Compelled speech can violate the First Amendment as much as suppression of speech. The Court said that government cannot meddle in speech by claiming that it is improving the marketplace of ideas. Here, the Court concluded that states were not likely to succeed in prohibiting the platforms from enforcing the platforms' own content moderation rules. The Court said that the States' attempt to better balance the mix of viewpoints on the internet by restricting content moderation amounted to an interference with speech decisions made by the private platforms. The Court added that a State cannot prohibit speech to rebalance the speech market. Inasmuch as the content moderation practices amounted to speech decisions by the platforms, the government was not free to enact laws that infringed those private speech rights.
Moody

Poem for Friday

Iceland

By Jonas Hallgrimsson (1807-1845)

Charming and fair is the land,
and snow-white the peaks of the jokuls [glaciers],
Cloudless and blue is the sky,
the ocean is shimmering bright,
But high on the lave fields, where
still Osar river is flowing
Down into Almanna gorge,
Althing no longer is held,
Now Snorri's booth serves as a sheepfold,
the ling upon Logberg the sacred
Is blue with berries every year,
for children's and ravens' delight.
Oh, ye juvenile host
and full-grown manhood of Iceland!
Thus is our forefathers' fame
forgotten and dormant withal.

Jonas Hallgrimsson was born in Iceland on 16 November, 1807. He is a revered figure in Icelandic literature, writing in the Romantic style. His love of the Icelandic people and country side and pride in the national identity comes through his poetry. He was a promoter of the Icelandic Independence Movement. He was employed for a time by the sheriff of Reykjavik as a clerk. He studied law at the University of Copenhagen. He also worked as a defence lawyer. He founded the Icelandic periodical Fjolnir first published in 1835. He died on 26 May 1845, after slipping on stairs and breaking his leg, the previous day. He died of blood poisoning aged 37 years. His birthday each year is recognised as the Day of the Icelandic Language.

Ég bið að heilsa, words by Jónas Hallgrímsson, composition by Ingi T. Lárusson
https://www.youtube.com/watch?v=6OqbfGSJDUc

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