

Friday, 16 November 2018

Weekly Criminal Law

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

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Executive Summary

McPhillamy v The Queen (HCA) - criminal law - sexual offences - tendency evidence - evidence of "B" and "C" evidence concerning appellant's sexual misconduct did not have 'significant probative value' - tendency evidence not admissible in appellant's trial for sexual offences against "A" - appeal allowed

R v MI (NSWCCA) - criminal law - Crown appeal - discount on prison sentence granted to respondent as result of undertaking - partial failure to fulfil undertaking - no reasonable excuse - discount removed

Meskovski v DPP (VSCA) - criminal law - civil forfeiture - no error in judge's refusal to make order under ss38(2) or 45(1) *Confiscation Act 1997* (Vic) - appeal dismissed

DPP v McKay (VSCA) - criminal law - sentencing discretion miscarried with respect to sentence for recklessly causing serious injury - respondent resentenced - appeal allowed

R v Adamson (SASCFC) - criminal law - arson - open to jury to reject alibi and to find appellant guilty beyond reasonable doubt - appeal dismissed

Summaries With Link (Five Minute Read)

[McPhillamy v The Queen \[2018\] HCA 52](#)

High Court of Australia

Kiefel CJ; Bell, Keane, Nettle & Edelman JJ

Criminal law - sexual offences - tendency evidence - appeal concerned admissibility, as tendency evidence, of "B" and "C"'s evidence of appellant's 'sexual misconduct with them' in appellant's trial for sexual offences against "A" - acts which "B" and "C" complained of had occurred a decade prior to alleged offences against "A" - whether evidence had 'significant probative value' - Court of Criminal Appeal of New South Wales found, by majority, that the tendency evidence 'strongly supported the prosecution case' - ss97 & 10 *Evidence Act 1995* (NSW) (Evidence Act) - whether proof of offending against "B" and "C" could affect assessment of likelihood appellant offended against "A" 'to a significant extent' - held: Court not satisfied that the tendency evidence met 'threshold requirement' of s97(1)(b) Evidence Act - tendency evidence did not have 'significant probative value' - appeal allowed.

[McPhillamy](#)

R v MI [2018] NSWCCA 251

Court of Criminal Appeal of New South Wales

Gleeson JA; R A Hulme & Button J

Criminal law - Crown appeal - Director of Public Prosecutions, pursuant to s16AC *Crimes Act 1914* (Cth), appealed against inadequacy of sentence imposed on respondent - appellant contended that respondent had received 'discount for future assistance' on his prison sentence due to his undertaking to give evidence against other offender, and that respondent had 'at least partially failed to fulfil that undertaking' without 'reasonable excuse' - appellant contended Court should "remove the discount" - whether failure to comply was entire or partial - whether reasonable excuse - held: Court satisfied respondent had partially failed to fulfil undertaking with no reasonable excuse - discount removed.

[View Decision](#)

Meskovski v DPP [2018] VSCA 293

Court of Appeal of Victoria

Maxwell P; Tate & Weinberg JJA

Criminal law - civil forfeiture - applicant sought leave to appeal against civil forfeiture order, which forfeited applicant's 50 per cent interest in property - relationship between s38(2) and s45(1) *Confiscation Act 1997* (Vic) (Confiscation Act) - whether judge erroneously refused to exclude property or order amount to be paid from forfeited property - held: powers conferred by ss38(2) & 45(1) Confiscation Act were 'alternative discretionary powers' which could be exercised upon Court's satisfaction of reasonable likelihood that 'civil forfeiture order would cause undue hardship to any person' - no error in primary judge not being satisfied of reasonable likelihood of undue hardship by making civil forfeiture order - alternative discretionary powers not enlivened - no error in judge's refusal to make order under ss38(2) or 45(1) Confiscation Act - leave to appeal granted - appeal dismissed.

[Meskovski](#)



DPP v McKay [2018] VSCA 292

Court of Appeal of Victoria

Beach & Hargrave JJA; Almond AJA

Criminal law - respondent pleaded guilty to charge of recklessly causing serious injury, charge of assault with a weapon and charge of possession of controlled weapon without excuse - respondent sentenced to total effective sentence of 1 year and 8 months in prison with 10 months non-parole period - appellant contended that sentence for recklessly causing serious injury was manifestly inadequate - held: Court satisfied that sentence for recklessly causing serious injury was 'wholly outside the permissible range' - sentencing judge's sentencing discretion miscarried - appellant resentenced to 4 years and 6 months' in prison for recklessly causing serious injury.

[DPP](#)

R v Adamson [2018] SASCFC 114

Full Court of the Supreme Court of South Australia

Vanstone, Lovell & Doyle JJ

Criminal law - appellant found guilty of arson - appellant had contended that when fire was lit he was at Glenelg Lacrosse Club (Club) and thus had an alibi - Club was 'only about 800 to 850 metres' from townhouse where fire was lit - prosecution had contended that 'appellant had a sufficient opportunity to light the fire' and relied also on circumstantial evidence - appellant contended guilty verdict was unreasonable and could not be supported with regard to evidence - appellant contended 'no reasonable jury could have rejected as 'reasonable possibility' that he was at the Club when fire lit - held: it was open to jury to reject alibi and to find appellant guilty beyond reasonable doubt - appeal dismissed.

[R v Adamson](#)



Benchmark

Spring, the sweet spring

By: Thomas Nashe

Spring, the sweet spring, is the year's pleasant king,
Then blooms each thing, then maids dance in a ring,
Cold doth not sting, the pretty birds do sing:

Cuckoo, jug-jug, pu-we, to-witta-woo!

The palm and may make country houses gay,
Lambs frisk and play, the shepherds pipe all day,
And we hear aye birds tune this merry lay:

Cuckoo, jug-jug, pu-we, to-witta-woo!

The fields breathe sweet, the daisies kiss our feet,
Young lovers meet, old wives a-sunning sit,
In every street these tunes our ears do greet:

Cuckoo, jug-jug, pu-we, to witta-woo!

Spring, the sweet spring!

https://en.wikipedia.org/wiki/Thomas_Nashe

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