



Friday, 28 February 2020

Weekly Criminal Law

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

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Executive Summary

Stevenson (a Pseudonym) v The Queen (VSCA) - criminal law - 'sexual penetration of a child under 16' - appeal against conviction dismissed

Brown v The Queen (VSCA) - criminal law - 'recklessly causing injury' - appeal against conviction allowed - applicant acquitted

BNM v The Queen (SASCFC) - criminal law - 'trafficking in a controlled drug' - appeal against conviction dismissed

Summaries With Link (Five Minute Read)

Stevenson (a Pseudonym) v The Queen [2020] VSCA 27

Court of Appeal of Victoria

Whelan & Kyrou JJA; Croucher AJA

Criminal law - applicant found guilty of two charges of 'sexual penetration of a child under 16' - applicant sentenced to two year 'community correction order' with '200 hours of community work' - applicant placed on 'Register of Sex Offenders for 15 years' - applicant sought to appeal against convictions - whether trial judge erroneously admitted evidence of 'Facebook posts' in relation to issue of applicant's awareness of complainant's age - evidence's probative value - prejudice - hearsay - whether erroneous admission of evidence concerning 'purported date' of comment of applicant on Facebook post - *Evidence Act 2008 (Vic)* - *Electronic Transactions (Victoria) Act 2000 (Vic)* - held: no error in judge's admission of evidence - leave to appeal granted - appeal dismissed.

[Stevenson](#)

Brown v The Queen [2020] VSCA 26

Court of Appeal of Victoria

Kyrou, Niall & Emerton JJ

Criminal law - applicant alleged to have assaulted complainant on two occasions - applicant arraigned in County Court on five charges: 'intentionally causing injury and alternatively recklessly causing injury' (charges 1 and 2), 'intentionally causing injury and alternatively recklessly causing injury' (charges 3 and 4) and 'common law assault' (charge 5) - applicant found guilty on charge 4 and acquitted in respect of other charges - appellant appealed, contending failure by prosecution 'to disclose relevant information in its possession' (disclosure ground) - appellant also contended 'fresh evidence' had become available which would have led jury 'to hold a reasonable doubt' concerning applicant's guilt or 'have given rise to a significant possibility' that jury would hold doubt (fresh evidence ground) - respondent conceded fresh evidence ground - applicant did not press disclosure ground - s277 *Criminal Procedure Act 2009 (Vic)* - held: appeal allowed - applicant acquitted.

[Brown](#)

BNM v The Queen [2020] SASCFC 10

Full Court of the Supreme Court of South Australia

Peek & Doyle JJ; David AJ

Criminal law - appellant found guilty of 'trafficking in a controlled drug' - appellant appealed against conviction - s32(3) *Controlled Substances Act 1984 (SA)* - appellant contended there had been erroneous application of ss34P(2)(a) & (b) *Evidence Act 1929 (SA)* (*Evidence Act*), erroneous directions to jury, erroneous failure to direct jury, and that verdict was unreasonable - whether to grant leave to appeal - s34 *Evidence Act* - failure to give Peacock direction - whether miscarriage of justice - admissibility of evidence - held: appellant granted leave to appeal on certain grounds - appeal dismissed.

BNM



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On an Hour-Glass

By: John Hall (1627–1656)

MY life is measur'd by this glass, this glass
By all those little sands that thorough pass.
See how they press, see how they strive, which shall
With greatest speed and greatest quickness fall.
See how they raise a little mount, and then
With their own weight do level it again.
But when th' have all got thorough, they give o'er
Their nimble sliding down, and move no more.
Just such is man, whose hours still forward run,
Being almost finish'd ere they are begun;
So perfect nothings, such light blasts are we,
That ere we're aught at all, we cease to be.
Do what we will, our hasty minutes fly,
And while we sleep, what do we else but die?
How transient are our joys, how short their day!
They creep on towards us, but fly away.
How stinging are our sorrows! where they gain
But the least footing, there they will remain.
How groundless are our hopes, how they deceive
Our childish thoughts, and only sorrow leave!
How real are our fears! they blast us still,
Still rend us, still with gnawing passions fill;
How senseless are our wishes, yet how great!
With what toil we pursue them, with what sweat!
Yet most times for our hurts, so small we see,
Like children crying for some Mercury.
This gapes for marriage, yet his fickle head
Knows not what cares wait on a marriage bed:
This vows virginity, yet knows not what
Loneness, grief, discontent, attends that state.
Desires of wealth another's wishes hold,
And yet how many have been chok'd with gold?
This only hunts for honour, yet who shall
Ascend the higher, shall more wretched fall.
This thirsts for knowledge, yet how is it bought?
With many a sleepless night, and racking thought.
This needs will travel, yet how dangers lay
Most secret ambuscados in the way?
These triumph in their beauty, though it shall



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Like a pluck'd rose or fading lily fall.
Another boasts strong arms: 'las! giants have
By silly dwarfs been dragg'd unto their grave.
These ruffle in rich silk: though ne'er so gay,
A well-plum'd peacock is more gay than they.
Poor man! what art? A tennis-ball of error,
A ship of glass toss'd in a sea of terror;
Issuing in blood and sorrow from the womb,
Crawling in tears and mourning to the tomb:
How slippery are thy paths! How sure thy fall!
How art thou nothing, when th' art most all!

[https://en.wikipedia.org/wiki/John_Hall_\(poet\)](https://en.wikipedia.org/wiki/John_Hall_(poet))

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