

Benchmark

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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

Kelley v R (NSWCCA) - criminal law - 'aggravated dangerous driving occasioning grievous bodily harm' - 'common assault' - applicant sought to appeal against sentence - leave to appeal granted - appeal dismissed

Yates (a pseudonym) v The Queen (VSCA) - criminal law - evidence - 'aggravated burglary' - rape - sexual assault - County Court judge ruled female complainant 'not competent to give sworn or affirmed evidence' but 'was competent to give unsworn evidence' - judge 'declined to certify under' s295(3) *Criminal Procedure Act 2009* (CPA) - review of 'certification decision' refused

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Summaries With Link (Five Minute Read)

Kelley v R [2021] NSWCCA 173

Court of Criminal Appeal of New South Wales

Bell P; Rothman & Bellew JJ

Criminal law - applicant pleaded guilty 'aggravated dangerous driving occasioning grievous bodily harm' - applicant was sentenced to 3 years 4 months in prison with 2 year non-parole period - applicant also pleaded guilty to two counts 'common assault' - for each charge of common assault applicant was sentenced to Community Corrections Order (CCO) - one CCO was for 12 months the other for 2 years - applicant sought to appeal against sentence - whether conflation of 'objective seriousness and moral culpability' - whether failure to consider significance of evidence concerning moral culpability - whether s52A(4) & 61 *Crimes Act 1900* (NSW) - s8 *Crimes (Sentencing Procedure) Act 1999* (NSW) - held: leave to appeal granted - appeal dismissed.

[View Decision](#)

Yates (a pseudonym) v The Queen [2021] VSCA 190

Court of Appeal of Victoria

Priest, Sifris & Kennedy JJA

Criminal law - evidence - 'aggravated burglary' - rape - sexual assault - County Court judge ruled female complainant 'not competent to give sworn or affirmed evidence' but 'was competent to give unsworn evidence' ('interlocutory decision') - judge 'declined to certify under' s295(3) *Criminal Procedure Act 2009* (CPA) ('certification decision') - applicant, pursuant to s296 CPA, sought review of certification decision - if successful on certification decision applicant sought to appeal against interlocutory decision, contending judge 'erred in ruling that the complainant was competent to give unsworn evidence' - held: application for review of certification decision refused.

[Yates](#)

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The Open Sea

By: Dorothea Mackellar

FROM my window I can see,
Where the sandhills dip,
One far glimpse of open sea.
Just a slender slip
Curving like a crescent moon— 5
Yet a greater prize
Than the harbour garden-fair
Spread beneath my eyes.

Just below me swings the bay,
Sings a sunny tune, 10
But my heart is far away
Out beyond the dune;
Clearer far the sea-gulls' cry
And the breakers' roar,
Than the little waves beneath 15
Lapping on the shore.

For that strip of sapphire sea
Set against the sky
Far horizons means to me—
And the ships go by 20
Framed between the empty sky
And the yellow sands,
While my freed thoughts follow them
Out to other lands.

All its changes who can tell? 25
I have seen it shine
Like a jewel polished well,
Hard and clear and fine;
Then soft lilac—and again
On another day 30
Glimpsed it through a veil of rain,
Shifting, drifting grey.

When the livid waters flee,

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Flinching from the storm,
From my window I can see, 35
Standing safe and warm,
How the white foam tosses high
On the naked shore,
And the breakers' thunder grows
To a battle-roar... 40

Far and far I look—Ten miles?
No, for yesterday
Sure I saw the Blessed Isles
Twenty worlds away.
My blue moon of open sea, 45
Is it little worth?
At the least it gives to me
Keys of all the earth!

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

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