



Friday, 28 June 2024

## Weekly Criminal Law

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

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### Executive Summary

**Chambers v R** (NSWCCA) - a verdict of guilty to a grooming offence regarding a child was not inconsistent with a verdict of not guilty to an offence charging that sexual intercourse took place

**Boag v Western Australia (No 2)** (WASCA) - in prosecution for unlawful killing, s7(a) of the *Criminal Code* (WA) required that the act causing death be the actual and not the attributed act of the accused, and the act constituting the offence must be the one that the accused person actually did

## HABEAS CANEM

### First beach holiday



# Benchmark

## Summaries With Link (Five Minute Read)

### **Chambers v R [2024] NSWCCA 94**

Court of Criminal Appeal of New South Wales

Davis, Wright, & McNaughton JJ

Inconsistent verdicts - a jury found the applicant guilty of exposing the complainant to indecent material, namely a pornographic movie, with the intention of making it easier to procure her for unlawful sexual activity contrary to s66EB(3) of the *Crimes Act 1900* (NSW), and not guilty of sexual intercourse with the complainant while under authority contrary to s66C(2) of that Act - he sought leave to appeal on the ground that the verdicts were inconsistent - held: the ground of appeal required the Court to consider whether the verdict of guilty in relation to Count 1 was unreasonable on the whole of the evidence taking into account the jury's verdict of not guilty in relation to Count 2 - the applicant bears the burden of establishing inconsistency of verdicts and it is only where inconsistency rises to the point where intervention is necessarily required to prevent a possible injustice that the relevant conviction will be set aside - a verdict of not guilty does not necessarily imply that a complainant has been disbelieved or a want of confidence in the complainant - ultimately in a case where it is contended that a verdict is unreasonable on account of its inconsistency with another verdict, the test for an appellate court is one of logic and reasonableness - the focus is on any explanation, not for the conviction, but for the acquittal - the jury could well have concluded that the complainant was an honest 12-year-old who was doing her best to recount everything that had happened to her truthfully to the best of her ability but, notwithstanding that, her evidence concerning Count 2, while honest, was not sufficiently certain or detailed as to be reliable enough to justify a finding beyond reasonable doubt - the Court rejected the applicant's submission that the only rational explanation for the acquittal on Count 2 must be that the jury had a reasonable doubt as to the complainant's credibility - the complainant's evidence in respect of Count 1 did not suffer from similar problems to those which affected her evidence in relation to Count 2 - taking into account all the relevant circumstances, there was a logical and reasonable basis on which the two verdicts could be reconciled and the verdict of guilty on Count 1 was not unreasonable - leave to appeal against conviction granted, but appeal dismissed.

[View Decision](#)

### **Boag v Western Australia (No 2) [2024] WASCA 75**

Court of Appeal of Western Australia

Buss P, Mazza JA, & Seaward J

Acting in concert - three co-accused (including the appellant) carried out a plan to rob persons for methylamphetamine, which involved a violent assault on three other people, including a woman, forcing them into a car owned by the woman, and then driving recklessly and terrorising the woman until she opened the car door and jumped out, which caused her death - the three co-accused were convicted after a trial by judge alone of having unlawfully killed the woman, contrary to s280(1), read with s272, of the *Criminal Code* (WA) - the State contended that all three co-accused were joint principals, within s7(a) of the Code, in that each of them did acts



that threatened or intimidated the victim, and which caused her to jump out of a moving car, which resulted in her death - the appellant appealed against conviction - held: at the time of primary judgment, the law as to the operation of s7(a) was that the phrase 'person who actually does the act', extended to all persons who actually do the act or one or more acts in the series which constitutes or constitute the offence - however, after the retrial, the High Court delivered judgment in *O'Dea v WA* [2022] HCA 24; 273 CLR 315, holding, regarding the application of s7(a) to unlawfully doing grievous bodily harm, that the act 'causing' the grievous bodily harm must be the 'actual' and not the attributed act of the accused person, and the act that constitutes the offence of unlawfully doing grievous bodily harm must be the one that the accused person 'actually does' - this required that the appeal be allowed, subject to the proviso - the State's contention that the Court should apply the proviso because the trial judge's unchallenged findings of fact established that the appellant was criminally responsible under s8(1) of the Code (common intention to effect an unlawful purpose for which commission of the charged offence was a probable consequence) was rejected - the Court was not persuaded that no substantial miscarriage of justice occurred at the retrial - appeal allowed, and new trial ordered.

[Boag](#)



# Benchmark

## INTERNATIONAL LAW

### Executive Summary and (One Minute Read)

**United States v Rahimi** (SCOTUS) - Federal statute that prohibits individuals who are subject to a domestic violence restraining order from firearm possession does not violate the Second Amendment right to keep and bear arms

### Summaries With Link (Five Minute Read)

#### **United States v Rahimi 602 US \_\_ (2024)**

United States Supreme Court

In an 8-1 decision (Thomas, J dissenting), the Supreme Court upheld the validity of what are known as 'red flag' laws that prohibit firearm possession by domestic abusers. During a dispute with his girlfriend, Rahimi fired a gun that he kept in his car. She obtained a restraining order from a court in Texas. The Texas Court further suspended Rahimi's gun license for two years on the grounds that the violence was likely to occur again. During this period, Rahimi threatened additional women with a gun and was a suspect in an additional five shootings. When police searched his home, they found firearms, ammunition, and a copy of the restraining order. Rahimi was indicted for violating a federal statute that prohibits firearm possession while subject to a domestic violence restraining order. Rahimi claimed that the statute was unconstitutional because it established a restriction on the right to keep and bear arms that was not part of firearm regulation at the time the Second Amendment was adopted in the 18th Century. The District Court rejected this argument, but the US Court of Appeals agreed that the statute was unconstitutional. In the opinion by Roberts CJ, the Court pulled back from a purely historical approach to gun rights. The Chief Justice stated that recent court decisions expanding firearm rights 'were not meant to suggest a law trapped in amber'. By this the Court moved away from the history and tradition test and recognised that the Second Amendment permits regulations that may not have existed in 1791. The Court held that, while the right to keep and bear arms was a fundamental right, prohibitions on going armed were accepted as part of the common law at the time the Second Amendment was adopted. The Court said that the statute only prohibited possession while the restraining order was in effect and where a court had found that the individual represented a credible threat to the physical safety of others in a domestic situation.

[United States v Rahimi](#)



## Poem for Friday

### Adlestrop

By Edward Thomas (1878-1917)

Yes. I remember Adlestrop  
The name, because one afternoon  
Of heat the express-train drew up there  
Unwontedly. It was late June.

The steam hissed. Someone cleared his throat.  
No one left and no one came  
On the bare platform. What I saw  
Was Adlestrop only the name

And willows, willow-herb, and grass,  
And meadowsweet, and haycocks dry,  
No whit less still and lonely fair  
Than the high cloudlets in the sky.

And for that minute a blackbird sang  
Close by, and round him, mistier,  
Farther and farther, all the birds  
Of Oxfordshire and Gloucestershire.

**Edward Thomas**, an English poet biographer, author, essayist, and critic was born on 3 March 1878, the son of Welsh parents, a railway clerk, politician and preacher Phillip Thomas, and Mary Townsend. His connection to Wales was important throughout his life. He was described by Aldous Huxley as "*one of England's most important poets*". Thomas wrote poetry from 1914, when he was 36, encouraged by his new neighbour, the then relatively unknown Robert Frost. During his life, his only published poetry was *Six Poems* (1916) under the pseudonym Edward Eastaway. Thomas struggled with the burden of constant production of what some critics described as "hack work" to support his family, and the work he wished to produce. At times he was reviewing up to 15 books each week. He made many attempts at suicide, suffering marital disharmony and depression. Adlestrop is considered one of Thomas' finest poems. The poem describes the ordinary circumstances of Thomas' train from Paddington to Malvern, stopping at Adlestrop station at 12:15pm with images of the surrounding English countryside. However the poem elicits profound feelings in the reader through those descriptions. Thomas was killed in the Battle of Arras, in France on 9 April 1917, having enlisted for service in the British infantry in 1915. Ted Hughes described Thomas as "*the father of us*"

all’.

**Adestrop** by Edward Thomas, composed by Susanna Self- the third of six “Songs of Immortality”

<https://www.youtube.com/watch?v=2NYUdo12yfg>

Reading by Patricia Conolly. With seven decades experience as a professional actress in three continents, Patricia Conolly has credits from most of the western world’s leading theatrical centres. She has worked extensively in her native Australia, in London’s West End, at The Royal Shakespeare Company, on Broadway, off Broadway, and widely in the USA and Canada. Her professional life includes noted productions with some of the greatest names in English speaking theatre, a partial list would include: Sir Peter Hall, Peter Brook, Sir Laurence Olivier, Dame Maggie Smith, Rex Harrison, Dame Judi Dench, Tennessee Williams, Lauren Bacall, Rosemary Harris, Tony Randall, Marthe Keller, Wal Cherry, Alan Seymour, and Michael Blakemore.

She has played some 16 Shakespearean leading roles, including both Merry Wives, both Viola and Olivia, Regan (with Sir Peter Ustinov as Lear), and The Fool (with Hal Holbrook as Lear), a partial list of other classical work includes: various works of Moliere, Sheridan, Congreve, Farquar, Ibsen, and Shaw, as well as roles such as, Jocasta in Oedipus, The Princess of France in Love’s Labour’s Lost, and Yelena in Uncle Vanya (directed by Sir Tyrone Guthrie), not to mention three Blanche du Bois and one Stella in A Streetcar Named Desire.

Patricia has also made a significant contribution as a guest speaker, teacher and director, she has taught at The Julliard School of the Arts, Boston University, Florida Atlantic University, The North Carolina School of the Arts, University of Southern California, University of San Diego, and been a guest speaker at NIDA, and the Delaware MFA program.

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