

JURD7121 Crime and the Criminal Process

Case Book

69 cases, full P-FIRAC, alphabetical

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Facts	the court hears ~20 contested bail applications a week, with little time and usually only the police facts and the applicant's record.
Issue	the practical effect of the s 74 bar on repeat applications.
Rule	s 74 prohibits a fresh Local Court application absent changed circumstances; only the Supreme Court can revisit a Local Court refusal.
Application	with no local review avenue and minimal material, a quick refusal cannot practically be reopened.
Conclusion	“for many applicants, my decision is for all effective purposes, final”, s 74 as a remand driver.

M

<i>M v R</i> [2015] NSWSC 138 (McCallum J)	
Procedure	Supreme Court bail application, two weeks after the 2014 show cause amendments commenced.
Facts	an early test of the new show cause provision.
Issue	are show cause (s 16A) and unacceptable risk (Div 2) considered together or separately?
Rule	together : “the apparent simplicity of a two-stage approach is illusory”, because you cannot show detention is “not justified” without engaging the risks the second step assesses.
Application	the absence of an unacceptable risk itself points to detention being unjustified.
Conclusion	the two tests effectively merge, later rejected by <i>Tikomaimaleya</i> .
<i>Mai</i> (1992) 26 NSWLR 371	
Procedure	NSWCCA, appeal against conviction for attempting to possess/import a prohibited drug.
Facts	The accused took delivery of and dealt with a substance they believed was heroin, but the heroin had been removed and replaced with an inert substance (plaster) by authorities.
Issue	Can a person be convicted of attempt where the completed offence was factually impossible, and does the conduct sufficiently evince the criminal intent?
Rule	Factual impossibility is no defence to attempt; the test looks to whether the accused's acts, viewed with their intention, were sufficiently proximate and unequivocally referable to the intended offence (equivocality).
Application	The accused intended to deal with heroin and acted on that belief; that the substance was harmless plaster did not save them, because impossibility does not negate the attempt and the conduct was referable to the intended drug offence.
Conclusion	Conviction upheld; stands for impossibility being no defence in NSW and the equivocality approach to attempt.
<i>Mallard v The Queen</i> [2005] HCA 68; 224 CLR 125	
Procedure	High Court appeal after the WA Court of Criminal Appeal declined to overturn the conviction.
Facts	Andrew Mallard was convicted in 1995 of the 1994 murder of Perth shopkeeper Pamela Lawrence; the Crown case leaned heavily on his admissions; the fight was drawn out by his mental illness and appellate reluctance to disturb a jury verdict.
Issue	did prosecutorial non-disclosure and the use made of the confession evidence occasion a miscarriage of justice?
Rule	the prosecution's duty of disclosure is fundamental; a conviction secured where significant material capable of undermining the Crown case was withheld from the defence is a miscarriage of justice .
Application	material inconsistent with the Crown case (including forensic evidence about the wound and the alleged weapon) had not been disclosed, and the admissions were unreliable.

Issue	What must the Crown prove to rebut the presumption of doli incapax for a child aged 10 to under 14, and was it rebutted here?
Rule	The presumption that a child aged 10 to under 14 is incapable of crime can be rebutted only by proof beyond reasonable doubt that the child knew the act was seriously wrong (as distinct from merely naughty or mischievous). That knowledge cannot be inferred from the doing of the act alone.
Application	The evidence did not establish that RP understood his conduct was seriously wrong rather than childish or mischievous; the seriousness of the acts alone could not supply that knowledge, and there was insufficient evidence of his actual understanding given his age.
Conclusion	Appeal allowed, convictions quashed. Confirms doli incapax requires proof beyond reasonable doubt of the child's actual knowledge that the act was seriously wrong, drawn from the whole evidence, not the act itself.
<i>Ryan v The Queen</i> (1967) 121 CLR 205	
Procedure	HCA, appeal against conviction for murder.
Facts	Ryan robbed a service station holding a loaded, cocked rifle; while tying up the attendant the gun discharged and killed him. He claimed the firing was a reflex or involuntary movement when the attendant moved suddenly.
Issue	Was the relevant act (firing the loaded gun) voluntary, given the accused said the discharge was a reflex pulling of the trigger?
Rule	Criminal responsibility attaches only to a willed (voluntary) act; voluntariness is assessed by identifying the relevant act and asking whether it was a product of the will, and an act done with a loaded, cocked weapon can be willed even if the precise discharge was reflexive.
Application	The jury was entitled to find the relevant act was presenting the cocked, loaded rifle with finger on the trigger, which was voluntary; the reflex pulling of the trigger did not break the chain because the dangerous situation was deliberately created. Even a reflex contraction of the finger could be regarded as part of the willed act of using the weapon to overawe the victim.
Conclusion	Appeal dismissed; conviction upheld. Authority for the proposition that the prosecution must prove a voluntary (willed) act, but reflex movements flowing from a deliberately created dangerous act remain voluntary.