FOLEY'S FEBRUARY CRIMINAL LAW CPD SERIES – THURSDAY 19 FEBRUARY, 2026

LEARNINGS FROM SOME RECENT DECISIONS OF THE COURT OF APPEAL

1. **Duties imposed upon the prosecution**

1.1 **The overarching duty**

- Coleman v R [2025] VSCA 250, at [85];
- Lynn v R [2025] VSCA 315, at [118] – [122] & [153].

1.2 **The duty of disclosure**

(i) Its scope, and the duty to make inquiries

- Nelson v R [2025] VSCA 226, at [51] & ff;
- Mokbel v R [2025] VSCA 243, at [381] & ff.

(ii) Recent examples of a breach of this duty

- Asare v R [2025] VSCA 222, at [46] – [48] & [60] – [62];
- Barbaro v R [2025] VSCA 321, at [17] – [19];
- Mokbel v R [2025] VSCA 243, at [731] & ff.

1.3 **Recent examples of incidents of the duties imposed upon the prosecution**

(i) to ensure that inadmissible evidence is not placed before the jury

- Portea v R [2025] VSCA 255, at [61] – [64] & [82] – [84]

(ii) not to enlarge the Crown case by permitting an additional and alternative basis of guilt to be left to the jury

- Mali v R [2025] VSCA 91, at [20] & ff

(iii) not to put a proposition to the jury which is based on a false premise…

- Coleman v R [2025] VSCA 250, at [77] & ff

(iv) not to put a proposition to the jury which is beyond the evidence and which invites the jury to speculate

- Matthams v R [2025] VSCA 44, at [53] & ff;

- Lynn v R [2025] VSCA 315

(v) not to invite the jury to discount the accused's denials "because he was the accused"

- Tran v R [2025] VSCA 303, at [106] & ff

(vi) to prove the correct interpretation of the accused's record of interview

- Wu v R [2025] VSCA 4

(vii) not to attack/challenge the evidence given by a prosecution witness – its reliability and/or the credit of the witness – in the absence of cross-examination by the prosecutor pursuant to s. 38 of the Evidence Act, 2008

- Seymour v R [2025] VSCA 334, at [93] & ff;

- Lynn v R [2025] VSCA 315, at [91] – [104] & ff

(viii) not to suggest "recent invention" by the accused without a (proper) basis

- Lynn v R [2025] VSCA 315

2. **Appeals against conviction following a plea of guilty — what to look for when considering prospects of success**

(i) where it is asserted that the applicant could not properly have been convicted based upon the admitted facts;

- Grimm v R [2025] VSCA 11;

- Alessawi v R [2025] VSCA 23, at [26]–[52];

- Parker v DPP (Cth) [2025] VSCA 316.

(ii) where it is asserted that the integrity of the plea was affected;

- Gluyas v R [2025] VSCA 335;

- Mokbel v R [2025] VSCA 243.

3. **'Geolocation' evidence relating to an accused's electronic devices (or vehicle): some relevant matters affecting admissibility**

- Moorhouse (a pseudonym) v R [2025] VSCA 329.

4. **The effect of media reporting during a criminal trial**

- Singh v R [2025] VSCA 247, at [79]–[126]; [189]–[213].

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