



HIGH COURT OF AUSTRALIA

18 March 2020

STRBAK v THE QUEEN [2020] HCA 10

Today, the High Court unanimously allowed an appeal from the Court of Appeal of the Supreme Court of Queensland. Under the common law of Australia, during a criminal trial (save in rare and exceptional circumstances), no adverse inference can be drawn by a jury (or the judge in a trial without a jury) from the fact that the accused did not give evidence. In this context, the principal issue before the Court was whether the decision in *R v Miller* [2004] 1 Qd R 548 ("*Miller*"), which permits a sentencing judge, at a hearing of disputed facts following a plea of guilty, to more readily accept evidence or draw inferences invited by the prosecution in the absence of contradictory evidence given by the offender, was wrongly decided.

The appellant and her partner, Matthew Scown, were jointly charged before the Supreme Court of Queensland with the manslaughter of the appellant's son, Tyrell. Tyrell was aged four years and three months when he died as the result of injuries inflicted to his abdomen within 48 hours of his death. Mr Scown and the appellant were both alone with Tyrell for intervals during the 48 hours before his death. The fatal injuries were inflicted by one of them. Tyrell was very unwell in the two days preceding his death. Neither the appellant nor Mr Scown sought timely medical attention for Tyrell.

Mr Scown pleaded guilty to manslaughter on the agreed basis that he was criminally negligent in failing to seek medical assistance for Tyrell. The appellant also pleaded guilty to manslaughter, however, her matter was set down for a hearing to determine the factual basis on which she was to be sentenced for the offence. The prosecution's primary case was that the appellant inflicted the blunt force trauma that caused Tyrell's death. The prosecution's alternative case was that the appellant failed to seek medical assistance for the child. The appellant denied the primary case but acknowledged liability on the alternative basis.

The appellant did not give evidence at the sentencing hearing. At the outset of the sentencing judge's reasons, his Honour stated that he was permitted to more readily accept evidence or draw inferences invited by the prosecution in the absence of contradictory evidence from the offender, reflecting the principles enunciated in *Miller*. His Honour took into account the appellant's failure to give contradictory evidence before making findings adversely to her in relation to a number of contested facts, and concluding that she had inflicted the blunt force trauma causing Tyrell's death. The appellant was sentenced to nine years' imprisonment.

The appellant applied for leave to appeal to the Court of Appeal against the sentence, contending that the sentencing judge erred in having regard to the fact that she had not given evidence and inviting the Court of Appeal to depart from *Miller*. The Court of Appeal held that the sentencing judge had not applied the principles in *Miller* and refused leave to appeal. By grant of special leave, the appellant appealed to the High Court.

The High Court unanimously found that *Miller* was wrongly decided and that the sentencing judge had applied the principles stated in *Miller* to the determination of at least some of the contested

facts. Given that a plea of guilty is a formal admission of each of the legal ingredients of the offence, and that the offence of manslaughter may be committed in a wide range of circumstances of varying implications as to culpability, the Court held that the appellant's plea of guilty to manslaughter did not relieve the prosecution of the obligation to prove the facts of its primary case without assistance from her. In the result, the appeal was allowed, the appellant's sentence quashed, and the matter remitted to the Supreme Court of Queensland for the appellant to be re-sentenced according to law.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*