

26/05; [2005] VSC 379

SUPREME COURT OF VICTORIA

DPP v MICEVIC

Cummins J

11 September 2005 — (2005) 12 VR 14; (2005) 158 A Crim R 1

CRIMINAL LAW AND PROCEDURE – JURY TRIAL HELD ON A SUNDAY – WHETHER SUNDAY LIKE OTHER HOLY DAYS IS A *DIES NON JURIDICUS* (NOT A COURT DAY) – WHETHER PERMISSIBLE TO TAKE A VERDICT ON A SUNDAY: SUPREME COURT ACT 1986, S7.

There is no established religion in Victoria or in Australia. The law does not recognise, nor does the Supreme Court, holy days, whether Sunday, Saturday or Friday; although religions do. The observance of religion is a matter for the individual, not for the State or the law. At common law in Australia there are no “holy” days so called, nor does such a day constitute a *dies non juridicus*. In Australia each day is a civil day in a secular system of law in a secular State. Further, there is no Victorian legislation making Sunday or any other day a holy day or a *dies non juridicus*.

CUMMINS J:

1. Today is a Sunday and we are in court in a criminal trial with the jury deliberating in the jury room. The jury retired to consider its verdict on the charge before it of manslaughter at 2.45 pm on Thursday last. It deliberated throughout Thursday afternoon, deliberated for eight hours on Friday and again for eight hours yesterday, being Saturday. Mid-afternoon yesterday, the jury through my tipstaff and head keeper, communicated to the court that it wished to sit and continue deliberating today, which request I granted.

2. The accused, Zdradko Micevic, then 21 years of age and a security employee engaged at the Beaconsfield Hotel, St Kilda, is charged with the manslaughter of David Hookes on 19 January 2004. Mr Hookes was the Victorian Cricket Coach and also a media presenter. The trial has taken three weeks to date. Forty-five witnesses, including the accused, have given evidence before the jury.

3. Early this morning by email, learned senior counsel for the prosecution raised the question whether it is permissible to take a verdict on Sunday. I have now heard submissions. In the 2002 *Victorian Trial Manual* at p1123 it is asserted that:

“As the taking of a verdict is a public judicial act it is extremely doubtful whether a verdict can be taken on a *dies non*, such as a Sunday.”

Such a statement in a 2002 text book in Australia I must say is surprising; but more relevantly, I consider is wholly erroneous.

4. The authority referred to in the *Victorian Trial Manual* is *Winsor v R*^[1], and an article *Never on Sunday*^[2]. In *Winsor* there were *obiter dicta* doubting whether a verdict could be validly received on a Sunday, by Cockburn CJ at 308 (referring to old authority of Lord Coke and Comans), Blackburn J at 317 and Mellor J at 322. The attractively entitled article *Never on Sunday* – although we are – is by S. Spencer QC, Recorder. There is other English authority, referred to conveniently in *In re “N” (Infants)*^[3]. Stamp J there stated at 523:

“The authorities show, beyond doubt, that at common law, Sunday, like other holy days, was a *dies non juridicus*.”

Stamp J in 1967 cited authority from the years 1611 and 1764.

5. In my view the cited English authorities do not constitute the common law in Victoria. This is a secular judicial system in a secular State. There is no established religion in Victoria or in

Australia. The law does not recognise, nor does this Court, holy days, whether Sunday, Saturday or Friday; although religions do. The observance of religion is a matter for the individual, not for the State or the law. At common law in Australia there are no “holy” days so called, nor does such a day constitute a *dies non juridicus*. In Australia each day is a civil day in a secular system of law in a secular State. The English common law cases spoke of a society with an established religion, in centuries long gone. They do not state the common law in Australia in the 21st century.

6. Further, and in any event, the matter in Victoria is governed by statute. Section 7 *Supreme Court Act* 1986 provides:

“Subject to the Rules, the Court may sit and act at any time and place.”

The section means what it says. There is nothing in the Chapter I of the Rules – *Supreme Court (General Civil Procedure) Rules* 1996 – contrary to the proposition that the Court can sit on any day; and there is nothing in Chapter VI – *Supreme Court (Criminal Procedure) Rules* 1998 – either.

7. Further, there is no Victorian legislation making Sunday or any other day a holy day or a *dies non juridicus*, either generally or for purposes of receiving a verdict. There is nothing in Part III Division I Sub-division 19 *Crimes Act* 1958 (Verdicts) or in Part 6 *Juries Act* 2000 (Jury Trials). There was a brief appearance in Victorian legislation of *The Sunday Observance Act* (1677) 29 Charles II cVII, s6. It was inserted in the *Supreme Court Act* 1958 by s7 *Imperial Law Re-enactment Act* 1980. That Act inserted s62(1A), which had its genesis in *The Sunday Observance Act* of Charles II. Even that, however, rendered void only service of process on a Sunday. In any event, the *Supreme Court Act* 1958 was repealed in whole by s140(1) of the *Supreme Court Act* 1986; which brings us to the present section 7, which provides that the Court may sit and act at any time and place.

8. That is how we come to be here in Melbourne on a Sunday, competently and validly, according both to statute and common law.

[ADDENDUM: A verdict of not guilty of manslaughter was returned by the jury at 5.45 pm on Monday 12 September 2005].

^[1] (1866) LR 1 QB 289. When the question of the discharge before verdict of the jury was taken by writ of error to the Court of Exchequer Chamber, the matter of *dies non juridicus* was not referred to in argument or judgment: *Winsor v R* (1866) LR 1 QB 390.

^[2] (1995) Crim LR 625.

^[3] (1967) 1 Ch D 512.

APPEARANCES: For the DPP: Mr R Elston SC and Mr J Baum, counsel. Solicitor for Office of Public Prosecutions. For the Accused Micevic: Mr T Forrest QC, counsel. Galbally Rolfe, solicitors.