

## **STRBAK v THE QUEEN (B55/2019)**

Court appealed from: Queensland Court of Appeal  
[2019] QCA 42

Date of judgment: 12 March 2019

Special leave granted: 11 September 2019

Ms Heidi Strbak was charged with the manslaughter of her 4 year old son, Tyrell. While she pleaded guilty to that offence, the particular basis for her criminal responsibility was disputed. The medical evidence showed that Tyrell died as a result of abdominal injuries caused by blunt force trauma. The prosecution alleged that Ms Strbak applied that force, or alternatively, that she failed to seek medical treatment for him. Ms Strbak admitted her guilt only upon that second basis. A trial to determine the facts then followed.

In 2017 a co-accused, Mr Matthew Scown (Ms Strbak's then partner, but not the father of Tyrell), pleaded guilty to manslaughter. He was then sentenced upon the basis that he had caused Tyrell's death by failing to obtain medical assistance for him.

The prosecution's case that Ms Strbak had inflicted the fatal blows was entirely circumstantial. There was however evidence that she had previously acted abusively and aggressively towards Tyrell. Although the medical evidence differed, the dominant view was that the fatal injuries were the result of two distinct episodes. The first occurred 24 to 48 hours prior to death, with the second occurring much closer to the time of death. After a six day hearing, the sentencing judge found that Ms Strbak had caused Tyrell's fatal injuries. She was then sentenced to nine years' imprisonment.

On 12 March 2019 the Queensland Court of Appeal (Fraser & McMurdo JJA; Crow J) unanimously refused Ms Strbak leave to appeal against her sentence. Justices McMurdo and Fraser held that the sentencing judge had not erred in finding that Ms Strbak had caused Tyrell's injuries, a conclusion that was supported by the prosecution's strong circumstantial case and by Mr Scown's testimony. This made it much more probable than not that Ms Strbak was responsible for those injuries, rather than Mr Scown (who was the only other realistic candidate).

While agreeing with Justices McMurdo and Fraser, Justice Crow also dismissed Ms Strbak's complaint that the sentencing judge had erred in placing determinative weight on Mr Scown's evidence without taking into account the strong incentive he had to absolve himself. His Honour additionally rejected the submission that the sentencing judge had undermined the privilege against self-incrimination by more readily accepting the prosecution evidence. This was in circumstances whereby Ms Strbak had exercised her right to silence. While senior counsel for Ms Strbak conceded that *R v Miller* [2004] 1 Qd R 548 ("*R v Miller*") compelled the sentencing judge to take this view, it was submitted that *R v Miller* was incorrect and that it ought to be reconsidered. Justice Crow

however concurred with Justice McMurdo that *R v Miller* was simply not engaged.

In this matter, the ground of appeal is:

- In refusing to reconsider *R v Miller* there was a constructive failure by the Queensland Court of Appeal to exercise its jurisdiction.