



## HIGH COURT OF AUSTRALIA

29 May 2020

PICKETT v THE STATE OF WESTERN AUSTRALIA; MEAD v THE STATE OF WESTERN AUSTRALIA; MEAD v THE STATE OF WESTERN AUSTRALIA; ANTHONY v THE STATE OF WESTERN AUSTRALIA; TSM (A CHILD) v THE STATE OF WESTERN AUSTRALIA  
[2020] HCA 20

Today the High Court unanimously dismissed five appeals from a judgment of the Court of Appeal of the Supreme Court of Western Australia. The appeals concerned whether ss 7(b), 7(c) and 8 of the *Criminal Code* (WA) ("the Code") apply to render an enabler or an aider, or a party to an unlawful common purpose, guilty of murder where the deceased may have been killed by a child who was not proven to be criminally responsible for the killing under s 29 of the Code.

On 27 January 2016 at about 3.30 am, a group of eight males ("the Appellants' Group"), which included the five appellants and PM, who was aged 11 at the time, were involved in the assault of Patrick Steven Slater ("the Deceased") on the first floor of The Esplanade Train Station complex in Perth. Each of the eight members of the Appellants' Group were captured by CCTV footage proceeding to the first floor of The Esplanade Train Station complex holding weapons or objects that could be used as weapons; however, there was no CCTV footage of the assault. One member of the Appellants' Group used a screwdriver to stab the Deceased in the chest, causing him to bleed to death shortly afterwards.

Each of the eight males of the Appellants' Group was charged with murder. The five appellants pleaded not guilty and were tried together in the Supreme Court of Western Australia before a judge and a jury. PM was tried separately in the Children's Court of Western Australia. At the trial of the appellants, the case for the prosecution was put on the basis that one member of the Appellants' Group inflicted the fatal stab wound, and only that person caused the death of the Deceased under s 7(a) of the Code, while each of the other seven males in the Appellants' Group was deemed to have taken part in committing the offence as an enabler or an aider, or a party to an unlawful common purpose, under s 7(b), s 7(c) or s 8 of the Code. Sections 7 and 8 of the Code operate when "an offence is committed".

At the appellants' trial, the prosecution had not proved beyond reasonable doubt that it was a person other than PM who stabbed the Deceased. Under s 29 of the Code, because PM was under the age of 14 at the time of offending, but over the age of ten, he could not be criminally responsible for his acts in killing the Deceased unless it was proved by the prosecution that, at the time of the killing, he had the capacity to know that he ought not to do the act. The prosecution adduced no evidence to establish PM's capacity. The trial judge declined to direct the jury that they could not convict the appellants of murder unless they were satisfied beyond reasonable doubt that PM was not the person who stabbed the Deceased. Each of the appellants was convicted of murder. The majority of the Court of Appeal held that the appellants were rightly convicted of murder by operation of s 7(b), s 7(c) or s 8 of the Code notwithstanding that PM, as the hypothetical killer, was not criminally responsible for killing the Deceased.

By grant of special leave, the appellants appealed to the High Court. The Court unanimously held that the expression "an offence" in ss 7 and 8 of the Code refers to the act or omission

which constitutes the offence, not the criminal responsibility of the actor. The Court held that the liability to punishment of each of the appellants for murder by operation of s 7(b), s 7(c) or s 8 of the Code did not depend upon either the criminal responsibility of PM, and thus proof beyond reasonable doubt that he had capacity under s 29, or proof beyond reasonable doubt that he did not stab the Deceased. Accordingly, the trial judge did not err in declining to instruct the jury that it did.

- *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.*