

Tuesday 8 July 3.30pm to 5.00pm

Developing a Contextual Approach to Implied Consent in a Visual Recording Environment: Climate for Changing the Criminal Law

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Abstract

For the purpose of making visual recording offences, consent should not be automatically implied merely because the person visually recorded is in a public place. There are several drawbacks from automatically implying consent, for example, it leaps from an awareness of risk of being visually recorded in a public place to a waiver of privacy and thus consent to the making of the visual recording. Further, it treats observing another person with a naked eye the same as making a visual recording of another person, which are very different, and the latter involves a permanent recording. Another shortcoming with implying consent to being visually recorded in a public place is that it discriminates against homeless people, Indigenous people and youth, who spend a large portion of their time in public places. These drawbacks have prompted the criminal law to recognise that privacy is a matter of degree, privacy may exist in a public place and that implied consent in a public place should be approached contextually.

My contextual approach to implied consent builds on privacy literature. In a visual recording environment, my contextual approach to implied consent involves examining the means used by the person making the visual recording to disrupt the person visually recorded in a public place and how the making of the visual recording disrupted the person visually recorded. Developing a contextual approach to implied consent is important to a visual recording environment because it enables the criminal law to keep up with advances in mobile phone cameras and digital cameras.

Homicide and the Excuse of Accident: Reform, Abolish or Retain?

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Abstract

In October 2007 the Queensland Department of Justice and Attorney-General released a discussion paper which called for comments and feedback as to appropriateness of the current laws relating to the excuse of accident and its application to homicide offences. The discussion papers were in response to the considerable community interest that followed two high profile homicide cases. In each of the cases a jury acquitted in circumstances where the accused had perpetrated significant acts of violence against the victim but where at trial the accused sought to rely on the excuse of accident. The discussion paper questioned whether, in light of the high profile acquittals, the law relating to the excuse of accident reflects community expectations. As the excuse of accident provides the fault element for offences which do not require the Crown to prove the existence of a specific mental element and the discussion paper was limited to its application to homicide offences the Queensland review is concerned with the appropriate fault element for the offence of manslaughter.

This paper will review the evolution of the law that is currently the subject of review. The paper will focus on the difficulty faced by courts in applying the excuse in circumstances where a victim has died as a result of acts of violence perpetrated by the accused. The paper will also compare the current state of the law in Queensland with that of other jurisdictions that are currently reviewing their laws relating to manslaughter. Finally the paper will evaluate whether the excuse as it relates to homicide should be retained, reformed or abolished.
