



HIGH COURT OF AUSTRALIA

8 December 2021

CHAUNCEY AARON BELL v STATE OF TASMANIA
[2021] HCA 42

Today, the High Court dismissed an appeal from a judgment of the Court of Criminal Appeal of the Supreme Court of Tasmania. The appeal concerned the operation of s 14 of the *Criminal Code* (Tas) ("the Code"), and the circumstances in which an honest and reasonable, but mistaken, belief in the existence of a state of facts will operate to excuse conduct that would otherwise constitute an offence.

The appellant was relevantly charged with one count of supplying a controlled drug to a child, being a person under the age of 18 years, contrary to s 14 of the *Misuse of Drugs Act 2001* (Tas) ("the MD Act"). The complainant was 15 years old at the time of the alleged offence. However, the appellant claimed that he believed that the complainant was 20 years old and, on that basis, sought to rely on the excuse of honest and reasonable mistake in respect of the complainant's age. The trial judge ruled that the excuse was not available to the appellant because, even if his belief that the complainant was an adult had been true, his conduct still would have constituted an offence, namely, the offence of supplying a controlled drug to another person contrary to s 26 of the MD Act. The trial judge directed the jury accordingly. The jury returned a guilty verdict. An appeal to the Court of Criminal Appeal was dismissed.

Section 14 of the Code relevantly provided that the question whether criminal responsibility is entailed by an act done under an honest and reasonable, but mistaken, belief in the existence of any state of facts the existence of which would excuse such act, is a question of law, to be determined on the construction of the statute constituting the offence. Section 8 of the *Criminal Code Act 1924* (Tas) preserved the operation of common law justifications, excuses and defences except insofar as they were altered by, or inconsistent with, the Code.

The High Court held that the effect of s 14 of the Code was not to lay down a substantive rule of law. Rather, its effect, when read with s 8 of the *Criminal Code Act*, was to regulate the application of the principle of honest and reasonable mistake of fact, which existed at common law, to the offence in s 14 of the MD Act. That common law principle operates to excuse conduct where the accused holds an honest and reasonable belief in a state of facts, which, if true, would make the act of the accused "innocent". The appellant did not dispute on appeal that his conduct would have constituted an offence against s 26 of the MD Act. However, the appellant advanced an interpretation of the common law principle that would require only that his conduct be innocent of the particular offence charged. The High Court rejected that submission. Because the appellant's mistaken belief as to the complainant's age, if true, would not have rendered his act "innocent" within the operation of the MD Act, the common law excuse was not available. The trial judge was correct not to leave the excuse to the jury.

- *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.*