



R v. Davidson

[1969] VR 667

Country: Australia

Region: Oceania

Year: 1969

Court: Supreme Court of Victoria

Health Topics: Sexual and reproductive health, Violence

Human Rights: Right to health, Right to life

Facts

Davidson was a medical doctor who was charged of four counts of unlawfully using an instrument and one count of conspiring to use an instrument or other means with intent to procure the miscarriage of a woman.

Decision and Reasoning

The Court held that an abortion would not be "unlawful" if it was necessary and proportional to the need to avert a serious danger. The tests for necessity and proportionality were derived from the corresponding tests for murder.

The Court held that a therapeutic abortion would be necessary if it averted a serious danger to the life or to the physical or mental health of the woman, "provided it is a serious danger and not merely the normal dangers of pregnancy and childbirth" ([1969] VR p. 671). A therapeutic abortion also needed to be proportionate to the serious danger.

The jury eventually found Davidson not guilty on this basis.

Decision Excerpts

"For the use of an instrument with intent to procure a miscarriage to be lawful the accused must have honestly believed on reasonable grounds that the act done by him was (a) necessary to preserve the woman from a serious danger to her life or her physical or mental health (not being merely the normal dangers of pregnancy and childbirth) which the continuance of the pregnancy would entail; and (b) in the circumstances not out of proportion to the danger to be averted." [1969] VR p. 672.

"Accordingly, to establish that the use of an instrument with intent to procure a miscarriage was unlawful, the Crown must establish either (a) that the accused did not honestly believe on reasonable grounds that the act done by him was necessary to preserve the woman from a serious danger to her life or her physical or mental health (not being merely the normal dangers of pregnancy and childbirth) which the continuance of the pregnancy would entail; or (b) that the accused did not honestly believe on reasonable grounds that the act done by him was in the circumstances proportionate to the need to preserve the woman from a serious danger to her life or her physical or mental health (not being merely the normal dangers of pregnancy and childbirth) which the continuance of the pregnancy would entail." [1969] VR p. 672.