SMITH v. THE QUEEN (S249/2016)

Court appealed from: New South Wales Court of Criminal Appeal
[2016] NSWCCA 93

Date of judgment: 20 May 2016

Special leave granted: 14 October 2016

The Appellant is a US citizen who was convicted of importing a commercial quantity of methamphetamine into Australia, contrary to s 307.1(1) of the *Criminal Code* (Cth) ("the Code"). He was subsequently sentenced to 10 years imprisonment, with a non-parole period of 5 years.

According to the Appellant, he came to travel to Australia because a "Reverend James Ukaegbu" had initially organised a trip for him from the USA to India. While in India, the Appellant said that he met with a friend of the Reverend, who then asked him to deliver some gifts to someone in Australia. Those gifts included: two executive golf sets, a pair of shoes, two containers of vitamins and various cakes of soap.

Upon arrival in Australia, Australian Customs officers detected traces of methamphetamine while examining the Appellant's luggage. Ultimately, 1,945.5 grams of methamphetamine was found in packages secreted inside that luggage. During interviews with Australian Customs and the Australian Federal Police, the Appellant recounted that he had significant misgivings about carrying the gifts to Australia, but stressed that he had absolutely no intention of importing drugs. At trial, the Appellant submitted that that he had no idea that anything illegal was concealed within his luggage.

Upon appeal, the Appellant submitted that the trial Judge, Judge Hock, had misdirected the jury with respect to the fault element of intention of s 307.1(1) of the Code. He contended that her Honour had erred in directing the jury that they might consider whether the Appellant was aware of the *likelihood* that there were packages in his luggage, in the sense that there was a "significant or real chance" that they were there. The Appellant submitted that the jury should have been directed that, for an offence contrary to s 307.1(1) of the Code, it was necessary for the Crown to prove he had an *intention to import* those packages. It was insufficient to prove that he was merely reckless as to their presence.

On 20 May 2016 the Court of Criminal Appeal (Beazley P, Harrison & R A Hulme JJ) held that the offence of importing a commercial quantity of a border controlled drug under the s 307.1(1) of the Code had three elements. The first related to the importation of a substance, in respect of which the fault element was intention. The second was that the substance was a border controlled drug, in respect of which the fault element was recklessness. The third was that the quantity was a commercial quantity, in respect of which there was absolute liability.

Their Honours found that a jury may properly be directed that a finding of intention may be arrived at by a process of inferential reasoning from proved

facts. They held however that proof of intention always involves a factual inquiry to be conducted by reference to all the circumstances of the case at hand. The question therefore is always whether intention has been established to the satisfaction of the jury beyond reasonable doubt.

The ground of appeal is:

- The Court of Criminal Appeal erred in holding that the trial judge did not misdirect the jury with respect to the fault element of intention.