HIGH COURT OF AUSTRALIA

26 May 2010 **Manager, Public Information**

HAJAMAIDEEN MOHAMED ANSARI v THE QUEEN
ABDUL AZEES MOHAMED ANSARI v THE QUEEN

[2010] HCA 18

Today the High Court held that a charge, under s 11.5 of the *Criminal Code* (Cth) ("the Code"), of conspiracy to commit an offence that has recklessness as its fault element is not bad in law.

The appellants, Hajamaideen Mohamed Ansari and Abdul Azees Mohamed Ansari, are brothers who operated a money exchange business in Sydney. They arranged for the collection and deposit into various bank accounts of approximately $2 million. Each deposit was for an amount less than $10,000 in cash. The appellants were alleged to have made similar arrangements in relation to a further $2 million to $3 million in cash, though they were arrested before receiving any of the money. Under the *Financial Transaction Reports Act* 1988 (Cth) ("the FTR Act"), banks and other financial institutions are obliged to report cash transactions involving amounts of $10,000 or more to a Federal Government agency. Pursuant to s 31 of the FTR Act, a person commits an offence if he or she is a party to two or more cash transactions involving less than $10,000 and it would be reasonable to conclude that the person conducted the transaction(s) in a particular manner or form so as to avoid the transaction(s) being reported to the relevant federal agency.

The appellants were jointly tried and convicted on charges — under ss 11.5 and 400.3(2) of the Code — of conspiring to deal with money worth $1 million or more, being reckless as to the risk that the money would be used as an instrument of crime. They appealed unsuccessfully to the NSW Court of Criminal Appeal. On 2 October 2009, they were granted special leave to appeal to the High Court from that decision.

The appellants' principal argument before the High Court was that the charges against them were bad in law because a criminal conspiracy under the Code could not have as its object an offence an element of which is recklessness. They contended that, were it otherwise, such a charge would require proof that the appellants intended to be reckless as to the fact that there existed a risk that the money would become an instrument of crime.

The High Court rejected the argument, holding as incorrect the premise on which it was based — that proof of an intention to commit an offence requires proof of an intention that each physical element of the offence will come into existence and that the fault element specified for that physical element will also come into existence at the same time. What is required, the Court held, is proof of an intention that an act or acts be performed, which, if carried out, would amount to the commission of an offence. The appellants' argument did not take into account that, under the Code, recklessness may be satisfied by proof of intention or knowledge. Provided that the appellants intended that the conduct upon which they agreed would be carried out and that they knew all the facts that made that conduct criminal, it did not matter that the offence that was the object of the conspiracy charge was one for which the fault element is recklessness.

A second argument — that the Court of Criminal Appeal mischaracterised the physical and fault elements of the offence of conspiracy under s 11.5 of the Code — was rejected for the reasons given in the Court's decision in *R v LK* [2010] HCA 17, also handed down today.

The High Court dismissed the appeals.

- *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.*

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