



HIGH COURT OF AUSTRALIA

10 May 2017

MALTIMORE SMITH v THE QUEEN;
THE QUEEN v STEVEN LAKAMU SIOSIUA AFFORD
[2017] HCA 19

Today the High Court held in relation to two appeals that an inference that an accused intended to import a substance contrary to s 307.1(1) of the *Criminal Code* (Cth) ("the Code") could be drawn from the accused's knowledge or belief that there was a real or significant chance that he or she was importing the substance.

The first appeal, *Smith v The Queen*, involved the importation into Australia of illicit drugs, secreted in golf sets, shoes, containers of vitamins and soap. Although admitting that he had some concerns about the items he had been given by an acquaintance in India, Mr Smith claimed that he had no intention to import the illicit drugs concealed in them. Mr Smith was convicted in the District Court of New South Wales on one count of importing a commercial quantity of a border controlled drug contrary to s 307.1(1) of the Code. He unsuccessfully appealed against conviction to the Court of Criminal Appeal of the Supreme Court of New South Wales on the ground that the trial judge misdirected the jury with respect to the fault element of intent.

The second appeal, *The Queen v Afford*, also involved the importation of illicit drugs. The drugs were found in packages stitched inside the lining of luggage given to Mr Afford by an acquaintance in Manila. Mr Afford denied that he intended to import the illicit drugs and submitted that even if he had been suspicious that the suitcase might contain drugs, such a suspicion could not establish an intention to import the substances. Mr Afford was convicted in the County Court of Victoria on one count of importing a commercial quantity of a border controlled drug contrary to s 307.1(1) of the Code. He successfully appealed to the Court of Appeal of the Supreme Court of Victoria on the grounds that the verdict was unreasonable and that a substantial miscarriage of justice occurred by reason of a misdirection with respect to the fault element of intent.

By grants of special leave, the appeals came before the High Court and were heard together. The Court held that the process of inferential reasoning posited in *Bahri Kural v The Queen* (1987) 162 CLR 502; [1987] HCA 16 is applicable to proof of an intention to import a substance contrary to s 307.1(1) of the Code. Consequently, where it is established that an accused perceived there to be a real or significant chance of a substance being present in an object which the accused brought into Australia, it is open to infer on the basis of all the facts and circumstances of the case that the accused intended to import the substance. It is also appropriate for a trial judge so to direct the jury. A majority of the Court held that the trial judge's directions to the jury were sufficient in both appeals. The Court also held that it was open to the jury to be satisfied of Mr Afford's guilt beyond reasonable doubt. Accordingly, the appeal in *Smith v The Queen* was dismissed and the appeal in *The Queen v Afford* was allowed.

- *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.*