



HIGH COURT OF AUSTRALIA

10 October 2018

PAUL JOSEPH RODI v THE STATE OF WESTERN AUSTRALIA
[2018] HCA 44

Today the High Court unanimously allowed an appeal from the Court of Appeal of the Supreme Court of Western Australia. The appellant was charged with possession of a prohibited drug with intent to sell or supply it to another, after a police search located 925.19 grams of cannabis at the appellant's home. At trial, the appellant admitted possession of the cannabis but maintained it was entirely for personal use. He further claimed that all of the cannabis was harvested from two plants located at his home. A prosecution witness, Detective Coen, testified that in his experience, mature, naturally grown female cannabis plants typically yield between 100 grams and 400 grams of cannabis head material, and that he would expect the yield from the two plants located at the appellant's home to be at the lower end of this scale. A jury found the appellant guilty.

In the Court of Appeal, the appellant sought an extension of time within which to appeal against his conviction. His proposed ground of appeal was that as a result of fresh or new evidence a miscarriage of justice had occurred. The new evidence on which the appellant relied consisted of transcripts of earlier proceedings which showed that Detective Coen had previously given evidence to the effect that naturally grown female cannabis plants may yield between 300 grams and 600 grams of head material ("the Earlier Coen evidence"). A yield within that range was consistent with the appellant's account that the cannabis in his possession had come from the two plants at his home. This evidence had not been disclosed to the appellant at trial. The Court of Appeal admitted this evidence, as well as evidence of Detective Coen's explanation that his opinion had changed after his own experiments and discussions with cannabis growers.

The Court of Appeal, by majority, refused the application for an extension of time and dismissed the appeal. The Court held that the Earlier Coen evidence was "fresh evidence". Nevertheless, the Court concluded that the non-disclosure of the Earlier Coen evidence to the appellant did not give rise to a miscarriage of justice. The Court referred to a number of considerations in reaching this conclusion, including that Detective Coen's explanation for his change in opinion was "credible and cogent". The Court concluded that there was no significant possibility that, on the whole of the trial record and the additional evidence, a jury, acting reasonably, would be satisfied to the requisite standard that the appellant did not intend to sell or supply to another any of the cannabis.

By grant of special leave, the appellant appealed to the High Court on the ground that the majority of the Court of Appeal erred in finding that the fresh evidence did not give rise to a significant possibility of acquittal by the jury. The Court accepted this contention. The blow to the appellant's credibility by Detective Coen's evidence at trial was undeniably significant to the jury's assessment of the strength of the appellant's evidence. The Court of Appeal, by considering that the effect of any doubt as to the reliability of Detective Coen's explanation for his change of opinion on the appellant's prospects of acquittal might be resolved by the Court's acceptance of that explanation, misunderstood the role of an appellate court confronted with fresh evidence that impugns a verdict at trial. The cogency of his explanation was a question for the jury. Accordingly, the Court ordered that the appellant's appeal be allowed, his conviction be quashed, and a new trial be had.

- *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.*