

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY



No. M 161 of 2017

BETWEEN:

THE QUEEN

Appellant

and

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ROMANO FALZON

Respondent

APPELLANT'S OUTLINE OF ORAL ARGUMENT

Part I:

1.1 This Outline is in a form suitable for publication on the internet.

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Part II:

2.1 The appellant bore the onus of establishing that the cannabis possessed by the respondent was possessed for the purpose of sale and not the respondent's personal use.

2.2 If the respondent was in the business of cultivating and then selling cannabis this state of affairs would be relevant to the respondent's purpose in possessing the cannabis. The existence of the business would make it more likely that the cannabis possessed was for the purpose of sale and not for personal use.

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2.3 The large amount of cash money found at the respondent's residence in the vicinity of drug trafficking accoutrements and paraphernalia bore witness to the existence of a drug trafficking business. The cash formed, as it was put to the judge by

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prosecuting counsel during preliminary argument, “an implement of crime in the sense that it’s working capital to be used for future expenditure in a business or represents past sales”.¹

2.4 The evidence of the cash money was probative and thus relevant to determination of the issue that stood between the prosecution and defence.

10 2.5 There was nothing *unfairly* prejudicial about the evidence of the cash money. True it was that the evidence of the cash money may have represented the product of past sales of cannabis, but it was no part the appellant’s purpose in seeking the admission of this evidence to suggest that the appellant had a propensity or tendency to traffick in cannabis in the sense of asserting that that the respondent was just “the kind of person” to engage in this form of activity. Rather, the contention that the appellant wished the jury to accept was the existence of an ongoing commercial operation in respect of which the evidence of the cash money was but one feature or incident. The point of interest was the character of the *money*. The asserted character of the money was in no different position to, say, the character of deal bags, scales or any other implement of trafficking that may, or may not, betray past trafficking acts. The admissibility of this type of evidence, as circumstantial evidence, is not contingent
20 on any finding of propensity or tendency.

2.6 Most importantly, the admissibility of the evidence of the cash money as an incident of an ongoing business was not – as the Court below appeared to hold – contingent upon the Crown alleging a “course of conduct” or *Giretti* offence. Acceptance of such contingency could have the effect of rendering ineffective a broad swathe of “possession for sale” trafficking cases.

30 2.7 The evidence of the cash money being relevant and thus probative, there was no reason of prejudice or principle that could warrant its exclusion. The Court below erred in holding that the trial judge had erred in admitting the evidence of the cash money.

¹ See T of 4 May 2016 at 164(1)-(9) found in the Appellant’s Supplementary Materials. In essence, this point was made on numerous occasions by the prosecutor in his closing to the jury.

Dated: 19 April 2018

A handwritten signature in black ink, appearing to read 'Chris Boyce', written over a horizontal dotted line.

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