IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. M161 of 2017

BETWEEN:

THE QUEEN

Appellant

v

ROMANO FALZON

Respondent

APPELLANT'S SUBMISSIONS

Part I: Suitability for internet publication

1.1 The appellant certifies that this submission is in a form suitable for publication on the internet.

Part II: Concise statement of the relevant issues

2.1 Is it relevant to proof of an accused's purpose in possessing a certain drug that the accused is generally engaged in the business of trafficking in that drug?

Part III: Notice under the *Judiciary Act* 1903

3.1 The appellant certifies that the question of whether notice should be given under section 78B, *Judiciary Act* 1903 (Cth) has been considered. Such notice is not considered to be necessary in this appeal.

Part IV: Citation of reasons for judgment

4.1 The decision of the judge at first instance is cited as *DPP v Falzon* [2016] VCC.

4.2 The decision of the Court of Appeal ("the Court below") is cited as *Falzon v The Queen* [2017] VSCA 74 ("the judgment below").

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Part V: Statement of relevant facts

Introduction

5.1 The necessary factual background to this case can be found in the judgment below at paragraphs [5] – [18] and [56] - [62] in the reasons for decision of Whelan JA. It can be found, also, at paragraphs [83] – [98] and [123] – [128] of the reasons for decision of Priest and Beach JJA ("the majority below"). Nevertheless, in order more easily to understand the appellant's submission in this Court, the following factual matters may be emphasised.

Charges, findings of guilt and an acquittal

5.2 The respondent was found guilty after a trial of having cultivated not less than a commercial quantity of cannabis at two properties at Sunshine North, Victoria. Those properties were 10A and 10B Mansfield Avenue. This offending was contrary to section 72A of the *Drugs, Poisons and Controlled Substances Act* 1981 (Vic.) ("the *Drugs Act*"). The respondent was also found guilty of having trafficked in a drug of dependence at a property in Sydenham, Victoria, namely, 8 Bryson Court. This offending was contrary to section 71AC(1) of the *Drugs Act*. The form of trafficking alleged in support of the Sydenham charge was that the respondent had, on 17 December 2013, knowingly possessed cannabis for the purposes of sale. The respondent was also acquitted of a charge of having trafficked in not less than a commercial quantity of cannabis at Sunshine North contrary to section 71AA of the *Drugs Act*. This charge was an alternative to the section 72A Sunshine North charge. Like the allegation made with respect to the Sydenham charge, the prosecution's case on this alternative charge (the charge of which the respondent was acquitted) was that the respondent had, on 17 December 2013, knowingly possessed cannabis in not less than a commercial quantity for the purposes of sale.

Evidence at trial

5.3 On 17 December 2013 police executed search warrants at, and searched, the properties mentioned above. A search of a dwelling located at the 10A Mansfield Avenue Sunshine North property revealed:

(a) 37 cannabis plants of varying maturity and size growing in four rooms, weighing a total of approximately 17.72 kilograms;

(b) an electrical bypass in the roof space;

(c) 15 shrouds, 28 globes, 12 electrical transformers, one carbon filter, three power boards, two shrouds with globes in boxes, six shrouds containing built-in electrical transformers, and one box containing a grow tent; and,

(d) a wall chart timetable and copies of a feed program relating to cultivation of cannabis.

5.4 In Sunshine North at 10B Mansfield Avenue, a search of a dwelling revealed:

(a) 55 cannabis plants of varying maturity and size growing in three rooms, with a combined weight of 17.039 kilograms;

(b) an electricity bypass in the roof space;

(c) a number of shrouds, globes, transformers, electrical timers, a carbon filter and wall charts relating to the growing of cannabis;

(d) assorted vacuum-sealed bags, a set of scales and a sealer device; and,

(e) a tray containing dried cannabis weighing 28.5 grams, and a vacuum-sealed bag containing dried cannabis weighing 21.1 grams.

5.5 In total, 92 plants were located at the two Sunshine North Mansfield Avenue properties, with a combined weight of 34.781 kilograms. There was also an additional 49.6 grams of dried cannabis.

5.6 On the same date, police executed a search warrant at the Sydenham property and searched a dwelling there. At the Sydenham property, police found:

(a) ten immature cannabis plants weighing 1.76 kilograms;

(b) eight harvested cannabis plant stumps weighing 657.9 grams;

(c) an electricity bypass;

(d) a number of light shrouds, light globes, electrical transformers, power boards, charcoal filters, together with feed program charts setting out the timetable for nutrients to be fed to cannabis plants;

(e) two plastic bags containing a mixture of dried cannabis and unidentified plant material weighing a total of 4.1 grams; and,

(f) a zip lock bag containing dried cannabis weighing 3.3 grams.

5.7 On 17 December 2013, police also executed a search warrant at the applicant's home at 5 Kendall St, Essendon. At this location, police found:

(a) a plastic container holding dried cannabis that weighed 220 grams;

(b) three snap-lock bags containing dried cannabis and unidentified plant material, one weighing 113.8 grams and the other two 172.3 grams, located inside a locked cabinet in the garage;

(c) a sealed bag (either heat sealed or vacuum sealed) containing dried cannabis that could be connected to the presence of a sealing machine at Sunshine North (there being no sealing machine at either Sydenham or Kendall Street);

(d) a number of sets of keys consisting of keys that opened doors of the two houses located at Sunshine North;

(e) documents relating to cannabis cultivation consisting in documentation that was the same as documentation found at the premises at Sunshine North, both in hard copy and on a computer;

(f) two black garbage bags containing black water pipe tubing that was of the same type as tubing used at the two houses at Sunshine North; and,

(g) $120,800.00 in cash secreted in various locations throughout the house including the storage area under the stairs inside the house (in a black plastic bag), the upstairs en-suite bathroom (in a 'shortbread' tin inside a side bottom drawer), and the work bench in the garage (in a top drawer).

5.8 The two Sunshine North Mansfield Avenue properties were owned by an associate of the respondent and the associate's wife. Police surveillance from June 2013 disclosed the respondent's occasional attendance at these properties. The Sydenham property had been purchased jointly by the respondent and another in early 2013. It was accepted that the respondent and the joint-owner of that property cultivated cannabis there.

5.9 There was evidence led as to the value of the cannabis that had been grown or was growing at Sydenham. The estimated value of the cannabis already harvested from the cannabis plant stumps found there was between $16,000.00 and $32,000.00. The estimated value of the growing cannabis plants found there, if grown to maturity, was between $20,000.00 and $40,000.00. Evidence was given in relation to the value of

the cannabis located and seized at Kendall Street Essendon in the plastic container, the snap-lock bags and the heat or vacuum sealed bag. The estimated value was between $4,500.00 and $8,100.00, although a much higher value was suggested if the assumption was made that the cannabis was to be sold in 'gram quantities'.

5.10 The respondent was arrested on 17 December 2013 and made a number of admissions to police during a record of interview:

(a) he said that he smoked cannabis which he grew for himself;

(b) he said that the cannabis found at Kendall Street, Essendon, was his own and was for his personal use;

(c) when asked from where he had obtained the cannabis, he said that he grew it;

(d) when asked where he had grown this cannabis, he said "you know where";

(e) he said that he and the joint-owner of the Sydenham property purchased that property about a year earlier;

(f) he had grown 19 plants at the Sydenham property, of which nine had been harvested;

(g) when asked what his purpose was for the plants found at Sydenham, he said "personal use";

(h) he said that there had been a harvest at Sydenham some two weeks earlier, and when asked what had become of that material, he said "smoke most of it, youse got the rest";

(i) he visited the Sydenham property and tended the cannabis plants there, where he had been cultivating cannabis for about six months; and,

(j) when he was asked what he did with the cannabis that he did not smoke himself, he said: "give it to me mates and that. Mates come around, with the car club".

The judge's ruling

5.11 The respondent took exception to the admissibility of the cash that was found secreted at the Essendon property. The judge ruled that this evidence was admissible. The judge said that the evidence was admissible "in the same way as the finding of other indicia of trafficking is admissible", namely, as simply one part of the prosecution's circumstantial case.

The use to which the prosecution put the evidence of the cash found at Essendon

5.12 The cannabis found at Essendon was relied on by the prosecution to prove its case in respect of both Sunshine North and Sydenham.[1] It must be recalled that the prosecution alleged a commercial trafficking charge in respect of Sunshine North – the charge of which the respondent was acquitted (laid in the alternative to the charge of cultivation at Sunshine North in respect of which the respondent was convicted). Both trafficking charges – Sunshine North and Sydenham – alleged possession of cannabis on 17 December 2013 for the purposes of sale.

5.13 The argument made by the prosecutor was that the cannabis found at Essendon was packaged in a way that was common for cannabis to be packaged for sale. Reference was made in this regard to the plastic clip sealed bags and to the vacuum sealed bag found at Essendon.[2]

5.14 The cash money found at Essendon was also relied on by the prosecution to show an intent to traffick in respect of the cannabis found at Sunshine North and Sydenham. Reliance was placed on the sheer amount of cash that was found. Also, there was expert evidence adduced at trial to the effect that drug transactions are often conducted in cash so as not to leave a trail of evidence.[3] The prosecution was able to establish by means of relevant tax records that the respondent had not declared as income the cash that was found at Essendon.[4]

5.15 In respect, generally, of the material found at Essendon that was led in proof of the Sunshine North and Sydenham trafficking charges, the prosecutor described this evidence as the "indicia of trafficking". The prosecutor referred to the cash, "the quantities of dried cannabis, one in a vacuum sealed bag" and "the other plastic sealed bags, typical of drugs packaged for sale".[5]

5.16 Other references can be added: dealing with "intent", the prosecutor alleged that the respondent was conducting "a professional enterprise, a business enterprise, a profit

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[1] See the judgment below at paragraph [57].
[2] See the judgment below at paragraph [58].
[3] See the judgment below at paragraph [59].
[4] See the judgment below at paragraph [60].
[5] See the judgment below at paragraph [61].

making enterprise."[6] It was, so the prosecutor argued, "an ongoing commercial profit making enterprise."[7] The prosecutor said: "What is being engaged in is a commercial profit making activity in relation to both the cultivating of cannabis, not for personal use but for the purposes of sale, for making a profit."[8]

5.17 As demonstrated by the verbatim quotation set out by Whelan JA,[9] the respondent's possession of the cash money was woven by the prosecutor into the fabric of the conduct of this business.

5.18 However one might choose to describe or characterise what the prosecutor said, the gravamen of the prosecutor's point to the jury can be seen for what it was: it was to suggest that the evidence of the cash money found at the respondent's home – together with the other evidence of drug paraphernalia found at the house – established that the respondent was in the "illegal business" of drug trafficking. The prosecutor argued that this evidence was relevant to proof of "intent" in so far as the possession of the cannabis at the other locations was concerned.

The Court of Appeal

5.19 As is evident, the Court of Appeal split 2-1 on the question whether the trial judge had ruled correctly in not excluding the evidence of the cash found at Essendon. Whelan JA held that the evidence was admissible. Priest and Beach JJA held to the contrary. Having found that the admission of the impugned Essendon cash evidence vitiated the respondent's conviction on the Sydenham trafficking charge, Priest and Beach JJA concluded that the admission of this evidence also tainted unacceptably the respondent's conviction of the Sunshine North cultivation charge. Priest and Beach JJA quashed all the respondent's convictions and ordered a new trial. Whelan JA would have dismissed the respondent's appeal.

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[6] T at 1343(22)-(28).
[7] T at 1345(10)-(11).
[8] T at 1351(9)-(12).
[9] See the judgment below at paragraph [59].

Part VI: Statement of argument

Introduction - principle

6.1 The principle at stake in this appeal is the question of the admissibility of evidence that may betray past wrongdoing and, as such, a criminal propensity and/or tendency, but which is relevant for a different purpose.[10]

6.2 The majority below was prepared to accept that the cash money the subject of this appeal was open to be characterized as a "float for an ongoing drug-related business."[11] This cash may, or may not, have signified past wrongdoing, but it was the simple possession of the money that in this case was said to be redolent of a continuing intention to conduct business in the relevant commodity, that commodity being cannabis. If the respondent was in this business then he was more likely to have possessed the cannabis the subject of the Sunshine Nth and Sydenham cultivation operations for sale.

6.3 But the Crown case on intent or purpose did not rely solely on possession of the cash. The cannabis at each of the Sunshine Nth and Sydenham locations was possessed in an amount that might be thought vastly to exceed what could conceivably be consumed by just one person, assuming reasonable fortitude. The Crown could prove that the respondent possessed the other accoutrements and paraphernalia of drug trafficking found at the respondent's Essendon residence.

6.4 Focus should, however, be placed upon how it was that possession of the cash took forward the Crown case on intent.

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[10] *Makin v A.G. (NSW)* [1894] AC 57 at 65 per Lord Herschell. The Lord Chancellor said: (T)he mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused. The statement of these general principles is easy, but it is obvious that it may often be very difficult to draw the line and to decide whether a particular piece of evidence is on one side or the other." The Lord Chancellor's concluding words to the first sentence set out above are not to be interpreted as proposing a "closed list of the sort of cases in which the principle operates": *Harris v DPP* [1952] AC at 705 cited by Gibbs ACJ in *Markby v The Queen* (1978) 140 CLR 108 at 116-117. See, also, *Perry v The Queen* (1982) 150 CLR 580 at 584-589 per Gibbs CJ.

[11] See the judgment below at paragraph [130].

6.5 This may be done by way of analogy.[12] When a shop-keeper possesses a cash float in the shop's till, this very act of possession may suggest an intention to sell the item located in the shop's window display. The money possessed may, or may not, be the product of past sales. Indeed, the provenance of the money may be unknown. Given what the Crown could prove in the present case, from the jury's advantaged position it was as if the cash money secreted in the Essendon home was just such a float. Indeed, as has been noted, the majority below were content to characterize the money in precisely this way.

10 6.6 But the Court below, due to the reasoning of the majority below, ruled that the Crown could not approach the case in this manner. One can perceive essentially four reasons in the judgment below that are proffered by the majority in order to explain why this was the case. Each reason may be taken in turn.

The failure to plead a Giretti count

6.7 The "essential"[13] difficulty confronting the Crown, according to the majority below, or the objection that the majority held that "as a matter of logic"[14] stood in the way of the cash money's admissibility, was the fact that the Crown had not pleaded what is essentially a course of conduct charge available in Victoria at common law – a
20 charge whose form is premised upon the decision of the Victorian Court of Criminal Appeal in *R v Giretti* (1986) 24 A Crim R 112 ("*Giretti*"). A *Giretti* charge is a charge by which it may be alleged "that there was a continuing offence, *in the nature of a business*, being carried on".[15] A *Giretti* charge is a special form of pleading. It overcomes problems of duplicity and lack of particularity that otherwise might arise.

6.8 But the principle upon which the Crown relied in the present case, and as has been described above, is not encapsulated by *Giretti*. The principle upon which the Crown relied was one that might lead to the admission, say, of a shingle hung up outside the

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[12] With apologies to Gleeson CJ's tailor: see *Sultana v The Queen* (1994) 74 A Crim R 27 ("*Sultana*") at 29.
[13] See the judgment below at paragraph [128].
[14] See the judgment below at paragraph [146].
[15] (Emphasis added) See the judgment below at paragraph [128]. See, also, at paragraph [130], where, having observed that the evidence of the cash could only have gone towards proof that the respondent was carrying out an ongoing drug business, Priest and Beach JJA said: "Given the manner in which the prosecution chose to put its case against the appellant, however,... [namely, as an assertion alleging that the respondent was in possession of cannabis on 17 December 2013 for the purposes of sale]... the cash cannot have been relevant on either of those bases."

Essendon premises advertising the sale of cannabis. The mere possession of money in the form of a cash float was akin to this form of advertisement. It was evidence that betrayed a present intention to sell. Whilst it might be *sufficient* to prove that same intention by means of a past course of conduct of selling that produces money in the form of a cash float, this is by no means *necessary*. The provenance of the money that goes to make up a cash float may be unknown; but the use that is to be made of the money in the float is clear. A person – often someone possessed of a certain entrepreneurial frame of mind - may be described as being "in" a certain "business". But nothing may be known about that person's background.

6.9 The majority below's appeal to *Giretti*'s case obscured this important distinction. The Crown, it might be thought, is likely to have struggled to prove in this case a course of conduct in trafficking in the *Giretti* sense. Thus the reasoning employed by the majority means that the Crown is effectively prevented from adducing what, by any rational analysis, is highly relevant evidence. And the question may legitimately be posed when it comes to exclusion on this basis: why stop at the cash money?

6.10 This self-same reasoning could extend so as to render inadmissible *any* evidence suggestive of the carrying out of a drug trafficking trade or business led in proof of a possession-for-sale drug trafficking charge. It could apply to evidence of the possession of cash or evidence of the possession of any other drug accoutrements or paraphernalia. Thus, acceptance of the majority's reasoning would mean exclusion of evidence that is traditionally admitted in proof of trafficking charges where the allegation is possession for sale - evidence such as the existence of weapons, telephones, tick-books or sheets and client lists etc. For example, here, apart from the cash, the respondent did not - it appears - apply to exclude the other evidence of drugs and drug paraphernalia found at Essendon. This other evidence found at Essendon was also evidence of the applicant having conducted a business in drug trafficking and, therefore, might (at least perhaps potentially) have founded the laying of a *Giretti* charge. Had the respondent sought to exclude this other evidence, the reasoning of the majority might just as easily have been applied so as to exclude it, as well as the cash. It can be seen how the reasoning of the majority might be applied in a way significantly to curtail the ability of the prosecution to prove a case

of this nature by means that were once, but it seems no longer, considered acceptable.

Other State and Territory authority

6.11 Nevertheless, and intriguingly, the majority below, whilst invoking *Giretti* as its principled objection to the admission of the cash money evidence, in virtually the same breath cited with apparent approval a series of possession-for-sale cases[16] from around Australia that – almost uniformly – stand for the principle upon which the appellant relies. But these cases would seem, of course, to be wrongly decided if the majority below's *Giretti* objection is correct.[17]

6.12 In all but one of these cases evidence of cash money was ruled admissible in support of a Crown case that alleged that certain drugs were possessed for sale.[18] The basis for admission in these cases was that the possession of the money was capable of evidencing a present and future intention or disposition to conduct a business in the drug possessed. Nowhere in these cases does one find the course of conduct pleading – or *Giretti*-type – objection made. The majority below did not translate this particular objection into analysis of those cases. It chose, instead, to distinguish those cases from the present by means of apparent factual discrimination.

6.13 The majority below essentially distinguished those other cases from the present on the basis of a lack of sufficient physical proximity existing between the drugs and cash possessed in the instant case. The cash here, and by reference to those other cases, was not possessed - according to the majority below - sufficiently "in close proximity to"[19], "in parallel with"[20] or "contiguously with"[21] the relevant cannabis.

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[16] See the judgment below at [68].
[17] See the judgment below at paragraphs [131] to [143]. These cases are: *R v McGhee* (1993) 61 SASR 208, *Sultana*, *Blackwell v The Queen* (1996) 87 A Crim R 289, *Edwards v The Queen* [1998] 2 VR 354, *Evans v The Queen* [1999] WASCA 252 and *R v Rees* [2005] ACTSC 91. Cf *Lewis v The Queen* (1989) 46 A Crim R 365.
[18] The exception is *Lewis v The Queen* (1989) 46 A Crim R 365, although it is the dissent of Rice J that has been picked up in the later cases.
[19] See, for instance, the judgment below at paragraphs [136], [138] & [142].
[20] See the judgment below at paragraph [140].
[21] See the judgment below at paragraph [145].

6.14 The high value of the cash money found at Essendon, together with the presence at that address of the accoutrements of drug trafficking, puts the present cash, it might be thought, in close proximity with drug material and, by extension, the drugs located at Sydenham and Sunshine North. This is especially so given the respondent's clear and, in the case of Sydenham, admitted connection with those properties.

6.15 But surely it is wrong to place too much emphasis on physical proximity in cases of this kind - including the present. For one thing, and as has already been recognised but may bear repeating, the majority below were prepared to accept that the cash the subject of this appeal could be characterised as a "float for an ongoing drug-related business." But, in any event, drug trafficking is a notoriously insecure field of endeavour. One is always at risk of "raid" by police or "run through" by others of criminal disposition. If a principal in a drug cultivation operation can afford to do so, he or she might be well advised to sleep apart from the crop[22] but keep the money close to where sleeping takes place.

How the cash money was relied upon at trial

6.16 If the Crown failed to exploit at trial the purpose for which the cash money was admitted, this will not impugn the decision to admit the evidence in the first place. But such failure might tend against miscarriage in the Court below, or, alternatively, render the present case an unsuitable vehicle for examination of the principle that is said here to arise. It is suggested in the decision of the majority below that the prosecution "eschewed reliance... on a case that involved an allegation of an ongoing drug trafficking business."[23] But this simply is not so. The contrary is demonstrated above.[24]

Section 137 of the Evidence Act 2008 (Vic.)

6.17 Albeit briefly, the majority judges below recognised that if they were wrong on the question of relevance, they would have excluded the evidence of the cash on the basis that "the probative value of the evidence is outweighed by the risk of unfair

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[22] And install a hapless "crop-sitter".
[23] See the judgment below at paragraph [146]. See, also, the observation at paragraph [145].
[24] See paragraphs 5.12 to 5.18.

prejudice".[25] Such finding does not, of course, nullify the precedential value of the majority's reasoning on relevance.[26] It might be doubted, nevertheless, how the majority, having concluded that the impugned evidence was "irrelevant", could then go on - cogently - to evaluate the "extent" of the evidence's relevance on the assumption that they were wrong in their primary conclusion.[27]

6.18 But, in any event, it is difficult to see what was so prejudicial about the evidence of the cash that was not, also, probative in proof of the Crown case. If this money was not a "cash float" for the trafficking in drugs, then what was it? No other nefarious use was posited. There was evidence that the money had not been brought to tax, but this fact was led in support of the drug connection.

6.19 Perhaps reflecting these observations, Whelan JA's judgment reminds the reader that "(o)nce the basis upon which the evidence was relevant is properly understood, the argument for exclusion under section 137 becomes difficult to maintain"[28] and that such an argument has not been accepted in any of the State and Territory decisions that deal with this particular question of admissibility. Moreover, Whelan JA's judgment records that the respondent's argument (as applicant) in the Court below concerning exclusion pursuant to section 137 was only advanced orally and that "there was no basis articulated as to why exclusion under s 137 was required, once it was accepted that the evidence was relevant on the basis set out in the... [State and Territory]... authorities...".[29]

6.20 The view of the majority below was that "the risk of the misuse of the evidence is undoubtedly high".[30] No doubt this view was premised on the majority's conclusion that the impugned evidence invited no more than "rank propensity" or "tendency" reasoning.[31] But as has been explained above, and even assuming the existence of at least some risk of improper reasoning, the impugned evidence offered a great deal

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[25] See the judgment below at paragraph [148].
[26] A matter of considerable concern to the appellant.
[27] The phrase "extent of the evidence's relevance" arises out of the meaning accorded to the notion of relevance and the definition of "probative value" contained in the *Evidence Act* 2008 (Vic.).
[28] See the judgment below at paragraph [72].
[29] Ibid.
[30] See the judgment below at paragraph [148].
[31] See the judgment below at paragraph [147].

more than so-called "rank propensity" or "tendency". For the impugned evidence to be corralled into the holding pens of "tendency" or "propensity" sold vastly short the evidence's far more attractive probative appeal.

6.21 This point may be fleshed out by return to the shopkeeper analogy. It would seem artificial to allege against a shopkeeper that by virtue of the shopkeeper's possession of a cash float in the till, that person has a "tendency" or "propensity" to sell the item appearing in the shop window. Far more appealing, it might be thought, would be to say that possession both of the item in the shop window and the cash float in the till shows that the shopkeeper is in the business of selling the particular item. From the existence of this business may be inferred that the shopkeeper possesses the item for sale. The latter approach offers up, it might be thought, an attractive process of reasoning without any appeal to a supposed "tendency" or "propensity" borne by the shopkeeper.

Conclusion

6.22 Upon reflection, it may seem rather difficult to distil the precise principle upon which the Court below relied to exclude the impugned evidence. This is so because the majority below appeared, on the one hand (albeit indirectly), freely to endorse the very principle of admissibility upon which the appellant relies, whilst, on the other, effectively to neutralise this principle via invocation of *Giretti*'s case. If this appeal could be reduced simply to an instance of the application of settled principle, that would be one thing. But this case cannot be so refined. Quite apart from the result arrived at in the present case, it can hopefully be seen at once how the majority below's reliance on *Giretti* has the capacity effectively to render the prosecution of serious drug crime in Victoria far less effective than hitherto may have been the case.

6.23 The evidence of the cash found at Essendon was admissible. It is submitted that this appeal should be allowed.

Part VII: Applicable constitutional provisions, statutes and regulations

7.1 Nil.

Part VIII: Orders Sought

8.1 The orders sought by the appellant are:

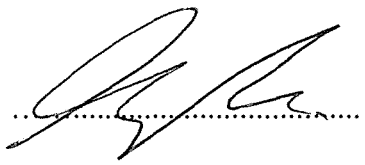
(i) That the appeal be allowed.

(ii) That the order of the Court of Appeal made on 5 April 2017 allowing the respondent's appeal to that Court be set aside, and in place of that order that the appeal to that Court be dismissed.

Part IX: Presentation of Oral Argument

9.1 It is estimated that it should take no longer than 2 hours to present the appellant's oral argument.

Dated: the 24th day of November 2017



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