



HIGH COURT OF AUSTRALIA

Public Information Officer

8 September 2005

PELLEGRINO PAUL MULE v THE QUEEN

The jury at Mr Mule's drug trial was correctly instructed about the weight that it may choose to give to particular statements he made in a police interview, the High Court of Australia held today.

Mr Mule was convicted of possessing 27 ecstasy tablets weighing 5.5 grams with intent to sell or supply them to another and was jailed for two years and nine months. Under section 11 of the *Misuse of Drugs Act*, a person is deemed, unless the contrary is proved, to have an intent to supply if possessing two grams of ecstasy. The tablets, \$32,750 in cash, a loaded pistol and a stun gun were found in two safes at Mr Mule's home in the Perth suburb of Ballajura in August 2001. He was in Broome at the time but his wife phoned him during the search and they spoke in both English and Italian. This conversation was intercepted by police.

Mr Mule did not give evidence at his trial in the District Court of Western Australia. A videotaped police interview and transcripts of certain intercepted telephone conversations were tendered as evidence without objection. In the interview, he and his solicitor admitted that the ecstasy tablets belonged to him but that they were for personal use. In summing up, Judge Allan Fenbury contrasted the admission of possession with the exculpatory assertions about personal use and pointed out that Mr Mule's denials were not supported by evidence from him on oath. No objection or request for redirection were sought but this direction was the subject of the sole ground of appeal against conviction. The Court of Criminal Appeal dismissed the appeal. Mr Mule appealed to the High Court.

The Court unanimously dismissed the appeal. It held that Judge Fenbury's remarks to the jury did not amount to a misdirection. Under section 638 of the WA Criminal Code, instructions about the applicable law are mandatory, while observations on evidence are discretionary within established principles. Observations must be fair and balanced but a judge is not prohibited from making observations favourable to one side or the other if he or she makes clear that it is for the jury alone to decide the facts. Judge Fenbury instructed the jury that as a matter of law the videotaped interview became evidence for Mr Mule as well as against him and that it was not obliged to give the same weight to everything that was said in the interview. Judge Fenbury correctly instructed the jury about Mr Mule's right to silence and did not detract from this right by pointing out that statements made during the interview were not on oath. The Court held that, in the circumstances of the case, it was appropriate for Judge Fenbury to tell the jury that it was entitled to give less weight to the assertion that the ecstasy was for Mr Mule's own use than to the admission of possession. The summing-up as a whole made clear that this was a question for the jury.

- *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.*