



HIGH COURT OF AUSTRALIA

10 August 2012

THE QUEEN v KHAZAAL
[2012] HCA 26

Today the High Court unanimously allowed an appeal from a decision of the Court of Criminal Appeal of the Supreme Court of New South Wales, which had allowed an appeal by the respondent, Belal Saadallah Khazaal, against his conviction for making a document connected with assistance in a terrorist act, knowing of that connection, contrary to s 101.5(1) of the *Criminal Code* (Cth) ("the Code").

In September 2003, the respondent compiled and edited an electronic book ("the e-book"), which he subsequently submitted for publication online. The e-book comprised material written in Arabic concerning Islam and jihad that the respondent had downloaded from the internet, together with a dedication, foreword and other short passages written by the respondent. Among other things, the e-book advocated the widespread use of assassination, described numerous methods of carrying out assassinations, and identified particular targets for assassination.

The respondent was charged under s 101.5(1) of the Code with making a document "connected with ... assistance in a terrorist act" while knowing of that connection. Section 101.5(5) of the Code provides that no offence is committed under s 101.5(1) "if the ... making of the document was not intended to facilitate ... assistance in a terrorist act". Under s 13.3 of the Code, the respondent bore the burden of "adducing or pointing to evidence that suggest[ed] a reasonable possibility" that the making of the e-book was not intended to facilitate assistance in a terrorist act ("the evidential burden").

The respondent stood trial in the Supreme Court of New South Wales in August and September 2008. He did not give evidence at his trial, but did point to evidence adduced by the prosecution concerning his status as an accredited journalist and researcher with an academic interest in Islam, the circumstances in which he made the e-book, and some parts of the e-book's contents. The respondent argued that this evidence suggested a reasonable possibility that the making of the e-book was not intended to facilitate assistance in a terrorist act. The trial judge rejected this argument. The respondent was convicted and sentenced to 12 years' imprisonment, with a non-parole period of 9 years.

The respondent successfully appealed to the Court of Criminal Appeal. A majority of the Court of Criminal Appeal held that the evidence pointed to by the respondent was sufficient to discharge the evidential burden imposed by ss 13.3 and 101.5(5) of the Code.

By special leave, the prosecution appealed to the High Court. The prosecution argued that the evidence pointed to by the respondent was not sufficient to discharge the evidential burden imposed by ss 13.3 and 101.5(5) of the Code. By notice of contention, the respondent argued that

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the trial judge had misdirected the jury by not giving adequate directions in relation to the words "connected with ... assistance in a terrorist act" in s 101.5(1).

The High Court unanimously allowed the appeal. In relation to the argument on the appeal, the Court held that the evidence pointed to by the respondent did not suggest a reasonable possibility that the making of the e-book was not intended to facilitate assistance in a terrorist act. In relation to the notice of contention, the Court held that no error had been shown in the trial judge's directions.

- *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.*