



HIGH COURT OF AUSTRALIA

8 August 2018

THE QUEEN v ROMANO FALZON [2018] HCA 29

Today the High Court published reasons for orders it made on 19 April 2018 allowing an appeal from a decision of the Court of Appeal of the Supreme Court of Victoria.

The respondent was convicted by a jury of cultivating a narcotic plant (*Cannabis L*) in not less than a commercial quantity and trafficking in a drug of dependence (*Cannabis L*). He was acquitted of a separate charge of trafficking in a drug of dependence. Police had executed search warrants at four properties, including the respondent's home, and found, amongst other things, cannabis plants, dried cannabis and drug paraphernalia. Police also found \$120,800 in cash at the respondent's home. At trial, the Crown alleged that the trafficking offences charged were constituted of possession of cannabis on a particular date at three of those properties (not including the respondent's home) for the purpose of sale. The respondent objected to the admission of the evidence of the cash found at his home on the basis that it was irrelevant or alternatively that its prejudicial effect outweighed its probative value. The trial judge ruled the evidence admissible. Evidence of the cannabis and other materials found at the respondent's home, including the cash, was led in proof of each trafficking charge as showing that the respondent was conducting a business in cultivating cannabis for the purpose of sale.

The respondent appealed against his convictions to the Court of Appeal on the basis, relevantly, that a substantial miscarriage of justice occurred as a result of the trial judge wrongly admitting the evidence of the cash. The majority of the Court of Appeal allowed the appeal. Their Honours held that the evidence of the cash was irrelevant to the trafficking charges because it could only have gone towards establishing past sales of cannabis, and the prosecution had chosen to put its case on the basis of possession of cannabis for sale on a single day and not on the basis that the respondent was conducting an ongoing drug trafficking business. The majority also observed that the evidence of the cash was inadmissible because it was led for the purposes of propensity or tendency reasoning. The respondent's convictions were set aside.

By grant of special leave, the Crown appealed to the High Court on the ground that the majority of the Court of Appeal erred in concluding that a substantial miscarriage of justice had occurred as a result of the trial judge admitting the evidence of the cash found at the respondent's home. The High Court unanimously held that the evidence of the cash found was admissible as an item of circumstantial evidence that, in conjunction with evidence of other indicia of drug trafficking, could show that the respondent was carrying on a business of trafficking in cannabis, and thus that the respondent's purpose in possessing the cannabis was the purpose of sale. The fact that the evidence tended to show the commission of other offences of trafficking did not render it inadmissible because it was relevant to establishing the intent to sell and to counter the respondent's claim that the cannabis was possessed for personal consumption.

- *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.*