



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 13 Mar 2026 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: S172/2025
File Title: The King v. Ko
Registry: Sydney
Document filed: Form 27F - Appellant's Outline of oral argument
Filing party: Appellant
Date filed: 13 Mar 2026

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

**IN THE HIGH COURT OF AUSTRALIA
 SYDNEY REGISTRY
 BETWEEN:**

THE KING
 Appellant

and

TSZ CHEUNG HERMAN KO
 Respondent

OUTLINE OF ORAL SUBMISSIONS OF THE APPELLANT

PART I INTERNET PUBLICATION

10 This outline of oral submissions is in a form suitable for publication on the internet.

PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

1. **The Crown case.** The respondent's role in the importation was to handle the logistics of clearing customs, and the subsequent delivery of the dough mixer containing the hidden drugs to a residential address: see **SU 25-26 (CAB 31-32); CCA [49]-[51] (CAB 81-82)**. He attempted to import that dough mixer by engaging in conduct, comprised of 16 specified acts: see **SU 25-26 (CAB 31-32)**. While engaging in that conduct, that is, at the same time, he intended to import both the dough mixer and the substances concealed in it: see **SU 26-27 (CAB 32-33)**. And at the same time, he was reckless as to the fact that the substances were border controlled drugs: see **SU 27-28 (CAB 33-34)**.
- 20 2. **The summing up.** The trial judge's oral and written directions on intention (in the context of ss 5.2 and 307.1(1) of the *Criminal Code* (Cth)) impressed on the jury the necessity for the coincidence of the physical and the fault elements (**AS [15], Reply [13]; cf RS [22]-[23]**) and that, in order to be satisfied the respondent meant to deal with the substance, the jury had to be satisfied of that having regard to all the facts and circumstances of the case (**AS [13], cf RS [18]-[19]**).
 - **SU 20.7 (CAB 26.7)**
 - **SU 21.1 (CAB 27.1)**
 - **SU 24.2 (CAB 30.2)**
 - **SU 26.8 (CAB 32.8)**, summarising the Crown case
 - 30 • **SU 29.6 (CAB 35.6)**, summarising the Defence case
 - **MFI-18, ABFM 5 – 6**

3. **Smith and Afford.** The trial judge’s directions were consistent with *Smith and Afford*, with the consequence that those directions were sufficient to instruct the jury about intention. The impugned direction was almost the same as [60]-[61] of *Smith and Afford* (as then summarised, accurately, in the headnote at p 292 of the CLR). That the Crown relied on the extended definition of “import” does not provide a basis to distinguish *Smith and Afford*, **Reply [14]**, *cf* **RS [2], [24]**.
- *Smith v R; R v Afford* (2017) 259 CLR 291, [60]-[61], [69(1)-(12)], [91] (**JBA v 2, Tab 6**)
- 10 4. **CCA judgment.** The CCA erred in concluding at [125] (**CAB 106-107**) that the absence of a reference to “nevertheless persisted with that conduct” in the summing up was an error; in light of the directions given, the inclusion of that phrase would have added nothing.

Dated: 13 March 2026

Raelene Sharp

Director of Public Prosecutions (Cth)

T: (03) 9605 4441

E: associate@cdpp.gov.au

Paul Holdenson

Aickin Chambers

T: (03) 9225 7231

E: ophqc@vicbar.com.au

Christopher Tran

Fifth Floor St James' Hall

T: (02) 8257 2578

E: christopher.tran@stjames.net.au