



HIGH COURT OF AUSTRALIA

12 August 2026

THE KING v KO
[2026] HCA 29

Today, the High Court by majority dismissed an appeal from a judgment of the Court of Criminal Appeal of the Supreme Court of New South Wales.

Following a trial in the District Court of New South Wales, the respondent was convicted of one count of attempting to import a commercial quantity of two border controlled drugs, contrary to ss 11.1(1), 307.1(1) and 311.1(1)(f) of the *Criminal Code* (Cth). The prosecution alleged that the respondent facilitated the customs clearance and delivery of a consignment containing a commercial dough mixer that had been shipped from Toronto to Sydney. The dough mixer had been intercepted prior to its departure from Canada and found to contain 101 packages consisting of methamphetamine and phenylethylamine, which are border controlled drugs.

A critical issue at trial was whether the respondent intended to import the packages of drugs (a "substance"). In relation to that element of the offence, the trial judge directed the jury that "if you are satisfied beyond reasonable doubt that the accused perceived that there was a real or substantial chance of a substance being present in the consignment that he attempted to import, then it is open to you to infer, having regard to all the facts and circumstances of the case, that he intended to import the substance".

The respondent applied to the Court of Criminal Appeal for leave to appeal against his conviction, relevantly contending that the trial judge erred in his directions to the jury in relation to the element of intent. The Court of Criminal Appeal upheld this contention, holding that the trial judge's directions fell short of stating that an awareness of a real and significant chance that the conduct involved the importation of the substance would not of itself be sufficient to draw the necessary inference concerning the fault element of intent.

In dismissing the appeal, the High Court by majority held that the trial judge should have expressly directed the jury that, even if it was established beyond reasonable doubt that the respondent was aware of, or perceived, a real or significant chance that the object imported contained a substance, the jury must still consider whether, based on all the facts and circumstances of the case, it was proven beyond reasonable doubt that the respondent intended to import the substance. A majority of the Court held that the terms of the trial judge's directions were a material error and amounted to a miscarriage of justice.

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.