



Transcript of Proceedings

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Date: 20 May, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Application No 202 of 2004

RE AN APPLICATION FOR BAIL BY ANN LOUISE FARRELL

CAIRNS

..DATE 06/05/2004

JUDGMENT

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: By this application the applicant seeks bail pending the hearing of charges made against her on 12 March 2004. The charges are that on that date the applicant did possess property, namely \$12,025, such money being obtained directly from the commission of an offence defined by section 5 of the Drugs Misuse Act, and further, that on the same day she had in her possession two sets of scales which she used in the commission of an offence defined by the same Act.

The applicant was, at that date, already on bail in respect of 11 drug related charges, those charges having been made on 6 August 2003. These offences range from trafficking in methamphetamine, being in possession of that drug, being in possession of products for the use of producing the drug, and being in possession of tainted property and other related offences.

The committal proceedings in respect of the trafficking offence are due to commence on 17 May 2004. On 6 August 2003, as part of the investigation into those earlier charges, police officers conducted an extensive search of the applicant's residence. There they found various especially constructed places in which drugs or other items were secreted or might have been secreted.

I infer from the details contained in Exhibit FJS5 to the affidavit of Ms Schwilk filed by leave at the commencement of this case that the search was a thorough one. As part of the investigation of these earlier charges the police also

undertook a financial analysis from which the police allege that the applicant has unexplained income of approximately \$119,000. Her source of legitimate income is said to be from a small business of manufacturing and selling jewellery. The police report that the income from that source was small.

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I mention these matters because when police officers conducted a further search of the premises on 12 March 2004 they found the money and the two sets of scales the subject of the further charges. The money, \$12,025, was found in four wads in the bedroom said to be occupied by the applicant. Three wads were found in separate pockets in a pair of jeans and the other in a pair of Doc Martens boots. One set of scales was secreted behind the peddles of an electronic organ, the other under a fish tank. Each set of scales gave a positive reaction to a presumptive test for the presence of methamphetamine.

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The applicant has a criminal history of involvement with drugs. In 1998 it was possession of drugs; 1999 producing unlawful drugs; 2000 possession of drugs; 2001 possession of utensils and pipes. Gauging by the penalties imposed in respect of these offences I infer that the circumstances of them were relatively minor. However, the circumstances of the charges on 6 February 2003 as alleged indicate a significant increase in scale.

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The applicant being on bail for those offences is now in a show cause situation. She bears the onus of convincing me why

her detention is not justified. Mr Henry of counsel for the applicant argues that the applicant is in this position because of a choice made by police officers to charge her with an indictable offence rather than bringing a summary charge which was available for those same circumstances where, from a prosecution point of view, proof of the charges would be much easier.

The basis upon which the choice was made is said to be to allow consideration of extending the period of trafficking alleged in the August 2003 charge. The question of choice of charges to be laid seems to me to be a matter for the police, and for the purpose of this application it is relevant only to a consideration of the strength of the prosecution case.

The second point to which I am asked to give consideration is the consequences for the applicant if bail is not allowed, and for her ability to prepare a defence. The first consequence is that she will lose the opportunity to continue to earn income and thereby to service a mortgage over her house. That may have significant financial consequences for her. The second is that by reason of lack of remand facilities in Cairns if bail is not allowed the applicant will be sent to the Stuart Prison in Townsville. This will make difficult her preparation of defence of various proceedings against her, not only the committal proceedings but also to raise arguments against the pecuniary penalties which are sought by the prosecution.

Weighing all these matters up I have a concern that given the
evidence of a large sum of money found in the applicant's
possession in the March 2004 search, the presence of scales
secreted in the manner in which they were, suggests to me,
though one can never be sure, that there is a reasonably
strong case to be made against the applicant. It suggests
also that there is a serious danger of the applicant
reoffending if she is permitted to go at large on bail.

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Having made those statements it follows that the applicant has
failed to convince me that her detention is not justified in
the circumstances. The application is refused.

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