

SUPREME COURT OF QUEENSLAND

CITATION: *R v Anderson* [2003] QCA 45

PARTIES: **R**
v
ANDERSON, Deborah Maree
(appellant)

FILE NO/S: CA No 355 of 2002
DC No 197 of 2002

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction

ORIGINATING COURT: District Court at Townsville

DELIVERED EX TEMPORE ON: 18 February 2003

DELIVERED AT: Brisbane

HEARING DATE: 18 February 2003

JUDGES: Davies and Williams JJA and Philippides J
Separate reasons for judgment of each member of the Court,
each concurring as to the order made

ORDER: **Appeal against conviction dismissed**

CATCHWORDS: CRIMINAL LAW – EVIDENCE – JUDICIAL DISCRETION TO ADMIT OR EXCLUDE EVIDENCE – ILLEGALLY OBTAINED EVIDENCE – PARTICULAR CASES – where search warrant under which evidence was obtained was held to be invalid – where evidence was admitted by learned District Court Judge – whether this was a proper exercise of discretion

CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST CONVICTION RECORDED ON PLEA OF GUILTY – GENERAL PRINCIPLES – whether appellant had established that a miscarriage of justice had occurred

Crimes Act 1914 (Cth), s 29D
Financial Transaction Reports Act 1988 (Cth), s 24(1), s 24(2)

Bunning v Cross (1978) 141 CLR 54, considered
Meissner v The Queen (1995) 184 CLR 132, considered
R v Gadaloff [1999] QCA 286, CA No 24 of 1999, 24 September 1999, considered

COUNSEL: The appellant appeared on her own behalf
G C Davey for the respondent

SOLICITORS: The appellant appeared on her own behalf
Director of Public Prosecutions (Commonwealth) for the
respondent

WILLIAMS JA: The appellant, Deborah Maree Anderson, pleaded guilty on the 16th of October 2002 to 18 counts on an indictment presented by the Commonwealth Director of Public Prosecutions. Counts 1 to 6 alleged defrauding the Commonwealth contrary to section 29D of the Crimes Act 1914. Count 7, 9, 11, 15 and 17 alleged an offence of opening an account with a cash dealer in a false name contrary to section 24(1) of the Financial Transaction Reports Act 1988. Counts 8, 10, 12, 16 and 18 alleged an offence of operating an account with a cash dealer in a false name contrary to section 24(2) of the Financial Transaction Reports Act 1988. Count 13 alleged an offence of opening an account with a cash dealer without disclosing another commonly used name and Count 14 alleged the offence of operating an account with a cash dealer without disclosing another commonly used name.

It appears that the total amount of moneys obtained from the Commonwealth in relation to counts 1 to 6 is \$21,251.96 and the amount outstanding with respect to counts 7 to 18 was the total sum of \$30,337.45. The pleas of guilty came after there had been a ruling given with respect to the admissibility of some evidence.

Before the District Court Judge the appellant was represented by experienced counsel and a point was taken with respect to the validity of a search warrant which was issued on the 15th

of May 2001. In broad terms it appears that police officers were primarily concerned with the activities of a Donna Marie Smith and in particular her allegedly obtaining some money under false pretences.

There were a number of names that the police were concerned with and apparently the belief was that Smith had used the names Donna Marie Anderson, a name similar to that of the appellant, and the name Debbie Simpson, a name which was one of the aliases used by the appellant.

After the initial plea of not guilty there was a voir dire hearing with respect to the validity of the warrant.

Ultimately the District Court Judge held that the warrant was invalid because it did not name a federal police officer who was in attendance when it was executed. However, the learned District Court Judge considered that in the exercise of the discretion recognised by the High Court in *Bunning v. Cross* (1978) 141 Commonwealth Law Reports 54, he should admit the evidence, although unlawfully obtained. Thereafter there was some consultation between the appellant and her counsel and she then pleaded guilty to all of the charges.

Before this Court the counsel for the respondent has read an affidavit by Michelle Ann Sewell who was the instructing solicitor at the time the matter was before the District Court. That affidavit makes clear what can be gleaned from a careful perusal of the record, namely that the prosecution was able to prove all counts on the indictment, other than counts

17 and 18, without the necessity of relying on any document seized at the time the warrant was executed.

In those circumstances the appellant must overcome her pleas of guilty. The approach of an appellate Court where there is a challenge to a plea of guilty is discussed by the High Court in *Meissner v. The Queen* (1995) 184 Commonwealth Law Reports 132 and by this Court in *Gadaloff* CA No 24 of 1999.

It is clear that the onus is on the appellant to establish that a miscarriage of justice occurred when the District Court accepted and acted on the pleas, and there must be material which indicates that the convictions are attended by such unfairness as to warrant a new trial.

In the circumstances I am not persuaded that the appellant has discharged the onus on her. In my view, the learned District Court Judge was entitled to exercise the *Bunning v. Cross* discretion in favour of the prosecution and it cannot be said that there is anything unfair about what happened on the 16th of October 2002 such as would justify this Court in setting aside the pleas of guilty.

In all of the circumstances the appeal against conviction should be dismissed.

DAVIES JA: I agree.

PHILIPPIDES J: I also agree.

DAVIES JA: The appeal is dismissed.
