SUPREME COURT OF QUEENSLAND

CITATION:	*R v Bellino* [2003] QCA 110
PARTIES:	**R** **v** **BELLINO, Stephen William** (applicant/appellant)
FILE NO/S:	CA No 391 of 2002 SC No 217 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction & Sentence
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED EX TEMPORE ON:	14 March 2003
DELIVERED AT:	Brisbane
HEARING DATE:	14 March 2003
JUDGES:	McPherson JA, Jerrard JA and White J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Allow the appeal against conviction**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS – UNREASONABLE OR INSUPPORTABLE VERDICT – WHERE APPEAL ALLOWED – where parcel addressed to appellant's house-mate delivered to appellant's home - where appellant convicted of unlawfully having possession of cannabis sativa – whether jury could safely draw an inference of the appellant's knowledge that the parcel contained the illegal substance *Criminal Code Act* 1899 (Qld), s 668E *M v The Queen* (1994) 181 CLR 487, considered
COUNSEL:	B Farr for the appellant T Rafter for the respondent
SOLICITORS:	NR Barbi Solicitors for the appellant Director of Public Prosecutions (Qld) for the respondent

WHITE J: The appellant was found guilty on the 29th October 2002 after trial of one count of unlawfully having possession of cannabis sativa with a circumstance of aggravation. He was

sentenced to four months' imprisonment wholly suspended with an operational period of eight months.

He appeals against conviction on the grounds that the learned trial Judge ought to have found that there was no case to go to the jury. In the alternative, that the verdict although said to be unsafe and unsatisfactory in the grounds of appeal is unreasonable or cannot be supported having regard to the evidence pursuant to section 668E of the Criminal Code. The appellant is also an applicant for leave to appeal against sentence.

On the 2nd May 2001 customs authorities at Brisbane Airport intercepted a package in transit from Launceston in Tasmania to Queensland. Police were called and a search of the package revealed that it contained over nine kilograms of cannabis sativa. The police removed three-quarters of the cannabis and replaced it with telephone books before rewrapping and readdressing it and delivering it using an undercover officer to the address which was on the package.

It was addressed to one Natasha Horvath at an address in Fortitude Valley. The appellant shared accommodation at that address with the addressee. The undercover police officer who delivered the parcel was deceased by the time of the trial. His statement and evidence at committal were read to the jury. That officer spoke via the intercom system at the block of units to the appellant. He was then met at the door by the appellant.

A female person, the addressee was seated on a couch in front of the television in the lounge room of the unit. He handed the parcel to the appellant. It might reasonably be inferred from his statement that he ascertained that the addressee was the woman on the couch. He subsequently assisted in execution of a search warrant which he said, at the committal, occurred no more than five to 10 minutes later.

Detective Paskin who led the police party estimated the time was approximately 10 minutes after delivery while Detective Turnbull who accompanied him estimated 10 to 15 minutes. After the parcel was delivered police observed a man and a woman enter the unit. Shortly thereafter police knocked at the door identifying themselves as police officers.

Probably no more than seconds later one of the females at the unit opened the unlocked door. Detective Paskin entered first followed by Detective Turnbull although there was some contest about this at the trial. Their evidence varies about what they saw. Detective Paskin saw the appellant hold the package at about waist height with one arm. He appeared to be picking at a corner of the address label. He observed him lean forward, drop the package from below waist height to the floor and then make some motion with his legs as if pushing or tapping the package with his foot the inference being that he was attempting either to conceal it or to dissociate himself from it. Detective Turnbull as she came into the unit saw the appellant holding the package with both hands and bending forwards slightly as if to put the package down. She did not

note attempted tampering with the address label. She then turned away.

It was accepted that it would not have been possible to push so large a package under the lounge chair. Both detectives' view of what the appellant was doing with his feet was obscured by that piece of furniture. There was a tear on the address label tendered at the trial. The police officer who assisted in the repackaging could not recall the label being ripped when he did the repackaging. He was not entirely certain about this.

Mr Farr, who appeared at trial for the appellant as well as on this appeal, submitted to the learned trial Judge that there was insufficient evidence from which a properly instructed jury could infer the appellant's knowledge that the package contained a dangerous drug. For this was the sole issue at trial. There was no contest but that the appellant had the parcel in his possession.

Her Honour found that there was sufficient evidence to go to the jury although she was of the view that the matter was marginal. There was no error in that conclusion and, in any event, it is now to be dealt with via the section 668E ground.

The Crown relied on four matters as giving rise to the inference of knowledge by the appellant. One, that the appellant was holding the parcel when the police entered the unit although it was addressed to Miss Horvath. Two, the

package was still unopened at the least five and at the most 15 minutes after delivery which was surprising if it was, as it might appear to be, a present of some kind wrapped in paper on which the words "Congratulations" and champagne glasses appeared.

Three, the evidence of Detective Paskin that the appellant was picking at the label from which the inference could be drawn that he was seeking to remove any association with his address from the package. Four, conduct observed particularly by Detective Paskin from which it could be inferred that the appellant was attempting to dissociate himself from the parcel when the police entered.

The difference in evidence of the two police officers was explained to the jury on the basis that they were looking from different angles and focussing on different things. The defence dealt with those submissions in this way that although the police saw the appellant holding the parcel when they entered the unit there was no evidence as to how long he had been doing so. That is, he might have put it down and recently picked it up again.

The appellant continued holding the parcel in circumstances where the door of the unit was unlocked and after the police had called out for the door to be opened. Finally, that it was not remarkable that the parcel was not already opened in the interval between delivery and execution of the search warrant and it was not addressed to the appellant.

The defence pointed to the inconsistency between the two police officers about the appellant tampering with the label and the discrepancy as to whether the appellant dropped the parcel there being nothing heard on the audio tape which was then operating. The jury were given appropriate directions about inferences. There is no criticism of the summing-up.

In the course of their deliberations they sought further guidance about inferences. It was not until her Honour gave the jury a Black direction after an indication that they could not reach a decision that a verdict of guilty was returned. In M v Queen 1994, 181 CLR 487 the High Court considering comparable New South Wales legislation to section 668E of the Criminal Code gave guidance as to the correct approach to a submission that a verdict should be set aside on the ground that it was unreasonable or could not be supported having regard to the evidence.

An appellate court must ask itself whether upon the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty. In answering that question the Court must not disregard or discount either the consideration that the jury is the body entrusted with the primary responsibility of determining guilt or innocence or the consideration that the jury has had the benefit of having seen and heard the witnesses.

Here there were some discrepancies in the evidence of the two police officers. It was open to the jury to prefer the evidence of Detective Paskin as the first into the unit and who observed the appellant for a longer period of time than that officer. The jury were invited to draw inferences of knowledge from a number of pieces of evidence.

However, at its highest, I am not persuaded that the jury could safely have drawn the inference of knowledge of the dangerous drug in the parcel. The appellant was, as the learned Presiding Judge commented in the course of argument, in the end, a man holding a parcel. I would allow the appeal against conviction.

McPHERSON JA: I agree.

JERRARD JA: I agree. In the circumstances, the possession of the unopened parcel addressed to the appellant's flat mate when the police entered the premises is not sufficient to prove beyond reasonable doubt that the appellant then knew of its contents. There is as well insufficient evidence of what would otherwise be inexplicable disassociation of himself from that parcel from which one could then draw that inference of the relevant knowledge.

McPHERSON JA: The order is the appeal against conviction is allowed. The conviction and verdict are set aside. Verdict and Judgment of acquittal are entered on the count on the indictment.