

SUPREME COURT OF QUEENSLAND

CITATION: *R v Christie* [2003] QCA 413

PARTIES: **R**
v
CHRISTIE, Donovan Kimball
(appellant)

FILE NO/S: CA No 115 of 2003
SC No 6 of 2003

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction

ORIGINATING COURT: Supreme Court at Bundaberg

DELIVERED EX TEMPORE ON: 17 September 2003

DELIVERED AT: Brisbane

HEARING DATE: 17 September 2003

JUDGES: McMurdo P, Davies and Jerrard JJA
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 - JURISDICTION, PRACTICE AND PROCEDURE - APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION - APPEAL AND NEW TRIAL - PARTICULAR GROUNDS - UNREASONABLE OR INSUPPORTABLE VERDICT - WHERE EVIDENCE CIRCUMSTANTIAL - where appellant convicted of supplying and trafficking methylamphetamine and cannabis sativa - where strong circumstantial case in respect of trafficking - where appellant raises a number of criticisms in relation to the evidence - whether verdict cannot be supported having regard to the evidence

CRIMINAL LAW - EVIDENCE - JUDICIAL DISCRETION TO ADMIT OR EXCLUDE EVIDENCE- POLICE INTERROGATION - PROPRIETY OF POLICE QUESTIONING AND OTHER CONDUCT BY POLICE - ADMINISTERING CAUTION - GENERALLY - where, in police interview appellant said his sole source of income was the sole parent's pension - where bank records disclosed a large amount of undisclosed income - where police officers did not follow precise wording of required warning - whether admission of total income in police interview was illegally or improperly obtained

COUNSEL: Appellant appeared on his own behalf
R G Martin for respondent

SOLICITORS: Appellant appeared on his own behalf
Director of Public Prosecutions (Queensland) for respondent

DAVIES JA: After a trial lasting five days the appellant was convicted of trafficking in methylamphetamine and cannabis sativa. He was also convicted on two counts of supplying those drugs, one of possession of cannabis sativa and one of possession of a set of digital scales, a quantity of cipseal plastic bags and a ceramic bowl and pestle used in connection with the commission of the crime of supplying those drugs. He appeals against those convictions.

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The evidence against the appellant was in seven main categories. The first was direct evidence from two of his former customers, Gould and Gilchrist. The second was surveillance evidence of a large number of meetings between the appellant on the one hand and a number of unidentified people on the other. The third was the police evidence of the apprehension of Gilchrist in possession of methylamphetamine immediately after his meeting with the appellant on 7 December 2001. The fourth was police evidence of an interception of other apparent customers of the appellant found to be in possession of methylamphetamine shortly after a meeting with the appellant in November 2001. The fifth was police evidence that an apparent customer of the appellant's had apparently disposed of a sharps kit in a bin shortly after his meeting with the appellant on 16 November 2001. The sixth was evidence of drugs and other material found in the appellant's residence. And the seventh was evidence of unexplained income acquired by the appellant.

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The appellant did not give or call evidence at the trial. Accordingly, the Crown case, which as I will explain was a strong circumstantial case in respect of trafficking, remained uncontradicted. The appellant took part in several police interviews but these are relevant only to a ground of his appeal and to support the evidence of a forensic accountant as to unexplained income of the appellant.

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The appellant was represented by counsel at his trial but appears on his own behalf in this appeal. His sole ground of appeal is stated to be that the verdict cannot be supported having regard to the whole of the evidence. However, in his notice of appeal he invites us to look at his outline of argument and it is convenient therefore to take what are, in effect, his grounds of appeal from the substance of his outline of argument. It is also convenient to explain, in more detail, the substance of the case against the appellant by reference to those grounds of appeal as amplified in his outline of argument and in his oral submissions before us this morning. I turn first then to the evidence of Gould and Gilchrist and the appellant's criticism of that evidence.

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Gould

Gould was a young woman of 21 years of age. She said that she met the appellant when she was 14 years of age and for the following five or six years purchased amphetamine and cannabis from him two or three times a week. Most purchases were of cannabis. Routinely they would make contact by her phoning

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him. They would arrange to meet at a neutral location and at the meeting she would exchange money for the drug. Gould said that she then gave up drugs for a time and went south. She then made contact with the appellant again early in 2001 and thereafter bought amphetamine from him approximately two or three times a week. Generally, she would pay \$100 for seven points. Their method of contact was as I have already indicated.

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At the trial an attempt was made to discredit Gould by producing what was said to be a statement signed by her claiming that her statement to police was untrue and that she had been coerced into making it. When this document was put to her she said it was not hers; that neither the writing nor the signature was hers. She also identified an error in the document namely, that the police officer who took her statement was not Detective Strohfeldt but Detective Elliott. The jury plainly accepted her evidence and a reading of it, in my opinion, gives no cause to doubt the correctness of their conclusion. Indeed, there was evidence that Gilchrist had been approached by the appellant's mother with a view to having him sign a written statement similar to that put to Gould in her cross-examination. The similarity between the two statements is marked by the fact that Detective Strohfeldt's name is misspelt in the same way in each.

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The appellant's criticism of Ms Gould's evidence on appeal has even less merit than the criticism of it mounted at the trial.

There is no substance in a ground based on alleged falsification of evidence by Ms Gould.

Gilchrist

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Gilchrist's evidence at trial, unlike that of Gould, was vague in a number of respects and in some others inconsistent with that of police officers. The appellant referred to one of those inconsistencies during the course of his oral submissions this morning. However, the jury were plainly entitled to accept the substance of his evidence supported as it was by his apprehension in possession of drugs shortly after a meeting with the appellant. The handwritten statement which he had signed tended rather to support his evidence and point to the appellants' guilt; in other words, the circumstances in which it was signed seemed rather to be a clumsy attempt by the appellant or his mother to threaten or dissuade him from telling the truth.

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There is no substance to the appellant's criticism in this Court of the jury's acceptance of Gilchrist's evidence.

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The surveillance evidence and the appellant's criticism of it

None of the surveillance evidence positively established that, at any of the meetings surveilled, the appellant handed over drugs. The point of the evidence was that what was observed on each of the occasions of surveillance was something which was not readily innocently explicable. Each of the meetings

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was plainly pre-arranged (one person plainly waiting for the other beforehand) brief and in a neutral location. After two of them the party other than the appellant was apprehended in possession of drugs. One of those, involving Gilchrist, I have already mentioned; the other was the occasion in November 2001. On a third such occasion, also in November 2001, a sharps kit was recovered from a bin into which the person other than the appellant had been seen to dispose of something.

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The appellant asserts in this Court, in his written outline, that these meetings could have been explicable by reference to his "nu-skin" business which he said he had commenced but from which he had derived no income. However, as Mr Martin for the respondent argues in his outline, the nature of the meetings, as observed, were inconsistent with any meeting designed to enlist customers or to hand over products particularly as the appellant says he had derived no money from this business.

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The appellant also says that there may have been other explanations for these meetings but no credible one has been advanced. When taken together with the other evidence this was, in my opinion, plainly evidence supporting the existence of a trafficking business.

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The evidence of drugs and other material found in the appellant's residence and the appellant's criticism of this evidence

In a caravan in a caravan park police found, relevantly, a container with a number of clipseal plastic bags, a set of digital scales, a mortar and pestle, a further quantity of clipseal bags, one of them with methylamphetamine residue in it, and some cannabis. The appellant's criticism of this evidence is not a contention that those items were not found in the caravan or that they were not circumstantial evidence of the carrying on of the business of trafficking in methylamphetamine. Rather, it was that there was no evidence connecting him with that caravan.

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It is true that there was no evidence that he was the owner or renter of the caravan. However, in the caravan police also found documents relating to Sarah Taliani, the appellant's de facto partner, and documents relating to the appellant; in particular, tilt train travel vouchers, a newspaper clipping and a photograph relating to his younger daughter. There was evidence also putting him in close proximity to that caravan.

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It may be inferred that, if the appellant was a drug dealer, he would be unlikely to have premises, in which incriminating evidence was found, owned or leased in his own name. The evidence, in any event, showed a history of premises occupied by him rented in Taliani's name. There is no substance of his criticism of this evidence.

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The evidence of unexplained income and the appellant's criticism of this

In the course of a police interview the appellant said that he had no income beyond the sole parent's pension of \$600 a fortnight. The appellant's bank records and other documents relating to his finances were discovered and examined by a forensic accountant. When the appellant's legitimate income from the period 1 January 2001 to 9 December 2001 was subtracted from his actual income for that period there was an unexplained income of over \$30,000. The appellant made two criticisms in this Court of that evidence.

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In the first place he submitted that his admission of his total income from legitimate sources was illegally or improperly obtained, the investigating officer not having administered a caution in the terms stated in the Police Powers and Responsibilities Code. An objection to the evidence on this basis had been made at the trial but rejected by the trial judge.

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There were several police interviews. The first was on 7 December 2001, the second on 10 December 2001 and the third was on 12 December 2001. The first and third but not the second of those were before the jury. The second was before the judge in assisting him to make his determination on the admissibility of the admissions against interest. The objection seems to be that in each of the interviews of 7 and 12 December 2001 though the police officer warned him in

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substance of the matters referred to in s 34 of the Police Powers and Responsibilities Code he did not follow the precise wording. There is no substance in this objection as the trial judge held. Section 34 of the Police Powers and Responsibilities Code requires only substantial compliance with the terms of the warning and there was such substantial compliance.

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The other basis of the appellant's complaint is to the evidence of the forensic accountant. He suggests some other basis of explanation for the money in his accounts. However, a reading of the accountant's evidence gives no cause to doubt its relevance and probity as circumstantial evidence showing income for which there was no rational explanation other than from the appellant's business of trafficking.

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The appellant's other grounds

There are a number of other grounds advanced by the appellant in writing and orally. None of them is of any substance. It is sufficient to deal with the major ones summarily.

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(a) The arraignment

The appellant and his co-accused Taliani were arraigned together. The appellant pleaded not guilty and Taliani pleaded guilty. The appellant objects that this took place before the jury panel. However, there was no application for them to be arraigned separately or in the absence of the jury

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panel. There is no reason to think that this prejudiced his trial.

(b) Publicity

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There was apparently a press report of the appellant's arrest in the local Bundaberg News Mail headed "Traffickers Caught at School". This, the appellant submitted, prejudiced his fair trial because it indicated that he was guilty and implied that he was selling drugs to school children.

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The trial took place one year and three months after the appellant's arrest. There was no reason to think that, after that length of time, the jury would recall specifically, even if they had read it, the headline or article in December 2001. Moreover, his Honour gave a warning about ignoring information acquired outside the courtroom and there is no reason to think that the jury ignored that warning.

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(c) References to the appellant's prison record

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It is true that in the police statement by Gould there are references to the appellant having got out gaol only shortly before the commencement of the trafficking offence. This statement was tendered by the appellants counsel, its tender being relevant to the handwritten statement which the defence hoped to but failed to persuade the jury, was Gould's statement. In so tendering it the appellant's counsel no doubt thought that the risk that references to the appellant

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having been in gaol might prejudice the jury against him was outweighed by the prospect of discrediting Gould. This was a legitimate tactical decision about which the appellant has no cause to complain.

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He also asserts that reference to his having been in prison was implied in the fact that the forensic accountant took a period commencing only in January 2001, the time when in fact the appellant was released from prison. However, there is no reason to think that this evidence prejudiced the jury in this way, with or without the evidence in Gould's statement. There may be any one of a number of explanations why no calculations were made for a period before then.

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Some other points were made by the appellant but they do not merit specific attention so lacking are they in substance. It follows that all grounds of appeal must fail and the appeal should be dismissed.

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THE PRESIDENT: I agree.

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JERRARD JA: I agree.

THE PRESIDENT: The order is the appeal against conviction is dismissed.

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