SUPREME COURT OF QUEENSLAND

CITATION:	*R v Markovski* [2009] QCA 299
PARTIES:	**R** **v** **MARKOVSKI, Cele** (appellant/applicant)
FILE NO/S:	CA No 110 of 2008 SC No 180 of 2008
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction & Sentence
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	9 October 2009
DELIVERED AT:	Brisbane
HEARING DATE:	25 September 2009
JUDGES:	Keane and Fraser JJA and Jones J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Appeal against conviction dismissed** **2. Application for leave to appeal against sentence refused**
CATCHWORDS:	CRIMINAL LAW – EVIDENCE – CONFESSIONS AND ADMISSIONS – STATEMENTS – STATEMENTS BY AGENTS – ACTS AND DECLARATIONS IN FURTHERANCE OF COMMON PURPOSE – GENERALLY – where appellant convicted upon jury verdict of two counts of trafficking in a dangerous drug and one count of possession of a dangerous drug – where evidence of telephone conversations between third parties using euphemisms for drugs admitted against appellant in furtherance of shared common purpose – where appellant argues Crown failed to establish shared common purpose – whether evidence admissible against appellant CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where appellant sentenced to concurrent terms of 15 years for the trafficking offences and six years for the possession offence – where appellant argued sentence manifestly excessive – where appellant tendered affidavits containing evidence available at

trial purporting to refute use of euphemisms for drugs in evidence of telephone conversations admitted against appellant – whether tendered affidavits should be received – whether sentence manifestly excessive

Martin v Osborne (1936) 55 CLR 367; [1936] HCA 23, cited
R v Elizalde [2006] QCA 330, cited
R v Kelly [2005] QCA 103, cited
R v Klasan [2007] QCA 268, cited
R v Omer-Noori [2006] QCA 311, cited
R v Slivo [2007] QCA 64, cited
Tripodi v The Queen (1961) 104 CLR 1; [1961] HCA 22, considered

COUNSEL: A J Glynn SC, with R Bonnici, for the appellant/applicant
R G Martin SC for the respondent

SOLICITORS: Carne Reidy Herd for the appellant/applicant
Director of Public Prosecutions (Queensland) for the respondent

[1] **KEANE JA:** On 5 March 2008 the appellant was convicted upon the verdict of a jury of one count of trafficking in the dangerous drug cocaine, one count of trafficking in the dangerous drug 3,4-methylenedioxymethamphetamine ("ecstasy"), and one count of possession of the dangerous drug cocaine. These offences were committed in contravention of the *Drugs Misuse Act* 1986 (Qld).

[2] On 6 March 2008 the appellant was sentenced to concurrent terms of 15 years for each of the trafficking offences and six years for the possession offence. The trafficking offences were declared to be serious violent offences. The effect of these sentences is that the appellant is obliged to spend 12 years in actual custody before he becomes eligible for parole.

[3] The appellant seeks to appeal against his convictions and sentence. It is necessary to summarise the case against the appellant advanced by the Crown at trial before proceeding to a discussion of the arguments agitated by the appellant.

The Crown case at trial

[4] The Crown case was that the appellant had engaged in trafficking cocaine and ecstasy from 28 July 2003 to 19 March 2004. He was also charged with his de facto wife, Danica Jovic, with being in possession of a quantity of cocaine on 18 March 2004.

[5] In relation to the trafficking charge, the Crown relied upon evidence of telephone intercepts of 215 conversations between the appellant and other persons. These telephone calls occurred between 29 July 2003 and 18 March 2004. Some of these conversations were in English, others were not. Of these conversations, 72 were between the appellant and Morteza Kashani-Malaki, who was referred to at trial as "Mo". In these conversations, references were made to the acquisition, supply, sale, purchase and distribution of commodities such as wine, ice cream, tiles, taps, and tap ware. These were apparently coded references to drugs. There were also discussions about the purchase of "blocks" or "blocks of land" or "that land". On some occasions, blocks of land were spoken about as if they were portable. There

was evidence that the price discussed for blocks of land said to be for "sub-division" was close to the going market rate for divided blocks of commercial cocaine. Similarly, the prices quoted for items such as taps, which the Crown alleged were ecstasy tablets, approximated the market price for ecstasy tablets. The Crown relied upon other evidence as well. It is in relation to this other evidence that the arguments on appeal arise. I shall summarise these aspects of the evidence.

[6] On 23 January 2004 the appellant rang Mo and asked how Mo had gone with "them taps". Mo said he had given them out last night. The appellant asked Mo if he wanted "the rest of them there", and Mo said: "Yeah, if they're good". The appellant repeatedly said that they were. The appellant said that he would drop them off to Mo the next morning. After this conversation, three telephone conversations occurred between Mo and Saman Omer-Noori ("Noori"). Two of these conversations occurred on 24 January 2004 and one occurred on 25 January 2004. In a conversation on 24 January between Mo and Noori, Mo said that he had "the taps, the washers" and said they were very good. Noori said he would let Mo know. On 25 January 2004 Mo said to Noori: "They bought some pills, yeah really good ones … He wants eighteen fifty for them." Mo said he tested them and "he made his stock guaranteed the same as that other stuff he gave …". Noori wanted to know what it was called and Mo said VW or V-Dub. He said again that it was guaranteed and that the pills came from "Ces". Other evidence shows that the appellant was known to Mo as "Cec".

[7] Mo came into possession of ecstasy tablets which bore a VW stamp or insignia on them. On 13 April 2004 police found five ecstasy pills with the VW insignia in a garage which other evidence connected to Mo.

[8] A police officer, Mr Molloy, gave evidence that on 6 August 2003 he stopped the appellant's motor vehicle for a traffic check. Mr Molloy said that he asked the appellant how much money he had, and the appellant said "$5,000". Mr Molloy said that the appellant turned out his pockets and Mr Molloy saw the money and formed the view that it was at least $7,000. The appellant said that the money was for a job he had done. He offered to give Mr Molloy the name of the person who had paid him the money. Mr Molloy did not accept the invitation. There was evidence from Mr Liekefett, a police surveillance officer, that prior to Mr Molloy's contact with the appellant, the appellant had been observed by police arriving at and leaving the apartment block where Mo lived.

[9] Later on 6 August 2003 a telephone conversation occurred between Jovic and Mo. Jovic said to Mo that Cele had been pulled over by police who found money in his pocket. Jovic told Mo that the appellant had called her to say that the police might be calling her and that she should say that "Showstopper" had paid them the money for a job they had done for them. She then asked Mo if it was alright to say that. He said it was. She also asked for a person from that organisation whose name she could use. Mo gave her a name.

[10] Later that day, Mo rang the appellant. They discussed the fact that the appellant had been pulled up by the police. Mo asked: "What happened to the money situation …?" The appellant said that he told police "we did a job." Mo said: "… so there's no problem", and the appellant said: "Anyway as I said I just stay low till I get my traffic I mean licence sorted out …"

[11] The Crown also relied upon evidence of a telephone conversation on 22 November 2003 at 16:06:25 between the appellant and an unidentified male person about items referred to as "Queen Bees" which the unidentified person said he was going to try that night. The appellant asked how much they were and was told: "About one thousand, maybe about 17." The appellant asked about the price for more and said: "About five thousand we need … for every week." The unknown male then quoted a price: "Maybe up to fourteen." The appellant then referred to "V Volkswagen".

[12] On 18 March 2004 police found a container with a caustic soda label in a nappy bag in the appellant's car. In the container was 494 grams of white powder containing 378 grams of cocaine. The fingerprints of the appellant and Mo were on the container. On the same day police found $5,000 in cash in the appellant's home.

[13] In a record of interview between Jovic and the police, Jovic said in relation to the container of cocaine found in the nappy bag:

> "No, I said Cele must have put it in the bag because I hadn't seen it. I don't know - I don't know what it was. I don't know if he bought it or - I don't know. I don't even know if he did buy it. I just opened it and it was there."

[14] The appellant did not give or call evidence at trial.

Grounds of appeal

[15] The Court granted the appellant leave to amend his notice of appeal to raise the following grounds of appeal in relation to his convictions:

> "1. The learned Trial Judge erred in admitting evidence of three conversations between Morteza Kashani-Malaki and Saman Omer-Noori.
> 2. The learned Trial Judge failed to properly direct the jury with respect to the evidence referred to in Ground 1;
> 3. The learned Trial Judge erred in admitting the evidence of a conversation between Danica Jovic and Morteza Kashani-Malaki on the 6th August 2003;
> 4. The learned Trial Judge erred in admitting evidence of the finding of five 'ecstasy' tablets in the control of Kashani-Malaki.
> 5. The learned Trial Judge erred in failing to direct the jury that they could not use the statements of Jovic made to a police officer against the Appellant."

Grounds 1 and 2

[16] It is convenient to consider grounds 1 and 2 together as they each concern the evidence of the three telephone conversations in January 2004 between Mo and Noori referred to above.

[17] On the appellant's behalf it is submitted that the evidence of the conversations between Mo and Noori was inadmissible against the appellant. It is said that, as against the appellant these statements were hearsay, and they were not admissible as statements in furtherance of a common purpose because of the failure of the Crown to establish a common purpose which involved the appellant in any dealings between Mo and Noori.[1] The proposition advanced on the appellant's behalf by

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[1] Cf *Tripodi v The Queen* (1961) 104 CLR 1 at 7.

Mr Glynn SC, who appeared for him with Mr Bonnici of Counsel, was that the only basis for the admission of what would otherwise be inadmissible hearsay statements against the appellant required the Crown to establish a common unlawful purpose between the appellant and Mo so that any statements by Mo to Noori could be seen as statements by Mo as agent of the appellant in furtherance of that common purpose.

[18] In *Tripodi v The Queen*,[2] it was said that:

> "[T]he basal reason for admitting the evidence of the acts or words of one against the other is that the combination or preconcert to commit the crime is considered as implying an authority to each to act or speak in furtherance of the common purpose on behalf of the others."

[19] On the appellant's behalf it is argued that the evidence did not establish a purpose common to the appellant and Mo in respect of which Mo's conversations with Noori occurred in furtherance of the purpose with Mo acting as the appellant's agent. The common purpose cannot be identified, so it is said, any more precisely than in the following passages from the learned trial judge's summing-up to the jury. His Honour said:

> "What you must do, rather than leap on the word 'Ces' and say, 'Well, that definitely puts Markovski in', is look at the conversations as a whole and see whether they satisfy you that they are in fact a progression of the plan, if you consider there is a plan, that Markovski and [Mo] had to distribute, to buy, sell, illicit drugs."

[20] Earlier his Honour had said:

> "Well, what I want to say about that in particular, apart, of course, from the fact the Crown relies on them as setting up an actual deal that emanated from the accused man Markovski is this …"

[21] On the appellant's behalf, it is said that the purpose so identified was not a sufficient basis to characterise Mo as the appellant's agent for the sale of drugs by the appellant to Noori. It is argued that while the evidence in question here may suggest a transaction of sale between Mo and Noori relating to ecstasy, and a separate transaction of sale between Mo and the appellant, there is no basis for an inference of a transaction encompassing the appellant and Mo in the common purpose of trafficking in ecstasy to Noori. At best for the Crown, so it is said, the evidence shows a series of separate sales in which any sale by Mo to Noori was a sale by Mo on his own account.

[22] On the respondent's behalf it is submitted that the appellant's argument fails to recognise that the statements made in the conversation between Mo and Noori were indeed made in furtherance of the purpose, common to Mo and the appellant, of distributing illicit drugs, sourced from the appellant, and on-sold by Mo to others including Noori.

[23] The respondent relies upon the decision of this Court in *R v Kelly*[3] where McPherson JA said that where the prosecution case was that A and B were engaged in carrying out an agreement amounting to an unlawful conspiracy to supply C with illicit drugs, it would not matter, for the purpose of admitting into evidence against

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2 (1961) 104 CLR 1 at 7.

3 [2005] QCA 103 esp at [6].

A statements made by B and C in the absence of A, whether A was the principal supplier and B his agent, or whether A and B were partners or even independent contractors who joined in the process of trafficking drugs to C. McPherson JA described the question for the jury as being whether A was proved to be a party to the transactions between B and C "which were the original evidence or *res gestae* relied on by the Crown" to establish A's part in the conspiracy to supply illicit drugs to C.

[24] I accept the respondent's submission. In my respectful opinion, the appellant's argument takes too narrow a view of the nature of the dealings between the appellant and Mo. Once it is accepted that there was evidence, other than Mo's conversations with Noori, from which a purpose, common to the appellant and Mo, for the provision of ecstasy by the appellant to Mo for on-sale might be inferred, it may also be inferred Mo was speaking for both himself and the appellant in negotiating the on-sales. The large quantities of drugs discussed between the appellant and Mo compels the inference that the supply by the appellant to Mo was not for his consumption but for further distribution. The evidence of the appellant's assurances to Mo as to the quality of what was to be supplied supports the inference that the appellant and Mo were both concerned with the on-supply of the appellant's products. The inference that the purpose of further distribution down the chain from Mo was common to them would not be falsified by the possibility that they may have chosen to keep their accounts between each other as buyer and seller rather than as partners, but, as it happens, there is no evidence that this was the case.

[25] Under this ground of appeal it is also argued for the appellant that, even if the evidence of the conversations between Mo and Noori was admissible against the appellant, it was admissible only in relation to count 2, the charge of trafficking in ecstasy. The learned trial judge erred, it is said, in failing to direct the jury that they could not use the evidence of this trafficking to establish the appellant's guilt of the other charges, particularly the charge of trafficking in cocaine.

[26] The respondent argues that the Crown case at trial was that the appellant and Mo were involved in the business of trafficking both ecstasy and cocaine. To establish each of counts 1 and 2, it was necessary to show a regularity of dealing sufficient to establish that such dealing with drugs as the appellant was involved in, occurred in the course of a business which might be regarded as "trafficking".[4] In my respectful opinion, the Crown was entitled to contend that the appellant had established a business which involved trafficking in ecstasy and trafficking in cocaine.

[27] In any event, the learned trial judge made sure that the jury did not confuse the evidence which was particularly relevant to each of the trafficking counts. His Honour said:

> "Now, count 1 - turning to count 1 - I am still talking now about what is alleged - what the Crown case is here - as I think I mentioned to you before, the Crown places heavy emphasis on the use of the words 'white', 'paint', 'Coke', 'drink with Scotch', 'stuff you can drink from a can', 'pure', those words, and also the dollar values. For example '205 for the block' and the Crown says, 'Well, that's actually 205,000 for the block.' And that falls in with the evidence given by those experienced in this business, namely the investigating police officers. And, of course, the Crown says you can pay attention, in

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[4] Cf *Martin v Osborne* (1936) 55 CLR 367 at 376; *R v Kelly* [2005] QCA 103 at [7].

> considering the trafficking charge, to the fact that there was nearly half a kilo of very pure cocaine in Markovski's car on the 18th of March 2004, and the particular calls leading up to that interception, which are 209, 212 and 215. I won't read them to you. You can look at them.
>
> Now, on count 2, what does the Crown say specifically? Well, there is references in the telephone calls to the costing which allies with the oral evidence you heard from the police officers, $17, $17.50, $18, $20 and that, the Crown says, will satisfy you that what's being talked about here are tablets - ecstasy tablets.
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> Certain items which were frequently discussed, the Crown submits to you, in context can only be rationally and reasonably taken to be references to ecstasy tablets. Taps, [washers], plumbing, tiles. The Crown refers to the quantity referred to. They are talking about thousands, and I think on one occasion even hundreds of thousands of one of those items.
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> There is reference to the quantity of these items in terms, the Crown submits to you, one would not use in relation to taps, [washers], tiles, et cetera. 'Super grouse', 'highest quality', 'I've tried them, they're the best', words to that effect. And then there is the description, '007' and 'VW' and there is police evidence in relation to what those items - what those abbreviations can mean in the drug trade - or do mean in the drug trade.
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> Then, finally, in relation to the ecstasy the Crown points to the fact that five tablets stamped 'VW' were found in the garage to which [Mo] had access, even though it appears somebody else may have had access also, the day before. They follow calls numbered 139, 140, 141 and 142."

[28] There was no request by the appellant's counsel at trial for any redirection. That is hardly surprising, given that the learned trial judge's directions had sufficiently compartmentalised the evidence which bore directly on the trafficking of each particular commodity.

[29] It was also said in the appellant's written submissions that the learned trial judge erred in mentioning, in the course of his summing-up to the jury, that he had ruled that the evidence was admissible. It was said that this observation was unnecessary and gave rise to a risk that the jury would have taken this reference as giving the evidence special weight. On the contrary, so it was said, his Honour should have emphasised to the jury the need for caution in acting upon such evidence and that they must be satisfied that the conversation was in furtherance of an unlawful purpose.

[30] This criticism was not further developed in the submissions made orally on the appellant's behalf. There is no substance in this criticism of the learned trial judge's summing-up. No application for a redirection was made at trial, and it is impossible to suppose that his Honour's comment adversely affected the appellant's prospects of acquittal.

[31] I would reject these grounds of appeal.

Ground 3

[32] On the appellant's behalf it is said that the evidence of the telephone evidence between Jovic and Mo of 6 August 2003 was inadmissible hearsay. In particular, it is said that Jovic's assertions to Mo about what the appellant had told her were inadmissible as evidence of the truth of what she asserted because they were hearsay; and, to the extent that the Crown contended that the assertions were admissible as proof that Jovic said these things, then they were of no probative value at all and were inadmissible as irrelevant.

[33] It may well be that the conversation between Jovic and Mo was admissible on the basis that it could be inferred that Jovic was speaking to Mo at the appellant's request, but the Crown Prosecutor did not seek to support its admissibility on this basis. But, in any event, the appellant's argument fails to appreciate that the fact that the conversation took place is relevant to set the scene for the subsequent discussion on the same day between the appellant and Mo: the conversation between Jovic and Mo is a fact which explains Mo's telephoning the appellant. In the conversation between the appellant and Mo there is evidence of consciousness of guilt referable to the appellant's interception by police shortly after the appellant's contract with Mo.

[34] I would reject this ground of appeal.

Ground 4

[35] Under this heading, the appellant argues that the learned trial judge erred in admitting the evidence that the five ecstasy tablets were found at Mo's home on 13 April 2004 in support of the charge of trafficking in ecstasy. It is said that the location of these tablets with the VW insignia was too remote from the conversation of 22 November 2003 concerning "Queen Bees" and "Volkswagens" to establish that they had been supplied to Mo by the appellant in the course of the appellant's trafficking in ecstasy.

[36] It was a rational inference from the discovery at Mo's place of ecstasy tablets with a VW logo on them, subsequent to a discussion between Mo and the appellant about the supply by the appellant to Mo of ecstasy tablets bearing this logo, that the tablets were supplied by the appellant. Whether that inference was the only reasonable inference in the circumstances depends on the other evidence in the case. In this regard, there was, as has been seen, discussion about the supply of ecstasy tablets with the VW logo in late January 2004. There was also no suggestion in the evidence that Mo had other sources of supply of ecstasy tablets marked with the VW logo.

[37] I would reject this ground of appeal.

Ground 5

[38] On the appellant's behalf it is contended that the learned trial judge erred in failing to direct the jury that they could not use Jovic's statement to the police concerning the container in the nappy bag against the appellant. It is argued for the appellant that the jury should have been warned that this statement which asserted a close connection between the appellant and the container could not be used against the appellant.

[39] The Crown case was that Jovic's assertions, which were an integral part of her denial of criminal responsibility for possession of the cocaine, were untruthful. It is

evident that the jury accepted the Crown case in this regard because they convicted Jovic of possession. It is therefore apparent that the jury rejected Jovic's assertions.

[40] There was evidence, apart from Jovic's assertions, on which the jury could have convicted the appellant of the charge of possession. In particular, there was the evidence of the discovery of the appellant's fingerprints on the container of cocaine in his car.

[41] Once again it is impossible to suppose that the appellant's prospects of acquittal were adversely affected by the absence of a direction of the kind now said to be necessary.

[42] I would reject this ground of appeal.

Sentence

[43] It is said on the appellant's behalf that the sentence of 15 years with a non-parole period of 12 years is manifestly excessive. On the appellant's behalf it is submitted that the proper sentence was imprisonment for 11 years with a non-parole period of eight years.

[44] The appellant was 47 to 48 years old at the time of the offences. He was 52 years old when he was sentenced. His criminal history was of little relevance.

[45] In passing sentence on the appellant, the learned sentencing judge made it clear that he regarded the appellant as a person who was highly placed in the drug distribution network and who dealt in wholesale amounts. His Honour noted the absence of remorse on the appellant's part.

[46] The learned sentencing judge was satisfied that, even though he was unable to say what profit the appellant might have made from his illicit trading, the appellant was engaged in "trafficking at a very high level … in wholesale amounts of cocaine and ecstasy … for the obvious motive of making profits … over eight months". His Honour went on to say:

> "[T]here is good reason to believe that you were high up the totem pole. One is drawn irresistibly to that by listening to the very lengthy record of calls. You and Kashani-Malaki were on easy terms with each other and you were talking about very large amounts of cash which, I might say, never reached the banking system or any other system whereby it might be traced. You used terms which have been explained to us by the investigating police officers which indicate very large quantities of illegal drugs. A block of land means a large quantity of, in this case cocaine, sometimes heroin. We are told that a kilogram of good quality cocaine has a wholesale value of $205,000-odd.
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> There is reference in a phone call to some 67,000 and I believe that that refers to dollars. And that call, as I was reminded, was made in the early days of your trafficking. Looking at that amount of money, $205,000 per kilogram for high purity cocaine we see that half a kilogram, an amount which achieved some importance in this case, is over $100,000 wholesale, and there is reason to believe that cocaine of that quality when broken down to street level approaches $1 million.

> In October 2003 there was reference to five acres. If we are talking about cocaine, as I think likely, we are talking about five kilograms of cocaine. In relation to the ecstasy, in November, I think it was, 2003 there is reference to 5,000 tablets per week.
>
> Now, the evidence is that these tablets sell for between 20 and $30 to those who use them. Well, simple mathematics shows a very large sum of money involved in that trade.
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> There is a discussion on the phone in which it appears that one of your customers owed you a quarter of a million dollars. In December '03 there is talk of 400 to $500,000. In December there is reference to 5,000 tablets, which I think we can take to be ecstasy. And in February 2004 there is reference to 40 grand per month. There is reason to believe that high quality cocaine can be built up by some 10 to 40 per cent before it is released on the street."

[47] His Honour's reference to the use of the term "block of land" to refer to "very large quantities of illegal drugs" and to the wholesale value of $205,000 for a kilogram of good quality cocaine, was informed by the evidence of Mr Doran, a police detective. It is said for the appellant that there was no reference to a "block of land" in the evidence on this point: rather this evidence was to "a block". It is said that the learned sentencing judge could not rely upon Mr Doran's evidence of the interpretation of these terms to make findings of fact as to the quantities and values of drugs trafficked by the appellant In particular it is said that this evidence was not sufficient to enable the learned sentencing judge to make findings of fact adverse to the appellant.

[48] Further in this regard, affidavits of Roman Balaz, Jakov Beslic and Colleen Donnelly were tendered to this Court in an endeavour to show that references in telephone intercepts by the appellant to a "block of land" at "Bundall" were indeed references to a block of land and not to a large amount of cocaine. On the appellant's behalf it is said that the affidavit of Mr Balaz explains that he spoke to the appellant about the possibility of buying two blocks of land at Bundall, one being "clean", that is to say, cleared, the other not so. It is submitted that if this evidence had been placed before the learned sentencing judge it would have cast doubt on Mr Doran's evidence of the coded meaning of terms used in conversations involving the appellant.

[49] It is also said on the appellant's behalf that the learned sentencing judge erred in failing to give weight to subjective factors in mitigation of sentence such as the appellant's age, marital and emotional situation, his previous good character and his good work history. The appellant and Jovic are the parents of a young child.

[50] No explanation is advanced on the appellant's behalf as to why the new evidence which is proffered was not called at trial. There is no suggestion that this evidence was not available to the appellant. I infer that it was not adduced at trial as a result of a deliberate forensic decision. Even if it were the case that the appellant did engage in genuine negotiations about a block of land at Bundall, it would remain the case that there was ample evidence on which the learned sentencing judge could reasonably conclude that the appellant's trafficking produced substantial profits, and that he was close to the top of his distribution network.

[51] There is no good reason to relieve the appellant from the consequences of the manner in which his case was conducted at trial. I would reject the tender of these affidavits.

[52] In relation to the subjective factors which the appellant claims were not given sufficient weight by the learned sentencing judge, the circumstance that the appellant has a good work history and a relatively good record is of little moment where the offences for which the appellant was sentenced involved an organised criminal enterprise conducted for profit.

[53] Decisions of this Court show that in cases of substantial trafficking at a relatively high level in the drug distribution network, a sentence between 11 and 13 years imprisonment is the appropriate range where the offender is entitled to the benefit of a plea of guilty.[5] The appellant was not entitled to that benefit. The sentence which was imposed was within the appropriate range of sentence for trafficking of this order of seriousness.

Conclusions and orders

[54] The grounds of appeal against conviction are not made out. The appeal against conviction should be dismissed.

[55] The sentence was not affected by error. The application for leave to appeal against sentence should be refused.

[56] **FRASER JA:** I have had the advantage of reading Keane JA's reasons. I agree with those reasons and with the orders proposed by his Honour.

[57] **JONES J:** I respectfully agree with the reasons of Keane JA and with the orders he proposes.

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[5] *R v Omer-Noori* [2006] QCA 311; *R v Elizalde* [2006] QCA 330; *R v Klasan* [2007] QCA 268; *R v Slivo* [2007] QCA 64.