

IN THE HIGH COURT OF AUSTRALIA  
SYDNEY REGISTRY

S  
No. 233 of 2018

BETWEEN:



JASON TROY MCKELL  
Appellant

and

THE QUEEN  
Respondent

APPELLANT'S CHRONOLOGY

Part I:

We certify that this chronology is in a form suitable for publication on the internet.

Part II:

| Date        | Event  | Appeal Book Reference   |
|-------------|--|-------------------------|
| May 2013    | A joint taskforce began intercepting the telephone services of the appellant and the co-accused. Police conducted surveillance of the appellant and the co-accused on 14, 16, 18 and 20 May 2013.  | CAB 167.44, 168.18      |
| 13 May 2013 | The appellant instructed a Wymap employee to make enquiries with respect to three consignments using their airway bill numbers.  | CAB 168.6               |
| 16 May 2013 | A consignment, originating in Chile, arrived in Sydney aboard an Emirates flight, containing five boxes labelled "pajamas" (first consignment). DHL was the nominee consignee as the freight-forwarding agency. The ultimate consignee was Reach Ltd, which police enquiries found did not exist.  | CAB 168.32-40           |
| 17 May 2013 | The appellant sent a text message to a Wymap truck driver instructing him to collect the first consignment and keep it with him, and later told the driver not to put the consignment in his electronic run sheet.   | CAB 168.42-50           |
| 18 May 2013 | The appellant and Wymap truck driver met and transferred the boxes to the appellant's utility vehicle. The appellant drove and met the co-accused in the car park underneath the appellant's unit complex.<br><br>The appellant then drove and met the Wymap truck driver again, told him there had been a mistake and they transferred the boxes back to the truck. | CAB 168.54-60, 169.1-14 |

| Date                  | Event   | Appeal Book Reference                              |
|-----------------------|---|--|
| 20 May 2013           | <p>A consignment, originating in Bangladesh, arrived in Sydney aboard a Malaysian Airlines flight, comprising 22 boxes, 15 of which each contained five pails labelled "printing transfer adhesive" (<b>second consignment</b>). DHL was the nominal consignee as the freight-forwarding agency. The ultimate consignee was T-Shirt Printing Australia, which existed but had not ordered the consignment.</p> <p>The 75 pails contained a crystalline substance weighing 77,708.7 grams comprising pseudoephedrine.</p>  | CAB 169.30-44                                      |
| 20 May 2013           | <p>The appellant and the co-accused met at a café and discussed the second consignment, and the appellant used an iPad to track that and a third consignment.</p> <p>The co-accused attended a self-storage facility where he purchased flat-packed boxes and packing tape. The appellant sent the co-accused a text message stating "Dont forget to tape trial".</p> <p>The co-accused taped the bases of boxes and loaded them into his vehicle. The appellant phoned the Wymap truck driver and told him that the one last week was the wrong one but he now had the real one, and told him to collect a consignment of 22 boxes from a cargo terminal operator.</p> <p>The appellant subsequently collected the boxes from the driver. The police arrested the appellant and, a short time later, also arrested the co-accused.</p> | CAB 169.58,<br>170.1-20,<br>170.34-50,<br>171.1-18 |
| 21 May 2013           | <p>A consignment, originating in Abidjan, arrived in Sydney aboard a British Airways flight, comprising two boxes of shampoo bottles (<b>third consignment</b>). The consignee was the same company used for the first consignment, which did not exist.</p> <p>The shampoo bottles contained a total of 9,962.7 grams of a crystalline methylamphetamine.</p>  | CAB 171.24-34                                      |
| Around<br>21 May 2013 | Police executed a search warrant in the appellant's home and located \$400,150 in cash in a lock box.   | CAB 171.44-48                                      |
| 8 May 2016            | A joint indictment was presented against the appellant and the co-accused. The appellant was charged with one offence contrary to s 307.11(1) of the <i>Criminal Code</i> (Cth), one offence contrary to ss 11.5(1) and 307.1(1) of the <i>Criminal Code</i> (Cth) and one offence contrary to s 400.4(1) of the <i>Criminal Code</i> (Cth).  | CAB 5  |

| Date              | Event   | Appeal Book Reference                     |
|-------------------|---|---|
| 7 June 2016       | Baly DCJ determined a pre-trial application by both accused to have evidence concerning the first consignment excluded.   | AFM 5-10                                  |
| 8 June 2016       | Trial of the appellant and the co-accused commenced in the NSW District Court in Sydney before a different judge, King DCJ and jury.  | CAB 221                                   |
| 14 July 2016      | Summing up by the trial judge commenced.  | CAB 8-36                                  |
| 15 July 2016      | Summing up by the trial judge was completed and the jury retired.   | CAB 37-94                                 |
| 21 July 2016      | Jury returned verdicts of guilty on all charges.  | CAB 102-103                               |
| 11 November 2016  | The appellant was sentenced to a non-parole period of 11 years and 9 months, to expire on 18 April 2018, with a balance of term of 6 years and 9 month.   | CAB 156, 158-159 (remarks at CAB 104-157) |
| 5 June 2017       | Notice of appeal filed in the New South Wales Court of Criminal Appeal stating that the ground of appeal was that " <i>The Judge's summing up to the jury caused a miscarriage of justice</i> ".                            | CAB 160-161, 162                          |
| 15 September 2017 | Hearing of the appellant's appeal in the NSW Court of Criminal Appeal, before Payne JA, Beech-Jones J and Fagan J.  | CAB 163                                   |
| 8 December 2017   | New South Wales Court of Criminal Appeal dismissed the appellant's appeal (Payne JA and Fagan J agreeing with additional remarks, Beech-Jones J in dissent).  | CAB 163-208<br>CAB 209                    |
| 17 August 2018    | Special leave granted after oral hearing (Keane and Bell JJ) from the whole of the judgment (of the majority) of the Court of Criminal Appeal of New South Wales given on 8 December 2017.                                  | CAB 229                                   |
| 23 August 2018    | Order granting special leave to appeal filed and served.  | CAB 229                                   |
| 29 August 2018    | Notice of appeal, on behalf of the appellant, to the High Court of Australia, on the ground that the CCA erred in finding that the summing up to the jury by the trial judge did not give rise to a miscarriage of justice. | CAB 230                                   |

**Dated: 5 October 2018**

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**A L Bonnor**