



Momcilovic v. The Queen

245 CLR 1

Country: Australia

Region: Oceania

Year: 2011

Court: High Court

Health Topics: Controlled substances

Human Rights: Right to due process/fair trial

Facts

In 2006, police found over 700 grams of methylamphetamine in Momcilovic's apartment. Forensic evidence linked the drugs to her partner, but not to Momcilovic. She denied knowing that the drugs were in her apartment or that her partner was involved in trafficking. Her partner admitted at Momcilovic's trial that the drugs were in his possession for sale.

Momcilovic was convicted of drug trafficking under Australia's Drugs, Poisons and Controlled Substances Act of 1981 (the Act). Section 5 of the Act provided that a substance found on premises occupied by a person was deemed to be in the possession of that person unless the person satisfied the Court to the contrary.

Momcilovic appealed her conviction, arguing that, because Section 25(1) of Australia's Charter of Human Rights and Responsibilities Act (the Charter) guarantees the right of criminal defendants to be presumed innocent until proven guilty, Section 5 of the Act must be interpreted as requiring that persons on trial for drug offenses need only meet the evidential burden of introducing evidence tending to show that drugs found on premises occupied by that person were not in that person's possession. It would then be up to the prosecutor to prove possession beyond a reasonable doubt. Further, she argued that Section 5 did not apply to the drug trafficking offense with which she was charged so as to relieve the prosecution of the burden of proving that she knew of the existence of the drugs she was said to be trafficking.

Decision and Reasoning

First, the Court held that Section 5 of the Act could not be interpreted to impose the evidential burden that Momcilovic proposed. The Court reasoned that the plain-language of Section 5 was clear, and that the Court was bound to apply the ordinary meaning of the statute to effectuate the intent of Parliament upon enacting the law. It thus could not change the burden of proof from that provided by the statute. The Court underwent an extensive analysis of section 7(2) of the Charter, which provides that a human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and ultimately determined that section 7(2) could not play a part in the Court's interpreting the law in a way that is compatible with human rights, its duty under section 32(1) of Charter.

Second, the Court held that Section 5 did not apply to drug trafficking offenses. The Court looked to the trial court's jury instructions, which had left it open to the jury to convict Momcilovic of trafficking even though they were not satisfied beyond reasonable doubt that she knew of the existence of drugs in her apartment. That is, the jury instructions had allowed the jury to conclude that Momcilovic's presence in the apartment where drugs were present was prima facie evidence of trafficking of those drugs, and Momcilovic had the burden of proving otherwise. The Court held that such instructions were inconsistent with the presumption of innocence and that Momcilovic was entitled to a retrial.

Decision Excerpts

"In my opinion, the application of s 5 to establish prima facie evidence of possession for sale constituting trafficking under s 71AC is anomalous and is not a purpose of the Act. As a matter of construction it should not be applied to that offence. The contrary view has the result that occupation of premises, upon which there is a quantity of drugs of or exceeding the traffickable quantity, would be prima facie evidence of trafficking in those drugs in circumstances in which the burden of disproving knowledge of the presence of the drugs on the premises would rest upon the accused." Para. 72.

“For the preceding reasons, and having regard to the way in which the case was conducted at first instance, there was a miscarriage of justice by reason of the misapplication of s 5 of the Drugs Act to the charge of trafficking. The various directions that the appellant bore the burden of proving that she did not know of the drugs should not have been made. The trial judge ought to have directed the jury that it was for the Crown to prove beyond reasonable doubt that the appellant was in possession of the methylamphetamine found in her apartment and, as a necessary part of that proof, to show that she knew of its existence.” Para. 74.

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