

CITATION: *The King v Truong* [2024] NTSC 23

PARTIES: THE KING

v

TRUONG, Tony Vinh

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

FILE NO: 22137062

DELIVERED: 2 April 2024

HEARING DATE: 11 and 12 December 2023

JUDGMENT OF: Kelly J

CATCHWORDS:

Misuse of Drugs Act 1990 (NT)

REPRESENTATION:

Counsel:

Crown:

I Rowbottam

Accused:

M Thomas with R Shaw

Solicitors:

Crown:

Director of Public Prosecutions

Accused:

Shaw and Henderson

Judgment category classification: C

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

The King v Truong [2024] NTSC 23
No. 22137062

BETWEEN:

THE KING

AND:

TONY WINH TRUONG

CORAM: KELLY J

REASONS FOR JUDGMENT

(Delivered 2 April 2024)

- [1] Mr Truong has pleaded guilty to one count of supplying a commercial quantity of methamphetamine and one count of supplying a commercial quantity of cannabis.
- [2] The statement of facts relied on by the Crown is quite lengthy (“Crown facts document”). It consists of 60 paragraphs most of which set out text messages between Mr Truong and various people to whom he is alleged to have supplied cannabis. These were taken from data retrieved from Mr Truong’s phone which was seized by police after he was arrested on the charge of supplying methamphetamine.

[3] Counsel for Mr Truong, Mr Thomas, took exception to some of the matters set out in the Crown facts document. During a preliminary mention of this matter, the Crown prosecutor, Mr Rowbottam indicated that he had asked defence counsel, Mr Thomas, to indicate which paragraphs of the Crown facts document he disagreed with and what the defence position was in relation to those matters so that the matter could be settled by negotiation. Mr Thomas said in Court that he declined to do so and insisted that the matter be set down for a disputed facts hearing. I gave a direction that the defence give notice of the matters in the Crown facts document that were in dispute and set it down for a disputed facts hearing as requested.

Mr Thomas eventually produced a document setting out the paragraphs he objected to. In the end, this boiled down to four areas of disagreement.

[4] The first area of disagreement relates to the allegations of supply of cannabis to Joseph D'Antoine. These allegations are contained in paragraphs [52] to [56] of the Crown facts document. The allegation is that Mr Truong supplied Mr D'Antoine with a half pound (227 grams) of cannabis. This is admitted by the defence, but Mr Thomas objected to the inclusion of paragraph [54] which states:

At approximately 2.16 pm on 17 October 2021, Truong attended Hudson Apartments in Berrimah and collected a suitcase containing approximately 34 pounds (15.6 kg) of cannabis from an interstate courier.

- [5] The reason given for objecting to this was that it did not relate to the supply to Mr D'Antoine. The Crown prosecutor, Mr Rowbottam agreed to delete this paragraph when notified of the objection.
- [6] The second area of disagreement concerned a matter in paragraphs [33] to [51] of the Crown facts document relating to the supply of cannabis to Joseph John Micairan. The allegation is that Mr Truong supplied Mr Micairan with 20 pounds (9.07 kg) of cannabis and this is admitted by the defence. However, Mr Thomas objected to the inclusion of paragraphs [36], [37], [38] and [49]. Paragraphs [36] to [38] relate to text messages between Mr Truong and Mr Micairan in which Mr Micairan asked Mr Truong to supply him with a hand gun and Mr Truong tried to talk him out of it but appears to have agreed, and text messages in which Mr Truong offered to sell Mr Micairan three rifles. Paragraph [49] sets out details of weapons, including firearms, found during a search of Mr Truong's property.
- [7] Mr Thomas contended that these should not be included because they are irrelevant. At the disputed facts hearing, Mr Rowbottam contended that these paragraphs were included because the possession of firearms is an aggravating circumstance when people are selling drugs because it indicates that the person is in need of, and has taken steps to obtain, extra-legal security for his illegal operations.

- [8] The Crown called evidence from Detective Ramage from the Drug and Organised Crime Division to the effect that the text messages had indeed been retrieved from Mr Truong's phone and that the firearms had in fact been seized.
- [9] I do not consider that these paragraphs in the Crown facts document are totally irrelevant to the charges to which Mr Truong has pleaded guilty for the reasons outlined by Mr Rowbottom. They supply some context within which the admitted offending took place. However, I do not agree that these matters are technically aggravating or that they will make a substantial difference (if any) to the sentence to be imposed.
- [10] Thirdly, Mr Thomas objected to the inclusion of paragraphs [14] to [18] of the Crown facts document which referred to the fact that Hujaness Samuela had flown from Melbourne to Darwin with three large suitcases. On being told of Mr Thomas's objection, Mr Rowbottom for the Crown agreed to delete those paragraphs stating that in his view they would make no difference to the sentencing exercise. They had been included simply for context, to give an indication of where Mr Truong got at least some of his cannabis from.
- [11] Fourthly, Mr Thomas objected to the inclusion of paragraphs [22] and [27] of the Crown facts document in the section of the document relating to allegations of supply of cannabis to Joseph John Crosbie. Paragraph [22] relates to the supply of one pound of cannabis. Detective Ramage gave

evidence that the relevant text messages had been retrieved from Mr Truong's phone and that they related to the re-supply of one pound of cannabis by Mr Crosbie to Mr Truong (from cannabis Mr Truong had earlier supplied to Mr Crosbie). Because of this it was not included in the total amount supplied by Mr Truong to Mr Crosbie in the Crown facts document. Again the existence of the relevant text messages was not in dispute. This is clearly relevant to the current offences, being a supply within the extended definition in the *Misuse of Drugs Act 1990* (NT).

[12] Paragraph [27] refers to a text message from Mr Truong concerning \$400,000, and 170kg of "green" (meaning cannabis). It is not alleged by the Crown that Mr Truong was responsible for the supply of this or in receipt of the money. It was included as context only. In the words of Mr Rowbottom, "It demonstrates how high up in the food chain [Mr Truong] was, in terms of his contacts in the drug world." The existence of the text and its meaning were not disputed.

[13] In my view, while this may be of marginal relevance only, it is not totally irrelevant, providing context to the current offences by demonstrating that Mr Truong had knowledge of quite high level drug transactions, from which the prosecution seek to draw an inference that Mr Truong occupied a senior role in the syndicate which was supplying drugs into Darwin. (Whether that inference should be drawn is a matter to be agitated on the sentencing hearing, not on what was supposed to be a disputed facts hearing.)

- [14] Detective Ramage gave evidence at the disputed facts hearing about the existence of the retrieved text messages that form the basis of the Crown facts document. He also gave evidence, based on his many years' experience in the Drug and Organised Crime Division, about the meanings of some of the expressions used in the text messages, although there did not seem to be any dispute about these.
- [15] In my view, there is no good reason why the disputed paragraphs [36], [37], [38] and [49] (relating to firearms), paragraph [27] (demonstrating Mr Truong's knowledge of transactions involving \$400,000 and 170kg of cannabis), and paragraph [22] (relating to an arrangement for Mr Crosbie to resupply 1 pound of cannabis to Mr Truong) should be excluded from the Crown facts document. The facts in those paragraphs are not disputed and are not totally irrelevant to the charges to which Mr Truong has pleaded guilty.
- [16] Having said that, while these paragraphs give some context to the offending, given the matters in the rest of the Crown facts document, it does not seem to me that their inclusion is likely to have a significant effect (if any) on Mr Truong's sentence.
- [17] I should add that although this matter was listed as a disputed facts hearing, none of the facts set out in the paragraphs objected to was actually disputed. The paragraphs in question simply set out text messages that the defence did

not dispute had been sent and received. Nor was the amount of the drugs supplied put in issue.¹

- [18] The cross-examination of Detective Ramage consisted almost entirely of defence counsel asking him to confirm that he could not say that the transactions discussed in certain selected texts had in fact occurred. Detective Ramage readily conceded that was correct, and in fact added that he could not say whether any of the transactions discussed in the text messages had taken place. That is irrelevant to the question of criminal liability given that the extended definition of “supply” in the *Misuse of Drugs Act 1990* (NT) includes doing, or offering to do, an act preparatory to supply.
- [19] Although the issue pursued in cross-examination may be relevant to an assessment of objective seriousness, on the basis that the drugs discussed in those transactions were not actually supplied into the community with consequential harm, the Crown was not suggesting otherwise. That being so, it was unnecessary to call Detective Ramage to give evidence. Similarly, the other questions going to relevance, significance and weight agitated by the defence during the course of the preliminary hearing were more appropriately addressed during the course of the substantive sentencing

¹ There was one exception to this. Paragraph 28 of the Crown facts document set out text messages between Mr Truong and Mr Crosbie in which Mr Crosbie mentioned 20 (meaning 20 lbs of cannabis) and Mr Truong said, “I’m giving you 30.” Mr Thomas said that Mr Truong did not admit to actually supplying more than 20 lbs of cannabis on this occasion. That is irrelevant. The text message itself amounted to a supply of 30 lbs within the extended definition of supply and the Crown facts document did not purport to identify what quantities were actually physically supplied on any of the occasions referred to in the text messages. The only inference that could be drawn from the references to debts of \$56,000 and \$23,000 in the text messages was that there must have been substantial quantities (exact amount unknown) actually supplied into the community.

hearing, without the delay occasioned by the conduct of an unnecessary preliminary hearing.
