R v Shillito [2009] NTSC 12

PARTIES:	THE QUEEN
	v
	SHILLITO, JOHN
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	20728880
DELIVERED:	6 April 2009
HEARING DATES:	1 September 2008
JUDGMENT OF:	MILDREN J

CATCHWORDS:

Statutes:
Misuse of Drugs Act, s 3
Criminal Code, s 308

Cases:
Holden (1990) 52 A Crim R 32, followed

REPRESENTATION:

Counsel:

Crown:	E Armitage
Accused:	G Algie with M Twiggs

Solicitors:

Crown:	Office of the Director of Public Prosecutions
Accused:	North East Lawyers

Judgment category classification:	C
Judgment ID Number:	mil08430
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

R v Shillito [2009] NTSC 12
No. 20728880

BETWEEN:

THE QUEEN
Plaintiff

AND:

JOHN SHILLITO
Defendant

CORAM: MILDREN J

REASONS FOR RULING

(Delivered 6 April 2009)

[1] The accused is charged with the unlawful supply of a commercial quantity of cannabis material which allegedly took place on or about 26 October 2007 at Darwin.

[2] He is jointly charged with Anthony Jesson. Jesson is charged with taking part in the unlawful supply of a commercial quantity of cannabis between 16 September and 27 October 2007.

[3] Counsel for the accused has applied for a separate trial. After hearing submissions I refused the application. I said that I would deliver reasons later. These are my reasons.

[4] No submission was made that the accused were not properly joined.

[5] The case against the accused is based on the extended definition of "supply" contained in s 3 of the Misuse of Drugs Act. The Crown alleges that the accused transported a large quantity of the cannabis which was found in a vehicle of which he was the registered owner. The case against Mr Shillito depends upon telephone intercepts, observations made by the police who saw the accused driving his vehicle at various locations consistent with their understanding of the telephone intercepts, finding the cannabis in his vehicle as well as admissions which Mr Shillito made to the police.

[6] Counsel for the accused does not suggest that there would be any incurable prejudice to the accused in having him jointly tried with the accused, Anthony Jesson. In his submission, there is a significant difference in the accused's Shillito's defence. Essentially, it is submitted that the accused Shillito has admitted all of the essential elements of the offence in the record of interview. It is not intended to dispute the admissibility of the record of interview nor to submit that the co-conspirators rule does not apply to the circumstances of this case. There is no dispute by the accused Shillito about who was speaking to whom in the intercepted telephone calls. It is submitted that the essence of Shillito's defence is that he owed a gambling debt to a person named Treilor. He claims that Treilor threatened him with a pistol and told him that he had to take marijuana with him to Darwin and if he did so the debt would be forgiven. Shillito claims that Treilor took his car overnight and the following day he received a phone call

as a result of which he collected the car from a hotel in Adelaide. The only defence which Shillito intends to run is the defence of duress.

[7] In those circumstances, it was submitted, that it would be a very short trial if Shillito were to be tried separately.

[8] Part of the application was based on the fact that counsel for the accused Jesson sought and was granted an adjournment to consider some documents produced on subpoena. Counsel for Jesson proposed to use the documents in order to cross examine certain Crown witnesses. Consequently the trial would be delayed by two days. In substance the nature of the application was that the trial against Shillito could proceed, that at least one day would be saved, that the trial would be short and that there should be no prejudice to the Crown.

[9] Counsel for the Crown submitted that the trial would not be shortened in the manner contemplated by counsel for the accused Shillito. In her submission it would be necessary to run most of the evidence which the Crown intends to lead at the joint trial against Shillito notwithstanding his admissions. In the Crown submission this evidence was necessary in order to rebut the defence of duress.

[10] The Crown also relies on s 308 of the Criminal Code which permits more than one person charged with committing different or separate offences arising substantially out of the same facts, or out of closely related facts so

that a substantial part of the facts is relevant to all the charges, to be charged on the same indictment and tried together.

[11] The Crown case against Shillito and Jesson is that they formed a common intention to prosecute an unlawful purpose in conjunction with one another. Alternatively it was put that they were involved in a joint criminal enterprise.

[12] There is a prima facie presumption in favour of the conduct of joint trials in cases such as this. The prima facie rule is not easily displaced[1]. There are also administrative and policy reasons for conducting joint trials which include the convenience of witnesses, the increased time and expense involved in separate trials and that the administration of justice requires avoiding wherever possible inconsistent verdicts.

[13] It was not suggested that there will be any prejudice to the accused other than the saving in costs and time if a separate trial were to be ordered.

[14] I doubt whether much time would be saved. I am not satisfied that the circumstances of this case warrants the ordering of separate trials in the exercise of my discretion. Accordingly the application is refused.

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[1] *Holden* (1990) 52 A Crim R 32, 33–45