



HIGH COURT OF AUSTRALIA

Public Information Officer

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GRAHAM VICTOR TABE v THE QUEEN

The High Court of Australia rejected an appeal against conviction for possession of a dangerous drug, in circumstances where Mr Tabe argued that the jury had been misdirected on the elements of the offence. The Court held that no misdirection had occurred.

A parcel addressed to "Mr Tabler" of 1 Markeri Street, Mermaid Beach, on the Gold Coast, containing methylamphetamine arrived at the Bundall mail centre in November 2001. It was undeliverable because the street number did not exist, so a postal worker opened the parcel to try to trace the sender. Inside was a glass jar of powder. The worker called police who removed the drug and replaced it with an innocuous substance. Mr Tabe and Nicole Janet Briggs arrived to collect the parcel on 19 November, with Mr Tabe waiting in the car while Ms Briggs went inside to pick up the parcel. Police arrested the pair outside. Ms Briggs pleaded guilty to possession of a dangerous drug. Mr Tabe was charged with the same offence, on the basis that he aided, counselled or procured Ms Briggs to attempt to possess the drug. Under section 44A of the *Drugs Misuse Act*, an attempt is treated as the equivalent of a completed offence.

At his trial in the Queensland Supreme Court, Mr Tabe called witnesses to show that the parcel was collected merely as a favour to a Geoff Tabler. Gavin McGuane said Mr Tabler had asked him and Mr Tabe for a lift to the Bundall mail centre to collect the parcel on 16 November. As Mr Tabe had been drinking, Mr Tabler drove his car and Mr Tabe went inside to collect the parcel, but was told it had gone to the Robina mail centre where Mr Tabe was then told the parcel was on its way back to the dead letter office at Bundall. Mr Tabler allegedly asked Mr Tabe to collect the parcel later as he was leaving for Sydney. Mr Tabe then returned to the Bundall mail centre with Ms Briggs on 19 November. The evidence about Mr Tabler was treated as raising a defence that Mr Tabe honestly and reasonably but mistakenly believed the parcel did not contain a dangerous drug, pursuant to section 57(d) of the Act and section 24 of the *Criminal Code*. On this defence, he bore the onus of proof. The prosecution said it did not need to prove that Ms Briggs or Mr Tabe knew that the parcel specifically contained methylamphetamine. Mr Tabe was convicted and sentenced to two years' jail. He appealed unsuccessfully to the Court of Appeal, then appealed to the High Court.

The Court, by a 3-2 majority, dismissed the appeal. The majority held that the intention of the *Drugs Misuse Act* is to oblige an accused person, who is proven to knowingly have the custody or control of a dangerous drug, to prove that their possession is innocent. Where an accused person knowingly and intentionally has custody or control of a substance then a question as to belief in the nature of the substance arises for consideration only under the heading of mistake, and hence under section 24 of the *Criminal Code* as modified by section 57(d) of the *Drugs Misuse Act*.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*