

STATE OF TASMANIA v RODNEY ERIC BARKER
COMMENTS ON PASSING SENTENCE

1 JULY 2020
PEARCE J

Rodney Barker, you plead guilty to trafficking in a controlled substance. On 14 September 2017 the police, acting on a tip off, went to some Crown land in a remote location off Gladstone Road between Pioneer and South Mount Cameron in north east of Tasmania. After walking through the bush for about 200 metres they found a small makeshift shed with a tin roof. You were nearby when the police arrived, although you live in Perth near Launceston. On the ground about 10 metres from the shed was a backpack and a green canvas bag. Inside the canvas bag was about 2.2 kilograms of cannabis head. You then walked out of the bush followed not long afterwards by your dog. Two zip lock bags respectively containing 1.2 grams and 1.0 grams of cannabis were found in your front pocket. About 20 metres from the shed, in light bush, was a blue esky containing another 4 kilograms of loose cannabis head.

You were arrested and brought to the police station in Launceston where you were interviewed. In the course of the interview you admitted that the backpack and the canvas bag were yours, but you initially claimed that the cannabis inside the canvas bag did not belong to you. You told the police that the esky and the cannabis inside it belonged to you, that you had put the esky there more than 12 months earlier, and that it had been covered by hessian and a tarp. You said you were familiar with the area and thought it would be a good place to "stash" your cannabis. You had gone there on that day, you said, because you had run out of "smoko." You told the police that you smoked a "fair bit" of cannabis, you thought about two ounces of cannabis each week. The police searched your home in Perth and found 1.2 grams of cannabis in a cigarette packet, a cryovac bag containing almost 200 grams of cannabis in a bedside table, some unused cryovac bags, and a plastic tub of cannabis leaf in an outbuilding. You admitted that this cannabis was yours because you were the only cannabis smoker in the house.

In the course of sentencing your counsel gave a different explanation for how you came to be in possession of the cannabis found near South Mount Cameron. It was asserted you were shown the cannabis by a friend and you had no knowledge of its origin, although you believed from the quantity that another person would sell it. You accepted that you had concealed the cannabis in the esky by re-hiding it. Given what you had told the police during your interview, the explanation was not accepted by the State and it became necessary for me to resolve the dispute by hearing evidence. Before referring to the evidence it is necessary to refer to the legislative provisions. Any person who guards or conceals cannabis with the intention of selling it, or in the belief that another person intends to sell it, trafficks in cannabis. A person who possesses cannabis with the intention of selling it, trafficks in cannabis. The amount of cannabis found in your possession was greater than a trafficable quantity, that is, more than one kilogram. The result is that it is presumed you intended to sell it unless you persuade the Court to the contrary, on the balance of probabilities.

You assert that the cannabis in the bag was for you to use, but admit guilt of trafficking on the basis that you guarded or concealed the cannabis in the esky in the belief that someone else intended to sell it. Your evidence was that you discovered an esky full of cannabis by chance when you were gem fossicking in the area in 2016. You saw the shed from a distance and decided to investigate. You were with another person but you investigated alone. You found the esky poorly hidden in an area of fern not far from the shed. You took a handful of the cannabis and put everything back. Your evidence was that you did not return to it until more than a year later, on 14 September 2017, the day of your arrest. You are a long term cannabis smoker. You said that the cannabis found at your home was leftovers from a plant you had

grown in your back yard in Perth. However you did not return to South Mount Cameron for cannabis to smoke. You had noticed a problem with your health, and although at that stage there had been no diagnosis of the cause, you had already started to research use of cannabis oil. You decided to return to South Mount Cameron on the off chance that the cannabis was still there so you would have enough to make oil and still enough to smoke. You say you found the esky exactly as you left it more than a year earlier, still full of loose cannabis. You put a proportion of it in the canvas bag you had taken for that purpose, and replaced the esky. Your dog ran off into the bush and it was only as you were walking back out, having found her, that you saw that the police had arrived.

I find myself unable to accept that you have given a truthful account. I regard your account as inherently unlikely. Its truth depends on acceptance of a series of improbabilities: that the esky would still be there containing cannabis in usable form after so long; that the true owner would have stored but then apparently abandoned such a large amount of cannabis; that you would decide, before diagnosis, that you needed cannabis for oil; and that you would lie to the police for the reasons you offer. Your evidence was you gave a false version to the police because you were tired, and that you were concerned about admitting having stolen someone else's cannabis, at least in part, because whoever the real owner was may be a threat to you if it became known. Some of your answers during the interview you were evasive, but that was deliberately so, and you had no difficulty in exercising your right to decline to answer some of the questions. You readily admitted that the esky and the cannabis inside it was yours, and that you had taken it to that location and gone back to it to obtain cannabis to smoke. You suggested to the police that there would be other fingerprints on the esky because it was used at Christmas and Easter time before it was, to use your words, "full of dope". To me, those answers had the ring of truth. You said nothing to the police about having found the esky or that the cannabis inside it belonged to someone else, or that you wanted the cannabis for oil. I regard your evidence about the reason for the lies as a false attempt to explain away mostly truthful answers given at the interview.

You are aged 68. About a month after your arrest you were in fact diagnosed with cancer. You required surgery. You have since developed other health problems. You have some relatively minor prior convictions related to use, possession and cultivation of cannabis, but the most recent is 1988, now 32 years ago. You are a long term cannabis user. There is no other evidence of selling. There is no unexplained cash, no text messages or any of the other usual paraphernalia of selling, except perhaps for the cryovac bags. However the difficulty in proving such sales is one of the reasons the legislature has imposed the onus on persons in possession of more than a trafficable quantity of an illicit drug to prove that they did not intend to sell it. Ignoring the cannabis leaf, which is of limited use, you were on your own account in possession of more than 6 kilograms of cannabis head, six times the trafficable quantity. Sold at the typical price, it was worth at least \$36,000. I am satisfied that you intended to use some of it yourself. In the absence of what I consider to be a truthful account, you have not discharged the onus of establishing that you did not intend to sell the remainder. That amount of cannabis is not accounted for by personal use, even assuming that you are a heavy user.

Trafficking in cannabis is a serious matter. It is not to be regarded as less serious than trafficking in other drugs. Cannabis causes much harm in the community, and trafficking in it is normally punished by imprisonment. The quantity involved here necessitates a term of imprisonment, but taking into account that you have no history of selling, trafficking or supplying drugs, and your personal circumstances, it is appropriate to suspend the term. A suspended term of imprisonment presents an opportunity for you to stop offending, but there

are conditions attached. One condition is that you not commit any offence punishable by imprisonment. You should understand that use of cannabis is such an offence. If you breach that condition the sentence must be activated unless it is unjust.

Rodney Barker, you are convicted. You are sentenced to a term of imprisonment of 11 months. I wholly suspend that term for two years from today.