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HIGH COURT OF AUSTRALIA

DONNINI v R

Barwick CJ, McTiernan, Menzies, Walsh and Mason JJ.

22 December 1972

[1972] HCA 71; (1972) 128 CLR 114; [1972-73] ALR 1093; (1973) 47 ALJR 69

CRIMINAL LAW – EVIDENCE – QUESTIONS ASKED WITH A VIEW TO ESTABLISHING GOOD CHARACTER OF ACCUSED –- CROSS-EXAMINATION OF ACCUSED – QUESTIONS TENDING TO SHOW PREVIOUS CONVICTIONS – DISCRETION OF JUDGE: *CRIMES ACT* 1958 (VICT.), S399.

So far as is material, proviso (e) to s399 of the *Crimes Act* 1958 (Vict.) provides: "A person charged and called as a witness ... shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless ... (ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character ... Provided that the permission of the judge must first ... be obtained."

HELD:
1.   Special leave to appeal should be granted because of the public importance of the question whether a trial judge is under an obligation to direct a jury specifically as to the use they can properly make of evidence of bad character, particularly the evidence of prior convictions, where the only purpose of the admission of that evidence is to deny evidence of good character led for the accused or to impugn the credit of an accused who has placed himself in conflict on matters of fact with evidence given by witnesses for the Crown.

2.   However, leave having been given, the appeal was dismissed because in the circumstances of the case, the language used by the trial judge in his charge to the jury was sufficient to preclude their use of the evidence of the prior convictions as evidence of propensity on the part of the applicant to commit the crime with which he was charged.

[Ed Note: The matters discussed by the High Court in this matter are not relevant to the Magistrates' Court]

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