

20/81

SUPREME COURT OF QUEENSLAND — COURT OF CRIMINAL APPEAL

R v NESSEL

Lucas SPJ, DM Campbell and Sheahan JJ

19 December 1980 — (1980) 5 A Crim R 374

CRIMINAL LAW – CONSPIRACY – EVIDENCE – RULES APPLYING TO A CONSPIRACY TRIAL.

The following rules apply to a conspiracy trial where the Crown is seldom in the position of being able to prove the agreement by direct evidence:

- (1) General evidence may be given of the origin and nature of the conspiracy charged.
- (2) The existence of the conspiracy may be inferred from overt acts of the accused pointing to a common purpose.
- (3) There must be admissible evidence against an accused to show a connection with the conspiracy before he may be convicted.
- (4) Evidence of the acts and declarations of a conspirator in furtherance of the common purpose is admissible against his co-conspirators.

DM CAMPBELL J: The facts of the case involved four men being convicted of conspiracy to defraud the public of fraudulently inducing *divers* persons to entrust moneys to International Opal Pty Ltd as security. There was a successful appeal. [*The report does not refer to the grounds of appeal, and that part of the judgment reported, consists of comment by the Court, on proof of conspiracy. Ed*] ... The crime is complete as soon as two or more persons agree and it is immaterial should it transpire that nothing was done to carry the agreement into effect: *R v Aspinall* (1876) 2 QBD 48, 58. There is a short but accurate statement of the general rule in *Halsbury* 3rd ed. Vol. 10 p439:

"In a charge of conspiracy general evidence of the existence of the conspiracy may first be given, before particular facts are proved which show that one or more of the defendants took part in it."

It was laid down in *Mulcahy v R* LR 3 HL 306 at p317 (approving *dicta* of Grose J in *R v Brisac and Scott* [1803] EngR 641; (1803) 4 East 164, 171; 102 ER 792) that proof of the existence of a conspiracy is generally "a matter of inference deducted from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them". These are the 'overt acts' as Lord Wilberforce remarked in *DPP v Doot* (1973) AC 807 at p818:

"Often in conspiracy cases the implementing action is itself the only evidence of the conspiracy – this is the doctrine of overt acts".

In *R v Gunn* [1930] NSWStRp 50; (1930) 30 SR (NSW) 336 at p342; 47 WN (NSW) 157 Street CJ said:

"It is laid down by the authorities that the fact of a conspiracy must be established, *prima facie* at least, before the acts and declarations of one can be used in evidence against the others, but this would in most cases lead to such insuperable difficulties that in practice the rule is disregarded and for the purpose of proving the conspiracy evidence is admitted to acts done by the alleged conspirators."

In my opinion, the following rules may be stated as applying to conspiracy trial where the Crown is seldom in the position of being able to prove the agreement by direct evidence. (1) General evidence may be given of the origin and nature of the conspiracy charged. (2) The existence of the conspiracy may be inferred from overt acts of the accused pointing to a common purpose. (3) There must be admissible evidence against an accused to show a connection with the conspiracy before he may be convicted. (4) Evidence of the acts and declarations of a conspirator in furtherance of the common purpose is admissible against his co-conspirators.