



## HIGH COURT OF AUSTRALIA

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### RAYMOND JAMES WASHER v THE STATE OF WESTERN AUSTRALIA

Evidence of an acquittal on one drug conspiracy charge was rightly excluded from a later trial on a different charge, the High Court of Australia held today.

Mr Washer was convicted by the Western Australian District Court in 2005 of conspiring with John Di Lena and Andrea Scott between 18 May and 2 June 2000 to possess a prohibited drug, methylamphetamine, with intent to sell or supply it, and sentenced to seven years' jail. The alleged conspiracy involved the proposed importation to WA from Queensland of two kilograms of the drug. Mr Washer contributed \$55,000 to the deal. He and Mr Di Lena, allegedly the organiser, flew to Brisbane at different times to organise the shipment. An associate, Robert Fisher, was sent to Brisbane to collect the drug. Rather than flying back, Mr Fisher wanted to return by hire car with his girlfriend, Pauline Lennon. Ms Scott arranged to have the car hire charged to her credit card. In northern New South Wales, Mr Fisher and Ms Lennon argued, and she drove off in the car, with the drug concealed inside. Police apprehended Ms Lennon two days later and found the concealed methylamphetamine. Ms Lennon was arrested, Mr Fisher was arrested a few days later, and Ms Scott's payment for the hire car led to her being arrested, along with Mr Di Lena and Mr Washer.

In 2004, Mr Washer was acquitted of a separate conspiracy with Gavin Whitsed and William Bowles to sell or supply methylamphetamine. They and Mr Di Lena and Ms Scott were members of the Rebels Outlaw Motorcycle Gang. Some evidence presented at the first trial, including police surveillance of conversations between Mr Washer, Mr Whitsed and Mr Bowles, and scales and a coffee grinder with traces of the drug found in Mr Washer's home, was also used at the second trial. During that trial, Mr Washer's counsel, during cross-examination of a police witness, sought to adduce evidence of the earlier acquittal. Judge Henry Wisbey disallowed the line of questioning.

Mr Washer appealed unsuccessfully against his conviction to the WA Court of Appeal, then appealed to the High Court. He argued that Judge Wisbey erred in not allowing evidence of the acquittal to be adduced and that once the evidence was received Judge Wisbey should have directed the jury to give Mr Washer the full benefit of his acquittal.

The High Court unanimously dismissed the appeal. Four members of the Court upheld Judge Wisbey's ruling against the earlier acquittal being allowed into evidence. One member would have allowed evidence of the acquittal but held that the proviso that there had been no substantial miscarriage of justice applied, due to overwhelming evidence against Mr Washer. The plurality held that the acquittal had to be relevant to be admitted into evidence. Relevance depended upon whether the evidence could rationally affect the assessment of the probability of the existence of a fact in issue in the proceedings. The acquittal would be relevant if it gave an appellant a right to the benefit of an assumption related to the assessment of other evidence in the case, or it had had some logical connection with the assessment of any facts in issue. The plurality held that the acquittal only established that Mr Washer was not guilty of a particular conspiracy, but did not establish that he was innocent of drug dealing or that his conversations with Mr Whitsed and Mr Bowles were not about drugs. It held that no logical connection between his acquittal and some fact in issue at the later trial was identified and the evidence was properly excluded as irrelevant.

- *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.*