



HIGH COURT OF AUSTRALIA

Manager, Public Information

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DION ROBERT TAIAPA v THE QUEEN [2009] HCA 53

The defence of compulsion under the Queensland *Criminal Code* provides that an accused person is not criminally responsible for conduct that would otherwise involve criminal offending if he or she reasonably believes that there is no other way to escape the carrying out of a threat of serious harm or detriment. If an accused raises the defence of compulsion he or she must be able to point to some evidence capable of amounting to reasonable grounds for the belief, the High Court held today.

Dion Taiapa was arrested in July 2006 when the police located 364 grams of methylamphetamine and over \$28,000 in cash during a search of the vehicle in which he was travelling. The drug was estimated to be valued between \$459,000 and \$1.15 million, depending upon how it was sold. At his trial Mr Taiapa gave evidence that he owed a debt of \$60,000 to two men, Tony and Salvatore, who had supplied him with drugs in the past. They had come to his home, threatened him and his pregnant de facto wife with a gun and demanded repayment. Mr Taiapa's mother agreed to lend him \$29,000, however his offer of this amount and repayment of the balance by instalments was rejected by the two men. In addition to taking the \$29,000 they instructed him to travel from Cairns to Sydney to collect two parcels, which Mr Taiapa understood would contain prohibited drugs. They again threatened to harm him, his wife and his mother if he did anything stupid, and they specifically instructed him to not report the matter to the police.

At his trial Mr Taiapa relied on the defence of compulsion. He gave evidence that he believed he had no option other than to comply with Tony and Salvatore's demands. He said that he had not reported the threats to the police because he had insufficient information to enable the police to identify Tony and Salvatore and he did not believe that police protection was "100 per cent safe". He described Tony and Salvatore as being "not your everyday drug dealers". He said that they were unlikely to fall into a trap. The trial judge withdrew the issue of compulsion from the jury on the basis that Tony and Salvatore were not in a position to execute their threats when Mr Taiapa collected and transported the prohibited drugs. Mr Taiapa was convicted on charges of unlawful trafficking and possession of a dangerous drug. He appealed to the Court of Appeal of the Supreme Court of Queensland, which found that the trial judge had erred in determining that the defence required that the person making the threat be in a position to carry it out when the offence was committed. However, the Court of Appeal said that Mr Taiapa had ample opportunity to alert the police to his predicament and it determined that there was no evidentiary basis for finding that his belief (that he could not otherwise escape the carrying out of the threat) was based on reasonable grounds. For this reason the Court of Appeal held that the trial judge had been correct to withdraw from the jury the issue of whether Mr Taiapa was acting under compulsion when he committed the offences.

Mr Taiapa applied for special leave to appeal to the High Court and three judges of the Court referred his application to a bench of five judges. The High Court unanimously determined to grant special leave to appeal but to dismiss his appeal.

The Court found that there was no reason to doubt the conclusion reached by the Court of Appeal. An unparticularised concern that police protection may not be a guarantee of safety could not, without more, supply reasonable grounds for a belief that Mr Taiapa had no option other than to break the law in order to escape the execution of the threats made by Tony and Salvatore.

- *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.*