

**NOT  
RECOMMENDED**

QUEEN

v

WALL

**Coram:** Thomas J  
Keith J  
Blanchard J

**Judgment:** 29 April 1997  
(ex parte)

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JUDGMENT OF THE COURT DELIVERED BY KEITH J

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The appellant is charged with two counts of supplying a Class B controlled drug, one count of cultivating a prohibited plant and one count of selling a Class C drug. He has applied for leave to appeal against a successful Crown application under s344A Crimes Act 1961 to have admitted evidence of a financial analysis carried out by Detective Constable Ferguson, a qualified accountant.

The Crown intends to adduce a Source and Disposition Statement to corroborate the evidence of a witness. That witness is to give evidence that over an extended period the appellant sold her cannabis and supplied her with hashish to sell on his behalf. The Source and Disposition Statement involves a financial analysis of raw material obtained under search warrants from the appellant's bankers, from his solicitors, from his accountants and from his home. According to Detective Constable Ferguson, such analysis shows that income of at least approximately \$40,000.00 was received by the appellant and cannot be accounted for by reference to any known source

of income from either the appellant or his wife. The Crown accepts that if the witness does not come up to brief the financial analysis evidence will lack relevance and should not be adduced.

The appellant challenges the ruling that this evidence is admissible. Legal aid was declined after consideration by three Judges of this Court and the appeal has been determined on the basis of written submissions.

The appellant advances four main submissions. The first is that the evidence is not cogent because some person other than the appellant may be equally responsible for the disposition. He argues that to permit the jury to have the evidence in these circumstances is to invite it to speculate rather than to draw a reasonable inference that the appellant was responsible. Further, he asks what the position would be if the source of the income were something personal to his wife which she did not wish to disclose.

The Court does not accept this submission. The evidence derives its cogency from the fact that no explanation has been offered about the source of the income. Its cogency can, of course, be tested by cross-examination or evidence called to rebut it. In particular if the appellant's wife has an explanation for the income then she could provide it. There has been no suggestion at any stage that there is an explanation which for personal reasons Mrs Wall does not wish to disclose. If there is, it remains open for Mrs Wall to bring it to the attention of the Police or Crown Solicitor.

The appellant's second submission is that because the police failed to put the evidence to him until after he was charged, the only way he can present an explanation for the dispositions and prevent any erroneous inferences from being drawn is to give or call evidence at trial. He argues that as a matter of policy the courts should be cautious in allowing a situation to develop where there is no opportunity to put police information to the accused until after he or she has been charged, so that the police can

present the information at trial confident that the only way that the accused can challenge it if he or she or someone close to him or her gives evidence.

We do not accept this submission. As in any case where an innocent explanation is offered of apparently incriminating circumstances, if the appellant wishes to assert some additional source of income then he will have to call or give evidence. The fact that the admission of the Source and Disposition Statement may have the effect of persuading the appellant to give or call evidence is no reason to exclude it: *R v Drain* CA 249/94, 11 October 1994 at p3. Further, as mentioned already, it is open to the appellant to challenge the Source and Disposition Statement by cross-examination instead of by evidence.

The third submission is that the evidence is not sufficiently relevant to justify its admission because although the receipt of unexplained money is consistent with drug-dealing, it is not evidence of it.

Again, we do not accept this submission. The Source and Disposition Statement shows that during the relevant period the appellant received a significant amount of money which has not been accounted for. This tends to support the evidence of the Crown witness, that she was selling cannabis and hashish on behalf of the appellant during that period. Further, it will be open to the jury to reject or accord little weight to the inferences that the Crown invites it to draw.

The appellant's final submission is that the prejudicial effect of the evidence outweighs its probative value. He suggested that in exercising its discretion on this matter, the Court should take into account the fact that the Source and Disposition Statement was produced fourteen months after the appellant's arrest and seven months after his committal for trial. He argues that such a delay is unsatisfactory and unreasonable as it leads to uncertainty as to when the case against the accused will be complete.

The appellant does not identify the nature of the prejudice which will flow from the admission of the evidence. Indeed, one is left with the impression that it is precisely because the evidence is probative that the appellant feels that he is prejudiced by it. Further, despite the delay of fourteen months, the appellant has had the evidence available to him for some six months and does not claim that he has had insufficient time to answer it. There is therefore no prejudice outside the relevance and strength of the evidence that the appellant will suffer.

Thus, none of the appellant's submissions are accepted by this Court. The application for leave to appeal against the pre-trial ruling is accordingly dismissed.



**Solicitors:**

Eagles & Eagles, Invercargill for Appellant  
Crown Law Office, Wellington for Crown