

Trafficking in a Dangerous Drug

It is a crime to carry on a business of unlawfully trafficking in a dangerous drug (heroin is a dangerous drug). "Trafficking" includes selling.¹ Here there is no suggestion that the defendant was selling (heroin or other drugs) lawfully. So the critical question is whether the defendant was carrying on a business of selling (heroin) at some time between the dates, and at the place, mentioned in the indictment.

What does the expression "carrying on a business" connote in this context?

Generally speaking, a single sale may be proved to have been carried out in such circumstances as to show that it was a part of the carrying on of a business. However, mere occasional sales of the drug could not amount to the carrying on of a business of selling it. "Carrying on a business" for present purposes signifies much more than a few isolated transactions.² The expression connotes a continuous course of conduct engaged in to obtain a reward of a commercial character. Proof of the carrying on of a business therefore requires the prosecution to establish several transactions done for gain over more than a brief interval. Repetition of acts, and activities of a commercial nature possessing something of a permanent character, are hallmarks of a business being carried on. But the person need not intend to trade indefinitely before that person can be said to be carrying on a business. Nor must the venture be profitable before it may fairly answer the description "business".

The reward need not be money. For example, an addict could carry on a business though the only reward is drugs for personal consumption. And it is scarcely to be expected that a person who carries on an illicit trade (in heroin) would establish shop premises, have business cards, or advertise. It is not essential to the identification of a venture as a business that it have more than one customer. Some businesses of their nature will have more than one customer: for example, the local grocer. Others may not.

¹ Typically, the trafficking will be selling. But "trafficking" is of wider import, meaning "knowingly engaging in the movement of drugs from source to ultimate user": *R v Elhusseini* [1988] 2 Qd R 442 at 450.

² To establish trafficking it is necessary to show a regularity of drug dealing sufficient to establish that it occurred in the course of a business which might be regarded as trafficking: *Martin v Osborne* (1936) 55 CLR 367 at 376; *R v Kelly* [2005] QCA 103 at [7].