

DISTRICT COURT OF QUEENSLAND

CITATION: *R v Sweet* [2021] QDC 216

PARTIES: **THE QUEEN**
(respondent)

v

KYM ANTHONY SWEET
(applicant)

FILE NO/S: 478/20

DIVISION: Criminal

PROCEEDING: Pre-trial hearing

DELIVERED EX TEMPORE ON: 6 September 2021

DELIVERED AT: Maroochydore

JUDGE: Cash QC DCJ

ORDERS: **1. The application is dismissed.**

CATCHWORDS: CRIMINAL LAW – PROCEDURE – APPLICATION – where the applicant is charged with two offences under the *Drugs Misuse Act 1986* (Qld) – application to dismiss both charges – where the applicant submits he constitutes two separate legal entities – sovereign citizen – the straw man duality – where the applicant submits that the indictment has charged the incorrect entity – whether the charges should be dismissed due to incorrect identification of the applicant

CASES: *Barlow v The Queen* (1997) 188 CLR 1, 9
Bradley v The Crown [2020] QCA 252
Meads v. Meads [2012] ABQB 571; [2013] 3 WWR 419
R v Wyles; ex-parte A-G [1977] Qd R 169, 177

LEGISLATION: *Criminal Code Act 1899* (Qld), s 7, s 597
Drugs Misuse Act 1986 (Qld)

ARTICLES: Netolitzky, D J, ‘A Pathogen Astride the Minds of Men: The Epidemiological History of Pseudolaw’, paper delivered at the Centre d’expertise et de formation sur les intégrismes religieux et la radicalisation symposium: ‘Sovereign Citizens in Canada’, Montreal, 3 May 2018
Netolitzky, D and Warman, R, ‘Enjoy the Silence: Pseudolaw at the Supreme Court of Canada’, 2020 57-3 *Alberta Law Review* 715, 740

APPEARANCES: W M Slack for the respondent Crown, instructed by the Office of the Director of Public Prosecutions

The applicant appeared in person

- [1] HIS HONOUR: On 9 December 2020, an indictment was presented in the District Court at Maroochydore alleging the applicant, Kym Anthony Sweet, committed two offences contrary to the *Drugs Misuse Act 1986* (Qld). The first allegation is that between February and August 2019, he unlawfully produced cannabis in amount exceeding 500 grams. The second allegation is that on 1 August 2019, he possessed hydroponic equipment that he had used in connection with producing cannabis.
- [2] The applicant now applies for these charges to be dismissed. The essence of the applicant's argument is that he possesses two distinct personas. One the 'real live flesh and blood man' and the other a 'straw man' or 'dummy corporation'. The former is designated in the applicant's material as 'Kym-Anthony':¹ and the latter as KYM ANTHONY SWEET.² According to the applicant's argument, the real person is not subject to the laws of Queensland, and the charges should be dismissed.
- [3] Merely setting out the argument is sufficient to show it is nonsense. It is apparent that the applicant is one of a group of people who for some years have attempted, universally without success, to avoid the operation of laws with which they do not wish to comply. The term 'organised pseudo legal commercial argument' litigants (OPCA) was coined by Rooke ACJ in *Meades v Meades*³ to describe adherents to these discredited theories. The ideas promoted by OPCA litigants emerged, of course, in the United States.⁴ They have since spread to most parts of the common law world, including Queensland.⁵ Recognising that the arguments presented by OPCA litigants are largely incoherent, if not incomprehensible, courts have been increasingly willing to dismiss their claims summarily.⁶ While I think the present application is devoid of merit, I do propose to mention at least some reasons why that is so, in the hope that it might dissuade similar pointless applications in the future.
- [4] The 'straw man' argument has its origins in the premise that human beings do not inherently possess a legal personality.⁷ Instead, some separate legal identity is imposed upon them (through birth certificates and the like) by the government. This process creates a kind of contract, but one that can be repudiated by the human being, usually through a declaration or affidavit (in this case the applicant's 'Affidavit of the Truth') and 'surrendering' the birth certificate. The purported effect

¹ The significance of the colon was not made clear to me, nor have I been able to discern its meaning from other cases, mentioned below, dealing with similar claims.

² Here the alleged significance of capital letters is explained by a reference to the *Chicago Manual of Style*, 16th ed., at 16.89. This apparently stipulates corporations should be named using capital letters. How this is supposed to apply, or even be relevant, to the present case was not explained.

³ [2012] ABQB 571; [2013] 3 WWR 419.

⁴ Netolitzky, D J, 'A Pathogen Astride the Minds of Men: The Epidemiological History of Pseudolaw', paper delivered at the Centre d'expertise et de formation sur les intégrismes religieux et la radicalisation symposium: 'Sovereign Citizens in Canada', Montreal, 3 May 2018.

⁵ For example, *Skyring v Commonwealth Commissioner of Taxation* [1993] QCA 119, *Skyring v Australia and New Zealand Banking Group* [2013] QCA 118 and [1994] QCA 143, *Sharples v Arnison* [2002] 2 Qd R 444, *Clampett v Hill & Ors* [2007] QCA 394, *Kosteska v Phillips* [2011] QCA 266 and *Kosteska v Magistrate Manthey and Anor* [2013] QCA 105.

⁶ *Bradley v The Crown* [2020] QCA 252.

⁷ In setting this out I have drawn from the work of Donald Netolitzky and Richard Warman in 'Enjoy the Silence: Pseudolaw at the Supreme Court of Canada', 2020 57-3 *Alberta Law Review* 715, 740.

of such repudiation is to render the human being immune to the laws of the relevant polity. The processes adopted by OPCA litigants to achieve this repudiation can be arcane. Some of the language used, and documents relied upon, resemble spells or incantations.

- [5] The present case is no exception. A number of the applicant's documents have affixed what appear to be fingerprints in red ink, and an extract of his birth certificate was sent to the registry accompanied by a commemorative coin. One document is headed 'Evidence-Claim-of-live-life-certificate'. Its contents are even less comprehensible than its title. Other documents contain references to overseas law, such as the *Uniform Commercial Code* of the United States. Some of the applicant's documents have the appearance of form documents,⁸ and it seems to be common for overseas based charlatans to exploit the gullible by selling these form documents as 'solutions' to a variety of legal problems.⁹ None of the documents are of any legal effect whatsoever.
- [6] In Australia, a human being is also a legal person. An adult human being with full capacity can sue and be sued. They are subject to the criminal laws of this state.¹⁰ These fundamental propositions cannot be doubted. It is true that a natural person can create a legal entity that has a distinct legal personality – such entities are commonly called companies – but this is an adjunct to, rather than a replacement for, the legal personality of the human being. One way of illustrating why this must be so is to consider the consequences of the ability to 'renounce' legal personhood. The law has at times recognised categories of person who did not possess a legal personality. These categories included, before 1833, slaves, who were regarded as chattel property, could be bought and sold, and who had no rights under the law. At times women and children were thought not to possess a legal personality. Blackstone regarded children as the property of their fathers,¹¹ and women have been regarded as chattels without a distinct legal personality. The fates of people who were in these categories were rarely pleasant. If the applicant were somehow able to renounce his legal personality, he would become a human being without rights. He would be mere property. Such an outcome would be antithetical to our society and system of laws.
- [7] For these reasons I reject the applicant's argument he is constituted by two separate legal entities. But even if I were wrong about that, the argument can do him no good in the face of a criminal prosecution brought under the statute law of Queensland. The Criminal Code provides in section 7:
- (1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say –

⁸ In one the applicant forgot to substitute 'Australia' for the placeholder term 'YOURNATION'.

⁹ The one to whom the applicant refers, Russell Jay Gould, is a resident of the United States of America. He claims to have unlocked the secrets of 'quantum grammar' and in doing so he saved America from once again becoming a colony of the United Kingdom because of a secret pre-revolution postal contract. In this way he became the 'postmaster-general of the world'. (I am not making this up.)

¹⁰ Support for the proposition that the criminal law applies to a person regardless of their status in law may be found in *R v Murrell and Bummaree* (1836) 1 Legge 72 (the case of 'Jack Congo Murrell') There it was held that the law applied to an Aboriginal man who, at the time, would have had no other legal rights.

¹¹ William Blackstone, *Commentaries of the Laws of England*, 12th ed. (A. Strahan and W Woodfall, 1793).

- (a) every person who actually does the act or makes the omission which constitutes the offence ...

An ‘offence’ is defined by section 2 to be:

an act or omission which renders the person doing the act or omission liable to punishment ...

- [8] Criminal liability attaches to a person where they ‘do the act or one or more acts in a series which constitutes or constitute the offence’.¹² On any view of the present allegations, that could not be the ‘straw man’ or ‘dummy corporation’ mentioned by the applicant. The applicant’s own writings describe this purported alternate persona as ‘an artificial person’, a ‘legal entity’, ‘an artificial legal person’ and a ‘legal fiction’. Even if it existed in law, it is not capable of doing the act or acts that attract criminal liability. Of the two entities claimed by the applicant to exist – the applicant as ‘a real live flesh and blood man’ and the ‘straw man’ – the only one who could have done the acts that constitute the offences is the applicant, constituted in the corporeal form of the person who appeared in court to make this application. That is the person who was charged by the police, committed to stand trial by a Magistrate and against whom the present indictment was presented. That person is subject to the criminal law of this State and may be found to be criminally liable for his own acts. Even if the applicant possesses a ‘legal split-personality’, a proposition I reject, it could not alter this reality.
- [9] There is no room for doubt or confusion as to who is said to have done the criminal acts and who is to stand trial in relation to the allegations. That is the applicant. His apparent wish to be identified by a name that is different to the name he was assigned at birth is of no moment at all.¹³ However he is known, and no matter how odd the punctuation, he remains the same person – the one alleged to have committed the offences charged in the indictment.
- [10] While the so called ‘straw man’ argument may properly be described as nonsense or gobbledygook,¹⁴ it is in any event of no assistance to the applicant in present circumstances. It is to my mind clear that under the criminal law of Queensland the applicant’s claim to possess or be associated with some separate legal entity is entirely irrelevant.
- [11] There being no merit to the application, it must be dismissed.

¹² R v Wyles; ex-parte A-G [1977] Qd R 169, Lucas J at 177. See also *Barlow v The Queen* (1997) 188 CLR 1, Brennan CJ, Dawson & Toohey JJ at 9.

¹³ If there is a claim that the applicant is wrongly named in the indictment the remedy is to be found in section 597 of the *Criminal Code*.

¹⁴ As it has been in *Deputy Commissioner of Taxation v Casley* [2017] WASC 161, [15]; *Smadu v Stone* [2016] WASC 80, [5]; *Re Magistrate M M Flynn; ex parte McJannett* [2013] WASC 372, [14]-[15].