



Supreme Court of New Zealand

20 December 2011

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

MAHANA MAKARINI EDMONDS v THE QUEEN

**(SC 57/2011)
[2011] NZSC 159**

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

In November 2008, the appellant and four other men (all involved with the Black Power gang in New Plymouth) armed themselves and drove to the vicinity of a party attended by a group of out-of-town scaffolders. The appellant and his associates were displeased with the presence in New Plymouth of the scaffolders, because they had (or were believed to have) Mongrel Mob connections. The appellant and his associates drove up just as some of the scaffolders were making their way back from the party to a nearby house at which they were staying. The appellant (who remained by the car but was armed with a gun) encouraged his four associates to pursue the scaffolders down the driveway to that house. At the end of this pursuit, one of the pursuers (Matiu Pahau) fatally stabbed the last of the scaffolders, Peri Niwa (who in fact was neither an associate nor a member of the Mongrel Mob). At trial, Pahau was convicted of murder and the appellant and two others (both of whom were part of the pursuing group) were found not guilty of murder but guilty of manslaughter. The fourth member of the pursuing group was not able to be located by the police.

The case against the appellant was advanced on the basis of common purpose liability under s 66(2) of the Crimes Act 1961. Significantly, all those charged had also pleaded

guilty to, or were found guilty of, other offending, including participation in an organised criminal group with the purpose of committing serious violent offences against the scaffolders. The appellant had pleaded guilty to this charge.

The basis of the appeal is the contention that the trial Judge was required to, but did not, direct the jury that they could only find the appellant guilty of manslaughter if satisfied that he had known that Pahau was carrying a knife. The Judge had instead directed the jury that it was sufficient if they were satisfied that the appellant had known that Pahau was carrying a weapon.

The Supreme Court has unanimously dismissed the appeal.

Counsel for the appellant relied on cases from England and Wales involving group violence in which the courts have placed considerable significance on whether the alleged parties knew of the presence of the weapon actually used by the principal offender (or weapons posing the same or greater danger to life). But the principles of law stated in these cases have their root in concerns about over-criminalisation which have no more than limited application in New Zealand. Those cases were also decided on the basis of the common law principles of joint enterprise liability which, while similar in effect to those provided for by s 66(2), are more capable of judicial development. The present appeal must be decided on the basis of the language used in that section.

For liability under s 66(2), the prosecution must show that the alleged party recognised that the offence which was committed by the principal offender was a probable consequence of the implementation of the common purpose. The only relevant level of risk is the probability of that offence being committed. Given the appellant's plea of guilty to the charge of participation in an organised criminal group and other evidence which was led, it was open to the jury to conclude that the appellant envisaged sufficiently serious violence to justify the inference that he appreciated there was a substantial risk of death. This inference did not depend on whether the appellant knew that Pahau was armed, either generally or with a knife.

The Court is thus of the view that there was no legal or practical requirement for the Judge to have directed the jury in the manner contended for by the appellant.

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