

STEVEN JOHN BAIRD
Applicant

v

THE QUEEN
Respondent

Court: McGrath, Chambers and Glazebrook JJ

Counsel: A G Speed for Applicant
K A L Bicknell for Crown

Judgment: 5 February 2013

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Baird seeks leave to appeal the decision of the Court of Appeal¹ dismissing his appeal against conviction on two counts of manufacturing methamphetamine between 2 and 4 June and 8 and 11 June 2009 respectively.

[2] At trial, the case against Mr Baird was that he was a secondary party to the manufacture of methamphetamine, pursuant to both ss 66(1) and 66(2) of the Crimes Act 1961. The Crown conceded before the Court of Appeal that, although the case against his co-offenders was very strong, there was no evidence against Mr Baird

¹ *Baird v R* [2012] NZCA 430.

under s 66(1).² The Court of Appeal held that this had not been made clear to the jury either by the Crown or the trial Judge. Accordingly, this led to the risk that the jury might have thought there was an evidential foundation against Mr Baird under s 66(1).³ However, after reviewing the evidence of Mr Baird's liability under s 66(2), the Court of Appeal was satisfied that there was no substantial miscarriage of justice because his conviction on those counts was inevitable. The Court of Appeal thus applied the proviso to s 385(1) of the Crimes Act.⁴

[3] There may be scope for argument as to whether the Crown concession relating to s 66(1) was well made and therefore whether the trial Judge's summing up was in fact defective. Even if the summing up were defective, however, the proviso was not misapplied by the Court of Appeal.

[4] The evidence in the case was that the manufacturing of methamphetamine took place at the Jacaranda Motel in Epsom from April 2009. The evidence against Mr Baird included:

- (a) The sum of \$310,000 in cash found under a floorboard in a shed at his home.
- (b) Two four litre containers of acetone (a component in the process of methamphetamine manufacture) found in a storage unit Mr Baird rented in Avondale. One of which bore the fingerprint of one of his co-offenders.
- (c) Intercepted conversations from 1 to 9 June 2009 (outside normal business hours) between Mr Baird and a co-offender – where in one Mr Baird is asked for “acetoney” and where in others there were coded references to the methamphetamine manufacturing process.
- (d) Surveillance evidence placing Mr Baird at the Jacaranda Motel on 7 and 9 June 2009, albeit not at a time methamphetamine would have been present.

² At [10].

³ At [32].

⁴ At [38].

[5] We accept the Crown's submission that the Court of Appeal considered all relevant evidence, including Mr Baird's explanations for the evidence against him, and applied the correct test⁵ in coming to its decision. Conviction was inevitable and there is no risk of miscarriage of justice.

[6] The application for leave to appeal is dismissed.

Solicitors:
Crown Law Wellington for Respondent

⁵ *Matenga v R* [2009] NZSC 18, [2009] 3 NZLR 145 at [28].