

IN THE SUPREME COURT OF NEW ZEALAND

SC 33/2015
[2015] NZSC 87

BETWEEN JOLENE KEANE
 Applicant

AND THE QUEEN
 Respondent

Court: Elias CJ, William Young and Arnold JJ

Counsel: Q Duff for Applicant
 S K Barr for Respondent

Judgment: 22 June 2015

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] This case concerns s 12 of the Misuse of Drugs Act 1975 which provides:

12 Use of premises or vehicle, etc

(1) Every person commits an offence against this Act who knowingly permits any premises ... to be used for the purpose of the commission of an offence against this Act.

...

[2] In this case the offence against the Act relied on by the Crown was the manufacture of methamphetamine. The premises in question consisted of a flat which was rented by the applicant and her husband. It was unclear on the expert evidence whether methamphetamine had been manufactured (in other words, whether the process had been completed). The Judge directed that the jury could find Ms Keane guilty if they were satisfied beyond reasonable doubt that the

premises had been used for the manufacture or the attempted manufacture of methamphetamine.

[3] The applicant was found guilty of permitting the flat to be used for the purpose of manufacturing methamphetamine and her subsequent appeal against conviction was dismissed by the Court of Appeal.¹ She now seeks leave to appeal and her counsel has identified two grounds for the proposed appeal.

[4] The first is said to involve jurisdiction. The “offence against [the] Act” specified in the indictment was manufacturing methamphetamine. In summing up and in his question trail, the Judge put the case to the jury on the basis that the Crown did not have to show that there had been an actual manufacture of methamphetamine; rather it was enough to show that there had been an attempt to manufacture methamphetamine. This is said to have involved an amendment to the indictment by question trail.

[5] There is scope for debate as to the scope of the s 12(1) offence and, in particular, as to whether (a) an actual use of the premises must be established or (b) it is enough that the defendant put the other person in a position to use the premises for the purpose of the commission of an offence against the Act. But such debate is not material in the present case. By permitting the premises to be used for the purpose of attempting to manufacture methamphetamine, the applicant necessarily also permitted them to be used for the purpose of manufacturing methamphetamine. This point is dealt with succinctly in the Court of Appeal judgment at [14] and [17].

[6] The second ground is a complaint that the Judge suggested that the jury could convict the applicant on the basis of (a) knowledge on her part of the use of the premises for the manufacture of methamphetamine acquired only after the event and (b) failure (also after the event) to notify the police of what had happened.

[7] The applicant’s argument is based on some reliance by the Crown at trial on post-event communications by the applicant with her husband and a general statement by the Judge to the jury to the effect that if she knew what was proposed, a

¹ *Keane v R* [2015] NZCA 31 (Wild, MacKenzie and Lang JJ).

failure to evict the offender or call the police could constitute a failure to take reasonable steps to stop the offending. This argument, however, is misconceived. No concern about these aspects of the summing up was raised at trial or in the Court of Appeal, and understandably so. It would have made no sense for the Judge to suggest that a conviction could be founded on after-the-event knowledge and an after-the-event failure to call the police. It is clear that the remarks by the Judge about the failure to call the police were a reference to the situation as it was before the attempt to manufacture methamphetamine got under way. It is also clear that the reliance on after-the-event communications was to show prior-to-the-event awareness on the applicant's part of what was to happen.

Solicitors:
Crown Law Office, Wellington for Respondent