

**ORDER PROHIBITING PUBLICATION OF ANY PART OF THE
PROCEEDINGS (EXCEPT THE OUTCOME) UNTIL FINAL DISPOSITION
OF TRIAL.**

**IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY**

CRI 2007-063-002677

**VINCENT HURUNUI
KIM MERE HAIRA
TIA HAIRA**
Applicants

v

THE QUEEN
Respondent

Hearing: 7 February 2008

Appearances: A Schulze for Accused Hurunui
M Dorset for Accused Kim Haira
M Simpkins for Accused Tia Haira
F Pilditch for Crown

Judgment: 13 February 2008 at 1:30PM

**(RESERVED) JUDGMENT OF ANDREWS J
[s347 Applications]**

*This judgment was delivered by me on
13 February 2008 at 1:30pm
pursuant to r 540(4) of the High Court Rules.*

.....
Registrar/Deputy Registrar

Date:

Solicitors: Lance Dawson, PO Box 2279, Rotorua (A Schulze)
Lance Dawson, PO Box 2279, Rotorua (M Simpkins)
Gordon Pilditch, PO Box 740, Rotorua (F Pilditch)
Counsel: M M Dorset, PO Box 360, Rotorua

Introduction

[1] Vincent Hurunui, Kim Haira and Tia Haira are charged as follows:

- a) Count 1: that Vincent Hurunui and Kim Haira between 22 May 2007 and 22 June 2007 at Rotorua, supplied a Class A controlled drug (methamphetamine).
- b) Count 2: that Vincent Hurunui on 22 June 2007 at Rotorua, possessed a Class A controlled drug (methamphetamine) (alternative to Count 1).
- c) Count 3: that Kim Haira between 22 May 2007 and 22 June 2007 at Rotorua, knowingly permitted the premises at 21 McIntyre Avenue to be used for the purpose of the supply of a Class A controlled drug (methamphetamine) (alternative to Count 1).
- d) Count 4: that Vincent Hurunui, Kim Haira and Tia Haira, on 26 June 2007 at Rotorua were in possession of a Class C controlled drug for the purpose of sale.

[2] Each of the three accused has applied for discharge under s 347 of the Crimes Act 1961. Vincent Hurunui has applied for discharge on Counts 1 and 4. Kim Haira has applied for discharge on Counts 1, 3 and 4. Tia Haira has applied for discharge on Count 4.

[3] The test is that set out in *R v Flyger*¹ and *Parris v Attorney-General*²: whether there is before the Court evidence which, if accepted, would as a matter of law be sufficient to prove the case such that a jury, properly directed, could convict. If there is such evidence then it is for the jury to determine whether the evidence is, or is not, sufficient to establish guilt.

¹ *R v Flyger* [2001] 2 NZLR 721

² *Parris v Attorney-General* [2004] 1 NZLR 519

Common factual background

[4] The property at 21 McIntyre Avenue in Rotorua (“the property”) is owned by Mr Hurunui and his Family Trust. It is occupied by Ms Kim Haira (Mr Hurunui’s former partner) and her daughter Tia Haira.

[5] On 22 June 2007 the Police attended at the property on an unrelated matter. Tia Haira was present in the house and Mr Hurunui was located at the rear. Kim Haira was not present.

[6] On entering the house at the property the Police detected a strong smell of recently consumed cannabis and observed drug paraphernalia on a table. A search was invoked under s 18(2) and (3) of the Misuse of Drugs Act 1975. Found during the search of the property were:

- A surveillance camera trained on the driveway;
- A radio scanner tuned to the Police frequency;
- Digital scales;
- A quantity of small plastic snaplock bags, described by the Police as “point bags”;
- Approximately 5 grams of cannabis plant, in two plastic snaplock bags;
- A butane torch and methamphetamine pipe;
- Some tablets of restricted drugs;
- A cannabis cigarette.

[7] In a rubbish bag outside the house the Police found a number of documents which are said by the Police to be consistent with being “tick lists”, commonly used in drug dealing.

[8] Mr Hurunui was searched. He was found to have 48 milligrams of methamphetamine in small magnetic tin and \$585 in cash. Mr Hurunui was at that time on bail on other matters, bailed to an address in Kawerau. He was in breach of bail by being at the Rotorua address. He was arrested and remanded in custody until being granted bail in August 2007.

[9] The Police carried out a further search of the property on 26 June 2007. They found approximately 21 grams of cannabis plant concealed in the ceiling above a wardrobe in the bedroom occupied by Tia Haira. It was in one large and two small plastic snaplock bags. In the bedroom occupied by Kim Haira, the Police found three sets of scales.

Count 1

[10] The evidence pointing to there having been a sale or supply of methamphetamine from the property was set out by Mr Pilditch as being the presence of camera surveillance (enabling the occupants to know who was entering the property), the presence of a radio scanner (enabling the occupants to know what the Police were doing), the presence of digital scales capable of weighing the very small quantities required for trading in methamphetamine, the “point bags”, and the documents found in the rubbish bag which were, Mr Pilditch submitted, consistent with being “tick lists” commonly seen in drug dealing.

[11] The Crown case is that the alleged tick lists show calculations including the amount for which a quantity of methamphetamine has been purchased, and how that quantity was to be divided for on-sale, and at what prices. Thus, he submitted, the documents are evidence of the purchase and on-sale of methamphetamine.

[12] Mr Pilditch also submitted that Police evidence would be given to assist the jury in understanding the significance of the items found.

[13] I accept Mr Pilditch’s submission that there is evidence before the Court from which the jury could properly conclude that there was a supply of methamphetamine at the property at some time prior to the search on 22 June 2007. The issue for the

Court is whether there is evidence to link Mr Hurunui and/or Kim Haira to that supply.

Vincent Hurunui

[14] Mr Schulze submitted that there is insufficient evidence to support a charge that Mr Hurunui supplied methamphetamine. The amount found on his person was, he submitted, consistent with it being for his personal use. Further, no other methamphetamine was located at the address. The cash found on Mr Hurunui was not sufficient for any inference to be drawn that it came from the sale or supply of methamphetamine. Further, Mr Schulze submitted that the documentary analysis of the documents described as tick lists had concluded that they were not written by Mr Hurunui. In summary, Mr Schulze submitted, the evidence was more consistent with Mr Hurunui being a buyer, rather than a seller.

[15] Mr Pilditch acknowledged that the evidence in respect of Mr Hurunui on Count 1 was not strong, pointing only to Mr Hurunui's association with the house as further evidence in support of the charge. He also acknowledged that it was difficult to characterise Mr Hurunui as a supplier rather than as a buyer.

[16] I accept Mr Schulze's submission that there is insufficient evidence before the Court on which a jury, properly directed, could convict Mr Hurunui on Count 1.

Kim Haira

[17] Mr Pilditch submitted that the evidence linking Ms Haira to the general evidence of drug dealing comprised her occupancy of the property, and the analyst's evidence that she was the author of the alleged tick lists.

[18] Against that, Ms Dorset submitted that there was insufficient evidence on which a properly directed jury could convict Ms Haira of supply. First, she submitted, Ms Haira was not present at the property on 22 June 2007. Secondly, she submitted, there was evidence before the Court (in the statement made by Tia Haira) that Ms Haira customarily used small snaplock bags in the course of her business –

to hold small items of jewellery for sale. It is relevant to note that in the search carried out on 26 June 2007, jewellery was found packaged in small snaplock plastic bags. All bags found on 22 June were empty. Ms Dorset pointed out that there was no evidence to suggest that methamphetamine had been bagged in any of the plastic bags located at the property.

[19] With respect to the alleged tick lists, Ms Dorset advised the Court that Ms Haira's instructions were that these were calculations of wages for hours worked by various people.

[20] I do not accept that Ms Haira's absence from the property on 22 June 2007 is determinative. The date range for Count 1 is 22 May 2007 to 22 June 2007.

[21] In relation to the plastic bags, I note that Tia Haira's statement, as an "out of Court statement", cannot be relied on by Ms Haira unless she gives evidence. If that evidence is given, then it will be for the jury to decide whether it accepts the Crown case that the plastic bags were consistent with drug dealing, even if similar bags were used to package jewellery.

[22] Turning to the alleged tick list, I am again satisfied that it will be for the jury to decide whether it accepts the Crown case that Ms Haira was the author of the documents, and that they are, in fact, tick lists. I accept that there is evidence the Crown can draw on to support the inference of their being tick lists, in the form of the Police evidence as to the documents, and their apparent contrast to other documents found that clearly relate to Ms Haira's business.

[23] Accordingly, I am satisfied that there is evidence before the Court on which a properly directed jury could convict Ms Haira on Count 1.

Count 3

[24] Mr Pilditch submitted that if the Court accepted that there is evidence of the supply of methamphetamine from the property (as I have accepted) then it would be open to the jury, if it were not satisfied that Ms Haira was actually involved in the

supply of methamphetamine, to conclude that she had allowed the supply to occur, and thus find her guilty on Count 3, in the alternative to Count 1. This is on the basis of her day-to-day occupancy of the property.

[25] I note Ms Dorset's reference to Ms Haira's statement to the Police that the property is:

Vincent's premises not mine, I have to say I have no say whatsoever in what happens here, this is Vincent's place. If he tells me to fuck off I have to go, it's happened.

However, it will be a matter for the jury to decide if it accepts the Crown case that an inference may be drawn from Ms Hurunui's occupancy of the house that she had allowed the supply of methamphetamine (again, if the jury accepts the Crown case that there was a supply of methamphetamine) to occur.

Count 4

[26] Count 4 alleges that on 26 June 2007 Vincent Hurunui, Kim Haira and Tia Haira were in possession of a Class C controlled drug for the purpose of sale. This charge results from the finding of approximately 21 grams of cannabis during a search carried out on 26 June. As noted earlier, the cannabis was packaged in plastic snaplock bags and concealed in the ceiling above the wardrobe in the bedroom occupied by Tia Haira.

[27] Mr Pilditch submitted that the items located in the search on 22 June 2007 (in particular, the video surveillance, radio scanner, plastic bags and scales) were relevant in relation to Count 4.

[28] Again, the issue is whether there is evidence before the Court linking each accused to the alleged possession for supply.

Vincent Hurunui

[29] Mr Schulze's submission as to this Count was simple: Mr Hurunui could not have had possession, control or knowledge of the cannabis on 26 June 2007, as he was at that time in custody, following his arrest on 22 June 2007.

[30] Mr Pilditch acknowledged the force of Mr Schulze's argument. He also acknowledged that there was no evidence that the search on 22 June included a search inside the ceiling. However, on the basis that the cannabis was not detected on 22 June 2007, he acknowledged that the Crown would face difficulty in linking Mr Hurunui to the cannabis found on 26 June.

Kim Haira

[31] Mr Pilditch relied on the evidence of the items found on 22 June 2007 and the finding (on 26 June) of scales and cash in Ms Haira's bedroom. He submitted that if the jury accepts the Crown case that the property was set up for drug-dealing, then it could properly infer from the evidence that Ms Haira had knowledge and/or possession of the cannabis found.

[32] Ms Dorset submitted that there as nothing to link Ms Haira to the cannabis: it was found in Tia Haira's room, not the room occupied by Kim Haira, and Ms Haira had made no admissions. Further, she submitted that no inference of supply could be drawn from the quantity of cannabis found.

[33] I do not accept that the location of the cannabis in Tia Haira's room, and the absence of any admission from Ms Haira, as being determinative of the s 347 application. I accept that as the occupier of the house it will be open to the jury to infer that she had knowledge (at least) of the cannabis. It will be for the jury to decide whether it does accept the Crown case. Further, the quantity of cannabis found affects only the onus of proof. As Mr Pilditch readily acknowledged, the onus in this case is on the Crown to prove the case.

Tia Haira

[34] Mr Simpkins conceded that the cannabis was found in the bedroom occupied by Tia Haira. However, he submitted that she was not the only person who had access to the room – that it was clear that many others were able to (and did) have access to it. Further, he submitted that there was no evidence in the form of fingerprints, or a statement from Tia Haira, to support the allegation that she was in possession of the cannabis.

[35] I accept Mr Pilditch's submission that the fact that the cannabis was found concealed above Tia Haira's wardrobe (with access available only from the wardrobe) could be drawn on to support the Crown case against Tia Haira. I accept that there is sufficient evidence on which a properly directed jury could convict her on Count 4.

Result

[36] Mr Hurunui is to be discharged under s 347 on Counts 1 and 4.

[37] The applications by Kim Haira (for discharge on Counts 1, 3 and 4) and Tia Haira (for discharge on Count 4) are dismissed.

[38] Because the discharge must be given in open Court the charges against Mr Hurunui are to be called at Callover at **9:00am** on **Thursday 14 February 2008**. Mr Hurunui is required to be present.

Andrews J