

**IN THE DISTRICT COURT
AT ROTORUA**

**CRI-2017-063-003139
[2018] NZDC 11520**

THE QUEEN

v

CRAIG McKECHNIE

Hearing: 1 June 2018
Appearances: M Jenkins for the Crown
A Schulze and E Reilly for the Defendant
Judgment: 1 June 2018

ORAL JUDGMENT OF JUDGE G C HOLLISTER-JONES

[1] In July 2017, Craig McKechnie was on what he has self-described as a drug fuelled derailment from life. In early July 2017, he was using his mobile phone to trade in methamphetamine. When the police searched his apartment on 31 August, they found methamphetamine and cash.

[2] The Crown seeks forfeiture of \$15,000 in cash found in a cereal box on the dining room table in the apartment and \$9510 in cash found on the defendant's person.

[3] The defendant says this money, which totals almost \$25,000, was from the sale of two vehicles, with the sales taking place in the days preceding the police search. He says he sold one for \$20,000 and the other for \$5000 and after he purchased some clothing for his children, he was left with \$24,510.

Forfeiture principles

[4] The application for forfeiture is governed by s 32 Misuse of Drugs Act 1975 and, in particular, subs (3). Following conviction for a drug dealing offence, I must be satisfied that the money was either received by the defendant from drug dealing or was in possession of the defendant for the purpose of facilitating drug dealing.¹

[5] The burden of proving this is on the Crown and the standard of proof is the balance of probabilities. This is an additional penalty to any other penalty imposed under the Act. If the money that is sought to be forfeited was being used by the defendant in his drug dealing enterprise as a float or working capital to purchase drugs for re-sale, then the whole amount is liable for forfeiture, even though there may be some mixing of source.²

The Crown case

[6] The Crown relies on the evidence of the defendant trading in methamphetamine between 2 and 8 July 2017; the five text transactions that he has pleaded guilty to and the circumstances of the police search on 31 August.

[7] The particular circumstances arising from the search that the Crown rely on are, first, on the dining room table in the apartment occupied by the defendant and his co-defendants, there was this cereal box which, first of all, had some Two Minute Noodles in. Below that, \$15,000 in cash in the following denominations; seven \$100 notes, 222 \$50 notes, 158 \$20 notes and four \$10 notes. The police officer who examined it described it as being extremely neatly packaged into bundles which were in appearance “almost ironed.”

[8] Then next to the cereal box was a toiletry bag containing a point bag with 0.249 grams of methamphetamine in it and a three-layered plastic container containing 1.9 grams of methamphetamine. On top of the fridge in the room were scales and plastic point bags.

¹ Section 32(3) Misuse of Drugs Act 1975.

² *Keen v R* [2015] NZCA 221.

[9] The officer who undertook the search said that the defendant's co-defendants were sitting at this dining room table, that the defendant answered the door. The officer asked all of those present who the money and the plastic container belonged to and no one replied. When asked a second time, the defendant said he had just got back and had no idea.

[10] The Crown also rely on the fact that when the defendant was searched, a glass pipe and \$9510 was found on him and that this was in 14 \$100 denominations, 115 \$50 denominations and 118 \$20 denominations. This cash had a similar appearance to the cash in the cereal container. The Crown also rely on the fact that the defendant, when asked, said this amount of money was approximately \$10,000 and when asked where he got it from, he provided no answer.

[11] In relation to the Crown's reliance on the defendant not providing an answer when asked at the time, I caution myself about that because it is unclear at what point he was given his rights.

The defendant's case

[12] The defendant says that in August 2017, he sold a Volkswagen Golf for \$20,000 and a Ford Econovan for \$5000 and that the money for both these sales was owed to his parents. His mother has filed an affidavit in support covering the circumstances of the purchase of the Volkswagen Golf and the fact that her husband owned the Ford Econovan. Mrs McKechnie's affidavit also covers communications with the defendant concerning the sale of the Volkswagen Golf and then the Ford Econovan.

[13] The defendant gave evidence and said that following the sales of the two vehicles in the days preceding the police search, he acquired effectively \$25,000 and after buying the clothing I have referred to, was left with \$24,510. Mr McKechnie said he originally put this in the cereal container, but on the morning of the police search, he separated out \$9510, put that money in his pocket and that was intended to pay his bills.

[14] I turn now to examine the circumstances of each vehicle.

Volkswagen Golf

[15] The Volkswagen Golf was purchased from a licensed motor vehicle dealer in May 2016 for \$19,939. The money for this purchase was provided to the defendant by his parents. It appears, from what I understand, the defendant has then used it since May 2016.

[16] On 2 July, the defendant sent a text, and this is the text message that forms charge 1. In it the defendant said to the drugs associate that he needed his car. I asked the defendant about this and he told me that at that time, the car must have been borrowed by the associate.

[17] The car was transferred out of the defendant's name on 11 August 2017. There is no evidence from the purchaser. The name of the purchaser has not been provided by the defendant and the defendant says that the person is a friend of his wife. The defendant's evidence is that the purchaser will not have anything to do with him or this proceeding. As a result of the defendant not disclosing the name of the purchaser, the Crown have been unable to carry out checks with the purchaser to verify the defendant's claims.

[18] Mrs McKechnie states that in August 2017, the defendant phoned her, told her that he had sold the Volkswagen Golf, that he had received a cash payment for it and would pay her and her husband back \$15,000 of what he owed them for the motor vehicle. So the defendant, at least according to his mother, did not tell her what he had received for the sale. The money was never paid to Mr and Mrs McKechnie and the defendant says he put the money into the cereal box and was going to give them \$15,000 the next time he saw them and \$5000 at a later date.

[19] On close examination, there are some very unusual features around the sale of the Volkswagen Golf. It was a second-hand car when purchased in 2016. Its retail price at the time was almost \$20,000. It was used for 15 months and sold privately to an unnamed and unknown purchaser for \$20,000. Fifteen months of use and a subsequent sale for a little more than what was paid for it, is not consistent with market patterns for second-hand vehicles. The defendant's explanation for this was that he

had modification work done on it enhancing its value, but there was no evidence of this.

[20] Whilst it is clear that this vehicle was disposed of and the defendant told his mother he had sold it (with the amount not being mentioned), I am not satisfied it was sold for \$20,000 and that is because of these unusual features I have just referred to. In addition, the defendant was trading in drugs over this period. It seems as though the car was being used by a drug associate on 2 July and there is the additional fact that in July, the defendant acted dishonestly by stealing a valuable wood splitter. Further and, more importantly, the key features are that the sale price does not accord with market realities and most tellingly, the defendant's failure to supply the details of the purchaser tells against the legitimacy of the sale.

[21] Then in relation to the claimed proceeds of the sale, the \$15,000, this money was found on the dining room table in the apartment occupied by the defendant and his co-defendants, with the \$15,000 being present, hidden in the cereal box beside the jointly possessed methamphetamine.

[22] The defendant claims coincidence in relation to this. That it is just a coincidence that his co-defendants were sitting at the table where the money and drugs were found. That it is just a coincidence that that morning he had taken out the \$9500 and left the \$15,000 on the table. The defendant also in evidence denied that he had made any money from his drug enterprises.

[23] I find that the defendant's claim of coincidence in relation to the extremely close connection of the money and the drugs is not credible and I also find that the claims around the sale of the car not to be credible for the reasons I have given. It is clear that the \$15,000 was closely connected to the methamphetamine which as a result of the defendant's plea is accepted was possessed by him at least in part for the purpose of sale.

[24] I am satisfied that it was more likely than not to be used, at least in part, for future drug purchases which would then be repackaged and on-sold. It is possible that some of the money was from the sale of the Volkswagen, but it was at the time of the

search part of the float in the defendant's drug enterprise and this means in accordance with the principles concerning forfeiture that the entire amount is to be forfeited.

The Ford Econovan

[25] This was the defendant's father's van which was lent to the defendant to live in. The defendant says he sold it on 26 August 2017 without his parents' knowledge to his wife's nephew for \$5000 cash. Unlike the Volkswagen sale, the defendant has disclosed the name of the claimed purchaser of the van, but there is no evidence from that person and the Court only has the defendant's word about the sale and the sale price. Particularly, there is no evidence of the value of the van at the time. After the defendant's arrest, the van was found at the nephew's place with Mrs McKechnie going to remove the number plates which were personalised plates of her husband.

[26] In relation to this, the Crown rely on the denomination breakdown which they say is not, as it were, a standard cash till type denominations and the similar appearance to the money found in the cereal container. The Crown also rely on the money being found together with a methamphetamine pipe and they also rely on the defendant's lack of answer at the time, although, as I said, I consider that should be treated with caution, given the fact that the defendant's rights were operative. Furthermore, the Crown point to the large amount of cash on the premises at the time. Ms Petera-Healy had \$10,000 and Mr Hau, \$3800. The Crown say the overall circumstances point to the defendant and his co-defendants being active traders in methamphetamine at the time.

[27] It is clear that there are common features in relation to the \$9510. I also find that the defendant's explanation that he had split the money off that morning for the purpose of paying bills to be unlikely. It is possible that some of this money may have come from the sale of the van and/or the Volkswagen, but I am satisfied that it became absorbed as part of the trading capital in the defendant's joint drug business.

[28] Accordingly, the \$9510 is forfeited as well.

[29] There will be an order for forfeiture of \$24,510.

G C Hollister-Jones
District Court Judge