

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN
[SQUARE BRACKETS]

**IN THE DISTRICT COURT
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKĀURAU**

**CRI 2021-004-000889
[2022] NZDC 13549**

THE QUEEN

v

**DARREN ANDREW CREELMAN
DANIEL MARC WILES**

Hearing: 13 April 2022

Appearances: T Stuart for the Crown
J Rhodes for Creelman
A Ives for Wiles

Judgment: 20 July 2022

**RULING OF JUDGE K LUMMIS
[Propensity]**

[1] Darren Creelman and Daniel Wiles face trial together with Ms Biddle and [person 1] in respect of methamphetamine and firearm offending. The Crown applies to adduce as propensity evidence previous convictions of Mr Creelman and Mr Wiles in relation to earlier methamphetamine and firearms convictions.

The charges

[2] Ms Biddle booked to stay at an address on Jervois Road from 1 to 6 February 2021. The property is a single bedroom unit regularly rented out for short stay visitors via AirBnB. CCTV footage outside the unit showed Mr Wiles and Ms Biddle first

entering the property on 1 February 2021. Mr Creelman and [person 1] arrived at the property on 4 February 2021.

[3] On 5 February 2021 police identified that Mr Creelman was at the address. Mr Creelman had an outstanding warrant for his arrest. As a result, police searched the address seeking to locate him.

[4] While police officers were making their way into the address an occupant broke the bathroom window from the inside and threw a fully loaded 22 calibre revolver into the neighbouring property over the head of one of the attending officers.

[5] Inside the property police found Mr Wiles, [person 1] and Ms Biddle in the living room. They heard the toilet flush and located Mr Creelman in the bathroom. The bathroom smelt strongly of chemicals. The floor was wet and the sink tap was running. There were empty buckets on the floor and a large empty plastic container in the bathtub. The water in the toilet bowl was opaque milky white.

[6] Mr Creelman had a fresh cut to his right hand which was bleeding, consistent with being sustained from the broken window. It appeared Mr Creelman had been attempting to dispose of a large amount of methamphetamine by pouring it into the bathtub, sink and toilet. Officers collected samples of the liquid from the floor, swabbed the toilet bowl and extracted approximately 1.4 litres of toilet water. The water from the toilet bowl was later distilled by ESR and found to contain 57.7 grams of methamphetamine. An unknown amount of methamphetamine had already entered the sewerage system.

[7] Given the evolving situation police invoked a warrantless search for controlled drugs and firearms. Approximately \$120,000 was found throughout the house. Three sets of electronic scales and a plastic bag containing approximately 42 grams of methamphetamine were found on the coffee table.

[8] A small point bag containing four pistol bullets was located on the floor by the bathroom. A further 14 rounds of pistol ammunition was located in the lounge.

[9] A large black Nike bag in the lounge contained a small plastic jar of crystal methamphetamine rock and residue, two meth pipes, a large amount of cash, plastic tubing with white residue inside and a set of car keys. CCTV footage showed Mr Wiles carrying the black Nike bag in and out of the address on a number of occasions.

[10] Mr Wiles wallet, with his identification cards, was located in the bedroom as well as 15 grams of methamphetamine, seven rounds of 22 calibre ammunition, and a black bruni 84 calibre 9 mm pistol with a detached magazine. A handbag on the bed contained identification belonging to Ms Biddle and Mr Wiles and a bag with methamphetamine crystals inside.

[11] Police located two counterfeit driver licences bearing the photo of Mr Creelman but referring to the details of other individuals on the dining room table.

[12] A silver Audi parked at the address was searched and contained an extensive clandestine methamphetamine laboratory; notably a parr bomb, caustic soda, iodine, heating elements, metal piping and a distillation set up. ESR analysis of the items revealed significant quantities of precursor substances including 14.8 kilograms of iodine balls, 31 kilograms of iodine and 5.7 kilograms of white phosphorus. A significant number of items contained methamphetamine residue. ESR scientists concluded that the equipment had recently been used to manufacture methamphetamine estimating that approximately 10 kilograms of methamphetamine had been manufactured.

[13] Accordingly, police allege that the defendants had manufactured commercial quantities of methamphetamine at the address in the days prior to the search.

[14] A loaded M4 semiautomatic assault rifle was hidden under a jacket on the rear passenger seat of the Audi with multiple rounds in the magazine.

[15] The keys to the Audi were located beside Mr Creelman's counterfeit licenses on the dining table inside the address. Mr Wiles's fingerprints were found on the outside of the driver's door.

[16] As a result, the defendants jointly face:

- (a) One charge of manufacturing methamphetamine,
- (b) Six charges of unlawfully carrying or possessing firearms/explosive,
- (c) Five charges of possessing methamphetamine for supply; and
- (d) Four charges of possessing a precursor substance, material or equipment.

[17] Mr Creelman faces a further two charges of dishonestly using a document.

Propensity offending for Mr Creelman

[18] The Crown seeks to admit evidence of six methamphetamine convictions, eight firearms convictions and two dishonesty convictions. These convictions have been accumulated over four separate incidents.

2007 convictions for methamphetamine and firearm offences

[19] The summary of facts is not available for these convictions. The facts have been taken from the sentencing notes of Justice Venning.¹

[20] On 4 May 2005, Mr Creelman's car was impounded after he was found to be a disqualified driver. A search of the car located 42 grams of methamphetamine and 325 grams of pseudoephedrine.²

[21] On 26 September 2006, Mr Creelman crashed his car after evading police. A search of the car located 3 grams of methamphetamine, \$4,850 cash, electronic scales, a pistol grip shotgun and ammunition.³

¹ *R v Creelman* 30 March 2007, High Court Auckland CRI 2005-090-003426 at [1]. Mr Creelman was found guilty at trial of offending in May 2005 and entered guilty pleas to offending in September 2006. Justice Venning was not the trial Judge but had been the trial judge at an earlier trial where the jury had been unable to agree.

² Pseudoephedrine was not classified as a class B controlled drug until 7 September 2011.

³ Methamphetamine was noted at the time as having a wholesale value of one thousand dollars a gram.

[22] Mr Creelman was convicted of two charges of possession of methamphetamine for supply, possession of a precursor substance, unlawful possession of a firearm and unlawful possession of ammunition.

2013 firearms convictions

[23] On 15 August 2012, Mr Creelman was again involved in a police chase. The vehicle he was driving was searched and a pistol magazine containing 59 mm bullets was located next to the driver's seat. A search of Mr Creelman's home revealed a backpack containing over 1300 rounds of ammunition including shotgun shells, rifle rounds and 9 mm bullets. A black powder revolver was found in a spare bedroom. In a white sack in a cardboard box also in the spare bedroom police located a double-barrelled shot gun and two wooden rifle stocks. In the wardrobe of the main bedroom police located a Kalashnikov assault rifle wrapped and taped in a towel. Under the rifle was a small bag containing an empty 20 round magazine sufficient for the rifle.

[24] Mr Creelman was convicted of five charges of unlawful possession of firearms and explosives.

[25] Mr Creelman was also convicted in June 2013 of a charge of unlawful possession of ammunition on 1 April 2013 said to relate to a 'shotgun cartridge in Mr Creelman's wardrobe'. A summary of facts has not been provided. I have reviewed the sentencing notes and they do not throw any more light on the circumstances surrounding that offence. Without more detail I therefore disregard the 1 April 2013 offence.⁴

2013 methamphetamine offending

[26] Police surveillance identified Mr Creelman as associating with Mr Kao who was involved in importing pseudoephedrine and distributing methamphetamine within New Zealand. Mr Creelman's role together with Mr Kao was to sell methamphetamine to clients.

⁴ The information provided has been taken from the police database NIA. While the information is likely to reflect the original charge, it is unknown if it accurately reflects the offending later accepted by Mr Creelman.

[27] Intercepts showed Mr Creelman received 5 ounces of methamphetamine on 4 February 2013. On 5 February 2013 Mr Creelman requested five more ounces of methamphetamine for an associate and 4 grams for himself which was later supplied. Further interceptions in March showed ongoing transactions. Mr Creelman was sentenced for supplying 10 ounces of methamphetamine (283 grams). The arrangement was an ongoing one. A further 5 ounces of methamphetamine was the subject of a conspiracy charge.

[28] Mr Creelman was convicted of two charges of supplying methamphetamine and two charges of conspiring to supply methamphetamine.

Dishonestly using a document

[29] On 13 August 2020, Mr Creelman was convicted of using a document for pecuniary advantage relating to offences on 4 February 2020.⁵ Mr Creelman was located with a wallet containing two forged New Zealand drivers' licenses. Both licenses had Creelman's photograph attached but with different names and other differences not compatible with a genuine document. However, the licenses looked real until checks on a police database showed the mismatch between the name and the photograph.

Propensity offending for Mr Wiles

[30] The Crown seeks to admit evidence relating to 11 of Mr Wiles's prior convictions. 10 of those relate to methamphetamine convictions entered in 2016 and one relates to a conviction in 2020 for unlawful possession of a firearm and associated ammunition.

⁵ During the hearing I did not have the summary of facts. I had information from the police computer system set out in a job sheet by [Detective A] dated 4 March 2022. Defence cautioned me against using the police record without the official court record to confirm the scope of the offending. For this particular offence I formed the view that the NIA record was likely to be accurate given the level of detail recorded about the driver's licence and the potential use. The court staff have now obtained a copy of the charging documents and the summary of facts. These confirm that Mr Creelman was in possession of fraudulent drivers licenses as alleged.

Methamphetamine offending

[31] On 9 May 2014 Mr Wiles was driving a car with his son and two others. He failed to stop for a police roadside checkpoint. The car was stopped with road spikes. Mr Wiles 12 year old son was in the car and had been handed a number of items. This included two cell phones and a small plastic container which contained 9.4 grams of methamphetamine. Mr Wiles partner, who was in the car, had \$20,000 cash on her. Police later searched Mr Wiles hotel room and located 250 grams of hypo phosphorous acid. Mr Wiles was charged alongside the other adults in the car.

[32] As a result of the searches production orders were obtained for Mr Wiles's mobile phone. Mr Wiles pleaded guilty to ten charges including charges of conspiring to supply, offering to supply and supplying methamphetamine, possession of material for the purpose of manufacturing methamphetamine as well as conspiring to supply a precursor substance, namely pseudoephedrine. When sentencing for these offences Judge McDonald accepted that Mr Wiles was a street dealer with the total amount of methamphetamine involved in the offending amounting to 12.65 grams.⁶ Judge McDonald did not accept that personal use was a significant factor in the offending and sentenced on the basis that 11.65 grams was for sale. Mr Wiles had been living in Auckland but had been caught dealing methamphetamine on a trip north.

Firearms offending

[33] On 1 May 2020, police were alerted to an incident involving Mr Wiles assaulting someone while holding a cut down 12 gauge shotgun. This resulted in a search of his property. The shotgun was located with eight live shotgun cartridges. Mr Wiles stated that he had the firearm for self-defence due to his gang status.

The law

[34] Propensity evidence is admissible when it has probative value in relation to an issue in dispute and this outweighs the risk of unfair prejudice to the defendant.

⁶ *R v Alamoti, Wiles and Gilfedder*, Sentencing notes of Judge McDonald 18 October 2016 [2016] NZDC 20702 at [20].

The parties here agree that the proposed evidence is propensity evidence, as defined by s 40(1)(a) of the Evidence Act 2006, being evidence that tends to show a person's propensity to act in a particular way or to have a particular state of mind, being evidence of acts, omissions, events, or circumstances with which a person is alleged to have been involved.

[35] Identification of the issue in dispute is important because the probative value of the evidence is assessed by reference to that issue. Some degree of specificity is required to generate probative value.

Issue in dispute

[36] The key issue in this case will involve identifying who was responsible for the drug related items and the firearms located at the address and in the Audi outside the address. The trial is likely to focus on whether methamphetamine had been manufactured at the address and, if it had, who was responsible for the manufacture. Who had knowledge, control and thereby possession of the larger quantities of methamphetamine, the clan lab and the firearms will be hotly contested.

[37] It is important to note that the evidence shows both Mr Creelman and Mr Wiles as closely linked to some of the incriminating items. It can be expected that Mr Creelman will have real problems distancing himself from the loaded 22 calibre revolver thrown out of the bathroom window. His presence in the bathroom and the cut to his hand appear consistent with being sustained while breaking the window. Given the state of the bathroom Mr Creelman may struggle to distance himself from the methamphetamine located in the toilet bowl water.

[38] Mr Wiles was seen carrying the black Nike bag in and out of the address. The bag contained a small jar of crystal methamphetamine rock and residue as well as a large amount of cash. Mr Wiles and his partner had been at the address for several days prior to Mr Creelman's arrival. Further, the items in the bedroom including 15 grams of methamphetamine and a 9 mm pistol, appear more closely linked with Mr Wiles and Ms Biddle.

[39] As already noted, knowledge of the presence of the items located in the lounge and the Audi will be hotly contested.

[40] Given the quantity of methamphetamine involved a reverse onus will apply if the jury are satisfied either defendant is in possession of the methamphetamine located.

[41] Further, there is a reverse onus operative for the firearms charges, whereby every person in occupation of any land or building or the driver of any vehicle on which any firearm or explosive is found, though not to the exclusion of the liability of any other person, be deemed to be in possession of that firearm unless he proves that it was not his property and that it was in the possession of some other person.⁷

[42] In respect of the firearms charges each party will likely seek to distance themselves from the car and house to try and avoid the reverse onus or weaken its effect.

[43] This is likely to create a cutthroat situation where the parties are forced to point the finger at the other or they will be left to simply state they had no knowledge of the items. This may be difficult in a small one bedroom apartment.

[44] None of the defendants gave statements to police. With the reverse onus in play the defendants may be under considerable pressure to give evidence. Credibility of their explanations in the face of the onus is likely to be a significant feature of any trial.

[45] Turning then to the factors in section 43 for **Mr Creelman**;

Frequency and connection in time

[46] The date of the alleged offence is 5 February 2021. Mr Creelman has been convicted of being involved in the supply of methamphetamine on three separate occasions between May 2005 and March 2013. Mr Rhodes for Mr Creelman submits

⁷ Arms Act 1983 section 66.

that several discrete incidents of commercial relating methamphetamine offending over the course of 15 years does not represent a particularly frequent pattern of offending. At first glance this argument has some merit, but on closer inspection it does not withstand scrutiny due to Mr Creelman's periods of incarceration.

[47] Mr Creelman's firearm and ammunitions related offending occurred in September 2006 and August 2012.

[48] The September 2006 offending occurred whilst Mr Creelman was on bail for the May 2005 offending. These matters were not dealt with until 30 March 2007 when Mr Creelman was sentenced to 6 ¼ years imprisonment. I am unsure when he was released on parole. Mr Creelman's criminal history shows he offended again July 2010 and the sentencing notes for that offence outline that he offended on parole, was subsequently recalled and was unlikely to be before the parole board again until 2011.⁸

[49] Mr Creelman offended again in early 2013. On 7 August 2015 he was sentenced to 6 ½ years' imprisonment. He was released from Spring Hill corrections facility on 17 December 2018 and was under the supervision of the Department of corrections for some time following. While on the face of it there is a considerable gap between the offences it is notable that Mr Creelman was in custody for a significant portion of the intervening period.

[50] I consider that Mr Creelman's methamphetamine and firearm offending is both frequent and connected in time given the periods of incarceration and corrections oversight.

[51] The dishonest use of a document conviction relates to offending on 4 February 2000 just 12 months prior the current alleged offending. In my view the offending is connected in time.

⁸ Sentencing notes of Judge Tremewan dated 25 November 2010. CRI 2010-090-009001 at [14].

Similarity of the conduct

[52] Neither Mr Wiles nor Mr Creelman have previous convictions for methamphetamine manufacture or convictions which are directly comparable to what is said to be very large-scale offending on this occasion. However, Mr Creelman's 2005 convictions include a conviction for a significant quantity of a precursor substance and his 2013 convictions involve significant quantities of methamphetamine. It is also important to have regard to the fact that quantities involved in methamphetamine offending generally have increased significantly in the past 15 years. The ability to import significant quantities has impacted on use and availability. Covid-19 has also had an impact. Mr Creelman's methamphetamine offending appears to follow the general trends.⁹ Quantities that may seem small by current standards were still considered very significant in the not too distant past.¹⁰ In my view there is a similarity for Mr Creelman to be involved with what, by the standards of the relevant time, would be considered significant quantities of methamphetamine.

[53] The 2007 convictions involved possession of 325 grams of pseudoephedrine. Again, this would have been a significant quantity at the time.¹¹

[54] The mixing of drugs and firearms is also another point of similarity between the 2006 offences and the index offending. The 2013 convictions for firearms found on 15 August 2012 were not directly related to any methamphetamine offending. However, it was only six months later (February and March 2013) that Mr Creelman was found to be involved in commercial methamphetamine distribution.

⁹ The March 2021 Parliamentary service Paper "Methamphetamine in New Zealand: A snapshot of recent trends" outlined the significant increase in convictions for dealing or trafficking between 2011 and 2018 and how Covid-19 restrictions had caused a significant disruption to international supply chains and movement of drugs resulting in a significant price increase.

¹⁰ This was recognised in *Zhang v R* [2019] NZCA 507 when the Court of Appeal increased and expanded the sentencing bands. In *Fatu* Band 4 previously covered amounts in excess of 500 grams. The revised bands increased the entry to the highest band to 2 kilograms. The Court noted at [30]: "The vast majority of methamphetamine is now imported and the quantities involved are significantly greater than they were a decade ago ..."

¹¹ *R v Creelman* 30 March 2007, High Court Auckland CRI 2005-090-003426. Justice Venning noted at [3] that the street value of the pseudoephedrine was between \$97,000 and 167,000 and at [14] described it as a "substantial" quantity.

[55] The current firearms and ammunition allegations involve a point bag containing 4 pistol bullets, 14 rounds of pistol ammunition (from bathroom floor and lounge), a fully loaded 22 calibre revolver (thrown out the bathroom window), a black Bruni 84 calibre 9mm pistol with detached magazine, seven rounds of 22 calibre ammunition (in the master bedroom) and the loaded M4 semiautomatic assault rifle with multiple rounds in the magazine (found in the Audi). The prior allegations involved a pistol grip shotgun and ammunition (2007 convictions), a black powder revolver, 1300 rounds of ammunition including shotgun shells rifle rounds, 9mm bullets, a double-barrelled shotgun, a Kalashnikov assault rifle (2013). There is some similarity in the selection of weaponry with the required ammunition always being close at hand. Further there is some similarity in the ability to acquire a number of weapons.

[56] The counterfeit licences located on the current occasion appear to be similar to those Mr Creelman had on the earlier occasion. On each occasion Mr Creelman had two licences.

Number of persons making allegations/collusion

[57] This is not a case involving any suggestion of collusion.

Unusualness

[58] For drug offending where methods and trends change over time an assessment of unusualness is difficult. As was recognised by the Court of Appeal in *Preston v R*,¹²

As is often the case, an assessment of unusualness is somewhat fraught. There is often no certainty about the appropriate comparator. There is only so much equipment and so many chemicals that can be possessed and intended for methamphetamine manufacture. Looking for additional “unusualness” in such cases is often unhelpful and can lead to the temptation to return to the pre-Evidence Act striking similarity test to establish the unusualness.

¹² *Preston v R* [2012] NZCA 542.

[59] Despite this the courts have recognised that possession of precursors and equipment of manufacture is relatively unusual. In *Broome v R*, the Court of Appeal noted;¹³

The possession of precursors and equipment for the purpose of manufacturing methamphetamine is relatively unusual in our view a previous instance of such behaviour does show a tendency towards a particular state of mind, namely an interest or preparedness to be involved in the manufacture of methamphetamine. We therefore accept that Mr Broome's previous conviction of such an act could constitute propensity evidence.

[60] The regular and unlawful possession of firearms and the casual way they have been stored is in my view unusual. The way the items have been located in past and in the alleged offending (including throwing a loaded revolver out of a window) indicates a relatively reckless attitude towards the storage and safe use of such weapons.

[61] Turning then to consider the factors in section 43 for **Mr Wiles**;

Frequency

[62] Mr Wiles prior proven involvement in methamphetamine involved regular supply in the first five months of 2014 with possession of various items on 9 May 2014. Mr Wiles has a single conviction for firearm offending.

[63] It is noted that even a single incident may constitute propensity evidence.¹⁴

Connection in time

[64] Mr Wiles proven involvement in selling methamphetamine and conspiring to supply a precursor substance was 7 years prior to the index offending in the first half of 2014 (between 16 January 2014 and 9 May 2014). Mr Wiles was sentenced in October 2016 to three years and 7 months imprisonment. This reduces the significance

¹³ *Broome v R* [2017] NZCA 575 at [55].

¹⁴ *Latifi v R* [2014] NZCA 11 and *Patten v R* [2014] NZCA 486.

of the 7 year time gap. Mr Wiles was released from prison on 15 August 2018 and was subject to the supervision of the Department of Corrections after that time.

[65] Mr Wiles firearms conviction arose from offending on 1 May 2020 less than a year before the alleged offence. In my view this is closely connected in time.

[66] In the circumstances of this case, the 2014 methamphetamine offending is also connected in time.

Similarity of the conduct

[67] Ms Ives contends that Mr Wiles 2014 offending as a low level street dealer is significantly different to the current allegation. The quantity was limited to the 9.4 grams found on him and the production order data showing further sales. The overall amount involved in the offending was 12.65 grams. Ms Ives submits that this is in stark contrast to the quantities involved in the current offending.

[68] It is correct to say the quantities involved on this occasion are far greater. However, Mr Wiles' prior convictions show a propensity to deal commercially having travelled out of town to generate further opportunities to supply rather than dealing to sustain a habit. It is also important that the 2014 offending involved \$20,000 cash, 250 grams of hypo phosphorus acid and conspiracy to supply pseudoephedrine. This demonstrates an ability to generate significant income and to acquire products used in the manufacture process.

[69] I further note the willingness to involve his partner in the offending on both the prior and current occasion.

[70] Further, both sets of offending occurred away from Mr Wile's home address. An AirBnB on this occasion and a motel in 2014.

[71] Ms Ives refers me to the case of *Grimshaw v R*.¹⁵ *Grimshaw* makes a distinction between an allegation involving considerable quantities of

¹⁵ *Grimshaw v R* [2013] NZCA 22.

methamphetamine and low-level dealing. The issue in *Grimshaw* was one of attribution and knowledge of several larger amounts of methamphetamine in a house secreted in a freezer and on top of a wardrobe. There were a large number of people using the house and Ms Grimshaw had been absent for two days prior to the police search. The context of the index offending here is very different given the AirBnB was small, temporary accommodation with methamphetamine related items in plain view scattered throughout.

[72] I view Mr Wiles earlier offending as of a different type to that described in *Grimshaw*. The contrast is highlighted by the starting points taken for Mr Wiles and Ms Grimshaw's earlier offending. Ms Grimshaw's offending fell within band 1 of *R v Fatu*,¹⁶ with a start point of 2 ½ to 3 years imprisonment.¹⁷ Mr Wiles offending in 2014 was placed within band 2 of *Fatu*, attracting an overall start point of four years and 3 months imprisonment.¹⁸ It is correct that Mr Wiles 2014 offending involved significantly less methamphetamine than the current alleged offending. It was nevertheless a significant quantity.

[73] In *R v Khan*, the Court of Appeal considered the relevance of the difference in seriousness between the propensity evidence and the index offending and stated:¹⁹

A difference in the seriousness of offending will not, of itself, outweigh the probative value of the propensity evidence. Such differences might merely reflect the circumstances in which the offending occurred and the opportunities presented to the offender.

[74] In respect of the firearms, Mr Wiles prior conviction relates to a cut down 12 gauge shot gun located with eight live shotgun cartridges. This type of rifle has no lawful purpose. Ms Ives submits there is no similarity to the weapons located in the index offending which were a 22-calibre revolver, a semiautomatic assault rifle and a 9mm pistol and associated ammunition. However, the fact that the rifle was cut down and the presence of live ammunition close at hand does provide some similarity.

¹⁶ *R v Fatu* [2006] 2 NZLR 72.

¹⁷ *Grimshaw v R* [2013] NZCA 22 at [11].

¹⁸ *R v Alamoti and Others* [2016] NZDC 20702 at [24] to [26].

¹⁹ *Khan v R* [2010] NZCA 510 at [24] (footnotes omitted).

Unusualness

[75] I do not see Mr Wiles drug offending as particularly unusual.

Probative value versus unfairly prejudicial effect

[76] In the context of the current offending both Mr Wiles and Mr Creelman are closely connected with at least some of the incriminating items. This differentiates this case from others where propensity evidence has been held to have an unduly prejudicial effect.²⁰ The AirBnB was rented for the sole purpose of providing a place to manufacture and deal methamphetamine from with a limited number of people having been at the address. The incriminating items were located in open view throughout the small apartment and when police entered there was a strong smell of chemicals. The Crown case is that all parties were involved as a joint effort. It is likely to be a cut-throat defence with each defendant seeking to distance themselves from the drugs and firearms in question. Attribution is at the heart of this case.

[77] There is significant probative value in leading evidence of prior convictions for similar offending. It reduces the credibility of any claims that the defendants were in the wrong place at the wrong time or caught up in the middle of someone else's manufacturing operation. The fact that these men have been actively dealing methamphetamine in the past with others makes it less likely that their presence at the address on 5 February 2021 was an unlucky coincidence. It demonstrates a tendency to pursue joint ventures.

[78] Both Mr Wiles and Mr Creelman have significant links to at least some of the methamphetamine at the Jervois address. The CCTV footage from outside the address shows time spent at the address. It is not a case where the addition of prior convictions will create significant prejudice.

[79] Given the earlier convictions did not involve the manufacture of methamphetamine I do not consider that they will unfairly predispose the factfinder against the defendants. I accept that there will be some prejudicial effect. This is not

²⁰ For example, *Brown v R* [2020] NZCA 97 and *Grimshaw v R* [2013] NZCA 22.

a case where the factfinder would give disproportionate weight to this evidence, particularly as it is balanced between the defendants. It is not a case where the Crown will be relying almost solely on the propensity evidence.

[80] Further, I note most of the prior convictions were not defended and the agreed summaries would be able to be incorporated into an agreed fact document. Mr Wiles reference to his “gang status” when asked about the sawn-off shotgun in 2020 could be viewed as prejudicial. I would expect that would not be included in the agreed facts. Appropriate judicial directions will also act to alleviate unfair prejudice.

[81] I accept the factors weighing in favour of admitting the propensity evidence are stronger for Mr Creelman. However, as raised with Counsel during the hearing, there would be significant unfair prejudice to Mr Creelman if Mr Wiles convictions were not before the jury.

[82] This is particularly so in light of the likely cutthroat defence that will operate. This will be particularly significant in relation to the clan lab located in the Audi. Mr Creelman appears linked to the vehicle by the keys being close to his wallet while Mr Wiles fingerprints were found on the outside of the driver’s door.

[83] In my view there is a high degree of coincidence in Mr Creelman and Mr Wiles being involved in earlier commercial methamphetamine offences and again in 2021 of being in possession of significant quantities of methamphetamine and various items related to the manufacture of methamphetamine. Their prior involvement with methamphetamine will also be directly relevant to the issue of knowledge of the use of the items located. The evidence has probative value that outweighs its prejudicial effect.

[84] Likewise, their prior involvement with firearms is probative of again being in possession of firearms.

[85] Finally, for Mr Creelman the convictions relating to counterfeit drivers’ licences demonstrate a high degree of coincidence given the proximity of the offence and the similarities between the offences. Given the lower level of seriousness of the

dishonesty offences the scope for prejudice in admitting these offences will be limited. I note this may not be an issue if the matter proceeds to trial given there is no obviously discernible defence to these charges.

[86] Therefore, all of the proposed propensity evidence is admissible for the index offending. The exception is in regard to the manufacturing methamphetamine charge. Mr Creelman and Mr Wiles have not previously been convicted of manufacturing methamphetamine. The basis of the earlier precursor offending was that Mr Creelman and Mr Wiles possessed items knowing they were to be used for the manufacture of methamphetamine. The earlier offending says nothing about any propensity by Mr Creelman or Mr Wiles themselves to manufacture methamphetamine.

[87] Like the case of *Preston*,²¹ there is no linkage or coincidence reasoning applicable to the manufacturing charge. The trial Judge will, therefore, need to carefully distinguish for the jury which charges the propensity evidence attaches to.

Judge K Lummis

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 19/07/2022

²¹ *Preston v R* [2012] NZCA 542.