IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA484/2025
[2026] NZCA 109

BETWEEN	THANH HUNG PHAM Appellant
AND	THE KING Respondent

Hearing: 11 February 2026

Court: Campbell, Dunningham and Andrew JJ

Counsel: S N B Wimsett KC for Appellant
A M McClintock and M W Büdler for Respondent

Judgment: 9 April 2026 at 11.00 am

JUDGMENT OF THE COURT

The appeal against conviction is dismissed.

REASONS OF THE COURT

(Given by Dunningham J)

[1] The appellant, Thanh Hung Pham, was convicted following a jury trial on a charge of importation of methamphetamine.[1] Mr Pham now appeals his conviction.

[1] Misuse of Drugs Act 1975, s 6(1)(a) and (2)(a): maximum penalty of life imprisonment.

[2] The appeal is advanced on the grounds that:

(a) the verdict was unreasonable because the defence case could not be excluded as a reasonable possibility; and

(b) there were errors in the trial Judge's summing up and directions which created a real risk that the outcome of the trial was affected.

Factual background

[3] On the morning of 17 November 2023, Megan Stephenson arrived at Auckland International Airport from the United States with 6.7 kg of methamphetamine in her suitcase. She was detained by the New Zealand Customs Service (Customs).

[4] At 12.25 am the following morning, the appellant went to a hotel in Karaka, Auckland (the hotel). The Crown said this was to collect the methamphetamine and to pay Ms Stephenson, and that this must have been agreed prior to the importation, thus making him a party to the importation (there being no dispute that to find the appellant guilty of the importation he must have agreed to assist the importation prior to its completion). That was disputed by the appellant, who argued his only involvement was responding to a request to go to the hotel after the importation was complete and that there was insufficient evidence to prove he had a role in facilitating the importation at any earlier stage.

[5] To explain these competing contentions, it is necessary to set out the relevant evidence in some detail.

[6] Ms Stephenson and an accomplice arrived at Auckland International Airport from Los Angeles at around 9.38 am on 17 November 2023. She was arrested at customs and her two mobile phones were seized. Her accomplice, however, got through customs. The importation of the 6.7 kg of methamphetamine Ms Stephenson had in her suitcase was agreed to have concluded at midday on 17 November 2023.

[7] That evening, using one of Ms Stephenson's phones and posing as her, a Customs officer began communicating with an individual who appeared to be

coordinating the importation and who was identified by the name My My Ban Hien (MMBH). The communications with MMBH occurred across a two-hour period commencing around 10.34 pm, which is when the Customs officers connected the phone to Wi-Fi and started viewing and photographing the messages.

[8] The phone showed that three earlier voice calls from MMBH to Ms Stephenson had been missed. There was then a text from MMBH saying "Where are you right now", to which the officer replied "Stil with immigration they stop me".

[9] There was then a missed voice call from MMBH as the Customs officer did not answer the phone call. This was followed by further brief messages from MMBH, including "Where are you right now" and "Sorry Megan", to which the Customs officer replied "I'm really tired and can't talk now in taxi where do I go now?"

[10] MMBH then sent a link with a photo of the hotel, followed by the words "I so sorry" and "I gift you 2 thousand".

[11] This was followed by a longer message from MMBH saying:

> Im so sorry for that.
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> I have a big believe in you and like the way you worked with us.
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> this is the first time you go there so she just go to help you and make everything easier with you that what I wanted. I didn't know she did something wrongs with you. Now I knew it and it will not happen any more.

[12] There was a further call to Ms Stephenson's phone from MMBH shortly after 11 pm which was not answered, followed by the message "Megan I want talk you right now", to which the Customs officer replied "I'm tired it's all been too much. There is no booking what do I do now?" MMBH responded, acknowledging she was tired and saying that they will "have a person give 2.000usd to you to book room!". MMBH followed up by saying that it would take about one and a half hours for "my friend" to be there.

[13] The Customs officer responded as if he were Ms Stephenson waiting in the lobby of the hotel and said "Can they come fast I'm so tired and my phone is going flat." MMBH responded suggesting she borrow a charger and confirming that their

"friend" would "get there about 30–45mins". There were then further messages from MMBH at around 12.30 am saying "There is a white Mercedes staying out there" and "Let them know who you are".

[14] The appellant and an associate drove to the hotel in a white Mercedes car, arriving in the carpark around 12.25 am. The appellant was captured on CCTV wearing distinctive clothing and carrying a shoulder bag and trying, unsuccessfully, to access the hotel lobby. He was also seen talking on the phone and to his associate during this period. They left the carpark at 12.46 am.

[15] A search warrant was executed at Mr Pham's address on 30 November 2023. Two mobile phones were seized from his bedroom, and around $200,000 in cash was located in the house, of which $108,700 was found in the cistern of the toilet in Mr Pham's ensuite bathroom. Mr Pham was arrested for his alleged role in the importation.

[16] Mr Pham's OPPO phone was analysed. Because the phone used encrypted applications, limited content was able to be recovered from it. One such encrypted application was Threema. Customs was only able to access a folder of images downloaded from Threema and not the content of messages sent on Threema. However, electronic analysis of the phone showed that Mr Pham had made multiple web searches for the hotel, including visiting its website at 12.57 am on 18 November 2023, and had made a phone call to the hotel at 1 am.

[17] Images of white crystals and powder were also located on the phone, accompanied by a screenshot of messages between "Gragas, Tommy, You" which referenced "85k. AUD". It could not be confirmed if the appellant was the "You" in these messages because the messages were in the form of a screenshot (which may or may not have been taken on the appellant's phone) and the appellant's phone did not contain the application on which the messages were sent, Signal.

[18] Also found on the phone was an image of Ms Stephenson's Arizona identification card, but that image was received on 18 November 2023, after

the importation was complete and after the appellant had visited the hotel. There was no evidence of a prior connection between the appellant and Ms Stephenson.

[19] The appellant completed two video interviews with a Customs officer. In those interviews he was asked about his movements on the night of 17 November and the early morning of 18 November 2023. He said, initially, that he went to the hotel to book a room and then he said he went there so he could go to the toilet. He also said that he was there for maybe a few minutes and a maximum of 10 minutes (the Customs officer having erroneously put it to him that he was there for 40 minutes). However, the CCTV footage showed he was there for around 21 minutes.

[20] He accepted he had searched for the hotel online, which was done on the OPPO phone. However, when asked about the photo of Ms Stephenson's ID on that phone he claimed the phone was not his. He had earlier stated (before the first interview commenced) that the phone was his son's (who was in Vietnam) and that he did not know the password. When it was put to him that he went to the hotel with $2,000 to give to Ms Stephenson so she could book a room, he said "I didn't know anything about that. I've got nothing to do with anything." He also denied that the shoulder bag he was carrying contained anything other than his personal belongings. When asked to explain what he and his friend were talking about when seen conversing in the CCTV footage, he said: "It's nothing dodgy. We're just [inaudible …] if it's open or not. That's it — nothing. Not money or anything … That's all."

The trial

[21] The trial itself was short, with opening addresses on 3 June 2025 and evidence presented on 4 and 5 June.

[22] At the conclusion of the Crown case, the defence brought an application to dismiss the charge under s 147 of the Criminal Procedure Act 2011. Judge P Sinclair declined the application. In her reasons, issued on 10 June 2025, the Judge concluded there was "sufficient evidence for the jury to draw safe inferences" and that a "properly directed jury could reasonably convict the defendant."[2]

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2 *R v Pham* [2025] NZDC 12281 at [39].

[23] The hearing reconvened on 9 June 2025, and closing submissions and the Judge's summing up were given on that day.

[24] In closing, the Crown advanced its case on the basis that the appellant had agreed, before the middle of the day on 17 November 2023 (and therefore before the importation concluded), to receive the drugs. The Crown relied on inferences to be drawn from the evidence. In particular, it said that for an importation worth over $2,000,000 it was a matter of common sense that there would be someone ready in advance to collect it, someone who knew what was going on and who was trusted. The totality of the evidence demonstrated that the appellant was the trusted person in New Zealand who was pre-organised to receive the drugs.

[25] Defence counsel, however, said there was insufficient evidence to say what the appellant did to help or assist with the importation before midday on 17 November. There was no evidence of any connection with Ms Stephenson or of any communication with MMBH about the importation prior to its completion. He may simply have been asked, once things went wrong (and therefore after the importation had concluded), to check if Ms Stephenson was through and gift her $2,000.

[26] The jury subsequently found the appellant guilty on the charge.

Submissions for the appellant

First ground of appeal — unreasonable verdict

[27] Mr Wimsett KC, for Mr Pham, submits the Crown evidence did not provide a legitimate basis for the jury to infer that the appellant undertook some acts or actions to further the importation prior to its completion. While the Crown theory that he was involved beforehand as the trusted recipient in New Zealand was possible, it was also possible that the appellant only received instructions on the evening of 17 November 2023 after the importation had concluded, and that he came to the hotel to pass on cash to Ms Stephenson for reasons unknown to him.

[28] Mr Wimsett submits that the latter is a more reasonable possibility because:

(a) had the appellant known about the importation, he would have known what flight the courier was to arrive on and the delay in contact from Ms Stephenson would have caused him concern, especially since it was known that she was stopped by Customs;

(b) if he were involved, he would also have known that Ms Stephenson was travelling with an accomplice who evaded Customs, and that person would have known that Ms Stephenson had not made it through;

(c) there was no phone data which showed the appellant tracking Ms Stephenson's flight or checking arrival times at the airport, nor was there any evidence placing him near the airport;

(d) had he known that he was involved in an illegal importation it was unlikely that he would have spent so much time in front of the hotel (observed by CCTV) wearing distinctive clothing or left his car parked in a disabled car park;

(e) had he known what was at stake, he would not have then called the hotel on a traceable number after Ms Stephenson failed to show at the hotel;

(f) had he known about the importation, it is expected he would have taken steps to delete information from his phone, including the images of Ms Stephenson's ID and the white powder and crystals that the Crown relied on as being methamphetamine; and

(g) the balance of the evidence relied on by the Crown, including the cash found at his home and the screenshots of messages found on his phone, added nothing to the Crown case apart from inviting the jury to speculate impermissibly.

[29] In short, Mr Wimsett submits that in this case the jury could not exclude the reasonable possibility that the appellant was called in to go to the hotel after the importation concluded to give Ms Stephenson some cash, but that he did not know that she had imported methamphetamine and he only realised there was a problem when Customs executed the search warrant on 30 November 2023.

[30] In arguing that this possibility could not be excluded on the evidence, Mr Wimsett refers to the recent Supreme Court decision in *Iongi v R*.[3] In *Iongi*, the issue was whether the jury could safely draw the conclusion, on the evidence, that Mr Iongi was aware of his cousins' plan to shoot the deceased and had joined in on it or otherwise assisted or encouraged it.[4]

[31] The Crown submitted that it was implausible in the circumstances for any one of the three defendants to be unaware of the purpose of the trip to the house where the deceased lived and to not be involved in the plan. However, the majority of the Supreme Court found that:

> [91] … The Crown case had not displaced the defence inference of non-participation by Manu Iongi in the plan developed, at some point, by the other two men. The availability of both inferences on the evidence required the jury to guess, or speculate, as to which was in fact right. … therefore, there was no rational basis for the jury to have rejected the defence inference of non-participation in the plan as a reasonable possibility. A properly directed jury could not be sure Manu was aware of the plan by the others to fire a shotgun at a person at Calthorp Close, and had agreed to help them effect that plan.

[32] Mr Wimsett submits that here, as in *Iongi*, the availability of both inferences on the evidence required the jury to guess or speculate as to which inference was correct. Therefore, a properly directed jury could not be sure that the appellant knew of the methamphetamine importation plan and agreed to the plan prior to its completion. The jury's verdict was therefore unreasonable.

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3 *Iongi v R* [2025] NZSC 191, [2025] 1 NZLR 900.
4 At [9].

Second ground of appeal — deficiencies in summing up and directions

[33] Mr Wimsett also submits a miscarriage of justice occurred through a combination of errors or irregularities in the Judge's summing up and directions. These errors or irregularities created a real risk that the outcome of the trial was affected. Equally, they may have contributed to what Mr Wimsett submits was an unreasonable verdict.

[34] First, Mr Wimsett takes issue with the use of the words "involved" and "involvement" to establish guilt on an importation charge. Mr Wimsett suggests that an individual could be involved in a crime through, for example, their mere presence without having any legal responsibility for what occurred. Instead, the jury should have been asked to consider what overt act was committed by the appellant that facilitated the importation.

[35] Here, he says the Judge gave an inadequate explanation of the definition of "involvement". Her direction was as follows:

> [25] … I am going to give you a brief summation of the law of importation and how you can apply it to this case. To import means to introduce or bring in from overseas or cause to be brought in from overseas. … Importing is concerned with actions designed to bring goods from outside New Zealand to the point where they are available to the intended recipient. The element of importing exists from the time the goods enter New Zealand until they reach their immediate destination. Completion of the importation will occur when the drugs have completed their arrival process in New Zealand, so the process of importation is concluded when the drugs reach their intended destination and are available to the recipient or alternatively when the authorities take control of the drugs and do not send them on to the intended destination.
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> [26] A defendant's acts or actions must have caused or contributed to the importation and those acts or actions must have occurred before the process of importation was completed. However, in some cases the defendant's behaviour after completion of the importation may support an inference that he was involved in bringing about the importation. In other words, and in reference to this case, importation was complete when the drugs were seized and removed from its package by Customs officers at about the midway through 17 November 2023.
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> [27] Acts or actions following completion of the importation cannot themselves be the sole basis for liability but conduct by a defendant after that time is only relevant if it permits inferences of participation before the drugs were seized.

The Judge also directed the jury that "at all times you must focus on the ultimate issue which is whether you are satisfied that the Crown has proven beyond reasonable doubt Mr Pham was involved in this importation".

[36] The critical question, question three in the jury question trail, read as follows:

> Are you sure that, prior to the completion of the importation, Thanh Hung Pham was involved with and/or assisted the importation?

[37] However, Mr Wimsett submits there was no discussion about what "involved" meant, nor was there any discussion about what acts there were that "involved" the appellant in the importation before it was completed.

[38] Mr Wimsett says there was also an insufficient link between the Judge's directions and the evidence supporting any involvement. Here, the Crown simply alluded to an arrangement for the appellant to collect the methamphetamine, or to pay Ms Stephenson in cash. But how that arrangement facilitated the importation was unclear. If the appellant's involvement amounted to his agreement to meet Ms Stephenson at the hotel then Mr Wimsett submits the Crown must prove that, at the time of this arrangement and alleged agreement, he knew that he was to collect the methamphetamine and pay her for it. Mr Wimsett says the Crown's evidence does not go that far.

[39] Mr Wimsett says this case is similar *R v Paignton*, which considered the elements of importation, including the need to prove that the defendant was part of the alleged importation.[5] There, the High Court said that:[6]

> … the prosecution must establish that either the accused brought the controlled drug into New Zealand or that the accused caused the controlled drug to be brought into New Zealand by someone else or by post or by some other method … Two points must be established. *There must be an overt act — that is some active conduct — on the part of the accused in the process of importation before the article reaches its final destination* — and that act must be accompanied by an intention on the part of the accused that the article be imported into New Zealand. Thus it follows it must be established that the accused knew of the importation; that he or she intended to conduct himself or herself in a way that was directed towards achieving that end and that he or she did so conduct himself or herself …

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5 *R v Paignton* HC Hamilton T31/94, 3 February 1995.

6 At 13 (citations omitted, emphasis added).

[40] In *Paignton* there was no direct evidence of knowing participation, but the Crown argued it could be inferred from various pieces of circumstantial evidence which related to the accused's involvement with drugs: the fact she made a long-distance phone call to a place where she had recently lived in the Netherlands and where she admitted knowing people involved with drugs; that within five weeks of that call two envelopes addressed to the accused and containing drugs were sent from the Netherlands; and the letter in one of the envelopes addressed the accused in terms of endearment.[7]

[41] The Court, however, concluded that the Crown could not have excluded the possibility of the accused having received two unsolicited gifts, saying:[8]

> Plainly the circumstances are suspicious but suspicion is not enough. In my view I do not think that a reasonable jury properly directed could draw the inference beyond reasonable doubt from the factors relied on by the Crown that the accused had taken some active part with knowledge in the importation of the two envelopes addressed to the accused.

[42] Similarly, Mr Wimsett submits that in this case there is no evidence of any overt acts or any available inference of an overt act from which the jury could reasonably conclude that the appellant was actively involved before the completion of the importation. He says the evidence in *Paignton* had a stronger connection between the accused and the envelopes containing drugs than is available here.

[43] Because the Crown's case lacks sufficient evidence of what it said the appellant's actions were before the conclusion of the importation, Mr Wimsett says the Judge was unable to comment on this issue in summing up, which risked the jury deciding that the appellant's attending the hotel was sufficient to constitute his involvement. He submits that it was important to give a direction relating to what might entail someone's "involvement" in an importation, particularly where there were competing inferences to be drawn from the circumstantial evidence.

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7 At 17–19.
8 At 22.

[44] The appellant also takes issue with the Judge's directions regarding circumstantial and inferential evidence. Her directions on this issue were as follows:

> [31] … Because the Crown's case is wholly based on circumstantial evidence, I need to direct you now about how you can use circumstantial evidence and inferences. Circumstantial evidence relies on reasoning by inference. It gets [its] force from the involvement of a number of factors that independently point to the guilt of the defendant. The analogy that is often drawn is of a rope, any one strand of the rope may not support a particular weight, but the combined strands are strong enough to do so. The logic that underpins a circumstantial case is that the defendant is either guilty or is the victim of an implausible and unlikely series of coincidences.
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> [32] … An inference is a conclusion drawn from proven facts, but it is not a guess or speculation. When you consider a circumstantial case, you must have regard to what are called defence circumstances, which are circumstances that favour the defence.
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> [33] To find Mr Pham guilty you must be satisfied that the only inference open in the circumstances is one which allows no reasonable doubt. It is not sufficient that the evidence should merely show a strong probability of guilt. If there is the possibility of other inferences being available, as raised in cross-examination by counsel, then you must find Mr Pham not guilty.

[45] While Mr Wimsett acknowledges that these directions were consistent with the specimen directions provided in the Criminal Jury Trials Bench Book, he says the Judge's directions regarding the evidence relating to messages from MMBH and the use of the word "us" in those messages (which was relied on by the Crown), was inadequate. When outlining the defence position on this evidence, the Judge simply stated "Mr Pham disputes that the 'us' is him" and pointed out that MMBH was not a witness at the trial and had not been tested on whether the person(s) they were referring to as "us" included Mr Pham. She also subsequently reminded the jury that the Crown was relying on hearsay evidence to draw the inference that the appellant was involved in, or a party to, those communications.

[46] Mr Wimsett is critical of the Judge for not referring the jury back to the other possible inferences raised by the defence, including that "us" could refer to the accomplice who travelled with Ms Stephenson and evaded Customs.

Submissions for the respondent

[47] Ms McClintock, for the respondent, accepts that the Crown case was circumstantial but says the Crown nevertheless clearly identified the overt act which

was sufficient to establish the appellant's liability, being his agreement to act as a recipient of the importation prior to its completion.

[48] The respondent acknowledges that if the competing Crown and defence inferences were equally available then the appeal would succeed.[9] However, Ms McClintock submits that is not the case and that the Crown relied on four broad limbs to support the inference of the appellant's prior agreement and participation in the importation. These were:

(a) The appellant's lies and inconsistencies about the reason he was at the hotel, about the OPPO phone and about his links to Ms Stephenson. If the jury accepted these were lies (and defence counsel accepted at trial that the appellant had told some lies), this supported a lack of credibility and a rejection of the appellant's explanation for his presence at the hotel.

(b) The appellant's conduct after the importation, which was indicative of a rearrangement of previously agreed plans rather than the inception of a new plan. This is because the messages did not show a detailed plan being formed. Rather, they simply confirmed which vehicle the appellant would be arriving in. Furthermore, the communications from MMBH to Ms Stephenson's phone support the inference that it was not just the two of them that were involved, as they referred to "us" and to a "friend" (that is, the appellant) who would assist.

(c) The screenshots of messages and images of methamphetamine and cash on the appellant's phone, which dated from before the completion of the importation, supported the inference that the appellant participated in the organisation of the importation, although encrypted applications precluded the appellant's messages from being recovered. The material

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[9] We note, as an aside, that this is not the test. The issue on the appeal is whether there was a rational basis for the jury to have rejected the defence inference as a reasonable possibility: see *Iongi v R*, above n 3, at [91] per Winkelmann CJ, Williams and Kós JJ.

which was able to be recovered from his phone supported the conclusion that he was involved in the importation.

(d) The significance of the importation itself supported the inference that arrangements for the pick-up of the drugs by a trusted person would necessarily be in place prior to the importation.

[49] Looking at this evidence in totality, the respondent submits that it supported the Crown inference being available.

[50] The respondent also submits that there was a rational basis for excluding the defence inference that the appellant only participated following the completion of the importation and was unaware of the reason for his attendance at the hotel until after the importation had concluded. The respondent submits that the appellant's lies about his reason for travelling to the hotel were an important factor in enabling the jury to exclude the defence inference.

[51] While the respondent accepts that Ms Stephenson's delay in clearing customs would (and did) cause some concern to the organisers of the operation, it says they had no reason to know that she had actually been detained by Customs. The fact that the appellant was not tracking Ms Stephenson's flight and was not located around the airport does not assist the defence position. The person most likely to be monitoring her arrival was MMBH, who then directed the appellant, organised him to attend the hotel and attempted to advise Ms Stephenson of the vehicle he would be in.

[52] The suggestion that the appellant was conspicuously dressed and parked in a place which would draw attention to him does not, in the respondent's submission, assist the defence, since it was in the middle of the night and the plan was for Ms Stephenson to recognise the vehicle.

[53] Similarly, the respondent says the submission that the appellant subsequently went about normal life and did not attempt to delete data, does not assist the defence, noting that he used encrypted applications which he did not provide passwords for and his video interviews were demonstrably unreliable.

[54] Ms McClintock submits this is not a case like *Kuru v R*[10] or *Iongi v R*, as in those cases there was no prior communication or evidence indicating the intended participation in the plan. In contrast, here, the strands of evidence support the conclusion that the appellant had, at the least, agreed to collect the drugs and that he then took active steps to fulfil that agreement to the extent he could. Secondly, the nature of the offending was quite different. The scale and organisation of a plan to import commercial quantities of drugs into New Zealand necessarily required substantial planning, including the prior arrangement of a recipient in New Zealand, whereas that sort of planning was not required for the alleged plans for violence in *Kuru* and *Iongi*.

[55] In responding to the submission that there were errors or irregularities in the trial Judge's summing up and directions, Ms McClintock submits there was an adequate explanation of what comprised the appellant's involvement. It was clear that the proposition being put was that he had, at the least, agreed prior to the importation to collect the drugs and that this was important to the importation going ahead. This proposition was clearly identified in the Crown's closing address by statements such as:

> It is important here to note that receiving $2 million worth of drugs is not something that is likely to be agreed on a whim, he wasn't a person brought in last minute. This was planned well in advance for Mr Pham to receive the drugs, an agreement to collect the drugs from the courier prior to the importation is enough for you to be sure.

[56] This was repeated, albeit briefly, in the Judge's summing up — for example, with her saying:

> The Crown … suggests you can draw the inference that he went to the hotel because of information he had received earlier to meet Ms Stephenson, the courier, to collect the methamphetamine and pay her.

[57] Ms McClintock also submits that the Judge's directions about circumstantial evidence and inferences were sufficient, noting that they aligned with the specimen directions provided for in the Criminal Jury Trials Bench Book.

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10 *Kuru v R* [2024] NZSC 184, [2024] 1 NZLR 985.

Discussion

Was the verdict unreasonable?

[58] In our view, the key issue on appeal is whether this was a case, like *Iongi*, where there was "no rational basis for the jury to have rejected the defence inference … as a reasonable possibility".[11] Put another way, was there a rational basis for the jury to have rejected the defence inference that the appellant agreed to go and assist Ms Stephenson only after the importation had been completed? Mr Wimsett argued in closing that the alternative, and more likely, inference was that:

> Mr Pham was not involved, that things went bad, quite obviously and they got someone, a friend even, a connection in New Zealand, to go and check it out, to gift her $2,000.

[59] However, having considered the evidence and, in particular, the appellant's two interviews with a Customs officer, we have reached the view that there was a rational basis for the jury to have rejected the defence inference. During his second interview, the essence of the defence case (being that he went to the hotel to pay for Ms Stephenson's room) was put to the appellant, with the Customs officer saying "I believe that you went to [the hotel] to give [Ms Stephenson] some money to book a room" and "I believe you were there to give her money to book a room". The appellant replied by denying he knew Ms Stephenson and eventually saying "I didn't know anything about that. I've got nothing to do with anything". Rather than accept what is now the essence of the defence case, the appellant, during the interview, offered alternative, and implausible, explanations for his attempts to try and enter the hotel over an approximately 20-minute period.

[60] In our view, the jury could rationally reach the view that the appellant's rejection of this proposition when given the opportunity to accept it in interviews which took place well after the hotel visit, especially in light of all the other circumstantial evidence that he was involved in methamphetamine dealing, meant it was not reasonably possible that the appellant had been enlisted simply to assist after the importation had concluded.

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[11] *Iongi v R*, above n 3, at [91] per Winkelmann CJ, Williams and Kós JJ.

[61] This is in contrast to *Iongi*, where the majority of the Supreme Court considered both the Crown and defence inferences remained open to the jury and the Crown had not displaced the defence inference. The availability of both inferences on the evidence therefore required the jury to guess, or speculate, as to which was in fact right.[12] Here, Mr Pham's rejection of the suggestion that he was at the hotel simply to help Ms Stephenson book a room meant there was a proper basis on which the jury could reject the defence inference.

Were there errors in the Judge's directions and summing up?

[62] We do not accept that there was any error in the Judge's use of the term "involvement" (or "involved") in summing up on the charge. We are satisfied the Judge made it clear that, for example, a mere connection to the people who were importing was insufficient. Instead, she was specific, saying "[a] defendant's acts or actions must have caused or contributed to the importation and those acts or actions must have occurred before the process of importation was completed".

[63] While the Judge's explanation of the appellant's role was quite general, she nevertheless specified the Crown case when going through the question trail, saying that the alleged involvement was that he "agreed to be the recipient of the methamphetamine well before the importation was completed". Similarly, she explained the Crown case as being that the importation required a "prearranged trusted person and that [the] evidence points to that person being Mr Pham". She also said further on in the summing up that the inference the Crown said should be drawn was that the appellant "went to the hotel because of information he had received earlier to meet Ms Stephenson, the courier, to collect the methamphetamine and pay her".

[64] We are satisfied, in all the circumstances, that what was alleged by way of involvement in this case was made clear in the Judge's summing up.

[65] Similarly, we can see no fault with the Judge's directions on inferences, which are cited above at [44]. The only real criticism made of the directions she gave is that she inadequately summarised the defence position with respect to the inference to be

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12 At [91] per Winkelmann CJ, Williams and Kós JJ.

drawn from the word "us" used in MMBH's communications when she said "Mr Pham disputes that the 'us' is him". However, in that regard we accept the respondent's submission that the key issue was whether "us" included the appellant, not whether it might have included Ms Stephenson's travel companion. As the Crown said in closing:

> … the inference that the Crown suggests here …, [is] that this us indicates multiple people. Multiple people involved and the available inference for you … is that this includes Mr Pham.

[66] Thus, whether or not the travel companion was involved did not exclude the appellant's involvement. The real issue was whether the appellant was included in the "us" and that was made clear by the Judge. In our view, nothing more was needed.

[67] For all these reasons, the appeal against conviction is dismissed.

Result

[68] The appeal against conviction is dismissed.

Solicitors:
Crown Solicitor, Auckland for Respondent