IN THE SUPREME COURT OF NEW ZEALAND

SC 11/2009
[2009] NZSC 34

ALANA GLENYS-MAY THOMAS

v

THE QUEEN

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: G W Wells for Applicant
G H Allan for Crown

Judgment: 7 April 2009

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] This is an application for leave to appeal a pre-trial ruling concerning the admissibility of evidence found upon the execution of a search warrant. It comes to this Court in unusual circumstances. Since the dismissal of the appeal in the High Court the applicant has pleaded guilty to various drug charges and been sentenced.

[2] In the High Court[1] it was held that there was sufficient information for the warrant to be granted to authorise a search for class A drugs. But the warrant was defective in that it was overbroad by including reference to class B and class C drugs and to manufacturing of methamphetamine when there was nothing in the application for the warrant supporting those references. Furthermore the occupants were given only a defective copy of the warrant. The High Court Judge found in terms of s 30(5)(a) of the Evidence Act 2006 that the evidence found as a result of the search was improperly obtained. But carrying out a balancing test in terms of that section he considered that exclusion of the evidence was not proportionate to the impropriety.

[3] The Court of Appeal[2] did not need to carry out the balancing exercise because it was of the view that the search was not unlawful despite the irregularities. Almost all of the things seized pursuant to the warrant were or were related to class A drugs. The exception was a small number of ecstasy tablets but, when found, the Court said, they could have been seized under s 18 of the Misuse of Drugs Act 1975. The form of the warrant did not prejudice the applicant.

[4] We consider that leave should not be granted in these circumstances. The conclusion reached by the Court of Appeal is not obviously wrong but, in any event, the High Court's application of the balancing test mandated by s 30 was plainly correct. Exclusion of the evidence would have been a disproportionate response to the defects in the warrant and the failure to provide a correct copy to the applicant.

Solicitors:
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1 *R v Green and Thomas* (unreported, High Court, Auckland, CRI 2006-4-16031, 23 November 2007, Rodney Hansen J).

2 *R v Green and Thomas* [2008] NZCA 352.