



Supreme Court of New Zealand

19 September 2013

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**IFEANYI JUDE AKULUE V THE QUEEN
(SC 38/2013) [2013] NZSC 88**

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

The appellant, Ifeanyi Jude Akulue, is charged with importing and conspiring to supply methamphetamine. He wishes to raise defences of compulsion and necessity. Whether the evidence on which he relies is sufficient to raise these defences and should be admitted at his trial has arisen as a preliminary point for determination before trial.

In the District Court, the appellant accepted that the statutory defence of compulsion under s 24 of the Crimes Act 1961 is not available. The Judge ruled, however, that the evidence deposed to by Mr Akulue could be led in support of a common law defence of necessity. The Solicitor-General appealed. The Court of Appeal held that the evidence, if admitted, would not support a defence of necessity. The Court expressed no concluded view on the availability of the defence of compulsion under s 24 but recorded that the

case had been run on the basis that the appellant was not able to rely on that section.

The appellant appealed with leave to the Supreme Court.

Despite the position taken in the lower courts, the appellant maintained before the Supreme Court that he was able to invoke the defence of compulsion provided for by s 24 of the Crimes Act. Alternatively, he relied on the common law defence of necessity, which he maintained was preserved by s 20 of the Crimes Act. The Crown argued that the evidence relied on by the appellant did not raise either of the claimed defences.

The appellant was arrested after he contacted a courier carrying the drugs who had been intercepted at Auckland airport and placed under police supervision at a hotel. He admitted knowing about the importation of the drugs and that he approached the courier in order to obtain the drugs in order to pass them on to another person. In the affidavit evidence he has provided to the District Court he says that he was compelled to commit the offences by a cousin living in Nigeria whom he named. The appellant says that the cousin had threatened to kidnap and kill members of the appellant's family in Nigeria unless he assisted with the importation of the drugs.

This account of events is set out in the appellant's sworn affidavit. The appellant sought an order under s 344A of the Crimes Act 1961 as to the admissibility of the evidence at trial. Whether it was admissible turned on whether the narrative disclosed a defence.

The Supreme Court has unanimously dismissed the appeal. It has held that the evidence contained in the affidavit does not raise the defence of compulsion as it is constituted under s 24 of the Crimes Act. The threats said to have been made were not "of immediate death or grievous bodily harm" and the cousin was not "present when the offence [was] committed", as the terms of s 24 require. The Court has held that the requirements of the section cannot be loosened in the way suggested by the appellant to encompass the

alleged threats in this case. This interpretation of s 24 was supported by the legislative history of the section as well as previous Court of Appeal authorities. The Court held there was no inconsistency between s 24 and the New Zealand Bill of Rights Act 1990.

On the second issue, the Court has held that no defence of necessity was available to the appellant. Section 20 of the Crimes Act preserves common law defences only “so far as they are [not] altered by or are inconsistent with this Act or any other enactment”. Any defence of necessity based on threats of harm from another person is covered exclusively by the terms of s 24. To permit the appellant to rely on the defence of necessity would be “inconsistent” with s 24. This conclusion is supported by the legislative history of s 20 and is also consistent with previous New Zealand authorities.

Accordingly, the appeal has been dismissed.

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