

**COURT OF APPEAL**

**FRASER JA  
LYONS SJA  
BODDICE J**

**CA No 164 of 2019  
DC No 8 of 2019**

**THE QUEEN**

**v**

**DEBRINCAT, David Anthony**

**Appellant**

**BRISBANE**

**THURSDAY, 21 NOVEMBER 2019**

**JUDGMENT**

**LYONS SJA:** The appellant was convicted after trial in the District Court Innisfail of one count of permitting use of a place contrary to s 11 of the *Drugs Misuse Act 1986* (Qld). He appeals that conviction. The prosecution case was that a man named Brett Souvlis moved onto the property next door to where the appellant resided with his partner and uncle. His uncle owned both properties. The allegations were that between July and September 2017 Souvlis had trafficked in methylamphetamine from a shed on the property where he resided and that this was done with the knowledge and approval of the appellant.

The two day trial commenced on 14 May 2019. The appellant was self-represented throughout the trial. The prosecution case consisted of evidence from police officers about intercepted telephone calls and text messages between the appellant and Souvlis. The owner

of the property was not called to give evidence but an affidavit was tendered in which he swore that he had allowed Souvlis to stay on his property for a short while at the request of the appellant and his wife. Text messages were also sent by the appellant to Souvlis asking him to leave the property. Other telephone and text message evidence consisted of evidence about Souvlis selling drugs from the property.

The prosecution also called Brett Souvlis in the trial. His evidence was not opened by the Crown prosecutor. His evidence was that he met the appellant in 2012 or 2013 and moved into the shed on the lot next door to where he was living in February or May 2017 and that his dealings were with the appellant and he had limited contact with the owner of the property. He stated that it was the appellant who connected the electricity. Significantly, his evidence was that he began selling drugs from the property and that the appellant was present at the shed for some of the transactions which he conducted by mobile phone and that the appellant drove him to collect drugs.

Mr Souvlis had entered into an undertaking, pursuant to s 13A of the *Penalties and Sentences Act* 1992 (Qld), to give evidence against the appellant in the trial and was awaiting sentence in the Supreme Court for trafficking in methylamphetamine. He was subsequently sentenced for trafficking in dangerous drugs and received a significant discount off his sentence given his cooperation with the authorities. His statement was signed on 13 May 2019 and was given to the Crown prosecutor by police that day. It was provided to the associate and the appellant on the morning of 14 May 2019. It is uncontested in this application that his evidence was not opened by the Crown prosecutor and the fact that he was going to give evidence, pursuant to s 13A, was not brought to the attention of the trial judge, jury and the appellant.

The appellant argues that a miscarriage of justice has been caused and relies on three bases: first, because there has been a failure of the prosecution to comply with its disclosure obligations, second, there was a failure by the learned trial judge to give an accomplice direction and, third, the prosecutor did not open the evidence of Brett Souvlis and did not

bring to the attention of the court the fact the witness had given a s 13A statement. Counsel for the respondent appropriately accepts that the jury ought to have been warned about the need to scrutinise Mr Souvlis' evidence with care given he was an accomplice who was giving evidence against the appellant in the expectation that he would receive a reduced sentence for giving the evidence.

As counsel for the Office of the Director of Public Prosecutions appropriately accepts, the failure to give such a warning has resulted in a miscarriage of justice. Accordingly, the appeal should be allowed, conviction set aside, and a retrial ordered.

**FRASER JA:** I agree.

**BODDICE J:** I agree.

**FRASER JA:** The orders of the court are:

1. The appeal is allowed;
2. The conviction is set aside;
3. A retrial is ordered.