NOTE: DISTRICT COURT ORDER PROHIBITING PUBLICATION OF ADDRESS OF HOME DETENTION LOCATION REMAINS IN FORCE.

IN THE SUPREME COURT OF NEW ZEALAND

SC 74/2016
[2016] NZSC 120

BETWEEN	SARA-JANE SKEET Applicant	
AND	THE QUEEN Respondent	

Court: William Young, Arnold and O'Regan JJ

Counsel: C J Tennet for Applicant
P D Marshall for Respondent

Judgment: 6 September 2016

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Following a jury trial in the District Court, the applicant, Ms Skeet, was convicted on two counts of blackmail, one of kidnapping and one of aggravated robbery. She was sentenced to seven months home detention,[1] which she has served. On appeal, the Court of Appeal quashed her aggravated robbery conviction but upheld her convictions on the blackmail and kidnapping counts.[2] Ms Skeet now seeks leave to appeal against the Court of Appeal's decision with respect to those three convictions.

[2] We begin with the blackmail convictions. Relevantly, a person breaches s 237 of the Crimes Act 1961 if they make one of four specified threats with intent to

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[1] *R v Skeet* [2015] NZDC 4183.
[2] *Skeet v R* [2016] NZCA 198 (French, Simon France and Ellis JJ) [*Skeet* (CA)].

cause the victim to act in accordance with their will and with intent to obtain a benefit for themselves or cause loss to another. The form of threat at issue is “a threat to endanger the safety of any person”. The Crown case was that Ms Skeet threatened the victim that she would harm him and/or his disabled daughter if he did not give her money and other assistance, and thereby committed blackmail.

[3] On appeal, Ms Skeet argued that a threat of actual violence was not a qualifying threat, relying on the decision of the High Court in *R v Winn*.[3] In that case, Ellis J held that blackmail was not the appropriate charge where a demand for money or property was accompanied by threats of direct violence or physical harm to the victim or another person. There were two principal reasons for this view. First, s 237 in its present form was introduced into the Crimes Act in 2003, when the previous pt 10 was replaced by a new pt 10. Section 237, which replaced the previous s 238 (extortion), included for the first time the phrase “a threat to endanger the safety of any person”. Ellis J considered that the legislative background showed that the phrase was introduced to address situations of industrial blackmail – it related to threats to contaminate consumer products and such like, not to direct threats of violence.[4] Second, Ellis J considered that a threat “to endanger the safety of any person” was not the same as a threat “of violence”, as found in, for example, s 234 of the Crimes Act (robbery). There was a qualitative difference between a threat of direct violence and a threat to endanger safety. Accordingly, on a purposive, contextual and plain meaning interpretation, the phrase was limited to threats of indirect harm, and did not include threats of direct harm.[5]

[4] The majority in the Court of Appeal did not accept Ms Skeet’s submissions. They considered that the ordinary and natural meaning of the phrase was apt to cover a threat of direct harm to the victim or another.[6] The minority, Ellis J, maintained the view she had expressed in *R v Winn*. She would, however, have substituted a conviction under s 239 (demanding with intent to steal) or under s 234 (robbery).[7]

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[3] *R v Winn* HC Auckland CRI-2009-090-12003, 13 September 2010.
[4] At [21]–[23].
[5] At [24]–[25].
[6] *Skeet* (CA), above n 2, at [13]–[25].
[7] At [98]–[99].

[5] For Ms Skeet, Mr Tennet wishes to argue that Ellis J's interpretation is correct.

[6] We accept that the meaning to be given to s 237 is a matter of general or public importance. However, we do not consider that the restricted meaning of the phrase at issue has a sufficient prospect of being accepted to merit the granting of leave. The phrase has a plain meaning, which encompasses threats of both direct and indirect harm, as the majority in the Court of Appeal found. The legislative background does not compel a conclusion that the phrase should be read down; nor is the fact that there is some overlap between s 237 and other sections in pt 10 in any way unusual. We note that there are other examples since 2003 of convictions for blackmail being based on threats of violence to the victim: see, for example, *R v Qiu*.[8]

[7] Turning to the kidnapping conviction, the Crown had alleged that Ms Skeet and an associate had threatened the victim with violence, had stolen his cell phone and demanded all the money in his bank account. They told the victim that they would take him to an ATM machine, where he would withdraw all his money. The victim was told to drive to a particular location with Ms Skeet. He did so, followed by Ms Skeet's associate in another car. When there, he withdrew $2,000 and gave it to Ms Skeet.

[8] Mr Tennet submitted that the trial Judge was required to instruct the jury that if the victim went with Ms Skeet reluctantly but voluntarily, Ms Skeet would not be guilty of kidnapping. This argument was made to the Court of Appeal, and rejected. It raises no issue of general or public importance; nor, for the reasons given by the Court of Appeal,[9] is there any risk of a substantial miscarriage of justice.

[9] Accordingly, the application for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

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[8] *R v Qiu* [2007] NZSC 51, [2008] 1 NZLR 1.
[9] *Skeet* (CA), above n 2, at [34].