Supreme Court of New Zealand
Te Kōti Mana Nui

8 September 2016

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

LYONEL MANUREWA TE POU TANIWHA v THE QUEEN

(SC 115/2015) [2016] NZSC 121

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 publication of the name, address, occupation or identifying particulars of the complainant is prohibited by s 203 of the Criminal Procedure Act 2011.

The appellant was convicted of six counts involving physical and sexual violence against the complainant, with whom he was in a brief relationship. The Crown alleged that soon after the relationship began, the appellant began to act in a possessive and controlling way towards the complainant and later became abusive and violent towards her.

Two particular incidents are relevant to the appeal. The first incident relates to two counts of rape of which the appellant was convicted, arising out of events on Christmas Day 2012. During the evening, while the complainant was at the appellant's house, the appellant demanded that she have sex with him. When the complainant refused, the appellant raped her, putting a dirty towel in her mouth to stop her protestations. He raped her a second time shortly afterwards.

When the complainant gave evidence at trial, she was shown a photograph of the bathroom at the appellant's house. The photograph showed some towels. The prosecutor asked the complainant whether she recognised any of the towels. She said she did – one of the towels was the one which the appellant had forced into her mouth. When her

85 Lambton Quay, Wellington
P O Box 61 DX SX 11224
Telephone 64 4 918 8222 Facsimile 64 4 471 6924

attention was drawn to the towels in the photograph, the complainant apparently reacted, showing visible distress.

The prosecutor referred to the complainant's reaction to the photograph of the towels in his closing address to the jury, stating that it showed that she was not lying. In addition, the prosecutor drew attention to the complainant's demeanour generally, submitting to the jury that the way in which she gave her evidence throughout the trial was indicative of someone who was telling the truth.

The appellant submitted that, given the use that the prosecutor attempted to make of the complainant's demeanour in closing, the jury should have been given a tailored demeanour direction by the Judge in his summing up. In the absence of such a direction, the appellant submitted, there was a risk that the jury would give unjustified weight to the complainant's demeanour in determining her credibility.

The second incident related to a Police safety order (PSO) served on the appellant. The appellant had turned up at the complainant's flat early one morning. He was intoxicated and belligerent. The complainant did not want to see him. Her flatmate called the police, who detained the appellant and served him with a PSO. The effect of the PSO (which lasted for five days) was that the appellant was not to contact or harass the complainant in any way. When the police released the appellant later that day, he immediately breached the PSO by going to the complainant's workplace, where he asked her for money and told her that she had to come to his house that evening.

In opening the case for the Crown, the prosecutor referred to the circumstances giving rise to the PSO and stated that the appellant's behaviour after the PSO was served demonstrated his controlling tendencies and his lack of appreciation for appropriate boundaries. The police officer who issued the PSO also gave evidence, as did the complainant in respect of the PSO. Finally, in closing, the prosecutor stated that the appellant's response to the PSO was aligned with the complainant's evidence as to the appellant's attitude to the involvement of the police in their relationship.

The appellant submitted first that the PSO evidence was inadmissible because its probative value was outweighed by its prejudicial effect; and second, in the alternative, that if the evidence was admissible, a "proper use" direction should have been given.

The Court of Appeal held that in this case no tailored demeanour direction was required because there was no real risk that the jury would have placed excessive reliance on demeanour in reaching their verdicts. In respect of the evidence relating to the PSO, the Court of Appeal held that the evidence was admissible and that no proper use direction was required.

The Supreme Court granted leave on the questions of whether the Court of Appeal was correct that:

(a) No miscarriage of justice arose as a result of the absence of a tailored demeanour direction in the Judge's summing up to the jury; and

(b) Evidence of the appellant's breach of a Police safety order two days after the date covered by the final count alleged in the indictment was admissible and no "proper use" direction was required.

The Supreme Court has unanimously dismissed the appeal.

The Court held, in respect of the submissions made about the complainant's demeanour, that there was no risk of a miscarriage of justice as a result of the jury making an illegitimate, demeanour-based assessment of credibility. The Court held that there is no invariable requirement for judges to give demeanour warnings when summing up to juries in cases where credibility is at issue. The Court noted, however, that trial judges could usefully, as a matter of course where credibility is likely to be a major issue at trial, include in their opening remarks to the jury a brief statement about the approach the jury should take to assessing competing accounts from witnesses. In respect of the evidence relating to the PSO, the Court held that the evidence was admissible and did not require a proper use warning.

Contact person:

Kieron McCarron, Supreme Court Registrar (04) 471 6921