

NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF COMPLAINANT PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011. SEE <http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360350.html>

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 79/2018
[2018] NZSC 101**

BETWEEN ESTALL JHANA GLASSIE
 Applicant

AND THE QUEEN
 Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: I M Brookie for Applicant
 J C Pike QC for Respondent

Judgment: 30 October 2018

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was charged with nine counts involving violence and sexual violation in relation to his partner, said to have been committed over a two day period in April 2016. At the commencement of his District Court jury trial, he pleaded guilty to three of the six violence charges and the jury found him guilty on all other charges. The trial judge, Judge M E Sharp, sentenced him to imprisonment for 12 years and eight months.¹ The applicant appealed to the Court of Appeal raising three grounds of

¹ *R v Glassie* [2017] NZDC 27391 (Judge M E Sharp).

appeal. All of these grounds failed and the appeal was dismissed.² He now seeks leave to appeal against the Court of Appeal decision, but only in relation to one of the grounds of appeal rejected by the Court of Appeal.

[2] The proposed ground of appeal relates to the comments made by the prosecutor at the trial about the complainant having no motive to lie and the directions made by the Judge in relation to that comment. The prosecutor qualified her comment about the complainant not having a motive to lie by noting by there was no onus on a defendant to prove motive as to why a complainant may have exaggerated or made up her account. The Judge directed the jury that, regardless of the absence of evidence of motive to lie, the onus of proof remained on the Crown throughout and there was no onus on the defence to prove a motive to lie.

[3] In the Court of Appeal the applicant argued that the Judge should have told the jury to set aside the Crown's submission in relation to the lack of a motive to lie entirely. The Court of Appeal rejected this, referring to the leading authority.³ The Court rejected the submission that the Judge was required to direct the jury to set the submission to one side and concluded that the direction given had been appropriate.

[4] In support of his application, the applicant argues that there is difficulty with the application of the leading authorities, *R v Tennant*, *R v M* and *R v E (CA 308/06)*.⁴ He seeks to argue that, because the absence of a motive to lie was characterised by the prosecutor as being one of the three main reasons why the complainant should be believed, the motive to lie issue became a "special feature" of the Crown closing address. This meant that a different approach from that taken in *R v Tennant* and *R v M* was required, given the comment made by the Court of Appeal in *R v M* that no direction on the issue of motive to lie will usually be necessary "if the inquiry is made briefly and in a low-key way and the point is not made a special feature of the Crown's closing address".⁵

² *Glassie v R* [2018] NZCA 308 [CA judgment] (Williams, Wylie and Thomas JJ).

³ *R v Tennant* [1998] 2 NZLR 257 (CA).

⁴ *R v Tennant*, above n 3; *R v M* (2000) 18 CRNZ 368 (CA); *R v E (CA 308/06)* [2007] NZCA 404, [2008] 3 NZLR 145.

⁵ *R v M*, above n 4, at [11].

[5] The Court of Appeal rejected this submission on the facts, finding that the comments made by the prosecutor in the present case were suitably moderate, and qualified by a reminder to the jury that the submission being made did not shift the onus of proof.⁶

[6] We do not consider that there sufficient prospect of success on the argument that the prosecutor made a special feature of the absence of a motive to lie to justify the granting of leave to appeal on this issue to this Court. Nor do we consider that the law is so unclear that a point of public importance arises in relation to this issue.

[7] We therefore dismiss the application for leave to appeal.

Solicitors:
Crown Law Office, Wellington for Respondent

⁶ CA judgment, above 2, at [43].