

KEVIN MOARNA JARDEN

v

THE QUEEN

Coram: Gault J
Tipping J

Counsel: S J Shamy for Applicant
S P France for Crown

Judgment: 20 October 2004

JUDGMENT OF THE COURT

[1] Mr Jarden seeks leave to appeal from a decision of the Court of Appeal delivered on 29 July 2004. The Court of Appeal dismissed his appeal against conviction on 14 counts of sexual offending against two girls.

[2] We do not find it necessary to hear oral submissions. The applicant's written submissions have been considered, along with those filed by the respondent. The grounds of the proposed appeal relate to the fact that the jury were given copies of the transcripts of the complainants' videotaped interviews but were not given transcript copies of their cross-examination or of Mr Jarden's own evidence. The application does not contend that the rule concerning the giving to a jury of

“balancing material” is absolute. Such a contention would, in any event, be difficult, if not impossible, to sustain.

[3] The question therefore becomes whether the fact that the further material was not supplied to the jury in this case gave rise to a real risk of a miscarriage of justice. The Court of Appeal found there was no such risk. That was a matter of evaluating all the relevant features of this particular case. No point of general or public importance arises nor are we persuaded that it is reasonably arguable that a substantial miscarriage of justice may have occurred, or may occur, unless the proposed appeal is heard.

[4] The applicant has therefore not established that it is necessary in the interests of justice for this Court to hear and determine the proposed appeal. We are therefore precluded from granting leave by s13(1) of the Supreme Court Act 2003. Leave to appeal is accordingly refused.

Solicitors:
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