

IN THE SUPREME COURT OF NEW ZEALAND

**SC 7/2006
[2006] NZSC 21**

MARTIN CHARLES COX

v

THE QUEEN

Court: Elias CJ, McGrath and Anderson JJ

Counsel: D La Hood for Appellant
J C Pike for Crown

Judgment: 31 March 2006

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Cox seeks leave to appeal against the dismissal by the Court of Appeal of his appeal against conviction by a jury on one count of assault with intent to commit sexual violation and one count of sexual violation by unlawful sexual connection involving digital penetration. Following a successful appeal against the sentence imposed by the District Court, Mr Cox was sentenced to two concurrent terms of four years imprisonment.

[2] There are three categories of grounds on which leave to appeal is sought. The principal grounds relate to the Court of Appeal's findings that the prosecutor at the appellant's trial had cross-examined the appellant in an inappropriately sarcastic manner, and in some instances had invited answers which could have disclosed privileged communications, all without any intervention from the trial Judge. The appellant takes issue with the Court of Appeal's finding that this conduct did not warrant a new trial. These grounds are said by the appellant to raise questions concerning the fundamental rights of an accused person to have a fair trial, and to remain silent, under s 25(a) and (d) of the New Zealand Bill of Rights Act 1990.

[3] The next proposed ground of appeal concerns the trial Judge's decision to allow additional recent complaint evidence to be admitted during re-examination of a witness. This ground is said to raise important questions concerning the Court of Appeal's approach to admission of prior consistent statements. Finally, there is a ground of appeal arising from an aspect of the trial Judge's direction concerning the credibility of the appellant and the complainant.

[4] This is said to raise a general question concerning the application of s 385 of the Crimes Act, including the proviso to s 385(1), where the Court of Appeal has identified errors by a trial Judge in the conduct of the trial or during the summing-up. This question goes to each of the specific grounds and their combined effect.

[5] The appellant says that each of these grounds of appeal raise a question of general or public importance which make it in the interests of justice that he should be given leave to appeal to this Court.

[6] No issue is taken by the Crown with the Court of Appeal's findings of the inappropriateness, in a number of respects, of the prosecutor's questioning of the appellant. We agree with these findings, with the Court of Appeal's expressions of concern over the manner and tone of the cross-examination, and at the absence of intervention by the trial Judge to restrain the prosecutor. We do not, however, consider that these factors considered together or separately raise concerns as to the overall fairness of the appellant's trial, or of a breach of his right to silence. Nor do we see any basis for contending that the trial has resulted in a miscarriage of justice.

We note that the appellant was not thrown by the prosecutor's line of questioning and that the points made inappropriately during her cross-examination could have properly featured in her closing address.

[7] Finally, we do not consider that the appellant's other grounds of appeal give rise to questions of sufficient general or public importance to warrant a second appeal in this case. Each is concerned with the application of well established principles to particular circumstances arising during this trial and in the Judge's summing-up. None of these matters, even when considered together with those features of this trial to which we have referred, could give rise to a finding that the conviction of the appellant resulted in a miscarriage of justice.

[8] In these circumstances we are of the view that it is not necessary in the interests of justice for this Court to hear and determine the proposed appeal. The application for leave is accordingly dismissed under s 13(1) of the Supreme Court Act 2003.

Solicitors:
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