

IN THE SUPREME COURT OF NEW ZEALAND

**SC 88/2007
[2008] NZSC 7**

KEVIN JOSEPH CHARLES LITTLE

v

THE QUEEN

Court: Blanchard, Tipping and McGrath JJ

Counsel: A Stevens for the Applicant
M D Downs for Crown

Judgment: 22 February 2008

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was found guilty of murdering his seven month old daughter by drowning her in the bath. His appeal against conviction and the 17 year minimum period of imprisonment imposed on him was dismissed by the Court of Appeal. The principal ground on which he seeks leave to appeal to this Court is that a computer animation, which formed part of the evidence of a Crown witness, Dr Calhaem, should not have been admitted because it amounted to an impermissible experiment or reconstruction.

[2] The applicant told the police that the drowning of his daughter was accidental. He described to them how the accident had occurred. Dr Calhaem, with the assistance of the computer animation, gave evidence that if the applicant had dropped his daughter in the way he described to the police, she would very likely have landed on the floor, not in the bath. The essence of this evidence was undoubtedly admissible as the opinion of a properly qualified expert. The fact that he used a computer animation to demonstrate to the jury how he reached his opinion rather than using a diagram, verbal description, drawing on a whiteboard or some other means, did not make the computer animation inadmissible. It represented simply the use of modern technology to illustrate the basis upon which the witness had come to his conclusion.

[3] We regard the proposition that this evidence should not have been admitted as untenable. There was nothing unfairly prejudicial in the method the witness adopted or in the content of the evidence itself. There is no basis for an argument that a substantial miscarriage of justice may have occurred on this ground. Nor is it arguable that a miscarriage may have occurred because of an insufficiency of evidence making the verdict unreasonable nor, we should add, on account of the circumstance that the applicant gave in evidence a different explanation as to how he accidentally dropped his daughter, from that which he originally gave the police.

[4] We conclude by saying that we can also see no basis upon which leave can properly be granted for a further appeal against the 17 year minimum component of the life sentence imposed on the applicant.

[5] For these reasons the application for leave must be dismissed.

Solicitors:
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