

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 71/2008  
[2008] NZSC 108**

**M**

v

**THE QUEEN**

Court: Elias CJ, Blanchard and Wilson JJ

Counsel: A G V Rogers for Applicant  
N P Chisnall for Crown

Judgment: 10 December 2008

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

**REASONS**

[1] The applicant seeks leave to appeal against dismissal by the Court of Appeal<sup>1</sup> of his appeal against conviction on charges of sexual offending against his daughter who was less than 12 years old at the time of the offending.

[2] The only proposed ground on which reliance is placed in the written submissions for the applicant concerns the circumstances in which the defence

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<sup>1</sup> *R v M* [2008] NZCA 358.

decided not to call certain evidence from a character witness, namely that the applicant was a good parent and did not have any previous convictions other than for traffic offending. The Judge gave a ruling that if evidence of that sort were led it would open up a line of cross-examination by the Crown concerning the applicant's behaviour in relation to one of his other children. It was true that the applicant did not have any criminal convictions other than for traffic offending but he had committed a traffic offence arising from an occasion on which he had allowed another of his children, a 14 year old girl, to drive, she having lived in the United States and not being used to cars driving on the left hand side of the road. Apparently the applicant had given her some driving lessons and there had been an accident which led to his being prosecuted for aiding and abetting an underage driver.

[3] The trial for the sexual offending took place before the Evidence Act 2006 came into force. The point concerning character evidence sought to be raised in this Court turns very much on the facts of the particular case and raises no question of public or general importance. Furthermore, there is no appearance of a miscarriage of justice having resulted from the acceptance by the defence of the Judge's ruling because the Judge in fact gave a character direction in the course of which he told the jury that having a previous good character was not, of itself, a defence and that as a matter of logic, people can and do offend for the first time. The Court of Appeal found, and we agree, that the jury is likely to have taken from that direction that the applicant had no relevant previous convictions. The applicant thus got the benefit of being depicted to the jury by the Judge as someone without previous convictions of the relevant type. He was not exposed to cross-examination which may have prejudiced him in the eyes of the jury as someone whose behaviour in relation to a child had on one occasion been less than desirable. If there were any deficiency in the Judge's ruling concerning the proposed evidence, it was overtaken by the good character direction.

[4] Moreover, the proposition that evidence of no previous convictions would have had any influence is speculative. Character evidence carries relatively little

weight where the alleged offending is of a kind which could be expected to be concealed by an accused from those who may observe him in a domestic situation.

[5] For these reasons, any error by the Judge was immaterial.

Solicitors:  
Crown Law, Wellington