NOTE: PUBLICATION OF NAME OR IDENTIFYING PARTICULARS OF COMPLAINANT PROHIBITED BY S 139 CRIMINAL JUSTICE ACT 1985

IN THE SUPREME COURT OF NEW ZEALAND

SC 50/2010
[2010] NZSC 86

PT

v

THE QUEEN

Court: Elias CJ, Blanchard and McGrath JJ

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

Judgment: 20 July 2010

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks leave to appeal against the Court of Appeal's[1] dismissal of his appeal against conviction on a charge of sexual violation by unlawful sexual connection. He was also convicted of injuring and assault charges involving the same complainant, who had been his partner. The jury, however, acquitted him of four other charges of sexual violation.

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1 *PT v R* [2010] NZCA 151.

[2] On the count on which the applicant was convicted, the complainant's evidence was that the applicant had engaged her in non-consensual oral sex during which he had bitten her on the clitoris. The applicant denied that he had bitten her and said that their sexual connection was with her consent. A general practitioner gave evidence that on examining the complainant 10 months later he had observed abnormality in her clitoral area which he said was likely to be scarring from a previous trauma.

[3] The first ground of appeal is that this evidence was irrelevant or an expert's opinion that was not substantially helpful and accordingly inadmissible under ss 7 and 25 of the Evidence Act 2006. We are, however, satisfied that the ground is not arguable. The doctor's evidence was clearly sufficiently connected to the disputed issue of whether the complainant had been bitten to be relevant. Likewise, the doctor's opinion evidence about likely scarring was sufficiently related to the complainant's disputed evidence of being bitten to meet the threshold in s 25 of being substantially helpful.

[4] The second ground raised some concerns over errors in the way the trial Judge referred to the doctor's evidence in his direction to the jury. These concerned her description of the size of the scarring and the place of the injury. We are satisfied that it is not arguable that these errors could have confused the jury. They were not capable of giving rise to a miscarriage of justice.

[5] The application for leave to appeal against conviction is accordingly dismissed. There is a contingent application for leave to appeal against sentence which consequently fails.

Solicitors:
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