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

IN THE SUPREME COURT OF NEW ZEALAND

SC 68/2011
[2011] NZSC 134

M

v

THE QUEEN

SC 98/2011

W

v

THE QUEEN

Court: Blanchard, Tipping and McGrath JJ

Counsel: R A A Weir for Applicant M
R A Harrison for Applicant W
K A L Bicknell for Respondent

Judgment: 8 November 2011

JUDGMENT OF THE COURT

Both applications for leave to appeal are dismissed.

REASONS

[1] Both proposed appeals concern the admissibility of the testimony of an expert, a clinical psychologist, who gave evidence at the trials of each applicant for sexual offending against a child, on the behaviour of children who have been sexually abused.

[2] At both trials the expert made it clear in her evidence that she was speaking in general terms and was not, save in one instance relating to the applicant M, commenting about the behaviour of the particular complainants, with whom she had had no contact.

[3] We are not persuaded that it is arguable that the Court of Appeal erred in taking the view that the evidence was admissible in each case.[1] The evidence was certainly admissible on the "substantially helpful" test under s 25 of the Evidence Act 2006 for the reasons given by the Court of Appeal. Against the background of the rest of the evidence given by the expert in relation to M, the jury would have appreciated that her comment about two emails sent by the complainant in that case to M was made in abstract, not based on knowledge of the particular complainant.

[4] In the case of W, there was additional evidence to which a further objection was taken in the Court of Appeal. It involved the expert's explanation of why a child who had been the subject of grooming by an offender might stay living in the same household. In order to give an explanation of such counter-intuitive behaviour of a groomed victim who does not complain, it was necessary for the expert to describe typical features of a grooming process to the jury. Again, however, this was not done with reference to the facts of the particular case and it was clearly admissible. The jury would have understood that the expert was not commenting on the events in the particular case.

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1 *M(CA 23/2009) v R* and *W(CA 51/2009) v R* [2011] NZCA 191.

[5] No matter of general or public importance arises nor is there any appearance that a substantial miscarriage of justice may have occurred.

Solicitors:
Crown Law Office, Wellington