IN THE SUPREME COURT OF NEW ZEALAND

SC 52/2012
[2012] NZSC 80

PATRICIA ANGELA PICKERING

v

THE QUEEN

Court: Elias CJ, William Young and Chambers JJ

Counsel: F P Hogan for Applicant
M J Lillico for Crown

Judgment: 3 October 2012

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] A jury found Patricia Pickering guilty of murdering a three year old, Dylan Rimoni. The Court of Appeal dismissed her appeal against conviction.[1] Ms Pickering now seeks leave to appeal.

[2] The first ground of appeal relates to the admission of certain evidence from a Crown expert relating to scarring. Mr Hogan, for Ms Pickering, submits this evidence was inadmissible because the prosecutor, at an earlier trial which was

1 *Pickering v R* [2012] NZCA 311.

aborted, had agreed not to lead the particular evidence. The submission is that the prosecutor should not have been permitted to resile from that agreement at the later trial. The Court of Appeal examined this question and determined that, in the circumstances of this case, there was nothing inappropriate about the evidence being led. No untoward prejudice arose from the change of course. This is very much a factual question, peculiar to this trial. No question of general or public importance arises. No basis on which a serious miscarriage of justice may have occurred is raised.

[3] The Crown led evidence concerning what was termed the "first head injury" Dylan suffered. It was particularly relevant to a charge of causing grievous bodily harm, in respect of which, during trial, Ms Pickering was discharged under s 347 of the Crimes Act 1961. Following that decision, trial counsel did not seek to have any of the evidence already in ruled inadmissible. The prosecutor, in his final address to the jury, referred to the first head injury evidence as being relevant to the murder charge. The trial judge, Wylie J, gave a propensity evidence direction in respect of that evidence. Mr Hogan did not object at trial to that direction or to the continuing admissibility of the evidence. The Court of Appeal held that, in the circumstances of this case, Ms Pickering's failure to object to the continuing admissibility of the evidence following the s 347 decision amounted to consent to its admissibility in terms of s 9 of the Evidence Act 2006.[2] Regardless of the arguability of that proposition, we think the other reason given by the Court of Appeal to be unanswerable, namely that, even had there been a challenge, "it was inevitable that the evidence of the head injuries would be available as admissible evidence".[3]

[4] We have considered the other grounds of appeal: the way in which the Judge summed up on circumstantial evidence and inferences; alleged prosecutorial misconduct in closing; the Court of Appeal's refusal to admit new evidence from Dr Lammie, a British consultant neuropathologist. With respect to these points, all Mr Hogan has submitted is that the Court of Appeal was wrong, but he has not articulated why the Court's detailed conclusions and reasoning are wrong. None of these points raises an issue of general or public importance. Nor do they cause us to

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2 At [98].
3 At [99].

consider a substantial miscarriage of justice may have occurred or may occur unless this Court hears the appeal. In particular, we agree with the Court of Appeal that Dr Lammie's proposed evidence is almost entirely consistent with the evidence the defence did call from Dr Squier.[4]

[5] For these reasons, we dismiss the application for leave to appeal.

Solicitors:
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[4] At [179].