

ORDER PROHIBITING PUBLICATION OF THE JUDGMENT AND ANY PART OF THE PROCEEDINGS (INCLUDING THE RESULT) IN NEWS MEDIA OR ON THE INTERNET OR OTHER PUBLICLY AVAILABLE DATABASE UNTIL FINAL DISPOSITION OF TRIAL. PUBLICATION IN LAW REPORT OR LAW DIGEST PERMITTED.

NOTE: SUPPRESSION ORDER IN [2018] NZHC 2481 PROHIBITING PUBLICATION OF MS RURU'S NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS PURSUANT TO S 200 CRIMINAL PROCEDURE ACT 2011 REMAINS IN FORCE. SEE <http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360346.html>

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 25/2020
[2020] NZSC 45**

BETWEEN MELISSA-MAE RURU
Applicant

AND THE QUEEN
Respondent

SC 26/2020

BETWEEN TYSON JACK SYKES
Applicant

AND THE QUEEN
Respondent

Court: Glazebrook, Ellen France and Williams JJ

Counsel: W Lawson for Applicant Ruru
N Levy QC for Applicant Sykes
F R J Sinclair for Respondent

Judgment: 11 May 2020

JUDGMENT OF THE COURT

A Ms Ruru's application for leave to appeal is dismissed.

- B Mr Sykes' application for an extension of time for leave to appeal is granted.**
- C Mr Sykes' application for leave to appeal is dismissed.**
- D We make an order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.**
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REASONS

Introduction

[1] Ms Ruru and Mr Sykes apply for leave to appeal against a Court of Appeal judgment dismissing their appeals against a pre-trial ruling of the District Court relating to the admissibility of communications between them found on a cell phone belonging to Mr Sykes.¹

Background

[2] At the relevant period Ms Ruru was a police officer. Mr Sykes was a boxer.

[3] In December 2015 Mr Sykes was convicted of a driving offence and sentenced to 200 hours community work. He wished to complete this at Sykes Boxing Gymnasium, a venture closely connected to his family. This was approved when Ms Ruru, who was involved with the gymnasium, offered to oversee his community work at the gymnasium. It is alleged that during 2016 Ms Ruru submitted false community work attendance records in his regard.

[4] Mr Sykes was sentenced to a further 120 hours of community work in 2017 and there are similar allegations against Ms Ruru falsifying records in that period. Ms Ruru also faces a charge of forgery for allegedly forging Mr Sykes' signature on a New Zealand Olympic Games Team Athlete Agreement Form. The applicants are also

¹ *Ruru v R* [2020] NZCA 64 (Miller, Gilbert and Collins JJ) on appeal from the District Court's pre-trial decision *R v Sykes* [2019] NZDC 8863 (Judge Cooper).

jointly charged with attempting to defeat the course of justice by completing and submitting false records in relation to Mr Sykes' community service.

[5] In early 2018, the police were conducting two investigations – one into suspected drug activity by Mr Sykes and one codenamed “Operation Veritas”, related to the allegations of falsifying the records of community work.

[6] On 14 March 2018, the police applied for a search warrant of Mr Sykes' home. They took the view that they had sufficient evidence for a search warrant for the suspected drug offences but not in relation to Operation Veritas. The search warrant application did, however, disclose that the police were continuing investigations in relation to Ms Ruru's involvement with Mr Sykes' community work hours at the gymnasium. The application explained that police analysis of text data obtained from production orders suggested that the applicants communicated on Facebook Messenger. The application also alleged that Ms Ruru and Mr Sykes were close associates and that Ms Ruru was aware of Mr Sykes' drug activities.

[7] The search warrant authorised the police to search Mr Sykes' home for drugs and correspondence relating to using controlled drugs, cell phones and SIM cards, and electronic storage devices.

[8] The impugned evidence relates to photographs taken during the search of Mr Sykes' house of messages on Facebook Messenger that were found on Mr Sykes' cell phone and which relate to Operation Veritas. It was not possible to know which messages were cached on the phone/application memory facility and which were downloaded when the police opened the Facebook Messenger application on Mr Sykes' phone.

[9] Mr Sykes had given the police the password of the phone because he was told it would otherwise go to the Police Electronic Crime Laboratory where it could remain for up to four months.

Extension of time

[10] Mr Sykes' application is out of time by two days. He says his bail conditions preclude him from using a cell phone and there is no landline where he is in lockdown. An adequate excuse has been provided and no issue as to the late application is taken by the Crown. An extension of time to appeal is granted.

Grounds of application

[11] The applicants challenge the Court of Appeal's conclusion that the search warrant was lawful and executed lawfully, ultimately requesting that the disputed evidence be ruled inadmissible and be excluded under s 30 of the Evidence Act 2006. The submissions basically repeat most of the submissions in the Court of Appeal. It is asserted that the search warrant application was too broad (particularly given the heightened privacy interest in cell phones), that it did not specify that Facebook Messenger was to be searched, and that it misapplied the statutory scheme as searches of a computer network should be limited to the local network. Mr Sykes also says that he should have been told the police could compel him to open his phone under s 130 of the Search and Surveillance Act 2012.

Our assessment

[12] We do not consider that this application meets the heightened threshold in s 74(4) of the Senior Courts Act 2016. The matters the applicants seek to raise can be raised in a post-conviction appeal if the applicants are convicted. We thus dismiss the applications for leave to appeal.

Result

[13] Ms Ruru's application for leave to appeal is dismissed.

[14] Mr Sykes' application for an extension of time for leave to appeal is granted.

[15] Mr Sykes' application for leave to appeal is dismissed.

[16] For fair trial reasons, we make an order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.

Solicitors:

Lance Lawson, Rotorua for Applicant Ruru

Crown Law Office, Wellington for Respondent