

WINSTON JAMES SHANE YOUNG

v

THE QUEEN

Court: Elias CJ, Tipping and McGrath JJ

Counsel: G King for Applicant
F E Guy Kidd for Crown

Judgment: 8 December 2010

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was convicted of the armed robbery of the offices of a local authority on a day quarterly rates payments were due. His co-accused was acquitted. He now applies for leave to appeal on the grounds that his conviction is:

- (i) unreasonable and not supported by the evidence;
- (ii) inconsistent with the acquittal of his co-accused; and
- (iii) the consequence of a flawed summing up by the Judge.

The particular complaint concerning the summing up is that the Judge did not address the consequences for the Crown's case against the applicant of the jury's acquittal of the co-accused.

[2] We are satisfied that the first ground is not arguable. Clothing, including latex gloves, was found by a farmer at the roadside shortly after the robbery. It had not been there the previous afternoon and had obviously been thrown from a car. The only DNA profile located on the gloves was that of the applicant. There was a powerful attack by defence counsel at the trial on the DNA science evidence and its application to the gloves, but it was clearly open to the jury to accept the evidence as linking them to the applicant. Other evidence indicated that the robber was wearing latex gloves of the same colour as those found. There were some similarities between other clothing at the roadside and that described by witnesses as worn by the robber. Although the Judge told the jury that this evidence on its own would not be enough to convict the applicant, it did provide support for the Crown case. The key point is that the jury was plainly entitled to find the gloves had been worn by the applicant and that they were used during the robbery.

[3] Nor do we consider it arguable that the acquittal of the co-accused was inconsistent with conviction of the applicant. The Crown's case and the evidence against the two differed. Only one of the accused was present during the robbery and the Crown case was that the applicant was that person. The co-accused was alleged to be the insider who had access to another person's knowledge of Council systems and premises layout and passed that knowledge on. The case against the co-accused was circumstantial and dependent on a connection he had with the applicant. As well, the co-accused gave evidence on his own behalf whereas the applicant did not.

[4] On the third ground, the trial Judge did say, correctly in the view of the Court of Appeal, that if the applicant was acquitted, the jury should also acquit the co-accused. But it does not follow that the Judge had to give a direction in reverse. The Judge suggested to the jury that they consider the case against the applicant first, which would avoid that risk. Furthermore, the acquittal of the co-accused did not rule him out as the source of knowledge for the applicant. It simply meant his

involvement in the particular crime had not been proved. For these reasons, we are also satisfied that the third proposed ground is not arguable.

[5] There is no basis for suggesting there is a miscarriage of justice in this matter, nor does it give rise to a question of public importance. The application for leave to appeal is accordingly dismissed.

Solicitors:
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