Supreme Court of New Zealand
Te Kōti Mana Nui

19 November 2014

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

ASHLEY DWAYNE GUY v THE QUEEN
(SC 67/2012)
[2014] NZSC 165

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

The appellant, Mr Guy, was found guilty by a jury of a charge of sexual violation by unlawful sexual connection. After the verdict it was discovered that, by error, the jury had been provided in the jury room with two documents that had not been introduced in evidence at trial.

The first document was a transcript of an interview conducted by the police with the appellant and recorded by video. The appellant's counsel had before trial, objected to the admission of the video interview and the transcript. Because of this objection, Crown counsel did not seek to produce the video interview or the transcript but instead, without objection, led evidence from the interviewing officer that the appellant had been spoken to but had said he was not in a position to "make an honest clear statement" because he did not remember what had happened.

The second document was the transcript of a statement made to the police by the complainant. Crown counsel had not attempted to put the statement in argue at trial and no reason was given at trial to justify the admission of such a previous consistent statement under s 35 of the Evidence Act 2006.

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Mr Guy appealed to the Court of Appeal against his conviction on the basis that the provision of these two documents to the jury resulted in a miscarriage of justice. Section 385(1)(c) of the Crimes Act 1961 (which was at the time the relevant provision) provided that an appeal to the Court of Appeal or Supreme Court against conviction must be allowed if there has been a miscarriage of justice, subject to the proviso that the court may dismiss an appeal if "no substantial miscarriage of justice has actually occurred".

The Court of Appeal dismissed Mr Guy's appeal. While the Court of Appeal accepted that the provision of the transcripts to the jury raised a "powerful argument" that the trial had miscarried, it held that, in the circumstances of the trial as a whole, there was no miscarriage of justice. Mr Guy appealed to the Supreme Court.

The Supreme Court, by majority comprising Elias CJ, Glazebrook and O'Regan JJ, has allowed the appeal.

Elias CJ and Glazebrook J held that, because significant material bearing on the critical issues in the case was provided to the jury without having been put in evidence, there was a breach of natural justice leading to an unfair trial. The right to a fair trial is fundamental and this in itself meant that there was a miscarriage of justice, that the proviso to s 385(1) is inapplicable and therefore that the conviction must be set aside. In any event, they held that the material provided to the jury could have affected the result of the trial.

O'Regan J has given separate concurring reasons. O'Regan J considered that it was necessary to assess whether the provision of the material to the jury was capable of affecting the result of the trial so as to constitute a miscarriage of justice. O'Regan J has decided that the provision of the transcripts was capable of affecting the verdict and that, due to the focus on credibility and reliability, this was not an appropriate case to apply the proviso to s 385(1).

McGrath and William Young JJ dissented. They considered that the provision of the transcripts could not have affected the result at trial.

In accordance with the views of the majority, the appellant's conviction is quashed and a new trial is ordered.

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