IN THE SUPREME COURT OF NEW ZEALAND

SC 69/2015
[2015] NZSC 140

BETWEEN		RAWIRI DAVID LAWSON Applicant
AND		THE QUEEN Respondent

Court: Elias CJ, William Young and Arnold JJ

Counsel: Applicant in person
K Laurenson and T P Westaway for Respondent

Judgment: 6 October 2015

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

The proposed appeal

[1] In the early hours of the morning of 16 September 2011, a window in the office of the manager of a supermarket was smashed from the outside. The office was on an upper floor and looked out over part of the roof of the supermarket. Whoever smashed the window had stood on that part of the roof to do so. The alarm system was activated but the offender was not located. At about 5.30 am a cash officer arrived at the supermarket and deactivated the alarm. Shortly afterwards, an intruder came through the broken window. He was armed with a knife and disguised with a stocking over his face. The intruder confronted the cash officer and forced her to open a safe from which he removed a little over $18,000. As a result of these events, the applicant was prosecuted for aggravated robbery and kidnapping.

[2] A roll-up cigarette with the applicant's DNA was found on the roof of the supermarket under the smashed window. The Crown called evidence placing the

applicant in the vicinity of the supermarket at 7.30 am on the day of the robbery and the applicant was shown to have been flush with cash subsequent to the robbery. The Crown case was supplemented with propensity evidence in respect of prior offending by the applicant involving four aggravated robberies of commercial premises (one of which was a Four Square supermarket) and a 2009 burglary of a supermarket. The applicant had been sentenced to imprisonment in respect of this last offence and was released from prison in August 2011, that is the month before the offending now in issue.

[3] The applicant was found guilty at trial[1] and his appeal to the Court of Appeal was dismissed.[2] He now seeks leave to appeal.

[4] The applicant's submissions address a number of issues which we address under four headings.

How the cigarette came to be dropped, what the offender was wearing and associated fair trial issues

[5] There were arguments at trial as to how the cigarette may have come to have been dropped. These arguments were associated with CCTV footage of the offender which suggested that he had been wearing a shirt with a buttoned down pocket. The defence theory was that as the shape of the cigarette was not distorted, it could not have been in a trouser pocket and that, if it was in the shirt, it would not have fallen out. The Crown did not attempt to prove what clothing the applicant was wearing although the prosecutor noted that when previously offending, the applicant had, by way of disguise, sometimes worn more than one set of clothing. There was no evidence to indicate that the offender had a bag in which a second set of clothing could be carried. The applicant claims that during the prosecutor's address a corrections officer prevented him passing his counsel a note addressing this point. The Court of Appeal was prepared to address his appeal on the basis that he was prevented from passing such a note but of the view that this was of insufficient materiality to warrant allowing the appeal.[3]

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1 Mr Lawson was subsequently sentenced to eight years' imprisonment with a minimum term of imprisonment of four years, nine months: see *R v Lawson* [2013] NZHC 1150 (Mallon J).

2 *Lawson v R* [2014] NZCA 463 (O'Regan P, Courtney and Clifford JJ).

3 At [7]–[11].

[6] In his submissions to us, the applicant addressed the points which we have just discussed and in particular claimed that there had been a shift in the Crown case in relation to clothing and that he had not been afforded a fair opportunity to respond.

The admissibility of evidence as to the 2009 burglary

[7] When committing this burglary, the applicant had climbed onto the roof of a supermarket, used a jemmy to remove external weather boards and then smashed through the internal lining to obtain entry to the cashier's office. The admissibility of the evidence of this offending was upheld in a pre-trial appeal.[4] The applicant's position is that the burglary conviction was not material to his propensity to commit aggravated robberies. He also emphasised differences between the 2009 and 2011 offending.

A change in the Crown case

[8] Whereas the case against the applicant had been opened on the basis that the appellant was a party to the offending, the indictment was amended on the fifth day of the trial to allege liability as a principal.

[9] No submissions were advanced as to how this prejudiced the applicant.

The sufficiency of the evidence to support a conviction

[10] The applicant argues that on the basis of the points already discussed together with some evidence as to another person he describes as "a very viable suspect" there was insufficient evidence to warrant verdicts of guilty.

Our appreciation

[11] The applicant's arguments are, in large measure, a re-run of arguments which were advanced on his behalf to the Court of Appeal and carefully addressed by that Court. They do not raise any issue of public or general importance. And, as well,

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4 *R v Lawson* [2012] NZCA 540.

for the reasons we are about to give, there is no appearance of a miscarriage of justice.

[12] The Crown case did not depend upon establishing the precise mechanism by which the cigarette came to be dropped, the nature of the clothing the offender wore or whether he had a bag. However the case was approached, it was practically inevitable that the jury would conclude that the applicant had dropped the cigarette and had done so in the course of the offending. We see nothing untoward in the approach taken in relation to the burglary conviction. It is true that on this occasion, the applicant had not confronted anyone but the modus operandi was nonetheless similar to that in issue and the relevance of the evidence was enhanced by the timing of the burglary in relation to (a) the earlier aggravated robberies and (b) the offending at issue. The burglary was part and parcel of a strikingly distinctive pattern of events. We have no difficulty with the amendment to the indictment. And, as will be apparent, we consider that there was ample evidence upon which the jury could return verdicts of guilty.

Solicitors:
Crown Law Office, Wellington for Respondent