NOTE: ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF APPLICANT PURSUANT TO S 200 OF THE CRIMINAL PROCEDURE ACT 2011 MADE IN THE COURT OF APPEAL REMAINS IN FORCE.

NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF COMPLAINANT PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011.

IN THE SUPREME COURT OF NEW ZEALAND

SC 80/2017
[2017] NZSC 136

BETWEEN	A (SC 80/2017) Applicant
AND	THE QUEEN Respondent

Court:	Glazebrook, O'Regan and Ellen France JJ
Counsel:	P L Borich QC for Applicant J E L Carruthers for Respondent
Judgment:	6 September 2017

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant stood trial in relation to a total of 20 charges of violent offending and four charges of sexual offending against his former wife. He was convicted of five charges of violent offending and was either acquitted or the jury was hung on the balance of the charges.[1] The applicant's appeal to the Court of

[1] We were told that there will not be a re-trial on the balance of the charges.

Appeal against conviction and sentence was dismissed.[2] He now seeks leave to appeal to this Court.

[2] The applicant wishes to argue that there were a number of errors in the way his trial was conducted which have given rise to points of public importance and to a miscarriage of justice. In particular, the applicant relies on the following matters:

(a) the way the prosecutor cross-examined him about his admission of violence;

(b) comments by the prosecutor in the Crown's closing address; and

(c) decisions by the trial Judge, Judge Ronayne, about the admissibility of evidence and other matters.

The cross-examination

[3] The applicant gave evidence at trial. He admitted some violence towards the complainant. The prosecutor cross-examined the applicant about the admission suggesting, amongst other things, that in this way the applicant had accepted the elements of the relevant charge and asking him whether he now wished to plead guilty.[3] The applicant wishes to argue the line of questioning was inconsistent with the presumption of innocence and fair trial rights contained in s 25 of the New Zealand Bill of Rights Act 1990.

[4] The Court of Appeal said the prosecutor was entitled to put to the applicant the fact he had accepted the elements of the offence were met and "effectively that he was guilty of the charge".[4] While the prosecutor encouraged the jury to form a view about the applicant's integrity on this basis, he did not invite the jury to infer guilt on other charges because of the applicant's continued denial of the charge to which the admission related. The Court saw that this was important.[5]

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2 *A (CA90/2017) v R* [2017] NZCA 278 (Asher, Venning and Ellis JJ).
3 The questions are set out in detail in the Court of Appeal's judgment: at [42].
4 At [47].
5 At [47].

[5] We see no appearance of a miscarriage in this assessment. Nor does any more general point arise. The questions were not very well put. But the prosecutor was entitled to ask the applicant what his defence was and that is, essentially, what the prosecutor did.

The Crown closing

[6] There were, as the Court of Appeal accepted, errors in the way the prosecutor referred to the complainant's evidential video interview in closing (the interview was not played at trial, however there was some cross-examination of the complainant about what she had said in the interview). For example, the Court said it was wrong to suggest the complainant's evidence at trial was consistent with her evidential interview.[6] The Court also considered that the prosecutor's remarks should have been corrected by the Judge.[7] Nonetheless, the Court of Appeal concluded, there was no miscarriage of justice. That was essentially because the pattern of verdicts indicated that the jury: [8]

> … did not find [the complainant's] evidence by itself sufficiently credible and/or reliable to found a conviction … . And in relation to three of the five charges on which [the applicant] was convicted, he admitted key aspects of the offending …

[7] The applicant's challenge to this assessment does not raise a point of public importance. Nor does anything raised by him throw doubt on the Court of Appeal's analysis or raise any risk of a miscarriage of justice.

[8] The applicant also wishes to challenge the treatment of two other aspects of the prosecutor's closing remarks. The prosecutor first suggested there was overseas law as to corroboration requirements in cases of sexual offending[9] and, secondly, used an unduly emotive analogy at one point when discussing the complainant.

[9] The Court of Appeal said that the first of these remarks was "potentially confusing" but it was not prejudicial.[10] As to the other remark, the Court of Appeal

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6 Three errors are identified in the Court of Appeal's judgment: at [54].
7 At [55].
8 At [57].
9 See the Court of Appeal judgment at [63].
10 At [67].

observed that the Judge's direction to the jury that they should not be swayed by prejudice or sympathy addressed the matter.[11]

[10] The law as to the obligations on a prosecutor has been addressed by this Court.[12] No question of public importance arises. Nothing raised throws doubt on the Court of Appeal's assessment. Nor do we see any risk of a miscarriage of justice.

Admissibility of evidence and other matters

[11] The other matters the applicant wishes to raise include the trial Judge's rulings as to the admissibility of evidence about two earlier short-term relationships in which the complainant was involved and about what was described as a police officer's "lack of objectivity".

[12] All of these matters were considered by the Court of Appeal. No point of public importance arises. Nor is there any appearance of a risk of a miscarriage of justice arising out of the way in which these matters were assessed.

[13] The application for leave to appeal is accordingly dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

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11 At [69].
12 *Stewart v R* [2009] NZSC 53, [2009] 3 NZLR 425.