IMM v THE QUEEN (D12/2015)

Court appealed from: Northern Territory Court of Criminal Appeal
[2014] NTCCA 20

Date of judgment: 19 December 2014

Special leave granted: 16 October 2015

In August 2011 a girl aged 13 ("the Complainant") told three members of her family that the Appellant had been molesting her since she was little. The Complainant also told her best friend. After a police investigation, the Appellant was charged with one count of sexual intercourse with a child (when the Complainant was aged 6) and three counts of indecent dealing with a child (when the Complainant was aged 4, 5 and 11).

At the Appellant's trial, evidence of what the Complainant had told both her relatives and her friend ("the complaint evidence") was admitted into evidence above an objection by the Appellant's counsel. The basis of that objection was that none of that evidence was sufficiently specific to any of the alleged acts which formed the basis of the charges. The complaint evidence was admitted by Justice Blokland under s 66 of the *Evidence (National Uniform Legislation) Act* (NT) ("the Act"), as evidence of asserted facts that were fresh in the memory of the Complainant at the time, such evidence thereby not being prevented by the hearsay rule from being admitted to prove the truth of the matters complained about. Her Honour also refused to exclude the complaint evidence, under s 137 of the Act, as unfairly prejudicial to the Appellant. Justice Blokland's directions to the jury included, that if it was satisfied as to the complaint evidence, then that evidence could be used as "*some evidence that an offence did occur*".

Also admitted was the Complainant's testimony that the Appellant had once run his hand up her thigh while giving her a massage ("the tendency evidence"). Justice Blokland ruled, under s 97(1)(b) of the Act, that that evidence had significant probative value, as it was capable of demonstrating that the Appellant had a sexual interest in the Complainant.

The jury found the Appellant guilty of the intercourse offence and of two of the indecent dealing offences. Justice Blokland then sentenced the Appellant to imprisonment for 6 years, with a non-parole period of 4 years and 3 months.

The Appellant appealed against his conviction. This was on grounds that Justice Blokland had erred by admitting the complaint evidence and the tendency evidence, and that her Honour had misdirected the jury in relation to the former.

The Court of Criminal Appeal ("CCA") (Riley CJ, Kelly & Hiley JJ) unanimously dismissed the appeal. Their Honours held that Justice Blokland had not erred by admitting the complaint evidence, as it was referable to the charges and its probative value outweighed any danger of unfair prejudice to the Appellant. The CCA held that Justice Blokland's directions to the jury contained

appropriate warnings about the use of evidence of conduct which was not the subject of the charges. That the complaint evidence was in general terms did not mean that it could not be used by the jury as "some evidence" that an offence had occurred. Their Honours held that a lack of corroborating evidence did not prevent the tendency evidence from being admitted under s 97 of the Act. They held that a lack of corroboration was a matter of weight for the jury. It was not a matter of admissibility.

The grounds of appeal are:

- The CCA erred in holding that the trial judge did not err in admitting tendency evidence.

- The CCA erred in holding that the trial judge did not err in admitting complaint evidence.

- The CCA erred in holding that the trial judge did not misdirect the jury regarding the complaint evidence.