



HIGH COURT OF AUSTRALIA

18 December 2013

GRAEME STEPHEN REEVES v THE QUEEN

[2013] HCA 57

Today the High Court unanimously dismissed an appeal against conviction and upheld an appeal against sentence from a decision of the New South Wales Court of Criminal Appeal, brought by Graeme Stephen Reeves. Mr Reeves was convicted following a trial by jury in the District Court of New South Wales of malicious infliction of grievous bodily harm with intent to inflict harm of that kind.

Mr Reeves was a gynaecologist and the complainant, CDW, was his patient. The harm inflicted on CDW was the surgical removal of her vulva, including her labia and clitoris. Mr Reeves was sentenced to a term of two and a half years' imprisonment with a non-parole period of one year. The Court of Criminal Appeal confirmed his conviction and allowed an appeal by the Director of Public Prosecutions against the inadequacy of the sentence.

CDW had been referred to Mr Reeves by her general practitioner for treatment of a pre-cancerous lesion on her left labia. She gave evidence that she had agreed to the surgical removal of a small flap of skin containing the lesion and not to the removal of her entire vulva, including her labia and clitoris. Mr Reeves' case was that CDW had consented to the surgery knowing that it entailed the removal of her entire vulva.

The direction given to the jury by the trial judge stated that there would not be a lawful cause or excuse for the surgery if Mr Reeves did not honestly believe that CDW had given her informed consent to the full extent of the operation, including removal of the labia and clitoris. The direction stated that for consent to be "informed" the medical practitioner must at least explain the purpose of the operation, the part or parts of the body to be cut or removed, the possible major consequences of the operation and any options or alternative treatments which may be reasonably available. The Court of Criminal Appeal found that the introduction of the concept of "informed consent" was an error, but that in light of the conduct of the trial, this error had not occasioned a substantial miscarriage of justice. Mr Reeves' appeal was dismissed.

Mr Reeves applied for special leave to appeal to the High Court. The Court found that the Court of Criminal Appeal identified and applied the correct test for consent to surgery, which requires that the patient be informed in broad terms of the nature of the procedure. The High Court found that in the context of this trial, the use of the phrase "informed consent" and the reference to possible major consequences and alternative treatments had not distracted the jury from the one issue on consent, which was whether the prosecution had excluded beyond reasonable doubt that CDW had been informed that the surgery involved the removal of her vulva, including her labia and clitoris. The High Court agreed with the Court of Criminal Appeal that the misdirection had not occasioned a substantial miscarriage of justice.

The Director of Public Prosecutions conceded that the Court of Criminal Appeal erred by failing to consider the exercise of its residual discretion to dismiss the appeal taking into account the medical

evidence of Mr Reeves' deteriorating health and the imminent expiry of his non-parole period. In light of that concession, the High Court allowed Mr Reeves' appeal against sentence on this ground and remitted the matter to the Court of Criminal Appeal for it to consider the residual discretion.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*