

22/12

**NOT
RECOMMENDED**

IN THE COURT OF APPEAL OF NEW ZEALAND 18/6 C.A. 131/92
C.A. 132/92

THE QUEEN

v.

M M
J M

875

Coram: Cooke P.
 Richardson J.
 Casey J.
 Hardie Boys J.
 McKay J.

Hearing: 9 June 1993

Counsel: K.I. Jefferies and A. Shaw for Appellants
 J.C. Pike for Crown

Judgment: 9 June 1993

JUDGMENT OF THE COURT DELIVERED BY COOKE P.

The two accused are jointly charged on indictment with kidnapping and threatening to do grievous bodily harm. The offences are alleged to have been committed on 19 October 1991. There is a third count against M M only of having in possession a firearm while committing the crime of kidnapping. The accused seek leave to appeal from a ruling of a District Court Judge in Christchurch, given as long ago as 7 May 1992, allowing to be admitted in evidence at their trial certain admissions or alleged admissions made to the police. That

ruling was under s.344A of the Crimes Act 1961. From such a ruling an appeal lies under s.379A only by leave.

In the case of J M , the Judge found, after fully traversing the evidence, that she was not detained at the time of the relevant statement or statements, nor did she believe that she was detained. In reaching that finding the Judge took into account his adverse view of her credibility as a witness. In the light of that finding there is no basis for an argument under either s.22 or s.23(1) of the New Zealand Bill of Rights Act 1990, nor in her case is there any other ground warranting leave to appeal.

In the case of M M , points are sought to be raised under s.22 of the New Zealand Bill of Rights Act, and at common law and in the unfairness jurisdiction, with regard to the right to a lawyer. Section 22 was not even mentioned before the District Court Judge, it seems, and there was no argument there for M M based on the Bill of Rights. Nor did he give any evidence. A point of major significance is that the police job sheet, which is before the Court, records shortly after a statement which the Judge has rightly excluded under the principle in *R. v. Halligan* [1973] 2 N.Z.L.R. 158, the remark by the accused in answer to a question about a lawyer:

'Yes, I won't get one now, I'll talk to one later'.

There are then some questions and answers but these conclude when the accused replies to one question:

'Not really. I'll wait until I speak to my lawyer and then it's done right, isn't it.

3.

In the light of that evidence there is no foundation for any suggestion under either the Bill of Rights Act or the common law to the effect that the accused was denied any right to a lawyer.

Leave to appeal is refused, both in his case and in that of J

M

RB Cooke P.

Solicitors:

Jefferies and Raizis, Wellington, for Appellants
Crown Law Office, Wellington, for Crown