

Supreme Court of Queensland - Court of Appeal

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R v. Button [2001] QCA 133 (10 April 2001)

Last Updated: 18 July 2001

QCA 133

COURT OF APPEAL

WILLIAMS JA

WHITE J

HOLMES J

CA No 247 of 2000

THE QUEEN

v.

FRANK ALAN BUTTON (Appellant)

BRISBANE

..DATE 10/04/2001

JUDGMENT

WILLIAMS JA: As I said in the course of argument, today is a black day in the history of the administration of criminal justice in Queensland. The appellant was convicted of rape by a jury and has spent some approximate 10 months in custody in consequence of that conviction.

DNA testing carried out at the insistence of his lawyers after that jury verdict has now established that he was not the perpetrator of the crime in question, and indeed the recent DNA testing would appear to have identified some other person as the perpetrator of that crime.

What is of major concern to this Court is the fact that that evidence was not available at the trial. A scientist from the John Tonge Centre gave evidence of attempts prior to trial to establish a DNA profile from intact spermatozoa which were found in swabs taken from the complainant girl's vagina.

Apparently there was a scientific explanation for the inability to obtain a DNA profile at that time with respect to the sperm.

What is disturbing is that the investigating authorities had also taken possession of bedding from the bed on which the offence occurred, and delivered those exhibits to the John Tonge Centre. No testing of that bedding was carried out prior to trial. The explanation given was that it would not be of material assistance in identifying the appellant as the perpetrator of the crime.

That is true in a sense, but of course DNA testing has a two-fold purpose: that of identifying the perpetrator of a crime, and secondly, that of excluding a possible offender as being the perpetrator of the crime. Indeed, as it turned out in this case, it was the subsequent testing of staining on the sheets which gave the scientists their breakthrough and were able to establish a sufficient match between male staining on the sheets and the spermatozoa to conclusively establish that the appellant was not the perpetrator of this crime.

The Director of Public Prosecutions in her submissions to this Court did refer to the fact that the John Tonge Centre is under-resourced, and that is a matter which from time to time has been raised in these Courts. Judges have heard from time to time of committal proceedings having to be adjourned and

the dates for criminal trials postponed because testing at that Institute has not been completed.

It may well be that laboratory testing is expensive, particularly if it is to be as extensive as in my view it should be, but the cost to the community of that testing is far less than the cost to the community of having miscarriages of justice such as occurred here. The cost to the community in a case like this includes not only the costs of both sides of the aborted trial, but the costs to the appellant of the fact that he has been in custody for the length of time that I have indicated.

This Court has not had the opportunity of making any concluded findings with respect to the testing and whether or not there is any fault or blame that should be attached to anyone. The views that I have expressed are expressed with a view to ensuring that this sort of incident does not occur in the future, and that the major forensic laboratory in Queensland is so staffed and so financed that it will be able to deliver appropriate evidence to the Courts in all cases where its services are called upon.

Also this Court has not been in a position to make any evaluation of the police investigation of the complaint, but as Mrs Clare has conceded, there are aspects of that investigation which do require some further investigation. The Court is at least heartened by the fact that the Director of Public Prosecutions is of like mind and has undertaken to put in train the necessary investigations.

This Court can do little so far as compensation to the appellant for the fact that he has had to suffer the ignominy of a conviction for rape which now proves to be entirely false. I would assume that following the ordinary course his name would have been suppressed at the time of conviction, but no doubt in the small community in which he resided everyone would have been aware of the fact that he had been convicted.

In those circumstances, at least speaking for myself, it is my view that there should be no further restriction on the use of his name. In so far as Frank Alan Button now is relieved of that conviction, then it is my view that the community should be told of that.

The order of the Court is that the appeal is allowed and the conviction quashed.

WHITE J: I agree that the appeal should be allowed and the conviction quashed.

HOLMES J: I agree also.
