



HIGH COURT OF AUSTRALIA

30 March 2011

STUBLEY v THE STATE OF WESTERN AUSTRALIA [2011] HCA 7

On 20 October 2010, at the conclusion of the hearing of oral argument on the appeal, the High Court ordered that the appeal of Dr Alan John Stubley against his conviction for various sexual offences be allowed, that his convictions be set aside and that a new trial be held. Today the High Court published its reasons for the making of those orders.

Dr Stubley, a psychiatrist, was charged under the *Criminal Code* (WA) with 14 offences which included rape, attempting to commit rape, and unlawful and indecent assault, relating to sexual activity with two women who were his patients, JG and CL. The charges were founded on incidents alleged by JG and CL to have occurred between 1975 and 1978 during treatment sessions with Dr Stubley. At trial, Dr Stubley stated that he had been sexually intimate with the two women, however he maintained that JG and CL had consented on each occasion. Following the trial in the Supreme Court of Western Australia, Dr Stubley was found guilty of 10 offences. An appeal to the Court of Appeal against his conviction was unsuccessful.

At issue in the appeal to the High Court was whether the prosecution was entitled to adduce the evidence of three other women who each alleged that Dr Stubley had engaged in sexual activity with them while they were his patients. These allegations were not the subject of the charges against Dr Stubley, however the prosecution at trial successfully submitted that the evidence was admissible against him as "propensity evidence" or "relationship evidence" within the meaning of s 31A of the *Evidence Act* 1906 (WA).

However, by majority, the High Court held that the evidence of the three other women did not have significant probative value as propensity evidence or relationship evidence, and therefore that it should not have been admitted at the trial. This was because the only issue at the trial was whether the sexual activity between Dr Stubley and JG and CL was consensual, and the evidence of the three other women could not have probative value with respect to whether JG or CL consented to the sexual activity.

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.