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**IN THE YOUTH COURT
AT HASTINGS**

**I TE KŌTI TAIOHI
KI HERETAUNGA**

**CRI-2018-041-002196
[2018] NZYC 654**

NEW ZEALAND POLICE
Prosecutor

v

[JG]
Young Person

Hearing: 22 November 2018

Appearances: Senior Sergeant D Goodall for the Prosecutor
R Philip for the Young Person

Judgment: 22 November 2018

ORAL JUDGMENT OF JUDGE M A COURTNEY

[1] Inspector [name deleted] of the Napier Police has made an application under s 18 Criminal Investigations (Bodily Samples) Act 1995 (“the Act”) for an order to take a sample from [JG].

[2] [The Inspector] has filed an affidavit in support of the application. There is a belief on the part of [the Inspector] that [JG] may have committed the offence of sexual violation by unlawful sexual connection, covered by s 128 Crimes Act 1961.

[3] The application was considered by Judge Adeane on 31 October 2018. He transferred the matter to this Court for call today. When doing so, he directed that the application was to be served on [JG] and on [JG]’s mother, [NG]. At the same time, he appointed Mr Philip as counsel to represent [JG] with regard to the application.

[4] Mr Philip has attended today and has [JG] present with him. [NG] is not present today; however, [JG]’s father, [DG], is present. I am told that [NG] is [details deleted] and is unable to be here in Court.

[5] I have been provided with a certificate of service from Detective [name deleted] confirming that she served [NG] with the application on 1 November 2018. Notwithstanding there was no requirement for service on [DG], he has attended today. I am told he has spoken with [NG] about the application.

[6] I was concerned to point out to [DG] that Mr Philip has been appointed to act as lawyer for [JG] and not for [DG] or [NG]. I therefore enquired whether or not [DG] wished to have an opportunity to take legal advice with regard to the application. He has told me that neither he nor his wife wish to have that opportunity and he has also told me that both he and his wife consent to the making of the order.

[7] Mr Philip advises me he has gone through all of the issues regarding the applications with [DG] and [NG]. Once again, of course, he is not their lawyer but they have, at least, had the application explained to them and [DG] was quite certain that he wishes to consent to the order as [JG]’s father.

[8] Mr Philip has discussed the matter with [JG] and tells me that there is no opposition raised to the application on the part of [JG]. There is, therefore, consent to the making of the order.

[9] I need to be satisfied that the grounds for making an order are made out. Those grounds are set out in s 23 of the Act:

- (a) I must be satisfied that there is good cause to suspect that [JG] has committed the offence to which the application result relates. Without going through the details set out in [the Inspector]'s affidavit, I am satisfied there is good cause to suspect.
- (b) Secondly, [JG] must be able to be lawfully prosecuted for the offence. Although [JG] is only 12 years old, this is a charge that involves a maximum penalty of 20 years' imprisonment. Under the Act, a 12 year old can be subject to such an application if the charge involves a sentence of imprisonment for at least 14 years.
- (c) The third matter to be ascertained is that the material reasonably believed to be from, or genetically traceable to, [JG] has been found or is available. I am similarly satisfied from [the Inspector]'s affidavit in that regard.
- (d) Next, that there are reasonable grounds to believe an analysis of a bodily sample taken from [JG] would tend to confirm or disprove his involvement in the offence. Once again, without going into the detail, I am satisfied from [the Inspector]'s affidavit that is established. That is obviously also recognised on the part of [JG] by Mr Philip and also recognised on the part of [JG]'s parents who consent.
- (e) The final matter is whether or not, in all the circumstances, it is reasonable to make the order. In that regard I need to have regard to the nature and seriousness of the offence which is obviously extremely serious, [JG]'s age, evidence relating to the investigation, and any other

matters. I am fully satisfied that it is appropriate to make the order as requested.

[10] I therefore make an order that [JG] is to provide a buccal sample for DNA testing. That is to be provided at [location deleted] at 11.00 am today 22 November 2018, or at any earlier time or other place agreed by [JG] and his father to take place before then.

M A Courtney
Youth Court Judge