

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 93/2011  
[2011] NZSC 132**

**Haiden Davis**

v

**THE QUEEN**

Court: Blanchard, Tipping and McGrath JJ

Counsel: W C Pyke for Applicant  
M D Downs for Crown

Judgment: 3 November 2011

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

**REASONS**

[1] The applicant faced at his trial for murder a strong prosecution case. The Court of Appeal dismissed his appeal against conviction.<sup>1</sup> He now seeks to argue two grounds of appeal in this Court but neither involves any question of public or general importance, for they relate to the particular terms in which the jury was directed by the trial Judge.

[2] The first concerns the giving of a lies direction relating to the applicant's statement to the police. The Court of Appeal considered that the Judge did not err in deciding that such a direction was necessary. The account given by the accused to

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<sup>1</sup> *Davis v R* [2011] NZCA 380.

the police in his statement was implausible and was contradicted by the evidence of other witnesses and by the physical evidence concerning the knife wound. The jury could well have regarded it as untrue and, as a result, could then have failed to give proper consideration to whether murderous intent was proved on the basis of the evidence as a whole. The direction was preceded by the Judge's advice to the jury to take particular care with the statement because it was not given on oath and tested by cross-examination (the applicant did not give evidence at the trial). This direction was said by the Court of Appeal to be justified in the circumstances of the case and not to give rise to unfairness.

[3] The second complaint is about the terms of a direction given when the jury indicated during its retirement that it was not able to reach a unanimous decision. The applicant submits that the Judge failed to remind the jurors in express terms to be true to their oath and not to change their minds merely because of pressure from other jurors. The Court of Appeal concluded that when the whole of what the Judge said to the jury at that time is understood along with what the jury had been told during the summing up, these requirements had effectively been conveyed.

[4] We are not persuaded that the Court of Appeal's assessment in relation to either of the issues now raised can be faulted. Neither singly nor in combination do they raise a concern that there may have been a substantial miscarriage of justice.

[5] The criteria for leave are not met

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