

NOTE: THE HIGH COURT ORDER PROHIBITING PUBLICATION OF THE NAME AND IDENTIFYING PARTICULARS OF THE WITNESS REFERRED TO AS MR SMITH AND HIS EVIDENCE REMAINS IN FORCE.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 3/2018
[2018] NZSC 30**

BETWEEN	LEONARD GUS NATTRASS-BERGQUIST Applicant
AND	THE QUEEN Respondent

Court: Elias CJ, Glazebrook and O'Regan JJ

Counsel: M S Gibson for Applicant
K S Grau for Respondent

Judgment: 13 April 2018

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was convicted of murder, aggravated robbery and unlawfully taking a motor vehicle after a High Court jury trial. His appeal against conviction was dismissed by the Court of Appeal.¹ He seeks leave to appeal against the Court of Appeal decision. The point he wishes to raise on appeal is one of a number of points dealt with by the Court of Appeal and concerns the application of s 124 of the Evidence Act 2006, dealing with judicial warnings about lies.

¹ *Nattrass-Bergquist v R* [2017] NZCA 552 (Cooper, Brewer and Peters JJ).

[2] The applicant and his co-offender claimed that their attack on the victim commenced because the applicant was sexually assaulted by the victim and that when the co-offender inflicted the blows on the victim that caused the victim's death, he was doing so in defence of the applicant.

[3] The co-offender did not give evidence, but the applicant did. His evidence was the basis of the claim by the applicant and his co-offender that neither was guilty of murder because the blows causing the victim's death had been inflicted in self-defence within the meaning of s 48 of the Crimes Act 1961.

[4] In the Court of Appeal, counsel for the applicant argued that the Judge was required to give a direction complying with s 124(3) of the Evidence Act. In fact, the Judge had, in his summing up, dealt with the fact that the applicant's evidence was the only narrative relating to self-defence. However, he did not give a direction dealing with the three elements referred to in s 124(3) of the Evidence Act.² The applicant's counsel did not request at the trial that a lies warning be given. In the Court of Appeal, the submission that an error occurred because the Judge failed to give a lies direction in relation to s 124(3) was rejected. The applicant wishes to argue on appeal that a lies direction was required in this case, even though the alleged lie was in the applicant's evidence rather than in a pre-trial statement. The applicant argues that this is a point of significance because there is uncertainty as to when a lies direction should be given in circumstances where the allegation is that an offender has lied in evidence.

[5] We do not consider that the point the applicant wishes to raise is a point of significance justifying the grant of leave. We do not consider that the decision of the Court of Appeal creates or reflects any uncertainty about the application of s 124. Nor do we see any miscarriage arising from the way the Court of Appeal dealt with the issue.

² These are: (a) the jury must be satisfied before using the evidence that the defendant did lie; (b) people lie for various reasons; and (c) the jury should not necessarily conclude that, just because the defendant lied, the defendant is guilty of the offence for which the defendant is being tried.

[6] In these circumstances, we dismiss the application for leave to appeal.

Solicitors:

Tucker & Co, Auckland for Applicant

Crown Law Office, Wellington for Respondent