



Supreme Court of New Zealand

28 May 2009

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

ERIC BARRY STEWART v THE QUEEN
(SC 81/2009) [2009] NZSC 53

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

Mr Stewart appealed to the Supreme Court against his conviction on charges of defrauding the Accident Compensation Corporation. He alleged that prosecuting counsel, in his closing address at trial, attacked a key expert witness for the defence in intemperate and unjustified language; and told the jury that Mr Stewart and other defence witnesses were motivated to lie by their wish to avoid the conviction of Mr Stewart. As a consequence of either or both of these matters, Mr Stewart claimed the trial was not fair and a miscarriage of justice resulted.

The Supreme Court found that what the prosecutor said about the expert witness was an obvious breach of a prosecutor's obligations to act fairly and not to engage in inflammatory rhetoric. In addition, the comment on Mr Stewart's perceived motive to lie had no evidential foundation. Suggesting that an accused person is motivated to lie simply to avoid conviction is particularly serious because it subverts the presumption of innocence.

The prosecutor's conduct was so blatant a departure from good practice and so prejudicial that the trial was unfair and a substantial miscarriage of justice resulted. The convictions of Mr Stewart must therefore be set aside. Because he had already served his sentence, the Crown did not seek an order for re-trial.

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