IN THE SUPREME COURT OF NEW ZEALAND

SC 81/2011
[2011] NZSC 105

CLAYTON ROBERT WEATHERSTON

v

THE QUEEN

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: R M Lithgow QC for Applicant
M F Laracy for Crown

Judgment: 13 September 2011

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks leave to appeal against the dismissal by the Court of Appeal[1] of his appeal against a conviction for murder.

[2] Essentially two matters are raised.[2] The first is whether a television interview of a Law Commissioner, Dr Young, which occurred during the trial was so prejudicial (against the background of other material concerning the trial or the defence of provocation) that it may have affected the fairness of the trial. We are satisfied that the Court of Appeal dealt properly with this matter. It is unfortunate

1 *R v Weatherston* [2011] NZCA 276.
2 A third relating to certain photographs need not be discussed as it is not pursued in the absence of leave on other grounds.

that Dr Young chose to go on television on the subject of the provocation defence while a well-publicised trial was underway in which such a defence was being advanced. But he was not commenting on Mr Weatherston's case nor on his particular use of the defence. His statement was made on a channel with a very small audience and did not achieve much prominence. There were strong directions from the trial Judge about ignoring extraneous publicity.

[3] The applicant attempts to bolster this argument by making something of what the trial Judge said long after the trial at a conference of Judges. We have had the opportunity of reading the text of her remarks and agree with the Court of Appeal that counsel is not correctly interpreting what the Judge said. The Judge's opinion that the New Zealand public "grew to despise Clayton Weatherston" was derived, as the Court of Appeal recorded, from the nature of the evidence in the trial, Mr Weatherston's evidence and the way he gave it, and the fact that the trial was televised. Her opinion had nothing to do with Dr Young's interview which is not even mentioned by her. If television coverage caused adverse sentiment in the community towards Mr Weatherston, that was because of how he conducted himself at the trial. The jury which saw the whole conduct of the trial was unlikely to have been influenced by public perception and was entitled to draw its own view. Any reaction to Mr Weatherston's unusual conduct was generated by Mr Weatherston himself.

[4] We reject the criticism made by counsel that the Court of Appeal should have obtained a report from the trial Judge about her conference address. It was appropriate for the Court of Appeal to read the speech and discern from her words what she was intending to convey to her audience, as we ourselves have also done.

[5] The second matter sought to be raised is whether the prosecution should have obtained leave from the trial Judge before challenging Mr Weatherston's veracity by cross-examining him on what he had said in examination-in-chief about some events which occurred prior to the day on which the offending took place. The proposed argument concerns ss 37, 38 and 92 of the Evidence Act 2006. This argument likewise has no prospect of success. The Court of Appeal correctly interpreted and applied the Act. Sections 37 and 38 are not intended to relate to that kind of

questioning of veracity and are, instead, like the old collateral issues rule, intended to stop the introduction of material outside the scope of facts directly or indirectly in issue. In any event, leave would surely have been granted. The Crown had good reason to want to challenge what the applicant had said about the incidents in question and was obliged by s 92 to do so by cross-examination. The matters involved were significant and relevant and the Crown needed to be able to contradict him on them.

[6] No arguable matter of public or general importance has been raised and there is no appearance that there may have been a substantial miscarriage of justice. The criteria for leave are not satisfied.

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