



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

19 OCTOBER 2020

## **MEDIA RELEASE**

BROOKE CHRISTIE ROLLESTON v THE QUEEN (SC 17/2019)

BRANDON JAMES ROCHE v THE QUEEN (SC 18/2019)

[2020] NZSC 113

## **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](http://www.courtsofnz.govt.nz).

## **Suppression**

This judgment is subject to suppression orders under ss 203 and 204 of the Criminal Procedure Act 2011 and s 32B of the Juries Act 1981. These suppression orders prevent the publication of the names, addresses, occupations or identifying particulars of the complainant, any person under 18 who appeared as a witness in the proceeding, and any juror who attended for jury service in this proceeding.

There are also suppression orders in place preventing the publication of minutes issued by the Supreme Court in relation to this proceeding.

## **Background**

On 26 June and 19 November 2019, the Supreme Court issued two results judgments in relation to this proceeding. The Court now gives its reasons.

A jury found the appellants guilty of sexual offending against a teenage complainant.

The appellants appealed their convictions to the Court of Appeal on the basis that one of the jurors was biased. They alleged the brother of one of the appellants had bullied the juror when they were in high school together. The appellants applied for a direction that an independent person be appointed to interview all jurors. The Court of Appeal declined that application and dismissed the conviction appeals.

The Supreme Court granted the appellants leave to appeal the Court of Appeal's decision. The approved question was whether the Court of Appeal was correct to dismiss the conviction appeals.

### **The inquiry**

The first question before this Court was whether or not it should order an inquiry into the juror or jurors.

The appellants argued that an inquiry was necessary because there was enough of an appearance of bias to justify looking further. The Crown argued that there was not.

This Court granted the application and ordered an independent practitioner to interview the juror in question.

The majority, comprising Winkelmann CJ, O'Regan, Ellen France and Williams JJ, considered that if the appellants' allegations were substantiated, it could be inferred the juror had an antipathy to the brother of the appellant that could have influenced his attitude to that appellant. They considered that the Court did not need to decide at the time of ordering the inquiry whether one biased juror was enough to taint the verdict of the jury. That could be addressed, if necessary, after the independent practitioner's report was received. Glazebrook J considered that it was necessary to address the issue because there was a case for ordering the inquiry only if a finding that there was one biased juror would be enough to cause a miscarriage of justice. She considered that bias (actual or apparent) of one juror does mean a miscarriage of justice. All Judges therefore agreed that the allegation of bias was sufficient to warrant a closer look.

The juror was interviewed by an independent barrister about bullying in high school and his experience of the trial. Following the interview, the juror provided a written statement. He said that during the trial, he thought one of the appellants might have looked familiar, but did not know why. He also noticed someone who looked familiar in the public gallery just before delivering the verdict, but again could not place why, and did not connect that person with either appellant. He did not recall being bullied by the brother at school.

### **The substantive appeal**

This Court then heard the substantive conviction appeals.

The appellants argued that there was still an appearance of bias because there were reasons to doubt the juror's statement. They applied to cross-examine the juror. The Crown opposed this application and argued that there was no basis on which to maintain an allegation of apparent bias.

The Court dismissed the application to cross-examine the juror and dismissed the conviction appeals.

It held that there may be occasions where cross-examination of a juror or jurors is justified, but this was not such a case. There was no real conflict between the juror's statement and the appellants' evidence, and nothing suggested the juror's statement might be unreliable. The

juror and the appellant's brother simply had different subjective experiences of the same events.

There was therefore no basis on which to infer juror bias.

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