

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 95/2018  
[2019] NZSC 45

BETWEEN                      MARK EDWARD LUNDY  
   Applicant  
  
AND                                THE QUEEN  
   Respondent

Hearing:                      2 May 2019  
  
Court:                            William Young and O'Regan JJ  
  
Counsel:                      J H M Eaton QC, J-A Kincade and J Oliver-Hood for Applicant  
   P J Morgan QC and M L Jepson for Respondent  
  
Judgment:                      6 May 2019

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**JUDGMENT OF THE COURT**

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- A      Leave to appeal is granted (*Lundy v R* [2018] NZCA 410) in relation to the approved question below.**
- B      The approved question is whether the Court of Appeal erred in applying the proviso to s 385(1) of the Crimes Act 1961.**
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**REASONS**

[1]      The grant of leave is limited to the proviso issue. Leave is declined in relation to the points raised by the applicant about the absence of a demeanour direction by the trial Judge and the admission of the IHC evidence.

[2] In relation to the demeanour direction, there is no matter of general or public importance, this Court having addressed the issue recently.<sup>1</sup> We see no appearance of a miscarriage in the way the Court of Appeal addressed the issue in relation to the applicant's demeanour at the funeral of the deceased.

[3] The applicant did not challenge the Crown's evidence that there was central nervous system (CNS) tissue on the shirt he wore on the night that the deceased were killed at the trial. Nor did he do so in the pre-trial hearings.<sup>2</sup> This was in contrast to the position taken in his appeal to the Judicial Committee of the Privy Council.<sup>3</sup> The experts called by the applicant at the trial accepted the Crown position, based on the IHC evidence. The applicant's challenge to the reliability and admissibility of the IHC evidence was rejected by the Court of Appeal after detailed consideration of the matters raised by the applicant, which necessarily impugned the evidence given by the experts called by him at the trial. We do not see sufficient prospects of success in the argument that the applicant wishes to ventilate again in this Court to justify a further appeal on this issue.

Solicitors:  
Crown Law Office, Wellington for Respondent

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<sup>1</sup> *Taniwha v R* [2016] NZSC 123, [2017] 1 NZLR 116.

<sup>2</sup> *R v Lundy* [2014] NZHC 2527. The challenge to the admissibility of the IHC evidence was "maintained only formally": at [16(b)]. Kós J observed that the experts on both sides were in agreement that there was no doubt that the tissue analysed was CNS: at [78] and [95]. This aspect of Kós J's decision was not challenged on appeal: see *Lundy v R* [2014] NZCA 576.

<sup>3</sup> *Lundy v R* [2013] UKPC 28, [2014] 2 NZLR 273.