

**NOTE: PUBLICATION OF NAME OR IDENTIFYING PARTICULARS OF  
COMPLAINANT PROHIBITED BY S 139 CRIMINAL JUSTICE ACT 1985.**

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 77/2012  
[2013] NZSC 2**

**BENJAMIN IZAAK STANLEY**

v

**THE QUEEN**

Court: Elias CJ, Chambers and Glazebrook JJ

Counsel: J H M Eaton for Applicant  
D J Boldt and Z R Hamill for Crown

Judgment: 7 February 2013

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

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**REASONS**

[1] Benjamin Stanley was found guilty in the District Court at Timaru on one charge of sexual violation by unlawful sexual connection and three charges of sexual violation by rape. The Court of Appeal dismissed his appeal against conviction.<sup>1</sup>

[2] Mr Stanley seeks leave to appeal on the basis that the trial judge should have given a direction warning the jury against placing weight on the demeanour of the

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<sup>1</sup> *Stanley v R* [2012] NZCA 462.

complainant. She had cried shortly after the incident, during the police interview two weeks later, and again during much of her testimony. The Court of Appeal considered that, “in the circumstances of this case ... the Judge was [not] obliged to comment on what the jury might make of the complainant crying in the witness box, or warn them against placing weight on it”.<sup>2</sup> The Court of Appeal declined to endorse a sample direction apparently given in the Crown Court in England with respect to the risks of relying on demeanour as an indicator of the credibility and reliability of a witness.

[3] Mr Eaton seeks to advance before us on Mr Stanley’s behalf the question whether New Zealand courts should have to give a demeanour direction. While the content of and circumstances in which it is appropriate to give such a direction may raise questions of general importance in a particular case, we are satisfied that this was not such a case. What directions are required in any given summing-up is, as the Court of Appeal said, “a case-specific issue”.<sup>3</sup> We agree entirely with the Court of Appeal that, in the circumstances of this case, no further direction was required. The Judge’s summing-up reflected the way in which both counsel sought to use and explain the complainant’s crying.<sup>4</sup> In the circumstances of this case, the Judge responded to counsel’s references appropriately. Significantly, defence counsel<sup>5</sup> did not seek a demeanour direction and did not complain about its absence. In these circumstances, we do not consider the proposed appeal involves a matter of general or public importance. Nor are we satisfied a substantial miscarriage of justice may occur unless the appeal is heard.

Solicitors:  
Crown Law Office, Wellington

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<sup>2</sup> At [16].

<sup>3</sup> At [20].

<sup>4</sup> Mr Eaton was not counsel at trial.

<sup>5</sup> Described by the Court of Appeal as “experienced”: at [19].