



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

4 FEBRUARY 2025

## **MEDIA RELEASE**

TRISTAN LEE TAMATI v THE KING

(SC 48/2024)

**Hearing in the Supreme Court Tuesday 25 February 2025**

### **CASE HISTORY SYNOPSIS**

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court.

#### **Suppression**

Publication of the name, address, occupation or identifying particulars of the complainant, and any persons under the age of 18 years who appeared as a witness, is prohibited.

#### **Background**

##### *Trial counsel's closing address*

In 2020, following a trial by jury in the District Court, Mr Tamati was convicted in relation to two incidents of sexual offending against one complainant. The second incident was said to have occurred on a couch in a bedroom, with C and D nearby on the bed. At trial, C and D recalled Mr Tamati being close with the complainant on the couch. However, D said he did not see Mr Tamati and the complainant having sex. During his summing up to the jury, the trial Judge described C's evidence as "confusing and contradictory".

Mr Tamati's defence was that the complainant had fabricated her evidence. He denied sexual contact with the complainant. Counsel focused on the issue of the complainant's credibility during their closing addresses. Defence counsel emphasised reasons why the complainant may have lied, but chose not to mention the couch incident, including the inconsistencies between the complainant's evidence and C and D's evidence.

##### *Reliability warning under s 122 of the Evidence Act 2006*

Section 122 of the Evidence Act 2006 allows a trial judge who believes a witness's evidence may be unreliable to warn the jury that their evidence may be unreliable and to approach their evidence with caution during deliberations.

There was evidence that Mr Tamati, the complainant and C were intoxicated at the time of the alleged offending. The complainant and C both accepted this had impaired their memory in some respects. The trial Judge did not give a reliability warning in respect of their evidence, though. The Judge also did not direct the jury as to the potential impact of alcohol and drugs on memory.

### *Court of Appeal decision*

On 16 April 2024, the Court of Appeal dismissed Mr Tamati's appeal against conviction and sentence. While the Court thought Mr Tamati's trial counsel could have gone further to exploit discrepancies in the evidence, the choice not to do so was reasonably open to competent counsel. The Court also held that, in the circumstances and in the context of other jury directions, the trial Judge did not need to give a reliability warning to the jury.

### **This appeal**

On 2 August 2024, the Supreme Court granted Mr Tamati leave to appeal.

The approved questions are whether errors by trial counsel may have occasioned a miscarriage of justice, and whether in the circumstances the trial Judge was required to give a reliability warning. Although a trial judge has a discretion to give a reliability warning, in some circumstances the failure to give a warning may occasion a miscarriage of justice or render a trial unfair.

### **Viewing of hearing**

The courtroom is open to the public.

This hearing will also be live-streamed. Details about access to the live-stream and the conditions of access will be posted on the [Courts of New Zealand website](#) shortly before the hearing. No recording is permitted.

### **The panel**

The Hon Justice Kós	The Hon Justice Glazebrook	The Rt Hon Chief Justice Winkelmann	The Hon Justice Williams	The Hon Justice Miller
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Judges as seen from the public gallery

### **Counsel**

- Tristan Lee Tamati (Appellant): *J E L Carruthers and S J Bird*
- The King (Respondent): *M F Laracy and A J Ewing*

### **Sitting hours**

Court will begin at 10:00am and conclude at 4:00pm with adjournments taken from 11:30am to 11:45am and from 1:00pm to 2:15pm. There is no afternoon adjournment.

### **Enquiries**

Any enquiries about the hearing should be directed via email to [supremecourt@justice.govt.nz](mailto:supremecourt@justice.govt.nz). While attending the hearing, enquiries can also be directed to the Court Registry, which is located outside the main courtroom in the Supreme Court foyer.

Contact person:  
Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2024\] NZCA 113](#) (16 April 2024)  
Supreme Court leave decision: [\[2024\] NZSC 91](#) (2 August 2024)

