IN THE SUPREME COURT OF NEW ZEALAND

SC 104/2018

CA854/2013

IN THE MATTER OF	An appeal that a substantial miscarriage of justice has occurred
BETWEEN	**ALLAN JOHN TITFORD**
	Appellant
AND	**THE CROWN**
	Respondent

APPELLANT'S SUBMISSION

To the Registrar of the Supreme Court

I, Allan John Titford, the *appellant* in the proceeding identified above, through this submission, wish to advance my application for the leave of the Supreme Court to appeal against the July 31, 2017, judgement CA 854/2013 NZCA 331 Titford v The Queen, which declined application for leave to adduce fresh evidence, and dismissed both my appeal against conviction and appeal against sentence. That appeal resulted from the guilty verdicts and cumulative sentences of over 24 years being CRI-2010-029-001480 Titford v The Queen that was tried in the Whangarei District Court starting September 2, 2013.

My appeal to the Supreme Court is that the trial process and misdirection by the Judge created a miscarriage of justice.

1. Basic facts

I was tried on 51 counts and two alternative counts in September of 2013 in the Whangarei District Court. Susan Cochrane and her brother Richard were the main sources of testimony against me. I was found guilty of 39 counts 11 of which were majority verdicts. The guilty counts were: Three of rape, four of violent offences against Susan Cochrane; 24 of violence against the children; one for arson, one for attempted arson; one for fraudulent use of a document; one of perjury and one of attempting to pervert the course of justice; one of threatening to kill Susan and one of threatening to kill Richard Cochrane; and one of reckless discharge of a firearm. The jury took about a day and a half to deliberate. Each charge was considered for around 10 minutes. I received a cumulative sentence of 24 years.

This case was appealed in 2017 on the following grounds: incapacity to plea due to mental illness; new evidence from witnesses; insufficient time to prepare an adequate defence; lack

of separation; and the sentence. All the grounds for appeal were rejected. The Appeal Court relied substantially on the affidavit of my trial counsel John Moroney.

My case should not have been tried in Whangarei. Because of the high-profile Treaty of Waitangi claim on my farm, I was a controversial and sometimes reviled figure in Northland. Judge Duncan Harvey clearly disliked me and his animus hindered research into my case. He refused to provide opening and closing statements and the decision tree, claiming in a seven-page memo that they contained highly personal information. That was clearly false.

Response to the appeal judgement

I submit that the trial defence and appeal were inadequate, creating a miscarriage of justice.

The primary appeal argument, that I had a psychiatric problem and was not fit to stand trial, had little prospect of success, as the Justices confirmed. I do not agree that I had a mental illness but I went along with the strategy because Ron Mansfield was my appeal barrister and I felt that he knew best. The argument for separation was well constructed but that for lack of preparation time was done in general terms. The Justices said that Mr Mansfield had failed to demonstrate how the lack of separation and preparation time affected the trial.

The problem was that while Mr Mansfield understood the case in general terms, he lacked a detailed understanding of the evidence, and missed documents that would have allowed him to explain the impact of defence inadequacies and identify misdirection by the Judge.

In the Appeal Court's mind, the Judge Harvey's directions and evidence references solved the problem of the excessive complexity of the trial. The jury took an average of 10 minutes to make a decision on each case. With the 650 pages of trial transcript, 400 pages of witness DVD transcripts, and numerous exhibits to consider, it is obvious that the Judge's directions and summaries were probably all the jury used in nearly all of the cases where they did not go on gut feel alone.

In the unlikely (impossible) event they had used all the 663 evidence references they would have been frustrated. My McKenzie Friend Mike Butler checked all the references. At least 98 references lead to a place where there is either no mention of the offence or specific charge it is supposed to support. It took him 50 hours to locate, check and collate the information. The incidence of cases where evidence was missing was not checked as this would have been very time consuming, but there are significant omissions from Judge Harvey's summaries so it is likely that this flowed over to the evidence references. agj

The defence opening and closing statements were also extremely important. In a trial dominated by prosecution witnesses which stretching over 17 days, Moroney needed to clearly set out the key defence arguments so the jury could see. But he did too little of that.

I have always known that the court got it wrong, and now, after working for four years with Mr Butler (which resulted in a book *24 years – the trials of Allan Titford*), I can now identify how and where it went wrong. Inadequate preparation by my trial counsel meant that (a) key documents were not presented as evidence and (b) he did not understand the fraught relationship property battle that was at the centre of my financial motivation defence, and so failed to present a compelling counter-narrative.

I cannot detail all of the 39 guilty charges in the space allowed. However, to show that an injustice has occurred I have restricted the detailed analysis of evidence and the conduct of the trial to several of the most serious charges to show how preparation inadequacies affected the outcomes. I also address seven alleged assaults on the children where the children themselves did not give evidence or did not mention in their evidence the alleged incidents. This does not mean that I am not appealing the remaining charges, because the general problems of lack of separation and lack of time naturally flowed over to them.

2. Points of law

Mr Moroney's affidavit to the Appeal Court

The Appeal Court placed considerable weight on an affidavit provided by Mr Moroney that was not contested by my barrister Mr Mansfield. The Court drew the conclusion that the short preparation time did not unduly handicap the defence, and that if there were any problems, they were my fault. I did not see that affidavit. Nor would I have agreed with its contents, if I had seen it. It is partial, self-serving and often misleading.

- Mr Moroney admits that "less than two months" were available before the trial. But he does not say when in July he was appointed. However, the Legal Aid Authority job sheet shows that work on the defence did not really start in earnest until mid-August. In the three weeks from the middle of July less than 40 hours were billed. In a case with nearly 5000 pages of discovery documents plus around 30 hours of DVDs to read or watch, and 51 defences to be formulated, the time spent was inadequate.
- Mr Moroney does not explain why he failed to visit me near Te Kuiti so we could work through the charges in detail, face to face.
- Mr Moroney confirmed on page 7 of his affidavit that I would refer to relevant documents on occasion but was never able to find them. I keep all documents and did take a large box of documents to the trial. But during the trial there was too little time to do what should have been pretrial research and analysis.
- Mr Moroney says my defence "was quite simple: these allegations were lies, nothing that the witnesses said was true". There was much more to it than that. I made several counterarguments and the financial motivation behind Susan's accusations was the centre of the defence. However, on the basis of Moroney's statement the Appeal Court formed the view that the only defence offered was a blanket denial.
- Mr Moroney said there were only two supporters at my trial. This was inaccurate, gratuitous and prejudicial. The claim was repeated in the Appeal Court judgement.
- As a result of the lack of preparation, Mr Moroney's opening statement was perfunctory, totalling just 114 words. He simply said that there was another side to the story and that the accusations were motivated by money. In a long complex trial dominated by prosecution witnesses (with only me appearing for the defence at the end) it was essential to flesh out the financial motivation story, which was central to my defence, so the counter-narrative was in the jury's minds from the beginning and they could see the point of Mr Moroney's questions to me and in cross examination.

In his summing up of the rape charges Moroney dropped the financial motivation explanation altogether, because he was not on top of the evidence and arguments.

- Mr Moroney did not disclose a complaint by my friend Ross Baker about his service and fee for work in my trial. That complaint led to an application to the Law Society.

The rape charges

I was found guilty of three charges of rape (1987, a representative charge in 2008, and one in July 2009. Charges of threatening to kill and several charges of assault were an integral part of the complaint as it was necessary for Susan to explain her long delay in coming forward with the first rape and to put the element of force into her accusations

In her initial statement to police on July 30, 2009, Susan made only one complaint about a rape, which she says occurred 1987. It is inconceivable that she could have forgotten about the July 2009 rape, which occurred not much more than one week before the statement was written, and the 2008 event, or events. The only reasonable explanation for the omissions is that these rapes did not happen. Susan said in her DVD interview that the point of the statement was to alert the police to the possibility of violence by me. In that case recent rapes would have been more compelling than one that happened 22 years before.

Mr Moroney did not know about this statement. If he had the impact on the jury could have been decisive. The failure of Mr Moroney to present this document to the court removed the opportunity for Susan to be examined and cross-examined on its contents.

Judge Harvey misdirected the Jury on the rape evidence. He said:

> *The Crown rely on Mrs Titford who says in 1987 after a day of arguing, when she did not want sex she was hit and had no choice but to submit.*
>
> *Mrs Titford said that during 2008 this occurred to her on many occasions and that every time that it occurred there was a background of argument.*[1]

This is not correct. Susan said that there was one rape in 2008. She did not say that there were other rapes in 2008 as Judge Harvey claimed. She had a shifting account of what happened, under persistent questioning, she moved from a single event to broader claims that could have referred to anytime in our 22-year marriage. She presented me as some kind of fiend forcing myself on her with demands for sex two or three times a day. After 22 year of marriage and suffering from undiagnosed diabetes, which squashed my sex drive and made sex uncomfortable for me? Under cross-examination Susan backtracked and said that she "enjoyed sex most of the time, but not the three times he raped me".[2]

Judge Harvey down played this by saying "The accused also points to one point of the complainant's transcript where she said she was only raped on three occasions".[3] A fair and unbiased representation would have been "Susan said in response to Mr Moroney that she enjoyed sex with me most of the time but not the three times he raped me".

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[1] Summing up of Judge Duncan G Harvey, September 25, 2013, pp 40-41

[2] Queen v Allan John Titford, September 2, 2013, p45

[3] Summing up of Judge Duncan G Harvey, September 25, 2013, p41

The Crown was fishing for a representative rape charge. After a break the interviewer, who appeared to have consulted with a colleague, asked (from line 2225) asked directly how Alan would know you didn't want to have sex with him. Susan obliged by saying she told me didn't want to.[4] It was not clear whether she was referring to the three specific occasions or to some unspecified occasions in 2008. That was enough to lay a representative charge which gave the prosecution several advantages.

- It took out the alibi defence of a single dated charge. The interviewer was initially told that there was single rape in 2008 but made no attempt to ascertain the date. She must have known that I was frequently absent from home so any specificity risked a decisive alibi defence
- Repeated rapes meet the threshold for band four sentencing
- Multiple rapes appear more serious to the jury than a single charge.
- It lowers the psychological barrier for a conviction. The jury only had to be sure that it occurred once in 2008, a one chance in up to, say, 1000 possible events, on Susan's account. This is a different proposition from being sure that it occurred once in 2008 when the complainant does not know when in 2008 it occurred.

Judge Harvey linked accepting a "grand conspiracy" theory and the relevance of the delays in making complaints when he said "it is up to you to decide that there was a conspiracy between all these witnesses to come to court and lie. If there is such a conspiracy -- then of course the delay may well become very important". There is no such necessary linkage. It is perfectly possible not to accept that all of the witnesses conspired, and assess the relevance of the delays on a case-by-case basis.[5]

Financial motivation not presented adequately

Susan's primary motivation for the rape and other charges was financial. It was leverage in her matrimonial settlement negotiations, which she knew would be difficult.

- Susan thought that the best way forward was to get access to the assets by regaining effective control of the Mengha trust. She enquired to confirm that I would be removed as trustee if I was convicted in an e-mail to Greg Denholm on July 7, 2009. Attached to the email was a nine-page statement alleging abuse.[6] This email was written before she left me and before the last alleged rape.
- Susan sent a letter to me on July 30, 2009, the same day she made the statement to the police. She said that she wanted $1 million, and added that "people have been telling me that I should lay charges.[7]
- Susan presented herself to the Court as not greedy and only interested in enough money for a house for herself and children.[8] She was able to deflect testing on this

[4] DVD interview transcript, Susan Cochrane, p43.
[5] Summing up of Judge Duncan G Harvey, September 25, 2013, p36.
[6] Email from Susan Cochrane to Greg Denholm, July 7, 2009.
[7] Letter from Susan Cochrane to Allan Titford, July 30, 2009.
[8] Queen v Allan John Titford, September 2, 2013, p39.

because no documentary evidence was presented. The evidence was clear, she did ask for half of $7.5 million and later for $2.5 million,[9] a fact she denied in court.[10]

- Bank records show Susan had taken nearly $160,000 from two of the trusts without my knowledge. She would have been concerned that I would eventually find out, as she was no longer Trustee after being removed following her bankruptcy.[11]

After I was arrested on November 11, 2010, and bailed south of Auckland far away from Northland, Susan successfully took steps to separate me from trust finances, and liquidate trust assets mainly by selling the Awanui farm. Mr Moroney could have presented documents to show that:

- Susan asked the High Court on December 15, 2010, to appoint her as trustee. Her application was not successful.[12]
- In mid-2011, Susan applied to the High Court for an order in which I would agree to resign and have another trustee appointed. She succeeded because I reluctantly agreed to this after legal advice and resigned on August 2, 2011. Accountant Gina Tarasiewicz effectively became trustee.[13]
- Gina's legal counsel Cor Eckard took control of Mengha Trust funds on April 17, 2012, by invoking the order by consent.[14]
- Gina sold the Awanui farm without my consent. The farm sold after I was jailed.[15]

To repeat, in his closing address Mr Moroney made no reference to the financial motivation for the complaints. This was meant to be central to my defence.

Arson and attempted arson

On the attempted arson, in 1988, the Crown's case, as described by Judge Harvey is largely based on Susan's claim that she saw me break the rear window and put diesel on the floor.[16] Judge Harvey said that the reason for the attempt was that I thought that as the house was uninsured the Government would have to provide a new house.[17] Judge Harvey was wrong on that point. Susan only claimed that I thought the Government would provide a new house in relation to the 1992 fire, when our house was actually burnt down.[18]

My defence was mainly based on the implausibilty of the story that I would burn down my own uninsured house, and that the diesel demonstrated that this was not a genuine arson attempt, because diesel is not an effective accelerant. The police report concluded that this was not an attempted arson, and that either I had faked an apparent arson attempt, or that

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[9] Letter from Cook Westenra to Allan Titford, September 1, 2009.
[10] Queen v Allan John Titford, September 2, 2013, p37.
[11] Temma Trust bank account printouts 2001-2009.
[12] Affidavit of Susan Cochrane, December 15, 2010.
[13] Formal written statement of Gina Tarasiewicz.
[14] Letter, Cor Eckard to Elders, April 17, 2012.
[15] Letter, Graeme Halse to Cor Eckard, March 22, 2012
[16] Summing up of Judge Duncan G Harvey, September 25, 2013, p32.
[17] Ibid p32
[18] DVD transcript of the evidence of Susan Cochrane, June 24, 2010, p4.

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another party had done it to intimidate.[19] I do not know if that report was provided to Mr Moroney in the discovery documents. If it was not provided it should have been, as it would have been one of the first documents that the police would have examined.

Mr Moroney bungled this limb of my defence in his closing. He merely asked "where were the diesel tests", completely missing my argument. Judge Harvey failed to mention the diesel argument at all in his summary

The Crown had to prove that there was a benefit to me or a loss to another party. Judge Harvey said that this matter was settled as there was a mortgage on the property. Hence he said "ultimately the issues on all the counts is as follows . . . . count 10 did the accused attempt to burn down his own home, count 11 did the accused burn down his own home".[20]

Judge Harvey failed to appreciate that the mortgagee also had a guarantee from my father and so had a claim on another farm, a 425-acre farm worth $3 million. Our dwelling was worth $~~150~~ 75,000. I made this argument twice, once when questioned by Mr Moroney and again when cross examined by the Crown. The mortgagee's position had not been materially affected by the loss of the house, and they took no action in response to that loss to protect their position. The mortgage was paid off in full, as Susan testified, so there was no actual loss. There was no evidence I took any action to push the Government into providing me with a house and certainly a new house was not provided. Judge Harvey did not present the guarantor argument in his summary of this charge and misdirected the jury by saying that ~~the~~ there was a loss to another party simply because there was a mortgage.

Mr Moroney obviously did not understand the financial aspect of the charge and did not present my argument in his closing.

Threatening to kill Richard Cochrane

For threatening to kill, Judge Harvey put the Crown's case as follows:

> *The Crown said there can be little better evidence of that than Mr Cochrane's own evidence that he did not report a number of incidents that he saw because he was frightened of the accused because the accused ~~and~~ had told him on more than one occasion that he would shoot him his family and his kids.*[21]

My defence was described by the Judge as a simple denial. Mr Moroney did not provide any defence in his closing. He did provide a defence of the alleged threat to kill insurance agent Alastair Nauman, but there was no charge for that. Moroney may have confused the two. Richard Cochrane's actual evidence was as follows:

> *Crown: Did you at any stage say to Allan what you were going to do about it?*
> *Richard: Yeah, a few times I said we would go to the police and every time I mentioned it, it was always, "you go and get help from anyone or go to the police I'll*

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[19] Police report, Detective Constable G.C. Smith, November 11, 1988.
[20] Summing up of Judge Duncan G Harvey, September 25, 2013, p34
[21] Summing up of Judge Duncan G Harvey, September 25, 2013, p46

> *have you shot, I'll shoot you myself' On one occasion he produced a gun and that was way back in the Maunganui Bluff farm. He had two AK47s he was skiting about . . . . .*
> *Crown: The threat in Maunganui –was that in relation to you saying you would go to the police*
> *Richard: Ah, that was the threats about getting shot and shooting all the family where if anyone went to the police about anything.*[22]

This is at odds with the picture Richard had painted of many extended visits to the Bluff. If I made a believable threat, why did the visits continue?

> *Crown: All right, so you mention the threat was directed at you, that he would shoot you. If he was talking about shooting all the family, who was he meaning?*
> *Richard: My parents, my wife my child all my kids.*[23]

Richard was a young teen at the time, he didn't have a wife and kids.

> *Crown: How late did they [later threats] go to;*
> *Richard: It would have been early 2009 and once after the incident where he attacked James when he was fencing. Said if anyone ever went to the police, he'd have us taken out like he had Gordon Wheeler taken out.*[24]

It was put to Richard Cochrane that Alan was in Australia when Gordon Wheeler died. Richard's response was that I could have phoned back to New Zealand, implying that I must have got someone else to do the job. Caught with the impossibility that I had killed Gordon Wheeler Richard switched to another unlikely hypothesis

Richard Cochrane made a statement to police dated August 22, 2010, where he, among other thing, enumerated several cases of assault on the children. He was clear that three threats were made and they occurred between the middle of 2008 and the middle of 2009. Richards reference to the Maunganui "threat" was designed to give the impression that the threats had been going since the original threat to suit the narrative that it was the fear of me that kept everyone quiet for so long.[25] In response to questions from Mr Moroney on our relationship, Richard Cochrane said he had no problems with me. This is not consistent with a claim of ongoing death threats. Nor is it consistent with Richard's claims that he often working on the farm. If he believed them, he would have wanted to give me a wide berth.

Mr Moroney had established that Richard was an unreliable witness. He had convictions for fraud and tax evasion. On two occasions Mr Moroney caught Richard lying about the number of convictions. What was not presented was that I co-operated with the iRD on the latter charges. Richard would have known about this. Getting even as well as supporting his sister was an obvious motive to fabricate accusations

If the threat-to-kill charge had been heard in a stand-alone trial the Crown would have had little prospect of success. But Mr Moroney, inadequately prepared, overwhelmed by the

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[22] Queen v Allan John Titford, September 2, 2013, p261
[23] Ibid, p262
[24] Ibid, p262
[25] Statement to police, Richard Dean Cochrane, August 22, 2010.

number of charges and the breadth and volume of the evidence simply forgot to present my case. With no defence, and with the Crown's claims, the jury convicted.

The watercress shooting charge

I was found guilty on the watercress shooting charge (count 8) despite three fundamentally different versions of the event being presented. According to Susan, a shotgun was fired from the kitchen window.[26] Richard Cochrane said that five shots were fired, from a fence post, which did not appear in the scene photos,[27] while Potter (Susan's brother-in-law) was adamant that only one shot was fired from a free-standing position.[28] The witnesses varied on the date from 1987 to 1992 and on the type of gun used.

There was no police crime-scene investigation which would have addressed uncertainties about the location of the alleged watercress patch, the line of sight from the house and the distance to the patch. Instead the Crown relied on photos that were taken in 1992 when the house was burnt down. There was no complaint from the alleged near victim, as there almost certainly would have been. It would have been an opportunity for the land occupiers to get me in trouble. There was no attempt to retrieve a bullet and match it to one of my guns. According to Crown prosecutor Grant Anson these were just "details". The Judge gave a biased direction in his summing up, saying that if the jury found that a shot or shots were fired it is likely that they would find that it was reckless.[29] Discharging a firearm on a farm is not, in itself, reckless. This ruled out Susan's account, because a shotgun shot could not have reached the watercress picker, and Richard's, because he did not know where the shots were fired. This left Potter's account. This varied over the course of his evidence, but in essence he said he had his back to me when the shot was fired, which he described as a sonic boom not a sonic rifle crack He turned, remonstrated with me for firing the shot; got behind me to locate the alleged watercress picker by "following the line of the gun"; saw the puff of dust (which became a cloud on a second telling) from the impact of the shot only a metre from the "near victim". All in a "split second".

For this to be true the split second would have extended to several seconds; I would have had to have to held an unsupported rifle perfectly still through the action of firing and for a few seconds after; the wet watercress patch would have had to have thrown up a puff/cloud of dust, not a splash, from the bullet impact visible from 600 metres (on Richard's evidence), which, obligingly, hung around long enough for Potter to see exactly where the shot had landed and conclude that it was not a warning shot.

Potter initially placed the alleged watercress patch in the "middle of the field" but the Court allowed Anson to lead him to locate it in Anson's preferred position, (which was not in the middle of the field), in the scene photograph.

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[26] Queen v Allan John Titford, September 2, 2013, p70.
[27] Ibid, pp237-241.
[28] Ibid, pp331-336
[29] Summing up of Judge Duncan G Harvey, September 25, 2013, P45

Potter was unclear as to what kind of gun was used, initially saying it was a .308 or AK47, but was adamant that it was a high-powered gun. On re-examination he settled on a lever action gun like "the ones used in western movies", which he claimed he had experience using. The gun in question is presumably a Winchester, which is a collectors' gun with an effective range of about 100 to 150 metres. It is not a high-powered gun. I have never owned a high-powered gun. The evidence is so garbled and contradictory that the watercress shooting charges would not have proceeded if it was a stand-alone trial. They could only proceed in a multi-charge trial in which evidence escaped proper scrutiny.

Alleged victims unaware of alleged offences

Close examination of counts 14, 20, 21, 25, 46, 47, and 48 gives an example of specific gaps and errors. The alleged victims in those counts gave no evidence and were not examined or cross-examined on the alleged specific events. It was as if they knew nothing about the alleged incidents yet the jury was not presented with this highly relevant fact. They all relate to assaults on children. I was found guilty on four of these being counts 14, 20, 21, 25. The sole evidence for four of these counts (14, 20, 46, 47) were claims by Richard.

Mr Moroney did not pick this up in his summing up. The children did not mention those seven counts in their lengthy statements. The purported victims were available for examination. Why weren't they questioned? If I was tried on those counts in a separate trial they would have been thrown out. This is a glaring example of how processing 53 charges in a single trial perverted the trial process, hid gaps, and led to a miscarriage of justice.

Conclusion

A miscarriage of justice is a failure of a court or judicial system to attain the ends of justice. This submission shows how justice miscarried in the handling of allegations of rape against me, the alleged arsons and attempted arson, the alleged shooting at a watercress picker, and in seven allegations of assaults on children. I have been failed by my trial counsel, my appeal barrister, a District Court Judge and three Appeal Court justices. As a result of events at Maunganui Bluff and my experience during the 53-charge trial I have no faith in the New Zealand justice system. Please give my application serious consideration and be brave enough to find fault with the legal profession if that is due.

SIGNED Allan John Titford.

ALLAN JOHN TITFORD

DATED 10th Dec day of December, 2018 agj.

AUCKLAND

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