

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN
[SQUARE BRACKETS].

**IN THE DISTRICT COURT
AT TAUPO**

**CRI-2017-063-000861
[2018] NZDC 5003**

NEW ZEALAND POLICE
Prosecutor

v

[AIDAN LAWRENCE]
Defendant

Hearing: 16 March 2018

Judgment: 16 March 2018
(On the papers)

JUDGMENT OF JUDGE M A MacKENZIE
[As to access to Court documents]

The application

[1] Mediaworks has made an application under r 6.8 Criminal Procedure Rules 2012 to access the Court file in respect of the above. Specifically, the following documents are sought:

- The summary of facts (already released)
- The judgment of 26 February 2018
- The video shown in Court during the Judge alone trial (the dashcam footage)

- Other contents of the file, including but not limited to charge sheets, witness statements

Response of the police and the defendant

[2] It is said that there is significant public interest, as the case involves a foreign driver causing a serious motor vehicle accident.

[3] To ensure procedural fairness, the police and counsel for the defendant were given an opportunity to respond to the application. The position is as follows:

- (a) The police and the defendant are opposed to the release of the dashcam footage.
- (b) The police are not opposed to the release of the judgment of 26 February 2018, possibly the witness statement from [witness 1], but are opposed to the release of statements made by the police witnesses (in the main these were mainly from the victims involved in the accident).
- (c) The defendant opposes release of all documentation to the media on the basis that:
 - The defendant is a highly regarded medical practitioner in [an overseas city]. Any media coverage may adversely impact the perception of the defendant.
 - The case against the defendant was dismissed. Identification may unnecessarily affect the reputation of the defendant.
 - The defendant and the victims have a right to privacy in this matter without being further subjected to reliving the events again in the media one year after the accident.

The law

[4] Rule 6.8 Criminal Disclosure Rules 2012 has been revoked.

[5] Access to Court documents in the District Court is now governed by the District Court (Access to Court Documents) Rules 2017. These rules came into effect on 1 September 2017.

[6] Access to Court documents in an overall sense depends on a number of variables, including:

- (a) The nature of the proceedings;¹
- (b) Who is seeking access;
- (c) The documents sought; and
- (d) The stage of the proceedings.²

[7] There is a general right of access to documents in relation to a criminal proceeding, provided for in r 8(2) and (3) as follows:

- “(2) Every person has the right to access the following relating to a criminal proceeding, except as provided in subclause (3):
 - (a) the permanent court record under Part 7 of the Criminal Procedure Rules 2012;
 - (b) any published list providing notice of a hearing;
 - (c) any judgment, order, or minute of the court given in the proceeding, including any record of the reasons given by a judicial officer;
 - (d) any judicial officer’s sentencing notes.
- (3) Without limiting rule 6(a), a person may access the following documents only if a Judge permits the person to do so:

¹ For example, Rule 7

² Rule 13

- (a) any pre-trial judgment, order, or minute in a criminal proceeding, including any bail judgment, order, or minute:
- (b) any document containing evidence of a complainant or of a person who gives or intends to give propensity evidence:
- (c) electronically recorded documents of interviews with a defendant:
- (d) any document that identifies, or enables the identification of, a person if the publication of any matter relating to the person's identity (such as the person's name) is forbidden by an enactment or by an order of the court or a Registrar:
- (e) any document received, or any record of anything said, in a proceeding while members of the public are excluded from the proceeding by an enactment or by an order of the court:
- (f) any document containing evidence provisionally admitted into evidence and any document containing evidence that has been ruled inadmissible by the court."

[8] Rules 11 and 12 apply in relation to documents not covered by general rights of access. Rules 11 and 12 say:

"11 Any person may ask to access documents

- (1) This rule applies if a person is not entitled to access a document relating to a proceeding or an appeal under rule 8 or 9.
- (2) A person may ask to access any document by providing the Registrar of the relevant court registry with a letter, an email, or any other written form of request that—
 - (a) identifies the person and gives the person's address; and
 - (b) sets out sufficient particulars of the document to enable the Registrar to identify it; and
 - (c) gives reasons for asking to access the document, which must set out the purpose for which the access is sought; and
 - (d) sets out any conditions of the right of access that the person proposes as conditions that he or she would be prepared to meet were a Judge to impose those conditions (for example, conditions that prevent or restrict the person from disclosing the document or contents of the document, or conditions that enable the person to view but not copy the document).

- (3) The Registrar must promptly give a copy of the request to the parties to the relevant proceeding or appeal, or to their lawyers, by hand or electronically.
- (4) A Judge may dispense with service under subclause (3) if it would be impractical to require notice to be served.
- (5) A party who receives a copy of a request and who wants to object to it must give written notice of the objection to the Registrar, setting out the grounds on which the party objects,—
 - (a) before 3 pm on the third working day after the day on which the copy is received; or
 - (b) if the copy is received on a day on which a hearing relating to the document is proceeding, before 3 pm on the first working day after the day on which the copy is received.
- (6) For the purposes of subclause (5), a person is deemed to receive a copy of a request on the day on which it is sent electronically or handed to the person.
- (7) A Judge may—
 - (a) grant a request for access under this rule in whole or in part—
 - (i) without conditions; or
 - (ii) subject to any conditions that the Judge thinks appropriate; or
 - (b) refuse the request; or
 - (c) refer the request to a Registrar for determination by that Registrar.
- (8) Without limiting the powers in subclause (7), the Judge may refuse a request for access under this rule solely for the reason that the request does not comply with subclause (2)(a), (b), (c), or (d).”

“12 Matters to be considered

In determining a request for access under rule 11, the Judge must consider the nature of, and the reasons given for, the request and take into account each of the following matters that is relevant to the request or any objection to the request:

- (a) the orderly and fair administration of justice:
- (b) the right of a defendant in a criminal proceeding to a fair trial:
- (c) the right to bring and defend civil proceedings without the disclosure of any more information about the private lives of individuals, or matters that are commercially sensitive, than is necessary to satisfy the principle of open justice:
- (d) the protection of other confidentiality and privacy interests (including those of children and other vulnerable members of the community) and any privilege held by, or available to, any person:
- (e) the principle of open justice (including the encouragement of fair and accurate reporting of, and comment on, court hearings and decisions):
- (f) the freedom to seek, receive, and impart information:
- (g) whether a document to which the request relates is subject to any restriction under rule 7:
- (h) any other matter that the Judge thinks appropriate.”

Discussion

[9] Mediaworks seeks access to the Court file, and specifies various documents. I intend to consider the request in relation to specific documents sought and in terms of whether there is a general right of access, or whether access falls to be considered in accordance with rr 11 and 12.

[10] It is important to note that a request for access needs to set out sufficient particulars of the document to enable the registrar to identify it.³

General right of access

[11] There is a general right of access to the following documents pursuant to r 8(2) of the Rules:

³ Rule 11(2)(c)

- Any documents which form part of the permanent Court record under Part 7 Criminal Procedure Rules 2012. This would include the charging documents.
- The written judgment dated 26 February 2018 dismissing the charges, and reasons.

[12] I do note, however, that the Rules do not affect the Court's inherent power to control its own proceedings.⁴

[13] The Court may, on its own initiative or on request, direct that judgments, orders, documents or files of any kind may be accessed only with the permission of a Judge.⁵

[14] The principle of open justice is a compelling one, together with the freedom to seek, receive and impart information. In circumstances where there is an unrestricted right of access, as is the case with r 8(2), significant factors countervailing the public interest would be needed to cut across the general right of access provided for, particularly given that r 8(2) does not require a specific judicial direction. All that is needed is for an oral request to be made to a registrar.⁶

[15] Given the apparently unrestricted right of general access to a certain class of documents, as set out in r 8(2), I venture the view that it would be a rare case where a Judge would be prepared to invoke the Court's inherent power to restrict a general right of access to documents. There are no unusual or compelling features to this case which would cut across that general right of access. The fact that the defendant is a senior medical practitioner and may suffer reputational damage (which I regard as speculative in any event and given that the charges were dismissed) does not reach a point where the Court ought to intervene to exercise inherent jurisdiction to fetter the release of documents which legislation has mandated should be released as of right,

⁴ Rule 5(1)

⁵ Rule 5(2)

⁶ Rule 10(1)

without the need for any judicial intervention or imprimatur. This is in contrast to rr 8(3) and 11.

[16] If the Rules were applied as the legislation intended, I would not have been referred the application as it relates to my judgment, or the changing documents. Therefore, I direct release of:

- (a) The charging documents;
- (b) The judgment of 26 February 2018.

Documents which may be accessed with permission of a Judge

[17] Section 8(3) of the Rules sets out a number of documents which may be accessed only if a Judge permits. This rule governs the release of the statements of the complainants.

Other documents

[18] The summary of facts, other witness statements and the dashcam footage are governed by the procedure in r 11. The procedure for determination of a request under r 11, which involves having regard to the matters set out in rr 12-13, may nevertheless be circumvented by the Court invoking its inherent power to control its own proceedings.⁷

Summary of facts/dashcam footage/witness statements

[19] I am mindful of r 13 which acknowledges that access to documents may be limited before a substantive hearing, but that after a substantive hearing, open justice has greater weight in relation to documents relied on in a determination than other documents, subject to the protection of confidentiality and privacy interests which have greater weight than would be the case during the substantive hearing.

⁷ Rule 5(1)

[20] In terms of r 12, it is a matter of balancing the principle of open justice, including fair and accurate reporting, as against the protection of other confidentiality and privacy interests. I address the r 12 matters, which are relevant to this case, as follows:

- (a) **Right to a fair trial** - As the charges have been dismissed, there are no issues as to fair trial rights.
- (b) The protection of other confidentiality and privacy interests/privilege – The most significant issue relating to confidentiality and privacy interests relates one of the victims, who is a young child. A strong submission is made that release of the dashcam footage in particular may retraumatise the young child. There is cogency to that submission. I accept there are privacy considerations which relate to the victims, particularly because of the traumatic nature of the collision. The same could be said for the defendant, [Aidan Lawrence]. However, those interests need to be weighed against the public interests firstly, secondly, the judgment of 26 February 2018 is to be released by virtue of the general right of access, and thus there would be artificiality if confidentiality and privacy rights restricted access to other documents. Given that the charges against Dr [Lawrence] were dismissed, and there are clear reasons why that was so, it is difficult to see what adverse impact or reputational damage would result.
- (c) **The principle of open justice/freedom to seek and receive an impart information** – These principles are important, given the need to encourage fair and accurate reporting of, and comment on, Court hearings and decisions. I accept that on the face of it, it may seem inexplicable that when a vehicle crosses the centreline into the path of another vehicle, that the charges could be dismissed. As complete a picture as possible therefore is needed to provide proper context for fair and accurate reporting.

- (d) **Are any documents subject to restrictions in terms of r 7?** - The documents sought are not subject to any restrictions in terms of r 7.
- (e) **Stage of proceedings** – This case has concluded and the charges have been dismissed. I am mindful of r 13(c)(i) that open justice has greater weight in relation to documents that have been relied on in a determination than other documents. Whilst I accept that the protection of confidentiality and privacy interests has greater weight than would be the case during the substantive hearing, there is also a need to consider the public interest in cases involving the behaviour of tourist drivers, which is a topical matter.

[21] In respect of the request to access the various documents, the outcome is as follows:

Summary of facts

[22] As the summary of facts has already been released, I grant access to the police summary. The caveat is that it is superseded by the judgment of 26 February 2018 which arises from the Judge alone trial and which set out the relevant factual findings.

Statements of witnesses, complainants and dashcam footage

[23] Whilst these are governed by different provisions⁸, helpful guidance can be gleaned from *Television New Zealand v Rogers*⁹ and *TVWorks NZ Ltd v Parsons*¹⁰:

[24] In *Television New Zealand v Rogers*, Tipping J said at para [67]:

“The rules relating to the search of court records envisage the balancing of competing interests. It is difficult to posit a case in which the principle of open justice will not, to a greater or lesser extent, be a factor in favour of release. It is therefore generally appropriate to administer the rules on the basis that unless there is some good reason for withholding the material concerned, members of the public, or at least those with a bona fide purpose in obtaining the information, should be entitled to it. The freedom of information culture which

⁸ Rules 11-13 (witness statements and dashcam footage) and 8(3) (complainant’s statements)

⁹ *Television New Zealand v Rogers* [2008] 2 NZLR 277 (SC)

¹⁰ *TVWorks NZ Ltd v Parsons* [2009] NZAR 198 (HC)

exists in New Zealand, and its counterpart, the right to freedom of expression, both justify this general approach. In practical terms the effect of this approach is that if the balance of competing factors is even, the material in question should be released.”

[25] In *Television New Zealand v Rogers*, at paras [73] and [74], Tipping J said:

“[73] Concerns were also expressed that TVNZ might wish to present the video or selected aspects of it in a ‘sensationalist’ rather than a dispassionate and balanced way. That argument invites the Court both to speculate and to enter into the murky waters of presentational censorship and editorial control. I would decline the invitation. The videotape should either be made available to TVNZ or it should not. Matters of presentational and editorial judgment should be left where they belong. If it transpires that there are concerns about how the videotape has been used, they can be addressed by recognised causes of action or by reference to the Broadcasting Standards Authority.

[74] One final point should be mentioned. The courts must be careful in cases such as the present lest, by denying access to their records, they give the impression they are seeking to prevent public scrutiny of their processes and what has happened in a particular case. Any public perception that the courts are adopting a defensive attitude by limiting or preventing access to court records would tend to undermine confidence in the judicial system. There will of course be cases when a sufficient reason for withholding information is made out. If that is so, the public will or should understand why access has been denied. But unless the case for denial is clear, individual interests must give way to the public interest in maintaining confidence in the administration of justice through the principle of openness.”

[26] The request for access to the documents is legitimately made, given the public interest in driving behaviour of overseas visitors. The Supreme Court in *Television New Zealand v Rogers* makes it clear that the application for access to documents should be granted unless there is some good reason for withholding the material concerned. It is also well established that it is not for this Court to exercise a censorship or editorial function in an area outside its control.¹¹

[27] This very issue was considered by His Honour Judge Cooper in *Television New Zealand v Knox*¹² in terms of police taser footage. Balancing the competing considerations, I do consider that there is a good reason for withholding the dashcam footage in this case. One of the victims is a young child and is particularly vulnerable.

¹¹ *TVWorks NZ Ltd v Parson and Television New Zealand v Rogers*

¹² *Television New Zealand v Knox* [2017] NZDC 3329

This is a matter specifically referred to in r 12(d). I am required to take into account the protection of other confidentiality and privacy interests, including those of children and other vulnerable members of the community. That is quite a different position to the situation which existed in the *Knox* case which involved police officers.

[28] Information from the police is that the child is traumatised and is receiving ongoing therapeutic assistance. I acknowledge the potential for release of the dashcam footage to undermine and cut across those therapeutic interventions in the event the footage was in the public domain, in particular given the long reaching footprint of the digital era. Privacy interests of the child victim outweigh the public interest in release of the dashcam footage and the request for access to the dashcam footage is therefore declined.

[29] Aside from the dashcam footage, I grant access to the statements of the complainants and witnesses. I was concerned that release of particularly the complainants' statements may cause stress to the complainants, given the traumatic nature of the collision. However, as noted, it is not the role of this Court to indulge in censorship, and I am certain that the sensitivities of the situation are readily understood by the media.

[30] I do not consider that privacy interests relating to the defendant [Aidan Lawrence] override the legitimate public interest, given:

- (a) I accept that there is a high and legitimate public interest in the actions of overseas drivers;
- (b) It is difficult to see how there could be adverse publicity or reputational damage to the defendant, given that he was found not guilty; and
- (c) That the judgment is clear that the defendant acted responsibly in respect of his approach to driving on the day in question.

[31] In summary, relevant factors in terms of the decision to grant access to the documents requested include:

- The principle of open justice.
- Given that the charges were dismissed, it is important that access is granted to the documents sought (with the exception of the dashcam footage) so that any reporting can be fair and balanced and there is an understanding of why the charges were dismissed. To deny access to documents may give an erroneous impression that the Court is seeking to prevent public scrutiny of processes and the decision. To do so would undermine or limit confidence in the judicial system.
- I have balanced and taken into account the competing considerations of confidentiality and privacy, but they do not outweigh the principles of open justice in this particular case, other than the refusal to grant access to the dashcam footage, for the reasons already outlined.
- There is a legitimate public interest in access to documents, given the topical nature of issues relating to drivers from overseas countries.

M A MacKenzie
District Court Judge