

IN THE HIGH COURT OF AUSTRALIA

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BROWN

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v.

THE QUEEN

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## REASONS FOR JUDGMENT

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ORAL Judgment delivered at..... HOBART  
on..... FRIDAY 16th FEBRUARY 1973.....

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267  
CRIMINAL LAW - VOIRE DIRE - COMMENT BY JUDGE  
AS TO CREDIBILITY OF ACCUSED - UNNECESSARILY  
IMMODERATE LANGUAGE - POSSIBILITY JURY WOULD  
GET TO HEAR OF COMMENTS.

BROWN

v.

THE QUEEN

ORDER

Application for special leave to appeal refused.

BROWN

v.

THE QUEEN

JUDGMENT

ORAL

BARWICK C.J.

BROWN

v.

THE QUEEN

In my opinion, this is not a case for the grant of special leave. The suggested ground of appeal is that the trial miscarried because the trial judge, in giving his reasons for ruling on the voir dire that a confessional statement was admissible as voluntary, expressed his firm view as to the credibility of the accused as to matters of which the accused had given evidence before him. It is not suggested here that such reasons may not be given, that is to say the judge may not express himself in giving judgment on the voir dire. The objection is to what is claimed to be the unnecessarily immoderate language in which the judge expressed himself. It is said that there was at least a possibility that the jury would have heard of the judge's expression, the possibility against which it is submitted the trial judge ought to have taken the precaution of separating the jury from the public for the balance of what in the event proved to be a long trial. No request, however, was made at the time that this course be followed although the

possibility of the judge's reasons being reported in the local community was in counsel's mind.

What a judge should have or should not have said in giving his reasons on the voir dire in a criminal trial can only be decided in the circumstances of each case. No doubt the possibility that his reasons may reach the jury's eyes or ears in the circumstances of the trial and bearing in mind the public interest in it must be a factor in the judge's choice of language in expressing himself and in his exercise of discretion as to what steps, if any, he may take to keep what he has said from the eyes or ears of the jury.

However, I see no reason myself in this case to doubt the propriety of the Court of Appeal's refusal to regard the trial judge's expression as immoderate or as unnecessary in the circumstances.

I might add that no attack is made before us on the summing up in which the question of the accused's credibility in relation to the confession and the weight to be given to that confession were fairly left by the trial judge to the jury, nor is there any other aspect of the trial which is attacked.

In my opinion, the application for special leave should be refused.

STUART LLOYD BROWN

v.

THE QUEEN

JUDGMENT  
(ORAL)

McTIERNAN J.

STUART LLOYD BROWN

v.

THE QUEEN

I think the application should be refused  
and I agree substantially with the Chief Justice in what  
he has said.

STUART LLOYD BROWN

v.

THE QUEEN

JUDGMENT  
(ORAL)

GIBBS J.



STUART LLOYD BROWN

v.

THE QUEEN

I agree that the application should be refused  
for the reasons given by the Chief Justice.

STUART LLOYD BROWN

v.

THE QUEEN

JUDGMENT

(ORAL)

STEPHEN J.

STUART BLOYD BROWN

v.

THE QUEEN

I too agree that the application should be refused and I so agree in the terms stated by the Chief Justice.