

FEDERAL COURT OF AUSTRALIA

Roberts-Smith v Fairfax Media Publications Pty Limited (Appeal) [2025] FCAFC 67

SUMMARY

In accordance with the practice of the Federal Court in cases of public interest, the following summary has been prepared to accompany the orders made today. This summary is intended to assist in understanding the outcome of this proceeding and is not a complete statement of the conclusions reached by the Court. The only authoritative statement of the Court's reasons is that contained in the published reasons for judgment which will be made available on the internet at the Court's website. This summary is also available there.

In 2018 a number of articles were published in the Fairfax newspapers about the activities of Australian special forces soldiers during the war in Afghanistan. Among other things, the articles contained sensational allegations that war crimes had been committed by soldiers in the Special Air Service Regiment, raising serious questions about the culture and command structure of the regiment. The appellant sued the publishers and the investigative journalists who wrote them, claiming he had been defamed in the articles. The respondents contended that the defamatory imputations were substantially true and also relied on the defence of contextual truth. After a lengthy trial, the primary judge found that the appellant was defamed in the articles but held that most of the imputations were substantially true, upholding the defence of contextual truth with respect to the other imputations. In particular, his Honour found that the respondents had proved to the requisite standard that the appellant had committed, or was complicit in and responsible for murder, on three different missions. These were murders because his Honour was satisfied, contrary to the appellant's account, that the people whose deaths he caused, procured or agreed to were protected by the laws of armed conflict. In the course of his reasons, his Honour made numerous adverse findings about the credibility of the appellant's evidence and that of witnesses called on his behalf who had testified that the killings were legitimate.

In this appeal none of the adverse credit findings are challenged. Nevertheless, the appellant claims that none of the murder findings (and certain associated findings) should have been made. In short, he argues that the evidence upon which the respondents relied was not sufficiently cogent to satisfy the respondents' burden of proof and that the primary judge gave no, or no adequate, weight to the presumption of innocence. He points to various matters, too

numerous to mention in this short summary, which he contends disclose discrete errors. Having carefully considered all these matters, we are unanimously of the opinion that the evidence was sufficiently cogent to support the findings that the appellant murdered four Afghan men and to the extent that we have discerned error in the reasons of the primary judge, the errors were inconsequential. Accordingly, the appeal must be dismissed with costs.

PERRAM, KATZMANN AND KENNETT JJ

16 MAY 2025

SYDNEY