IN THE SUPREME COURT OF NEW ZEALAND

SC 36/2014
[2014] NZSC 92

BETWEEN	PAUL ANTHONY BLAIR Applicant
AND	THE QUEEN Respondent

Court:	McGrath, William Young and Glazebrook JJ
Counsel:	R M Lithgow QC for Applicant C A Harold for Respondent
Judgment:	21 July 2014

JUDGMENT OF THE COURT

The application for leave to appeal is refused.

REASONS

[1] The applicant was convicted by a jury in the District Court of selling cannabis to a police officer at the door of a house and of possession of cannabis for sale. The Court of Appeal dismissed his appeal against conviction.[1]

[2] His application for leave to appeal is based on the grounds of wrongful admission of voice identification evidence and failure by the trial Judge to address the jury on that evidence in breach of ss 46 and 126 of the Evidence Act 2006.

[3] The Crown case was primarily based on visual recognition of the applicant as the person who answered the door when a police officer knocked, and who sold the officer a tinnie. The officer gave detailed evidence of the appearance of the seller

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1 *Blair v R* [2014] NZCA 101.

and identified the applicant from a photo montage. The officer also gave evidence that the seller he spoke with had a distinctive baritone voice and was the same person who had earlier called out "hold on" before answering the door. The applicant admitted being on the premises at the time and that he was the person who called out when the police officer knocked. His defence was that there was another person in the house, of similar appearance to the applicant, who answered the door, spoke with the officer and made the sale.

[4] The voice identification evidence had been admitted without objection at trial. The Court of Appeal decided that, on the balance of probabilities, it was reliable and therefore admissible under s 46 of the Evidence Act. The voice was distinctive, there was no background distorting noise and there had been a very short period of time between the two voices that were heard.[2] We see no arguable error of approach nor any flaw in this reasoning that is indicative of a miscarriage of justice. We see it as relevant to our conclusion that this is a case where two voices were heard 'side by side' in circumstances where the opinion of the officer was based on a comparison that, on the evidence, he was in a position to make. It is not a case of an identification based on the familiarity of the witness with the accused's voice.

[5] In relation to whether a warning should have been given to the jury, a detailed direction on the visual identification evidence was given by the Judge, concerning which there was no complaint. The Court of Appeal decided that the Crown case did not depend "wholly or substantially on the voice identification" in terms of s 126 of the Evidence Act. It turned on the visual identification.[3] We see this analysis as correct beyond argument, so that no direction was required under s 126.

[6] Overall, the applicant raises no matter of general or public importance. Nor is there any indication a substantial miscarriage of justice has occurred.

[7] Leave to appeal against conviction is refused.

Solicitors:
Crown Law Office, Wellington for Respondent

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2 At [11] and [13].
3 At [21] and [26].