

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 94/2009  
[2009] NZSC 126**

|         |                                  |
|---------|----------------------------------|
| BETWEEN | JUSTIN LEIGH HARNEY<br>Applicant |
| AND     | NEW ZEALAND POLICE<br>Respondent |

Court: Elias CJ, Tipping and Wilson JJ

Counsel: A J Bailey for Applicant  
M E Ball for Crown

Judgment: 8 December 2009

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

**REASONS**

[1] The applicant defended driving charges in the District Court on the ground that it had not been established beyond reasonable doubt that he was the driver. He was convicted and appealed unsuccessfully to the High Court.<sup>1</sup> The applicant now seeks leave to appeal directly to this Court against the judgment of the High Court.

[2] Such an appeal would raise issues about the interpretation and application of s 45 of the Evidence Act 2006, which governs the admissibility of visual identification evidence. Those issues may well be of general and public importance. Before considering them, however, this Court would want to have the benefit of the views of the Court of Appeal.

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<sup>1</sup> High Court, Christchurch, CRI 2009-409-141, 13 October 2009, Harrison J.

[3] If the applicant wishes to pursue his challenge to the judgment of the High Court, he should therefore seek leave to appeal to the Court of Appeal. Before doing so, the applicant should consider the possible implications of the very recent judgment of the Court of Appeal in *R v Thomson-Wiari*,<sup>2</sup> which was delivered on 27 November 2009 with the reasons following on 1 December.

Solicitors:  
Crown Law, Wellington

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<sup>2</sup> [2009] NZCA 562.