Supreme Court of New Zealand

16 September 2011

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

Justin Leigh Harney v Police
(SC 64/2010) [2011] NZSC 107

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

Mr Harney was convicted in the District Court at Christchurch on charges of operating a motor vehicle recklessly and of failing to stop when required to do so. His appeals to the High Court and the Court of Appeal were dismissed.

He appealed to the Supreme Court over the application of s 45 of the Evidence Act 2006 to identification evidence given by a police officer, who said that at the time of the incident giving rise to the charges he recognised Mr Harney from having had dealings with him on two occasions some years previously. No identification parade or other formal identification procedure had been carried out. The issue was whether in the absence of such a procedure the evidence should have been admitted; in particular, whether the constable's recognition of Mr Harney provided a good reason for not conducting a formal procedure; and whether it had been proved that the circumstances in which the identification was made had produced a reliable identification.

The Supreme Court has concluded that the identification evidence should not have been admitted. Whilst the fact that an identification witness recognised a defendant could provide a good reason for dispensing with any formal procedure, the evidence

given at Mr Harney's trial had not provided a basis upon which it could properly be found that the constable's prior interactions with Mr Harney were a good reason for the lack of a formal procedure. Only scant evidence had been given of the nature of the constable's dealings with Mr Harney, the first about seven years beforehand and the second a year or two after that. There was no evidence of whether the constable dealt with Mr Harney briefly or at length on those occasions. This is not a case where a formal procedure would have served no useful purpose. Nor were the circumstances in which the purported identification occurred conducive to an accurate identification, because Mr Harney's vehicle was moving and the observation made by the constable must have been for a matter of a few seconds only, thereby affording him only a relatively fleeting glimpse of the face of the driver which he said he remembered from the earlier occasions. The circumstances in which the identification was made had not been proved to the requisite standard to have produced a reliable identification.

The appeal was allowed and the convictions set aside. As Mr Harney had long since been released after serving the sentence imposed by the District Court Judge, no retrial was ordered.

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