NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF COMPLAINANTS PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011. SEE http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360350.html

NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF ANY PERSON UNDER THE AGE OF 18 YEARS WHO IS A COMPLAINANT OR WHO APPEARED AS A WITNESS PROHIBITED BY S 204 OF THE CRIMINAL PROCEDURE ACT 2011. SEE http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360352.html

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 72/2025
[2025] NZSC 154

BETWEEN		LEON TAMATI CHASE Applicant
AND		THE KING Respondent

Court: Glazebrook, Ellen France and Kós JJ

Counsel: R J Stevens for Applicant
L J Sullivan for Respondent

Judgment: 11 November 2025

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

Introduction

[1] The applicant, Mr Chase, was convicted after trial on seven counts of sexual

offending against two young family members.[1] He was acquitted on another nine of the charges he faced. A term of eight years and three months' imprisonment was imposed.[2] He appealed unsuccessfully to the Court of Appeal against conviction and now seeks leave to appeal to this Court.[3]

Background

[2] The background is set out in the judgment of the Court of Appeal.[4] We need only note that the offending spanned several years and took place at a number of addresses where the complainants lived or were visiting family members.

[3] The defence case at trial was that the sexual acts did not happen. Mr Chase gave evidence at trial.

The proposed appeal

[4] The applicant raises three broad grounds all of which relate to the trial Judge's directions to the jury. The first of these grounds relates to the approach taken by the Judge in opening remarks; the second relates to directions about the evidence in the summing up; and, finally, the applicant says the Judge was wrong to give a propensity direction.

[5] The proposed appeal would reprise the arguments made in the Court of Appeal. In dismissing the appeal, the Court of Appeal addressed each of the matters raised by the applicant beginning with the issues arising out of the opening remarks.

The opening remarks

[6] The first challenge relating to the opening remarks is directed to the failure to discuss the burden and standard of proof. The Judge in the opening remarks said this:

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1 The convictions were entered on two charges of sexual violation by rape, two charges of sexual violation by unlawful sexual connection, and three charges of doing an indecent act on a child under 12.

2 *R v Chase* [2023] NZDC 18518 (Judge Mackintosh).

3 *Chase v R* [2025] NZCA 271 (Campbell, Dunningham and Harvey JJ) [CA judgment].

4 At [4]–[6].

> There is no obligation on a defendant in a criminal trial to give or call evidence. He's perfectly entitled to rely on the presumption of innocence and we'll be hearing more about that later on.

[7] The Court of Appeal recorded that the Crown accepted the Court of Appeal authorities are to the effect that reference to the presumption of innocence and the burden and standard of proof should be included in opening remarks, although the explanation need not be detailed.[5] The Court said that the approach here was "not ideal" but had not resulted in a miscarriage of justice.[6] Ultimately, the concern was met by the fact the Judge in summing up gave "a full and orthodox *Wanhalla* direction" on the burden and standard of proof; both counsel referred to these issues in their opening addresses; and the Judge's opening remarks, albeit brief, did alert the jury.[7]

[8] The Court of Appeal considered the next aspect, the omission of reference to prejudice or sympathy in the opening remarks, was also not ideal. But the Judge addressed the topic "firmly" in summing up.[8] It was also discussed in defence counsel's opening address and in both counsel's closing addresses.

[9] The third issue related to the directions about keeping an open mind. The Judge did direct the jury on the need to keep an open mind in her opening remarks, stating:

> It's very important to keep an open mind right throughout the trial until you have heard everything, right from the beginning, right to the very end …

[10] The Court of Appeal saw no merit in the argument this aspect should have been dealt with more fully in opening remarks.

[11] Finally, the applicant says that the opening remarks should have included a direction on demeanour. The Court of Appeal's assessment of this aspect is expressed as follows:

> [27] After reviewing the cases cited by [the Crown], we consider there has been no miscarriage of justice here due to the Judge's omission to address this matter in her opening remarks. Although a direction in the Judge's opening

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5 At [12], citing *Wilson v R* [2019] NZCA 485 at [27].
6 At [14].
7 At [14], referring to *R v Wanhalla* [2007] 2 NZLR 573 (CA).
8 At [18].

> remarks would have been helpful (as identified in *Taniwha*),[9] it is not strictly obligatory. Here, the risk of unfairness was averted by the firm directions in the Judge's summing up.

Directions in summing up on the evidence

[12] Turning then to the issues relating to the summing up, the Court of Appeal addressed first the way in which the Judge had directed on the evidence applicable to each charge. In relation to this the Court of Appeal noted that the Judge was "very economical" in her description of the evidence and its link to each individual charge.[10] But, the Court of Appeal noted, considerable time was spent discussing counsels' submissions on the credibility and reliability of the complainants' evidence. The Judge discussed various examples of what the defence highlighted as inconsistencies in the evidence. The Court of Appeal considered this was a "reasonable and fair approach in the circumstances". The Court also noted that because the hearing was short (three days) the evidence would have been fresh in the jury's mind. The Court of Appeal continued:[11]

> The primary issue for [the jury] to determine was whether the witnesses' evidence was credible and reliable, and this was also where the Judge placed her focus. This was appropriate given that there was seemingly no dispute that if the evidence was accepted, the charges would be made out.

[13] The Court also observed there was some force in the submission for the Crown that "the mixed verdicts demonstrate that the jury did consider each charge separately, as directed, despite generic question trails".[12]

[14] The Court of Appeal also discussed the related submission that the Judge failed to put the defence case. On this the Court said that although there had been no discussion of each individual charge, the central defence arguments were set out; namely, that the witnesses' evidence was "incredible, unreliable and implausible".[13]

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9 *Taniwha v R* [2016] NZSC 123, [2017] 1 NZLR 116.
10 CA judgment, above n 3, at [68].
11 At [68].
12 At [69].
13 At [75].

The propensity direction

[15] The final aspect relates to the direction given on propensity. As the Court of Appeal noted, the Judge provided a full propensity direction although the prosecutor had indicated the Crown was not relying on propensity. On this the Court of Appeal said that:

> [56] The propensity direction provided by the Judge was fair and fulsome and did not disadvantage the defence. The chambers discussion on 15 June 2023 does confirm that defence counsel consented to — and even potentially sought — such a direction. Moreover, the direction was neutral in its wording and referred to defence arguments relating to collusion and suggestibility. It is notable that the Crown also did not have an opportunity to discuss the issue in its closing address. We do not accept that the inclusion of the propensity direction rendered the trial unfair or otherwise gave rise to a miscarriage of justice. It was a reasonable response to a case in which the jury might, of its own accord, adopt propensity reasoning. The direction was fair and fulsome, and it was consented to by defence counsel at the time.

Discussion

[16] Resolution of the issues raised under the proposed grounds of appeal would not give rise to matters of principle but, rather, would turn on the application of established law to the facts of this case. No question of general or public importance arises.[14]

[17] In terms of the proposed ground of appeal concerning the opening remarks, we address first the issue raised about the directions on the burden and standard of proof. We emphasise that, as the Court of Appeal observed, the Criminal Jury Trials Bench Book recommends trial judges direct on burden and standard of proof in their opening remarks. That should have been done here. That said, for the reasons given by the Court of Appeal, the error has not led to a miscarriage of justice.[15] The Judge did draw attention to the absence of any burden on the defendant, the point was dealt with fully in both counsel's opening addresses, and there is no criticism of the Judge's directions in summing up on the topic.

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14 Senior Courts Act 2016, s 74(2)(a).

15 We do not need to decide if the Court of Appeal was right that the concern was met by the full direction in accordance with *R v Wanhalla*, above n 7. See also *H (CA378/2023) v R* [2024] NZCA 594 at [18]–[22].

[18] In respect of the other matters raised by the applicant concerning the opening remarks and those addressed under the second and third of the proposed grounds, nothing raised by the applicant suggests that the Court of Appeal was wrong in its assessment that the trial Judge's directions did not give rise to the appearance of a miscarriage of justice.[16] The criteria for leave to appeal are not met.

Result

[19] The application for leave to appeal is dismissed.

Solicitors:
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent

[16] Senior Courts Act, s 74(2)(b).