IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 64/2025
[2025] NZSC 163

BETWEEN	BROOKE MAURICE DUNN Applicant
AND	THE KING Respondent

Court: Glazebrook, Kós and Miller JJ

Counsel: N P Chisnall KC for Applicant
I S Auld for Respondent

Judgment: 18 November 2025

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Dunn, the owner of a paint business, Brooke Dunn Coatings Ltd (BDCL), was convicted following a jury trial of seven charges of possessing and supplying the industrial chemical hypophosphorous acid (HPA) for the manufacture of methamphetamine. The Crown case was circumstantial, depending on inferences being drawn from a number of strands of evidence.[1] Mr Dunn maintains the HPA was legitimately used in his paint business as a paint stripper and thinner, and in an anti-rust treatment.

[2] Mr Dunn appealed his convictions to the Court of Appeal, raising several grounds including the absence of a lies direction, inadequate directions on inferences,

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1 See *Dunn v R* [2025] NZCA 216, [2025] 2 NZLR 786 (French, Palmer and Cooke JJ) [CA judgment] at [21].

inversion of the burden of proof and improper reference to potential methamphetamine yield.[2] After the hearing, he sought to reopen the appeal and adduce fresh evidence from a forensic accountant, Mr Parsons, challenging the Crown's financial analysis.[3] That evidence had been prepared for a separate proceeding under the Criminal Proceeds Recovery Act 2009. Mr Dunn initially sought to appeal against sentence as well as convictions but later abandoned that appeal.

[3] The Court of Appeal declined to admit the fresh evidence and dismissed the appeal.[4] It found no error in the trial Judge's directions and concluded that Mr Parsons' evidence lacked cogency, being speculative and inconsistent with trial evidence. Mr Dunn now seeks leave to appeal against the Court of Appeal's judgment in this Court.

The parties' submissions

[4] Mr Dunn submits that the trial Judge erred in failing to give a lies direction under s 124 of the Evidence Act 2006 and a "*Hodge* direction" on inferential reasoning—i.e., that before finding him guilty, the jury had to be satisfied not only that the circumstances were consistent with his having committed the act, but also that the facts were inconsistent with any other rational conclusion than that he was guilty—and that the Court of Appeal did not properly address those errors on appeal.[5] He further submits that the Court of Appeal erred in declining to admit Mr Parsons' evidence, which partly undermined the Crown's argument regarding unexplained business income. Mr Dunn says these grounds raise both a risk of a miscarriage of justice and matters of general or public importance.[6]

[5] The Crown opposes leave. It says a lies direction was unnecessary given the trial Judge gave a tripartite direction and trial counsel strategically chose not to seek a lies direction; the *Hodge* direction is not required by law and was effectively covered

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2 At [29], [39]–[41], [54], [68]–[71] and [83].
3 At [87]–[88].
4 At [124]–[125].
5 Referring to *R v Hodge* (1838) 2 Lew CC 227, 168 ER 1136 as cited in *R v Hart* [1986] 2 NZLR 408 (CA).
6 Senior Courts Act 2016, s 74(2)(a) and (b).

by standard burden of proof directions; and Mr Parsons' evidence is not fresh or cogent, and contradicts evidence given at trial.

Our assessment

[6] We address each of the proposed grounds of appeal below.

Lies direction

[7] Mr Dunn's experienced trial counsel, Philip Morgan KC, did not seek a lies direction at trial, reflecting his view that "the complete lies direction is not at all helpful for a defendant", being "akin to telling the jury that the defendant has lied on oath or has lied to the Police" and therefore "counter-productive". As the Court of Appeal said, a trial judge has an overriding duty to ensure a fair trial and is not bound by the views of trial counsel, though those views can properly be taken into account.[7]

[8] In our view, the lack of a lies direction cannot have rendered Mr Dunn's trial unfair, or his conviction unsafe: Mr Morgan addressed the allegations of lying directly and at length in closing, presenting the alternative, innocent explanation clearly to the jury. The jury clearly did not accept the Crown case uncritically or assume Mr Dunn was necessarily guilty, as it acquitted him of the charges stemming from the first shipment of HPA.

[9] We do not therefore consider this proposed ground raises a risk of a substantial miscarriage of justice.[8]

Hodge *direction on inferential reasoning*

[10] This proposed ground raises no matter of general or public importance. A direction as to inferential reasoning is generally not mandatory wherever the jury is invited to draw inferences from the evidence, the requirement rather being that the judge must ensure the jury is adequately directed on the burden and standard of proof

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7 CA judgment, above n 1, at [59] citing *W (SC 120/2022) v R* [2023] NZSC 50 at [15].

8 Senior Courts Act, s 74(b). That is so whether or not a lies direction ought ideally to have been given: see *McAllister v R* [2014] NZCA 175, [2014] 2 NZLR 764 at [38].

beyond reasonable doubt in the circumstances of the case.[9] That was dealt with here via the standard *Wanhalla* direction, which is not challenged on appeal.[10] In our view, that was sufficient in the circumstances of this case.

[11] Nor has the applicant established a reasonably arguable error in the Courts below so as to give rise to a risk of a substantial miscarriage of justice. There was a significant amount of circumstantial evidence pointing to Mr Dunn's guilt. A jury was entitled to reject his innocent explanation as implausible and therefore not a reasonable alternative to the Crown case.

New evidence on appeal

[12] This ground challenges the Court of Appeal's finding that the proposed evidence of Mr Parsons lacked cogency. While there is also an issue as to freshness, the Crown does not appear to contest it, the Court of Appeal having based its decision on cogency rather than freshness.[11] We therefore focus on cogency.

[13] At trial, Ms Jacks, a forensic accounting expert called by the Crown, identified roughly $1.8 million in cash deposits and transactions associated with BDCL, Mr Dunn and his family as "unexplained". A significant part of that total—$1,471,160.13—was made up of cash deposits to BDCL's bank accounts. The principal disagreement between Mr Parsons and Ms Jacks concerns the treatment of this sum.

[14] Mr Parsons essentially says Ms Jacks' methodology was flawed and that a majority of these funds can be explained. In his view, most transactions recorded in the MYOB software as "orders" and some transactions recorded as "quotes" should be treated as genuine orders notwithstanding that they were not converted to "invoices" in the system. Ms Jacks only counted transactions for which an invoice

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9 That is not to say such a direction on inferential reasoning will *never* be necessary; but no exceptional or unusual circumstance exists in this case requiring departure from the usual, discretionary approach.

10 See CA judgment, above n 1, at [73]. See also *R v Wanhalla* [2007] 2 NZLR 573 (CA).

11 CA judgment, above n 1, at [106] citing *Fairburn v R* [2010] NZSC 159, [2011] 2 NZLR 63 at [33], *Lundy v R* [2013] UKPC 28, [2014] 2 NZLR 273 at [120], and *R v Bain* [2004] 1 NZLR 638 (CA) at [22], aff'd [2007] UKPC 33, (2007) 23 CRNZ 71 at [34].

had been generated. Mr Parsons said in the Court of Appeal that on his approach, roughly $600,000 to $800,000 of unexplained cash would remain.[12]

[15] There are four general deficiencies in Mr Parsons' proposed evidence which leave us unable to conclude that a risk of a substantial miscarriage of justice is raised. First, it is unclear what the actual quantum of unexplained cash is on Mr Parsons' approach; he was able to provide a rough estimate only. Secondly, it is unclear how that remaining sum is distributed between the periods of time to which the charges relate. So the new evidence does not exculpate Mr Dunn in relation to any particular charge. Thirdly, and relatedly, it is unclear whether the spikes in unexplained income identified by the Crown, correlating as they did to the HPA shipment dates, remain on Mr Parsons' analysis. Without that information, it is impossible to determine the potential effect of the evidence on each of Mr Dunn's convictions. That difficulty is exacerbated by the fact an appeal against sentence has not been pursued. Fourthly, even if all of these matters were to fall in Mr Dunn's favour, much inculpatory circumstantial evidence remains—evidence which must be weighed against the money evidence to determine the safety of the convictions.

[16] This ground raises no matter of general or public importance, turning entirely on its own facts.[13] Nor are we persuaded the proposed evidence meets the threshold for disclosing a risk of a substantial miscarriage of justice.[14] A more appropriate course may be for Mr Dunn to make an application to the Criminal Cases Review Commission, which could then address (in a way which we cannot) the four deficiencies we have noted in the new evidence.[15]

Conclusion

[17] We are not therefore satisfied it is necessary in the interests of justice for this Court to hear and determine the appeal on any of the proposed grounds.[16]

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12 At [111].
13 Senior Courts Act, s 74(2)(a).
14 Section 74(2)(b).
15 See generally Criminal Cases Review Commission Act 2019.
16 Senior Courts Act, s 74(1).

Result

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

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