

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 23/2026
[2026] NZSC 103

BETWEEN	FEI HE Applicant
AND	THE KING Respondent

Court: Williams, Kós and Campbell JJ

Counsel: R J T George for Applicant
L J Sullivan for Respondent

Judgment: 11 August 2026

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Ms He was found guilty by a jury of one representative charge of participating in an organised criminal group and one representative charge of selling a Class C controlled drug (synthetic cannabis). Her appeal against conviction to the Court of Appeal was dismissed.¹ She now applies for leave to appeal her conviction to this Court.

[2] The proposed appeal would advance two grounds. The first is that voice identification evidence was wrongly admitted. The second is that evidence of hearsay statements made by Ms He's co-conspirators was wrongly admitted. Ms He says that

¹ *He v R* [2026] NZCA 2 (Collins, Fitzgerald and Robinson JJ) [CA judgment].

a substantial miscarriage of justice is in prospect and that the proposed appeal involves a matter of general and public importance.²

[3] Ms He's notice of application for leave to appeal also included a challenge to the admissibility of certain visual identification evidence. No reference was made to this ground in Ms He's submissions. Without submissions on the point, we see no error in the Court of Appeal's conclusion that the visual identification evidence was properly admitted. We do not address this ground further.

Background

[4] The Crown's case at trial was that Ms He, a middle-aged Mandarin-speaking woman born in China, was the head of a synthetic cannabis supply operation in the Christchurch area.³ The police investigation into this supply operation was called Operation Ellerslie II. The evidence against Ms He included propensity evidence in the form of a statement of agreed facts that she had previously been convicted of synthetic cannabis supply offending. The police investigation into the prior offending was called Operation Sin.

[5] The first piece of contested evidence, the voice identification evidence, was given by Detective Zhang, a Mandarin speaker. He had also been involved in Operation Sin. In that investigation, Detective Zhang interpreted Mandarin text and voice messages taken from a phone seized from Ms He. He later performed the same task in the course of Operation Ellerslie II and said he recognised Ms He's voice.

[6] In support of this voice identification, Detective Zhang pointed out particular similarities between the voice he had heard in Operation Sin and that in Operation Ellerslie II—in both, the speaker was a woman with a middle-aged voice who spoke Mandarin with a northern Chinese accent; and in both, the exchanges suggested she was the person in charge.⁴

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

³ *R v He* [2025] NZDC 1498 (Judge Elkin) at [2] and [4].

⁴ CA judgment, above n 1, at [14] and [18].

[7] Ms He argues the voice identification was inadmissible in terms of s 46 of the Evidence Act 2006, which governs the admissibility of evidence of that nature.

[8] The second piece of contested evidence is of communications not involving Ms He, but instead involving her alleged co-offenders. This evidence was admitted against Ms He as co-conspirator hearsay. The communications covered topics including sales, stock, orders and prices, and included references to “lady”, “sister” and “big sister”—the same terms of deference used in the voice identification evidence. These references were said to be to Ms He, inviting the jury to infer that she was involved in and took a directing role in the offending.

[9] Ms He says the hearsay evidence in this case failed the requirement in s 22A(b) of the Evidence Act, which relates to the admissibility of co-conspirator hearsay evidence.

Assessment

[10] For the following reasons, we consider that the criterion for the grant of leave to appeal is not satisfied.⁵

Voice identification evidence

[11] Broadly grouped, Ms He advances three arguments to the effect that Detective Zhang’s evidence could not be relied upon. First, although she pleaded guilty to the Operation Sin charges, Ms He does not accept that it was her voice in the Operation Sin recordings. She therefore argues there was no valid comparator for Detective Zhang’s identification in Operation Ellerslie II. Second, Ms He argues that, even if that is not accepted, a number of features relating to Detective Zhang’s identification make it unreliable. Detective Zhang did not listen to the recordings obtained in relation to either operation for voice identification purposes, and there was a two-year delay between operations in which he did not hear Ms He’s voice. Finally, it is argued that the identification may have reflected predisposition.

⁵ Senior Courts Act 2016, s 74(1).

[12] We are not satisfied that these points are sufficiently arguable to warrant the grant of leave. First, the evidence suggested the phone obtained in Operation Sin belonged to Ms He.⁶ Second, Detective Zhang identified common voice characteristics from the two sets of recordings.⁷ Third, the evidence at trial was that he was surprised, rather than expecting, to hear a familiar voice when translating and transcribing the Operation Ellerslie II recordings.⁸

[13] In light of Detective Zhang’s knowledge of Mandarin, we take a similar view of Ms He’s final voice identification argument, that Detective Zhang’s evidence was inadmissible opinion.⁹

Co-conspirator hearsay evidence

[14] While Ms He raises an issue of principle as to the “reasonable evidence” threshold required before a court can be satisfied of the defendant’s participation in the conspiracy in terms of s 22A(b) of the Evidence Act, this case does not turn on its application. We consider that the point is insufficiently arguable on the facts in this case to justify the grant of leave.¹⁰

Result

[15] We conclude that a miscarriage of justice is not in prospect.¹¹ We also conclude that no issue of general or public importance arises on these facts.¹² It follows that leave to appeal is not necessary in the interests of justice.¹³

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

Solicitors:

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

⁶ See CA judgment, above n 1, at [41].

⁷ See in particular at [43].

⁸ At [44].

⁹ According to s 25 of the Evidence Act 2006.

¹⁰ CA judgment, above n 1, at [86].

¹¹ Senior Courts Act, s 74(2)(b).

¹² Section 74(2)(a).

¹³ Section 74(1).