

**NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR
IDENTIFYING PARTICULARS OF COMPLAINANT PROHIBITED BY S 203
OF THE CRIMINAL PROCEDURE ACT 2011. SEE
<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360350.html>**

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 41/2026
[2026] NZSC 105**

BETWEEN	UWAIS ABDIRAHMAN AHMED Applicant
AND	THE KING Respondent

Court:	Ellen France, Williams and Kós JJ
Counsel:	N P Chisnall KC for Applicant J G Fenton for Respondent
Judgment:	12 August 2026

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

Introduction

[1] The applicant was found guilty after a trial by jury of five charges of sexual offending against the complainant, charges of making an intimate visual recording and of blackmail. He was also found guilty of a charge of failing to provide assistance to police to access his electronic devices contrary to s 178 of the Search and Surveillance Act 2012 after he refused to provide the PIN numbers to two

mobile phones. His appeal against conviction was dismissed by the Court of Appeal.¹ He now seeks leave to appeal to this Court.

Background

[2] The chronology of events which follows is based on the Court of Appeal's description.² The relevant events begin in the afternoon of 9 February 2022 when Detective Sergeant Hensman supervised the execution of a search warrant at the applicant's home. Two mobile phones were seized during the search. At this point he was given advice about his rights. He asked to speak to a lawyer. There were difficulties in contacting the lawyers he nominated but police eventually contacted a Mr Young and the applicant spoke with him. After that discussion the applicant said that he would not be making a statement. He was subsequently arrested and again cautioned.

[3] The applicant spoke to Mr Young again, in private, after his arrest. Following that exchange, he was taken to the police station and a pat-down search was undertaken. A USB drive was taken from one of his pockets. He was cautioned again and asked if he understood his rights. He responded saying he had "no statement". Despite that, police commenced a DVD-recorded interview with the applicant. Detective Sergeant Hensman said in his evidence at trial that the primary purposes of the interview were to explain the nature of the allegations and give the applicant an opportunity to provide a response. Throughout the interview, which lasted about an hour, the applicant said little more than "no statement" to each of the propositions put to him.

[4] In the course of the interview, Detective Sergeant Hensman also advised the applicant that police wanted to look at the contents of one of the phones they had seized. The officer explained to the applicant that he was obligated, under s 130 of the Search and Surveillance Act, to provide the PIN code. The applicant responded by saying he had no comment. Further explanation was provided about the obligations under the Act and that if the applicant did not comply with the request, he could be charged. A similar request was made for the PIN number to the

¹ *Ahmed v R* [2026] NZCA 78 (Whata, Dunningham and Andrew JJ) [CA judgment].

² At [9]–[27].

other phone seized in the course of the search. The applicant's response was as before. He added he could not speak unless he saw a lawyer face to face. The interview concluded and the applicant was advised he would be charged in relation to the sexual offending and with the breach of s 178 of the Search and Surveillance Act.

[5] The applicant was given his rights again and he again asked to speak with a lawyer. Detective Sergeant Hensman was not able to get hold of Mr Young nor another lawyer he tried but did get hold of a lawyer by the name of Ms Jayanandan. The applicant spoke to her for about 10 minutes. The officer then received a call from Mr Hislop, a lawyer he had previously tried to contact on behalf of the applicant and, after briefing Mr Hislop on what had taken place to date, the applicant then spoke with Mr Hislop in private. After that conversation, Detective Sergeant Hensman again asked the applicant for the PIN numbers of the two phones. The applicant's response was that he would not comment unless a lawyer was present.

[6] The DVD recording of the applicant's police interview with Detective Sergeant Hensman was not shown to the jury. As the Court of Appeal said, that was clearly an appropriate course given that the interview contained material that was irrelevant and potentially prejudicial.

[7] However, the Crown did call evidence from Detective Sergeant Hensman about aspects of the interview, namely, those relating to the interchanges about the requests for the PIN numbers. That evidence was adduced in accordance with an agreed brief of evidence. Under cross-examination by defence counsel (not the current counsel), it was put to Detective Sergeant Hensman that he made no reference to s 130 of the Search and Surveillance Act during the interview. The officer denied that, referring to his common practice. Defence counsel pursued the point. As a result, the prosecutor sought and was granted leave to refer to the relevant exchange in the DVD interview in re-examination to make it clear that the applicant was told that the request was being made under the Search and Surveillance Act.³

³ The evidence that the jury heard is set out in the CA judgment, above n 1, at [26].

The proposed appeal

[8] The applicant says that the Court of Appeal was wrong to determine that there was no miscarriage of justice at his trial. He wishes to raise two main points:

- (a) Whether the Court of Appeal was right that there was no miscarriage of justice arising from the way in which the Crown led evidence about his arrest and the various attempts made by police to secure a statement from him, although he had exercised his rights under the New Zealand Bill of Rights Act 1990 to remain silent and to speak to lawyers.
- (b) Whether the Court of Appeal was right that no error ensued from the way in which the defence of “reasonable excuse”, available in relation to the s 178 charge, was dealt with at trial. He refers in this context to what he says was a breach of the right to speak to a lawyer after the second request for the PIN codes.

Our assessment

[9] The arguments the applicant wishes to make largely reprise those made in the Court of Appeal. In terms of the first ground relating to the use of the evidence about his arrest and the police interview, the applicant cited *R v E* in support of his argument that this evidence was irrelevant and prejudicial.⁴ The Court of Appeal took the view that, unlike *R v E*, there was good reason to introduce the evidence in issue here.⁵ The first request for the PIN numbers was made during the interview. Further, the Court said, the applicant relied on his right to silence and his right to speak to a lawyer as a defence to the charge under s 178. The Court considered that, in those circumstances, it was relevant to adduce evidence of the narrative of events as occurred here. The Court also noted that the most detailed evidence of the interview was led as a consequence of defence counsel’s cross-examination about compliance with s 130.

⁴ *R v E* (CA 308/06) [2008] NZCA 404, [2008] 3 NZLR 145 at [89].

⁵ The Court noted this was either because in those circumstances he could show that he had not refused to provide the PIN numbers; or, if he had refused to do so, that this was because he had a reasonable excuse to do so.

[10] The Court accepted it may have been possible to adduce this evidence by way of an agreed s 9 statement but it had not been suggested counsel had erred in agreeing to lead the evidence through an agreed brief. The Court was satisfied, in any event, that the evidence was led in a way minimising any potentially prejudicial effect on the appellant exercising his right to silence.

[11] Nothing raised by the applicant calls into question the Court of Appeal's assessment of this proposed ground of appeal, given the particular set of facts, including the Judge's directions.

[12] We add that the applicant submits that the proposed appeal provides the opportunity to address a point left undecided by this Court in *R v Perry*.⁶ This is a reference to what the Court in *Perry* described as "some" divergence in the relevant Court of Appeal decisions as to whether an interviewing officer may continue to question a suspect who has exercised the right to silence and, if so, to what extent.⁷ The Court in *Perry* had not addressed the point because it was thought:⁸

... best if such reconsideration occurs in the context of a case in which a suspect has exercised the right of silence and was then put under pressure or otherwise induced to change that election.

[13] *Perry* was not seen as a case in that category. It may be that at some point this Court may wish to consider this issue but, given the facts, the present case does not provide a suitable vehicle for that exercise.

[14] If there was an error here, it was not of such consequence as to give rise to a miscarriage of justice. Further, as the Court of Appeal said, to the extent there may have been residual prejudice from leading the evidence, the Judge's direction to the jury was sufficient to have remedied that prejudice. The relevant part of the summing up to the jury reads as follows:

[56] Now, when the police spoke to Mr Ahmed he declined to make any statement. I need to emphasise that that is his absolute right. So, it would, therefore, be unfair or wrong to hold it against him or read something into the fact that he did not make any response. He was told it was his right

⁶ *R v Perry* [2016] NZSC 102.

⁷ At [45] per William Young, Arnold and O'Regan JJ.

⁸ At [45].

not to, that is the end of it. No inference of guilt can be drawn from his silence.

[15] As to the second proposed ground, we see no error in the Court of Appeal's conclusion on the matters the applicant wishes to raise. The applicant emphasises the absence of efforts to facilitate further legal advice after the second request for the PIN numbers was made. However, against the background of the narrative of events we have discussed, we agree with the submission for the respondent that it was for the jury to determine whether the sequence of events created a reasonable excuse, at least after the second request. As the Court of Appeal put it:⁹

[61] From that point forward it was a question for the jury to decide whether, having been asked twice and having the opportunity to speak to lawyers between the two requests, the appellant's response of "[n]o comment" or words to that effect amounted to a "refusal". Similarly, it was a question of fact for the jury to determine whether, given that sequence of events, there was a reasonable excuse for not providing that information at least following the second request.

[62] Furthermore, we see nothing in the fact that the police did not give Mr Ahmed still a further opportunity to speak to Mr Hislop in the morning. Mr Ahmed had ample opportunity to consult his lawyer prior to the hearing of the charges and had not evidently considered it necessary to revisit his refusal to provide the PINs.

[63] We also consider there is nothing in the alleged failure by the Judge to explain that it was for the Crown to disprove the reasonableness of the appellant's excuse. The format of the question trail made it clear that each element had to be proved by the Crown and this included that the Crown had to prove the absence of a reasonable excuse.

Result

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

Solicitors:

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

⁹ CA judgment, above n 1.