

NOTE: PREVIOUS ORDERS NOTED IN [2025] NZCA 455 PROHIBITING PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF WITNESSES REMAIN IN FORCE.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 109/2025
[2026] NZSC 15**

BETWEEN SCOTT WATSON
Applicant
AND THE KING
Respondent

Court: Ellen France, Kós and Miller JJ
Counsel: N P Chisnall KC and K H Cook for Applicant
M F Laracy, S C Baker and T R Simpson for Respondent
Judgment: 10 March 2026

JUDGMENT OF THE COURT

- A** Leave to appeal is granted in part (*Watson v R* [2025] NZCA 455). The approved question is whether the Court of Appeal was correct to conclude no miscarriage of justice arose from the decision of the trial Judge to admit the visual identification evidence of Guy Wallace.
- B** The application for leave to appeal is otherwise dismissed.
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REASONS

Introduction

[1] The applicant, Scott Watson, was convicted after a 3-month trial in 1999 of the murder of Olivia Hope and Ben Smart. Ms Hope and Mr Smart were last seen boarding a boat in the Endeavour Inlet in the early hours of 1 January 1998 in the

company of a lone man and have not been seen since. It is now common ground that Olivia and Ben were killed by the lone man in circumstances amounting to murder. The issue at trial was whether Mr Watson was that man. Following conviction, Mr Watson was sentenced to life imprisonment with a minimum period of imprisonment of 17 years.¹ He is still in prison.

[2] Mr Watson’s convictions were referred to the Court of Appeal by the Governor-General on a reference under s 406(1)(a) of the Crimes Act 1961 (the Reference).² The Reference required the Court of Appeal to determine whether a miscarriage of justice may have occurred.

[3] In a judgment delivered on 9 September 2025, the Court of Appeal concluded there was no miscarriage of justice.³ In reaching that view, the Court addressed the issues raised in the Reference which related to evidence at trial about two hairs, the DNA of which matched that of Olivia Hope. The Court also considered challenges to the identification evidence given at trial, and the case against Mr Watson overall. Mr Watson seeks leave to appeal from the decision of the Court of Appeal dismissing his appeal.

[4] What follows are our brief reasons for declining leave on the proposed grounds, which we consider do not give rise to the appearance of a substantial miscarriage of justice or an issue of general or public importance, other than the ground relating to Mr Wallace’s visual identification evidence. Finally, we make some observations to clarify the scope of the grant of leave on that question.

The proposed grounds other than regarding visual identification evidence

Ground relating to the evidence about the two hairs

[5] This proposed ground concerns the evidence linking two hairs found on a tiger-patterned blanket on *Blade*, Mr Watson’s boat, with Ms Hope.

¹ *R v Watson* HC Wellington T No 2693/98, 26 November 1999 (Heron J).

² “Reference to the Court of Appeal on the Question of the Convictions of Scott Watson for Murder” (13 August 2020) *New Zealand Gazette* No 2020-ps3636.

³ *Watson v R* [2025] NZCA 455 (French, Courtney and Thomas JJ) [CA judgment].

[6] This ground concerns both the handling and alleged contamination of the hair samples in an Institute of Environmental Science and Research Ltd (ESR) laboratory on 7 March 1990 and possible transference of the hairs. The argument about contamination also raises concerns the jury was not aware two ESR personnel handled the hairs. There is an argument that insufficient attention was given to the possibility of secondary transfer from contact at Furneaux Lodge, where both Ms Hope and Mr Watson were earlier in the evening. It is also said that transference by police may have occurred in collecting sample hairs from Ms Hope's home and in collecting them from the tiger-patterned blanket.

[7] There are associated arguments which include a challenge to the prosecutor's submissions and the sufficiency of the trial Judge's direction on this topic. The applicant also wishes to raise an issue about the Court of Appeal's approach to the freshness required of new evidence in the context of the more relaxed approach to those issues on a s 406 reference.

[8] The matters the applicant had raised in relation to contamination and transference were all carefully analysed by the Court of Appeal, which had the benefit of further expert evidence. There is no direct challenge to the conclusion that the DNA sourced from the two hairs matched that of Olivia Hope. Rather, the focus is directed to the argument that the hair evidence was inadmissible because police and/or ESR mishandled it, risking contamination and/or transference rather than to the finding that the DNA matched that of Ms Hope. But the Court of Appeal considered the precautions relevantly taken by ESR and by the police minimised any risks. Further, these issues were before the jury, there was no unfairness in the prosecutor's submissions, and the Judge's directions were sufficient.

[9] Nothing raised by the applicant suggests these are matters requiring further review by this Court.⁴ That said, we make it clear that to the extent this Court is ultimately required to weigh evidence in the exercise of the proviso, it remains open to the applicant to argue that the risk of contamination or transference reduced the probative value of that evidence.

⁴ In terms of the Judge's directions, it was made clear that there was no onus on the defendant and the jury was told that they had to consider any possibility of inadvertent exchange of the hairs.

Other issues

[10] The applicant then raises a number of issues under the heading “Other issues”.⁵ The applicant highlights concerns about the impact of what was said to be a change in the Crown case over the course of the trial (the “two-trip theory”). Facts as they emerged at trial meant the Crown contended Mr Watson, having travelled to *Blade* in the early hours of the morning, must have returned to shore before then travelling back to *Blade* with Ms Hope and Mr Smart later that morning.

[11] Of this argument, the Court of Appeal in the applicant’s unsuccessful appeal in 2000 said that, once the defence elicited evidence about what the Crown said in closing was Mr Watson’s initial trip to *Blade*, it must have become clear to the defence that the Crown would have to address that point.⁶ The Court of Appeal in the 2025 case said:⁷

The essence of the Crown case never changed: that Mr Watson was the lone man on the Naiad [water taxi] with Ben, Olivia and Mr Wallace. We do not consider there was unfairness in this regard.

[12] In terms of this and the other matters raised under this heading, nothing raised by the applicant suggests a need to question the assessment of the Court of Appeal. Again, as we have said in relation to contamination and transference, it remains open for the applicant to raise these matters to the extent this Court is required to weigh evidence.

Visual identification evidence

[13] We turn then to some points of clarification with respect to the scope of the ground on which leave is granted, that is, Mr Wallace’s visual identification evidence. We interpolate here that this raises issues both as to admissibility and reliability.

⁵ The other issues relate to the fairness of what is called the “two-trip theory”; admissibility of propensity evidence as to motive (the “Three-Es”); the treatment of cellmate confessions; the adequacy of aspects of the trial Judge’s directions; the Court’s conclusion the case was compelling; and the requirements of Mr Watson’s affidavit.

⁶ *R v Watson* CA384/99, 8 May 2000 (Richardson P, Gault and Henry JJ) at [43]–[45].

⁷ CA judgment, above n 3, at [879].

[14] We need to make clear that this ground does not enable the applicant to challenge the Court of Appeal's decision not to admit parts of the evidence of Dr Gary Wells or that of Dr Adele Quigley-McBride. We see that aspect of the proposed appeal as having insufficient prospects of success. In any event, we do not see the decision about the admissibility of these parts of the expert witnesses' evidence as significant given that the substance of the evidence relevant to the appeal was admitted.

[15] Nor does the grant of leave extend to the proposed challenge to the Court of Appeal's decision not to make an order requiring production of the report of the expert instructed by the Crown, Dr Margaret Bull Kovera.⁸ Her opinion was that Mr Wallace's identification was unreliable. Again, we consider that decision immaterial given that the critical evidence enabling the Court of Appeal to make an assessment of reliability was before the Court.

[16] Next, we note that the grant of leave does not extend to the proposed challenge to the Court of Appeal's decision not to admit the evidence of Aaron Brown, a media expert, as to the media coverage.⁹ We do not see this evidence as adding anything of significance to the material that was before the Court.

[17] Finally, the applicant may challenge the Court of Appeal's decision not to admit the evidence of James Ruhfus, a digital technology specialist, about the *Mina Cornelia* photograph. That said, we envisage that evidence is unlikely to form a critical part of the Court's consideration of the impact of the photograph on the visual identification evidence.

Result

[18] Leave to appeal is granted in part. The approved question is whether the Court of Appeal was correct to conclude no miscarriage of justice arose from the decision of the trial Judge to admit the visual identification evidence of Guy Wallace. We consider

⁸ *Watson v R* [2024] NZCA 170; and see CA judgment, above n 3, at [612], n 138.

⁹ Addressed in an earlier judgment of the appeal panel: *Watson v R* [2024] NZCA 586.

it is not necessary in the interests of justice to hear and determine the other proposed grounds of appeal, and so the application for leave to appeal is otherwise dismissed.¹⁰

Solicitors:

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

¹⁰ Senior Courts Act 2016, s 74(1)–(2).