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

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 184/2025
[2026] NZSC 49

BETWEEN	MADISON LAIMAN Applicant
AND	THE KING Respondent

Court: Williams, Kós and Miller JJ

Counsel: J E L Carruthers for Applicant
K B Bell for Respondent

Judgment: 6 May 2026

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Laiman was found guilty by a jury of one representative charge of sexual violation by unlawful sexual connection. He was sentenced to three years and six

months' imprisonment.[1] The Court of Appeal dismissed his appeal against conviction and sentence.[2] Mr Laiman now applies for leave to appeal his conviction to this Court.

Proposed appeal

[2] Mr Laiman says the trial Judge ought to have given a unanimity direction to the jury. Her failure to do so is said to have given rise to a substantial miscarriage of justice. Mr Laiman also considers this an issue of public importance.

[3] The unanimity issue arises from a section of the complainant's cross-examination in which she contradicted statements made in her evidential video interview (EVI). The complainant was 11 years old at the time of the EVI and 13 years old at the time of the cross-examination.

[4] The offending was said to have occurred when the complainant and a relative stayed at Mr Laiman's home. In her EVI, the complainant was asked whether anyone was around at the time of the offending. She said that when she and her relative both slept in the lounge, "[Mr Laiman] doesn't do it." However, in cross-examination, the complainant said the offending also happened when her relative was present in the lounge. This contradiction in the complainant's evidence is said to have created two distinct factual scenarios covered by the one representative charge. The first scenario was that the offending occurred when the complainant was in the lounge and her relative was in the spare bedroom. The second was that the offending occurred when the complainant and her relative were together in the lounge. Mr Laiman submits the Judge ought to have directed the jury that it needed to be unanimous as to whether the elements of the offence were made out when the relative was present or when she was not.

[5] Mr Laiman identifies different issues with each of the two scenarios. In respect of the first, these include that, on his evidence, the complainant and her relative always slept together in the lounge, so Mr Laiman could not have offended against the complainant while her relative was sleeping elsewhere. In respect of the second,

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1 *R v Laiman* [2025] NZDC 3962 (Judge Moala).
2 *Laiman v R* [2025] NZCA 616 (French P, Jagose and Gault JJ) [CA judgment].

Mr Laiman submits it is implausible that he would risk offending against the complainant before going to work in the morning (as she alleged) in full view of her relative.

[6] It is common ground that, as the Court below noted,[3] a unanimity direction must be given where the evidence discloses a meaningful distinction between different acts constituting alleged offending charged on a representative basis.[4] A meaningful distinction can arise from factual matters falling outside of the constituent legal elements of the offence.[5] Whether it does is, as the Court of Appeal commented in this case, "a matter of degree".[6]

[7] The Court of Appeal identified the following factors, among others, as counting against there being a need for a unanimity direction in this case:

> [17] The representative charge was due to the complainant not being able to identify specific dates. The offending covered by the representative charge could not be differentiated either in terms of place or act … As Ms Bell put it, different locales, dates and place were not plainly evident.
>
> [18] We also agree with the Crown submission that in the circumstances of this case, the presence or otherwise of the complainant's relative during the offending did not deprive the appellant of being able to advance a defence to the representative charge. There was no suggestion the relative was awake and so able to witness the offending. The contradiction between the complainant's EVI evidence and her evidence did however assist the defence. It was appropriately able to be used by defence counsel as demonstrating the complainant's lack of credibility and reliability. The jury were also reminded of the discrepancy by the Judge in her summing up. A further point is that evidence of the presence of the relative also enabled defence counsel to question the inherent plausibility of the complainant's account of the offending.

Assessment

[8] This case involves the application of settled principle to particular facts. As Elias CJ said in *R v Mead*, whether a jury must be unanimous about particular

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3 At [15].

4 See for example *Qiu v R* [2007] NZSC 51, [2008] 1 NZLR 1 at [8]; *L (CA450/2017) v R* [2018] NZCA 104 at [27]; and *W (CA 362/2016) v R* [2017] NZCA 259 at [34].

5 See for example *R v Mead* [2002] 1 NZLR 594 (CA) at [17] per Elias CJ dissenting, citing *R v Leivers* [1999] 1 Qd R 649 (CA) at 662. See also *Mason v R* [2010] NZSC 129, [2011] 1 NZLR 296; *King v R* [2011] NZCA 664 at [24]–[25] per Miller and Asher JJ; and *R v P* [2025] NZHC 2412 at [26].

6 CA judgment, above n 2, at [15].

factual circumstances is "a practical question, not a technical one".[7] No matter of general or public importance therefore arises.[8] Nor do we see any appearance of a miscarriage of justice arising from the way the Court of Appeal applied that principle in this case.[9] We conclude that it is not necessary in the interests of justice for this Court to hear and determine the proposed appeal.[10]

Result

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

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

7 *R v Mead*, above n 5, at [17] per Elias CJ dissenting.
8 Senior Courts Act 2016, s 74(2)(a).
9 Section 74(2)(b).
10 Section 74(1).