IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE

CRI-2018-409-000061
[2018] NZHC 2297

BETWEEN	TIMOTHY JOHN JACKSON Appellant
AND	NEW ZEALAND POLICE Respondent

Hearing: 2 August 2018

Appearances: Appellant in person
C J Bernhardt for the Respondent

Judgment: 3 September 2018

JUDGMENT OF NATION J

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[1] On 20 December 2015, a speed camera recorded a motorcycle travelling at 145 km/h through a signposted 80 km/h area on State Highway 1, approximately 20 km south of Kaikoura. On 7 July 2016, Mr Jackson was convicted of driving his motorcycle at a speed which, having regard to all the circumstances of the case, might have been dangerous to the public.[1] Mr Jackson was subsequently fined $800, ordered to pay Court costs of $130 and disqualified from driving for the minimum mandatory period of six months.

[2] Mr Jackson appealed his conviction to the High Court. He was granted a stay of the sentence on or about 26 August 2016 until such time as the appeal was either heard and determined or abandoned, whichever was earlier. The appeal was set down for hearing on 8 November 2016. On 11 October 2016, the High Court advised Mr Jackson and the Police that the District Court was unable to produce a record of the

[1] Land Transport Act 1998, s 35(1)(b).

evidence given at the District Court trial. Mr Jackson, a lawyer, filed a memorandum setting out his submission that, given there was no record of the trial notes, his appeal should be disposed of by way of an order for a rehearing. He suggested, if the High Court agreed, the matter could be dealt with on the papers. The same memorandum included detailed submissions as to the merits of the appeal.

[3] Dunningham J considered the appeal on the basis Mr Jackson had agreed it should be dealt with through consideration of the written submissions that had been filed without a further hearing. She dismissed the appeal.

[4] The formal notice of the Court's decision of 26 January 2017 advised Mr Jackson that the appeal was dismissed and "disqualification is to resume from 12.00 am 27 January (was deferred pending appeal outcome)". Mr Jackson served the period of disqualification and paid the fine and Court costs.

[5] Mr Jackson applied for leave to bring a second appeal to the Court of Appeal.

[6] In a judgment of 29 August 2017, the Court of Appeal granted leave to appeal because there had not been a hearing with oral submissions, as they held was required by s 330 Criminal Procedure Act 2011. The Court stated that a second appeal in the Court of Appeal would cure the error that arose when Mr Jackson's first appeal was decided on the papers in the High Court. The hearing of the appeal in the Court of Appeal would be an opportunity for Mr Jackson to say that the Judge was wrong in deciding that, in effect, his conviction was safe and a retrial was not called for.

[7] The Court however invited the respondent Police to consider whether the absence of an adequate evidential record from the District Court might compromise the appeal to such an extent that the substantive issues raised by Mr Jackson on his appeal might not be able to be determined. They invited the Police to consider whether, for that reason alone, Mr Jackson's conviction would need to be quashed and a retrial ordered. The Police did not consider this would be appropriate.

[8] In a minute of 14 March 2018, Clifford J confirmed a direction that the appeal to the Court of Appeal be heard on the papers, a decision which that Court was expressly able to make pursuant to s 329 Criminal Procedure Act.

[9] In a judgment of 14 June 2018, the Court of Appeal determined Dunningham J's judgment was a nullity because of the way the High Court was in error in determining the appeal on the papers. The Court held that it was not a situation where the Court of Appeal could determine an appeal as provided for in s 240 Criminal Procedure Act. It indicated the error that had occurred in the way the High Court had dealt with the case previously could be addressed through a rehearing of the appeal in the High Court. That rehearing took place on 2 August 2018.

District Court decision

[10] In a reserved judgment of 23 August 2016, Judge Saunders recorded that an approved and qualified speed camera operator had recorded a motorcyclist drove past him in the relevant area at 13:46 hours on 20 December 2015. In the photo booklet prepared for the hearing, the number plate shown on the rear of the motorcycle was not particularly clear. A subsequent photo was produced from the computer record. The Judge was satisfied that, without any digital enhancement, he could determine the registration plate numbers and letters as "A6WZY". The photo also showed the rider of the motorcycle had a pack on his back, a black and white helmet and a pair of white calf-length boots.

[11] The Judge found that information as to the speed and description of the motorcycle and its rider was conveyed to Senior Constable Jackson, who was in a patrol car north of the Kaikoura township. That Constable spoke to Mr Jackson at a BP petrol station in Kaikoura, inspected the motorcycle, drew Mr Jackson's attention to certain defects and issued him with a notice requiring him to produce evidence within 14 days that the defects had been rectified. The Constable obtained Mr Jackson's details and took photographs of the motorcycle and Mr Jackson.

[12] The Judge found that, as a matter of law, Constable Jackson did have power to detain the driver of a motor vehicle while he established the correct identity and inspected the motorcycle for any defects. He did not accept that the Constable had

conducted himself in a manner which amounted to an unlawful detention of Mr Jackson or that the information or admissions from Mr Jackson were improperly obtained evidence. He found the photographic evidence taken at the BP station of Mr Jackson depicting his clothing and motorcycle was not taken in breach of any rights afforded to Mr Jackson under the New Zealand Bill of Rights Act 1990.

[13] The Judge was satisfied beyond reasonable doubt that the evidence adduced, even prior to the taking of photographs by Constable Jackson, established that Mr Jackson was the rider of the motorcycle with the registration shown on the speed camera photograph. He was satisfied to the required standard that the speed recorded using the speed camera as a detection device was correct and reliable evidence.

[14] He thus rejected what he said was Mr Jackson's first line of defence, namely that there was insufficient evidence of identity of the motorcycle depicted in the photographs taken by the speed camera, and inadmissible and improperly obtained evidence from Constable Jackson who spoke to him at the BP petrol station.

[15] The Judge then considered Mr Jackson's second line of defence, namely that the mere fact of a speed of 145 km/h was not sufficient to constitute the offence charged.

[16] The Judge accepted that proof of speed alone was insufficient to found a conviction. The way in which the assessment is to be made, by referring to the following statement from Penlington J in *Joad v Police*:[2]

> As the learned Judge rightly observed in the Court below, proof of speed alone is insufficient to warrant a conviction.
>
> Whether or not the speed at the material time is dangerous is to be judged objectively and does not depend on the defendant's state of mind: *R v Evans* [1963] 1 QB 412; [1962] 3 All ER 1086 (CA). The danger must be more than a mere possibility. There must be proof of a reasonable likelihood of danger to persons who might reasonably be expected to be on the highway: *Transport Department v Giles* [1965] NZLR 726. It is not necessary for the prosecution to prove any person was actually endangered by the defendant's mode of driving. The responsibility of the driver is not only to a definite person but also to the hypothetical member of the public who might come into

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2 *Joad v Police*, HC Hamilton, AP 79/94, 28 September 1994, at 6, cited by *Broderick v Police* HC Whangarei, CRI-2008-488-20, 10 July 2008, at [23].

> the area of the defendant's driving: *Wagg v Shaw* [1962] NZLR 498. The mere fact that not many people were likely to be about at the time when the alleged offence took place is not a defence where there is still a sufficiently distinct and reasonable possibility that an accident could result: *Gallagher v Police* (HC Auckland M1264/86, 3 December 1984, Prichard J).

[17] The Judge considered that, in the instant case, the relevant circumstances were:[3]

> 1. A sealed state highway with a gazetted 80 kph speed limit.
>
> 2. Medium to high traffic use on that day with over 2,000 vehicles recorded over the period the detection unit was in place.
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> 3. The proximity of the camping ground entrance just north of the detection vehicle.
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> 4. An electronic speed sign operating close by reminding drivers of the speed.
>
> 5. The likelihood of pedestrians and vehicles given the time of the day and holiday period.
>
> 6. The weather conditions, meaning a dry road but with every likelihood pedestrians and cyclists would be out and about in that area.
>
> 7. The driving experience of the defendant, and knowledge of the area.
>
> 8. The roadworthy condition of the vehicle and ability of the operator to stop within a safe distance in any emergency.

[18] Having regard to those factors and applying an objective test, the Judge was satisfied there was a distinct and reasonable possibility Mr Jackson would not have been able to safely and appropriate deal with any emergency situation, such as a pedestrian crossing the highway to or from the camp ground. He found there would have been a particular difficulty for any motorist who might have been trying to exit the camp ground given limited visibility and the expectation that any opposing vehicle would be approaching at less than 100 km/h.

[19] The Judge considered there might have been a danger to the hypothetical member of the public who might encounter Mr Jackson's driving. With all the factors he had found to be present, he considered the speed was such that the element of reasonable likelihood of danger had been made out.

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3 *Police v Jackson* [2016] NZDC 16002 at [29].

Appellant's submissions

[20] In his memorandum of 18 October 2016, Mr Jackson submitted that the nature of the appeal was such that the full record of evidence and exhibits had to be available, and suggested that a rehearing of the original charge would be the likely outcome of the appeal but made submissions as to the merits of the appeal in case it was to proceed.

[21] In those submissions, Mr Jackson did not challenge the speed camera accuracy other than to say the camera photograph relied on by the prosecution was not a legible record of the identity of the subject vehicle. He accepted a Police officer spoke to him in Kaikoura at the BP service station subsequent to the speed camera recording the motorcycle travelling at 145 km/h at 1.48 pm.

[22] Mr Jackson submitted the photograph, produced as an exhibit at trial, taken by the speed camera "was illegible as to the registration of the vehicle in the photograph". He acknowledged a second, enhanced or further enlarged photograph was proffered at trial but said no evidence about an enhancement process was supplied and Police had not advised prior to trial of its intended use. He submitted that, through cross-examination, it had been established the operator who had referred to these photographs would not have been able to identify the photograph taken by the speed camera as being a photograph of the motorcycle taken by the speed camera at the relevant time on 20 December 2015. Mr Jackson said there had been exchanges between himself and the Constable who photographed him at the service station. He suggested the Judge's notes did not fully record the evidence of the officer or himself in relation to this.

[23] Mr Jackson said his essential submission was:

> … that without reliable evidence of the identity of the vehicle in the photograph, the Police attempts to subsequently bolster such identification evidence, including as they did a requirement the appellant remain at a place of Police choosing and submit to photographs, are inadmissible on the basis they are the result of an unlawful detention and in any event, fail to improve the deficit in identification as a result of the poor quality of the speed camera photo.

[24] In the alternative, Mr Jackson submitted that, if identity of the vehicle was sufficient, the prosecution had failed to prove the driving and speed alleged contained

the required element of danger and that it would have been a case of "excess speed simpliciter".

[25] In further submissions of 29 November 2016, Mr Jackson submitted:

> There are two broad appeal grounds, as follows:
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> **Identity**
>
> a. The evidence of identity was insufficient for the District Court to be satisfied beyond a reasonable doubt as to the identity of the offender. This issue is divided into two parts:
>
> **Speed-Camera**
>
> i. The speed-camera evidence did not sufficiently identify the offender, and
>
> **Service Station**
>
> ii. The subsequent photographic evidence taken by the Police at the BP Service Station was improperly obtained, inadmissible and in any event, unable to perfect the speed-camera evidence.
>
> **Dangerous Driving v Speeding**
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> b. In any event, there was insufficient evidence upon which the District Court could conclude the element of danger to the public or a person was proved beyond reasonable doubt and the evidence, such as it was, established only excess speed.

[26] Mr Jackson submitted evidence of the speed camera operator that he was able to identify the motorcycle number from what he observed on the screen was unreliable given his lack of notes at the time and the fact his brief of evidence for the hearing was not prepared until some five months after the alleged offence.

[27] Mr Jackson then set out what he recalled was said by the speed camera operator when cross-examined. The exchange recorded by Mr Jackson had the operator saying that, after the motorcycle had passed, he looked at his computer screen, had enlarged the image on the screen and could read the registration number. The operator accepted that he had not brought to the Court a picture of precisely what he saw when he made that enlargement. Mr Jackson then referred to the Judge's notes on the issue which were available. Those notes recorded the operator saying that he had called the

Constable, gave him the registration number, provided a description and the speed the motorcycle had been travelling.

[28] Mr Jackson made further submissions as to how the operator's evidence as to the number of the motorcycle that had been recorded speeding and of the rider could have been based on information provided to the operator by Constable Jackson rather than what the operator had discerned from the pictures on his computer at the time he notified Constable Jackson of what had been recorded.

[29] In his submissions, Mr Jackson referred to the evidence of Constable Jackson and referred to his having been detained unlawfully but did not make any submissions as to why that was so. It seemed Mr Jackson was submitting that he had been unlawfully detained because the identity of the motorist and vehicle in the speed camera had not yet been proved.

[30] As to whether there was an adequate basis for the Judge to have found that the speed could have been dangerous, Mr Jackson said the Police case:

> … relied in large part on a suggestion the road was very busy that day and there was a camping ground entrance/exit on the west side of the road north of the place where the speed camera photo was taken.

[31] Mr Jackson then referred to the written submissions he had put before the District Court. In those submissions, Mr Jackson had highlighted what he considered to be the relevant circumstances as follows:

a. 145km/h is excessive and 60km/h over the posted limit.

b. The area was formerly a 100km/h zone and the road condition is sound.

c. The road surface was dry, weather fine and visibility excellent.

d. There were no other vehicles in the vicinity.

e. There were no pedestrians in the vicinity.

f. The motorist had ample stopping room in the event of a sudden change in conditions.

g. The vehicle was roadworthy and capable of both the speed it was travelling as well as equivalent stopping ability.

h. The rider was experienced, within the lane and not visibly "racing".

[32] He submitted that, on an objective view, there was no element of actual or possible danger. He submitted "the enquiry can only be whether the driving, as shown on the photograph, was dangerous". He referred to what had been said in other cases in circumstances in which the High Court or District Court had decided the element danger had either been made out or not.

[33] In his submissions for the rehearing, Mr Jackson said his ground of appeal was that he was unable to sufficiently mount the appeal without recourse to an accurate record of the trial.

[34] Mr Jackson referred to the principles that would have to be considered in deciding whether the absence of a trial transcript would be grounds for helping an appeal, as stated by the Court of Appeal in *Kingi v R*.[4] He also submitted the Court of Appeal's invitation to the Crown to consider whether or not the absence of a transcript required the case to be reheard should be seen as an indication that the Court of Appeal saw that this was a case where there was such fundamental prejudice to him on the appeal that *Kingi* could be distinguished. He submitted the appeal ought to be allowed on the basis he was unable to argue it.

[35] In oral submissions before me, Mr Jackson referred to the earlier written submissions that had already been filed. He said there had been evidence that, at the service station, the Constable Jackson had told him to sit on the motorcycle and told him where to stand, and that he had been kept at the service station for 30 to 40 minutes whereas he submitted the officer was only entitled to keep him there for 15 minutes. Mr Jackson said he was asking for the appeal to be allowed, his conviction to be quashed and for the Court to direct a retrial.

Discussion

[36] Relevantly, s 232 Criminal Procedure Act states:

> **232 First appeal court to determine appeal**
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> (1) A first appeal court must determine a first appeal under this subpart in accordance with this section.

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4 *Kingi v R* [2016] NZCA 160.

(2) The first appeal court must allow a first appeal under this subpart if satisfied that,—

(a) in the case of a jury trial, having regard to the evidence, the jury's verdict was unreasonable; or

(b) in the case of a Judge-alone trial, the Judge erred in his or her assessment of the evidence to such an extent that a miscarriage of justice has occurred; or

(c) in any case, a miscarriage of justice has occurred for any reason.

(3) The first appeal court must dismiss a first appeal under this subpart in any other case.

(4) In subsection (2), **miscarriage of justice** means any error, irregularity, or occurrence in or in relation to or affecting the trial that—

(a) has created a real risk that the outcome of the trial was affected; or

(b) has resulted in an unfair trial or a trial that was a nullity.

[37] Although a transcript is not available, the most significant evidence on which Mr Jackson was convicted is clear and not in dispute. At 13:46:32 on 20 December 2015, a motorcyclist was photographed by a speed camera travelling north along State Highway 1 at 145 km/h. The motorcyclist was carrying a black backpack, was wearing white boots and was wearing a black helmet with some white on it. The registration plate for the motorcycle produced in the prosecution bundle of photographs for the trial was not clear. An enlarged photograph of a photograph in the booklet showed the registration number as A6WZY.

[38] There is no dispute as to the road conditions or general circumstances in which the speeding was recorded. Photographs produced at the hearing show the speed camera was situated just south of a pylon on the eastern side of the main highway, a relatively short distance from the exit on the eastern side of the road from a camping ground. Any person or vehicle exiting the camping ground would have had a view to the south somewhat restricted by reason of vegetation on the eastern side of the road and the curve of the road. The exit was shown in the photograph to be a short distance from the 80 km/h speed sign.

[39] The motorcyclist was recorded speeding while travelling north.

[40] At 2.03 pm that day, Constable Jackson saw a motorcyclist at the BP service station in Kaikoura. He told the motorcyclist he had been recorded as travelling at 145 km/h. The motorcyclist identified himself to the Constable as Timothy Jackson. The Constable took photographs of the motorcycle and the person who had ridden it to the service station. As shown by these photographs, the registration number of the motorcycle was A6WZY. The motorcyclist was carrying a backpack and was wearing a black and white motorcycle helmet similar to that recorded in the speed camera photograph. He was also wearing distinctive calf-length white boots.

[41] Without having to consider the evidence of the speed camera operator as to how, on his computer, he enlarged the image which appeared on his screen so as to clearly show the registration number of the motorcycle, there was thus sufficient evidence on which the Judge could conclude that the motorcycle and motorcyclist who Constable Jackson identified at the BP service station in Kaikoura were the same as the motorcycle and motorcyclist recorded travelling north in the 80 km/h area south of Kaikoura at 145 km/h.

[42] Mr Jackson submitted that, as a result of cross-examination, the Judge would not have been satisfied that the speed camera operator was able to and did identify the registration number of the motorcycle at the time it was photographed on the speed camera. The Judge's notes, made at the time the speed camera operator gave evidence, recorded him saying in evidence that, after the speed camera had recorded the speed at which the motorcycle was travelling, he called Constable Jackson and informed him of the photograph that had been taken of the motorcycle, told the Constable the registration number of the vehicle and provided him with a description.

[43] The fact Constable Jackson then approached a motorcycle and a motorcyclist fitting the description which the speed camera operator had provided was consistent with the evidence given by the operator as to how he had identified the motorcycle and the motorcyclist at the time or very soon after the speeding had been recorded. There was thus ample evidence on which the Judge could decide the operator had recorded and established that, at the time it was caught speeding, the motorcycle concerned had the registration number A6WZY and was being ridden by a motorcyclist with certain features as to the backpack, helmet and calf-length boots,

which identified him as the same person who the Constable spoke to at the service station.

[44] The Judge could however have concluded that the motorcyclist at the BP service station was the same motorcyclist who had been recorded travelling at 145 km/h a short time earlier without having to accept the operator's evidence as to when and how he had identified the registration number of the motorcycle and the motorcyclist from looking at the image on his computer screen and then relayed that to Constable Jackson.

[45] On the appeal, there was no challenge to the Judge's conclusion that, at the service station, Constable Jackson did speak to Mr Jackson about apparent defects in his vehicle. There was no suggestion in submissions that Mr Jackson had objected to being photographed with his motorcycle in the way that happened. It is apparent from the notes made by the Judge that Mr Jackson did cross-examine Constable Jackson over the conversations which occurred between then when they were at the service station but there was nothing in the Judge's notes which suggest Mr Jackson asserted that he had refused to be photographed but his refusal had been ignored. The Judge noted that Mr Jackson had said in evidence that the Constable had said to him he was entitled to take the photographs and Mr Jackson had said "I suppose you will take photographs anyway".

[46] In most of the submissions Mr Jackson filed on his appeal, his objection to the admissibility of Constable Jackson's evidence appeared to be based on the argument that, at the time he took the photographs, the Constable did not have evidence sufficient to identify Mr Jackson as the rider of the motorcycle which had been previously speeding.

[47] The Judge did deal with the admissibility issue, determining:[5]

> [21] I do not accept that Senior Constable Jackson conducted himself in a manner which amounted to an unlawful detention of the defendant. Neither do I find that he obtained information or admissions from Mr Jackson which amounted to improperly obtained evidence.

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5 *Police v Jackson*, above n 3.

> [22] Senior Constable Jackson, faced with information about the identification of the motor cycle that had been detected speeding 15 minutes earlier south of Kaikoura was entitled to speak to and obtain driver details from the person who he believed was the rider of that motor cycle. The photographic evidence of Mr Jackson depicting his clothing and the motor cycle was not taken in breach of any rights afforded to the defendant under our Bill of Rights.

[48] Pursuant to s 113 Land Transport Act, Constable Jackson had the power to direct Mr Jackson, as a person who had been on a road on the motorcycle, to give his full name and particulars, including "any other particulars required as to the person's identity", which would include the particulars recorded by way of the photographs at the service station, as might have led to the identification of the person in charge of the motorcycle when it was recorded by the speed camera.

[49] Constable Jackson spoke to Mr Jackson and photographed him at the service station in Kaikoura. This was not on a road. This was not a situation where s 114(5) or the 15 minute limit applied. Section 114(5) states:

> **114 Power to require driver to stop and give name and address, etc**
>
> ...
>
> (5) An enforcement officer may require a driver to remain stopped on a road for as long as is reasonably necessary to enable the officer to establish the identity of the driver, but not for longer than 15 minutes if the requirement to remain stopped is made under this subsection only.

[50] In *Kingi v R*, the Court of Appeal observed:[6]

> [30] The unavailability of the usual transcript of the trial is regrettable. But the principles that apply in such a situation are well established:
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> (a) The mere fact there is no record (or no adequate record) of the trial is not in itself a ground for finding a conviction unsafe or unsatisfactory or for holding that a "miscarriage of justice" has occurred, to use the language of s 232 of the Criminal Procedure Act 2011.
>
> (b) Before an appellant may claim that result he must be able to show an irregularity in the trial or a misdirection in the summing-up.
>
> (c) However, where there is reason to suspect something has gone wrong in the trial, the absence or insufficiency of a proper transcript may be material.

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6 *Kingi v R*, above n 4.

[51] I consider, with the respondent having been able at trial to identify Mr Jackson as the rider of the motorcycle when it was recorded travelling at 145 km/h and as the same rider of the motorcycle identified and photographed at the service station in Kaikoura a short time later, the availability of a transcript from the hearing would have been of no assistance to him on his appeal insofar as the identification of him as the speeding motorcyclist was concerned.

[52] With the photographic evidence as well as the evidence from both Constable Jackson and Mr Jackson himself, having established that he was the motorcyclist at the service station in Kaikoura with the motorcycle registration number A6WZY, there was a proper basis on which Constable Jackson could ask him to remain at the service station for as long as was necessary for him to complete obtaining all the details as to his identification and to take photographs that recorded the appearance of both him and the motorcycle in a manner sufficient to identify him as the motorcyclist who had been speeding earlier.

[53] In his submissions, Mr Jackson did not explain just what evidence might have been in a transcript to prove he had been unlawfully detained. Even if there was a suggestion of this, the detainment would have been for a brief period. It would have been for the purpose of recording his identity at the time through the photographs that were taken. It would have been a situation where the Judge would have been entitled to exercise his discretion under s 30 Evidence Act 2006 to admit the evidence that was obtained.

[54] Mr Jackson was critical of the fact the prosecution presented in evidence an enlargement of a photograph that was in the booklet of photographs that Police had previously disclosed as the evidence to be produced at trial.

[55] The Crown accepted that the enlarged photograph was obtained and disclosed at a late stage but says the enlarged image was merely a better version of the same image as Police had disclosed to Mr Jackson.

[56] In his submissions, Mr Jackson accepted the photograph was an enlargement of the speed camera photograph that had previously been disclosed. Mr Jackson referred to modification or enhancement as only a possibility.

[57] The Judge was entitled to accept that the enlarged photograph was simply an enlargement of what had been provided earlier. The enlarged photograph still showed the motorcyclist as wearing the backpack and the calf-length white boots, as was the motorcyclist subsequently photographed at the BP service station in Kaikoura.

[58] Section 34 Criminal Disclosure Act 2008 relevantly states:

> **34 Undisclosed information**
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> (1) This section applies if, at the hearing or trial of a defendant, the court is satisfied that—
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> (a) evidence sought to be adduced by a party is, or is based on, information that should have been disclosed to the other party under this Act; and
>
> (b) that information was not disclosed.
>
> (2) The court may—
>
> (a) exclude the evidence; or
>
> (b) with or without requiring the evidence to be disclosed, adjourn the hearing or trial; or
>
> (c) admit the evidence if it is in the interests of justice to do so.

[59] The enlarged photograph was a duplication of a photograph that had been supplied to Mr Jackson. He thus had notice before the trial that a photograph had been taken of the motorcyclist and the motorcycle when it had been speeding and that photograph would be relied upon. The enlarged and clearer photograph was thus not new evidence. There was nothing to suggest that it was anything other than an enlargement so production of the enlarged photograph did not raise any new issue or unfairly prejudice Mr Jackson. It was a situation where the Judge, in the interests of justice, could admit the photograph as he did despite the fact that it had not been disclosed along with other documents held by Police.

[60] Furthermore, the enlargement was necessary only to clarify the registration number of the motorcycle that had been speeding. Even without the enlarged photograph, there was other evidence sufficient for the Judge to accept that the motorcycle and motorcyclist recorded as travelling at 145 km/h was the same motorcycle and motorcyclist identified at the service station.

[61] I thus do not accept that, to the extent the Judge may have relied on the enlarged photograph, there was any error that created a real risk that the outcome of the trial was affected to such an extent that a miscarriage of justice has occurred in terms of ss 232(4) or 232(2) Criminal Procedure Act.

[62] The fact that the enlarged photograph was not formally produced as an exhibit did not mean the enlarged photograph could not be relied on by the trial Judge as evidence.

[63] There was thus a proper evidential basis on which the Judge could find that Mr Jackson was the rider of the motorcycle recorded travelling at 145 km/h in an 80 km/h area just short of the access way to a camping ground area.

[64] I do not consider that the Court of Appeal's invitation to the Police to consider whether or not the absence of an adequate evidential record compromised the appeal to such an extent that, for that reason alone, Mr Jackson's conviction should be quashed and a retrial ordered, in some way means this Court cannot, on the rehearing of the appeal, make its own decision on this issue.

[65] Mr Jackson also argued on appeal that the circumstances of the speeding were not such as to provide a reasonable basis for the Judge to conclude the speed at the time, having regard to all the circumstances of the case, might have been dangerous to the public.

[66] Again, the circumstances which the Police relied upon are clear without the Court having a transcript. There is no dispute that the speeding occurred near the middle of the day, at the height of summer on 20 December, close to Christmas. It was at a time when it could be expected traffic on State Highway 1 would be

moderately heavy. The area where Mr Jackson was speeding was close to a camping ground and close to the beach. There was the potential for an emergency situation, particularly through a pedestrian crossing the highway to or from the camp ground. The Judge was entitled to find there would have been a particular difficulty for any motorist who might have been trying to exit the camp ground, given the limited visibility and the expectation that any opposing vehicle would be approaching at less than 100 km/h.

[67] In his written submissions of 29 November 2016, Mr Jackson said he had given evidence that he was familiar with the relevant stretch of road, said that he had not passed the access to the camping ground at excess speed, that coastal traffic had been moderate to light at the time and there was very little pedestrian or vehicle activity in that area.

[68] Even if a transcript of the evidence had shown that this was his evidence, the evidence, as accepted by Mr Jackson, would have been sufficient for the Judge to find that Mr Jackson had been travelling at 145 km/h in an 80 km/h area where the view of the road ahead was limited, pedestrians or other vehicles could have come quite suddenly into his path in a situation where they would not have been expecting a motorcyclist to be travelling at a speed approaching 145 km/h.

[69] In all these circumstances, there was a sufficient evidential basis on which the Judge could conclude that the speed at which Mr Jackson was travelling might have been dangerous to the public.

Conclusion

[70] I accordingly hold:

(a) The lack of a transcript of the evidence given at trial, in the circumstances of this case, is not a sufficient ground for finding that Mr Jackson's conviction was unsafe or unsatisfactory, or for holding that a miscarriage of justice had occurred, as would be required to permit the Court to allow the appeal in terms of s 232 Criminal Procedure Act.

(b) The admissible evidence from the photographs taken by the speed camera and at the service station, together with the evidence of Constable Jackson identifying the rider of the motorcycle spoken to at the service station, wearing a helmet similar to that worn by the motorcyclist photographed by the speed camera, wearing calf-length white boots as was the motorcyclist photographed by the speed camera, and carrying a backpack as was the motorcyclist photographed by the speed camera, identified Mr Jackson as the motorcyclist who had been travelling at 145 km/h in the 80 km/h area south of Kaikoura at 1.48 pm.

(c) There was additional admissible evidence identifying Mr Jackson as the speeding motorcyclist rider through the evidence from both the camera operator and Constable Jackson that the registration number of the motorcycle photographed by the speed camera was the registration number of the motorcycle Mr Jackson was on a little later at the BP service station in Kaikoura.

(d) The extent of the excess speed and the circumstances in which that speeding occurred provided an evidential basis on which the Judge could reasonably conclude that Mr Jackson's speeding, in all the circumstances, might have been dangerous to the public.

[71] For all these reasons, Mr Jackson's appeal is dismissed.

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