IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA313/2023
[2025] NZCA 505

BETWEEN	SEVULONI NASILASILA TABUWERE Appellant
AND	THE KING Respondent

Hearing: 22 May 2025

Court: Hinton, van Bohemen and Cull JJ

Counsel: R M Mansfield KC for Appellant
M W Nathan for Respondent

Judgment: 29 September 2025 at 2.30 pm

JUDGMENT OF THE COURT

The appeal is dismissed.

REASONS OF THE COURT

(Given by Hinton J)

[1] The appellant, Sevuloni Tabuwere, was found guilty by a jury in August 2022 of one charge of importing methamphetamine. On 15 May 2023, he was sentenced to 12 months' home detention and 100 hours' community work.[1] He had served that sentence prior to the hearing of this appeal.

---

1 *R v Tabuwere* [2023] NZDC 9876 [sentencing notes].

[2] In late 2018 and early 2019, two brothers, Donald Vuisevuraki (Donald) and Samuel Vaisevuraki (Samuel),[2] were involved in a joint enterprise to import methamphetamine into New Zealand. They were each convicted on a number of charges relating to the importation and supply of methamphetamine, including the importation for which the appellant was charged and convicted.

[3] Donald is a long-standing friend of the appellant. The Crown case against the appellant was that, at Donald's request, the appellant assisted in the brothers' enterprise by permitting his home address to be used to receive a methamphetamine package shipment (for which he would receive compensation).

[4] The appellant appeals his conviction on three grounds:

First ground — non-admission of 16 December 2018 text

(a) Trial counsel erred by failing to adduce a text message sent by the appellant to Donald on 16 December 2018 which said (in Fijian) "Bro apologies let's not do that", and further erred by failing to advance a defence of withdrawal. The Judge also erred by failing to direct on a defence of withdrawal.

Second ground — knowledge of importation

(b) It was not available for a properly directed jury to conclude that the appellant intended the package (regardless of the contents) to be imported into New Zealand, and thus the Crown failed to prove an essential element of the offence of importing. The error in allowing the jury to consider the charge at all was compounded by the fact that the Judge failed to direct the jury on the issue.

---

[2] Notwithstanding the different spelling of their names, Donald and Samuel are brothers.

Third ground — unreasonable verdict — no evidence of agreement to receive the package

(c) It was not available for a properly directed jury to conclude that the appellant had agreed or "allowed" his address to be used for the delivery of a package. The appellant says the only evidence given at trial was that he was told by Donald, 53 days after Donald had been told not to use his address, that the parcel had been sent anyway but that "they had pulled the plug" and "nothing [would] happen".

[5] The Crown's response to the points on appeal in brief is as follows:

(a) The text is not fresh evidence, it should not be adduced on appeal, and in any event, it would not have affected the outcome of the trial.

(b) There was sufficient evidence from which the jury could infer the appellant had intended the package be imported into New Zealand, the trial prosecutor fulfilled their cross-examination duties, and there was no further judicial direction required.

(c) The jury's verdict was reasonable, as there was evidence that the appellant agreed to use his address to receive the package and it was open to the jury to reject his position that he had simply been "told" the package would be sent.

[6] To succeed on his appeal, the appellant must satisfy the Court the jury's verdict was unreasonable or that a miscarriage of justice has occurred.[3] A miscarriage of justice means any error or irregularity that has created a real risk the trial outcome was affected, or that resulted in an unfair trial.[4]

---

3 Criminal Procedure Act 2011, s 232(2).
4 Section 232(4).

Issues at trial

[7] As set out in the question trail, the Crown had to prove the following in order to meet the burden of proof in respect of this charge:

(a) A package containing material concealed in a kitchen appliance was imported into New Zealand on or about 4 February 2019. The question trail recorded that the fact of importation was not in dispute. It was clearly in evidence that the package with the appellant's address on it arrived in the country on, or about 4 February 2019. This element of the charge was therefore not in dispute.

(b) The imported material was a Class A controlled drug, namely methamphetamine. This also was not in dispute.

(c) Before the methamphetamine arrived in New Zealand, the appellant (along with the other defendants) was involved with and/or assisted with the importation by allowing his address to be used for delivery of the package.

(d) The appellant intended that the material would be imported into New Zealand when he allowed his address to be used in that way.

(e) At the time the package was imported into New Zealand, the appellant knew it contained a controlled drug or was reckless as to whether it did.

[8] While the Crown says the primary issues at trial were the extent of the appellant's involvement and his knowledge or recklessness as to the contents of the package, the question of intention to import also remained at issue.

Overview of evidence

[9] As noted, the fact of the importations, and the brothers' involvement in them, was agreed. It was agreed that the brothers were involved in a scheme to import methamphetamine into New Zealand concealed in small to medium-sized appliances.

They were directed to several addresses, including the appellant's address in Albany. The package that was destined for his address arrived in New Zealand on 4 February 2019 from the United States. It was seized by Customs and found to contain 2.965 kgs of methamphetamine. It was not released for delivery.

[10] The appellant and Donald were old friends, having first met in Fiji some 18 years previously. This also was not disputed.

[11] At the end of 2018, Donald and Samuel had been looking for persons to receive their methamphetamine imports, colloquially known as "catchers". Donald went to the appellant's house for this purpose on 15 December 2018 and spent over two hours there. Both the appellant and Donald gave evidence that Donald had asked the appellant if his address could be used for a package to be delivered. They said that Donald explained a process where the appellant would mark "return to sender" on the package and keep it at his house for approximately three to four days, after which it would be collected. Donald said he had told the appellant that the reason for the process was, if customs or police turned up, the package would not have been opened and the appellant would be in the clear. Later in his cross-examination, Donald retracted the latter part of that evidence and said all he explained to the appellant was the "return to sender" process.

[12] The appellant's evidence was that he did not actually agree to receive the parcel on 15 December, but rather he had simply been told by Donald he would receive "a package". Donald gave evidence that the appellant outright refused to let his address be used. Both said that the appellant was never told of its contents. The appellant asked Donald what was in the package, but Donald would not tell him. In examination-in-chief, the appellant said Donald told him it was "a good thing" and "not a bad thing". The appellant said that he was still worried.

[13] They both gave evidence that Donald went to the appellant's workplace unannounced on 18 December 2018. The appellant said that, on this occasion, he told Donald: "Don't send the package." In cross-examination, the appellant was asked whether this was a phone call but he confirmed it was an in-person conversation. Donald also said in cross-examination that the appellant had sent him a text on

16 December 2018, saying not to send the package. The appellant did not mention the text in his evidence.

[14] On 4 February 2019, the package arrived in New Zealand, directed to the appellant's address, from the United States. It was seized by Customs and found to contain just under 3 kgs of methamphetamine. It was not released for delivery. Over the next few days, Donald made several calls to try to ascertain when the package would be delivered. He expressed concern on a phone call with Samuel that the package had been intercepted.

[15] On 7 February 2019, Donald called DHL and was told the package was being held by Customs and required more information to be released. Donald called the appellant just over an hour later.

[16] The 7 February 2019 telephone call between Donald and the appellant was central to the Crown case. During the call, Donald told the appellant to forget about the package, but that he should still write "return to sender" on it if it was delivered. Donald said that the appellant would be looked after if the package was not delivered and that they would give him something "to pay for [his] horse". It was accepted that the "horse" was the appellant's car. They went on to discuss their aspirations to "climb that ladder" and how they could not "just be working and on wages". The key portions of this call are reproduced below.

[Donald]	Oh brother. Okay, one thing I want to tell you.
Tabuwere	Yes, give it.
[Donald]	You, you know that thing, that thing, return to sender?
Tabuwere	Yes.
…	
[Donald]	Yeah, yeah , yeah. Okay. I'm saying to forget it.
Tabuwere	Yeah.
[Donald]	Because they have pulled the plug, nothing will happen. But if they have done it and sent to you, you just return to sender only because … can't-can't-can't be bothered.
Tabuwere	Okay, okay.

[Donald] But, me, yeah, me, me and my bro will look after you, don't worry.

Tabuwere Okay.

[Donald] Yeah, yeah man. Yeah, so ah, ah, because now this time I don't know if they've sent it to you or not and if they have sent it, don't do anything. Just say wrong choice, wrong address or whatever. But ah, if it doesn't arrive, me and my bro will just look after you anyway. We'll give you something.

Tabuwere Don't worry about it.

[Donald] To pay for your horse, your horse needs to be changed.

Tabuwere (Laughs) I've left that thing in the garage.

…

[Donald] Yeah, ha … slowly, slowly, slowly. One of these days we should have a serious talk we have to be serious about moving forward with the things we just been talking about.

Tabuwere Yeah okay, okay.

[Donald] We can't be like this bro.

Tabuwere No we can't be.

[Donald] It's like the motor is going full blast but not going anywhere. Got stuck we need to make it go faster.

Tabuwere Yeah right and your little bro is here?

…

Tabuwere We have to roll like him too.

[Donald] That's right, that's right bro.

Tabuwere Yes.

[Donald] And the deciding factor is that you and I have the lord on our side.

Tabuwere Yes.

[Donald] We can climb that ladder very quickly.

…

[Donald] We will hope and pray that this year we will have a breakthrough bro.

Tabuwere Yeah true.

[Donald]	We can't do this to ourselves.
Tabuwere	Live like this.
[Donald]	We can't just be working and on wages, paying our rent and then …
Tabuwere	And nothing left.
[Donald]	And when we retire we don't own a house.
Tabuwere	Very true.
[Donald]	That's it bro it's time that we wake up.
Tabuwere	Thank you bro we will catch up.
[Donald]	Yeah bro one of these days.
Tabuwere	Okay. Thanks.
[Donald]	Thanks.

First ground — non-admission of 16 December 2018 text

[17] For the purposes of the appeal, the appellant says he never agreed and, at the very least, he later made it clear, that he did not agree *or if needed* that he had withdrawn. The appellant then says that the text message he sent to Donald at 5:37 am on 16 December 2018 supports a lack of agreement or a defence of withdrawal from an agreement, and that trial counsel erred by not adducing it at trial.

[18] As set out above, the text message said (translated from Fijian): "Bro apologies let's not do that".[5]

[19] The Crown was not given notice under r 12A(1) of the Court of Appeal (Criminal) Rules 2001 that counsel error was to be argued as a ground of appeal. As a result, the Crown was unable to obtain an affidavit from trial counsel. However, the Crown agreed to proceed with the appeal. We note there is also no evidence from the appellant in support of his argument of counsel error.

---

5 This presumably is the text Donald referred to in his evidence.

[20] The appellant argues both that the text should be admitted and that the failure to adduce was a matter of trial counsel error. While the tests are different, in this case it makes no difference.

[21] The text is clearly not fresh evidence. It was available as part of disclosure, albeit in Fijian. Further, the appellant's brief of evidence referred to having sent the text message and also identified the message in the disclosure.

[22] The appellant argues that, despite not being fresh, the 16 December 2018 text is nonetheless credible and should still be admitted, relying on the following passage from *Lundy v R*:[6]

> … If the evidence is credible but not fresh, the court should assess its strength and its potential impact on the safety on the conviction. If it considers that there is a risk of a miscarriage of justice if the evidence is excluded, it should be admitted, notwithstanding the evidence is not fresh.

[23] The appellant says the text was significant and trial counsel erred by not adducing it. There is a risk of miscarriage of justice if the evidence is excluded.

[24] In *R v Sungsuwan*, the Supreme Court said, focusing on counsel's actions:[7]

> [66] There will be cases in which particular acts or omissions of counsel may in retrospect be seen to have possibly affected the outcome but they were deliberately judged at the time to be in the interests of the accused. In some cases the accused will have agreed or acquiesced — only to complain after conviction. Where the conduct was reasonable in the circumstances the client will not generally succeed in asserting miscarriage of justice so as to gain the chance of defending on a different basis on a new trial. Normally an appeal would not be allowed simply because of a judgment made by trial counsel which could well be made by another competent counsel in the course of a new trial.

[25] For the reasons the Crown contends, we agree that the text should not be admitted and that there was no trial counsel error. On both counts this is because we do not consider the text was significant or even, viewed overall, likely to be helpful to the defence case.

---

6 *Lundy v R* [2013] UKPC 28, [2014] 2 NZLR 273 at [120].
7 *R v Sungsuwan* [2005] NZSC 57, [2006] 1 NZLR 730.

[26] First, trial counsel has to be taken to have been aware of the text, given the extent it featured in the appellant's brief (and the reference to it in evidence by Donald).

[27] Secondly, as stated, in our view admission of the text would not have assisted the appellant's case and was likely to damage it. The appellant's defence and evidence was as set out above — that is, in essence, that he never agreed to receive a package at all. He was simply told on 15 December he would receive it and, soon after, he made it clear in person to Donald that no package was to be sent. Although Donald's evidence was more equivocal, Donald also said that the appellant refused to let his address be used and that the appellant confirmed that in person.

[28] The appellant's counsel said in closing:

> … He won't always remember the correct order of events and phone calls and meetings and discussions and conversations but he was very clear about, there's two things. He had no knowledge of what was in that parcel and because he did not know what was in that parcel, he did not want it coming to his house. He did not want anything to do with whatever this is. He couldn't have been clearer with Donald. He told him repeatedly, "Don't send that package to my house." He outright refused to have his address used this way according to Donald but also according to Donald he had no choice and yes, Mr Tabuwere did have goals. He wanted to climb the ladder like everyone else. He talked about becoming, his hopes of becoming a homeowner. Maybe replacing his old car but he was not going to achieve his goals by importing methamphetamine or being involved in that in any way. His wheels may well have been spinning. He may have been trying to get ahead but please don't take from that conversation about owning a home, that he was prepared to resort to drug-dealing, that this is how he was going to help his family to get ahead, that he'd have to roll like Samuel in order to get ahead. …

[29] The appellant's evidence was more nuanced than this. He said that at the first meeting he had been overborne or ignored rather than being clear he wanted nothing to do with it, but that he had made his position clear shortly after. But, contrary to the way it is now characterised by Mr Mansfield KC, it was not his defence that, if needed, he had withdrawn.

[30] We consider admission of the text could have cut across the appellant's defence of no agreement. First, the text itself is equivocal — what "that" refers to is totally unclear. But for it to be cogent, "that" must be taken as the sending of the package to the appellant's address. The text otherwise has no relevance at all.

[31] The text was arguably helpful to the defence in that it reinforced Donald's evidence that the appellant said he would not receive the parcel and it would corroborate Donald's evidence that a text had been sent by the appellant on 16 December.

[32] But we consider (and defence counsel no doubt did likewise) that admission of the text may well have detracted from, or even contradicted, the appellant's case that there was no agreement and he had only innocent involvement. First, the text was sent before Donald's otherwise curious unannounced visit to the appellant's workplace. The text may have cast the reason for the visit in a different hue. Secondly, the words used in the text may have been seen as deliberately vague, suggesting that the appellant knew he should not use language that gave anything away. He did not simply say, as he said he did in person to Donald: "Don't send the package." The text also runs contrary to the appellant's evidence that he was quite emphatic with Donald in rejecting the package. The text was more equivocal and suggested some joint involvement: "Bro, apologies let's [or let us] not do that". Thirdly, the text also suggested that the appellant had actually agreed to receive the package (beginning with "apologies") and that he knew what was in the package was something of real concern. In all, we consider the text would not have advanced the appellant's case and could have been prejudicial.

[33] We do not consider trial counsel erred by not addressing a defence of withdrawal. That would have required acceptance by the appellant that there was an initial agreement to receive the package, removing or undermining his key defence. "Agreement" might also suggest some understanding of what was involved in the consignment and in any event, "withdrawal" would again suggest a more than tacit acknowledgement of real concern as to what the package contained.

[34] We also agree with the Crown there was no real risk the outcome of the trial would have been affected by the non-admission of the text for the reasons stated above. In addition, as the Crown submits, there was strong evidence that, regardless of the text, the appellant had agreed to receive the package. The 7 February 2019 telephone conversation was a significant problem for the appellant, regardless of the defence strategy.

[35] As the Crown summarises its case:

(a) It was admitted that the brothers were involved in methamphetamine importation from late 2018 to February 2019, and that their method of import was by sending methamphetamine concealed in home appliances to addresses in New Zealand.

(b) It was also accepted that the brothers had sent other packages to other home addresses, and that these people had been convicted for their roles.

(c) The package destined for the appellant's address contained almost 3 kgs of methamphetamine, valued at up to $630,000. The Crown's position was that a package of significant value would only have been sent to a trusted "catcher" who had agreed to receive it. It would be most unlikely to be sent without agreement.

(d) There was evidence from Donald that he had discussed with the appellant specific instructions regarding the package, namely the "return to sender" process. Donald confirmed in his own evidence that he had explained the process to the appellant. Later, in the recorded phone call on 7 February 2019, Donald asked the appellant "you know that … return to sender thing" and the appellant replied "yes".

(e) Critically, the appellant expressed no surprise about Donald calling him regarding the package on 7 February 2019, and made no attempt to tell Donald that he had not agreed to receive it or that he had changed his mind and told Donald that.

(f) Notably, in that same conversation, Donald said "*they* have pulled the plug" (not the appellant) but that if "they" did send the package, for the appellant to still write "return to sender" on it.[8] This showed the

[8] Emphasis added.

appellant remained in his previously agreed role, and again, there was no protest from the appellant as to what Donald was saying.

(g) Just as noteworthy, Donald then said that even if the package was not delivered, the appellant would still be looked after and that he needed a new "horse", which the appellant accepted was slang for his car. The Crown say this was the compensation the appellant was to receive for his assumption of risk in receiving the methamphetamine, and his agreement to continue to be involved.

(h) The appellant finished the discussion by saying how they had to "roll like [Samuel]" and the two then discussed how they could "climb that ladder very quickly" and could not "just be working and on wages". The Crown say they were discussing their involvement in importing methamphetamine as a "way out" of their current lives.

[36] Whether or not the evidence of the text was before the jury, the later interactions would have served as a strong indication that the appellant remained a participant in the enterprise.

[37] Finally, in this regard the appellant contends that the trial judge erred by not directing on a defence of "withdrawal", and that there was an evidential foundation for doing so.

[38] For similar reasons to those above, we disagree. "Withdrawal" was not part of the appellant's defence at trial and this was not a situation where the Judge was required to put the defence to the jury despite it not being raised by counsel.

[39] In particular, a formal direction of a defence of "withdrawal" would have required on the evidence an acceptance that there was an initial agreement to receive the package. We agree with the Crown that a formal discussion of such a defence would have undermined the appellant's case.

[40] In any event, we consider the Judge covered the point the appellant now seeks to make on appeal. In the Judge's summing up, he told the jury:

> [63] Now, the circumstances for the defence are on the other side of the ledger if you like, that while there was this syndicate and ongoing importation of drugs which would have needed early planning and co-ordination, the defendant had no active involvement. His address was used but, on his evidence, and of Donald Vuisevuraki, he had no choice in that. While he may have been concerned, particularly when he was told about this 'return to sender' approach, he trusted Donald Vuisevuraki and went along with it initially and unwittingly. Concerned about that, he withdrew his consent early and he said that was the next day and then later in evidence, after a visit to his work by Donald Vuisevuraki, and from Donald Vuisevuraki, he said it was verbally he was told, and also he thought there was a text message sent as well. The evidence being that he did not want to be involved is the collection from both of them. That he had no knowledge of what was in that package and the fact that there's no evidence to suggest that he did and while there may have been talk of compensation it was just out of friendship.

[41] So, the Judge put the case that the appellant now contends for, and in fact as generously as possible to the appellant.

[42] For these reasons, we do not accept the points raised under the first ground of appeal.

Second ground — knowledge of importation

[43] Under this ground, the appellant raises three issues:

(a) whether the Crown adequately put to him in cross-examination that he intended the package be imported into New Zealand;

(b) whether there was evidence from which the jury could be sure that he intended the package to be imported into New Zealand; and

(c) whether the trial judge gave sufficient directions on this element of the charge.

[44] The points raised under this ground of appeal relate to the trial issue at [7](d)] above.

[45] We agree with the Crown that there was no requirement for the prosecutor to expressly put to the appellant that he knew the package was being imported. A party only has to cross-examine a witness on significant matters in issue if those matters contradict the evidence of the witness and the witness could be expected to give further evidence if given the opportunity.[9] The appellant knew the charge he was facing and knew the Crown case was that he agreed to receive the package knowing he was helping to import methamphetamine. The Crown extensively cross-examined the appellant about his knowledge of the scheme. He denied all of it. We agree with the Crown that his denials necessarily encompassed a denial that he knew the package was imported. There was no requirement to ask further questions in this regard.[10] Indeed, it could be said that the two and half pages of relevant cross-examination exceeded any obligation.

[46] The appellant next says there was no evidence from which the jury could be sure that he intended the package to be imported into New Zealand. Questions of knowledge of a defendant are generally drawn from inferences and that is the case here.

[47] We agree with the Crown that the jury could reasonably find that element of the charge proven. On the evidence of both the appellant and Donald, it was clear that the proposal discussed by the two involved a package being sent and that when it arrived at the appellant's house, he needed to write "return to sender" on it.

[48] In Donald's evidence-in-chief, he explained the rationale for the return to sender process was to protect the appellant from the risk of arrest. Donald also said:

> Q. … What I want to ask about first is why you were telling this to Sevu — Tabuwere to write "return to sender" on a package, please explain that for the jury?
>
> A. The reason being that from my brother's associates and all that. How they would do it if anyone is tracing that package and it arrived at whatever address, the person or the recipients whatever to put "return to sender" but leave it there, lying there for I don't know, three to four days, after a week, in case they will come in and arrest you and said "you haven't opened it, you haven't got the time to take it back or call

---

9 Evidence Act 2006, s 92.

10 See for example *R v Soutar* [2009] NZCA 227 at [27].

courier to come and pick it up", okay, I guess you put "return to sender" there.

Q. When you say "they might come and arrest you", who do you mean might come and arrest that person?

A. Well, customs or police.

Q. So, just so I understand and I am clear on what you are saying, you were telling Mr Tabuwere to write "return to sender" on the package but leave it in his house?

A. Ah, yes but –

…

Q. The question was, I just wanted to clarify what you meant by that explanation. Can you just say it again?

A. When the package arrived, um, that he needs to put "return to sender" and just leave it there for a few days so that if anyone is tracking it and coming in there to — to check the package, at least you haven't opened it. You've already put "return to sender", it's not yours and you're clear.

Q. Did you explain any of this to Mr Tabuwere?

A. I did but he says: "Why would they do that to me? I've said it outright, not my address." And I said: "I've passed that on to them but in case they are still doing it, which is out of my control 'cos we don't really know who the sender is, where it's coming from."

[49] During cross-examination, Donald explained that he had told the appellant:

Q. Sorry, but you gave evidence just before, didn't you, that you and [Samuel] had a very clear understanding, well certainly your evidence was that you had an understanding about the phrase "return to sender", the process involved with that. Do you remember giving evidence about it this morning?

A. Ah, yes.

Q. And it went along the lines of "because of the risk either customs or police could be tracking that parcel"?

A. Yes, sir.

Q. That you would write "return to sender" on it?

A. Yes, sir.

Q. That you would leave it for three or four days or even a week?

A. Yes, sir.

> Q. So, that if Police were to come around and find that package, you could then say, disavow any knowledge and say "oh, I was meaning to return it to sender, I don't know what's in it"?
>
> A. Correct, sir.
>
> …
>
> Q. And then you went on to say that you explained that to Mr Tabuwere, that was your evidence this morning?
>
> A. Yes. If it arrives, if it arrives because, like I said earlier, myself or Mr Tabuwere won't stop anyone from overseas from my brother's associates sending 'cos we really don't know who, ah, who's actually sending it from that side.

[50] As noted above, Donald subsequently retreated from the latter part of that evidence — at least in terms of whether he had communicated it all to the appellant. He then said he had only told the appellant to put "return to sender" on the package. However, it was open to the jury to reject that later evidence and to draw from Donald's evidence overall that he said enough to make it clear the package was being imported.

[51] It is also relevant in this context that Donald spent over two hours with the appellant. It is likely the discussion would have gone beyond putting "return to sender" on the package and reasonable to infer it would have addressed the prospects of a significant reward for the appellant. In all the circumstances, an inference could be drawn that the package was being imported with the assistance of the appellant, who would be rewarded for his involvement. Overall, there was sufficient evidence that the two had discussed the details of the consignment, which would enable a jury to conclude beyond reasonable doubt that the appellant knew the package was being imported.

[52] The appellant says further that the Judge did not give sufficient directions on this element of the question trail. We consider the directions were sufficient. The question trail given to the jury read as follows:

> Are you sure that Sevuloni Tabuwere intended that the material would be imported into New Zealand when he allowed his address to be used in that way?

[53] The question trail further defined "imported" to mean "bring into the country from abroad".

[54] In addition, the trial Judge said:

> If you answer that question "yes" and you are sure that he did assist in that way by allowing his address to be used, then you'd go on to question 4. This is concerned with what he intended. "Are you sure that Sevuloni Tabuwere intended that the material would be imported into New Zealand when he allowed his address to be used in that way?" If you answer that question "no" then you'd find him not guilty, if you answer that question "yes" you go onto question 5.

[55] We consider, in all, that was a sufficient direction to the jury. It would have been clear to the jury they needed to be satisfied beyond reasonable doubt that Mr Tabuwere intended the material to be imported.[11]

Third ground — unreasonable verdict — no evidence of agreement to receive the package

[56] The appellant says that the jury's verdict was unreasonable. As stated in Mr Mansfield's submissions, the appellant's position at trial was that he never agreed to receive the package and there was no evidence that he had so agreed.

[57] We make the following points.

[58] First, as will be clear, we agree with Mr Mansfield's submission on this ground that it was the appellant's position at trial that he never agreed to receive the package.[12]

[59] Secondly, we consider that there was sufficient evidence from which the jury could reasonably infer that the appellant had agreed to receive the package. This is evident in the material already discussed above. Even on the basis of the evidence of the appellant and Donald, that Donald had explained the "return to sender" process to the appellant on 15 December 2018, and the lengthy extract above from the phone conversation between Donald and the appellant on 7 February 2019 — referring again to the appellant writing "return to sender" on the package and to compensation for him — the jury could reasonably infer the appellant had agreed to receive the package and it was open to them to reject his evidence in which he denied doing so.

---

11 See *Christian v R* [2017] NZSC 145, [2018] 1 NZLR 315 at [35].

12 But we note that this contradicts the argument counsel runs on the first ground.

Conclusion

[60] For the reasons set out above we find against all of the grounds of appeal. The jury's verdict was not unreasonable, nor gave rise to a miscarriage of justice.

Result

[61] The appeal is dismissed.

Solicitors:
Crown Solicitor, Auckland for Respondent