

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**CRI-2014-485-26
[2014] NZHC 2631**

UNDER the Crimes act 1961 and Summary
Offences Act 1981

IN THE MATTER of an appeal against conviction

BETWEEN PETER DOUGLAS ZOHRAB
Appellant

AND NEW ZEALAND POLICE
Respondent

Hearing: 21 October 2014

Counsel: Appellant in Person
M J Ferrier for Respondent

Judgment: 24 October 2014

JUDGMENT OF GODDARD J

This judgment was delivered by me on 24 October 2014
at 1.30 pm, pursuant to r 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Solicitors:
Crown Solicitor's Office, Wellington

Introduction

[1] Mr Zohrab applies for leave to appeal to the Court of Appeal from my judgment of 26 June 2014, in which I dismissed Mr Zohrab's appeal from the judgment of Judge Tompkins in the District Court. Following a defended hearing before Judge Tompkins, Mr Zohrab was convicted on two charges of assault and disorderly behaviour. Both charges arose out of an incident on a commuter train on the morning of 18 October 2012.

[2] The appeal before me was advanced on the grounds that Judge Tompkins was actually or apparently biased; the Judge failed to give proper weight to certain evidence; and there was insufficient evidence to discharge the standard of proof. I dismissed the appeal on the basis that: no fair minded lay observer would have perceived a real possibility that the Judge had not brought an impartial mind to the issues he decided; the Judge did not err in his assessment of the evidence; and the evidence was sufficient to discharge the onus of proof.

The application for leave to appeal

[3] The charges were laid on 20 October 2012, before the commencement of the Criminal Procedure Act 2011. Section 144 of the Summary Proceedings Act 1957 applies accordingly. Under s 144, with the leave of the High Court, the applicant may appeal to the Court of appeal against any determination of the High Court on a question of law arising in any general appeal provided that the question of law involved in the appeal is one which, by reason of its general or public importance, or for any other reason, ought to be submitted to the Court of Appeal for decision.

[4] Mr Zohrab acknowledged that Mr Ferrier for the Crown had helpfully oriented his thinking to s 144 and he now advanced his appeal on the basis of a question of law framed as follows: that his credibility was assessed by both Judge Tompkins in the District Court and by me on appeal on the basis of intuition, as was apparent in paragraph [8] of Judge Tompkins' decision and paragraphs [11] and [21] of my decision.

[5] In paragraph [8] of Judge Tompkins' judgment, he found as follows:¹

In contrast, Mr Zohrab has a tendency to see conspiracies and sinister explanations in ordinary everyday and harmless events and I concluded that is combined with rigidity of views and an underlying sense of egocentric entitlement. I reject the defendant's denials that he never used obscene or abusive language during the initial confrontation with a variety of persons triggered by his taking umbrage at the window above his seat being closed and likewise, I reject his denial that he did not strike the complainant, Ms Benefield. I accept rather the evidence of the other commuters in the carriage that day and I conclude that after the window was pre-emptively closed above his head, Mr Zohrab reacted in an obnoxious and rude fashion. He was confrontational and used abusively obscene language throughout the verbal confrontation beginning with the closing of the window that he had opened.

[6] In paragraph [11] of my judgment, I recorded Mr Ferrier's submissions in relation to Judge Tompkins' assessment of Mr Zohrab's credibility in paragraph [8] above as follows:²

[11] Mr Ferrier in response suggested the Judge's statement was no more than an assessment of the appellant's credibility and was well founded on the evidence that had been given, in particular:

- (a) the appellant's remark that he noted a "circle of women" on the platform of the station whose attentions seemed to be focused on a "butch lesbian";³
- (b) the appellant's claim to have heard "a gnashing of teeth" when he said, "I may be a male but I've got rights too".⁴ Also his later statement that the gnashing came from "some women sitting over there on the other side of the aisle";⁵
- (c) the appellant's conclusion that, because the woman who requested that the window be closed did not consult him, she did not like him and was trying to provoke an incident;⁶
- (d) the appellant's statement to police during a phone call he made whilst awaiting trial that the incident was "a female conspiracy against him".⁷

¹ *New Zealand Police v Zohrab* DC Wellington CRI-2012-091-3317, 25 March 2014 at [8].

² *Zohrab v Police* [2014] NZHC 1457.

³ Notes of evidence at 53–54.

⁴ Notes of evidence at 56.

⁵ Notes of evidence at 71.

⁶ Notes of Evidence at 57.

⁷ Notes of evidence at 79.

[7] In paragraph [21] of my judgment I made the following finding in relation to Judge Tompkins' findings and Mr Ferrier's submissions, as recorded in paragraph [11] of my judgment above, as follows:

I am satisfied that such an observer would not view either the assessment of the appellant by the Judge in this case, nor his preference for the evidence of the prosecution witnesses over that of the appellant and Mr Wright, as giving rise to a real possibility that he had not brought an impartial mind to the resolution of the question he was required to decide. I accept the Crown's submission that the Judge's assessment of the appellant, far from being an "exercise of pronouncing a moral ... judgment", was simply an assessment of the appellant's reliability based on all of the evidence adduced at the hearing, including from the appellant himself.

Discussion

[8] The findings set out above, which Mr Zohrab has characterised as a determination of law are no more than findings of fact based on the evidence of the witnesses at trial and Judge Tompkins' assessment of the evidence as the trial Judge who saw and heard those witnesses. Those findings were open to Judge Tompkins and were clearly not the result of any apparent or actual bias.

[9] Mr Zohrab has not met the threshold requirement of s 144 in the argument he has advanced. As Mr Ferrier submitted, the application for leave to appeal to the Court of Appeal is predominantly an attempt to re-litigate the facts of the case. The complaints relating to the competence and bias of Judge Tomkins were determined in the High Court. The challenge to my competence and impartiality is primarily based on the fact that I endorsed the reasoning of Judge Tomkins as soundly based on the evidence. None of these issues meet the test in s 144. They do not raise questions of law, let alone any of such significance that is of general or public importance; or that should be submitted to the Court of Appeal for any other reason.

[10] One final matter requires attention. During the hearing and in written submissions Mr Zohrab objected to my reference to him as a "self-proclaimed 'Men's rights activist'". No disrespect was intended by this description.

Result

[11] The application for leave to appeal to the Court of Appeal is dismissed.

Goddard J