

**IN THE DISTRICT COURT
AT WELLINGTON**

CRI-2012-091-003317

NEW ZEALAND POLICE

v

PETER DOUGLAS ZOHRAB

Hearing: 25 March 2014
Appearances: Sergeant J May for the Informant
P Foster for the Defendant
Judgment: 25 March 2014

ORAL JUDGMENT OF JUDGE A I M TOMPKINS

[1] Peter Douglas Zohrab appears to answer two summarily laid charges, one of assault under s 196 and a related charge under s 41A Summary Offences Act 1981 of disorderly conduct.

[2] Both charges arise from the same alleged incident on a commuter train on the morning of 18 October 2013, travelling into Wellington. The named complainant, Ms Benefield, got on the train at Paraparaumu and was travelling in towards Wellington. She described how she heard a window in the carriage shut immediately behind her and then heard a man seated about two seats behind her yelling abuse to the effect that the window had been shut without his being consulted.

[3] Ms Benefield, together with other commuters in the train carriage that day and called as witnesses by the police, described how the man, the defendant, had become angry because without being consulted, another commuter that morning had shut the window above where he was seated it seems, at the request of another

commuter seated elsewhere in the carriage who was cold and felt a draught coming in from the open window.

[4] The other commuters called as witnesses today described the defendant as using a variety of abusive and obscene language and Ms Benefield said that after one particularly racist comment she decided to go back in the carriage to remonstrate with Mr Zohrab. She did that from a position adjacent to where he was sitting, wagging a finger at him as she did so and she described how he then pushed or punched her in the chest which caused another commuter passenger seated behind the defendant to then grab the defendant to restrain him and others to remonstrate with him. In cross-examination Ms Benefield and the other commuters called as witnesses by the police denied that Ms Benefield had first assaulted the defendant.

[5] I remind myself that the police are required in this prosecution to prove beyond reasonable doubt the essential elements of the charges faced by Mr Zohrab and note that the defence advanced to this charge, Mr Foster appearing for Mr Zohrab expressly disavowing any suggestion of self-defence, but the defence advanced is that at no stage did Mr Zohrab assault the named complainant, rather it was she who came down to where he was sitting and then punched him, he said in his evidence, on the chin and nose area, in the face. Another witness called by the defence asserting that it was a punch to his chest.

[6] For Mr Zohrab to be convicted of these two inter-related charges I must be satisfied first that Mr Zohrab behaved in a disorderly manner and secondly that he assaulted the named complainant, in this case by pushing or shoving her in the chest. I am satisfied that the police have reached that high standard of proof in respect to both charges.

[7] Having seen all the witnesses give evidence today, I conclude that the four main police witnesses, being the named complainant and three other commuters who were in the carriage that day, despite there being some internal inconsistencies between them as to what they narrated, have given an accurate account of what occurred.

[8] 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.

[9] 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.

[10] Ultimately, in response to Ms Benefield's admonitory wagging of her finger at him, I conclude that Mr Zohrab punched or pushed her in her upper chest area, just adjacent to her right collarbone.

[11] I reject the suggestion put to Ms Benefield and denied by her, but also contained in Mr Zohrab's evidence, that she it was who first punched him. I found unhelpful and unconvincing the variety of images said to show facial bruising produced by the defendant during his evidence in both paper and digital form. There was, as described both by the attending police and the defendant himself, minor bleeding evident on the left side of the defendant's nose, but I am satisfied that however the defendant came to suffer that bleeding, it was not as a result of any assault by the complainant.

[12] I have not overlooked the evidence given for the defence from a Mr Wright who mounted the carriage at Paekakariki and witnessed the second half of the confrontation towards the back of the carriage. His evidence was to the effect that the complainant had punched the defendant but I note that Mr Wright's evidence as to the location of that punch was contradicted both by the evidence from the several other persons already in the carriage and indeed the defendant's own account which, as noted, was that he was punched in the face.

[13] I also take into account that Mr Wright arrived somewhat belatedly after the initial argument about the window and the verbal confrontation involving the defendant that that had triggered. Overall I am satisfied that Mr Wright misinterpreted what he saw Ms Benefield do when she went to remonstrate with Mr Zohrab following his racist, abusive outburst.

[14] Likewise, although as Mr Foster noted, Mr Zohrab disavowed any suggestion of self-defence, in my view there was no impending harm about to come to Mr Zohrab and even if there was, his punch to a woman who was admonishing him verbally was unreasonable.

[15] Accordingly Mr Zohrab is convicted on both charges.

A handwritten signature in blue ink, appearing to read 'A I M Tompkins', with a horizontal line above it.

A I M Tompkins
District Court Judge