

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

M.871/84

1296

BETWEEN KNAUF

Appellant

AND POLICE

Respondent

M.872/84

BETWEEN BROUGH

Appellant

AND POLICE

Respondent

Hearing: 12 October 1984

Counsel: Mr Knauf in person  
Mr Lawry for Brough  
Miss Shine for Respondent

Judgment: ~~17~~ 12 October 1984

---

JUDGMENT OF PRICHARD, J.

---

When these two appeals came before me, Mr Lawry handed in a memorandum to the effect that he had advised the Appellant Brough that on the evidence as presented in the District Court, he could see no basis on which the appeal could succeed, that Mr Brough declined to accept that advice and accordingly Mr Lawry sought leave to withdraw - which I granted.

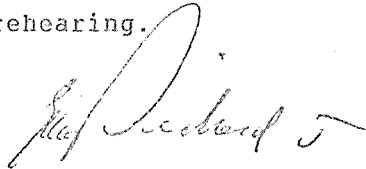
Mr Knauf appeared in person. His submission was to the effect that there was evidence now available which was not presented to the Court below - notably photographs which, Mr Knauf said, establish that the witness Richard Marsden could not have seen the window from which, he says, he saw one of the Appellants jump. (The evidence of this witness is important because he claims to identify both the accused in the vicinity of the window at that time). Mr Knauf said also that tide tables, which were not produced in the lower Court, were available and would establish that the Appellants could have been fishing as they both claimed. (The learned District Court Judge was influenced in reaching his decision by his belief that the state of the tide was such that the Appellants could not have got back to their car at 10.15 p.m. if they had been fishing at their usual fishing spot).

I inspected Mr Knauf's photographs. They appear to bear out what he says about the visibility of the window.

I am left with an uneasy feeling that it is just possible that the decision in this case might have been different if the Appellants' defence had been presented by counsel. I agree with Mr Lawry that on the evidence, as it was presented, the learned District Court Judge was fully justified in drawing the inferences which he did draw, and which led to the conviction of the

Appellants. However, with some hesitation, I have decided that in the interests of justice, I should remit this case to the District Court for rehearing - when, I trust, the Appellants will take the course they should have taken in the first place and obtain the assistance of counsel.

The appeals are allowed. The convictions of both Appellants are set aside and the case is remitted to the District Court for rehearing.



Solicitors:

Mr . Knauf (appeared in person)

Mr Brough (no counsel)

Crown Law Office, Auckland, for Respondent.