S.392

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY AP 129/94

94/1329

BETWEEN R.J. DOUGHTY LTD

Appellant

Set 7

A N D POLICE

Respondent

Hearing: 28 July 1994

Counsel: G.N. Bradford for Appellant
G.C. de Graaff for Respondent

Judgment: 28 July 1994

ORAL JUDGMENT OF ANDERSON J

Solicitors for Appellant: Coupe Davidson Sweetman
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Solicitors for Respondent: Meredith Connell
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This is an appeal against conviction in respect of six informations heard in the District Court at Otahuhu on 4 May 1994. Each information alleged offences in connection with the weight of loads being carried by vehicles owned and operated by the appellant. On conviction a total of $8850 was imposed by way of fines, consistently with the stern penalties which apply to overloading offences.

No question arises in these appeals concerning the approval of the weighbridge used, nor does any question arise as to the certificate of accuracy provided pursuant to s 197(1)(a) of the Transport Act 1962. The point in issue is whether there was sufficient evidence to prove beyond reasonable doubt that the weighbridge was operated correctly in connection with the weighing of the vehicles. Reliance is placed by the appellant on the principles elucidated in *Chelsea Haulage Limited v Ministry of Transport*, AP 137/90, Hamilton Registry, a judgment of Fisher J delivered on 25 March 1991.

The point reinforced by that decision is that a prosecution must show not only that a weighing device was an approved device and that it was accurate at the relevant time, but that also the alleged weighing was reliable. That last matter requires sufficient proof of design method and actual operational method in a particular case.

A perfect chain of proof would involve calling the designer of a machine, proving the designer's expertise in the particular field, and adducing evidence of design method, coupled with evidence from an operator showing on a step by step basis perfect compliance with intended design method. It is trite, however, that the standard of proof in criminal cases is proof beyond reasonable doubt and not proof to a level of perfection or mathematical

certainty. In any particular case one has to examine the available evidence and determine whether such proves the integrity of the method beyond reasonable doubt. Such proof was not available in ***Chelsea Haulage Ltd***, where the prosecution relied on the observations of a traffic officer in connection with the functions of an operator of the weighbridge, the latter not having been called at all.

In the present case the prosecution called the operator at the time of the weighing, that is Mr L.J. Floyd. Mr Floyd gave evidence that he had, until his retirement some five months before the Court hearing, operated a weighbridge for some 11 years. Over the years the bridge had been converted from fully manual operation to computerised operation. He had operated the weighbridge in its computerised configuration for some four years before the weighing in question. He made himself familiar with the functioning of the machine in its computerised configuration by reference to a manual, but as he became familiar with the use of the weighbridge he relied on experience, memory and habit. At the time of the weighing some 180 vehicles a day were being weighed. This represented some 300 weighing functions per day. His evidence indicates that weighing was up to six or eight a day, but considering his evidence as a whole this must be taken to mean weigh only functioning as opposed to other methods of using the weighbridge. His later evidence makes this distinction tolerably clear. In any event he was a very experienced operator. He was found by the learned District Court Judge to be thoroughly familiar with the proper workings of the weighbridge machine, competent to operate it properly and to have operated it properly on the occasion in question, such that the District Court Judge was satisfied that the evidence given as to the readings taken from the machine was accurate and reliable for the purposes of the prosecution. The learned District Court Judge came to that view specifically in reliance on

Mr Floyd's experience over a period of 11 years, training and re-training, frequent recourse in the early stages of computerised operation to the operations manual, and the development of familiarity with the machine and its workings to a point where it was unnecessary for the manual to be consulted for daily use. The learned District Court Judge found that Mr Floyd described in detail the procedures for operation of the machinery and it is plain that he impressed the learned District Court Judge with his demeanour and testimony.

Mr Bradford, in his typically helpful and conscientious submissions, pointed to the severe penalties which attach to overloading offences and the unfairness of the practical difficulties faced by transport operators in seeking to test the reliability of evidence such as that given by Mr Floyd. He pointed out that in the nature of things there are difficulties in obtaining access to operational manuals and, realistically, difficulties in seeking to elicit from weighbridge operators or other witnesses confessions of incompetence in connection with their daily work. Thus, submits counsel, a Court ought to be quite strict in its expectations and assessment of evidence to support charges such as these.

Such matters as Mr Bradford mentions are undoubtedly practical concerns for transport operators but the policy of the Act does not bear on the nature of the evidence in this case. It is plain, as Fisher J points out in ***Chelsea Haulage Ltd***, that the way in which the prosecution seeks to prove such matters as correct operation lies with the prosecution and the evidence may vary in nature from case to case. What is required is an evaluation of the evidence in a particular case. The demeanour of witnesses may be an important matter. The reliability of a witness describing a procedure will always be important. I am sure that Courts of first instance are always

keenly aware of the necessity to scrutinise evidence in an area where the practical ability for the defence to challenge such evidence is necessarily limited.

As far as one can make some assessment of the fluency and competence of a witness from the bare transcript, I have to say that Mr Floyd seemed to be a careful and erudite witness. Plainly the learned District Court Judge was impressed not only with what Mr Floyd said but how his evidence was given. Although not mentioned in the judgment under appeal one can ascertain from the notes of evidence confirmation from two police officers present at the time of the weighing of certain aspects of the operational procedure followed by Mr Floyd. These are consistent with Mr Floyd's evidence as to habitual method.

In the course of the District Court hearing and on the appeal, Mr Bradford has submitted that the best evidence of designed procedure or operational method would be the manual issued by the manufacturer of the weighbridge. That may well be so but it is not the only method of proof. This is not a case where secondary evidence of a document, for example, is sought to be adduced rather than the document itself. One is not so much concerned with best evidence in the conventional meaning of that term as with the best method of proving an issue. In this case the issue whether the weighing procedure was correctly followed so as to produce purported weights upon which the Court could rely was sought to be proved by Mr Floyd's evidence based on experience, training and habit. He was accepted as a reliable witness in this area. There was a proper basis for acceptance of him as such. The appellant has not satisfied the Court on appeal that the learned District Court Judge should have been left in a state of

reasonable doubt on the issue. In the result the appeals fail and are dismissed.

N.C. Anderson, J.