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Andrews v Police 11.10.88

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

AP 95/88

584

BETWEEN JOHN MARTIN ANDREWS

Appellant

A N D THE POLICE

Respondent

Hearing: 12th August 1988

Counsel: K.G. Hales for Appellant
R.E. Neave for Respondent

Judgment: 11 OCTOBER 1988

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JUDGMENT OF WILLIAMSON J.

INTRODUCTION

Is the cab of a truck which is travelling along a State Highway a public place? It is this central question to which most of the argument in this case was directed. In addition it was argued that the evidence called was insufficient to prove the charge beyond reasonable doubt.

CHARGE

The Appellant was charged under s.27 of the Summary Offences Act 1981 with an offence that on the 30th October 1987 between Amberley and Waipara in a public place, namely a truck travelling on a road, namely State Highway 1, intentionally and obscenely exposed part of his genitals.

FACTS

On the 30th October 1987 the Appellant was driving a Railways truck along the State Highway between Amberley and Waipara. He stopped and offered a ride to a female hitchhiker. As the vehicle travelled along the highway the Appellant, on the pretext that he was having trouble with new underpants, unzipped his overalls and produced an erect penis which he invited the hitchhiker to fondle. She refused but he

persisted. She remained steadfast in her refusal and his erection subsided. Shortly after she asked to be let out and the Appellant complied with her request. She then called the Police from a nearby service station. Because of the height of the truck it was accepted by all the witnesses who gave evidence in the District Court that no other person could have seen into the cab from the ground and that no other person could have witnessed the Appellant's alleged acts, other than the complainant.

The Appellant denied that he had performed any indecent act in the cab of the truck or that he had spoken to the complainant in the way she alleged. In evidence the Appellant said that because of a problem of one of his testicles becoming squeezed up into the inguinal canal he had experienced considerable pain and discomfort while driving along. He agreed that he unzipped his overalls and jeans but said that he did so in order to push the testicle down and that at no stage had his penis been erect, nor had he made any request to the complainant in relation to it. After hearing both the complainant and the defendant, the District Court Judge rejected the Appellant's evidence and accepted that of the complainant.

PUBLIC PLACE

Section 2(1) of the Summary Offences Act 1981 defines "public place" in the following way:

> "'Public place' means a place that, at any material time, is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from that place; and includes any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle carrying or available to carry passengers for reward."

Section 2(2) goes on to provide:-

> " (2) Without limiting the definition of the term 'public place' in subsection (1) of this section,

> for the purposes of this Act, a person is in a public place if he is in any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle, which is in a public place."

The learned District Court Judge held that subs. 2(2) applied and that because the Appellant was in a vehicle which was in a public place then he was in a public place while in that vehicle.

Counsel for the Appellant argued on this appeal that the District Court Judge was wrong because he failed to consider the mischief at which the provision in the Summary Offences Act 1981 was directed. In particular he argued that the complainant in this case was not a member of the public, because she was not in the cab of the truck as of right and neither was the cab of the truck open to or used by the public and nor could it have been viewed by the public. He made particular reference to the cases of Walker v Crawshaw [1924] NZLR 93 and Police v Ritchie and Others (unreported, Christchurch Registry, Hardie Boys J. 2/7/81).

In the first of those cases it had been held that an indecent act committed in an enclosed motorcar standing in a street is committed in a street and therefore in a public place. Further it was held that the act done was in circumstances that it may possibly have been seen by others and therefore may constitute an indecent act "wilfully" done. Sim J. appeared to have no difficulty concluding that, because a street was included in the definition of public place under s.2, persons, inside a motorcar parked on a street were still in a public place. The latter case of Police v Ritchie involved a question of whether offensive weapons carried in a private motorcar were in the possession of a person in a public place. Hardie Boys J. reviewed various older cases concerning offences in public places and said in connection with motor vehicles on streets:

> "The use of a motor vehicle is but one way by which persons can proceed along a public street. The vehicle does not in my view constitute a cocoon of privacy in which its occupants may with impunity do what they would not be permitted to do if they were proceeding by some other method of transportation or on foot. They are in a public place notwithstanding that they are there in a vehicle."

At the time when the two cases referred to were decided the definition of "public place" was contained in s.2 of the Police Offences Act 1927. That definition had remained the same from 1927 until 1982 when the Summary Offences Act 1981 came into force. The definition in the Police Offences Act 1927 was as follows:-

> "'Public place' includes and applies to every road, street, footpath, footway, court, alley and thoroughfare of a public nature or open to or used by the public as of right and to every place of public resort so open or used."

Section 40 of the Police Offences Act 1927 added an extended definition of public place for the purpose of Part II of the Act which dealt with indecency and vagrancy. One of the places specifically mentioned in this extended definition was:-

> "Any licensed public vehicle plying for hire."

The definition contained in the Summary Offences Act 1981 is in substantially different terms to the definition in the previous Act. It includes a general statement that a place which is at any material times open to or being used by the public is a public place. The definition then specifically refers to some particular features and to the inclusion of "any vehicle carrying or available to carry passengers for reward". Subsection (2) commences with the words "without limiting the definition of the term 'public place'". These words seem puzzling because the subsection appears to extend rather than limit in any way the previous definition.

The definition of public place in s.2 of the Summary Offences Act 1981 has been held to be a new enactment with significant differences from the Police Offences Act 1927. Quilliam J. specifically referred to this matter in the case of Stephens v The Police [1985] 2 NZLR 732 at 734.

In construing the Statute the Court's task is to apply the ordinary and natural meaning of the words which Parliament has used. (Refer R v Menzies [1982] 1 NZLR 40 at 46.) It has been held that the presumption in favour of the statutory definition is even stronger where that definition gives a word an extended definition beyond its ordinary meaning. (See Police v Thompson [1966] NZLR 813 at 818.)

The question in this case has to be decided in the context of the definition in s.2 of the Summary Proceedings Act 1981. It is interesting to note that in other Commonwealth countries, although under different statutory provisions, persons in vehicles have been held to be in a public place when the vehicle is itself in a public place. (See for example McKenzie v Stratton 1971 VR 848; Mansfield v Kelly 1972 VR 744; and R v Wise 1982 4 WWR 658.)

The definition of public place contained in s.2(2) of the Summary Offences Act 1981 clearly and plainly states that a person who is in a vehicle which is in a public place is in a public place. Accordingly the learned District Court Judge in this case was, in my view, correct in holding that the cab of the Appellant's truck, while that truck was moving along a State Highway, was a public place.

DEFENCE

Counsel for the Appellant argued that a finding that the interior of the vehicle which was in a public place was itself a public place would have the absurd result that a person changing his clothing in an unobservable position in a car or caravan parked in a public highway rest area or domain would still be committing an offence. This submission however overlooks the defence provided in s.27(2) of the Summary

Offences Act 1981 which states:-

> " (2) It is a defence in a prosecution under this section if the defendant proves that he or she had reasonable grounds for believing that he or she would not be observed."

Such a defence was not, of course, available to the Appellant in this case because clearly the complainant was in a position to observe the actions of the Appellant.

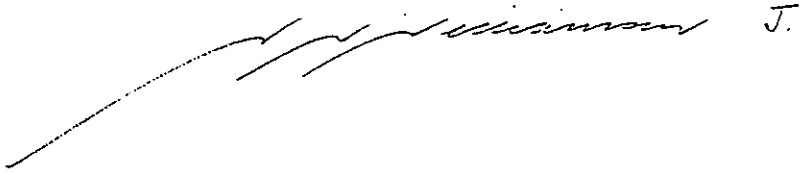
ALTERNATIVE SUBMISSION

In support of the alternative argument Counsel submitted that the District Court Judge could not in the circumstances properly have found a case proved beyond reasonable doubt notwithstanding his impression of the complainant. It was argued that the Judge had accepted uncorroborated evidence of the complainant in a case involving allegations of sexual impropriety against the reasonable explanation by the Appellant as to his medical condition which was accompanied by a denial of the facts outlined by the complainant. In particular it was further argued that the District Court Judge had given undue weight to the fact that the Appellant had not immediately proffered the explanation to the Police Officer who interviewed him. It was said that this could have been due to the Appellant's embarrassment at the medical condition from which he suffered.

After having reread the evidence and the decision of the learned District Court Judge I have concluded that there is no basis upon which this Court could accept the submissions made on behalf of the Appellant. The District Court Judge made his decision after hearing witnesses give evidence as to the Appellant's good character and after being reminded of the nature of the allegations made by the complainant and the standard of proof required. In this context the District Court Judge emphasised the advantage there had been to him in seeing and hearing both the complainant and the Appellant. He rejected the Appellant's explanation and accepted the complainant as a straightforward and honest witness. Such a

decision is clearly a sufficient basis (see R v Awatere and R v McPherson [1982] 1 NZLR 644 and 650).

The appeal is dismissed.



Solicitors:
Helmore Bowron & Scott, Rangiora, for Appellant
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