

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**IN THE DISTRICT COURT  
AT WELLINGTON**

**CRI-2017-085-000388  
[2017] NZDC 16875**

**NEW ZEALAND POLICE**  
Prosecutor

v

**[DAVID REEVES]**  
Defendant

Date of Ruling: 1 August 2017

Appearances: A Winsley for the Prosecutor  
S Campbell for the Defendant

Judgment: 1 August 2017

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**RULING OF JUDGE I G MILL**

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[1] Mr [Reeves] has been charged under the Crimes Act 1961 with common assault.

[2] On 20 January of this year, it is alleged he assaulted a [the complainant]. The allegation is that at about 10.45 pm on Friday 20 January, he was at a bar in Island Bay. The complainant in this matter was having an altercation with another customer. It is alleged the defendant came into the altercation and punched the victim in the throat, causing him to suffer a sore throat. It is alleged that he told the police that he lost his cool and hit the complainant.

[3] Disclosure has occurred in this case but the defendant wishes to have the complainant's prior convictions disclosed under the terms of the Criminal Disclosure Act 2008.

[4] In his submissions on behalf of the defendant, Mr Campbell says that according to the evidence from the constable's notebook, the complainant had been annoying and arguing with a number of staff and patrons during the evening and that a possible defence of self-defence, or defence of others or lack of intent, is likely to be raised at the Judge-alone trial on 14 September next. He submits that the complainant's previous convictions, whatever their nature, would be relevant to this defence and should accordingly be provided.

[5] It is pointed out that under s 13 Criminal Disclosure Act, a prosecutor must disclose to the defendant information described in the Act "as soon as reasonably practicable" and that any relevant information must be disclosed, including what is called "standard information." Standard information includes "any convictions of a prosecution witness that are known to the prosecutor and that may affect the credibility of that witness."

[6] Herein lies the issue in this application. The objection raised by the prosecution has been raised under s 14 Criminal Disclosure Act in that the information has not been provided as it is deemed by the prosecution that it is not relevant. Section 8 Criminal Disclosure Act defines "relevance" as follows: "*relevant*, in relation to information or an exhibit, means information or an exhibit, as the case may be, that tends to support or rebut, or has a material bearing on, the case against the defendant."

[7] In *M v R*,<sup>1</sup> the Court there said that they did not think this definition sets a standard different to the definition of relevance in s 7(3) Evidence Act 2006, where relevance was defined as "a tendency to prove or disprove anything that is of consequence to the determination of the proceeding."

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<sup>1</sup> *M v R* [2015] NZCA 587, (2015) 27 CRNZ 807

[8] Importantly, it was noted from *Wi v R*<sup>2</sup> that:

Any definition of relevance has to accommodate all kinds of evidence and in particular circumstantial evidence, individual pieces of which are often of slender, and sometimes very slender, weight in themselves. The question is whether the evidence has some, that is any, probative tendency, not whether it has sufficient probative tendency.

[9] Mr Campbell submits that, therefore, relevance has a broad definition and that the test that has to be satisfied is, indeed, a low one.

[10] It is also submitted that at common law, it was a test that, so far as convictions are concerned, the kind of conviction within the scope of the duty to disclose must be tested as to whether a reasonable jury or other tribunal of fact could regard it as tending to shake the confidence and the reliability of a witness. Mr Campbell, of course, has not had the advantage of seeing the convictions that are the subject of this application.

[11] The police submit that on 31 May of this year, defence counsel was advised that the complainant had three convictions only and that the prosecutor considered those convictions not to be relevant to the defendant's defence. When a further inquiry was made, the prosecutor advised counsel on 1 June that the complainant "does not have any convictions for dishonesty, violence, threats, perjury or anything that could be relevant to the defendant's defence."

[12] It was submitted on behalf of the prosecution that disclosure is only required for convictions that may affect the credibility of the witness which, of course, are the words used in s 13 Criminal Disclosure Act. The prosecution says it does not require wholesale disclosure of a witness' conviction regardless of their type.

[13] It has been pointed out that one High Court Judge, who is a respected Judge, has suggested that all convictions should be disclosed and then a decision can be made as to the relevance by counsel.

[14] I, indeed, think that would be a good approach but does not actually, in my view, conform with the provisions of the Criminal Disclosure Act.

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<sup>2</sup> *Wi v R* [2009] NZSC 121

[15] The prosecution has also raised issues over s 37 Evidence Act and whether the evidence, in fact, would be admissible insofar as veracity issues are concerned and whether privacy issues would be offended by disclosure of the information.

[16] In my view, s 37 would only come into play later on the question of admissibility, and that could be a separate matter.

[17] However, in my view, I simply have to apply the test of relevance to the convictions that I have, of course, seen myself.

[18] As disclosed, the complainant has three convictions, and I note that none of those convictions are for offences under the Crimes Act or, indeed, the Summary Offences Act 1981.

[19] Even applying the definition of relevance as I have described and the need for only slender relevance, as has been described also, I cannot see that any of these convictions have any relevance at all to the defence in this case, or anything that would be an issue in the case.

[20] Disclosure is declined.

I G Mill  
District Court Judge