DISTRICT COURT OF QUEENSLAND

CITATION:	*Paixao v Commissioner of Police* [2022] QDC 193
PARTIES:	**PASCAL PAIXAO** (appellant) **v** **COMMISSIONER OF POLICE** (respondent)
FILE NO:	D196/21
DIVISON	Appellate
PROCEEDING:	Appeal against conviction
ORIGINATING COURT:	Magistrates Court Maroochydore
DELIVERED ON:	12 August 2022 (ex-tempore)
DELIVERED AT:	Maroochydore
HEARING DATE:	13 May 2022, 12 August 2022
JUDGE:	Cash QC DCJ
ORDERS:	**1. The appeal is dismissed;** **2. The appellant pay the respondent's costs of the appeal in accordance with the scale amounts, such costs to be paid on or before 31 January 2023.**
CATCHWORDS	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST CONVICTION – appeal from the Magistrates Court – where the Magistrate found the appellant guilty of one charge of public nuisance – where the appellant appeals the conviction – sufficiency of evidence – whether the Magistrate was biased – whether the appellant was denied procedural fairness
LEGISLATION:	*Justices Act 1886* (Qld), s 222
CASES:	*Allesch v Maunz (2000)* 203 CLR 172, [22]-[23] *Andelman v The Queen* (2013) 38 VR 659, [678] *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337; 2000 HCA 6 *Forrest v Commissioner of Police [2017]* QCA 132, [5] *Isherwood v Tasmania* (2010) 20 Tas R 375, [391] *Kioa v West* (1985) 159 CLR 550 *MacPherson v The Queen* (1981) 147 CLR 512 *McDonald v Queensland Police Service* [2017] QCA 255;

[2018] 2 Qd R 612
Robinson Helicopter Company Inc. v McDermott (2016) 90 ALJR 679, 686 – 687; [2016] HCA 22, [43]
Rowley v the Commissioner of Police [2017] QDC 88, [25]-[27]
Teelow v Commissioner of Police [2009] QCA 84, [4]

APPEARANCES: Appellant in person

Ms S Masoumi instructed by Director of Public Prosecutions for the respondent.

Introduction

[1] On 4 November 2021 the appellant appeared before a Magistrate at Maroochydore. He faced one charge of committing a public nuisance contrary to section 6(1) of the *Summary Offences Act 2005* (Qld). The appellant pleaded not guilty. The prosecution called several witnesses. The appellant did not adduce evidence.

[2] After hearing submissions, the Magistrate found the appellant guilty. The appellant was fined $700, and a conviction was not recorded. By a notice of appeal filed on 2 December 2021 the appellant challenged his conviction. He appeared for himself today and on the last occasion the matter was before the District Court. On that occasion the appeal hearing did not conclude and was adjourned to today. Because of the unfocussed way in which the appellant wished to present his arguments on the last occasion he was before the court, and the length of time that hearing took, I have directed that the appellant be restricted to 45 minutes to conclude his arguments today. That was because the hearing at first instance before the Magistrate was short, it involved not a great deal of evidence, and it was concluded within a day. It would have been inappropriate to allow a disproportionate amount of time to the hearing of the appeal, especially in circumstances where it has not been easy to discern the appellant's true complaints.

[3] So far as I apprehend the appellant's submissions, both orally and in writing, they may be distilled to the following three essential grounds.

[4] First, the evidence was not sufficient to establish his guilt beyond reasonable doubt, secondly, he was denied procedural fairness and, thirdly, a reasonable and informed lay observer would have thought the Magistrate was biased.[1]

[5] If the appellant were to succeed on the first ground, the appropriate order would be to allow the appeal, set aside the conviction and instead enter a verdict of acquittal. If the appellant fails on the first ground but succeeds on either the second or third ground the appropriate orders would be to allow the appeal, set aside the conviction, and remit the matter to the Magistrates Court for rehearing according to law.

[6] Before turning to the detail of the proceeding at first instance and the arguments on the appeal, it is necessary to say something of the nature of the appeal and the legal principles by which it is governed.

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[1] To aid understanding I have attempted to convert the appellant's submissions into comprehensible legal propositions.

Legal principles

[7] An appeal to this court pursuant to section 222 of the *Justices Act 1886* (Qld) is to be determined in accordance with section 223 of that Act. That is, the appeal is by way of rehearing on the evidence before the Magistrate (and any other evidence introduced with leave of this court) rather than a hearing de novo. It is for the appellant to demonstrate that the decision the subject of the appeal is the result of some legal, factual or discretionary error.[2] An appeal by way of re-hearing involves the appellate court conducting a 'real review' of the evidence given at the trial. In *Robinson Helicopter Company Inc. v McDermott*,[3] the High Court said:

> A court of appeal conducting an appeal by way of rehearing is bound to conduct a "real review" of the evidence given at first instance and of the judge's reasons for judgment to determine whether the judge has erred in fact or law. If the court of appeal concludes that the judge has erred in fact, it is required to make its own findings of fact and to formulate its own reasoning based on those findings.

[8] In *McDonald v Queensland Police Service*,[4] Bowskill J said that:

> It is well established that, on an appeal under s 222 by way of re-hearing, the District Court is required to conduct a real review of the trial, and the Magistrate's reasons, and make its own determination of relevant facts in issue from the evidence, giving due deference and attaching a good deal of weight to the Magistrate's view. Nevertheless, in order to succeed on such an appeal, the appellant must establish some legal, factual or discretionary error.

[9] If, after conducting the necessary review, I am satisfied of the guilt of the appellant, it is appropriate to dismiss the appeal.

The proceedings at first instance

[10] Before turning to a summary of the proceedings before the Magistrate it is, I think, appropriate to observe that at no stage in the proceeding did it appear that the Magistrate addressed the appellant in any substantial way about matters of rights and procedure.[5] Had his Honour done so, some of the problems encountered in the hearing might have been avoided. But the need to provide such assistance to a litigant in person goes beyond matters of convenience. In some cases, the failure to apprise a defendant in person of at least any fundamental procedure or right that may be advantageous to their case may result in an unfair trial and a miscarriage of justice.[6] It may be that the need for such advice is even more critical where, as here, the litigant in person does not speak English as a first language. Advising a defendant of matters of rights and procedure need not be onerous. A template from which such advice might be adapted is easily found as part of the *Supreme and District Courts Criminal Directions Benchbook*

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2 *Allesch v Maunz* (2000) 203 CLR 172, [22]-[23]; *Teelow v Commissioner of Police* [2009] QCA 84, [4]. Cf *Forrest v Commissioner of Police* [2017] QCA 132, 5.

3 (2016) 90 ALJR 679, 686 – 687; [2016] HCA 22, [43] (footnote references omitted).

4 [2017] QCA 255; [2018] 2 Qd R 612.

5 There was a mention of the rule in *Browne v Dunn* at T.1-43, but that was in the context of admonishing the appellant about the way in which he was conducting his cross-examination. As well the Magistrate gave the appellant an extract setting out the elements of the offence, but that was after the morning break – see T.1-56.

6 *Isherwood v Tasmania* (2010) 20 Tas R 375 at 391; *Andelman v The Queen* (2013) 38 VR 659 at 678; *MacPherson v The Queen* (1981) 147 CLR 512.

and there seems to me no reason why that could not form part of the introductory remarks at any summary trial involving a litigant in person.

[11] As noted, the appellant faced a charge of public nuisance contrary to section 6(1) of the *Summary Offences Act*. This relevantly provides

> **6 PUBLIC NUISANCE**
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> (1) A person must not commit a public nuisance offence.
>
> Maximum penalty—
>
> (a) if the person commits a public nuisance offence within licensed premises, or in the vicinity of licensed premises—25 penalty units or 6 months imprisonment; or
>
> (b) otherwise—10 penalty units or 6 months imprisonment.
>
> (2) A person commits a public nuisance offence if—
>
> (a) the person behaves in—
>
> (i) a disorderly way; or
>
> (ii) an offensive way; or
>
> (iii) a threatening way; or
>
> (iv) a violent way; and
>
> (b) the person's behaviour interferes, or is likely to interfere, with the peaceful passage through, or enjoyment of, a public place by a member of the public.
>
> (3) Without limiting subsection (2) —
>
> (a) a person behaves in an offensive way if the person uses offensive, obscene, indecent or abusive language; and
>
> (b) a person behaves in a threatening way if the person uses threatening language.
>
> (4) It is not necessary for a person to make a complaint about the behaviour of another person before a police officer may start a proceeding against the person for a public nuisance offence.
>
> (5) Also, in a proceeding for a public nuisance offence, more than 1 matter mentioned in subsection (2)(a) may be relied on to prove a single public nuisance offence.

[12] While particulars were not stated, it soon emerged that the prosecution alleged the offence was committed by the appellant when he attended a bank and withdrew money, before returning soon after to ask for a receipt. When told one could not be provided after the transaction was finalised the appellant was alleged to have remonstrated with bank staff, including by gesticulating and loudly proclaiming his dissatisfaction by repeated use of loud obscene language. This, it was said, constituted disorderly or

offensive behaviour that interfered with the peaceful enjoyment of a public place by a member of the public.

[13] To prove the allegation the prosecution called two bank employees, two police officers and tendered security images recorded at the bank and footage recorded by the police officers when they arrived at the bank. The bank employees testified first.

Randy Castro

[14] Mr Castro was the teller who served the appellant. At the appellant's request, Mr Castro conducted the withdrawal of $20,000. Mr Castro said the appellant's demeanour during the transaction was "pleasant". At the conclusion of the transaction Mr Castro asked if the appellant wanted a receipt, but the appellant walked away without answering.[7] Mr Castro served another customer, then the appellant returned to request a receipt. When Mr Castro advised that was not possible the appellant "started screaming, started swearing".[8] Mr Castro's evidence continued

> I tried to fix the situation. I said, "I can print it. I can print your statement for you", which I gave to him, but it didn't fix the situation, and then still screaming; yelling; swearing; used, like, the eff word. He'd repeat several times, "Give me the fucking receipt". So that's – he went, like, on and on; on and on. The situation escalate. He start showing his anger. He get worse; escalated; very angry. And then I went to fix the situation. I went and printed another document. I said, "I can give you a document because I don't want the situation to happen here. We have several customers waiting to be served. I am here to assist you. That's why I'm here for".

[15] Mr Castro also said, of a moment soon after when the manager of the bank attended:

> So and then pretty much the manager came – jump on board, and she said, "What's going on, Randi?" So I explained what was the situation. Still yelling, and then Kye mentioned that, "All right. Let me just go back to the office". And she said for the customer, if he does not get himself back, she will call the police. So I mentioned she was call – that – we're going to call the police. "Please behave because not acceptable". There are, like, so many customers waiting to be served, and you know, we feel threatened as well because the customer was keep yelling, keep approaching me, and it was, as well, for the customers, as well.

[16] During Mr Castro's evidence the prosecutor tendered a USB stick that contained images recorded on the bank's security system. The appellant objected to its tender. It is a little difficult to understand the basis for the objection, but it appeared to be that it was not the same the footage disclosed to the appellant before the trial. I have watched the footage on the USB stick that is the exhibit. It is in the form of still images recorded every five seconds from cameras positioned around the bank. It was shown to relevant witnesses during the trial who identified themselves and the confirmed the footage captured relevant events inside the bank at the time of the alleged offence. The footage was, in my view, admissible.

[17] Having said that, I do not think the bank footage assists the prosecution case. There is nothing it shows that is inconsistent with the witness's description of the events, but the footage has no sound, it is not continuous video footage, and could not by itself prove

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7 T.1-3.27-30.
8 T.1-3.30-47.

that the appellant was disorderly or offensive. The appellant can be seen in at least some frames to be gesturing in the direction of Mr Castro. That might have multiple explanations, so at its highest, it could be considered as being objective evidence that is not inconsistent with the description by Mr Castro.

[18] The appellant cross-examined Mr Castro briefly, in between frequent, technical, and largely unnecessary objections from the police prosecutor.[9] That said, the appellant did himself no favours by the unstructured way in which he pursued the cross-examination. Mr Castro did confirm the appellant was friendly during the initial transaction,[10] but otherwise maintained the version of events he gave in his evidence-in-chief. The Magistrate was obviously frustrated with the conduct of the cross-examination. At one point he set a time limit for the cross-examination,[11] and soon after purported to excuse the witness before reneging.[12] When the cross-examination resumed it was no more focussed. Soon after the Magistrate said to the appellant, "You need to get to [the key issue] – if you don't, I'm going to do it", and took over the cross-examination.[13] In doing so he put matters to Mr Castro in accordance with what the Magistrate presumably thought was in dispute. Mr Castro rejected suggestions that the appellant was not angry, or aggressive, or swearing when the dispute about the receipt arose.

Kyeanne Whittaker

[19] The next witness, Ms Whittaker, was the manager of the bank branch where these events occurred. She testified that she was on her lunch break when she heard yelling and observed the defendant on internal security cameras. After a minute she went out to the customer service area to see if she could de-fuse the situation. Mr Castro explained the situation to Ms Whittaker who then spoke to the appellant.[14] Ms Whittaker's evidence-in-chief included the following[15]

> So he was ranting, red-face, hands around, swearing in the banking chamber in front of a lot of other customers. I'd explained that I couldn't prove that receipt either, and then he continued to carry on, so I asked him to leave the bank.

[20] She continued, testifying that the appellant said:

> "I'm not leaving until you give me the effing receipt. Give me this effing receipt", which I couldn't physically provide him that receipt. We can give the statement on your account, which is a receipt. It is a bank document. It is a legal receipt. But I couldn't physically print the legal transaction that he wanted, which is a bank requirement.

[21] Ms Whittaker went to call the police and could hear the appellant yelling, "Tell her to call – cancel the effing – the fucking police call".[16] The appellant's behaviour made Ms Whittaker feel embarrassed, intimidated, and scared.[17] The appellant's attempts to

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9 For example, at T.1-37.34-47.
10 T.1-22.6-18.
11 T.1-42.18.
12 T.1-43-T.1-44.
13 T.1-48.47; T.1-49-T.1-53.
14 T.1-57.
15 T.1-58.11-28.
16 T.1-60.28-32.
17 T.1-60.8-9.

cross-examine Ms Whittaker did not produce any relevant evidence. It did cause Ms Whittaker to become upset and cry.[18]

Police witnesses

[22] The two police officers who attended the bank in response to Ms Whittaker's call also testified. They arrived at about 12.25 pm,[19] roughly 20 minutes after the events said to constitute the offence of public nuisance. The relevant part of the police officers' evidence was a conversation with the appellant outside the bank. This was recorded and I have watched the entire recording. In the conversation with police, the appellant denied any wrongdoing and asserted that the bank had caused the problem. At times in the conversation the appellant swore and was clearly agitated. He appeared to have difficulty articulating his version of events, but this might be attributed to English not being his first language. The result is that it is hard to discern a coherent narrative in what the appellant said to the police.

[23] By the time the police officers came to be cross-examined, the proceeding had deteriorated into an argument between the appellant and the Magistrate.[20] The appellant had become irascible and insulting.[21] The Magistrate did not respond well to the appellant's provocation. When the appellant's cross-examination of the second police officer continually strayed into irrelevant matters, the Magistrate ended the questioning and excused the witness.[22] The prosecution case ended and the appellant said he did not intend to give evidence.[23]

Final submissions and decision

[24] In closing submissions, the prosecutor identified the evidence of the appellant gesturing, yelling, and swearing in the public forum of the bank as constituting behaviour that was "likely to cause a disturbance, annoy or insult others sufficiently deeply or seriously to warrant the interference of the criminal law".[24] He also submitted that swearing as alleged in a bank at lunchtime compared to, for instance, a nightclub late at night, was offensive. Having then pointed to the evidence of the effect of the appellant's conduct on the bank witnesses, the prosecutor submitted that each element of the offence had been satisfied.

[25] The appellant's submissions were short and can be set out almost in full. The appellant said[25]

> And I'm in agreeance with what was said using that case law. So both instances, I am showing consistency, and there is erratic behaviour from the police. There's even

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18 T.1-91.10.
19 T.1-113.5.
20 See, for example, T.1-128-T.1-129.
21 See, for example, T.131.13.
22 T.1-161.1-10.
23 T.1-161.23-25. The appellant did say he wanted to call two of the witnesses who has already given evidence in the prosecution case. Even if this had occurred, it could not have assisted the appellant who had already cross-examined each witness and would have been restricted to ask only non-leading questions.
24 Citing *Andrews v Rockley* [2008] QDC 104, where Rackemann DCJ in turn cited *Melser v Police* [1967] NZLR 437 and *Coleman v Power* (2004) 78 ALJR 1166.
25 T.1-165.34-T.166.8.

> disagreement with a police officer that's been more aligned to listen to the facts than someone who's not dancing around between colluding with the bank, my branch manager, and she goes and sobs on us and turns red and all this, and the statement she's made on the QP9 by the charging officer, that I turned red in the face, that I'm outraged and carrying on. But your Honour, I'm not a lawyer, and I'm not trying to offend anyone today or at the bank. But I'm just a small person fighting how many cops here, and numerous times, I went to the prosecutor, and I wasn't given the QP9, and I wasn't given the briefings – the full briefings that we have today. And I can go on, but now it's almost finished day, that it's ridiculous how incompetent a full team can't put things factually in order take it a hassle for not just myself but yourself as well. And I – it's taxpayers' money here that I pay taxes on, and you know, there is no need for this. And there is no footage that has any evidence of any of the witnesses that says I swore in the bank, and it's been redacted in a way that's been fast forwarded and then it was in multi-speed that you weren't witness on. There is so many things it's just not funny. There's no procedural fairness at all, so whether you go against me or not, it's irrelevant because it's not fair courts here, and I rest my case.

[26] It appears the Magistrate then moved immediately to convict the appellant and give his reasons. While being interrupted by the defendant, the Magistrate explained that he accepted the evidence of the bank witnesses, which had not been challenged in any meaningful way during cross-examination. That evidence, the Magistrate concluded, established beyond reasonable doubt that the appellant had behaved in a disorderly and offensive way and interfered with the peaceful enjoyment of a public place[26] by a member of the public. In doing so the Magistrate took care to note that the footage from the bank had limitations and could not itself be a basis for finding the appellant committed the offence. But the Magistrate noted the footage provided some support for the testimony of the bank witnesses. After hearing submissions, the Magistrate fined the appellant.

Arguments on the appeal

[27] On 11 February 2022 the appellant filed a document that was part printed and part hand-written. Part of the printing reads "Appellant's outline of argument". In handwriting there appears the following.

> There is evidence, compelling evidence in the full brief and evidence.gov (site) source that contradicts the allegations made against me.
>
> Source NB – in + out of court so far.

[28] This document had been preceded by the notice of appeal, which contains more detail under the description of the grounds of the appeal. As summarised above, these may be understood as being complaints that the evidence was not sufficient to establish the appellant's guilt beyond reasonable doubt, that the appellant was denied procedural fairness, and that the Magistrate was biased according to the principles discussed in *Ebner v Official Trustee in Bankruptcy*.[27]

[29] At the resumed hearing this morning, a further document was handed up, and the appellant has been given leave to file and read that further outline. I do not discern that

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26 According to the definition in Schedule 2 to the *Summary Offences Act*.

27 (2000) 205 CLR 337; 2000 HCA 6.

as raising any substantially different points, except for perhaps the pursuit of an unsupported allegation of errors in, or perhaps even tampering with, the transcript of the hearing before the Magistrate.

[30] The appellant first appeared before me on 10 May 2022 when the argument on this appeal commenced at 11.30 am. At 2.58 pm, because it was perceived there would be insufficient time to conclude the argument, the hearing was adjourned to today. On that occasion the appellant was prolix and over the space of some hours did not address any argument at what would be a comprehensible ground of appeal. It was as a consequence, as I have mentioned, that I directed the submission of the parties today be limited. At the resumed hearing, the appellant was given the opportunity to make supplementary submissions and to respond to the prosecutor's submissions. He has still, in my mind, failed to present a comprehensible argument.

[31] It is convenient to address the grounds, as I perceive them to be, in reverse order.

Bias?

[32] The relevant legal principles where there is an allegation of apprehended bias were summarised by Moynihan QC DCJ in *Rowley v Commissioner of Police*.[28] I respectfully adopt and set out below part of his Honour's decision.

> [T]he test to be applied to the conduct of judges [is] as described by the High Court in *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 at 344, where Chief Justice Gleeson, and Justices McHugh, Gummow and Hayne said:
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> > "a judge is disqualified if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide."
>
> Here, 'might' refers to real (not remote) possibilities, not probabilities: see *Johnson v Johnson* (2000) 201 CLR 488 at 492; and *Slaveski v R (On the Application of the Prothonotary of the Supreme Court of Victoria)* (2012) 40 VR 1 at 26.
>
> It must be recognised that the "fair-minded lay observer" does not make snap judgements, and is not complacent nor unduly suspicious or sensitive: see *Johnson* at 494, 509. Where a judicial officer's impartiality is called into question under this test, it should be considered that the fair-minded observer would have regard to the judicial officer's training, tradition, experience and oath or affirmation, which equips them to decide factual contests solely on the material put in evidence and matters of which judicial notice is taken: see *Johnson* at 493.
>
> The requirements of the test from Ebner are threefold. The process was explained by Chief Justice Gleeson, and Justices McHugh, Gummow and Hayne at 345:
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> > "First, it requires the identification of what it is said might lead a judge (or juror) to decide a case other than on its legal and factual merits. The second step is no less important. There must be an articulation of the logical connection between the matter and the feared deviation from the course of deciding a case on its merits. The bare assertion that a judge (or juror) has an "interest" in litigation, or an interest in a party to it, will be of no assistance until the nature of the interest, and the asserted connection with the possibility of departure from impartial

[28] [2017] QDC 88, [25]-[27].

> decision making, is articulated. Only then can the reasonableness of the asserted apprehension of bias be assessed."
>
> While only referring to two steps, the third was identified in *Isbester v Knox City Council* (2015) 255 CLR 135 at 155 by Justice Gageler as the consideration of the reasonableness of any possible apprehension caused by an identified interest or other factor. This test was characterised in *Isbester* at 146 by Justices Kiefel, Bell, Keane and Nettle as presenting a largely factual question, albeit one to be considered in the particular legal, statutory and factual context. It must be kept in mind that when applying this test, there is no requirement to conclude how a judge would actually approach the matter. The court must merely to consider whether there is a possibility the judge would not decide the case on its legal and factual merits: see *Ebner* at 345.

[33] Having carefully reviewed the transcript of the proceeding at first instance, I am unpersuaded a fair-minded lay observer might reasonably have thought the Magistrate would not decide the case according to its legal and factual merits. There is nothing to support a conclusion that the Magistrate knew anything about the case before the hearing commenced or had any interest in its outcome. To the extent the Magistrate was robust in exchanges with the appellant, that was driven by the appellant's own conduct at the hearing. It may be considered unusual to impose limits on cross-examination, or to excuse a witness before a defendant has announced they have concluded their questions, but in the circumstances of this case those features cannot give rise to a reasonable apprehension of bias.

[34] This complain is without merit.

Lack of procedural fairness?

[35] The common law has long recognised there is a fundamental duty to afford a party an opportunity to be heard where a decision is to be made that will affect the person's rights or interests. It is sufficient for present purposes to note the decision of the High Court in *Kioa v West*[29] and to observe that what is sufficient for procedural fairness will depend on the circumstances of the case, including the power being exercised and the legal framework for the decision. This case concerned an allegation of criminal conduct. While it was not criminal conduct of an especially serious kind, the nature of the proceeding meant it was appropriate for the Magistrate to take special care to ensure the appellant was properly heard. It is no doubt a difficult task for a Magistrate when confronted with someone like the present appellant, who is plainly intelligent but not legally trained, and who feels passionately about the issues raised in the case. But the difficulty of the task does not relieve a Magistrate of an obligation to see it performed.

[36] As I noted at the outset of these reasons, there was more that could have been done, and done easily, to ensure the appellant had the best opportunity to be heard. A little time could have been spent explaining to the appellant the elements of the alleged offence, process of the trial, the expected order of events, how to raise an objection to evidence, the importance of allowing witnesses the opportunity to comment upon disputed issues of fact, and other matters. The Magistrate did bring to the appellant's attention the elements of the offence, and the rule in *Browne v Dunn*, but only after the first witness had concluded their testimony. Apart from that, the appellant was offered no real assistance or guidance.

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[29] (1985) 159 CLR 550.

[37] To this may be added the conduct of the Magistrate in ending early the cross-examination of a police witness. While it may be within the power of a court to set limits, care must be taken to ensure the power is not exercised capriciously or out of frustration. Again, this might have been avoided if the appellant was given clear instruction before the hearing proper began.

[38] I am concerned about the conduct of the hearing by the Magistrate. It fell short of what would be ideal. But that does not necessarily equate to a lack of procedural fairness. In this regard it is important to note that when the appellant did cross-examine, the focus appeared to be on re-agitating whatever grievance he had with the bank concerning his transaction, and a claim that the bank footage had been doctored, rather than on any real issue going to the alleged conduct. As to the former, proof that the appellant's grievance was legitimate would have little bearing on whether his conduct constituted public nuisance. The boundaries of what might be tolerated in a public place are not set by the strength of feeling of an alleged offender. As to the latter there was no basis for the suggestion the footage had been altered. It was certainly deficient in that it recorded a series still images without sound rather than a moving picture, but the possibility someone had gone to the trouble of altering the recording to falsely implicate the appellant in the alleged offence of public nuisance is risible.

[39] The requirement of procedural fairness does not give a defedant a right to waste a court's time or pursue irrelevant matters. While the hearing was less than perfect, the imperfections did not concern any matter that could have made a difference to the assessment of the evidence. I think it is finely balanced, but in the particular circumstances of this case the appellant was not denied an opportunity to be fairly heard in answer to the allegation. This ground is not made out.

Sufficiency of the evidence

[40] I have considered all the evidence before the Magistrate, the relevant portions of which I have already summarised. If accepted, the evidence of Mr Castro and Ms Whittaker established the following.

[41] The appellant attended the bank branch at Coolum. He withdrew $20,000 but did not respond when Mr Castro asked if he wanted a receipt. Soon after the appellant returned and requested a receipt. Mr Castro explained he could not print a receipt but offered to print a statement. This did not "fix the situation" and the appellant was "screaming, yelling, swearing" and using the "f-word". The appellant repeated several times, "Give me my fucking receipt." His behaviour got worse or escalated. As this happened, there were other customers in the branch waiting to be served. The appellant pointed at Mr Castro as he yelled and Mr Castro felt threatened.

[42] When Ms Whittaker became involved, the appellant was red faced and swearing in front of a lot of customers. She asked him to leave the bank branch. The appellant said, "I'm not leaving until you give me the effing receipt, give me this effing receipt." She felt embarrassed, intimidated, and scared. The bank's security footage shows several other customers were nearby at this point.

[43] Such behaviour, in a public place in front of several people, would constitute disorderly or offensive behaviour and, if it occurred as described, interfere with the peaceful enjoyment of that place by members of the public.

[44] The critical question for the Magistrate, and me, is whether the testimony of Mr Castro and Ms Whittaker should be accepted as being truthful and reliable. In my view, it should. The evidence each gave was not implausible. It was consistent with what each other said, and with what could be discerned from the bank security footage. The appellant did not dispute that he was upset because he could not obtain what he considered to be a satisfactory receipt. So far as the appellant's conversation with the police is concerned, the suggestion that he remained calm and composed throughout was substantially undermined by his demeanour 20 or so minutes later when talking to the police.

[45] In respect of the evidence of Mr Castro and Ms Whittaker, the appellant submitted that I would conclude Mr Castro was directed to lie by Ms Whittaker. There is simply no evidence to support so serious an allegation. Mr Castro's evidence was also said to be not supported by the closed-circuit television footage from the bank. Perhaps it is appropriate to say it is not supported, but it was certainly not contradicted. Lastly, in respect of Mr Castro, it was said that he had, in evidence-in-chief, given evidence that he produced one receipt, when in fact, there were two. That may be an inconsistency, but it is a trivial one which does not detract from the assessment of his credibility otherwise.

[46] In respect of Ms Whittaker, the appellant submitted that I would find she had lied in her evidence because she is a sociopath, who had on previous occasions treated the appellant poorly. Again, that serious allegation is unsupported by any evidence, and it seems to me to be inconsistent with her appearance in court, where she became upset, as recorded on page 91 of the transcript. Nothing then was raised in the course of the hearing by the appellant to cast doubt on the witnesses' description of his conduct.

[47] I am left with no doubt that the appellant behaved in the manner described and so as to constitute the offence of public nuisance. There is no merit in this ground.

Conclusion

[48] Having reviewed the whole of the proceeding at first instance, I am not satisfied that the decision of the Magistrate was affected by any legal, factual, or discretionary error. I am also satisfied that the evidence shows the appellant is guilty of the offence of public nuisance. It follows that the appeal must be dismissed. I will hear the parties as to the costs of the appeal.

[49] …

[50] The orders will be

1. The appeal is dismissed; and
2. The appellant pay the respondent's costs of the appeal in accordance with the scale amounts, such costs to be paid on or before 31 January 2023.