IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA38/2025
[2025] NZCA 398

BETWEEN	DANIEL WILLIAM BAKER Applicant
AND	THE KING Respondent

Court: French P, Jagose and Gault JJ

Counsel: G H Vear and C L Forsyth for Applicant
E P C Duckett for Respondent

Judgment: (On the papers) 12 August 2025 at 10.30 am

JUDGMENT OF THE COURT

The application for leave to bring a second appeal is declined.

REASONS OF THE COURT

(Given by French P)

Introduction

[1] Mr Baker was convicted of one charge of endangering transport,[1] following a judge alone trial before Judge Sharp.[2] The Judge sentenced him to 12 months' intensive supervision and ordered forfeiture of the laser.[3] Mr Baker then appealed his conviction to the High Court. The appeal was dismissed by Wilkinson-Smith J.[4]

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1 Crimes Act 1961, s 270(1)(a).
2 *R v Baker* [2024] NZDC 17136 [DC judgment].
3 *R v Baker* [2024] NZDC 27145.
4 *Baker v R* [2025] NZHC 3842 [HC judgment].

[2] Dissatisfied with that outcome, Mr Baker now seeks leave under s 237 of the Criminal Procedure Act 2011 to bring what would be a second appeal in this Court.

[3] The application for leave is opposed by the Crown.

Background

[4] The Crown case was that in the early hours of the morning, Mr Baker shone a high powered laser at the sky into the cockpit of a Boeing 767 cargo aeroplane. The plane was at 7,000 feet and had commenced its descent, being about eight minutes away from landing at Auckland International Airport.

[5] In evidence the pilot said the "cockpit just sort of exploded into a bright green light". He took evasive action to avoid being hit directly in the eye by lowering his seat. Although he was not blinded by the light, it was, he said, a dangerous distraction at a critical phase of the flight.

[6] The Police Eagle helicopter located Mr Baker's house as the source of the laser. As the helicopter hovered overhead and then moved away, Mr Baker pointed the laser towards the sky in its direction. A tactical flight officer from the helicopter testified that they were lasered three times.

[7] When police arrived at Mr Baker's house, he was found in possession of a laser. In response to an officer asking him why he was shining his laser, he said he "thought there were drones in the area". Evidence of him having made that admission was not contested at trial.

[8] Mr Baker was initially charged with two counts of interfering with a transport facility with reckless disregard for persons or property, one charge relating to the cargo plane and the other to the helicopter. The District Court Judge amended the charge relating to the helicopter to one of attempting to interfere with reckless disregard,[5] but at the conclusion of the Crown case she dismissed that charge, having realised that the offence was not, as a matter of law, capable of being charged as an attempt.

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5 *R v Baker* [2024] NZDC 15531.

[9] At trial, the contested issues included the issue of whether there was sufficient evidence on which the Judge could infer recklessness. As indicated, the Crown called evidence from the pilot of the aeroplane and the tactical flight officer from the helicopter. It also called expert evidence about lasers. Mr Baker elected not to give or call evidence.

[10] In her decision, the Judge found that while she was unwilling to infer that Mr Baker deliberately aimed the laser at the plane, she was satisfied that he had acted with reckless disregard.[6]

[11] On appeal to the High Court, Mr Baker argued that in making a finding of reckless disregard the Judge had wrongly applied an objective test. In his submission, she found him guilty on the basis that he should have perceived the risk, rather than finding he actually perceived it.

[12] Wilkinson-Smith J agreed that in law the correct test was a subjective test but did not accept that the District Court Judge had failed to recognise this.[7] On her analysis of the District Court decision, the finding of recklessness was based on a combination of both general facts about lasers and facts specific to Mr Baker.[8]

[13] After traversing the evidence herself, Wilkinson-Smith J concluded that the District Court Judge was "perfectly entitled" to find that Mr Baker subjectively recognised there was a real possibility his actions would cause danger to the safety of an aircraft, but despite that aimed a laser beam at the night sky.[9] There was no error in the approach taken, and looking at the matter afresh she would have come to the same conclusion as the District Court.[10]

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6 DC judgment, above n 2, at [23].
7 HC judgment, above n 4, at [38].
8 At [38].
9 At [41]–[44].
10 At [48].

The application for leave

[14] In order to obtain leave, Mr Baker must satisfy us that his proposed appeal raises a question of general or public importance or that a miscarriage of justice may have occurred, or may occur unless the appeal is heard.[11]

[15] The ground of the proposed appeal in this Court is that both the District Court and the High Court erred in taking judicial notice of the fact that it is well known that high powered lasers pose a danger to aircraft and that there has been considerable publicity about the dangers of people shining laser beams in the sky. In doing so, both lower courts are said to have undermined the requirement to establish the requisite mens rea and effectively rendered the offence one of strict liability.

[16] In opposing leave, one of the submissions made by the Crown is that Mr Baker did not challenge the taking of judicial notice in the High Court. Although we agree that second appeals are not a mechanism for advancing new arguments, we do not consider that is the case here. "Judicial notice" may not have been specifically addressed as such in the High Court, but the essence or substance of the argument sought to be advanced now is the same as that run in the High Court.

[17] Whether it is an argument that warrants a second appeal is, however, another matter.

[18] Both lower courts recognised that the test was subjective. The proposed appeal is thus concerned less with an error of law than with a challenge to the application of that test to the facts. It is thus essentially fact-specific. As for the sufficiency of the evidence, we note there was evidence that, by his own admission, Mr Baker had been using the laser to search for objects in the night sky as well as evidence that he had lasered a manned aircraft — the helicopter — more than once. His use of the laser in itself was a sufficient basis from which to infer that he must have appreciated that it was powerful and sore to the eye. He must have known that planes fly at night time and, given he was in reasonable proximity to the airport, he would also know that there was a risk of planes flying overhead, and at low altitudes. All of that was available to

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11 Criminal Procedure Act 2011, s 237(2).

the Judge, in addition to evidence relating to the widespread publicity of the dangers posed by lasers.

[19] It follows, in our view, that the proposed appeal lacks merit and does not meet the statutory test for granting leave.

Outcome

[20] The application for leave to bring a second appeal is declined.

Solicitors:
Public Defence Service | Ratonga Wawao ā-Ture Tūmatanui, Tauranga for Applicant
Crown Law Office | Te Tari Ture o te Karauna, Wellington for Respondent