Criminal Appeal No. 13 and 14 of 2024

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE SUPREME COURT OF BERMUDA SITTING IN ITS APPELLATE CRIMINAL JURISDICTION
BEFORE THE HON. ACTING JUSTICE MARK DIEL
CASE NUMBER 2021: Nos. 16 and 19

Dame Lois Browne Evans Building
Hamilton, Bermuda HM 12

Before:

JUSTICE OF APPEAL THE HON. IAN KAWALEY

JUSTICE OF APPEAL THE HON. NARINDER HARGUN

and

ACTING JUSTICE OF APPEAL THE HON. ANDREW MARTIN

BETWEEN:

CRIMINAL APPEAL No. 13 & 14 of 2024

AMIR MIZRACHY

Applicant

- and -

THE KING

Respondent

Appearances: Mr. Amir Mizrachy the Applicant in person
Ms. Cindy Clarke, Director of Public Prosecutions, for the Respondent

Hearing: On the papers

Ruling: 2nd September 2025

Application for leave to appeal to the Privy Council against convictions in Magistrates' Court-relevant test for granting leave-Appeals Act 1911, section 2 (c)

Introductory

1. On 3 July 2025, the Applicant filed a Notice of Motion for Leave to Appeal to Appeal to His Majesty in Council (the "Notice") against the following limbs of this Court's Judgment dated 27 June 2025:

    (a) the dismissal of the Applicant's appeal against his conviction in the Magistrates' Court on 11 March 2021 for careless driving contrary to section 37 of the Road Traffic Act 1947 on 20 February 2020; and

    (b) the dismissal of the Applicant's appeal against his conviction in the Magistrates' Court on 26 February 2021 for wilful damage contrary to section 448 (I) of the Criminal Code on 19 March 2019.

2. Our 27 June 2025 Judgment dismissed the Applicant's appeal against the decision of the Supreme Court on 6 December 2023 which rejected his appeal to that Court against the said convictions (the "Judgment"). For completeness, we also dismissed the Crown's appeal against the Applicant's acquittal by the Supreme Court on charges of offensive words and racial harassment.

3. Directions were given for the present application to be heard on the papers, unless either party advanced a case for an oral hearing, and the filing of written submissions by the Respondent in response to the Application and the Applicant in reply. This approach was adopted because the Notice ran to 50 pages, consisting mostly of legal argument. It was supported by the Applicant's Affidavit sworn on 3 July 2025. Neither party requested an oral hearing. The Respondent filed submissions opposing the Notice dated 30 July 2025. The Applicant filed his reply submissions on 7 August 2025.

The legal requirements for granting leave to appeal to the Privy Council

4. The Appeals Act 1911 provides so far as is relevant as follows:

    "***When appeal lies***
    2 Subject to this Act, an appeal shall lie —

> *(a) as of right, from any final judgment of the Court, where the matter in dispute on the appeal amounts to or is of the value of $12,000 or upwards or where the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of $12,000 or upward; or*
>
> *(b) as of right, from the final determination of the Court of an appeal from any final determination of any application or question by the Supreme Court under section 15 of the Constitution;*
>
> *(c) at the discretion of the Court, from any other judgment of the Court, whether final or interlocutory, if in the opinion of the Court, the question involved in the appeal is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to Her Majesty in Council for decision*." [Emphasis added]

5. The Applicant explicitly seeks discretionary leave under section 2(c). The Notice avers "*that the proposed appeal raises questions of great public importance, and, in the alternative, that it concerns a miscarriage of justice of such magnitude that appellate review is required to prevent grave injustice*". Before considering whether a sufficient case for leave has been made out, it is important to consider what the parameters of the section 2 (c) test are in more depth than merely reciting the bare words of the statutory provision. Reference must accordingly be made to previous cases.

6. Ms Clarke referred the Court to my own Judgment in *Devon Hewey* [2024] CA (Bda) 24 Civ (with which Sir Anthony Smellie CJ and Sir Christopher Clarke P concurred) to illustrate the practical approach to deciding whether the grounds of appeal relied upon raise questions of great "*general or public importance*". I observed:

> "*12. The Solicitor-General in her written responsive submissions aptly relied upon this Court's decisions in The Hong Kong and Shanghai Banking Corporation Limited-v NewOcean Holdings Limited [2021] CA (Bda) 21 Civ (at paragraphs 10-11), approving the earlier decision in Imran Siddiqui-v-Athene [2019] BN 2020 CA 2. In the latter case, Smellie JA cited the following passage from the Eastern Caribbean Court of Appeal (BVI) decision in Renaissance Ventures Ltd-v- Comodo Holdings [2018] ECSC J 1008-3 (Mendes, JA (Acting):*
>
> > *'10… Where there is no genuine dispute on the applicable principles of law underlying the question which the applicant*

> *wishes to pursue on his or her proposed appeal, a question of great general or public importance does not ordinarily arise, especially where the principle of law is settled either by the highest appellate court or by longevity of application. Where the principle is one established by this Court but is either unsettled, in the sense that there are differing views or conflicting dicta, or there is some genuine uncertainty surrounding the principle itself, or it is considered to be far reaching in its effect, or given to harsh consequences, or for some other good reason would benefit from consideration at the final appellate level, this Court would be minded to seek the guidance of their Lordships' Board. Where, however, the real question on the proposed appeal is the way this Court has applied settled and clear law to the particular facts of the case, or whether a judicial discretion was properly exercised, leave will ordinarily not be granted on this ground. In such a case, the question on the proposed appeal may be of great importance to the aggrieved applicant, but it would not for that reason alone be a question of great general or public importance.'" [Emphasis added]*

7. In summary, a question of "*great general or public importance*" must be sufficiently contentious or unclear as a matter of principle to qualify for the grant of leave to appeal to our highest appellate Court. A question about how settled legal principles should be applied to a particular case will not "*ordinarily*" qualify for the grant of leave to appeal.

8. However, there is a residual jurisdiction to grant leave "*otherwise*" than where a question of great general or public importance is raised. The Applicant, without reference to authority, advanced the alternative ground of a "*miscarriage of justice* [which must be remedied] *to prevent grave injustice*". That is consistent with the following paragraph in the '*Judicial Committee of Privy Council: Practice Directions*' (November 2024), which sets out the test for leave the Privy Council applies in criminal cases where there is no appeal as of right:

> "*3.36 In criminal cases permission is granted where, in the opinion of the Appeal Panel, there is a risk that a serious miscarriage of justice may have occurred.*

9. It is also important to note that even where an appellant has an appeal as of right, the Privy Council will apply an arguability filter under the following paragraph of the same Practice Directions:

> "*3.37 In cases in which the appellant had an appeal as of right but the court appealed from refused in error to grant leave as of right, permission will be granted unless in the opinion of the Appeal Panel the appeal is devoid of merit and has no prospect of success or is an abuse of process*." [Emphasis added]

10. In my judgment, without in any way suggesting that there may be limits to the categories of exceptional circumstances in which it might be appropriate to grant leave to appeal to the Privy Council on the "otherwise" ground, it will generally be appropriate to grant leave where there is risk of that "*a serious miscarriage of justice may have occurred*". This view is supported both as a matter of general principle and because it would be wrong for this Court to refuse leave in circumstances where the Privy Council itself would likely grant it.

11. As regards both limbs of section 2(c) of the Appeals Act 1911, it seems obvious that the discretion to grant leave must take into account how arguable the grounds of appeal are in the context of the relevant case. Every litigant can potentially formulate grounds which on their face appear raise questions of great general public importance or articulate why a serious miscarriage of justice has occurred. But such grounds will only rise to the threshold required for granting leave to appeal to His Majesty in Council if they are sufficiently tethered to the legal and factual realities, objectively viewed, of the particular case. This is why in *Junos -v- The Premier et al; Moulder-v-The Premier et al* [2025] CA (Bda) 4 Civ (Sir Christopher Clarke P), the reasons for refusing leave included a discussion (at [3]-[6]) of the merits of the proposed grounds of appeal.

12. The judicial function requires courts to decide cases on the facts before them, not on an abstract or hypothetical basis. In *Attorney General for the Cayman Islands-v-Buray et al* [2025] UKPC 22 Lord Leggat opined as follows:

> "37. *In these circumstances the basis for the finding of incompatibility which the Court of Appeal nevertheless made was entirely abstract and theoretical. It did not relate to any feature of the claimants' cases or which the claimants had identified. Nor did the Court of Appeal itself identify even a single example of a possible future case or class of case in which it would or might be necessary, so as to avoid a breach of section 9 of the Bill of Rights, to grant permanent residence to a person whose application did not meet the requirement in section 37(3) of the Immigration Act. Although the Court of Appeal postulated 'cases where, exceptionally, the points system does not give sufficient weight to the particular individual circumstances of an applicant' (see para 83), they did not suggest any particular (or even general) circumstances in which this would be*

> *so. That is not a sound or satisfactory basis for making a finding of incompatibility.*
>
> *38. The reasons why it is not appropriate to make a finding and declaration of incompatibility on such an abstract basis are clear. The core reason is the nature of the judicial function and the constitutional and practical unsuitability of court proceedings as a means of deciding questions in the abstract, unmoored from the facts of an actual dispute.*" [Emphasis added]

13. In the present case, the application turns on whether or not either:

    (a) the proposed appeal raises a question of great general or public importance; or

    (b) there is a risk that a serious miscarriage of justice has occurred.

14. However, each of those issues must be analysed not in an abstract sense, but in the context of the legal and factual circumstances of the present case.

Merits of application for leave to appeal: Criminal Appeal No. 13/2023 (careless driving conviction)

This Court's impugned decision

15. This appeal relates to a conviction recorded in the Magistrates' Court for low-level traffic offence which will not be recorded as a criminal conviction and for which the penalty imposed was $1000 plus 10 demerit points. The Judicial Committee of the Privy Council in its criminal jurisdiction is not noted for dealing with such matters.

16. The Applicant advanced four grounds of appeal before this Court. The first three were refused for the reasons set out in our Judgment (at [13]-[29]). It was not (or not seriously) contested by the Applicant at trial or in the course of his appeals that he overtook a line of traffic on a yellow line (which was contrary to the Traffic Code he relied upon), collided with another vehicle and left the scene of the accident. We found:

    (a) the complaint that the Learned Magistrate failed to explain why he accepted the evidence of "lying witnesses" had to be rejected because it was open to the trier of fact to accept the evidence of the witnesses he relied upon;

(b) the complaint that the Learned Magistrate failed to adequately explain why he found the charge proved was rejected because the explanation given was adequate in all the circumstances;

(c) the complaint that the Learned Magistrate ought to have found that the Traffic Code had binding effect was rejected on the basis that this argument was contrary to a straightforward reading of the Road Traffic Act 1947, section 48 (2); and

(d) although the Applicant raised a valid complaint about being denied an opportunity to make a closing speech, no miscarriage of justice occurred and so the appeal should be dismissed.

17. The most significant findings in this Court's Judgment were as follows:

"*37. Accordingly, it is understandable that having regard to the practice of not inviting closing speeches in traffic cases and in the absence of any statutory mandate to afford the right to address the Court, the Magistrate refused Mr Mizrachy's request. However, in my judgment an error of law was made because there was no discernible valid justification for refusing him an opportunity to address the Court in closing. The justification given at the time, that Mr Mizrachy was not counsel, was not satisfactory and may well reflect the fact that the Magistrate was taken somewhat by surprise by an atypical closing speech request. The Judge also erred in failing to find that an error of law occurred. This ground of appeal (Ground 4) has merit and succeeds…*

39. In every criminal appeal where the appellant demonstrates that the decision or decisions complained of are potentially liable to be set aside on the grounds of legal error, this Court must consider whether the error established is sufficiently serious to warrant allowing the appeal and setting aside the conviction. The only substantial prejudice Mr Mizrachy complained of in his oral reply was being prevented from advancing his version of the case on credibility. He also was denied the opportunity to contend that the Complainant's conduct caused the accident. It is also important to remember that being denied the right to be heard is in and of itself prejudicial to some extent, merits apart. A losing party may often accept the result if they "had their day in court" and feel they were fully and fairly heard.

40. Mr Mizrachy has been fully heard before the Supreme Court and this Court which mitigates the inherent prejudice of not be heard in closing. He

> *put the key elements of his evidential case in cross-examination, because the Magistrate's careful Judgment ably grapples with the same evidential issues the trial Defendant has now raised by way of submission before two appellate courts. The Appellant has not advanced any legally viable defence to the charge of careless driving because the evidence against him was compelling. He admitted overtaking for a reason which had nothing to do with safety and created a situation in which an accident occurred. He left the scene of the accident before the Police arrived without leaving is personal details with the Complainant. His central and implausible thesis that she was solely or primarily to blame for the collision was considered and expressly rejected by the Magistrate. The conviction was unsurprisingly upheld by the Judge, albeit without adequately dealing with Ground 4 in explicit terms. In a short Ruling, he concluded: 'The facts speak for themselves in that the Appellant was clearly driving in a careless, indeed dangerous manner.' I agree.*
>
> *41. For these reasons I find that although Mr Mizrachy's complaint that the Magistrate erred in refusing his request to address the Court in closing is resolved in his favour, the appeal should nonetheless be dismissed under proviso (a) to section 21 of the Act, because 'no substantial miscarriage of justice has occurred'*".

The Applicant's proposed grounds of appeal

18. The Applicant's Notice described his grounds in headline terms as follows:

    (a) "*A. Leading Ground - Denial of the Applicant's Right to a Closing Speech as a Structural Error Constituting a Miscarriage of Justice";*
    (b) *"B. Miscarriage of Justice Due to Failure to Address False Testimony and Credibility Issues*";
    (c) *"C. Significant Legal Error and Public Importance Regarding the Legal Status and Application of the Bermuda Traffic Code*";
    (d) "*D. The Court of Appeal Erred in Law and Fact by Failing to Properly Address the Applicant's Claim of Selective Enforcement and Abuse of Process, Resulting in a Miscarriage of Justice*".

19. Despite passing allusions to the points raised in support of these grounds being of great general or public importance, the proposed grounds of appeal are properly viewed as complaints about how this Court applied the law to the Applicant's case.

20. The general merits of these grounds can be shortly stated:

(a) the first complaint challenges the Court's decision that, although an error of law was made by the Magistrates' Court when it deprived the Applicant, no miscarriage of justice occurred. It is largely based on the mistaken hypothesis that this Court found that the Applicant's constitutional fair hearing rights were infringed when no such finding was made;

(b) the second complaint is that the Court applied the wrong legal test in relation to when appellate review of factual findings made at trial is permissible. The test applied by Court is of longstanding. The test contended for by the Applicant is the more generous test governing when cases should be left by a trial judge (who is a judge of law but not of fact) to the jury which has no application in the question of when factual findings may be disturbed by an appellate court. The complaint is unarguable;

(c) the third complaint is that the Court erred in deciding that the Traffic Code does not have mandatory legal effect. This complaint is unarguable;

(d) the fourth complaint is that the Court erred in rejecting the Applicant's case that his prosecution ought to have been stayed on abuse of process grounds because he was selectively prosecuted. This ground is unarguable because no abuse of process application was made before the trial and because, as stated in the Judgment, the "*decision to charge only Mr Mizrachy, who left the scene after the accident without leaving his contact details, is wholly unsurprising as is the decision not to charge the driver who made the initial complaint*" ([27]).

Does the appeal raise questions of great general or public importance?

21. The Applicant's main proposed grounds of appeal has two limbs to it:

(a) an explicit complaint that the Court misapplied proviso (a) to section 21 of the Court of Appeal Act 1964 by finding that the refusal of the right to address the Court was wrong in law but did not invalidate his conviction; and

(b) an implicit complaint that the Court found that his fair hearing rights under section 6 of the Constitution had been infringed and failed to give due effect to that finding.

22. Neither strand of this proposed ground of appeal raises questions of "*great general or public importance*". Whether the proviso has been misapplied is by definition a question which almost invariably focusses on the peculiar circumstances of each case.

Admittedly, a question of great general or public importance might have arisen if the Court had actually found that the Applicant's constitutional rights had been infringed and still applied the proviso. However, if the Court had formally made a determination under section 15 of the Constitution that a contravention of the Applicant's section 6 rights had occurred, he would have had an appeal as of right under section 2 (b) of the Appeals Act, which provides:

> "*2 Subject to this Act, an appeal shall lie —*
>
> *...*
>
> *(c)as of right, from the final determination of the Court of an appeal from any final determination of any application or question by the Supreme Court under section 15 of the Constitution*." [Emphasis added]

23. That no decision was made on the constitutional question is clear from the following passage in the Judgment:

> "*34. It is inappropriate in this case where the issue was not argued to decide whether section 6 (1) of the Bermuda Constitution in guaranteeing fair hearing rights for persons 'charged with a criminal offence' does or does not apply to traffic cases having regard to the fact that they are not criminal in the criminal record sense. A broad and purposive construction would suggest that section 6 (1) should apply*…." [Emphasis added]

24. None of the other grounds of appeal raise points of great general or public importance in the requite legal sense. They are either complaints about how settled principles have been applied to the Applicant's case or (as regards the Traffic Code point) a point as to which there is no "*genuine uncertainty*" (*Devon Hewey*, at [12]). The points said to be of considerable general or public importance (Notice, pages 47-48) do not qualify as such because they are largely detached from the objectively viewed factual and legal landscape of the present case.

Is there a risk that a serious miscarriage of justice has occurred?

25. The risk of a serious miscarriage of justice can only be demonstrated by arguable grounds that this Court's decision was seriously wrong. We have already concluded that despite the fact that the Applicant advanced one valid procedural complaint (the refusal of his closing speech request) the Applicant advanced "*no substantial miscarriage of justice occurred* " (Judgment, at [41]). He has since identified a potential constitutional argument which he has not yet formally asked the Court to adjudicate. Either it is too late for him to seek such relief now under section 15 of the Constitution or he can substantively seek such relief. On either basis, no serious miscarriage of justice would potentially flow from our decision to dismiss his appeal.

26. The "otherwise" basis for granting leave to appeal has not been made out.

Findings

27. For the above reasons I would dismiss the Applicant's application for leave to appeal to the Privy Council against his conviction for careless driving in the Magistrates' Court on 20 February 2020.

Merits of application for leave to appeal: Criminal Appeal No. 14/2023 (wilful damage conviction)

This Court's impugned decision

28. This appeal relates to the Appellant's conviction in the Magistrates' Court on 26 February 2021 for the offence of wilful damage contrary to section 400 (I) of the Criminal Code on 19 March 2019. A restitution order in the amount of $1695 in favour of the Complainant in the case was imposed for that offence.

29. His appeal to this Court was based on the following grounds of appeal:

(a) the Complaint's "lie" was not appropriately taken into account in the Magistrates' Court or the Supreme Court;

(b) abuse of process and Police misconduct;

(c) the conviction was against the weight of the evidence;

(d) physical impossibility (supported by medical evidence which was wrongly ignored); and

(e) inadequate reasons in the Supreme Court's appellate Judgment and by the Magistrate.

30. This Court's key findings set out in our Judgment in relation to each of these grounds and our views as to their merits were in summary as follows:

(a) "…*This was a mistake on an issue which was peripheral to the merits of the wilful damage charge (it would be different if the charge related to a single scratch in the same area as the previous scratch). On any sensible view, the Complainant's voluntary correction of what she said in her Statement fortified her credibility rather than undermined it…*" ([64];

(b) "*The abuse of process complaint is also misconceived. Mr Mizrachy accepts in his Notice of Appeal that abuse of process can be used to stay*

criminal proceedings the pursuit of which would constitute an abuse of process. This doctrine cannot properly be invoked for the first time at the appeal stage…" ([65]);

(c) "*The complaint that the conviction was against the weight of the evidence can be summarily rejected. This sort of complaint requires an appellant to show that the finding of guilt bordered on perverse or that there was simply no evidence at all to support an essential element of the relevant charge*…" ([68]);

(d) "…*Mr Mizrachy had time to retain a medical expert witness had he seriously wanted to pursue an impossibility defence. The medical report that he sought to rely upon was, absent consent by the Prosecution, inadmissible as to the truth of its contents… Even if it had been admitted, the Note provides no basis for doubting the eyewitness evidence which formed the basis for the finding that he damaged the Complainant's car with an object as small and light as a car key*…" ([69]-[70]); and

(e) "*The complaint that the Supreme Court's findings were inadequately expressed has merit; but this merely requires this Court to analyse the adequacy of the reasons given for the underlying Magistrate's decision… The Magistrate's reasons for finding the wilful damage charged proved may have been concisely expressed but they covered all the main bases… He accepted the evidence of the independent witnesses and found they had no motive for giving false evidence against Mr Mizrachy, whom he did not believe and whose defence of physical incapacity he rejected…*"([71]-[72]).

The Applicant's proposed grounds of appeal

31. The proposed grounds of appeal are summarised in the Notice as follows:

(a) "*Leading Ground – Fundamental Misapplication of the Criminal Law Principles, Namely (1) the Standard of Proof including Evidential Standard, and (2) the Failure to Address the Absence of Actus Reus*". This was supported by the following main subsidiary points:

(i) the Court applied an overly high standard of appellate review of trial factual findings and ought to have found that there was "*no evidence of actus reus*" and "*no evidence of causation*" because if direct evidence were not to be required this would result in lowering the criminal standard of proof;

(ii) the Court systematically disregarded "*material contradictory evidence*";
(iii) the Court adopted "*circular reasoning and burden shifting*";
(iv) there was insufficient evidence to support a conviction;
(v) the cumulative effect of these errors was to result in a grave miscarriage of justice and to create a public interest in proper standards of criminal law being maintained;

(b) "*Error of Law and Misapplication of Fact by the Court of Appeal Regarding the Complainant's Material Lie* ". This complaint was supported by reference to authorities which at their highest essentially confirmed that previous inconsistent statements may be taken into account;
(c) "*Error of Law in the Court of Appeal's Rejection of Abuse of Process Ground Arising from Unlawful Arrest, Police Misconduct, and Investigation Failures*". This was supported by authorities which confirmed that criminal proceedings can be stayed at any time if they become unfair (but did not support the proposition that the appellate courts can impose a stay on grounds of abuse of process not complained of in the trial court); and
(d) "*Improper Rejection and Mischaracterization of Medical Evidence Establishing Physical Incapacity*".

32. The Notice sets out (at pages 47-48) various general questions said to arise from the appeal which are of great general or public importance. On their face, these questions are very loosely tied to the matrices of the present case and would apply to potentially to the overwhelming majority of criminal appeals. It is in summary argued (at page 49):

> "*17. These errors—particularly the total absence of proof of actus reus—render the convictions unsafe and unjust. They also raise grave questions of public importance, including:*
>
> *• The threshold for proving actus reus in circumstantial cases.*
>
> *• The duty of courts to intervene where no direct evidence links the accused to the alleged act.*
> *• The consequences of police and prosecutorial failures to investigate exculpatory evidence.*"

33. Taking a high-level view of the proposed grounds of appeal, they only have potential merit in a '*Through the Looking Glass'* world in which recognised principles of criminal law are turned on their head. The central theme of the supporting submissions is that any adverse decision or observation that any Judge has made against the Applicant is, by definition, fundamentally flawed. In fairness, the Applicant is not the first and will not be the last litigant in person who will for reasons which are entirely understandable find it impossible to bring objectivity to bear in their own cause.

Does the appeal raise questions of great general or public importance?

34. In my judgment the Applicant has failed to identify any question of law and practice which is, by reason of its uncertainty, of such great general or public importance that clarification by Bermuda's highest appellate court is required. The central thrust of his submissions is that the Court has misinterpreted settled principles which are tolerably clear. It is not contended that there is a genuine controversy based on conflicting decisions about what the relevant principles are as regards issues such as the standard of appellate review of a trial judge's factual findings, the approach to circumstantial evidence and the law relating to the admissibility of expert medical evidence.
35. For the avoidance of doubt I reject the submission in the Applicant's reply submissions that the Respondent's failure to file fulsome submissions in response to the present application demonstrates its strength. On the contrary the present application is so palpably weak, objectively viewed, that it sufficed for the DPP to:

    (a) cite *Hewey-v- The Attorney General* in support of the correct legal test for what qualifies as a question of "*great general or public importance*"; and
    (b) submit that "*there is no basis upon which this Honourable Court should utilize its discretion to grant leave to appeal under section 2(c) of the Appeal Act 1911.*"

Is there a risk that a serious miscarriage of justice has occurred?

36. The Applicant's case for leave rests fundamentally on the proposition that there is a risk that a serious miscarriage of injustice because if the legal errors complained of had not occurred, he would quite possibly have been acquitted. This requires the Applicant to demonstrate (at a minimum) both:

    (a) an arguable error of law; and
    (b) an arguable case that the error creates a risk of a serious miscarriage of justice.

37. In our Judgment, we summarised the critical trial findings and the Applicant's attempts to undermine them as follows:

> "*72.He accepted the evidence of the independent witnesses and found they had no motive for giving false evidence against Mr Mizrachy, whom he did not believe and whose defence of physical incapacity he rejected. It was in my judgment not necessary to explicitly deal with every point raised by Mr Mizrachy to undermine the reliability of their evidence as the points he raised were so obviously weak. It bordered on the absurd to suggest that he could only safely be convicted if the witnesses were able to describe precisely what he did when the actions they described were broadly consistent with the scraping and*

> *drawing which the Police found on the SUV in question when they arrived at the scene. The Magistrate did not need to mention that the star shape drawn on the back of the Complainant's car was almost like Mr Mizrachy's signature mark, intended to defiantly declare to the world that despite his temporary confinement in a car park in a strange land, he and his national identity mattered.*"

38. The last four pages of the Applicant's 14 page long written submissions to the Magistrate consisted of a "Summation" devoted to positive affirmations of his Jewish religious and cultural identity, mostly evocative quotes from leading non-Jewish commentators including Winston Churchill. Drawing strength to combat the individual battles of today from the collective battles of one's tribe's past is something that most would readily understand and many would readily identify with. However, the litigant 'on a mission' will often advance points with great conviction which do not meet the standards of objective validity which the law requires.

39. Had the conviction rested solely on the evidence of the Complainant, it would have been based entirely (or substantially) circumstantial evidence. The Prosecution would have been able to argue that the Applicant had the 'motive, means and opportunity' to damage the Complainant's car while she was making a report to the Police about his verbal abuse. He was admittedly angry because the Complainant's car had blocked his car in the parking lot and he was still at the scene when she returned with the Police and the damage was seen. Instead, the conviction rested substantially on the direct independent evidence of two credible eyewitnesses of the Applicant moving around the Complainant's car with actions which were consistent with his having caused the scratches which the Police later found on that car.

40. The proposition that the law required those eyewitnesses to give direct evidence of the scratching (which could be inferred from the damage found on the car and the actions of the accused which they witnessed) requires a standard of proof which would make the criminal law unworkable. Only in a criminal defendant's dreamland could such a high standard of proof be required.

41. In these circumstances, the proposition that there is a risk of a serious miscarriage of justice flowing from our approach to this aspect of the evidence is hopeless.

42. It also argued that the standard for appellate review of factual findings was set too high. There is a very limited scope for appellate courts to overrule factual findings made by a trial judge and this is very settled law indeed.

43. Where a criminal defendant is convicted on the verdict of a jury, an appeal only lies against the jury's verdict on the facts "*on the ground that it is unreasonable or cannot be supported having regard to the evidence*" (Court of Appeal Act 1964, section 20(1).

The Criminal Appeal Act 1952 defines the extent to which criminal convictions in the Magistrates Court can be set aside by the Supreme Court in the following terms:

> "***Appeals under section 3 against conviction or sentence***
>
> *18. (1) Subject as hereinafter provided, the Supreme Court in determining an appeal under section 3 by an appellant against his conviction, shall allow the appeal if it appears to the Court—*
>
> > *(a) that the conviction should be set aside on the ground that, upon a weighing up of all the evidence, it ought not to be supported; or*
> >
> > *(b) that the conviction should be set aside on the ground of a wrong decision in law; or*
> >
> > *(c) that on any ground there was a miscarriage of justice;*
>
> *and in any other case shall dismiss the appeal:*
>
> > *Provided that the Supreme Court, notwithstanding that it is of opinion that any point raised in the appeal might be decided in favour of the appellant, may dismiss the appeal if it appears to the Court that no substantial miscarriage of justice in fact occurred in connection with the criminal proceedings before the court of summary jurisdiction.* " [Emphasis added]

44. It would be clear from a review of criminal appeals by persons convicted in the Magistrates' Court too voluminous to list that the standard of appellate review of factual findings made in the Magistrates' Court entitles due deference to the findings made by the trier of fact unless:

    (a) the evidence as a whole does not support the conviction (i.e. no reasonable tribunal could have properly convicted);
    (b) there is no evidence at all to support a critical factual finding; and/.or
    (c) the evidence was approached in a legally incorrect way (e.g. inferences were improperly drawn or the burden of proof misapplied).

45. Two recent Supreme Court appellate decisions can be mentioned to illustrate this point. Firstly, in *Hayward-v-Miller (Police Sergeant)* [2025] SC (Bda) 45 App (% May 2025) Wolffe J concluded as follows:

> "*48. Taking all of this into consideration, and following Robinson v. Commissioner of Police [1995] Bda LR 64 (and other authorities cited by*

> *Mr. Matthew Frick for the Respondent) I see no reason why I, who did not have the advantage seeing and hearing the unfolding of the evidence from the mouths of the Prosecution witnesses and from the Appellant, should disturb the Magistrate's assessment of the Appellant's credibility and reliability.*"

46. Secondly, in *Webb-v- Miller (Police Sergeant)* [2025] SC (Bda) 89 Cri (21 August 2025), Doherty AJ concluded as follows:

> "*For the reasons stated I would dismiss this appeal. The Magistrate embarked on a comprehensive analysis of the evidence and the law in relation to this case. There is ample evidence to support his finding of guilt in this matter. Despite the able submissions of Ms. Christopher on the potential effects of glare, I see no basis to overturn the Magistrate's findings in this matter. Given the evidence before him I see no reason to question the inferences he made nor his ultimate finding. I see no palpable error on his part.*"

47. The complaint about the rejection of the Applicant's impossibility defence is hopeless for the reasons set out in our Judgment (at [69]-[70]) and at paragraph 30 (d) above. No other matter capable of supporting an arguable ground that the risk exists of a serious miscarriage of justice has been advanced. I accordingly am bound to conclude that, having found that the proposed appeal raises no question of "*great general or public importance*", there is no reason "*otherwise*" for granting leave under section 2 (c) of the Appeals Act.

Conclusion

48. For these reasons I would dismiss the Applicant's Notice of Motion for leave to Appeal to His Majesty-in-Council. These reasons are far longer than would have been required in the case of an applicant who was legally represented and/or who could otherwise be presumed to have some general familiarity with Bermudian law.

Hargun JA

49. I agree.

Martin (Acting Justice of Appeal)

50. I also agree.