

IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY

G.R.102/83

372

BETWEEN _____ K
Appellant
AND POLICE
Respondent

Hearing: 29th March, 1984
Counsel: Mill for Appellant
Pearson for Respondent

ORAL JUDGMENT OF SINCLAIR, J.

K was charged with assaulting one M with intent to injure him and it has its origins in a fracas which occurred in Timaru in May of last year. M gave evidence. Rather strangely he was unable to give any evidence of identification of either of two assailants and it seems very clear that there were at least two assailants in this particular episode. The District Court Judge commented that he found that a little strange and in the absence of some cogent medical evidence one can only conclude that M had some very good reasons for not being able to identify his assailants.

The only other person who could give any evidence of identification was a Miss C who was viewing what she saw from across the street. She did not know the appellant personally and had but a passing acquaintanceship with him having seen him on two occasions in a pizza parlour where she worked for a period. In the course of her evidence a curious state of affairs arose. In cross-examination she

was asked whether the person she had identified as the Appellant had been facing her and she replied "No; not at that time." When asked how she identified him she replied that she did not know and that he must have turned round, but that she was not sure. Once that stage was reached, having regard to the amendment of the Crimes Act in 1982 on the question of identification, which really only reconstituted the principles the Courts have been acting upon for years, one must have had considerable doubts as to her reliability as a witness so far as identification was concerned. But further doubt was cast when she was later asked whether she could have been mistaken about him. She replied: "It may be possible" and then she went on to say that she did know him and she saw his face. Under re-examination she confirmed that she had never seen the Appellant other than at the pizza parlour and that she knew him not as K , but as Kei , which apparently is the name she had given to the police. Then in further re-examination it transpired that she was shown a book of photographs and that one of the photographs looked like the man she had seen. There was no attempt made to have an identification parade.

There was no admission from Kei that he was present and in those circumstances to my mind it would be quite unsafe to uphold a conviction on that evidence of identification. It simply just does not stand up to any examination of the principles which have been evolved over the years and which have been restated in England in recent years in Turnbull's case. The Appellant was virtually unknown to the witness,

who had doubts as to whether she had seen his face, and who conceded that she may well have made a mistake. In those circumstances it is impossible to uphold the conviction and the appeal is allowed. The conviction will be quashed.

Mr Mill seeks costs. I accept that the prosecution was brought in good faith. There was information which the police had which linked the Appellant with the assault. In those circumstances, once faced with that situation it was probably better that the police leave the matter to the Court to decide. But with respect to the District Court on this occasion I think that an error has crept in which ought not to have crept in and that this Appellant has had to bring this appeal to clear his name of this particular offence. In the circumstances I intend to allow costs in the sum of \$100.



SOLICITORS:

Clark & Mill, Timaru for Appellant