

IN THE HIGH COURT OF NEW ZEALAND

M. 317/84

CHRISTCHURCH REGISTRY

999

BETWEEN     A                     ALSTON

APPELLANT

A N D           THE POLICE

RESPONDENT

Judgment:     10 August 1984  
Hearing:       10 August 1984  
Counsel:       M.S. Knowles for Appellant  
                  B.M. Stanaway for Respondent

ORAL JUDGMENT OF CASEY J.

Miss A                                     Alston was convicted in the District Court on                     1984 on a charge of disorderly conduct outside a dance hall on the night of                     1984 at Harewood. The evidence suggests that there had been some disturbance at the property and a police party was sent and cleared the hall. The dog handler, Constable Reekers, gave an account of Miss Alston taunting and abusing his dog, apparently in a drunken state, as a result of which she was attacked and thrown to the ground. She was then arrested by Constable Bombay and taken to the police van and according to Constable Reeker's evidence, while this was taking place she collapsed on the ground and was sitting up when she was struck on the front of the head by the door as it was kicked open by the van's occupants. Constable Bombay gave a different version. He said he got her into the van and she had been there for some eight minutes when he arrested one or more males, and as it was against police policy to have males and females in the same van, he tried to get her out. She refused to come; he thought she was drawing a knife or offensive weapon and he struck her twice on the wrist with a baton and

forcibly pulled her out. He said she was then too drunk to stand and lay down outside the van. She sat up at some stage just as the door was kicked open and sustained the injury to the forehead and was later taken to the hospital where I gather she was an in-patient for two or three days with the dog bites and the bruising to the forehead and the cut which required some eight stitches.

Miss Alston's version supported by a friend who was apparently a member of the band, was quite different. She said that she had come out of the hall and was standing outside when she was set upon by the dog, thrown to the ground and assaulted by the police being either batoned or kicked while she was on the ground, and she produced photographs purporting to show not only injuries obviously associated with dog bites on the leg and arm and the injuries to the forehead, but other bruising which Constable Reekers conceded in cross-examination could not be accounted for by the incidents which had been described by the police. I think it fair to say (and it is not disputed by Mr Stanaway) in the context of the case it was accepted that these injuries had also been caused on the night. She denied taunting the dog and the main evidence to this effect on which the Court could rely was that of Constable Reekers. Constable Bombay gave evidence of her lurching or stumbling towards the dog waving her arms around, but apparently he was in no position at that stage to make as conclusive an observation.

The learned Judge accepted the police evidence in a decision in which he gave some reasons which have been criticised by Mr Knowles who made a detailed analysis of his comments. I think it fair to say that some of his criticisms are not altogether appropriate for an oral decision delivered at the end of the trial, in which the learned Judge stated his conclusions clearly enough, but has used language which in a more considered judgment might in some respects have been different. I discount that part of Mr Knowles' submission, but I am still left, as I explained to Mr Stanaway, with a feeling of overall unease about

this conviction because of the clear discrepancies in some of the police evidence. First of all, the evidence from Constable Bombay of Miss Alston's state of intoxication which was apparently accepted by the learned Judge, that when she was taken from the van she was so drunk that she couldn't stand. This seems to be quite inconsistent with the account Constable Reekers gave of the purposeful taunting of himself and the dog which lasted over a period and was sufficient, as he said, to cause him to walk back with the dog towards his van in an effort to get out of her way. Mr Knowles also commented on the likelihood of such conduct on his part when on other evidence the police were faced with a potentially ugly situation from the patrons of the hall with rocks and bottles being thrown.

The second matter is the inconsistency between the two constables in the account of her arrest and being taken to the van and this, in my view, is a matter of moment because it does demonstrate such differences that they can hardly be explained by the ordinary frailties of human observation or the different viewpoints that various witnesses may have of the same incident.

The third matter was the apparent extent of the injuries acknowledged by Constable Reekers, which called obviously for an explanation from the police and none was forthcoming. The learned Judge, in accepting the evidence of Constable Bombay as reliable, made no comment about that of Constable Reekers' though it is implicit from his judgment that he must have accepted him. But he did so without any reference to these inconsistencies and, having regard to the detailed and circumstantial account given by the Appellant, I am left at the end of the day with (as I have already mentioned) a feeling of unease about this conviction. In the light of Mr Knowles' submissions and, I must say the, frank comment by Mr Stanaway at the end of his case, I feel it would be unsafe to allow it stand. I say this without expressing any opinion on the honesty or the truthfulness of the police evidence. It is simply, I think, that at the end of the day, if

he had heard the submissions which Mr Knowles has now made to me. I think the learned Judge would have been left with at least a reasonable doubt about the case. Accordingly the conviction will be quashed.

*M. G. Casey*

Solicitors

M.S. Knowles, Christchurch, for Appellant  
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