IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M.323/84

BETWEEN DE JONGE
Appellant

A N D POLICE
Respondent

Counsel: M.J. Knuckey for Appellant
R.G. Douch for Respondent:

Hearing and Judgment: 5 November 1984

ORAL JUDGMENT OF GALLEN J.

This is a most unfortunate matter where a situation exists which is bound to lead to difficulties and which should not exist within a suburban area. For a start, it seems to me that it is quite unfortunate that a lady who has some seniority, should be subjected to cheeky comments and it is clear from the evidence of Snell that in the first incident out of which these incidents arose, she had been subjected to cheek from other children. The evidence indicates that Snell was accustomed to referring to this lady by a Christian name which was in any event, not her name. It would seem in view of the relationship between the parties that it is hardly to be considered a friendly situation or one where her Christian name should properly have been used. On the other hand, it is also quite unacceptable

that young children may be frightened to walk along the street because of other persons in the street and because of a large dog being exercised.

The appeal arises out of two convictions relating to two separate incidents. The first occurred on 30 April and it seems to have been a situation which developed when the two young Snell boys were afraid to go further down the driveway because they say that the appellant was blocking the drive with the dog at the bottom of the drive. There is a considerable amount of disputed evidence as to exactly what occurred, but in fact the only witnesses who testified are the appellant herself, Snell and his father. It seems to me that the evidence is quite equivocal as to what happened on that occasion, although it is clear that the boys were frightened to go down the drive and although it is also clear that their father thought it was necessary to intervene. Following his intervention the appellant moved away.

The basis of the charge is an allegation that in some way she assaulted the boys by frightening them by the use of the dog. On the evidence which is contained in the notes of evidence, I cannot see how it would have been possible on that occasion to meet the requirements of a charge of assault as it is defined in the Crimes Act.

In respect of that charge therefore, the appeal will be allowed.

The second situation is different. That apparently occurred on 6 May. The evidence as to that is the evidence again of Snell, of his father and of the appellant. I accept, as the learned District Court Judge did, that the evidence of the Police Constable is confirmatory of what the appellant said in evidence. The allegations depend on a suggestion that once again the dog was used to frighten the children. The evidence is that having passed the appellant, something occurred which caused her to change direction - the boys ran and she ran after them with the dog and it is clear that the boys' father considered that the boys were being chased. The boy himself in his evidence uses precisely that term. He says:-

> ".....she turned around and just started to chase us and at first she was just running slowly and we were running slowly."

In her evidence, the appellant says that the dog changed direction and she followed the dog and there is some evidence which is confirmatory of this in the evidence of Snell himself. The evidence of his father is rather stronger.

The learned District Court Judge came to the conclusion that on that occasion at least, there was sufficient evidence to justify a charge of assault. Having set out the requirements which are contained in the Crimes Act, he then indicated that he accepted the account which had been given particularly by Snell and on the basis of that, he considered that the charge had been made out.

In my view, he was entitled to come to that conclusion. The issue is in the end, one of credibility and as Mr Douch has said, the evidence of the appellant where it is set out on p.25, is at best, equivocal. She indicates that the dog having changed direction, she changed direction. There is no doubt that the boys' father thought they were being chased. In the circumstances, I think that what occurred could have been interpreted as a threat for the purposes of the definition in the Crimes Act.

The appeal in respect of the second incident will therefore be dismissed.

The sentence which was imposed seems to me to be an appropriate one having rgard to the fact that clearly this is a situation where there is feeling between the parties and I do not propose to vary the sentence which has been imposed.

Solicitor for Appellant: M.J. Knuckey Esq., Hamilton

Solicitor for Respondent: Crown Solicitor, Hamilton