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IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M 250/84

1193

BETWEEN GREENWOOD

Appellant

AND POLICE

Respondent

Hearing: 2 October 1984

Counsel: Mrs P. Mills for appellant
Mr Morgan for respondent

ORAL JUDGMENT OF HILLYER J

This is an appeal against decisions made by District Court Judge Cartwright in the District Court at Hamilton on 17 April 1984.

Appellant was convicted of a breach of Sections 57 (c) and 33 (c) of the Transport Act 1962, in that he drove a motor vehicle on a road, namely Elmwood Crescent, in a manner which having regard to all the circumstances and/the (sic) case was dangerous to R . The appellant was also convicted on 6 charges of breaches of the Post Office Act, under sections 108 and 110 relating to the use of a telephone.

The evidence as found by the learned District Court Judge, was that one R was in Elmwood Crescent, and a car driven by the appellant came towards him. Mr R was on the footpath, or on a grass verge on the footpath, and the car driven by the appellant swerved towards him.

Mrs Mills, for the appellant, accepting as she had to, that the question was substantially one of credibility, nevertheless said that the findings made by the District Court Judge could not amount to dangerous driving. She said this because the vehicle was being driven by the appellant at a slow speed, 25-30 kph, and it came only to within 1 or 1½ metres of Mr R . Certainly, she admitted, Mr R d got a fright to such an extent that he

jumped out of the way of the on-coming vehicle, but she said the police had chosen to charge the appellant with driving in a manner which was dangerous, not driving in a manner which might have been dangerous, and because of the slow speed and the fact the car did not get very close to Mr Rowland, the manoeuvre was not in fact dangerous.

With all due respect to Mrs Mills' submissions, I do not accept them. For a motor vehicle to be driven even at 25-30 kph to within 1½m or 1m of a person standing on the footpath, in my view is dangerous, and the District Court Judge was well justified in finding that the manoeuvre was dangerous and in convicting the appellant. Even at that speed, the time it would take to cover a distance of 1½m would be extremely short. It would take only a fractional misjudgment on the part of the driver for Mr R to have been struck by the car, and using a motor vehicle as a weapon, or even threatening to use it in that way is a dangerous use which should certainly not be encouraged.

The other charges were of use of the telephone. There is apparently bad blood between the appellant and Mr R , and there were a number of telephone calls. It was accepted that these calls were made by the appellant, as the learned District Court Judge found. She was entitled to do so on the evidence. It was a question of credibility, and she, having seen and heard the witnesses, came to the conclusion that it was the appellant who made the telephone calls.

Before me the only point taken was that sections 108 and 110 refer in each case to using a telephone "under the control of the Postmaster General." Mrs Mills submitted that there was no proof that the telephone was under the control of the Postmaster General. This submission was made to the learned District Court Judge who said :

> "I propose to take judicial notice of the fact that the telephone was under the control of the Postmaster General

> and I accept the prosecuting sergeant's submission that all telephones in New Zealand are under the control of the Postmaster General. I am supported in that statement to some limited extent by the evidence of the two witnesses, Mr R and Mr S , whose briefs of evidence were admitted by consent. Each of those witnesses in their briefs stated that they were employed as a technician for the New Zealand Post Office and went on to describe a tracing procedure that was undertaken which resulted in the tracing of a call to a subscriber on the 506 party line, one of the subscribers of which is the defendant. That tends to support the contention that the telephone, both of the complainants and of the defendants, was under the control of the Postmaster General at about the time that these complaints were lodged."

Mrs Mills submitted that that finding was wrong. She said that possibly Mr Greenwood, the appellant, had a private telephone which he somehow plugged into the system. That still would not mean that the telephone of the complainant was not under the control of the Postmaster General, and clearly that phone was being used by the appellant to annoy or to use offensive language.

Furthermore, S.159 of the Act, which deals with private lines, provides that no person shall use any line otherwise than with the approval of the Postmaster-General. Again Mrs Mills submits that that refers to lines, and not telephones, but if the line is not used, if the Postmaster, were for example, to refuse the use of the line, the telephone could not be used, therefore the Postmaster-General is in control of that telephone, even if it is a private telephone.

In my view the District Court Judge was amply justified in taking the judicial notice which she did take, and in finding as she found she was supported by the evidence of the witnesses referred to.

The appeals in both cases are dismissed. Costs are allowed to the respondent. The appeal was without merit and has taken some time. I allow costs of $250.

P. Hillyer J.

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P.G. Hillyer J.

Solicitors: Mrs Mills for appellant
Crown Law Office for respondent