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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M. 433/85



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BETWEEN TIFAGA LENE FROST

Appellant

AND

POLICE

Respondent

Hearing: 27 May 1985

Counsel: M.G. Phillips for Appellant
L. Shine for Respondent

Judgment: 27 May 1985

ORAL JUDGMENT OF DAIVSON CJ

The appellant, Frost, pleaded guilty in the District Court to a charge of assault laid under section 9 of the Summary Offences Act 1981. He was convicted by the District Court Judge and was fined \$500 plus Court costs \$35, and it was ordered that \$100 of that fine be paid to the complainant. Frost now appeals against that sentence upon the grounds that the fine was manifestly excessive.

The grounds of appeal which have been raised are first, that the appellant says he merely slapped the complainant and did not punch him about the head as the summary of facts before the District Court Judge indicates; second, the appellant said he lost his temper when the complainant swore at him in the presence of his family, but the summary of facts merely states that the complainant shouted out to the appellant to watch where he was going; third, Frost says this was not a premeditated attack or assault upon the complainant. Those matters, it was said by Mrs Phillips on Frost's behalf, were not adequately taken into account as also were not the appellant's

claim that there was no medical evidence to substantiate the headaches.

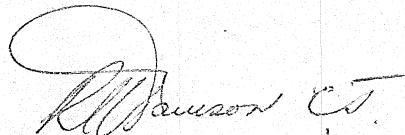
The appellant pleaded guilty, and the statement of facts was read to the District Court by the prosecutor. If the appellant had wished to challenge the accuracy or the validity of those statement of facts he should have been prepared to have the evidence called and himself give evidence as to that. The apparent conflict between what the appellant claims now to be the position and what was said in the statement of facts was clearly before the learned District Court Judge, and he resolved the matter on the basis of the summary of facts it would appear.

Now, this was not a minor case of its type. It seems that the complainant had to take certain evasive action on his bicycle to avoid being hit by the appellant's car and shouted out to the appellant to watch where he was going, but thereafter there followed quite deliberate acts upon the appellant's part which showed that he was determined to have it out with the complainant, as it were. The appellant stopped his car in front of the cyclist, but the cyclist rode on riding along the footpath so as to keep away from the car. The appellant got into his car and drove it past the complainant again and stopped in front of him and as the complainant came riding past the appellant grabbed him and pulled him from the bicycle striking him two or three times. That indicates that there was certainly some predetitation on the part of this appellant to do something to show his displeasure in what he thought was the complainant's conduct.

One of the matters to be taken into account in considering sentence is the personal circumstances of the offender, that is why I was interested to find out what I could through appellant's counsel of those circumstances. He is a marrie man with four children and he earns about \$180 per week clear. Those matters were known to the learned District Court Judge, and really I think the only point I have to consider at this stage is whether in view of the personal circumstances of this

offender a fine of \$500 is too heavy. I have got to weigh that against the seriousness of the assault in this particular case.

In my view the learned Judge was perfectly justified in imposing a fine of \$500, having regard to the seriousness of this particular assault, and to impose anything less would have been to let the appellant off very lightly. The appeal is dismissed.

A handwritten signature in cursive script, appearing to read "R. Dawson C.J.", is written in the right-hand margin of the page.

Solicitors: M.G. Phillips C/- S. Muliaumasealii for Appellant
Crown Solicitor for Respondent