NZLR

C.1536

NOT RECOMMENDED

IN THE HIGH COURT OF NEW ZEALAND 28/10
AUCKLAND REGISTRY

AP.174/94

1636

BETWEEN WILLIAMSON

Appellant

AND POLICE

Respondent

Hearing: 11 October 1994

Counsel: R. E. Lawn for Appellant
H. B. Leabourn for Respondent

Judgment: 11 October 1994

ORAL JUDGMENT OF BLANCHARD, J.

Solicitors: R. E. Lawn, Auckland for Appellant

Crown Solicitor, Auckland for Respondent

This is an appeal against conviction on a charge of assault under s.202(c) of the Crimes Act 1961.

I took the trouble to read the file beforehand in some detail. I formed the preliminary view that the appeal was not meritorious and I am afraid that nothing I have heard this morning changes my view.

The incident in question arises, it appears, out of a commercial dispute. A charge of theft was dismissed in the District Court. That related to some objects known as "dished ends". It suffices to say that the appellant went to the premises of an engineering company, one of whose directors is the complainant. He left the building with the "dished ends" and placed them in the rear seat of his motor vehicle. He got into the driver's seat, obviously intending to leave. An employee with whom he had been dealing, Mr Milne, had summoned the director, Mr Verissimo, although apparently Mr Verissimo at the time had little idea about the exact nature of the dispute. Mr Milne first opened the front door on the passenger's seat side and then opened the rear door on the passenger side of the vehicle. At the same time Mr Verissimo had approached the car from the front. He indicated by gesturing with his open palms that he did not want the vehicle to leave. The appellant then, as an independent witness put it, "just sort of floored it on the metal" (the loose metal on the driveway), and the car moved forward suddenly, striking Mr Verissimo who fell across the bonnet.

The appellant's intentions towards Mr Verissimo can also be seen from what occurred from that point on. He did not stop. He continued to accelerate out towards the road with Mr Verissimo on the bonnet. He was

weaving around and eventually Mr Verissimo fell off the car. Fortunately he was not injured in any serious way.

The learned District Court Judge recorded his finding at page 5 of his judgment as follows:

> *"There is nothing to support the defendant's evidence that he supposed that he might have been subjected to some violence if he had stopped to talk further with Mr Verissimo and Mr Milne as they evidently intended. I am drawn to the conclusion that he acted as he did in a very rash, careless and dangerous fashion in order to ensure that he could get away with the goods that he had taken without paying for them then and there."*

Whatever the rights and wrongs of the situation relating to the goods, I am satisfied having reviewed the whole of the evidence and looked particularly at the passages to which Mr Lawn has directed my attention this morning that the Judge's finding was well warranted.

The appellant had no good reason to think that he would be subjected to violence by either Mr Milne or Mr Verissimo. Mr Verissimo's posture was entirely passive. Mr Milne was on the passenger's side of the car and it is obvious from an account of what he did that his interest was in the goods, not in the person of the appellant.

In these circumstances a defence of the use of the motor vehicle by way of self-defence could not possibly succeed. The appellant's reaction was out of all proportion to the circumstances and, as the learned District Court Judge said, it was very rash, careless and dangerous.

For the same reason the argument put forward based on an apprehension of a breach of the peace also fails.

The appeal is dismissed with costs of $300.