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**IN THE YOUTH COURT
AT MANUKAU**

**I TE KŌTI TAIOHI
KI MANUKAU**

**CRI-2018-292-000386
[2018] NZYC 651**

NEW ZEALAND POLICE
Prosecutor

v

[AB]
Young Person

Hearing: 16 November 2018

Appearances: Sergeant M Allan for the Prosecutor
V Heather for the Young Person

Judgment: 16 November 2018

ORAL JUDGMENT OF JUDGE H M TAUMAUNU

[1] So, [AB], you are charged with theft of \$60 cash and a Nissan car key valued at \$20 from the person of [victim name deleted] on 6 January this year at Manukau. You are also charged with injuring that same person with intent to injure him and you are also charged with unlawfully taking a vehicle, namely a Wingroad motor vehicle that was the property of the same person, and all of these charges relate to the same incident back in January.

[2] Now, it has been a very economical hearing as far as the evidence is concerned. Mr Heather is your lawyer and has narrowed the issues very much to focus on what is really in dispute. Everything else has been accepted. The material elements that have to be proved by the police are fairly self-evident. The key issue in dispute is whether or not the police have proved identity beyond reasonable doubt and the reason I say that is because although you have admitted all of this offending to the police in a DVD interview, you have come to Court today and denied being present at the scene and denied having anything at all to do with the offending.

[3] Now, it is necessary for me to spell out what has to be proved and to note that it all has been effectively admitted if the Court is satisfied beyond reasonable doubt that you actually were the person involved in the offending, but this is a situation where the police have alleged that you have punched [the victim] with one punch to the face and have knocked him out in doing so and also stomped on his face when he fell on the ground unconscious. To prove the charge of injuring with intent to injure the police have to prove beyond reasonable doubt that you are the person who punched and stomped on the victim and in doing so that you caused him really serious harm and that you intended to cause him really serious harm when you did so.

[4] The facts, if they are proved by the police, on the basis of the police case seem to me to be sufficient to prove both injury; when I look at the photographs I see that the complainant, [the victim], had lacerations both to the back of his head and also on his face. The injuries to his face are likely to be attributable to the stomping on his face that was committed by you and your associates. That is what you have told the police in the DVD interview at least, and as far as the injury to the back of the head is concerned that may well have been caused by someone else, one of your associates, but it is not the police case that in fact you are the one who actually hit him in the back

of the head with the bottle while he was seated inside the car. The police case is that you are the one who punched him in the jaw and knocked him out cold. That is what the injuring with intent to injure charge is designed to deal with.

[5] Now, if the Court accepts your version of events as you explained them in the DVD interview, it seems to me that by punching someone with all of your might or all of your force and enclosing a lighter around your fist and punching him in that manner to make your fist heavier and to make it hit harder, all of that seems to me to indicate an intention to injure the target of your punch. There can be no other real inference drawn. That is the only inevitable inference to be drawn from those circumstances and it is also important to bear in mind the result of the punch was for the complainant to immediately lose consciousness and fall backwards onto the concrete. It is possible, although it is not consistent with the complainant's version of events, that that may have been the cause of the injury to the back of his head. However, the police do not allege that and that is not the way that the case has been run.

[6] As far as the material elements are concerned with the unlawful taking of the motor vehicle, the police allegation is essentially that you have been the one who has punched the window of the driver's door and smashed it in on the complainant whilst he was sitting in the driver's seat asleep, parked up in the reserve, and in doing so you have then been involved, perhaps as a party to the striking of the complainant in the back of the head. You certainly are involved as a principal by dragging him out of the car and then, according to your version of events on the DVD, you have been involved in not only punching him and knocking him unconscious but also taking his keys out of his pocket as well as his money and then you drove the car away, according to your version of events, with your friends and associates inside the car as passengers.

[7] As far as the other charge is concerned, which is one of theft of the cash and the car key, that also involves the police having to prove beyond reasonable doubt that it was you who committed that offending in those circumstances and this case boils down to whether or not the Court accepts the version of events that you have provided in the DVD interview as being the correct version of events, and that will have to be matched up against what the complainant has also said, or whether the evidence you have given at trial today raises a reasonable doubt as to whether or not your DVD

version of events is true and if it does raise a reasonable doubt then obviously the police will have failed to have proved identity. That would require proof beyond reasonable doubt and in those circumstances if there is a reasonable doubt about what you have said today then you would be found not guilty on each of these charges because, even though you were caught by police later on that same day that this incident is alleged to have taken place, even though you were caught driving the vehicle that does not necessarily translate into the material elements being proved.

[8] At the very least there are alternative charges of receiving a motor vehicle and also unlawfully getting into a motor vehicle and unlawfully converting motor vehicles that could have to be considered and are not charges currently before the Court. However, whether we get to that point is really a question of assessing the evidence as it has been presented so far.

[9] Now, when you gave your DVD interview to police you had already said when you were first dealt with by police that it was your friends who stole the car. You blamed your friends immediately when you were first pulled over by police. Then when you gave the DVD interview you accepted responsibility for everything. You told police that it was you who came up with the idea to rob the person of his car. You spoke in detail about the fact that you had all been drinking. You had shared, along with your four friends, four boxes of Woodstock bottles and then you were all bored and you wanted a vehicle to go for a ride. You saw the complainant who was in his vehicle and you decided that you would take his car.

[10] Now, you told the police in the DVD interview that the complainant was actually standing outside the vehicle having a smoke at the time that you approached him and it is then that you punched him. The complainant told police and also told this Court in evidence today that he was seated inside the car at the time that this incident started, that he had driven a long way and he was having a sleep, and that he was woken up by the driver's window being broken and he felt the glass as it was broken on top of him, effectively. He felt being struck in the back of the head with something that he thought was a bottle and then he described being dragged out of the car and then escaping.

[11] Now, what was also clear when the complainant gave evidence is that he cannot recall his level of consciousness. He cannot recall, he does not remember, how long he was unconscious for. What he does remember is once he was aware he was able to run away. He told Mr Heather under cross-examination he cannot remember much but he was asleep in the car after a long drive, that he felt the window smash, that he was dragged out of the car into the light and he also confirmed nothing happened outside the car. Now, under re-examination he said that he does not have a lot of recollection about this incident and it could have been a short period of time from the time he remembers being hit until the time he left the scene.

[12] The general impression I gained of the complainant's evidence is consistent with the evidence that was admitted from the St John's ambulance staff and that is that he was explained the effects of concussion and he was given a concussion information sheet. That is obviously consistent with the wound that he suffered to the back of his head, in particular, as well as the wounds that were evident on his face. It was also quite clear that the complainant refused treatment that was offered to him and he refused treatment against the advice of the ambulance staff and so it is not entirely clear from any medical evidence the level of loss of consciousness or the level of concussion that the complainant might have suffered but what is clear after hearing evidence from the complainant is that he does not remember much of this incident. He was seriously assaulted but, as far as the loss of consciousness is concerned, he cannot give any evidence about that and that is really as far as he takes it.

[13] Now, what does the Court make of the evidence given by [AB] today? [AB] says that between 11.00 and 12.00 he was picked up by his friends from [address deleted] and he was referring to the same day that he was picked up by police driving the vehicle. Now, I do note that he has got the time wrong because he was picked up by the police, as I understand it, earlier than that on that day and as I recall the evidence he was stopped by the police at around about 10.30 pm that evening on 6 December. So, his memory or recall of the time of when he was picked up by his friends is not very accurate because it is not consistent with when he was actually stopped by police because it must have been before the police stopped him.

[14] In any event, his explanation was that his friends turned up at his [address] in a stolen car, that [AB] did not know it was stolen, and that he jumped in but he did recall that the window had been smashed on the driver's side. Initially [AB] said he jumped in the back of the vehicle and his mates asked if he wanted to go for a drive of the vehicle which he agreed to do so, and so he started driving the vehicle in Papatoetoe. They were going to go back to Māngere but he was then pulled over in Papatoetoe and when the cops asked him who the owner of the vehicle was he just made up a story and he told the Court today that he took the blame when he was pulled over.

[15] That is not what was stated in the DVD. In the DVD he attributed blame to the other three occupants of the vehicle who had stolen the car so it is one of those situations where his story has changed on three different occasions. He told me today in evidence that he just made up the story on the DVD. He mentioned he knows how it feels and he said that he got the details of the story from the boys and that is the story he told the police in the DVD interview.

[16] Now, there are some major holes in the story that was told by [AB] in his evidence today. First of all, when he told me in evidence today that he was picked up from his [address], that is entirely inconsistent with what the police discovered when they actually went to the [address] when they were making their enquiries about where [AB] was actually supposed to be living because [AB] was in breach of bail at the time. He had not been residing at that [address] for a number of weeks and the occupant of that address, who had been offering the address to [AB] and was known to the police to offer that address as an address for bail for wayward Pasifika boys, that occupant had not seen [AB] for several weeks and as far as the occupant of that address was concerned he was not prepared to be a nominated person for [AB] at the time. [AB]'s claim or assertion today that that is where he was picked up from on that night is simply self-serving, inherently implausible, flies in the face of the independent evidence that is credible, and I reject his evidence on that point.

[17] Now, that is a crucial part of [AB]'s story in evidence today because if the Court was to accept either that that evidence is correct or that it raises a reasonable doubt, then that impact of or consequence of doing so would be that the rest of his

story that he was not involved in the assault and the taking of the vehicle would then have some credibility but it does not get off the ground, essentially because I cannot accept that there is any credibility in the assertion that [AB] was picked up from [the address]. He had not been seen at [the address] for several weeks. That is the check that was undertaken immediately after [AB] was apprehended by the police and in many ways [AB]'s story cannot be accepted.

[18] Now I need to reconcile, if possible, [AB]'s version of events in the DVD interview with what the complainant actually said. Now, Mr Heather had pointed out to me earlier on in this case that there is an inconsistency between what the complainant said happened and what [AB] said in his DVD interview. I agree there is an inconsistency. However, it is not a fatal inconsistency to the prosecution case because it seems to me that the inconsistency is able to be explained by the nature of the injury that was suffered by the complainant, the fact that it is likely he did lose consciousness as described by [AB] in his evidence, and there is likely to be a gap in the version of events described by the complainant where he does not know what happened. That is the essential finding I make in terms of that inconsistency because rather than being an inconsistency it seems to me that [AB] has actually just added to the incident in terms of his DVD interview explanation and filled in gaps that the complainant was not aware of.

[19] That does seem to me to be the inference to be drawn. There does not seem to me to be any other reasonable inference that would be able to be drawn in the circumstances and I am impressed by the way that [AB] explained what happened in the DVD interview. He was articulate, he gave a detailed account of what happened, he was supported by his mother as the nominated person; the impression I gained when his rights were being explained to him was essentially that he fully understood his rights. He was able to, in a clear and articulate way, describe what his rights were. There was a significant period of time spent with him by the interviewer to establish that he did understand his rights and at least on one occasion he told the interviewer that he was telling the truth in the DVD interview.

[20] [AB] has given three different versions of events but the only version which seems to me to be believable is the one that he gave on the DVD interview where he

has admitted all of these charges and admitted involvement as the principal offender. Now, why do I gain that impression after having viewed the DVD interview? Because there are some telling points that suggest to me that unless [AB] was actually involved in this offending he would not know the details in the way that he described. Because he has clearly described the amount of money that was taken, he has clearly described how that money was spent (\$40 of the money was spent on petrol, he talks about who actually put the petrol into the car, he talks about \$20 being used to buy smokes) and he also added that synthetic cannabis was found in the vehicle. There were four bags of it and they were actually sold by some of his associates in Ōtara.

[21] It was telling, I thought, when talking about the synthetics that [AB] himself said that he was not going to smoke the synthetics because it was much worse than weed and when asked, “Who were the boys?” [AB] asked this question. “Do I have to say?” Now, that question is also telling in terms of credibility. If [AB] was actually just making up a story and taking the blame, would he then have gone further and identified all of the boys by name, by ethnicity and by their involvement in the offending and then separated out the two who were found in the vehicle who were not involved in the offending? Probably not, because if this was just [AB] taking the blame one would have expected that he would just take the blame and not name anyone, but that is not how this interview went. [AB] named names, named involvement and named those who were not involved.

[22] The explanation itself is entirely consistent with common sense. The boys were all bored. The reason that they came up with or [AB] came up with the plan was just to kill the boredom by giving them some ability to have a ride in the car and [AB] came up with the idea to “smash the guy and take his keys off him.”

[23] There are also some other telling parts of the video interview that are unlikely to have been described by [AB] unless he was actually there. He described how, by knocking him out cold with one punch, the complainant was stiff and when he stomped on his head the stiffness stopped. Now, that is a description of an event that is unlikely to have been given by [AB] unless he was there and he witnessed and experienced exactly that happening. He also talked about stomping the victim with the back of his foot two to three times on his face but “not that hard,” those were the words that he

used, and when asked how many times the others stomped he said he wasn't sure because he was busy grabbing the keys out of the pocket of the complainant as he was lying on the ground unconscious.

[24] Now, all of that evidence is very difficult to make up, I would have thought, on the spot and the only sensible explanation or rational explanation is that [AB] knew all of these details because he actually was involved. To suggest that the boys told him in the car after they had picked him up not long before the police pulled that vehicle over is simply self-serving and defies belief.

[25] So, on that basis, where does the Court end up with all of this? I accept the DVD interview admission that was given by [AB]. Any inconsistency with what the complainant said can be explained by the fact that he must have lost consciousness, in line with what [AB] actually said. What [AB] said in the DVD is true. I am satisfied beyond reasonable doubt that it is and on that basis I find all three charges proved beyond reasonable doubt.

[26] All right, so Mr Heather, that brings us to the issue of now directing a family group conference and I will have my notes typed back for my signature and, because I only come to Manukau on the rare occasion, I will simply note that any Judge would be able to continue to either monitor a plan or to impose sentence.

H M Taumaunu
District Court Judge