

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

A. 1366/82

Set 2

BETWEEN

WAYNE DAVID CORDELL

PLAINTIFF

A N D

RAMON PETHIG

DEFENDANT

Judgment: 28 August 1984
Hearing: 28 August 1984
Counsel: E.P. Leary for Plaintiff
S.B. W. Grieve for Defendant

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ORAL JUDGMENT OF CASEY J.

This case has some unusual features. Mr Cordell, who is now the Manager and Chairman of the City-Newton Rugby League Club, had entered into a bail bond for a man to appear in the District Court in Wellington and when he failed to do so, he was given notice of a hearing at that Court on Wednesday 19th May 1982 to show cause why his bond should not be estreated. He was in Auckland and he instructed Counsel there and when the matter came up in the Wellington Court on 2nd June, he did not appear and His Honour Judge Pethig, who was dealing with the application, issued a warrant for his arrest.

Mr Cordell alleges in paragraph 5 of his Statement of Claim that warrant was issued invalidly and without jurisdiction, thus rendering the Defendant liable pursuant to s.193 of the Summary Proceedings Act, 1957. As a result he sues the Defendant for \$10,000 for false imprisonment together with special damages for legal costs of \$200, describing later in his Statement of Claim how he took all reasonable steps to have the warrant set aside and actually did this on Friday 11th June. However, notwithstanding this order

of Judge Nicholson in Auckland, the Henderson police, being unaware of the circumstances, executed the warrant purporting to have been issued through the Wellington Court on 14th June taking the Plaintiff from his home where he was present with his wife and young children over his protests, and holding him for a short time in the police station at Henderson before being satisfied of the true position. I must say immediately there is no suggestion made of any improper conduct or aggravation by the police and the action they took in the circumstances is quite understandable.

The Statement of Defence admits all the allegations in the Statement of Claim except the last one to the effect that the false imprisonment was occasioned by the invalid issue of the warrant and resulted in humiliation and the incurring of solicitor's costs of \$200 to have it set aside. Mr Grieve sought to persuade me that it was open to him to argue in the light of a Court of Appeal case in England - Sirros v. Moore and Ors (1974) 3 All E.R. 776, - that there was an argument about the Judge's liability depending on whether or not he was acting outside his ordinary jurisdiction to deal with questions of estreatment of bail. Reading s.19 of the Summary Proceedings Act, 1957 it states:-

" No action shall be brought against any District Court Judge or Justice for any act done by him unless he has exceeded his jurisdiction or has acted without jurisdiction."

The comments in the Sirros case as presented to me by Mr Grieve suggested that the question there was whether or not the Judge was acting within his general jurisdiction. He accepts that if the Judge in this case was acting in excess of his jurisdiction, that would involve liability on him. But in my view, as I mentioned to him during the course of argument, this question is concluded by the pleadings. There is a clear admission of the allegation in paragraph 5 of the Statement of Claim that the Judge was rendered liable by the issue of the invalid warrant and it is not now open for the Defendant to argue otherwise.

However, Mr Grieve also submitted that the action taken by the Plaintiff to have the warrant set aside in the Auckland Court and the order made thereon on 11th June had the consequence of effectively making the invalid warrant devoid of any legal results and accordingly, it could no longer be maintained that the experience the Plaintiff underwent at the hands of the Henderson police could be due to that document. I intimated that I did not find such an argument acceptable because, in my view, once there is a liability on the District Court Judge for acting in excess of his jurisdiction the question is whether there has been any break in the chain of causation, looking at the matter in a reasonable and common-sense way between what he did and what ultimately happened to the Plaintiff. It cannot be said that there was any supervening act which operated to override the influence of the earlier action. Indeed, the position is rather the converse of what one usually encounters in such a submission, in that the action taken by the Plaintiff was not effective, as it turned out, to make a break in the chain of causation. The Defendant is therefore unable to take advantage of the prompt action which Mr Cordell took on being apprised of the existence of this warrant, in prosecution of the duty upon him to mitigate his damages. He acted prudently and as quickly as he could and it was not his fault that the desired result was not achieved. Whether or not responsibility for this lies elsewhere is not a question for me. I am satisfied that there is admitted liability on the District Court Judge and no break in the chain of causation as a result of his action.

The matter therefore gets down to one of quantum. There is no argument of \$200 for the legal costs and that will be allowed as special damages. General damages of \$10,000 are, as Mr Grieve remarks, in the higher bracket for what happened here. I was referred to a case in Palmerston North decided by Jaffries J. where \$6,000 had been awarded in entirely different circumstances in which there had been

aggravation by the police and criticism of their conduct on his part. Fortunately, no such problems arise here. I have to fix a figure for Mr Cordell which will compensate him for the fact that he virtually took up the whole of his Friday trying to get this warrant set aside, with the anxiety and trouble that would have occasioned him. There is also the humiliation and distress which he would have felt on being arrested over his protests on the following Monday evening at his home around about 8 p.m., and to the fact that apparently the neighbours noticed the police car and perhaps him being taken off in it. There was some suggestion in the evidence that this happened. There is the effect this might have had on his relationship with his family, and particularly the young children, bearing in mind that he had served a term of 12 months imprisonment back in 1977 and they had succeeded in keeping this from them. They were naturally at the age of 12 and 7 very upset to see what happened to their father on this occasion. He had a brief spell in the Henderson police station, going through the preliminary processing and his possessions were removed. He did explain the position to the sergeant and as far as I can gather from the evidence, there were no problems with that officer after the phone calls made as a result of Mrs Cordell's eventually being able to contact Mr Leary and got the matter straightened out.

His Counsel said that had he wished to inflate his damages, Mr Cordell could have simply lain low and presented the police with the true facts after he had been held in custody for a much longer period. That might be so but, as I mentioned earlier, there is a duty on him in these cases to take reasonable steps to mitigate his damages and it might have been suggested in those circumstances that Mr Cordell had not done what he should have. However, there is no criticism of what he did here.

It certainly would have been an unpleasant experience for him. Mr Grieve mentioned that he is a man no

unacquainted with the force of the law in the past. He has been subject to arrest on other occasions and I think it is a valid comment that, having been through the process and knowing what is involved, this is not the same traumatic experience for him as it possibly would be for a citizen who had no previous dealings of this nature with the police. As I said during the course of argument, there is no suggestion in such a submission that somebody with Mr Cordell's past, who has had his trouble with the law, should be less free than any other citizen from an unlawful arrest and detention.

Taking all these matters into consideration we have to arrive at a figure which will be fair to compensate him for what he has been through. On the Monday night it was only a matter of not more than two hours. I think he received every courtesy that was appropriate in the circumstances from the police, bearing in mind that the facts had to be checked and he was driven home afterwards. I fix a sum of \$2,500 for general damages plus \$200 for special damages, together with scale costs, and witnesses expenses and disbursements to be fixed by the Registrar.

M. S. Casey J.

Solicitors

E.P. Leary, Auckland, for Plaintiff
Crown Solicitors Office, Auckland, for Defendant