IN THE HIGH COURT OF NEW ZEALAND 7/1
CHRISTCHURCH REGISTRY A.P. No.339/93

2367

HIGH PRIORITY

BETWEEN EDWARDS

Appellant

A N D POLICE

Respondent

Hearing: 9 December 1993

Counsel: E. Bedo for the Appellant
Miss J.A. Farish for the Respondent

Judgment: 20 DECEMBER 1993

JUDGMENT OF TIPPING, J.

Introduction

This is an appeal by Edwards against his convictions on charges of refusing to accompany an enforcement officer and driving with a blood alcohol level of 192mg. It is however a blood alcohol appeal with a difference. It raises two questions concerning police powers. The first relates to their powers of entry onto private property; the second to the ability of the police to detain a citizen short of formal arrest.

On Saturday 26 June 1993 at about 7.40 a.m. Constable Neil of the Traffic Safety Branch was on routine patrol driving west on Pages Road. He was approaching the intersection of Farnborough Street on his right. He observed a male person riding a motorcycle in an easterly direction on Pages

Road. That person turned out to be Mr Edwards. He was standing on the foot pegs of his motorcycle and had no helmet on. The motorcycle turned left into Farnborough Street. At this stage Constable Neil activated the flashing lights of his patrol car and followed the motorcycle. The motorcycle entered the first property on the eastern side of Farnborough Street and drove up the drive. As he did so the motorcyclist turned and looked at the constable.

Being unable to drive up the drive, as there was a car blocking the entrance, Constable Neil got out of his car and ran towards Mr Edwards who was trying to get through a narrow gateway at the far end of the drive. The motorcycle collided with the edge of the gate. Mr Edwards was manoeuvring it through the gate just as the constable reached him. He was trying to ride his motorcycle around to the back of the house. The constable said that, "at that stage", because of the way Mr Edwards had been riding the motorcycle, the fact that he was wearing no helmet and the motorcycle had no registration plate, he suspected that it had been stolen. He grabbed hold of the carrier of the motorcycle.

As a result Mr Edwards fell off. He jumped up and the constable immediately grabbed him. Mr Edwards told the constable that it was his house and he lived there. The constable nevertheless maintained his hold on Mr Edwards and marched him to the back door. He knocked on the door. A woman answered. On enquiry she confirmed that the person standing before her, in the arms of the constable, was indeed her husband. The constable then let go of Mr Edwards. He asked him his name and address. The former he gave as Garry Arthur Edwards and the latter as 2 Farnborough Street.

By this time it was obvious to the constable that Mr Edwards was highly intoxicated. His impression was promptly confirmed. The constable asked how much he had had to drink. Mr Edwards replied that he

had had lots, that he was pissed but it did not matter because he was not driving. The constable informed him that he had been driving the motorcycle in Pages Road and Farnborough Street and that he was required to undergo a breath screening test. This Mr Edwards refused to undergo, in spite of having been asked four times. After the third requirement the constable told him that if he refused again he would be required to accompany him for other tests. Following his fourth refusal the constable formally required Mr Edwards to accompany him for the statutory purposes. Mr Edwards again refused, saying that he was not going anywhere. The constable told him again that he was required to accompany him and that if he continued to refuse he would be arrested. Mr Edwards replied: "I don't have to, I'm pissed, I know it, there's no need".

Mr Edwards was then formally arrested. The constable told him that he was under arrest for refusing to accompany him. There was something of a struggle, which need not be described in any detail. With the assistance of some neighbours, who had come on the scene, Mr Edwards was handcuffed, put in the patrol car and taken to the Police Station. From then on the normal procedures were undertaken leading to a refusal by Mr Edwards to undergo a breath test but a consent to undergo a blood test. That test was duly administered and on analysis the level was established at 192mg.

Mr Bedo raised a number of points in support of the appeal. In the event they do not all have to be addressed. The key points, however, were the submission that the constable had no lawful authority to enter Mr Edwards' property at 2 Farnborough Street and the further submission that by detaining him and preventing him from entering his house the constable had compounded the unlawfulness of his entry by an unlawful detention or restraint short of formal arrest. It was submitted that the subsequent evidence of the refusal to accompany and the blood sample should be

excluded because it was tainted, indeed produced, by the earlier unlawful conduct of the constable. I have considered carefully counsels' oral submissions and the written submissions filed by Miss Farish after the hearing at my invitation. I have borne them in mind but do not find it necessary to cover all the ground which counsel did.

District Court Judgment

In his decision the learned District Court Judge held that the circumstances were such that the constable reasonably believed that the motorcycle might have been stolen. It is to be noted, however, that the constable himself did not say that he "believed" the motorcycle to have been stolen. He said that he "suspected" it to have been stolen. There is a material difference between belief and suspicion: see Laugalis C.A. 158/93 judgment 17/8/93 per Hardie Boys, J. However, it must fairly be said that if the learned Judge was of the view that there were reasonable grounds for belief, it must follow that he would have been of the same view in relation to suspicion, which is a lesser state of mind.

The learned Judge accepted that the constable was not entitled to go on to Mr Edwards' property pursuant to the hot pursuit provisions of s.66A of the Transport Act 1962. Those provisions clearly do not apply. Miss Farish did not seek to suggest otherwise. The reason, of course, is that the constable did not form any suspicion about alcohol impaired driving until after he was well into the property and had caught up with Mr Edwards through the gate and near the back door. The Judge then said that constables, in common with other members of the public, have a common law implied licence to enter private property and remain there until the licence is revoked. He held that this common law right had not disappeared into s.66A, as he put it. After reference to Payn v. MOT [1977] 2 N.Z.L.R. 50 C.A. and Howden v. MOT (1987) 2 C.R.N.Z. 417 C.A. the Judge said

that he was satisfied that in the circumstances of this case Constable Neil had a common law right to go on to Mr Edwards' property and investigate.

The Judge said that he accepted Mr Bedo's submission that the actions of the constable in restraining the cycle, and ultimately restraining Mr Edwards, were "in law an arrest". That however was only half of Mr Bedo's point, the other half being that the arrest was unlawful. Upon that the Judge made no express finding. The Judge was satisfied that Mr Edwards remained arrested until his identification and residence had been verified. The Judge concluded that at this point Mr Edwards was released from arrest and was thenceforth not under any physical compulsion. He meant by that, of course, not until he was formally arrested for failing to accompany. The Judge expressed the view that at no stage while the constable was on the property was his licence to remain there revoked. His Honour was of the opinion that as the licence was not revoked the constable was entitled to continue with his actions "and thus the submission that the evidence subsequently [sic] should not be admitted fails".

The Judge also concluded that the evidence should not be excluded for unfairness. He was of the view that in the particular circumstances, looked at objectively, there was no unfair act [sic] by the constable. The Judge took the view that as Mr Edwards was almost immediately released after having been arrested as a suspected thief, the failure by the constable to comply at that stage with s.23(1)(b) of the New Zealand Bill of Rights Act 1990 was of no moment. Accordingly since all the grounds upon which Mr Edwards had sought to exculpate himself were rejected he was convicted and sentenced to fines totalling $1,100.00 and six months disqualification.

Lawfulness of Entry

The fundamental starting point on the question whether the constable entered the premises lawfully is this. No one is permitted to set

foot on the land of another unless they can show lawful justification for doing so. As long ago as 1765 Lord Camden, C.J. in Entink v.Carrington (1765) 19 How. St. Tr. 1029 said: "If he will tread upon his neighbour's ground he must justify it by law". Accordingly a police officer, like any citizen, may go onto and remain on the land of another only in circumstances which are justified in law. There will be justification and thus no trespass if:

(a) The entry is authorised by statute.

(b) The entry is expressly or impliedly authorised by or on behalf of the land owner.

(c) the entry is justified by the doctrine of necessity.

(d) The entry is justified on some other basis recognised by law.

Statute

Section 317 of the Crimes Act 1961 gives constables power to enter premises, by force if necessary, in certain circumstances. So far as is material the section provides:

> **"Power to enter premises to arrest offender or prevent offence**
> (1) Where any constable is authorised by this Act or by any other enactment to arrest any person without warrant, that constable, and all persons whom he calls to his assistance, may enter on any premises, by force if necessary, to arrest that person if the constable -
> (a) Has found that person committing any offence punishable by ... imprisonment and is freshly pursuing that person; or
> (b) Has good cause to suspect that that person has committed any such offence on those premises.
> (2) Any constable, and all persons whom he calls to his assistance, may enter on any premises, by force if necessary to prevent the commission of any offence that would be likely to cause immediate and serious injury to any person or property, if he believes, on reasonable and probable grounds, that any such offence is about to be committed."

The section cannot apply so as to justify the constable's entry in the present case for several reasons. First, the entry was not "to arrest" Mr Edwards. At the point of entry there was no intention to arrest; the constable's purpose was simply to make enquiries. Second, the constable

had not "found" Mr Edwards committing an imprisonable offence. That requires the constable to actually witness, rather than just suspect, the commission of the offence and to be in fresh pursuit. Third, on entering the premises the constable had no suspicion that Mr Edwards had committed an imprisonable offence "on those premises". Subsection (2) clearly did not apply either.

The only possible way of contending that the circumstances were within s.317 is to say that the constable had in fact, but without realising it, found Mr Edwards committing an offence punishable by imprisonment, i.e. driving with an excess blood alcohol level. I do not consider that such retrospective justification is inherent in paragraph (a) of s.317(1). In any event the point is not open because the constable was not at the time of entry freshly pursuing Mr Edwards to arrest him on a blood alcohol offence. As indicated above, s.66A of the Transport Act 1962 did not apply. No other statutory basis for the constable's entry was suggested.

Authority - Express or Implied

The constable obviously had no express authority for his entry. The question therefore is whether there was in the circumstances an implied authority, or an implied licence as it is usually called. The Judge found there was. The decisions of the Court of Appeal in Payn and Howden, mentioned above, are in point. In Howden Cooke, P. noted the English case of Robson v. Hallett [1967] 2 Q.B. 939. His Honour described that case as "an influential modern case in which the doctrine of implied licence was either invented or articulated". Reference was made to the judgments of Lord Parker, C.J. and Diplock. L.J. The relevant passages are wellknown so I will not re-produce them here.

Howden was a case of a random check. This led Cooke, P. to say at 421:

> "Entering private property for random checking of a driver whose driving or other prior behaviour has given no cause for suspicion is quite a different thing. It is a very considerable intrusion into privacy. In my opinion it would not be reasonable to hold that an occupier gives any implied licence to police or traffic officers to enter for those purposes. Most New Zealand householders, I suspect, if confronted with that question would answer it No. Whether or not that suspicion is correct, it certainly could not be maintained that the answer Yes is required so clearly as to justify the Courts in asserting that such an implied licence exists."

It was accordingly held that the officer in Howden's case was a trespasser.

In the present case the constable was not conducting a random enquiry whether for alcohol or other purposes. His suspicions had been alerted by Mr Edwards' manner of driving the motorbike and in other ways. He had, in my judgment, good cause to suspect that Mr Edwards had committed an offence punishable by imprisonment, viz theft. Earlier in this judgment I have recorded that the constable said that he suspected that the motorbike had been stolen "at that stage", referring to a point of time after he, the constable, had entered the premises. I doubt that the constable was intending to be exact in this respect. It is a reasonable inference that the constable suspected, and for good cause, that Mr Edwards had stolen the bike prior to his entry onto the premises.

It is perfectly clear that the constable did not know, when he entered the premises, that Mr Edwards lived there. The entry by the motorcyclist into the first property to which he came in Farnborough Street, after the officer had switched on his flashing lights, was obviously highly suspicious. The constable had every reason to believe that the motorcyclist was trying to elude him. All the circumstances, objectively viewed, entitled the constable to suspect that the motorcyclist may have stolen the motorbike.

I ask myself the same question as that posed by Cooke, P. in Howden. I consider it reasonable to say that most, if not all, New Zealand householders would agree that a constable who, on reasonable grounds,

suspects that a person has entered their property following the commission of an imprisonable offence, has their implied authority to pursue that person onto their premises in order to investigate. All reasonable law abiding citizens should have no difficulty with that proposition, whatever the time of day or night the entry may be: as to that see Bisson, J. in Howden at 425. As there was no entry by the constable into the house, he having simply entered the grounds, and as in entering no force was used, I do not have to consider whether and in what circumstances an implied licence might extend to entry into buildings or to the use of force.

Subject to the time of day and subject, of course, to revocation, it may well be that householders should be regarded as giving law enforcement officers an implied licence to come onto their property to make bona fide and reasonable enquiries in the course of their duties. It is not necessary to go that far in order to decide this case. That is because the constable here had reasonable cause to suspect that the person seen going onto the subject property had committed an imprisonable offence. In relation to an implied licence wider than that: see Tipa C.A. 348/88 (judgment 17/2/88) which involved the making of enquiries about an accident and Adam A.P. 3/92 Napier Registry (judgment 29/5/92) per Gallen, J. which involved the making of enquiries about a non functioning tail light.

These cases can be contrasted with Stevenson A.P. 109/92 Dunedin Registry (judgment 19/2/93) where the Appellant, having parked his motorcycle, walked to his flat ignoring a traffic officer who required him to take a breath screening test and then to accompany him. The cyclist had started up the stairs to his flat when the officer grabbed his jacket to effect an arrest. Fraser, J., differing from the District Court Judge, held that the officer was on private property which he had no authority to enter to make the arrest. The distinction may perhaps be that the implied licence relates to the apprehension or questioning of others but not to someone known to be

the householder himself. The point is however of some difficulty and can be left until it arises directly. The general topic of powers of entry is discussed in a helpful article by Janet November in (1993) N.Z.L.J. 370.

Effect of s.317 Crimes Act

In the notes to s.317 of Garrow & Turkington on Criminal Law the learned editor says:

> "In Shattock v. Devlin [1990] 2 N.Z.L.R. 88 this section was held to be a codification of the right of police officers to enter on to private property to the exclusion of common law rights. The common law right of entry for necessity to prevent a breach of the peace therefore does not apply in New Zealand: see also Dehn v. Attorney-General [1988] 2 N.Z.L.R. 564 which was not followed."

Dehn was a judgment of my own. The first thing to note about the editor's comment is that the expression "to the exclusion of common law rights" cannot be regarded as covering the common law implied licence which I have been discussing. In Shattock v. Devlin Wylie, J. himself (see p.105) appears to have accepted that police officers have rights of entry pursuant to an implied licence, in parallel with or in addition to their more strictly confined rights under s.317 which, of course, authorises force where necessary. As already mentioned, it must be doubtful whether an implied licence would normally go that far. It would have to be an unusual case for an implied licence to authorise force.

It was with regard to the topic summarised by his heading "Necessity - Common Law Entry to Prevent a Breach of the Peace" that Wylie, J. differed from my approach in Dehn. With respect, the difficulty is that my judgment in Dehn had nothing to do with entry to prevent a breach of the peace. My summary at page 580 of Dehn was as follows:

> "My review of the foregoing authorities leads me to this conclusion. A person may enter the land or building of another in circumstances which would otherwise amount to a trespass if he believes in good faith and upon grounds which are objectively reasonable that it is necessary to do so in order (1) to preserve human life, or (2) to

> prevent serious physical harm arising to the person or another, or (3) to render assistance to another after that other has suffered serious physical harm. I am confining myself deliberately to cases involving serious danger to the person. What the law's approach ought to be in cases involving apprehended danger to property is not immediately before me. If anything in that field the criteria should be stricter."

That summary referred to people generally. It did not relate to police officers in particular. If, as I believe, citizens generally are justified by necessity in the circumstances set out and thus commit no trespass, it would, with great respect, be strange if police officers were the only people who could not claim justification from the necessity. I emphasise again that the subject in Dehn had nothing to do with prevention of breaches of the peace. At page 108 of Shattock v. Devlin Wylie, J. noted that counsel had argued that the various cases mentioned, including Dehn, "did not support a common law right of entry onto private property to prevent a breach of the peace". It must be said that a careful reading of Dehn shows that nowhere did that judgment purport to lay down or advocate a right of entry for that purpose. At page 109 Wylie, J. said:

> "If s.317 is in fact the codification of the law in New Zealand to the exclusion of common law rights then none of the cases and texts on which Mr Smith relied other than Dehn can assist the second and third defendants. Dehn appears to be the only case which has upheld the continued application of the common law right of necessity, and there the issue of whether s.317 replaced the common law right was not argued. It is true that Sir Francis Adams in his Criminal Law and Practice in New Zealand (2nd ed) in his notes to s.317 says at para 2514:
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> > "There is nothing expressed on the question whether s.317 displaces any common law power, and, as the section is in terms merely permissive, the better opinion would seem to be that common law powers are not affected."

It will be noted that Wylie, J. spoke of "the common law right of necessity". Sir Francis Adams spoke of "any common law power". Necessity is a justification negating what would otherwise be a trespass. It can hardly be called a power or right. Still less can it be equated with "a right of entry to prevent a breach of the peace". In my view Garrow &

Turkington's note to s.317 is potentially misleading. I appreciate that the note is based almost exactly on what Wylie, J. said in Shattock v. Devlin at page 110, viz:

> "I am persuaded to the view that s.317 is indeed a codification of the right of police officers to enter on private property, and to the exclusion of common law rights.

However the section, while in a sense a codification, leaves extant at least entry by implied licence and justification by necessity in terms of the Dehn test.

Returning to the present case, the constable was justified in entering the premises because, as I have demonstrated above, he had an implied licence to do so. My conclusion mirrors that of the Judge, although my reasoning has been rather more extensive. All this means that there was nothing unlawful in the constable's entry onto the premises. I also agree with the Judge that neither Mr Edwards nor his wife revoked the implied licence, so the difficulties which can sometimes arise in that area do not require consideration.

Restraint Short of Arrest

In the absence of express statutory authority, (for example s.202B of the Crimes Act and the breath/blood alcohol legislation) police officers are not permitted to stop, restrain or detain citizens in circumstances falling short of formal arrest or detention. There are a number of recent authorities noted in support of that proposition in Garrow & Turkington at page 2061, viz Admore [1989] 2 N.Z.L.R. 210 C.A. and Fatu [1989] 3 N.Z.L.R. 419 C.A. There is also the very recent decision in Goodwin (No. 2) [1993] 2 N.Z.L.R. 390 C.A. Those cases have concentrated on the inability of the police to detain for questioning. The proposition is, however, one of general application.

Restraint or detention, short of formal arrest or detention, is not permitted, save where expressly authorised by statute for any purpose. Restraint or detention which is unlawful amounts to the tort of false imprisonment. This was authoritatively determined by the decision of the Court of Appeal in Blundell v. Attorney-General [1968] N.Z.L.R. 341 (Turner, McCarthy and Macarthur, JJ.). This was a case involving an allegation of false imprisonment by police officers. They had detained the plaintiff in circumstances short of arrest in order to make enquiries about whether there existed a warrant for his arrest. The Judge had directed the jury that if the actions of the constables were in all the circumstances reasonable no tort had been committed. This was held to be a major misdirection. The question was not whether the actions of the constables were reasonable, but whether they were lawful. In this field a reasonable action is not necessarily lawful.

Giving the leading judgment, Turner, J. referred to s.315 of the Crimes Act, already mentioned, and also to ss.31 and 32 which deal with powers of arrest. Similarly he drew attention to s.316 which says that it is the duty of everyone arresting any person to inform that person, at the time of the arrest, of the reasons for the arrest unless it is impracticable to do so, or unless the reason is obvious. This provision is simply statutory recognition of the common law position confirmed in the famous case of Christie v. Leachinsky [1947] A.C. 573. At 358 Turner, J. said:

> "In my opinion the authority for arrest without warrant afforded by the sections which I have mentioned constitutes the only defence available in this country by way of justification for the purported arrest of a person without warrant by a constable on mere suspicion of a criminal charge against that person."

In his judgment at 357 McCarthy, J. said:

> "One fundamental rule of the common law which we have inherited as part of the British system of justice is that any restraint upon the liberty of a citizen against his will not warranted by law is a false

> imprisonment. If there has been any such restraint the onus is on the person creating the restraint to show that what was done is authorised by law."

McCarthy, J. also said this at 357:

> "But neither the common law nor our statute law has conferred upon the police power to take and hold for questioning, nor in my opinion, to hold while enquiries are being made."

At 359, in a passage very relevant to the present case, McCarthy, J. said:

> "But, in any event, in my view such a defence would be open only if what was done by the Police could fairly be said to be an integral step in the process of making a formal arrest: Kenlin v. Gardiner [1966] 3 All E.R. 931. There Winn L.J. in a judgment concurred in by the Lord Chief Justice and Widgery, J. said recently: 'But on the assumption that he had a power to arrest, it is to my mind perfectly plain that neither of the respondents purported to arrest either of the appellants. What was done was not done as an integral step in the process of arresting but was done in order to secure an opportunity, by detaining the appellants from escape, to put to them or to either of them the question.....'"

In his judgment at 361 Macarthur, J. agreed that the police have no power to hold persons for questioning or to hold them while enquiries are being made. His Honour added:

> "The only ground upon which a police constable may justify detaining a person is that he is acting in the process of arresting that person. The arrest may be under a warrant or it may be a case of arrest without warrant. In the latter event the case must fall within the provisions of the Crimes Act 1961 or, as stated in s.315 of that Act, some other enactment expressly giving power to arrest without warrant."

At the stage when the constable grabbed hold of Mr Edwards' motorbike causing him to fall off and then grabbed hold of him and marched him to the back door, the constable did not claim to be doing this as a preliminary to or as part of any formal arrest. Specifically he did not claim to be in the process of arresting Mr Edwards either for theft or for anything else. Indeed it appears that the constable did not ask Mr Edwards anything

about the ownership of the motorcycle at any stage. The only suggestion of arrest came much later when Mr Edwards was formally arrested for failing to accompany. That is why s.39 of the Crimes Act relied upon by Miss Farish does not assist the constable. He was not using force in making an arrest which, in the context, clearly means a lawful and formal arrest. This is not a case of emergency or threatened breach of the peace where different considerations may apply. It is therefore perfectly clear that Mr Edwards was subjected to a form of custodial restraint short of formal and lawful arrest. He was thus assaulted and falsely imprisoned.

After saying that he was satisfied that the constable had "the common law right to go on and investigate" the Judge, as mentioned earlier, said that the actions of the constable in restraining the motorbike and ultimately restraining Mr Edwards "were in law an arrest". The Judge said that Mr Edwards remained arrested until his identification and residence had been verified. I think the Judge must have meant to say that the constable's actions constituted de facto an arrest of Mr Edwards. That arrest was not however a lawful arrest for the reasons given. Mr Bedo's submission that the subsequent evidence should be excluded for unfairness on account of the wrongfulness of the detention of Mr Edwards was dealt with by the Judge simply saying: "In the particular circumstances here, looking at it objectively, I do not consider that there was any unfair act by the constable". That, with respect, hardly does justice to the point.

Mr Edwards was subjected to unlawful restraint and detention amounting to assault and false imprisonment. What is more, the evidence in relation to alcohol and the failure to accompany was obtained as a direct result of the constable's unlawful conduct. It is obvious that Mr Edwards was seeking the sanctity of his home. He would probably have achieved his objective if the constable had not unlawfully detained him. There is a considerable element of unfairness in the prosecution being able to produce

evidence which would probably not have been available if the constable had not acted unlawfully.

This point was not raised in terms as a Bill of Rights point. It was raised as a point based on the discretion to exclude evidence which has been obtained unlawfully or in circumstances of unfairness. However s.22 of the Bill of Rights giving everyone the right not to be arbitrarily arrested or detained is in point. In my judgment there was a breach of Mr Edwards' rights in this respect. Unlawfully obtained evidence is not per se inadmissible. There is no need to cite authority for that elementary proposition. However, the Court has a discretion to exclude it. The Judge did not really exercise his discretion on the point at all in the light of the way he approached the matter. Therefore the Appellant is entitled to have this Court exercise the discretion on proper principles. Indeed from the point of view of s.22 of the Bill of Rights the prosecution had the onus of showing why the evidence should be admitted in spite of the breach.

A balance must be struck between the interests of society in having offences prosecuted and the interests of citizens in having the police observe the law. In addition the Court has a regulatory function over the activities of the police: see for example Mann [1991] 1 N.Z.L.R. 458. While at one level it may be thought wrong for Mr Edwards to escape the consequences of drinking and driving and refusing to accompany a traffic officer, at another level there has been a substantial breach of his civil rights. While I have some general sympathy for the position in which the constable found himself, it is of fundamental importance that citizens are not unlawfully detained by law enforcement officers; the more so when substantial force is used in doing so. I have not overlooked the fact that there would have been no illegality if the constable had formally arrested Mr Edwards for theft and then immediately released him on establishing his bona fides. That, however, is not what happened. The absence of any formal

arrest for theft, coupled with the lack of any enquiry on that front, suggests that the constable did not have theft in the forefront of his mind when he detained Mr Edwards. Put bluntly the detention, on the constable's own evidence, was simply for the purpose of enquiry. The constable in no way claimed to be using force for the purpose of, or in the course of, an arrest on reasonable suspicion of theft.

It is important in a case such as this that the Court vindicate and give tangible recognition to the substantial breach of rights which has occurred. The only way in which that can be done is by excluding the evidence which resulted in a direct and material way from the breach. That Mr Edwards will escape the consequences of a relatively minor drink driving offence and a failure to accompany a law enforcement officer is a small price to pay for the recognition and enforcement of what is a very important civil right. In my judgment the evidence of what happened subsequent to the unlawful detention and false imprisonment of the Appellant should have been declared inadmissible. That being so there was no evidence to support either of the charges. The appeal is accordingly allowed. The convictions are set aside and the penalties imposed will automatically fall.