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**IN THE YOUTH COURT
AT TIMARU**

**CRI-2016-276-000023
[2016] NZYC 548**

NEW ZEALAND POLICE
Prosecutor

v

TQ
Young Person

Hearing: 2 September 2016

Appearances: Sergeant S Heeley for the Prosecutor
W van Vuuren for the Young Person

Judgment: 2 September 2016

ORAL JUDGMENT OF JUDGE J E MAZE

[1] TQ is charged with one charge of assault on 23 July 2016, two charges of trespass on 23 July 2016 and 25 July 2016, and two charges of assaulting police officers in the execution of their duty and one of resisting a police officer in the execution of his duty, all relating to 25 July.

[2] There is not really any dispute about the facts.

- (i) TQ assaulted another young person at [location deleted], Timaru on 23 July 2016. That is not a charge currently before the Court in this defended hearing.
- (ii) The victim of that assault complained to police on the same day.
- (iii) TQ agreed to co-operate with the police, by waiting for the police to arrive and going voluntarily to the station.
- (iv) Constable Parsons interviewed TQ in the presence of his mother and gained as I understand it, a confession, along with TQ's and his parents' personal details, including their phone contacts and address.
- (v) Constable Parsons served a trespass notice on TQ. TQ screwed it up and said he would be going back to [location deleted].
- (vi) Constable Parsons then reviewed security footage from the skate park on 23 July 2016, after having served the trespass notice, and he saw in live footage that TQ had returned to [location deleted]. The officer could not do anything about it at the time, as he had other obligations to attend to, and the following day, he was also engaged in duties which kept him at the station.

- (vii) On 25 July Constable Parsons again viewed the footage from [location deleted] and by chance again saw in live footage that TQ was back at [location deleted] in breach of the trespass notice.
- (viii) Constable Parsons secured the assistance of three other officers, one of whom was Constable McKay, the only other witness to give evidence, and together they went to [location deleted].
- (ix) Constable Parsons did consider issuing a summons for the trespass but he considered that if he did not arrest TQ, then TQ would continue to commit the offence of trespass, based on his words and actions when served with the notice, and his attendance there twice since. Constable Parsons concluded the arrest was, therefore, justified under s 214(1)(a)(ii) Children Young Persons and Their Families Act 1989. Constable Parsons also considered that proceeding by way of summons would not stop the offending by way of trespass.
- (x) Constable Parsons cited the same concerns, considerations and conclusions in relation to assault and intimidation. That is, he considered TQ would continue to commit assaults and intimidation, and proceeding by way of summons would not stop such offending.
- (xi) Constable McKay also said that he had satisfied himself as to the considerations.
- (xii) In the end it was Constable McKay, who after consulting with Constable Parsons, reached TQ first and effected the arrest, during which TQ punched Constable McKay, kicked Constable Parsons in the legs, spat at Constable McKay and tried to bite Constable Parsons' leg. The resisting charge

relates to him backing away from Constable McKay when first confronted, I believe.

[3] There is no dispute that if this matter has been properly brought, and if the officers were acting in the execution of their duty, TQ actions would amount to trespass, assaults and resisting. The issues are, were the constables acting in the execution of their duty at the time they arrested TQ, and if the constables arrested without warrant unlawfully, can the trespass charges remain or must they be dismissed?

[4] Were the Constables acting in the execution of their duty? It is incumbent on the prosecution to prove this beyond reasonable doubt as it is an element of three of the charges. Section 214 Children Young Persons and Their Families Act permits an officer to arrest a young person without warrant in strictly limited circumstances. That section requires him to have been satisfied on reasonable grounds that arrest was necessary for, as advanced in this case, preventing the young person from committing further offences, and where the young person might be proceeded against by summons, proceeding that way would not achieve that purpose.

[5] It seems to be accepted that Constables McKay and Parsons did satisfy themselves that arrest was necessary to prevent further offending, that is they did turn their minds to the issue and drew their own conclusions, but for the avoidance of doubt I accept their evidence that they did consider s 214, and they did act for the reasons they had said. For the same reasons I accept they satisfied themselves that proceeding by way of summons would not achieve that stated purpose. So then the real issue is whether they have satisfied themselves on both matters on reasonable grounds; that is, an objective test must be applied.

[6] There is no doubt that these additional threshold matters which must be satisfied before an officer may arrest a young person, are inserted into this legislation because of the accepted need to ensure criminal justice processes for young people are age appropriate, appropriate to young people's understanding and abilities, and are not unduly draconian. The objective reasonableness of the officers' beliefs on both issues will, therefore, require a balancing exercise between, on the one hand,

the seriousness of the situation if offending then occurring is not stopped immediately, and on the other hand, the need to ensure statutorily enshrined and age appropriate processes are strictly followed for young people committing offences.

[7] I start by identifying what offence TQ was actually seen to be committing on 23 and again on 25 July; that offence was trespass. The officers saw nothing else prior to deciding upon arrest, which could be considered any additional offence. Trespass without any further offending is a relatively minor matter; it carries a maximum term of imprisonment of three months. Therefore, the offending for which the officers considered it necessary to arrest to make it stop and for which they concluded a summons would not suffice to stop offending, must be trespass. It cannot be anything else.

[8] TQ had not been trespassed from [location deleted] when he committed the assault on 23 July. There is then no logical link between being trespassed and the assault on [details deleted], i.e. he was not more likely to assault others who are in places from which he has been trespassed. There was no evidence suggesting intimidation, as distinct from the assault, on any occasion.

[9] I have been provided with a decision of His Honour Judge Geoghegan, *Police v G R* from the Rotorua Youth Court of 12 May 2005¹. On the facts in that case, officers were justified in arresting on charges of *iter alia* burglary and possession of instruments for burglary. The offending was of course far more serious and perhaps more importantly in the process of being carried out or about to be carried out. His Honour said:

I have absolutely no doubt that the constable was entitled to arrest G in the circumstances in which he found him. She had valid reason to believe an offence had been committed and her actions were understandable and appropriate.

So His Honour found sufficient grounds to justify the arrest.

[10] Apart from the fact that that decision is of course not binding on me as a Judge of equivalent jurisdiction, it is a decision of a fellow Judge on the facts of that

¹ *Police v G R*, Youth Court, Rotorua, 12/5/2005, CRI-2005-269-8

case. The cited High Court case *R v Police*² does not advance the interpretation of s 214 for the purposes of this case. It too was a decision on its facts and concerns the proposition whether an officer must invite the young person to accompany before invoking the power to arrest. There the Court held that a police officer has no such obligation and to find that he or she did, would be to put a gloss on the wording of the section, but that is not what is in issue here.

[11] So returning to this case, is it objectively reasonable to arrest a young person to stop a trespass, without any other offending occurring or suspected, for the purpose of stopping the trespass, when the act specifically limits powers of arrest for a young person. The risk of harm to others and to property was obviously very low or non-existent. Trespass itself, without any other accompanying offending, is very low level offending and I am satisfied there were not reasonable grounds for either constable to be satisfied that arrest was necessary to stop the trespass continuing.

[12] In the same way I am satisfied there were not reasonable grounds for the officers to conclude that proceeding by way of summons would be insufficient to stop the offending. The young person was actually leaving the scene when the officers arrived, determined to arrest him.

[13] Therefore, I conclude that the officers conducted an invalid arrest, with the result they were not acting in the execution of their duty. The prosecution must prove beyond reasonable doubt they were, for the purposes of the three Summary Offences Act charges. By exceeding their powers, the officers were outside that protection. An element of each of the charges in the assault and resisting has not been established and so those charges must be dismissed.

[14] I turn then to the charges of trespass. Constable Parsons had seen TQ at [location deleted] through live security footage on both 23 and 25 July and have actually seen TQ running away from [location deleted] when he and the other police officers arrived on the 25th. Therefore, can these trespass charges survive the tainting by the unlawful arrest, which has meant the other charges could not be sustained.

² R v Police, High Court, Tauranga, 30/10/2007, CRI-2007-470-27

Here I am bound by the decision of *Pomare v Police*³, an appeal to the High Court, Whangarei, AP8/02, 12 March 2002. His Honour Justice Harrison pointed out that s 214 embodies critical limitations on police powers to arrest young persons. If the arrest was, as both here and in *Pomare*, unlawful, the only other procedure available for bringing the young person to Court was that under s 245 subs (1). If the police had no power of arrest, the Court has no jurisdiction, unless the alternative procedure under s 245 had been followed and here I refer to Youth Court decisions, *Police v H*⁴, and *Police v H G*.⁵ It then follows that the trespass charges too must be dismissed.

[15] In summary, the police have failed to prove beyond reasonable doubt the officers were acting in the execution of duty in relation to charges of assaulting constables and resisting. The officers had exceeded their duties by arresting when there were no reasonable grounds for their own personal conclusions they could do so. The charges of trespass must be dismissed because they have been invalidly brought before the Court in light of the finding that the arrest was unlawful and the Court, therefore, has no jurisdiction to hear them.

[16] Accordingly, I dismiss all five charges.

J E Maze
Youth Court Judge

³ *Pomare v Police*, HC Whangarei, AP8/02, 12/03/2002

⁴ *Police v H*, Youth Court, Kaitai, 20/01/2006

⁵ *Police v H G*, 2004 District Court Report 685