

THE HIGH COURT

[2012 No. 3707 P]

BETWEEN

PAUL REID

PLAINTIFF

AND

THE COMMISSIONER OF AN GARDA SIOCHANA, THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM IRELAND

AND THE ATTORNEY GENERAL

DEFENDANTS

Decision of Mr. Justice Hedigan delivered on the 9th day of May 2014

1. Counsel for the defendants has applied to have the case withdrawn from the jury on the grounds that no legal basis has been presented upon which the jury could find for the plaintiff on any of the claims he makes.
2. The jury are the judges of the facts in any case submitted to them for their determination. A judge sitting in a case being tried by a jury will be very reluctant to interfere with the jury's unique function in jury cases. As a general principle, it is only when the judge is satisfied that, on the undisputed facts, no case in law exists, he may withdraw the case from the jury. When he does so decide, however, he must do so in justice to the defendants.
3. The factual background of this case is bizarre. The plaintiff has been impersonated on at least four separate occasions on the evidence before the Court. The first is an incident referred to by the plaintiff when he said, at the time of his arrest on 9th February, 2011, that "it has happened before" when he told the arresting gardaí that someone had given his name, address (his mother's) and his date of birth. The second came to light when he applied for a Passport and was told one had already been issued. The third was the occasion of the theft incident on 20th May, 2010, in the Northside Shopping Centre in Dublin which resulted in the warrant issued on 10th June, 2010. That is the warrant we are concerned with in these proceedings. The fourth occasion was the incident on 30th March, 2011, in the Tallaght B&Q store which resulted in "the Tallaght warrant". The plaintiff contacted Garda Nealon of Tallaght garda station in order to sort out that warrant. He did this in July 2011, and satisfied the garda that he was not the person who had been arrested in the B&Q store on 30th March, 2011.
4. Added to this is the plaintiff's strange ambivalence as to whether the impersonator on the warrant was his brother, and his equally strange, somewhat fearful, absolute refusal to answer any questions about another person possibly involved in the fraudulent Passport application made in his name.
5. The claims made herein are somewhat complicated and intertwined. They may, however, be dealt with under the following headings:
 - (i) The Lawfulness of the Arrest;
 - (ii) False Imprisonment;
 - (iii) Malicious Prosecution;
 - (iv) Defamation.

(i) The Lawfulness of the Arrest

The arrest made was on foot of a bench warrant issued because of the failure of the person named thereon to answer to his bail in the District Court. It was a warrant lawfully, but erroneously issued. No fault attaches to either the gardaí or the District Court in this regard. They, like the plaintiff, were the victims of an impersonator. It is argued by the plaintiff that an otherwise lawful arrest on foot of this warrant was rendered unlawful on three grounds:

- (a) delay in executing the warrant;
- (b) the use of unreasonable force in breaking into the plaintiff's flat;
- (c) the handcuffing of the plaintiff.

(a) I know of no authority, nor has any been opened to me whereby I could hold that the delay of eight months in executing a bench warrant would render any arrest thereunder unlawful. It is clearly the case that such a warrant is a command by the Court to the gardaí to arrest the person named thereon. See *Shane Dunne v. DPP*, Carney J. 6th June, 1996. However, as also noted in that judgment, the issuing of such a warrant need not trigger a national manhunt. There are thousands of such warrants issued every year, and around the country there are warrant officers, just like Garda Joyce herein, whose sole function is the execution of warrants.

No legal basis for unlawful arrest arises under this heading.

- (b) The use of unreasonable force.

On the plaintiff's evidence, the gardaí knocked on the door of his flat and he decided not to answer. He says he did not know they were gardaí. Outside the flat at the time, the gardaí were present with a bench warrant for the plaintiff who lived in that apartment and who was, in fact, present in it. By definition, the bench warrant was in respect of a fugitive from justice i.e. a person in flight from the law. Were the gardaí to tamely withdraw? Hardly. Did they do so, they would have been ignoring a clear command by the

Court to arrest the person named on the warrant i.e. the plaintiff and bring him before the Court. In breaking into the apartment, on the plaintiff's own evidence, the gardaí were using the only means open to them to effect an entrance and execute the warrant.

No legal basis for unlawful arrest arises in this regard.

(c) The use of handcuffs

Handcuffs should not be used unless reasonable in all the circumstances. It is for the gardaí present to decide whether to do so or not. See *DPP v. Peter Cullen (Supreme Court.)* 18th February, 2014. The circumstances are the critical test- context, as so often, is all-important. What were the circumstances here? The gardaí, to the best of their knowledge, were attempting to arrest a man in flight from the law. They were unaware of the mistaken identity when they handcuffed him. They only knew that he was the person named on the warrant. He admitted to be. Inklings or suspicions developed only later. He was, indisputably, the man described on the warrant. He had failed to answer their knock. In those circumstances, it cannot, in my judgment, be said that their handcuffing of him was an unreasonable use of force and it would not, in my opinion, be open to a jury to reasonably find otherwise.

Thus, no lawful grounds have been raised whereby the jury could reasonably find that the arrest was unlawful. To find thus, in the circumstances of this case, would be a perverse finding.

(ii) False Imprisonment

This consists in the unlawful and total restraint of the personal liberty of another, whether by constraining him or compelling him to a particular place or confining him to a prison or police station or private place or by detaining him against his will in a public place. See *Dullaghan v. Hillen* [1957] Irish Jurist Reports page 10 at page 15. The plaintiff was lawfully arrested on foot of a valid bench warrant, as found above. There was, therefore, lawful authority for the arrest and imprisonment of the plaintiff. The only question that can arise is as to whether, once the gardaí had the suspicion that he might not, in fact, be the same person who had originally been arrested in the Northside Shopping Centre, they should have either set him at liberty that night of his arrest or after the District Court hearing the following day.

The gardaí were under a duty to execute the bench warrant in their possession. Their duty was to deliver up to the Court the person named on the warrant. Whether he was the person who committed the offence referred to was an issue to be dealt with before the Court. The gardaí did so and, on the evidence before the court, no malice or recklessness can or does arise in relation to those actions. Following his appearance before the District Court, on the recommendation of the gardaí, the plaintiff was released on bail. Again, this was by Court order, and thus, by lawful authority. Moreover, although he was required to attend at the District Court in Dublin, this did not amount in law to false imprisonment as per *Dullaghan v. Hillen*. Whilst his liberty was somewhat restricted by his obligation three times to attend Court in Dublin, there was not a "total restraint of the liberty of the person". There is, thus, in my judgment on the evidence, no legal basis upon which the jury could decide that the plaintiff was falsely imprisoned.

(iii) Malicious Prosecution

The tort consists of the institution of unsuccessful criminal proceedings by the defendant, maliciously and without reasonable and probable cause, as a result of which the plaintiff has sustained damage. See *McIntyre v. Lewis* [1991] I.R. 121 (S.C.). Prosecution is, in fact, not what is essentially involved in this case. It is the arrest on a bench warrant that is central to the plaintiffs claim. It is common case that the prosecution on foot of which the bench warrant issued was commenced in good faith, on the basis of impersonation by a third party. No suggestion of malice in the original prosecution was made, nor could be on the evidence. Equally, there was no absence of reasonable cause for this prosecution. A theft had occurred and the alleged thief had been apprehended. No factual basis at all exists to support a case of malicious prosecution. It is submitted by the plaintiff that when the gardaí developed a suspicion that the plaintiff might not be the perpetrator of the offence alleged, he should have been released. See McMahon & Binchy, 4th Ed. para. 36.06. That, however, is to confuse the issue between the plaintiff and the alleged perpetrator. Any inkling or suspicion that the plaintiff who was in fact the man named on the warrant, was not the perpetrator of the offence alleged thereon, was plainly something most unusual and calling for enquiry. As noted above, however, the duty of the gardaí was to execute the warrant and deliver up the person named thereon to the Court. After that, it was the Court's business to enquire into the identity of the perpetrator. This, they did, and recommended bail to which he was admitted. I think there was an unacceptable delay thereafter in clarifying the identity of the plaintiff and the perpetrator. Once the real possibility of a mistaken identity had been accepted by the gardaí, they should have moved immediately to clarify and determine the situation. It should not have been allowed to drag on over three District Court appearances. This failure on their part, however, does not give rise to any justiciable issue for the decision of the jury. It might well be the subject of a complaint to the Garda Ombudsman, but that, in my view, is as far as it goes. It certainly cannot amount to malice such as would transform what was initially the lawful execution of a valid warrant, and subsequently, bail upon the order of a Court into some hybrid form of malicious prosecution.

There is, in my judgment, no case in law in this regard to be put to the jury.

(iv) Defamation

There is no issue as to the absolute privilege that attaches to the bench warrant and the proceedings in Court. See *Macauley Company Ltd. v. Wyse Power* [1943] 77 ILTR 61. This privilege is agreed to exist. It is hard to see how the plaintiff can get past this. Not even malice or improper motive, neither of which are present, can defeat this privilege. In any event, it is plain that there was no publication of an untrue statement, even by conduct. What was published was that there existed a bench warrant in respect of the plaintiff. That statement, such as it was, was manifestly correct.

No case in this regard exists to put before the jury.

6. These, above, are the reasons which required me to withdraw the case from the jury.