

ROYAL COURT

26th July, 1989

Before: The Bailiff and  
Jurats Vint and Orchard

---

Police Court Appeal: Paul Roy Melia

---

Appeal against conviction on one charge of assaulting a police officer in the due execution of his duty. The appellant (who was aged 21) had been bound over to be of good behaviour for a period of one year.

---

Advocate S.C. Nicolle for the Crown  
Advocate R. Renouf for the appellant.

---

**JUDGMENT**

THE BAILIFF: This is an appeal by Paul Roy Melia against his conviction by the Magistrate on the 23rd February, 1989 of assaulting Detective Constable Aubert in the execution of his duty at 0120 hours on the 15th October, 1988. The circumstances which led to the conviction were these: three police officers, Detective Sergeant McDonald, Detective Constable Aubert and Detective Constable Harrison were on patrol in the town area in an unmarked vehicle. As Sergeant McDonald said during his evidence before the Magistrate, they were members of the Drug Squad and were rather shabbily

dressed because they were engaged on an undercover operation. The patrol stopped in Hilgrove Street because they thought they heard an alarm bell ringing. Whilst they were attempting to find out from what direction the noise of the bell was coming, the appellant, who was walking past the car, overheard the transmission coming from the police radio. He thereupon ran away. Because his shirt appeared to be covered in blood, and he had run away, the police became suspicious and followed him in the car. In addition to the alarm bell sounding there had been a fracas involving a number of people earlier in the evening. The police car caught up with the accused in the area of Belmont Road and Sergeant McDonald and D.C. Harrison got out and approached him. They wanted to talk to him because they noticed also that he had a cut to his left cheek which appeared to have been recently sutured. He refused to answer any questions, or to give any information, or his name. The police then decided they were justified in searching him, and detaining him for further enquiries into exactly what had happened, and how he came to be in that state. During this time Sergeant McDonald had hold of the right arm of the appellant. The manner of holding him was, according to the evidence of Sergeant McDonald "enough of a hold to let him know that I wanted to speak to him, and he wasn't going anywhere until I had satisfied myself with explanations, and so on". The Sergeant also said that he thought it was important that persons understood when they were stopped by the police that they were actually restrained and were held there, as he said "in other words, you know they are not just going to wander off willy nilly". The appellant accepted that he knew they were policemen because Sergeant McDonald had identified himself as such. D.C. Harrison reached into the rear pocket of the appellant's trousers and removed a hospital card. At this time D.C. Aubert was standing nearby and noticed the name Melia. He then said that he knew the appellant's mother. At that point the appellant shouted at D.C. Aubert, leapt forward, and attempted to strike and kick him.

Miss Nicolle for the Attorney General, made a preliminary submission, which was that, even accepting that what Sergeant McDonald and D.C. Harrison were doing was unlawful, which was not admitted by the Crown, D.C. Aubert had not been part of that unlawfulness and, therefore, the assault on him was carried out whilst he was performing his duty. That was a very interesting submission. However, the extracts in the transcript which Mr. Renouf pointed out to us, outweighed those used by Miss Nicolle to

support her submission. According to the evidence of D.C. Harrison the three police officers were acting as a group. We think it would be artificial to reach any other conclusion but that the three policemen were acting together throughout. Of course this does not mean to say that in other cases Miss Nicolle's submission might not apply, because you cannot have a reverse osmosis on every policeman because his colleagues do something which takes them outside the protection of their acting in the execution of their duty. But in this particular case we think we cannot accept that submission.

If what Sergeant McDonald or D.C. Harrison did was unlawful, then that unlawfulness tainted the presence of D.C. Aubert in this joint enterprise of the three policemen.

The police at that time knew there had been a fracas. They had heard, as we have said, an alarm bell ringing and they noticed when they stopped the appellant that he had stitches in the head and also, as I have already said, a bloodstained shirt. Under the circumstances they cannot be faulted in wishing to enquire further into what they had seen. However, they were bound and are bound by the provisions of the statute which confers certain powers on all police officers in the Island. These powers are contained in Article 3 of the Police Force (Jersey) Law, 1974 and the only one which is relevant is that contained in paragraph 1 of that Article which reads as follows:

"1. Where a police officer with reasonable cause suspects that any person has committed, is committing, or is about to commit an offence he may arrest that person".

The duties of a police officer which are detailed in Article 2 cannot superimpose on to Article 3 any further powers than those conferred expressly in the latter Article.

Mr. Renouf for the appellant has made three submissions to us in the course of this hearing. He says that the appellant was unlawfully detained. He says that even if he was lawfully detained, he was unlawfully searched, and lastly the appellant says that even if the detention and the search were lawful, they became unlawful because at no time was the appellant told by

any of the officers of the reason for his detention. If he is correct in his first submission then it will not be necessary to examine the other two.

It is clear from our reading of the cases that no offence is committed in a case of this nature if the police were acting unlawfully. It is quite clear also from the various authorities which have been cited to us, in particular Kenlin & anor -v- Gardiner & anor (1966) 3 All ER 931 that apart from the powers conferred on the police, be they Honorary or States police (of course as far as the Connétables and Centeniers are concerned they have other powers according to their oaths but they are not relevant to this case), a police officer does not have the power simply to detain someone for questioning, or pending enquiries.

The question we have to decide is whether there was an unlawful detention of the appellant by the police in the early hours of the morning of the 14th October. It is quite true that the degree of detention appears to be important and that suggestion is borne out by the case of Donnelly -v- Jackman a Divisional Court Case heard on the 27th January, 1970, there, and I read from the head note:

"The appellant was lawfully walking along a pavement when P.C. Roy Grimmit in uniform came up to him for the purposes of making enquiries about an offence which the officer had cause to believe the appellant had committed or might have committed".

It is important here to make a distinction between that case and this one because the police at the time they questioned Melia had not yet formed any idea in their minds as to whether they believed he had committed any offence. There is a distinction between the present case and Donnelly -v- Jackman. I continue with the head note:

"The officer spoke to the appellant asking him if he could have a word with him. The appellant ignored that request and continued to walk along the pavement away from the officer. The officer followed close behind him and apparently repeatedly asked him to stop and speak to him. At one stage the officer tapped the appellant on the shoulder and apparently shortly after that the appellant turned round and in turn

tapped the officer on the chest saying: "Now we are even, copper". It became apparent to the officer that the appellant had no intention of stopping to speak to him. The officer then again tapped the appellant on the shoulder with the intention of stopping him whereupon the appellant then turned round and struck the officer with some force. The officer did not touch the appellant for the purpose of making any formal arrest or charge but solely for the purpose of speaking to him".

In this case, likewise, the reason why the appellant was detained as he was by Sergeant McDonald was not because they had decided to arrest him for an offence which they had reasonable grounds for believing he had committed, was committing, or might be about to commit in the words of paragraph (1) of Article 3 in the Police Force (Jersey) 1974 Law, but merely to question him or make enquiries. I repeat there is no power in our statute for the police to do that, if in doing so they detain a man against his will. Of course if they ask someone: "Do you mind if we ask you some questions"? and he agrees, that of course is perfectly proper.

In the course of the judgment in Donnelly -v- Jackman Talbot J, said this:

"The principal question it seems to me is whether the officer was acting in the execution of his duty and a secondary question whether anything he did caused him to cease to be acting in the execution of his duty. When considering what the duties of the officer were I do not think I can do better than cite the words of Parker CJ, in Rice -v- Connelly (1966) 2 QB Div. 414 at p.419 it is also in my judgment clear that it is part of the obligations and duties of a police constable to take all steps which appear to him necessary for keeping the peace for preventing crime or for protecting property from criminal injury".

Those words have in fact been criticised by Mr. David Langam in 1974 Criminal Law Review at p.290 where in the middle of that page the author says:

"Taken out of its context" .... (and that of course is important) .... "there is much wrong with that statement and it would not be difficult to reveal its shortcomings. The statement comes closer to representing English Law if "take all steps" is replaced by "take all lawful steps". In one sense it is true that a policeman is acting in the course of his duty when he commits a technical or perhaps even a substantial tort for the bona fide purpose of tracking down criminals or seeking evidence. It would avail a chief constable not at all in resisting a claim for damages on the basis of vicarious liability to deny the course of duty. But the cases clearly establish that for the purpose of the crimes of assaulting or obstructing a policeman in the execution of his duty a policeman must be acting lawfully".

The judge goes on:

"Furthermore, in considering the problem whether the officer went outside the ambit of his duties so as to cease to be acting therein I would refer to the words of Ashworth J, in Waterfield (1964) 48 Crim. App. Rep. 42 at p.47, and I quote: 'In the judgment of this court it would be difficult and in the present case it is unnecessary to reduce within specific limits the general terms in which the duties of police constables have been expressed. . In most cases it is probably more convenient to consider what the police constable was actually doing and, in particular, whether such conduct was prima facie an unlawful interference with a person's liberty or property. If so then it is relevant to consider whether (a) such conduct falls within the general scope of any duty imposed by statute or recognised at common law and (b) whether such conduct albeit within the general scope of such duty involved an unjustifiable use of powers associated with the duty!'"

It is quite clear, and we so find, that the police had a duty to investigate what to them seemed a suspicious occurrence. To say otherwise would be to deny the clear words of Article 2 of our own Law. But the question is whether in investigating what they regarded as perhaps suspicious circumstances, that involved an unjustifiable use of the powers conferred by Article 3 associated with the duty required for them to operate under Article 2.

This is the nub of the matter. Was what Sergeant McDonald did trivial? Because in the same case the learned judge says at p.232:

"One ought to bear in mind that it is not every criminal interference with a citizen's liberty that amounts to a course of conduct sufficient to take the officer out of the course of 'his duty'".

We have come to the conclusion, having regard to the fact that so far as the case of Ludlow & ors -v- Burgess is concerned to which we have been referred by counsel for the appellant, that this was a case of a detention of a man against his will without arrest. As is said in that case at p.3 of the transcript (it is a case reported on the 4th February, 1971):

"Here is a detention of a man against his will without arrest. On any view that is unlawful and is a serious interference with a citizen's liberty and in those circumstances it cannot be an act performed in the execution of a police officer's duty".

In that case the policeman concerned was off duty in plain clothes and was boarding a bus at a bus stop when the appellant kicked him on the shin. There were two other appellants present at the time:

"The constable had reason to believe that the kick was perfectly deliberate and accordingly asked Forran what his game was, but Forran claimed that it was an accident and expressed that in strong language so that the police officer said: "you'd better watch your language". As a result the police officer told them to cut out foul language and he disclosed that he was PC Burgess. He did not have a warrant card but he said to the three appellants: "I'm telling you I'm Police Constable 481X Burgess attached to Uxbridge Police Station and again Forran used bad language reiterating that it was an accident and started to walk away".

This case really depends on what was found as I see it by the Justices in the next paragraph which is as follows:

"Police Constable Burgess then put his hand on Forran's shoulder not with the intention of arresting Forran but to detain him for further conversation and to complete enquiries, saying to Forran: "I'm not finished with you yet" to which Forran replied: "I have", commenced to struggle and kicked the officer on the right thigh. Up to this point Forran had not been told that he was under arrest".

That of course is the exact position here. The appellant at no time was told that he was under arrest. In Ludlow's case there was merely a hand on the shoulder, in this case there was a hand on a wrist or an arm of the appellant and clearly from the evidence on page 3 at letter 'g' of the transcript: "Melia was not impressed at being stopped". That is the evidence of Sergeant McDonald.

So the real distinction is whether if an officer attempts to detain somebody and that person does not struggle, whether that is any different from detaining somebody who does struggle. We think there is no distinction at all between those cases. The real test is whether the detention itself was lawful or not and it is clear from the passages I have cited of Sergeant McDonald's evidence that the appellant was restrained in a way that it was clear to him he could not get away. Therefore we have found that what Sergeant McDonald did was more than trivial and so applying the test in Waterfield, we think that his conduct took him outside the execution of his duty and accordingly the appeal succeeds.



Authorities referred to:

Carter -v- Nimmo & King (1968) JJ 1007.

Carter -v- Nimmo & King (1969) JJ 1257 at page 1261 (final sentence of penultimate paragraph).

Donnelly -v- Jackman Divisional Court Case heard on the 27th January, 1970 (reported in 54 Crim. App. Rev. 562).

Ludlow & ors -v- Burgess (nb not reported. Judgment of this High Court case no. 265/70 dated 7th February, 1971 from the shorthand notes of Cherer & Co. 34 Essex Street, Strand, London, WC2R 3AT).

Kenlin & anor -v- Gardiner & anor (1966) 3 All ER 931.

Pedro -v- Diss (1981) 2 All ER 59.

Brazil -v- Chief Constable of Surrey (1983) 3 All ER 537.

Police Force (Jersey) Law, 1974: Articles 2 and 3.

Misuse of Drugs (Jersey) Law, 1978: Article 17.

Firearms (Jersey) Law, 1956: Article 29.

Prevention of Terrorism (Temporary Provisions) Act, 1974: Articles 5, 6, 7 & 8.

The Misuse of Drugs Act, 1971 S.23.

The Firearms Act 1937 SS.26 to 30.