

WHITE V SOUTH AUSTRALIA

Supreme Court of South Australia (Anderson J)

9 April 2010

[2010] SASC 95

Criminal law – torts – police powers – damages – protest against uranium mine operating on Adnyamathanha land – breach of peace – whether there was trespass under *Summary Offences Act 1953* (SA) s 17A(1) – unlawful arrest and detention – torts of false imprisonment and assault – aggravated and exemplary damages

Facts:

The 10 plaintiffs in this case brought actions in assault and false imprisonment against 25 members of the South Australian Police Department, for whom the State accepted vicarious liability, in relation to events that had occurred a decade earlier during a protest at the Beverley uranium mine, situated just north of the Flinders Rangers, on Adnyamathanha land. The plaintiffs had all been involved, in varying capacities, with this protest, which was staged to oppose the operation of the mine. On the morning of 9 May 2000, most of the plaintiffs entered onto the mine site without the permission of the leaseholder, Heathgate Resources Pty Ltd. Several incidents occurred in which rocks were thrown at police. There was also a general scuffle between police and about 30 of the protesters. In response, police officers, led by members of the anti-riot Star Force, arrested and/or detained a large number of protesters, including nine of the plaintiffs in the present case, purportedly on the basis that they breached the peace and/or committed criminal trespass. Detainees were held in a shipping container, and later in a metal cage that was welded onto the container whilst detainees were inside. Those plaintiffs who were detained in this way were exposed to capsicum spray and welding smoke, deprived of light and water, and subject to significant physical force. Most of the plaintiffs spent at least seven hours in custody before being transported off-site and released.

Helen Gowans, an 11-year-old Aboriginal girl, was the one plaintiff who was not arrested or detained. She was attending the protest with her grandfather, Ron Coulthard, an Adnyamathanha elder. Despite the fact that Heathgate Resources had entered native title agreements with the

Adnyamathanha people which, inter alia, preserved their right of access to the site, Helen Gowans was exposed to capsicum spray. As a witness to the direct spraying of one of her companions, she was also made to experience considerable fear, pain and discomfort.

Parties had previously been involved in court-approved mediation; however, at the last moment, the State government had withdrawn. This withdrawal was accompanied by a public statement from the Deputy Premier describing the plaintiffs as a 'bunch of feral protesters who put the safety of our police officers in peril'; similar comments were made by the Police Minister. So, the court was asked to decide on the following issues: firstly, whether any of the plaintiffs had committed trespass under the *Summary Offences Act 1953* (SA) s 17A(1), and thus, whether the arrests for trespass were lawful; secondly, whether the detentions for breach of peace were lawful; thirdly, whether the plaintiffs had been falsely imprisoned; fourthly, whether police had assaulted the plaintiffs; and finally, whether the plaintiffs were entitled to damages and, if so, what ought to be the measure thereof.

Held, finding for the plaintiffs:

1. Under s 17A(1)(c) of the *Summary Offences Act 1953* (SA), trespassers must be asked to leave premises by an authorised person before they can be found guilty of an offence. It might be inferred that the police had been authorised by the leaseholder to ask protestors to leave. But at no time was a request to leave adequately communicated to the plaintiffs. It follows that the plaintiffs who were arrested for trespass had not committed the offence of trespass when

they entered the mine nor at any time thereafter; thus, all of the arrests and detentions for trespass were unlawful: [63], [391], [395]; *Barker v The Queen* (1983) 153 CLR 338; *Simple v Mant* (1985) 39 SASR 282; *Margarula v Rose* (1999) 149 FLR 444; *R v Conley* (1982) 30 SASR 226; *Police v Slobodian* (2008) 254 LSJS 117, considered.

2. The common law power of police to detain for breach of the peace should only be exercised for the purpose of removing persons from the premises as quickly as possible. Thus, all of the arrests and detentions for breach of the peace were also unlawful: [401], [404]–[405], [412]–[413]; *Brander v Lovegrove (No 2)* (1982) 103 LSJS 304, considered; *R v Howell* [1982] QB 416, considered; *R v Reid (No 2)* (1981) 2 A Crim R 28; *R (Laporte) v Chief Constable of Gloucestershire* [2007] 2 AC 105; considered.

3. Following the above, each of the plaintiffs was falsely imprisoned, with the exception of Helen Gowans. The use of the shipping container was poorly conceived and resulted in ‘fundamental breaches of human rights’: [35], [417]; *Maine v Townsend* (1883) 4 LR (NSW) 1, considered; *R v Deputy Governor of Parkhurst Prison; Ex parte Hague* [1992] 1 AC 58, considered; *Myer Stores Ltd v Soo* [1991] 2 VR 597, considered; *Bird v Jones* (1845) 7 QB 742; *Dallison v Caffery* [1965] 1 QB 348, considered.

4. Police officers acted without tolerance or good humour; the use of batons and capsicum spray was generally unwarranted. Physical contact or the apprehension of physical contact suffered in the course of an unlawful arrest or detention ordinarily constitutes assault: [25], [31], [368]–[369]. Each of the plaintiffs was assaulted: [370]–[374]; *Macpherson v Beath* (1975) 12 SASR 174, cited; *Rixon v Star City Pty Ltd* (2001) 53 NSWLR 98, considered; *Walker v Hamm (No 2)* [2009] VSC 290, considered.

5. The plaintiffs are all entitled to damages; amounts will vary according to individual cases. Aggravated damages must also be awarded to compensate the plaintiffs for the injurious effects of the defendant’s humiliating and insulting actions. Moreover, given the degrading circumstances of their imprisonment, exemplary damages must be awarded in order to punish the defendant for the police officers’ total disregard for the plaintiff’s rights; especially in light of the Government’s provocative pre-trial comments: [428]–[430], [440]–[441], [468], [470].