IN THE SUPREME COURT OF NEW ZEALAND

SC 8/2017
[2017] NZSC 69

BETWEEN	NICHOLAS DAVID WRIGHT Applicant
AND	VIJAY BHOSALE First Respondent
	ATTORNEY-GENERAL Second Respondent

Court:	William Young, O'Regan and Ellen France JJ
Counsel:	Applicant in person N M H Whittington and B J Thompson for Second Respondent
Judgment:	9 May 2017

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant is to pay costs of $2,500 to the second respondent.

REASONS

[1] The applicant was a passenger in a vehicle which was stopped by the police. The first respondent, a police constable, asked the occupants of the vehicle, including the applicant, to provide identification. The applicant, who is legally trained, refused to provide identification. Ultimately he was arrested, handcuffed and searched, and then taken to the police station, where he was held in custody for two and a half hours. He was then released on bail.

[2] The applicant sought disclosure of the police file and, when that matter came on for hearing some months later, the police prosecutor conceded that there had been

no lawful jurisdiction to require him to provide identification and acknowledged that the arrest and detention of the applicant was unlawful.

[3] The applicant brought proceedings in the High Court for battery, assault, false imprisonment and breach of rights affirmed by the New Zealand Bill of Rights Act 1990 (the Bill of Rights).[1] The respondents conceded that the first respondent had committed a battery, the applicant had been falsely imprisoned and there had been breaches of ss 18 and 22 of the Bill of Rights. The High Court Judge, Hinton J, found that there had also been a breach of s 24(a) of the Bill of Rights.[2] She made declarations relating to the battery, false imprisonment and breaches of ss 18, 22 and 24(a) of the Bill of Rights. She declined to make declarations that there had been breaches of ss 21 and 23 of the Bill of Rights and her declaration in relation to s 24 was more limited in scope than that sought by the applicant. She awarded damages of $12,000 in relation to battery, false imprisonment and arrest and a further $2,000 for the breach of s 24(a) of the Bill of Rights.[3] She refused to award exemplary damages.[4]

[4] The applicant appealed to the Court of Appeal unsuccessfully.[5] He now seeks leave to appeal to this Court, raising essentially the same issues as those he raised in the Court of Appeal, with additional grounds relating to the conduct of the appeal in the Court of Appeal.

[5] The Bill of Rights issues that the applicant seeks to raise on appeal relate to s 21 (whether the request for identification amounted to an unreasonable search), s 23(2) (whether the requirement that a person who has been arrested must be charged promptly or released imports minimum standards of conduct into the charging process) and s 24(a) (whether the failure to inform the applicant of the nature and detail of the charges ended when the applicant was told he was being charged under ss 52 and 113 of the Land Transport Act 1998).

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1 *Wright v Bhosale* [2015] NZHC 3367, [2016] NZAR 335 (Hinton J).
2 At [75]–[89].
3 At [128] and [133].
4 At [145]–[157].
5 *Wright v Bhosale* [2016] NZCA 593, [2017] NZAR 203 (Randerson, Duffy and Whata JJ) [*Wright v Bhosale* (CA)].

[6] We accept there may be arguable points in relation to these issues, but we see the present case as an inappropriate vehicle for dealing with them, given the nature of the incident and the fact that the unlawful police conduct has not only been admitted, but has also been the subject of a reasonably significant award of compensation. We do not see any appearance of a miscarriage if leave is not granted on these grounds.

[7] The applicant also wishes to argue that exemplary damages should have been awarded, and in that regard he challenges the concurrent factual findings in the Courts below that the first respondent did not act in bad faith, intentionally or recklessly. We do not see any appearance of error in the concurrent factual findings and, in those circumstances, the argument about exemplary damages, which focuses on the application of the test set out by this Court in *Couch v Attorney-General*, does not have a factual footing.[6]

[8] The applicant also wishes to argue on appeal that the first respondent did not have authority to ask the applicant to produce identification. The Court of Appeal did not consider that it was appropriate to engage with that question, given that the respondents had conceded that the first respondent had unlawfully demanded production of identification particulars from the applicant.[7] We see no proper basis to revisit that, nor do we see it having any practical effect on the outcome of the case.

[9] The applicant also wishes to raise on appeal an argument that the way the applicant's appeal was dealt with by the Court of Appeal caused a miscarriage of justice. His complaint is that, because the Court of Appeal dealt with his application for extension of time to appeal and the substantive appeal contemporaneously, he did not get the opportunity to file a complete notice of appeal. No issue of public importance arises. The applicant does not identify any issue which he sought to raise but was prevented from doing so, and in those circumstances we see no appearance of a miscarriage of justice if leave is not granted on this point.

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6 *Couch v Attorney-General (No 2)* [2010] NZSC 27, [2010] 3 NZLR 149.
7 *Wright v Bhosale* (CA), above n 5, at [41].

[10] Lastly, the applicant seeks to contest the costs order made against him in the Court of Appeal on the basis that, because the case involved the Bill of Rights, an award of costs against him was inappropriate. No point of public importance arises and we do not see the argument as having sufficient prospects of success in this Court to justify the grant of leave in respect of it.

[11] The application for leave to appeal is dismissed. We award costs of $2,500 to the second respondent.

Solicitors:
Meredith Connell, Wellington for Second Respondent