

DISTRICT COURT OF QUEENSLAND

CITATION: *Hennessey v Commissioner of Police* [2024] QDC 52

PARTIES: **HENNESSEY, Daniel Kerrick**
(appellant)
v
Commissioner of Police
(respondent)

FILE NO/S: 2708/23

DIVISION: Appellate

PROCEEDING: Appeal pursuant to s 222 of the *Justices Act 1886* (Qld)

ORIGINATING COURT: Magistrates Court at Holland Park

DELIVERED ON: 19 April 2024

DELIVERED AT: Brisbane

HEARING DATE: 12 April 2024

JUDGES: Smith DCJA

ORDER: **1. The appeal is allowed.**
2. The conviction is quashed.
3. The order made in the Magistrates Court is set aside.
4. No order as to costs.

CATCHWORDS: CRIMINAL LAW – BAIL – BEFORE TRIAL – OTHER MATTERS – Failure to appear – where the appellant called the registry to advise he would be appearing late – where despite this, a warrant was issued for his arrest – where he did appear and the Magistrate refused to deal with the matter and required him to surrender to the watch house – whether there was a failure to exercise jurisdiction – where the uncontested evidence is the appellant suffers an adjustment disorder which directly affects his ability to organise his life – where he had a panic attack on the day of court, but he made arrangements to attend – whether the Magistrate erred in convicting the appellant of failing to appear – whether the Magistrate’s reasons were sufficient – whether the appellant had a reasonable cause for failing to appear – whether failure to appear due to circumstances beyond his control

Bail Act 1980 (Qld) ss 28A, 33
Justices Act 1886 (Qld) ss 76, 222
Qld Parliamentary Debates Second Reading Speech [1979-

1980] vol 281, page 2931

Craig v South Australia [1995] HCA 58; (1995) 184 CLR 163, applied

DPP v Richards [1988] QB 701; 3 WLR 153 cited

Joyce v Baird [2013] ACTSC 79; (2013) 276 FLR 128, cited

McDonald v Queensland Police Service [2017] QCA 255, applied

R v Peehi (1997) 41 NSWLR 476; (1997) 92 A Crim R 539, cited

R v Singh [1979] QB 319; [1979] 2 WLR 100; [1979] 1 All ER 524, cited

Taikato v R [1996] HCA 28; (1996) 186 CLR 454, applied

COUNSEL: Ms E Kurz for the appellant
Mr K Kinsella for the respondent

SOLICITORS: Legal Aid Office (Qld) for the appellant
Office of the Director of Public Prosecutions for the respondent

Introduction

- [1] The appellant appeals his conviction of failing to appear in accordance with a bail undertaking. He was convicted of this offence on 22 August 2023 and was sentenced to a good behaviour bond for two months.
- [2] This appeal is pursuant to s 222 of the *Justices Act 1886* (Qld). It requires this court to conduct a real review of the trial and of the Magistrate's reasons and to make its own determination of the relevant facts giving due weight to the Magistrate's view.¹

Background

- [3] The appellant was due to appear in the Holland Park Magistrates Court on 21 July 2023.
- [4] The following recites the undisputed facts.²
- [5] The appellant was a person with a disability and was vulnerable. He was due to appear in court on 21 July 2023. He was extremely unwell on that court date and went through significant pain and suffering by travelling to court for the mention but was determined to appear as soon as he could. Early on the morning of the court date, he contacted the court registry staff to say that he was extremely unwell, apologising to the staff for not being at court and advising he was still making his way to court and he would be there as soon as he could.
- [6] Despite this a warrant was issued at 1008am.

¹ *McDonald v Queensland Police Service* [2017] QCA 255.

² Exhibit 1- Letter from Queensland Advocacy for Inclusion.

- [7] When the appellant arrived at the court it was still in session and he presented himself to the Magistrate who told him his attendance was too late, that a warrant had been issued for his arrest and he should present himself to the Holland Park Police Station where he would be taken into custody. The issue of the warrant caused significant stress for the appellant who required urgent support.
- [8] With support, he surrendered himself to the Holland Park Police Station on Monday 24 July 2023 and fully cooperated with the police. He was given watchhouse bail to appear. The appellant continued to be extremely mentally unwell and required support and assistance.
- [9] A trial for the alleged offence before another Magistrate on 23 August 2023. During the show cause proceedings the Magistrate said of Exhibit 1, “respectfully that does not amount to showing cause.” The Magistrate formed the view they were matters of mitigation only.
- [10] The lawyer informed the Magistrate that the appellant was a person who was diagnosed with depression, visual or auditory hallucinations, short term memory, insomnia and panic attacks. He suffered a panic attack on the morning at the court. Regardless though, he took steps to get to the court.
- [11] The Magistrate, without giving adequate reasons, found that cause was not shown.

Appellant’s submissions

- [12] The appellant submits that cause was shown here and the Magistrate should not have convicted the appellant. The respondent on the other hand submits that cause was not shown and the conviction is a valid one.

Discussion

- [13] Section 33 of the *Bail Act 1980* (Qld) provides:

“33 Failure to appear in accordance with undertaking

(1) A defendant who—

- (a) fails to surrender into custody in accordance with the defendant’s undertaking; and
- (b) is apprehended under a warrant issued pursuant to section 28 or 28A(1)(a), (b), (c) or (e);

commits an offence against this Act.

(2) It is a defence to an offence defined in subsection (1) if the defendant satisfies the court that the defendant had reasonable cause—

- (a) for failing to surrender into custody in accordance with the defendant’s undertaking; and
- (b) for failing to appear before the court specified in the defendant’s undertaking and surrender into custody as soon after the time for the time being

appointed for the defendant to do so as is reasonably practicable.

- (3) Proceedings for an offence against this section—
 - (a) shall be instituted and taken, without the laying of a complaint;
 - (b) shall be taken in accordance with the following procedures—
 - (i) production to the court before which a defendant apprehended under a warrant issued under section 28 or 28A(1)(a), (b), (c) or (e) is brought of that warrant shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the undertaking and of the failure to surrender into custody and that the issue of the warrant was duly authorised by the decision or order of the court that issued the warrant;
 - (ii) judicial notice shall be taken of the following—
 - (A) for a warrant other than a computer warrant—the signature of the person who issued the warrant;
 - (B) that the person who issued the warrant was duly authorised to do so.
- (4) Upon production to the court of the warrant the court shall then and there call on the defendant to prove why the defendant should not be convicted of an offence against this section.

[14] A breach of bail is a form of contempt of court.³ As can be seen the procedure is to be dealt with in the summary way (see subsection (4)), subject to observing the rules of procedural fairness.

[15] In my opinion the first magistrate was in error for failing to deal with the matter when the appellant first appeared on 21 July 2023.

[16] Indeed, that Magistrate should have dealt with the matter under s 28A (2) of the *Bail Act* which provides:

“28A Other warrants for apprehension of defendant

- (1) A court that a defendant is required to appear before may issue a warrant for the defendant’s apprehension if the defendant fails to surrender into custody after being—

³ See e.g. *R v Singh* [1979] QB 319; [1979] 2 WLR 100; [1979] 1 All ER 524.

- (a) released on bail by the Supreme Court or District Court on condition that the defendant will appear before a Magistrates Court; or
 - (b) released on bail by a Magistrates Court or the Childrens Court, or by any justice or justices conducting a committal proceeding, on the defendant entering into an undertaking; or
 - (c) released on bail under section 7(3)(a); or
 - (d) released on bail on the defendant making a deposit of money under section 14A; or
 - (e) released on bail that has been continued under section 34A(2), 34B(2), 34BA(2) or 34BB(2); or
 - (ea) released, on bail or without bail, under the *Youth Justice Act 1992*, part 5; or
 - (f) permitted to go at large without bail.
- (2) Where a defendant for whose apprehension a warrant has been issued under subsection (1)—
- (a) surrenders into the custody of the court that issued the warrant as soon as is practicable after the time for the time being appointed for the defendant to do so; and
 - (b) satisfies the court that the failure to surrender into custody was due to reasonable cause;

the court may withdraw and cancel the warrant.”

[17] In my view once the preconditions in s 28A(2) were met, the first Magistrate was obliged to determine whether the warrant should be cancelled. Once the appellant surrendered into the custody of the court, the Magistrate was obliged to determine this matter. It has been held previously that a person is in the custody of the court when they are in the court room or court premises.⁴ They do not have to be physically restrained.⁵

[18] The Magistrate erred in failing to exercise a statutory jurisdiction in accordance with s 28A of the *Bail Act*. I consider an error has been established.⁶

[19] Indeed, if this had happened in the District Court there is little doubt the warrant would have been cancelled where a defendant did attend the court the same day required in the undertaking albeit late.

[20] I now turn to the proceedings on 23 August 2023.

⁴ *DPP v Richards* [1988] QB 701; 3 WLR 153.

⁵ *R v Peehi* (1997) 41 NSWLR 476; (1997) 92 A Crim R 539.

⁶ *Craig v South Australia* [1995] HCA 58; (1995) 184 CLR 163 at p 177

- [21] In order to be convicted of this offence, a court would need to be satisfied beyond reasonable doubt that the defendant failed to appear in accordance with the undertaking and that a warrant was issued. Those elements were established here. The real question is whether the defendant satisfied the court on the balance of probabilities that he had a reasonable cause for failing to surrender into custody in accordance with the undertaking and for failing to appear as soon as practicable thereafter.⁷
- [22] The term “reasonable cause” is not defined in the statute. Cases have considered the term “reasonable excuse”.
- [23] In *Taikato v R*⁸, it was said that the concept of a “reasonable excuse” depends on the circumstances of the individual case and also the purpose of the provision to which the defence is an exception. A reasonable excuse is one which would be accepted by a reasonable person and is different to lawful excuse. Reasonableness involves a judgment of degree and can apply in widely differing circumstances. Whether there is a “reasonable excuse” for failing to appear depends on all of the circumstances of the case.⁹
- [24] In this case the Magistrate gave no adequate reasons as to why the appellant’s mental health issues were not a reasonable excuse for failing to appear in light of the attempts he made to attend court and in light of the evidence provided.
- [25] In all of the circumstances, I am satisfied that insufficient reasons were given in this case for convicting him. In those circumstances, it is for this court to redetermine the matter on the evidence before the Magistrate.
- [26] In my respectful opinion, I am satisfied that the appellant did have a reasonable cause and appeared as soon as practicable.
- [27] The evidence contained in Exhibit 1 was unchallenged. It was unchallenged therefore that the appellant suffered a mental health condition which caused him a panic attack. In light of that condition, he made full efforts to appear before the Magistrates Court on the day he was required to.
- [28] There is also further evidence from a psychiatrist which shows that the appellant has a severe Acute Adjustment disorder. This has symptoms including depression, illusions, an effect on memory and can cause panic attacks. This condition has affected his ability to work and causes dissociation. It decreases his ability to organise. There are suicidal thoughts. He was late to court as he had a severe episode of anxiety. His symptoms prevented him from appearing in court in a timely manner on 21 July 2023.
- [29] In all of the circumstances, bearing in mind the unchallenged evidence led by the defence, I am satisfied on the balance of probabilities he did establish he had a reasonable cause for failing to appear.

⁷ Section 76 of the *Justices Act 1996* (Qld).

⁸ [1996] HCA 28; (1996) 186 CLR 454 at pp 464 and 470.

⁹ *Joyce v Baird* [2013] ACTSC 79; (2013) 276 FLR 128.

[30] I bear in mind the purpose of the statute is to ensure that persons the subject of bail undertakings do appear in court and they should be punished for not appearing where they do not appear because of circumstances within their control. If someone does not appear due to circumstances not within their control, this generally would provide reasonable cause.¹⁰ In this case on the evidence the effects of the psychiatric condition were not within the control of the appellant.

[31] In the circumstances, I have decided to quash the conviction.

Orders

1. The appeal is allowed.
2. The conviction is quashed.
3. The order made in the Magistrates Court is set aside.
4. No order as to costs.

¹⁰ Qld Parliamentary Debates Second Reading Speech [1979-1980] vol 281, page 2931.