SUPREME COURT OF QUEENSLAND

CITATION:	*Schmidt v Argent & Ors* [2003] QCA 507
PARTIES:	**HELENA MAREE SCHMIDT** (plaintiff/respondent) **v** **JAMES ARGENT** (first defendant/first appellant) **MEGAN FAULKS** (second defendant) **KELLY TURNBULL** (third defendant/second appellant) **STATE OF QUEENSLAND** (fourth defendant/third appellant)
FILE NO/S:	Appeal No 11541 of 2002 DC No 9 of 2000
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	District Court at Ipswich
DELIVERED ON:	14 November 2003
DELIVERED AT:	Brisbane
HEARING DATE:	29 August 2003
JUDGES:	McMurdo P, Williams JA and Dutney J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Appeal dismissed with costs**
CATCHWORDS:	POLICE –ACTIONS FOR WRONGFUL ARREST, TRESPASS AND OTHER WRONGS – LIABILITY OF CROWN OR OTHER EMPLOYER – where respondent arrested on warrants for non-payment of traffic fines – where claims made for false imprisonment, negligence and assault – whether arrest was unlawful in circumstances where the respondent was not shown nor read any warrant – where no demand for payment of the full amount of the current debt was made as required by the warrant – whether respondent's continued detention at the Ipswich and Brisbane watchhouses was unlawful – where respondent suffered psychiatric injuries JURY – THE JURY IN CIVIL PROCEEDINGS – IN GENERAL – VERDICTS AND FINDINGS – OTHER

CASES – whether outcome open to a reasonable jury, properly directed and confining itself to relevant considerations

DAMAGES – GENERAL PRINCIPLES – EXEMPLARY, PUNITIVE AND AGGRAVATED DAMAGES – whether respondent entitled to aggravated damages – whether the conduct of the defendants was improper, lacking in bona fides or unjustifiable

DAMAGES – GENERAL PRINCIPLES – EXEMPLARY, PUNITIVE AND AGGRAVATED DAMAGES – whether the respondent entitled to exemplary damages – whether conduct of the defendants displayed contumelious disregard for the plaintiff's rights

Justices Act 1886 (Qld), s 69B
Police Powers and Responsibilities Act 1997 (Qld), s 56(1)
Police Powers and Responsibilities Regulations 1998 (Qld), Div 2 of Sch 2
Police Service Administration Act 1990 (Qld), s 10.5
Criminal Code 1899 (Qld), s 255

Borland v Makauskas [2000] QCA 521; Appeal No 6935 of 2000, 22 December 2000, followed
Calin v Greater Union Organisation Pty Ltd (1991) 173 CLR 33, followed
Pujick v Savic, Cox and Cudgewa Dairy Co Ltd [1971] VR 632, cited
R v Purdy [1975] QB 288, discussed
Spautz v Butterworth (1996) 41 NSWLR 1, cited
XL Petroleum (NSW) Pty Ltd v Caltex Oil (Australia) Pty Ltd (1985) 155 CLR 448
Theiss v TCN Channel Nine Pty Limited (No 5) [1994] 1 Qd R 156, cited
Zalewski v Turcarolo [1995] 2 VR 562, cited

COUNSEL: R V Hanson QC, with P B Rashleigh, for the appellants
R D Peterson for the respondent

SOLICITORS: Crown Law for the appellants
Bushnells Lawyers for the respondent

[1] **McMURDO P:** I agree with Dutney J that the appeal should be dismissed with costs for the reasons he gives.

[2] **WILLIAMS JA:** I agree.

[3] **DUTNEY J:** On 3rd December, 2002 following a trial by jury, judgement was entered in favour of the respondent against the first appellant in the sum of $65,000, against the second appellant in the sum of $40,000 and against the third appellant in the sum of $80,000. In addition, the appellants were also ordered to pay to the

respondent the sum of $7,000 for special damages and $1,600 for interest. The first appellant was the arresting officer. The second appellant conducted a strip search of the respondent at the Brisbane watchhouse. At the material time the third appellant was jointly liable for the conduct of police officers under s 10.5 of the *Police Service Administration Act* 1990.

[4] The damages included amounts for aggravated and exemplary damages. In the case of the first appellant aggravated damages of $20,000 and exemplary damages of $35,000 were included in the sum for which judgement was given. In the case of the second appellant the judgement sum included $10,000 for aggravated damages and $20,000 for exemplary damages. In the case of the third appellant the judgement included $60,000 for aggravated damages. The State of Queensland is not liable for exemplary damages for torts committed by police officers.[1]

[5] Because of the inclusion in the damages awards of aggravated and exemplary damages it is necessary to go into the facts in some little detail. Being a jury verdict in favour of the respondent it is necessary to take the view of the evidence most favourable to the respondent.[2] The appellants must establish that on such a view of the evidence, a reasonable jury, properly directed and confining itself to relevant considerations, could not have found the appellants liable.[3] In *Borland v Makauskas*[4] this Court referred to the test as being, that an appellant court would not interfere unless "the evidence *in its totality* preponderates so strongly against the conclusion favoured by the jury that it can be said that the verdict is such as reasonable jurors could not reach."[5]

[6] The action arose out of the arrest of the respondent on warrants for non-payment of traffic fines and her subsequent treatment while in police custody. Claims were made variously for false imprisonment, negligence and assault.

[7] The episode commenced on 30th December 1998 when the respondent and her partner were stopped in the street in the mid-morning for the purpose of an inquiry into an unrelated matter. The names and dates of birth of the respondent and her partner were taken and they were permitted to go on their way. The respondent gave her date of birth as 20th June 1969.

[8] A check was made on the police computer in relation to the respondent which disclosed she had outstanding warrants for non-payment of two fines totalling $696 for driving an unregistered vehicle and driving an uninsured vehicle. Her partner also had an outstanding warrant. The police then went to the address supplied by the respondent when she was spoken to earlier that day for the purpose of executing the warrants. The police arrived at the address sometime after 1 pm. In total, at least 5 police officers, and possibly more, went to the residence although not all for the sole purpose of executing the warrants. A search was conducted which located a hydroponic system, belonging to the respondent's partner, for growing cannabis.

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1 *Police Service Administration Act* 1990, s 10.5(2).

2 see *Zalewski v Turcarolo* [1995] 2 VR 562 at 567.

3 *Zalewski (supra)* citing *Australian Iron & Steel Ltd v Greenwood* (1962) 107 CLR 308 at 311; *Pujick v Savic, Cox and Cudgewa Dairy Co Ltd* [1971] VR 632 at 632-4. Also *Theiss v TCN Channel Nine Pty Limited* [1994] 1 Qd R 156 at 172-173.

4 [2000] QCA 521, 22 December 2000.

5 *Calin v Greater Union Organisation Pty Ltd* (1991) 173 CLR 33 at 41.

[9] At the time the police arrived the only persons at the residence were the respondent, the respondent's two children aged six years and fourteen months respectively, and the respondent's partner. It was a hot day and the respondent was wearing what she described as a "…summer teddy outfit … with little string straps, high cut at the sides." She was not wearing a bra. The outfit could be also described as "skimpy".

[10] The respondent says that she first spoke to the police at the front fence. A male police officer told her the police were there with warrants to arrest her and her partner. She asked what the warrants were for but was not given an answer. It appeared the police officer did not know. The respondent and the police then moved inside the residence. The respondent asked a female police officer if she could be left with her children and allowed to come in to the police station the next day. The female officer passed this request on to another officer. The other officer said words to the effect that there was a zero tolerance policy on warrants. No excuse was accepted and no leniency shown.

[11] Inside the residence the respondent was not told what the warrants related to. She was not told how much was required to be paid. She said that had she been told the amount she would have rung her father in Tasmania, as she had done on other occasions when she needed money, and asked him to pay the fines.

[12] Under cross-examination the respondent said that she was persuaded not to telephone her father because one of the female police officers told her that the conversion of the fines to fine option orders could be done and the respondent would be released that afternoon.

[13] The respondent herself had been trying to obtain fine option orders in relation to her outstanding fines for a couple of weeks before the police arrived but was unable to do so because the SETONS Court did not have copies of the fines and had not, to that time, obtained them from the police. The respondent said she was unaware of any warrants.

[14] The respondent was naturally concerned about the care of her children if she and her partner were both arrested and taken away. When she raised this concern she was told that she had fifteen minutes to make arrangements for them or the police would involve Family Services. Neither the respondent nor her partner had relatives in the area. The nearest family was at Toowoomba or Brighton. The only person the respondent could think of was the mother of a friend of her daughter who lived nearby and who the respondent knew slightly.

[15] The respondent's residence did not have a telephone by which she could contact the acquaintance she hoped would take care of the children. She asked a female police officer to make a call on her mobile phone. By this stage the respondent was suffering a panic attack. She had had these before, to the extent that she had been on medication. She had also been under psychiatric care as a result of problems with her upbringing. She was at the time of this incident sufficiently recovered to have ceased the medication. When suffering a panic attack the respondent experienced elevated heart rate, sweating, shaking and nausea. She said she becomes vague and vomits. Ultimately, she has a bad headache or migraine. Medical evidence suggests the plaintiff was suffering a psychiatric condition as a result of violent sexual abuse by her stepfather while she was a very young child. This abuse had left her with serious gynaecological problems and a probable post

traumatic stress disorder. She also suffered depression which she had, as a young adult, tried to treat by abusing drugs. The psychiatric problems were well towards resolution at the time of the episode being described.

[16] The female police officer allowed the respondent to use her phone and the acquaintance subsequently appeared and took the children. The respondent was quite distressed because the baby was teething and had been ill. When the older child had teethed she had had convulsions and been hospitalised. The respondent was concerned this might happen with her son and after being placed in the police car inquired if she would be released to visit her son if he was hospitalised. This request was apparently agreed to.

[17] The respondent was handcuffed before being taken to the police vehicle. She was also refused permission to change into a pair of jeans or put on shoes. She grabbed her wallet which was near to hand when she was being led away. Initially the respondent was placed in the paddy wagon but later shifted to a police sedan.

[18] As she was being led in handcuffs to the paddy wagon in the skimpy clothing she was wearing a group of children, including friends of her daughter, had gathered. The respondent felt humiliated.

[19] The respondent was not shown any warrant. The police at the scene did not have a copy of any warrant. The warrants were in electronic form pursuant to Part 4 Division 6A of the *Justices Act* 1886. Section 69B of the Act deals with the execution of electronic warrants. It permits them to be executed by using a written version of the warrant or a document made under the approved procedures and containing information about the warrant.

[20] At the Ipswich police station the duty officer searched the computer for details of the warrants. In error he extracted details of 4 other warrants outstanding for unpaid traffic fines in relation to another woman with a very similar name. The other woman's name was Helen Maree Schmidt. Her date of birth was in 1973. The particulars of the incorrect warrants were entered in the Watchhouse Custody Register.

[21] In the watchhouse and before the warrants were entered in the Custody Register the respondent was strip searched and made to squat and duck walk while naked. She was then allowed to dress and sit on a bench. Before the search the respondent was not told either that she was going to be strip searched or why. Some forms were brought to her. She signed the forms without reading them. No warrant was read to her nor was she told any details of any warrants. The forms the respondent was asked to sign appear to be applications to convert the fines on the incorrect warrants to fine option orders.

[22] The fines could not be converted on the day of the arrest because of delays in the SETONS Court. The respondent was given no update on the progress of her application. She was detained in a cell in full view of other male prisoners. She was eventually provided by her partner with a shirt to cover the "teddy" she was wearing. The woman with whom the children had been left was only expecting to care for them for a few hours. In the early hours of the morning on 31st December 1998 the respondent was transported to the Brisbane watchhouse. She was again handcuffed and placed in the back of a police van with a number of male prisoners

including her partner. At the Brisbane watchhouse a female officer tried to remove the ring the respondent was wearing. She was unsuccessful and the officer on the desk recommended she use a gel as lubrication. The respondent explained to the officer that the ring would not come off even when surgical gel had been applied to it at a hospital. Despite this the efforts of the officers to remove it continued resulting in the finger becoming red and swollen. The attempt to remove the ring only ceased when the respondent said that if they continued her finger would be dislocated and she would sue. The respondent was then strip searched again and given a prison tracksuit to wear. Again she was given no explanation for the strip search. Apparently it is standard practice to strip search anyone entering the Brisbane watchhouse in street clothes on the assumption that they have just been taken into custody. If someone has already been in custody it is assumed they will be in prison clothes.

[23] The overnight detention of the respondent caused her more distress in relation to the children. Her arrangement with the acquaintance was only for a few hours. It was intended to arrange for a relative from Toowoomba to come down when the detention looked like being longer. Because of delays at the watchhouse however that was not possible and the children were left with the acquaintance. The respondent was also told on the way to the Brisbane watchhouse that she would not be able to stay with the baby if he was hospitalised. She was not able to telephone the children until about 10 am on the 31st December despite several requests. When the respondent did telephone the children she learned that the baby had being crying almost constantly since she had left him.

[24] The respondent was released from the Brisbane watchhouse at about lunch time on the 31st December. Her partner had been released a short time before and the two caught a train back to Ipswich. On the journey home they looked at the paperwork that the police had given the respondent and noticed for the first time that it related to fines imposed on another woman with a similar, but not identical name, and a different date of birth.

[25] The episode has had a serious deleterious effect on the mental wellbeing of the respondent. Reports of a consulting psychiatrist, Dr Piaggio, were tendered which diagnosed a chronic adjustment disorder. Contrary to the position before the episode, the therapy the respondent has undergone has provided little benefit. Her own evidence was that she has become reclusive since the events. She avoids crowds, her children's school and other parents. She becomes anxious when she sees a police officer.

[26] The first issue ventilated on the appeal was whether or not there had been an unlawful detention. The error in identifying the correct warrants at the watchhouse was, it was submitted, irrelevant to the lawfulness of her detention if the respondent was properly arrested at her residence. For reasons I shall explain it is not necessary to consider this submission.

[27] The convenient starting point is s 255 of the *Criminal Code*. At the relevant time, that section said that:

> (1) It is the duty of a person executing any process or warrant to have it with him or her, if reasonably practicable, and to produce it if required.

> (2) It is the duty of a person arresting another, whether with or without warrant, to give notice, if practicable, of the process or warrant under which the person is acting or of the cause of the arrest.
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> (3) A failure to fulfil either of the aforesaid duties does not of itself make the execution of the process or warrant or the arrest unlawful, but is relevant to the inquiry whether the process or warrant might not have been executed or the arrest made by reasonable means in a less forcible manner.

[28] It was submitted on behalf of the appellants that it was unnecessary for the police to have a copy of the warrant in their possession because it was in electronic form. Reliance was placed on an authority of *R v Purdy*[6] which was a case where the police officer executing a warrant did not have the warrant on his person but it was in the police vehicle. This was held to be sufficiently under the police officer's control to satisfy the requirements of a provision equivalent to sub-s 255(1) of the *Code*. As I understood the submissions made by Mr Hanson QC for the appellants this authority was relied on not only as justifying not printing a copy of the warrant from the computer or making a document under the approved procedures in accordance with s 69B of the *Justices Act 1886* but as an authority for the submission that strict compliance with the requirements for execution of warrants was not required.

[29] Failure to comply strictly with s 255 of the *Code* does not render the execution of the warrant or the arrest unlawful because of the saving provision in sub-section (3). Other than that, I do not accept the submission that the fact that a warrant is stored in electronic form excuses compliance with sub-s 255(1). Nor do I accept the submission that in respects not covered by sub-s 255(3), strict compliance with the terms of a warrant or the procedures for execution is not required.

[30] Section 69B of the *Justices Act* provides a method for complying with s 255 where the warrant is stored in electronic form. There is every reason to think that the provision exists specifically so that the police executing the warrant can have with them a paper document which can be produced to the person against whom the warrant is to be executed. There is nothing in Part 4, Division 6A of the *Justices Act* which takes away from the requirements of s 255 of the *Code.*

[31] The correct warrants do not seem to have found their way into evidence in the trial. The incorrect warrants which were attached to the Watchhouse Custody Register to evidence the justification for the detention of the respondent are in evidence. Presumably all warrants of commitment are in the same form. The direction given by the warrants was as follows:

> The person named herein was ordered to pay the amount referred to in the original court order and any time allowed for payment has expired. As the current amount outstanding remains unpaid, you, the said Police Officers are ordered to
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> (i) locate and apprehend the person named herein, and
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> (ii) demand either FULL payment of the current amount outstanding or production of proof that the amount outstanding has been paid in

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6 [1975] QB 288.

> full or production of proof that postponement of the issue of the warrant has been granted by the Proper Officer of the Court.
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> IF THE REQUIREMENTS OF (ii) ARE NOT COMPLIED WITH, the said Police Officers are ordered to safely convey the person named herein to a place of legal detention, and deliver that person, together with this warrant to the keeper thereof in accordance with section 174A of the Justices Act 1886.
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> I FURTHER COMMAND YOU, the said keeper, to imprison the person named herein for the period stated herein, unless the current amount outstanding is sooner paid.

[32] While the wording of the warrant is awkward, in my opinion the meaning is clear. The direction given to the police officers who executed the warrant to convey the respondent to the watchhouse operated only if she failed to comply with a demand for payment in full of the current amount outstanding.

[33] The evidence set out above was evidence on which a properly instructed jury could find that no demand for payment of the full amount of the current debt was made. A demand could hardly be made if the police officer did not know what the debt was. The respondent's somewhat inconsistent responses to questions as to whether she could have obtained money to pay the fines, coupled with the representation that she would be released in a few hours in any event, did not necessarily amount to such an unequivocal refusal to pay any amount as to relieve the police officers from making demand for the full amount outstanding.

[34] Part of the appellants' case, as put to the jury, was that the respondent was told she had outstanding fines. She was asked if she could pay and said she could not. She knew what the warrants were for and how much was involved. The jury must, by its verdict, be presumed to have rejected the evidence supporting this case and found to the contrary. Unless each of these facts was established to the jury's satisfaction I cannot see any arguable basis for relieving the police officers of the requirement to make demand.

[35] The basis on which the case for the respondent was put to the jury in the trial judge's summing up was that the first appellant did not know what warrants he was apprehending the respondent on. There was therefore no evidence to establish on the balance of probabilities that the arrest was justified.

[36] Assuming, as we must, that the jury by its verdict accepted the facts necessary to make out this submission it must follow that the warrants could not have been properly acted upon and no demand could have been made. Until such time as a demand was properly made, the detention of the respondent was unlawful. Since the warrants under which the watchhouse staff in both Ipswich and Brisbane acted were not issued against the respondent, as a matter of common sense, no demand could have been made for the full amount outstanding on her warrants at any time. There was thus no evidence that the arrest or subsequent detention was justified and the verdict in favour of the respondent on the issue of false imprisonment should stand.

[37] The second cause of action is in negligence and relates to the detention at the two watchhouses. The respondent's case is that the first appellant was negligent in the following respects in arresting the respondent. The arrest was on incorrect warrants

that did not relate to the respondent. He failed to compare the information on the incorrect warrants with the respondent's details. He failed to have the warrants with him when he made the arrest. He failed to give the respondent the opportunity to pay before arresting her.

[38] The only basis on which the appellant seeks to overturn the jury's verdict on this cause of action is that the arrest was lawful and that what followed after the arrest, even if negligent, did not give rise to compensable damage.

[39] Having found that the jury was entitled to find that the initial arrest was unlawful and the detention did not thereafter become lawful this ground of appeal must fail and the jury's verdict on negligence must also stand.

[40] The third cause of action is for assault and battery. This relates to the strip searches at the Ipswich and the Brisbane watchhouses. If the arrest and detention were unlawful the police had no authority to strip search the respondent.[7] My opinion regarding the legality of the arrest must, therefore, also govern the outcome of the appeal against this finding of the jury. The jury's verdict that the strip searches constituted assault and battery should also stand.

[41] Before leaving liability, another point raised by the appellants on the appeal was whether the trial judge had interfered in the proceedings to the extent that the appellants were denied a fair trial. We were taken to a number of pages of transcript which were said to illustrate the complaint. For my part, I can see nothing in the passages to which we were referred which supports the argument advanced. In my view such interjections as were made by the judge were reasonable and appropriate and in the main, made with a view to clarification of answers given by the witness. In my opinion, the extent of the interjections was not such as would give the jury an unfavourable impression of the appellants' case.

[42] Having disposed of the appeal against the verdicts on liability I now turn to the appeal against quantum. The appellants have appealed against all three components of the jury verdict; i.e. general damages, aggravated damages and exemplary damages. Of these, the appeal against the quantum of general damages is most easily disposed of.

[43] The injuries suffered by the respondent as a result of her ordeal were psychiatric. I have briefly referred to them above. On any view the total jury award of $40,000 under this head cannot be said to be outside the range of what a properly instructed jury could award having regard to the evidence of Dr Piaggio.

[44] Aggravated damages are awarded where a party's conduct is in some sense, improper, lacking in bona fides or unjustifiable.[8] "[I]t is proper for the Court, in assessing ordinary compensatory damages, to take into account the whole of the conduct of the defendant to the time of verdict which may have the effect of increasing the injury to the person's feelings."[9] In this case the facts as outlined above and in particular the refusal of the first appellant to allow the respondent to make proper arrangements for the children, the refusal to allow her to change into appropriate clothing and the handcuffing in relation to traffic fines all are matters to

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7 The source of the police power to conduct a search at the relevant time is identified below.

8 See *Spautz v Butterworth* (1996) 41 NSWLR 1 at 17.

9 ibid at 17-18.

which a jury could properly have regard in deciding whether or not aggravated damages are appropriate. In assessing the conduct, the jury was entitled to consider whether the appellants' conduct was so reprehensible that the outrage to the respondent's dignity was increased. It is worth noting that, plainly audible on the video tape we were encouraged to watch by the appellants' counsel is a query from one police officer to another, after the respondent had been placed in a cell, as to why the first appellant was being so hard on the respondent.

[45] Section 56(1) of the *Police Powers and Responsibilities Act* 1997[10] gave the police power to search and re-search a person lawfully arrested or detained. The *Police Powers and Responsibilities Regulations* 1998 in Division 2 of Schedule 2 included provisions and guidelines for searches. The searcher was required to conduct the search so that as far as was reasonably practical the search caused minimal embarrassment to the person searched. The searcher was required to take reasonable care to protect the dignity of the person searched. The searcher was required if reasonably practical to tell the person in advance that she would be required to remove clothing and why it was necessary to do so.

[46] The operational guidelines in the regulation state the following:

> 3.1 Police officers should be aware that while the Act allows a police officer to require someone to remove clothing when the person is being searched, and searches involving the removal of clothing may be necessary, searches involving the removal of clothing should not be routinely conducted, and if conducted, searches that are not appropriately conducted may invite adverse public criticism of the police service.

[47] The jury was entitled to conclude that the strip searches were conducted as a routine, and without explanation to the respondent. In the case of the second search, the explanation for it offered at the trial seemed to be that the respondent was wearing street clothes. There was no evidence that any inquiry had been made as to where she had come from. Such an inquiry would have revealed that she had come from secure custody.

[48] The first search was conducted before the respondent was processed. The circumstances were that she had been arrested as a fine defaulter and was expected to be in custody only a couple of hours. She was not charged with any drug offence. The jury was entitled to regard the strip search in those circumstances as unnecessary.

[49] In fairness to the police, the first appellant was inexperienced and efforts were made to have the respondent's fines converted to fine option orders so that she could be released that afternoon. Their failure to achieve that result was not the fault of the police. Nonetheless the jury was entitled to look at all the circumstances and it was open to it to conclude that the arrest, even if it had been lawful, was conducted with inappropriate zeal and without proper respect for the dignity of the respondent and that her subsequent treatment was in the same vein. In those circumstances, it

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[10] The *Police Powers and Responsibilities Act* 1997 was subsequently repealed by the *Police Powers and Responsibilities Act* 2001.

cannot be said that the award of aggravated damages was outside the range of what a reasonable jury could award. While there are grounds for suspicion that the award of $60,000 under this head as compared with awards of $20,000 and $10,000 respectively against the first and second appellants reflected the fact that exemplary damages are not available against the State of Queensland, there are other possible explanations. An examination of the pleadings shows that the case against the third appellant was wider and covered a greater range of activities than the case against either the first or second appellants. For example the third appellant alone is held liable for the respondent's treatment at the Ipswich watchhouse. The third appellant is also held liable for the distress the inability to communicate with her children caused the respondent at the Brisbane watchhouse. The attitude of the appellants, and particularly the third appellant, in defending the trial, including denying the second strip search took place, and asserting the propriety of the police conduct throughout is also something the jury could consider under this head. I regard the quantum of the aggravated damages as high but I am not prepared to find that the amount is so unreasonable that it should be varied. It was, in my opinion, plainly open to the jury to award such damages. I would not disturb the jury's award of aggravated damages.

[50] Exemplary damages differ from aggravated damages in that they are intended to punish the defendant for conduct showing contumelious disregard for the plaintiff's rights and to deter the defendant from similar conduct in future.[11]

[51] Without wishing to traverse the evidence again, it is sufficient to say that in my view it was open to the jury to conclude that the evidence to which I have already referred was such as would in this case justify an award of exemplary damages against each of the first and second appellants.

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[11] see *XL Petroleum (NSW) Pty Ltd v Caltex Oil (Australia) Pty Ltd* (1985) 155 CLR 448 at 471.