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**IN THE YOUTH COURT
AT MANUKAU**

**I TE KŌTI TAIOHI
KI MANUKAU**

**CRI-2020-292-000174
[2021] NZYC 26**

**NEW ZEALAND POLICE
Prosecutor**

v

**[CV]
Young Person**

Hearing: 16 December 2020
Appearances: V Letele for [CV]
M Regan for New Zealand Police
Judgment: 5 February 2021

**RESERVED DECISION OF JUDGE T V CLARK
[In relation to pre-trial application]**

Introduction

[1] [CV] is charged with injuring with intent to injure, together with another young person.

[2] On 12 June 2020, at around 4.20 pm, a fight broke out at De La Salle College. A young person was stabbed and seriously injured. [CV] was not involved with the stabbing, however, during the same series of events, [name deleted] (“the complainant”) was assaulted and injured.

[3] The complainant was walking on Grey Avenue towards the train station when he was set upon by a group of unidentified males. This caused him to fall to the ground on his hands and knees. Whilst in that position, [CV] and others walked up to him and kicked him to the head and body. The complainant lost consciousness. The attack came to a halt when others intervened. The complainant suffered swelling and bruising to his face and head area.

[4] The event was captured by a person in a passing vehicle who recorded what had happened on a cellphone.

Admissions made

[5] When spoken to by police on 17 June 2020, [CV] frankly admitted his involvement in the assault offending. He can be clearly seen in the cellphone footage, kicking the complainant with some force on at least two occasions.

Pre-trial challenge

[6] Although [CV] was involved in the alleged offending, the defence submit that his arrest on 17 June 2020 was unlawful as none of the pre-conditions of arrest existed, and therefore the charging document is a nullity.

Arrest of a young person without a warrant – s 214 of the Oranga Tamariki Act 1989 (“the Act”)

[7] There are two ways by which a charge may be brought before the Youth Court. One is pursuant to the procedure in s 245 of the Act which involves consultation and follows an intention to charge family group conference.

[8] The second way in which a charge may be brought, is by way of an arrest of a young person under s 214 of the Act.

[9] Section 214 provides:

214 Arrest of child or young person without warrant

- (1) Subject to section 214A and sections 233 and 244, where, under any enactment, any enforcement officer has a power of arrest without warrant, that officer shall not arrest a child or young person pursuant to that power unless that officer is satisfied, on reasonable grounds,—
 - (a) that it is necessary to arrest that child or young person without warrant for the purpose of—
 - (i) ensuring the appearance of the child or young person before the court; or
 - (ii) preventing that child or young person from committing further offences; or
 - (iii) preventing the loss or destruction of evidence relating to an offence committed by the child or young person or an offence that the enforcement officer has reasonable cause to suspect that child or young person of having committed, or preventing interference with any witness in respect of any such offence; and
 - (b) where the child or young person may be proceeded against by way of summons, that proceeding by way of summons would not achieve that purpose.
- (2) Nothing in subsection (1) prevents a constable from arresting a child or young person without warrant on a charge of any offence where—
 - (a) the constable has reasonable cause to suspect that the child or young person has committed a category 4 offence or category 3 offence for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; and

- (b) the constable believes, on reasonable grounds, that the arrest of the child or young person is required in the public interest.
- (3) Every enforcement officer who arrests a child or young person without warrant shall, within 3 days of making the arrest, furnish a written report—
 - (a) where that enforcement officer is a constable, to the Commissioner of Police;
 - (b) where that enforcement officer is a traffic officer who is a Police employee who is not a constable, to the Commissioner of Police;
 - (c) where that enforcement officer is an officer or employee of the public service, to the chief executive of the department of which that person is an officer or employee;
 - (d) where that enforcement officer is an officer of a local authority, to the chief executive of that local authority.
- (4) Every report furnished pursuant to subsection (3) in respect of the arrest of any child or young person shall state the reason why the child or young person was arrested without warrant.

[10] Section 214 sets out the restrictions on the right of police to arrest a young person. In the event the restrictions have not been properly complied with, this may mean that an arrest is unlawful and the resulting charging document will be a nullity.

Matters to be determined

[11] The defence in the present case have asked the Court to carefully examine the police decision-making with regard to the arrest of [CV]. The issues for my determination are set out by me below:-

- (a) Whether the arresting officer, [the Constable], was satisfied on reasonable grounds that the arrest of [CV] was necessary to ensure his appearance before the court, or to prevent him from committing further offences or, to prevent the loss or destruction of evidence or interference with witnesses; and,
- (b) That proceeding by way of the issue of summons under s 214(1)(b) would not have achieved that purpose.

[12] Sections 214(2)(a) and (b) do not apply to the circumstances of this case as the maximum penalty in relation to the alleged offending is five years' imprisonment.

[13] An additional matter for the Court to take into account relates to the requirement under s 214(3) that the arresting officer furnish a written report in the event a young person is arrested. Although the failure to do so within the prescribed time will not be fatal, nonetheless I consider that when the report was furnished, and what the report contains, may be relevant considerations.

Evidence heard at pre-trial hearing

[14] At the pre-trial hearing on 16 December 2020, [the Detective Sergeant] and [the Constable] gave oral evidence. At the relevant time, both were based in Otahuhu and attached to the Criminal Investigation Branch.

[15] Formal written statements prepared by both witnesses were accepted for the purposes of the pre-trial hearing. The formal written statement from [the Detective Sergeant] was dated 13 November 2020. The formal written statement from [the Constable] was dated 12 November 2020. Both confirmed the truth and accuracy of those statements and were thereafter available for cross-examination and re-examination.

Summary of Evidence of [the Detective Sergeant]

[16] [The Detective Sergeant] became involved with this investigation on 15 June 2020. That was also when others in his team in Otahuhu, including [the Constable], became involved. He confirmed in his evidence that initially, the identities of persons involved were not known and that the identification of [CV] and others was not clarified for police until 16 June 2020.

[17] [The Detective Sergeant] confirmed that he watched a video on Monday or Tuesday (15 or 16 June 2020) several times. Police were being provided with information through staff at Tamaki College to help identify the different young people

shown in the footage. He described this information as being provided to police bit by bit, until eventually it was completed.

[18] [The Detective Sergeant] accepted that staff at the Otahuhu Youth Aid office were advised of the identity of [CV] and that he was made aware that [CV] had not had any previous dealings with Youth Aid, he was not before the Court at the time, he was not subject to any bail conditions, no alternative action had been taken against [CV] and he was living with his parents and siblings and attending school.

[19] [The Detective Sergeant] confirmed that on 16 June 2020, a determination was made that four young people of interest, including [CV], were to be arrested the following day. The intention was to execute search warrants reasonably early in the morning on 17 June 2020. Preparations were made by police with regard to what was to happen on 16 June 2020.

[20] In cross-examination, it was put to [the Detective Sergeant] that with all of the information he had received relating to [CV] and his family, and the fact that [CV] had had no previous contact with police, a different route could have been taken.

[21] In response, [the Detective Sergeant] said that all of the options had been taken into account, however, the police concern was that there would be further assaults, retribution or a recurrence of the same behaviour. He confirmed that these were not just his concerns, but the concerns of De La Salle College (who had employed extra security guards at the gate), the local police community section (who had been to the school and held a community meeting and put together a safety plan), and old boys of the school (who had gone to school to address the students). A first XV rugby match had also been cancelled because De La Salle College was worried about other schools turning up, and the possibility of further violence.

[22] In the end, [the Detective Sergeant] said that regardless of the fact [CV] had not previously been in trouble, a different route was not taken in this case.

[23] When asked whether the main concern in relation to the arrest was to bring [CV] to court so that he would have bail conditions, [the Detective Sergeant]

confirmed that was one of the concerns and reasons, but it was also due to the circumstances of the alleged offending itself.

[24] [The Detective Sergeant] said that it was the fact that [CV] was a young man who, together with others had been involved in an organised fight, and who had travelled from Tamaki College on the train, and had taken part in the fracas, that weighed most heavily.

[25] [The Detective Sergeant] said that he was not satisfied that [CV]'s family could provide him with adequate supervision and that that was not a risk he was willing to take. That was his position despite the fact that the fight had occurred on 12 June 2020, and the search warrant and arrest did not occur until five days later on 17 June 2020.

[26] In relation to the issue of predetermination regarding the decision to arrest [CV], [the Detective Sergeant] confirmed that there needed to be a plan. It was suggested to [the Detective Sergeant] that [the Constable] was out there to carry out his instructions. To some extent that was accepted, however, later in answer to questions from the Court, there was the following exchange:¹

Q. If, as the highest ranking officer, you have determined that four young people are going to be arrested –

A. Yes.

Q. – do you consider that that, to some extent, takes away from the autonomy of the detectives who are actually going out to complete the arrest?

A. I don't think so Ma'am. As I said before, I didn't want you to get the impression that that's how it works because it doesn't. So when we have these briefings, meetings, whatever you'd like to call them, it is a discussion. It's a group discussion. It's not one person saying: "This is how it's going to go, come hell or high water", that is not how it works, you know, we discuss things.

Q. But you wouldn't necessarily need the agreement of the team if you were wanting to make a decision about something, is that right?

A. Oh, I suppose not, Ma'am. No, I suppose if I really wanted to put my foot down.

¹ Notes of Evidence, page 23, lines 23–34 and page 24, lines 1–23.

- Q. Mmm. All right. So, I guess what I'm trying to figure out is, having made the decision that four young people would be arrested, what flexibility was there in relation to that if the individual arresting officers took a different view?
- A. There'd be plenty. If they could discuss with us and say: "Listen, I don't think we should be arresting A because of these reasons." If those reasons were sound and sensible, no problems at all.
- Q. All right. I was – really, what I'm trying to figure out is whether it was a foregone conclusion, that there would be four arrests that day regardless of the individual circumstances of the young person.
- A. Oh, well, it's a bit hard to say now that – because there were no other mitigating factors post-arrest in interview, that sort of changed our initial plan.
- Q. Okay.
- A. But if there had been, of course I'm open to that.
- Q. And so how would that be conveyed? So would one of the arresting officers have given you a telephone call and discussed it?
- A. Yeah, yeah, he would have just spoken to me directly and said: "Look, this is what I think. What are your thoughts?"
- Q. Okay. That is helpful to me, just to better understand the process.
- A. No problem.

Summary of Evidence of [the Constable]

[27] [The Constable] confirmed that his involvement with the investigation began on 15 June 2020. He had not been working over the weekend so arrived at work on Monday and became involved at that time.

[28] He confirmed that the identification of the alleged offenders was not known at that time, but that a teacher from Tamaki College was providing information about the identities of the people involved.

[29] [The Constable] confirmed that he watched videos and read information about the events. He also confirmed that search warrants for different addresses and different young people were prepared.

[30] [The Constable] confirmed that on 16 June 2020, he was assigned to deal with [CV]. By that time, he had seen footage of [CV] kicking a person on the ground more than once and while that person was on the ground.²

[31] With regard to the decision to arrest, [the Constable] said that when dealing with young people you do discuss whether an arrest is appropriate as opposed to another way of dealing with it and that a decision was made that [CV] would be arrested.³

[32] In terms of [CV]'s personal circumstances, [the Constable] confirmed that he understood [CV] was living with his parents and siblings, that he was 16 years of age, that he had not had previous dealings with police, that he had no active charges and had been attending Tamaki College.

[33] [The Constable] considered that the decision to arrest was his as the arresting officer, although [the Detective Sergeant] had oversight of the investigation and there were briefings or discussions held with him.⁴

[34] [The Constable] accepted that prior to going to [CV]'s home address, he had already made up his mind that [CV] was going to be arrested as he was satisfied that the grounds for arrest had been met.⁵

[35] [The Constable] confirmed that at 6.45 am on 17 June 2020, he together with others went to [CV]'s address. He explained the provision of Bill of Rights advice to [CV]'s sister. He confirmed that [CV] was also present at the time. He then described what happened at the address, and the events leading up to taking [CV] together with his sister (his nominated person), to the police station for interview.

[36] [The Constable] was asked:⁶

² Notes of Evidence, page 31, lines 20-32

³ Notes of Evidence, page 32, lines 9- 16.

⁴ Notes of Evidence, page 33, lines 16-29.

⁵ Notes of Evidence, page 33, lines 30-34 and p34, lines 1-4.

⁶ Notes of Evidence, page 36, lines 11-34 and page 37, lines 1-16.

- Q. [Constable], when you went to the address, was there any opportunity for you to speak to [CV] and his [sibling] or to form a different view instead of arresting him at that time, on that day?
- A. Well, the decision had been made that he was going to be arrested so that wasn't something that, that wasn't done.
- Q. So, you didn't have an open mind going there, knowing he's 16 year old, making if you thought that I'm not going to arrest this young person, I am going to change what my intention was today?
- A. No, because the facts of the incident were still the same, I didn't think they organised a fight, they had taken part in. They kicked someone on the ground and then, we had information that there may be repercussions to follow, in the ongoing tension between the two schools.
- Q. But you had no information that it was going to be [CV] who was instigating this, is that correct?
- A. Well, [CV] took an active part in that fight, so that any further fights, it's reasonable to believe that he would also take active parts in most fights.
- Q. Well, it's reasonable to believe that arresting a young person is a last option for you, is that correct?
- A. Well, it's to prevent further offending and if we believe that further offending is going to take place in that he is going to be involved in it, then he can be arrested. That was our decision making, that we believe that a further fight may take place and he's already shown willingness to travel from Tamaki College to De La Salle College with a group of other people, and to take part in that fight, so it's, it's sort of simmering with ongoing tensions between the two schools, and we had reason to believe that there was going to be another fight and if he's already taken part in one fight, it's likely that he's going to take part in the second fight.
- Q. The—
- A. And if he's already kicked someone on the ground in the head, well, kicked them more than once on the ground in the first fight, we have an obligation to make sure that that doesn't happen again so we need to prevent further offending, so that's why the decision was made to arrest him and that way, bail conditions could be put on him that would, then we could be sure that, he'd be unlikely to be involved in any further incidents.
- Q. Is what your saying is your main priority was he should be arrested, he should have bail conditions and that was the main priority for you to arrest [CV], wasn't it?
- A. Yes the main priority was to prevent further offending...

[37] [The Constable] confirmed that he was aware of a Facebook post or Instagram post with threats on it from Tamaki College and De La Salle College. He accepted that these were not from [CV].

[38] In cross examination it was put to [the Constable] that in his mind he was going to arrest [CV] and that he wasn't going to deviate from that. He accepted that that was correct unless he was provided with a very good reason. It was suggested that there was no opportunity and that he knocked on the door and the arrest took place, which he also accepted.⁷

[39] Questions were asked of [the Constable] as to whether or not he had filed the required report to the Commissioner of Police upon arresting [CV]. He confirmed that the report was not completed until 21 June 2020. The explanation provided was that on the day following the arrest of [CV], he was preparing for a High Court trial involving serious offending and on the following day two police officers were shot at in Henderson, one of whom later died. He was tasked to assist with that investigation. For a number of different reasons including his involvement with different jobs which he described as serious, he was unable to complete the report within the three-day time period.

[40] In addition, he was quizzed as to the content of that report and he confirmed that the reasons why he believed that [CV] should be arrested were to ensure his appearance in court and to prevent further offending. He spoke about ticking both boxes to be complete, but that the primary reason was to prevent further offending.⁸

[41] It was suggested that this report was almost a carbon copy of a report relating to another young person completed by [a second Constable]. To that suggestion he confirmed that he had filled in the report himself and denied that he had copied the report completed by [the second Constable]. He confirmed that he had not seen the report from [the second Constable] at all.

⁷ Notes of Evidence, page 39, lines 4-17.

⁸ Notes of Evidence, page 42, lines 1-18

[42] When it was put to [the Constable] that there was no real reason to arrest [CV] because he had no history with the court, he was not before the court and it was more than likely that he would turn up to court if summonsed, he confirmed that even though [CV] may well turn up to court, his primary reason for arresting him was to prevent further offending.

[43] When asked if that could have been achieved by an intention to charge conference, he said no. His evidence was that he believed bail conditions needed to be set by the Court to prevent him from being involved in any further incidents.⁹

[44] In re-examination, [the Constable] confirmed that the decision to arrest was his. He also agreed that the primary ground for arrest was to alleviate the risk or offending and that he did not consider that anything had changed between the general discussion around the reasons for arrest, and his ultimate decision-making as to the arrest of [CV].¹⁰

Analysis

[45] [The Constable] was the person effecting the arrest, so it was for him to be satisfied under s 214 that there were reasonable grounds. It seems clear from his evidence that the primary basis for the arrest of [CV] was to prevent him from committing further offences.

[46] I was initially concerned that preliminary discussions with [the Detective Sergeant] had essentially taken away the ability or willingness for the arresting officers to make their own independent assessment of the circumstances giving rise to the need for arrest.

[47] However, having taken [the Detective Sergeant] through the exchange where this topic was covered, I was satisfied that whilst as a team they had come to the view that arrest of four young persons would be required in the circumstances, it was

⁹ Notes of Evidence, page 44, lines 25–33.

¹⁰ Notes of Evidence, page 45, lines 31-32 and page 46, lines 1-7.

nonetheless for each arresting officer, including [the Constable], to make their own determination and to openly discuss their views with [the Detective Sergeant].

[48] I have taken into account the fact that [the Constable] was required under s 214(3)(a) to furnish a written report to the Commissioner of Police stating his reasons as to why the young person had been arrested. Unfortunately, this was not done within the three-day period. I note that it was done within a four-day period and there appeared to be a number of reasons why [the Constable] had not provided that information sooner, including his involvement with the investigation of other serious offences.

[49] Although there was a defence suggestion that perhaps there had been some “cutting and pasting” in relation to the report furnished by [the Constable], I note that [the Constable]’s report was tendered months before that of [the second Constable], and so the suggestion of copying by [the Constable] is unfounded. In any event, I do not consider that the 24-hour delay in terms of filing the report raises concerns about the decision-making in relation to the arrest of [CV]. I also found the evidence of [the Constable] in terms of his formal written statement, his oral evidence in Court and the details in his report about the grounds for arrest to be consistent.

[50] It is important to stand back and look at the circumstances of the alleged offending and the evidence available to [the Constable] when he decided to arrest of [CV]. From the information provided to me, it is clear that the fight at De La Salle College, between students from that school and students from Tamaki College, had been planned and was premeditated. Students from Tamaki College were required to travel to Middlemore by train and then to make their way to De La Salle College on foot in order to participate in the confrontation that occurred.

[51] In terms of the wider context being considered by police and the seriousness of what happened on 12 June 2020, a young person had been stabbed and was seriously injured. The alleged offending by [CV] involved him acting together with others to kick a young man who was on the ground on his hands and knees. The young man was kicked to his head and knocked unconscious. There was clear footage of [CV] being involved in that offending.

[52] I have seen the recorded footage of [CV] kicking the young man on the ground and I have seen him walking away smiling and behaving as though he was proud of what he had done.

[53] Following the events on 12 June 2020, De La Salle College and police were understandably concerned about the prospect of retaliation and/or re-offending.

[54] According to the formal written statement of [the Constable] dated 12 November 2020, the incident on 12 June 2020 was the result of ongoing online tension between the two schools, and he was aware that shortly after the incident, at least one message was posted to social media indicating that further violence would take place.

[55] [The Constable] further confirms in his formal written statement that to summons [CV] would not achieve the purpose of preventing further offending as bail conditions were required so that [CV] did not become involved in any further offending.

[56] I consider that the information available to police prior to the arrest of [CV] suggested that [CV] had intentionally travelled to De La Salle, had willingly involved himself in more than one incident at the school and was a central participant in a serious assault.

[57] Balanced against that was the fact that [CV] had not previously appeared before the Court and was living at home with his family and attending at school.

[58] From the evidence that I heard on 16 December 2020, the police view was that regardless of his previous good character, in the circumstances, an arrest was necessary to reduce the risk of [CV] being involved in further offending.

Was an arrest necessary to ensure appearance?

[59] I do not consider that there were reasonable grounds for [the Constable] to be satisfied that an arrest was necessary to ensure [CV]'s attendance at court. He was not someone with a proven track record of failing to attend and therefore whilst it may have been a peripheral concern, I do not consider that it was a central concern.

Was an arrest necessary to prevent the loss or destruction of evidence?

[60] It is not being suggested that an arrest of [CV] was necessary for the purpose of securing any evidence that may have been outstanding. In reality, the strongest evidence against [CV] prior to his arrest was the clear cellphone footage showing him involved in kicking the complainant whilst he was on the ground.

Was an arrest necessary to prevent further offending?

[61] I do, however, consider that [the Constable] was satisfied that there was a risk of [CV] becoming involved in further offending if steps were not taken immediately by police to ensure that he was subject to strict bail conditions, and that the issue of a summons would not have achieved that purpose.

[62] Whilst I did initially consider that perhaps [the Constable] was simply following the directions of [the Detective Sergeant], having heard evidence, I was satisfied that [the Constable] was someone who was able to take a contrary position if he considered that there was a basis for it.

[63] I am satisfied that [the Constable] was aware of the personal circumstances of [CV], the seriousness of his alleged offending, and the concerns of the school and community and he agreed with the overall determination that had been made by [the Detective Sergeant] and his team that an arrest of [CV] (and other young persons) was required in the circumstances. I am also satisfied that as the arresting officer, [the Constable] took all relevant matters into account and made up his own mind that an arrest was required.

[64] For the sake of completeness, the defence suggested in cross-examination that [the Constable] should have remained open minded about the decision to arrest, and that he did not give [CV] or his family an opportunity to attempt to persuade him to a different view.

[65] I do not consider that there was any ongoing obligation for [the Constable] to reconsider his decision to arrest [CV], so long as there were reasonable grounds to support it.

[66] I consider that in all the circumstances of this case, and based upon all of the information available to him prior to his decision to arrest [CV], [the Constable] had reasonable grounds to be satisfied that an arrest was necessary to achieve the purpose of preventing [CV] from becoming involved in further offending, and that the issue of a summons would not have achieved that purpose.

Decision

[67] As I have taken the view that one of the pre-conditions for the arrest of [CV] existed on 17 June 2020, I consider that the arrest was lawful, and therefore s 214 of the Act has been complied with.

Judge T V Clark
Youth Court Judge

Date of authentication: 05/02/2021

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