

CANADA / JUDGMENT

## Gamracy v. R.

[1974] SCR 640

### COURT

Supreme Court of Canada

### DECIDED

29 June 1973

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Gamracy v. R.

Collection

Supreme Court Judgments

Date

1973-06-29

Report

[1974] SCR 640

Judges

Judson, Wilfred; Ritchie, Roland Almon; Spence, Wishart Flett; Pigeon, Louis-Philippe; Laskin, Bora

On appeal from

Ontario

Subjects

Criminal law

Decision Content

Supreme Court of Canada

Gamracy v. R., [1974] S.C.R. 640

Date: 1973-06-29

Peter Gerald Gamracy (Plaintiff) Appellant;

and

Her Majesty The Queen (Defendant) Respondent.

1973: May 29; 1973: June 29.

Present: Judson, Ritchie, Spence, Pigeon and Laskin JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Criminal law—Arrest—Assault on police officer in execution of duty—Arrest without a warrant—Warrant outstanding—Officer not informed of the offence charged in the warrant—Duty of arresting officer—Criminal Code, ss. 29(2), 246(2), 450(1)(c).

The appellant was charged with assaulting a peace officer engaged in the execution of his duty. The incident occurred when the peace officer sought to arrest the appellant against whom a warrant was then outstanding for his arrest. The officer told the appellant that he was under arrest for an outstanding warrant. The officer did not know the nature of the charge with respect to which the warrant had been issued, but he had been told of its existence at the police station. Following an altercation with the accused, the officer telephoned the police station for reinforcements but did not at the time ask the nature of the charge involved. The trial judge acquitted the appellant of the charge as laid and convicted him of common assault. The Court of Appeal directed that a verdict of guilty be entered against the appellant on the charge as laid. The accused appealed to this Court.

Held (Spence and Laskin JJ. dissenting): The appeal should be dismissed.

Per Judson, Ritchie and Pigeon JJ: The officer was clearly acting under the authority of s. 450(1) of the Code, having reasonable and proper grounds to believe that a warrant was in force for the arrest of the appellant. The arrest was being made without the officer having the warrant in his possession and, therefore, s. 29(2) was applicable. The provisions of subs. (a) and (b) of that section are to be read disjunctively so that when an arrest is being made without a warrant, the duty of the arresting officer is fully discharged by telling the arrested person that the reason for his arrest is the existence of an outstanding warrant therefor. It was no part of the officer's duty to obtain the warrant to show to the appellant or to ascertain its contents.

Per Spence and Laskin JJ, dissenting: A police officer does not give either notice of the warrant or the reason for the arrest by simply informing the person whom he is arresting that there is some kind of warrant "out for him". On the circumstances of this case, it has been clearly demonstrated that it was feasible to inform the accused as to the contents of the warrant. The police officer failed to carry out the specific statutory duty put on him by section 29 and, therefore, he was not in the course of duty when he attempted to arrest the accused.

APPEAL from a judgment of the Court of Appeal for Ontario<sup>[1]</sup>, setting aside the acquittal of the appellant and directing a verdict of guilty. Appeal dismissed, Spence and Laskin JJ., dissenting.

R.G. Murray and E.J. McGrath, for the appellant.

M. Manning, for the respondent.

**The judgment of Judson, Ritchie and Pigeon JJ. was delivered by**

RITCHIE J.—This is an appeal from a unanimous judgment of the Court of Appeal of Ontario whereby that Court allowed an appeal from the acquittal of the appellant at trial and directed that a verdict of guilty be entered against him on a charge that he:

...did assault John Cronkwright, a Peace Officer of the City of London, engaged in the execution of his duty, contrary to section 232, subsection 2, clause (a) of the Criminal Code.

The incidents giving rise to this charge occurred when the Peace Officer sought to arrest the appellant against whom a warrant was then outstanding for his arrest.

The Peace Officer had called out to the appellant at a time when he was just entering his house, and when it became apparent that he did not intend to pay any attention, Cronkwright ran towards the house and caught up with the appellant just as he was opening the front door, and, taking hold of his arm, told him that he was under arrest under an outstanding warrant. In fact the officer did not know the nature of the charge with respect to which the warrant had been issued, but he had been told of its existence at the police station. The appellant pulled away and went into his house and when the officer followed an altercation took place during which the appellant attempted to push the officer out of the house and the officer, being apprehensive of what might follow, telephoned the police station for reinforcements but did not at the time ask the nature of the charge involved. After this the appellant became quite violent and picked up a large jar or jug from the kitchen counter which he held over his head and appeared to be about to throw at the officer. Cronkwright backed away and finally ran out onto the porch where a pushing match ensued and the officer was pushed down the steps, falling on the cement with the appellant partly on top of him with the result that his left elbow was broken and dislocated.

At trial, while acquitting the accused of the charge as laid, the learned judge convicted him of assault causing injury to the police officer. It is of interest to consider the doubts which caused the learned trial judge to acquit Gamracy and these are illustrated by the following excerpts from his judgment:

Certainly Gamracy was resisting arrest and in fact was assaulting Cronkwright and was not leaving the premises willingly. It is simply a matter of the degree of assault, and I would hold that there was an assault by Gamracy upon Cronkwright, an officer on duty at the time, and the sole question to be determined was whether or not Cronkwright, having advised Gamracy only of the fact that he had a warrant for his arrest and without mentioning what the warrant was for, was in fact performing his function. Cronkwright, in cross-examination, indicates that he did not know what the warrant was for and Cronkwright's evidence is as follows: 'I told him he was under arrest for an outstanding warrant'. In these circumstances can the accused be found guilty?

In my view the officer was clearly acting under the authority of s. 450(1) of the Criminal Code which reads as follows:

450. (1) A peace officer may arrest without warrant...

- (c) a person for whose arrest he has reasonable and proper grounds to believe that a warrant is in force within the territorial jurisdiction in which the person is found.

Notwithstanding the provisions of this section, and in spite of his having held that Cronkwright was “an officer on duty at the time”, the trial judge appears to have concluded that he was not “performing his function” because of the provisions of s. 29 of the Criminal Code which provides:

- 29. (1) It is the duty of every one who executes a process or warrant to have it with him, where it is feasible to do so, and to produce it when requested to do so.
- (2) It is the duty of every one who arrests a person, whether with or without warrant, to give notice to that person, where it is feasible to do so, of
  - (a) the process or warrant under which he makes the arrest, or
  - (b) the reason for the arrest.

As I have said, the arrest was being made without the officer having the warrant in his possession and it is therefore clear, in my opinion, that s. 29(2) is the applicable section and that the provisions of subs. (a) and (b) of that section are to be read disjunctively so that when an arrest is being made without a warrant, the duty of the arresting officer is fully discharged by telling the arrested person that the reason for his arrest is the existence of an outstanding warrant therefor. The trial judge appears to have thought, however, that when calling the police station for reinforcements because of the appellant’s violent and aggressive behaviour, the officer should at the same time have asked for details of the warrant for arrest. In this regard the trial judge said:

Was it feasible for Cronkwright to have informed the accused of the nature of the charge facing him. Here the facts are in part contradictory. As soon as the accused asked why he was being arrested, I am satisfied that the officer could have told the accused that he did not know the offence set out in the warrant and could have offered to secure such information either by telephone or by radio, from the cruiser, he Cronkwright was operating. However, such was not done by Cronkwright. On the other hand there is no doubt that the actions of Gamracy throughout the entire incident made it obvious that he had no intention of co-operating with the officer, and in this narrow sense it was not feasible for the officer either to show the warrant to Gamracy nor to tell him the reasons for his arrest. Certainly in retrospect there was fault on both sides.

In my view it was not only “not feasible” in a “narrow sense”, but it was no part of the officer’s duty to obtain the warrant to show to Gamracy or to ascertain its contents. The duty was fully discharged by telling the accused that the outstanding warrant was the reason for his arrest.

Counsel for the appellant contended that the provisions of ss. 450(1) and 29 of the Criminal Code should be interpreted in light of the observations made by Viscount Simon in the House of Lords in *Christie v. Leachinsky*[2], where he said:

...a citizen is entitled to know on what charge or on suspicion of what crime he is seized.

That was an action for false imprisonment and it is interesting to note that Viscount Simon, in the course of a very learned judgment, observed, *inter alia*, that the person arrested cannot complain that he has not been supplied with

...information as and when he should be, if he himself produces the situation which makes it practically impossible to inform him, e.g., by immediate counter-attack or by running away.

Although the case is no doubt an interesting one in the English context and naturally entitled to the greatest respect, I think it should be said that such cases afford no assistance in determining the true meaning and effect to be given to ss. 450(1) and 29 of the Canadian Criminal Code and I do not think that any further comment is necessary.

It will be seen that in the result I agree with Chief Justice Gale when he said, in the course of the reasons for judgment which he rendered on behalf of the Court of Appeal:

Here the police officer did not have a warrant with him; therefore, he was making the arrest without a warrant. But he was making the arrest pursuant to a warrant which was then outstanding and valid; and therefore, upon being asked the reason for the arrest, he gave notice to the respondent that the arrest was being made by virtue of that warrant. That is sufficient compliance with the provisions of s. 29(2).

For all these reasons, as well as for those advanced by Chief Justice Gale, I would dismiss this appeal.

### **The judgment of Spence and Laskin JJ. was delivered by**

SPENCE J. (dissenting)—I have had the opportunity of reading the reasons written by my brother Ritchie and I am content to accept the facts as outlined therein with such additions as I shall hereafter cite. I must, however, disagree with my brother's conclusion and I believe that I can state my disagreement very shortly.

It is common ground that when officer Cronkwright did not have in his possession the warrant naming the accused person then he was in fact arresting the accused without a warrant. Under the express words of s. 450(1)(c) a peace officer may arrest without a warrant a person for whose arrest he has reasonable and probable grounds to believe that a warrant is in force within the territorial jurisdiction in which the person is found. Officer Cronkwright had such reasonable and probable grounds. He had been so informed by the officers of his own police department.

Section 29 of the Criminal Code then sets out the duty of a person arresting another and s. 29(2) has direct application to the circumstances in the present appeal. It provides:

29. (2) It is the duty of every one who arrests a person, whether with or without warrant, to give notice to that person, where it is feasible to do so, of
- (a) the process or warrant under which he makes the arrest, or
  - (b) the reason for the arrest.

That section, it will be seen, requires the police officer “to give notice to that person, where it is feasible to do so, of (a) the process or warrant under which he makes the arrest, or (b) the reason for the arrest”. It is said that those two requirements are alternative and disjunctive. With that I agree. The question is what is (a) notice of the warrant, or (b) the reason for the arrest, and I am strongly of the opinion that a police officer does not give either notice of the warrant or the reason for the arrest by simply informing the person whom he is arresting that there is some kind of warrant “out for him”.

These sections of the Criminal Code put in statutory form requirements of common law which have existed literally for centuries, and the duties of a police officer at common law have been dealt with in courts of the highest authority. It is true that these cases usually deal with actions for false arrest but I think they are equally applicable to the test as to whether the police officer is in the course of carrying out his duty.

I stress that s. 29(2) commences with the words “it is the duty of”. Perhaps one of the chief of those cases is *Christie v. Leachinsky*[3] in the House of Lords, and I repeat the oft-quoted statement from the speech of Lord Simonds at p.593:

These and similar considerations lead me to the view that it is not an essential condition of lawful arrest that the constable should at the time of arrest formulate any charge at all, much less the charge which may ultimately be found in the indictment. But this, and this only, is the qualification which I would impose upon the general proposition. It leaves untouched the principle, which lies at the heart of the matter, that the arrested man is entitled to be told what is the act for which he is arrested. The “charge” ultimately made will depend upon the view taken by the law of his act. In ninety-nine cases out of a hundred the same words may be used to define the charge or describe the act, nor is any technical precision necessary: for instance, if the act constituting the crime is the killing of another man, it will be immaterial that the arrest is for murder and at a later hour the charge of manslaughter is substituted. The arrested man is left in no doubt that the arrest is for that killing. This is I think, the fundamental principle, viz., that a man is entitled to know what, in the apt words of Lawrence L.J., are “the facts which are said to constitute a crime on his part”.

(The italics are my own.)

It is the attempt to carry that principle into statute which is reflected in the use by Parliament in the words of s. 29(2) of the Code “to give notice to that person... (a) the process or warrant..., or (b) the reason for the arrest”.

In the present case, it was certainly feasible for the police officer to give notice by informing the accused man not only that there was a warrant in force but the charge set out in the said warrant. When the officer driving his cruiser approached the accused on the highway, he testified that he was headed for 26 Redan Street for the purpose of arresting Gamracy because he had been told that there was a warrant outstanding for Gamracy’s arrest. I find it quite incredible that the police officer should have been given this information and not informed of the offence charged in the warrant. Yet later in the home of the accused, it appearing that the accused intended to resist

arrest, the officer telephoned to the police station requesting some assistance. The officer, in cross-examination, admitted that he did not request information from whoever answered at the police station as to what was the charge in the warrant although the accused's constant demand was for that information. The constable repeats in cross-examination that the only information he gave the accused was that "it was for an outstanding warrant".

On these circumstances, I think it has been clearly demonstrated that it was feasible to inform the accused as to the contents of the warrant and that simply informing him that a warrant existed did not give him either notice of the warrant or the reason for his arrest.

I am, therefore, of the opinion that the police officer failed to carry out the specific statutory duty put on him by the provisions of s. 29 of the Criminal Code and that therefore he was not in the course of duty when he attempted to arrest the accused and the accused cannot be convicted under s. 246(2) of the charge of an assault on a peace officer engaged in the execution of his duty.

For these reasons, I would allow the appeal and restore the decision of the Provincial Court Judge acquitting the accused on the charge of the assault of a police officer but convicting him of common assault.

Appeal dismissed, SPENCE and LASKIN JJ. dissenting.

Solicitors for the appellant: Kelly, McRae & Murray, Toronto.

Solicitor for the respondent: The Attorney General of Ontario, Toronto.

[1] [1972] 3 O.R. 110, 7 C.C.C. (2d) 221.

[2] [1947] 1 All E.R. 567.

[3] [1947] A.C. 573.

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