

BRAISBY v. TAMASESE

HIGH COURT. Apia. 1928. 4, 5 December. WOODWARD C.J.

Arrest under warrant - police constable failing to show accused warrant
 - whether such failure constitutes defence to charge of obstructing
 and threatening police in execution of duty - common law position
 - mens rea.

The common law does not require any more of the arresting person than that he shall have the warrant with him so as to be in a position to satisfy any demand by the person arrested as to the authority for the arrest.

R. v. Tiriwa and Others 13 N.Z.L.R.; and Cod v. Cabe
45 L.J. Mag. Cases referred to.

Defendant convicted.

MOTION: To dismiss charges.

A. McCarthy, for prosecution.
 T.B. Slipper, for defendant.

Cur. adv. vult.

WOODWARD C.J.: Counsel for Tamasese moves for dismissal of the charges against him under Clause 7 of the Maintenance of Authority in Native Affairs (No. 2) Ordinance 1928, of obstructing and threatening in the execution of their duty the constables who arrested him on 27th ultimo.

The ground Counsel takes is that the constables did not at the time of the arrest show their warrant or acquaint the accused in any other way of their purpose or authority. The accused, he argues further, was in flight from a numerous armed force and assuming that there was some degree of resistance when he was overtaken the element of mens rea or conscious guilt was absent because he did not know that their purpose was to arrest him under lawful authority.

The New Zealand case of Regina v. Tiriwa and others 13 N.Z.L.R. p. 40 was quoted by the Crown Prosecutor as showing that the omission to read the warrant or give notice of the cause of arrest did not justify resistance. In New Zealand the duty of a constable under these circumstances was defined at that time by section 43(2) of the Criminal Code Act 1893, which reads,-

"It is the duty of every one arresting another,
 "whether with or without warrant, to give notice,
 "where practicable, of the process or warrant under
 "which he acts, or of the cause of the arrest."

The duty of a constable in Samoa is not defined in any enactment. His duty is that which the common law imposes and the present case seems to be governed by section 203 of the Samoa Act 1921.

"All rules and principles of the common law which
 "render any circumstances a justification or excuse
 "for any act or omission, or a defence to any charge,
 "shall remain in force with respect to all offences
 "constituted by this or any other enactment, except
 "so far as inconsistent with this or any other
 "enactment."

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If, therefore, the omission to read the warrant or give notice of the cause of arrest is under the common law a defence to these charges then the charges must be dismissed. I am unable, however, to discover that the common law requires any more of the arresting person than that he shall have the warrant with him so as to be in a position to satisfy any demand by the person arrested as to the authority for the arrest. See remarks of Bramwell B. in *Cod v. Cabe* 45 L.J. Mag. Cases p. 101. It is not questioned that the Police had the warrant with them in this case.

As to the absence of mens rea it would seem from the case of *Rex v. Forbes* that that is no ground for dismissal of the charges. The note of that case in Hals Vol. IX p. 237 reads as follows:-

"In a prosecution for an assault on a constable
"acting in the execution of his duty proof of
"knowledge of the accused that the constable was
"so acting is unnecessary."

Even if this were not so I think that the receipt on or after the 17th ultimo by the accused of the letter from the Administrator warning him of the issue of the warrant and of the trouble which would occur if he did not surrender himself to it is relevant to the question whether accused knew the purpose of the constables on the 27th ultimo and is prima facie proof that he did know it and knew them to be acting in the execution of their duty.

I am unable to dismiss these charges.