

IN THE REPUBLIC OF TRINIDAD AND TOBAGO

HIGH COURT OF JUSTICE

Cv. 2007-02941
H.C.A. No. S-218 of 2004
H.C.A. No. 3311 of 2004

Between

SHANE LEOTAUD

Claimant

and

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

BEFORE THE HONOURABLE MADAM JUSTICE DEAN-ARMORER

APPEARANCES

Mrs. R. Ramjit for the Claimant.

Mrs. J. Baptiste-Mohammed for the Defendant.

JUDGMENT

Introduction

1. Shane Leotaud, the claimant was born in 1981. In the year 2004, he was pursuing a degree in Computer Science at the Professional Institute of Marketing and Business Studies, and was the owner of a Chevrolet Beretta registration number PBF 7661.
2. In 2004 the claimant, together with two companions Jamie Singh and Sean Maharaj were detained by the police for several hours. Following their release, the police detained the claimant's motor vehicle for a period of two weeks.

3. In these proceedings, the claimant seeks general, aggravated and exemplary damages for wrongful arrest and trespass to his motor vehicle.

Facts

4. The facts in these proceedings were gleaned from the witness statement and cross-examination of the claimant and of P.C. Fazeer Suliman.
5. It is not disputed that on the 26th June 2004, the claimant, together with two of his companions visited the Barrackpore Police Station for the purpose of reporting an attack on the claimant's motor vehicle.
6. At the Barrackpore police station the three friends were told of a report of larceny of cattle. When they attempted to leave the Barrackpore police Station, they were continuously requested to hold on until 6:00 pm, when the claimant and his friends were approached by three police officers in plain clothes. It is not disputed that the three officers were P.C. Doodnath, P.C. Ribero and P.C. Suliman. The claimant and his companions were separated and questioned by the plain clothes officers.
7. The claimant was asked to accompany the officers to the CID office in San Fernando. The claimant drove his vehicle, PBF 7661 accompanied by P.C. Doodnath, while P.C. Ribero, P.C. Suliman followed in another vehicle with the claimant's two companions.
8. A dispute has arisen as to the time of arrival at the C.I.D. office San Fernando. The claimant contends that he arrived at the San Fernando office at 6:00 pm, while P.C. Suliman for the defendant has testified that they arrived at 8:00 p.m.
9. In my view, the testimony of P.C. Suliman should be accepted because it is supported by the entry in the station diary¹ and this constitutes a contemporaneous record.

¹ A copy of an extract from the Station Diary for 26th June, 2004, C.I.D. office, San Fernando was exhibited to the witness statement of Fazeer Suliman and marked FS 1.

10. The claimant and his two companions were detained at the C.I.D. office San Fernando under questionable conditions, which will become relevant at the stage of assessment. They were eventually released at approximately 3:30pm the following day.
11. The defendant has not denied the arrest of the claimant, but has attempted to justify it by contending that the arresting officer had reasonable and probable cause to believe that the claimant had committed an arrestable offence.
12. In support of this contention, the defendant relied on the evidence of P.C. Fazeer Suliman, who in his evidence-in-chief testified that a report had been made by Naradh Ragoonanan to the C.I.D. office, San Fernando on 26th June, 2004. P.C. Suliman testified that he had been detailed to investigate this report. Mr. Ragoonanan reported that he had been the owner of two white ewe goats, which were tied outside his home on the morning of 26th June, 2004. At approximately 2.00 p.m. on the same day, his sister raised an alarm that someone was stealing the goats. In response to the alarm, Mr. Ragoonanan ran to the area where the goats were tied and saw someone loading the goats into a red motor vehicle registration number, PBF 7661.
13. P.C. Suliman testified further that later on the 26th June, 2004, while driving with P.C. Ribero, he received an all points bulletin that PBF 7661 had been involved in the larceny of cattle in the Phillipine area.
14. P.C. Suliman continued his testimony by referring to a call which he received from P.C. Hamilton, who was on duty at the Barrackpore Police Station on that day. In response to the call, P.C. Suliman arrived at the Barrackpore Police Station, where P.C. Hamilton pointed out the claimant with two men who had arrived in motor vehicle PBF 7661.
15. P.C. Suliman interviewed the claimant and his two companions, eventually taking them to the C.I.D. office in San Fernando, where the claimant and his companions were interviewed further.

16. P.C. Suliman in his witness statement told the Court that he informed the claimant of the allegation of larceny of the two goats and that the claimant responded by saying that he had cause to stop his vehicle PBF 7661 along the Siparia Erin Road because the motor vehicle was overheating and that after driving off he noticed that he was being followed by a maxi taxi. The claimant told P.C. Suliman that there were two loud bangs, one of which was an equalizer to the hood of his car and the other being a car jack to his rear wind shield.
17. At the C.I.D. office, P.C. Suliman took possession of the equalizer and the car jack and interviewed Naradh Ragoonanan who made the report of larceny along with his brother, Shakti and his sister Arti. P.C. Suliman informed the claimant that his motor vehicle would be detained. The motor vehicle was sent to the Forensic Centre for testing on 28th June, 2004. The vehicle was returned to the claimant on 13th June, 2004.
18. At 3:30 p.m. on 27th June, 2004, the claimant was allowed to leave the C.I.D. office without having been charged. The claimant, in his evidence, described the deplorable conditions under which he was detained at the C.I.D. office San Fernando.

Law

False Imprisonment

1. The tort of false imprisonment is established by proof of: (a) the fact of the imprisonment; and (b) the absence of lawful authority to justify the imprisonment.² To establish the tort of false imprisonment the claimant first bears the initial burden of proving the fact of his imprisonment, the burden of proof then shifts to the arresting officers to justify the imprisonment.³

² Clerk and Lindsell on Torts, 19th Edition at paras 15-23, per des Vignes J in *Ivan Neptune v Attorney General* CV 2008-03386

³ *Dallison v Caffery* [1965] 1 Q.B. 348 at 370

2. In *Ramsingh v The Attorney General*⁴ their Lordships of the Judicial Committee of the Privy Council summarized the relevant principles concerning false imprisonment as follows:

The relevant principles are not significantly in dispute and may be summarised as follows:

- i. The detention of a person is prima facie tortuous and an infringement of section 4(a) of the Constitution of Trinidad and Tobago.*
- ii. It is for the arrestor to justify the arrest.*
- iii. A police officer may arrest a person if, with reasonable cause, he suspects that the person concerned has committed an arrestable offence.*
- iv. Thus the officer must subjectively suspect that that person has committed such an offence.*
- v. The officer's belief must have been on reasonable grounds or, as some of the cases put it, there must have been reasonable and probable cause to make the arrest.*
- vi. Any continued detention after arrest must also be justified by the detainer.*⁵

Reasonable and Probable Cause

3. Reasonable and probable cause has been defined as:

"An honest belief in the guilt of the accused based upon a full conviction, found upon reasonable grounds, of the existence of a state of

⁴ *Ramsingh v The Attorney General* [2012] UKPC 16

⁵ *Ramsingh v The Attorney General* [2012] UKPC 16

circumstances which, assuming them to be true, would reasonably lead any ordinary, prudent, and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed".⁶

4. In ***Harold Barcoo v The Attorney General of Trinidad and Tobago and Inspector Phillip Browne***⁷ Mendonca J as he then considered the elements of reasonable and probable cause and had this to say:

With respect to the third element whether the law was set in motion with reasonable and probable cause this, like reasonable and probable cause for arrest, involves subjective and objective questions. In Clayton and Tomlinson, Civil Actions against the Police (1987) the questions are posed as follows (at page 256)

- 1. Did the prosecutor have an honest belief in the guilt of the accused?*
- 2. Did the prosecutor have an honest conviction of the existence of the circumstances relied on?*
- 3. Was the conviction based on reasonable grounds?*
- 4. Did the matters relied upon constitute reasonable and probable cause in the belief of the accused's guilt?⁸*

5. In ***Maurice Koon Koon v The Attorney General of Trinidad and Tobago***⁹ CV 2009-01530 Kokaram J stated:

*In determining whether the arresting officer had reasonable and probable cause, the first enquiry is to ascertain what was in the mind of the arresting officer and to determine whether the grounds on which the arresting officer relied as the basis for his suspicion were reasonable. Wooding L.J. in ***Irish v. Barry*** put the two questions to be separately posed and answered as follows: (1) do those facts warrant a suspicion that a felony has been committed, and (2) do they also warrant a suspicion that*

⁶ See Hicks v. Faulkner [1881-85] All ER Rep 187, approved in Herniman v. Smith [1938] AC 305.

⁷ Harold Barcoo v The Attorney General of Trinidad and Tobago and Inspector Phillip Browne HCA No 1388 of 1989

⁸ ibid

⁹ Maurice Koon Koon v The Attorney General of Trinidad and Tobago CV 2009-01530

*the person whose arrest is contemplated committed it or was a party to its commission?*¹⁰

Damages for False Imprisonment

6. The principal heads of damage for false imprisonment include the injury to liberty, that is, the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings, that is, the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status.¹¹
7. Lawrence LJ in *Walter v Alltools*¹², expressed the view that damages may also be given for any injury to reputation, he stated, “a false imprisonment does not merely affect a man’s liberty; it also affects his reputation.”¹³
8. In *Thaddeus Bernard v Nixie Quashie* CA No 159 of 1992, Chief Justice de la Bastide made the following observations in respect of awards of aggravated damages:

*“The normal practice is that one figure is awarded for general damages. These damages are intended to be compensatory and to include what is referred to as aggravated damages, i.e. damages which are meant to provide compensation for the mental suffering inflicted on the plaintiff as opposed to the physical injuries he may have received.”*¹⁴
9. Chief Justice de la Bastide then went on to explain mental suffering in this way:

“Under this head of what I have called ‘mental suffering’ are included such matters as the affront to the person’s dignity, the humiliation that he

¹⁰ Ibid at page 4

¹¹ Per Master Mohammed in *Razack Mohammed v The Attorney General of Trinidad and Tobago* CV 2009-02792 at page 6

¹² *Walter v Alltools* (1944) 61 TLR 39. 40

¹³ Per Lawrence LJ in *Walter v Alltools* (1944) 61 TLR 39. 40

¹⁴ *Thaddeus Bernard v Nixie Quashie* CA No 159 of 1992 per de la Bastide CJ at page 5 of 11

has suffered, the damage to his reputation and standing in the eyes of others, and matters of that sort.”¹⁵

10. Exemplary damages may be awarded in instances where there is oppressive, arbitrary or unconstitutional conduct by servants of government. See *Rookes v Barnard*¹⁶ per Lord Devlin.

Detention of Motor Vehicle

11. In *Ghani and Others v Jones*¹⁷ police officers, in the course of investigating an allegation of murder, retained the passports of some suspects without the protection of a warrant and without making an arrest. Their justification was that they believed it to be of evidential value on a prosecution for murder. Lord Denning, M.R. laid down five prerequisites to justify the taking of property by police officers. Lord Denning stated:

First. The police officers must have reasonable grounds for believing that a serious offence has been committed—so serious that it is of the first importance that the offenders should be caught and brought to justice.

Secondly. The police officers must have reasonable grounds for believing that the article in question is either the fruit of the crime (as in the case of stolen goods) or is the instrument by which the crime was committed (as in the case of the axe used by the murderer) or is material evidence to prove the commission of the crime (as in the case of the car used by a bank raider or the saucer used by a train robber).

Thirdly. The police officers must have reasonable grounds to believe that the person in possession of it has himself committed the crime, or is implicated in it, or is accessory to it, or at any rate his refusal must be quite unreasonable.

¹⁵ Thaddeus Bernard v Nixie Quashie CA No 159 of 1992 per de la Bastide CJ at page 5 of 11

¹⁶ Rookes v Barnard [1964]UKHL 1

¹⁷ [1969] 3 All ER 1700

Fourthly. The police must not keep the article, nor prevent its removal, for any longer than is reasonably necessary to complete their investigations or preserve it for evidence. If a copy will suffice, it should be made and the original returned. As soon as the case is over, or it is decided not to go on with it, the article should be returned.

*Finally. The lawfulness of the conduct of the police must be judged at the time, and not by what happens afterwards.*¹⁸

12. In *Malone v Commissioner of Police of the Metropolis*¹⁹ the Court of Appeal applied Lord Denning's reasoning in *Ghani v Jones*. The court held that the police generally had no power to retain property lawfully seized from an accused person where it was not stolen or where the retention could not be justified on clearly ascertainable grounds. However, the police may detain property until trial where it is reasonably necessary to do so and where the property in question constitutes material which would be required at a later date at the trial.

Reasoning and Decision

1. There is no dispute that the claimant had been arrested by P.C. Suliman at approximately 6:30p.m. on 26th June, 2004. The claimant omitted in his Statement of Case to specify the time at which he was detained. Nonetheless, Mrs. Ramjit, learned Counsel for the claimant, in the course of her oral submissions, contended that the detention of the claimant began at 6:30p.m.
2. I have accepted this as having been established as a matter of fact for two reasons:
 - The defendant has not refuted 6:30p.m. as the time claimant was detained.
 - From the time of P.C. Suliman's arrival at the Barrackpore police station, the claimant was no longer free to leave the police station. From that time,

¹⁸ Ghani and Others v Jones [1969] 3 All ER 1700 at page 1705

¹⁹ In Malone v Commissioner of Police of the Metropolis [1979] 1 All ER 256

at approximately 6:30 p.m., his liberty was constrained and in my view he was under arrest.

3. The claimant's detention continued until the afternoon of the 27th June, 2004. The claimant's detention came to an end at approximately 4:00p.m. on 27th June, 2004. Although parties differ as to the time of release by about thirty minutes it is not disputed that the Claimant was released on 27th June, 2004 without having been charged.
4. In answer to this claim, the defendant contends that the arresting officers had reasonable and probable cause to arrest the plaintiff. Having regard to the defence, two major issues arise for the Court's determination:
 - Whether P.C. Suliman was justified in arresting the claimant; and
 - Whether P.C. Suliman was justified in seizing and detaining the claimant's motor vehicle PBF 7661.
5. The arrest of the claimant would be justified if the defendant succeeds in proving on a balance of probabilities that the arresting officer, P.C. Suliman had reasonable and probable cause to believe that the claimant had committed an arrestable offence.
6. An arrestable offence, is defined at s 3 (1) of the *Criminal Law Act*²⁰, as one for which the offender can be sentenced to a term of imprisonment for five years or more for the first offence.

²⁰ Laws of Trinidad and Tobago Criminal Law Act Chapter 10:04

7. Larceny of cattle, which includes goats, is an offence which is punishable by seven years imprisonment²¹.
8. If this Court holds that P.C. Suliman had reasonable cause to believe that the claimant had committed the offence of larceny, it would follow that the defendant would have successfully justified the claimant's arrest.
9. The term reasonable and probable cause was defined in the case of *Hicks v Faulkner*²² per Hawkins J to be

*“ ... an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds of the existence of a state of circumstances which assuming them to be true would reasonably lead any ordinarily prudent and cautious man placed in the position of the accuser to the conclusion that the person charged was probably guilty of the crime imputed.”*²³
10. By his evidence, P.C. Suliman has provided evidence of his belief in the existence of a state of circumstances based on reports which had been made to the San Fernando C.I.D. office. The critical aspects of the report were firstly that on the 26th June, 2004 at 2.00p.m., the offence of larceny was committed by persons occupying motor vehicle PBF 7661, and secondly that the claimant was at the material time an occupant of the motor vehicle.
11. Therefore at the time of effecting the arrest, P.C. Suliman was seized of information which connected the claimant to motor vehicle PBF 7661, which the arresting officer had reason to believe was used as an instrument in the execution of the reported offence.

²¹ Larceny Act Ch. 11:12 at s. 5.

²² *Hicks v Faulkner* [1881-85] All ER Rep 187

²³ [1881-85] All ER Rep 187 at 191

Moreover, the information provided by the claimant himself to P.C. Suliman further placed the claimant and his motor vehicle in the vicinity of the Siparia Erin Road, Phillipine at 2.00p.m on the 26th June, 2004. This time and this location were identical to those identified by Mr. Ragoonanan, who made the report of larceny.

12. P.C. Suliman therefore held the following information:
 - The occupants of PBF 7661 stole two goats at around 2.00p.m. on 26th June, 2004 in the vicinity of the Siparia Erin Road, Phillipine.
 - At 2.00p.m. on the 26th June, 2004, the claimant was both the owner and driver of PBF 7661 and by his admission he was driving the PBF 7661 on the Siparia Erin Road, Phillipine.
13. In my view the admitted connections between the claimant, motor vehicle PBF 7661, the date and time of the alleged offence and the location of the alleged offence provided a compelling scenario for any ordinarily prudent and cautious person to arrive at the conclusion that the claimant was probably guilty of the crime imputed.
14. Accordingly, it is my view and I hold that P.C. Fazeer Suliman having arrested the claimant at 6.30p.m. on 26th June, 2004 held reasonable and probable cause for doing so and was therefore justified in effecting the arrest.
15. Having regard to my finding, it was unnecessary to consider the conditions of the claimant's detention, since these factors would have become relevant in assessing damages due to the claimant.
16. The defendant is also required to justify the continued detention of the claimant²⁴, that is to say from 6.30p.m. on 26th June, 2004 to 4:00p.m. on 27th June, 2004. In my view, the

²⁴ Ramsingh v The Attorney General [2012] UKPC1 16

evidence of P.C. Suliman suggests that the time spent at the C.I.D. office San Fernando was necessary for the purpose of interviewing not only the claimant and his companions, but the Ragoonanans who had made the initial report of larceny. It is therefore my view and I hold that the continued detention of the claimant for close on twenty-four (24) hours was justified.

13. I turn now to consider the third issue, that is to say whether the seizure of the motor vehicle was justified. One of the prerequisites identified by Lord Denning in *Ghani v Jones* was that the seized article was an instrument used to commit suspected crime²⁵. In the instant proceedings motor vehicle PBF 7661 was specifically identified as the vehicle occupied by the offenders. This motor vehicle was also identified as that used to transport the stolen goats, which were eventually thrown from the car, when the Ragoonanan's raised an alarm. P.C. Suliman therefore had good grounds for believing that PBF 7661 was used as an instrument in committing the suspected crime.
14. Finally it is my view that a period of two weeks was not unreasonable for the police to complete their investigation on the motor vehicle. Accordingly, it is my view and I hold that the defendant has discharged the burden of proving that the seizure and detention of the claimant's motor vehicle was justified.
15. The claim is dismissed, the claimant to pay the defendant the costs of this Claim. Costs to be quantified by the Registrar of the Supreme Court in default of agreement.

Dated this 19th day of November, 2012.

M. Dean-Armorer
Judge²⁶

²⁵ See *Ghani v Jones* [1969] 3 [1969] 3 All ER 1700 at 1705

²⁶ Irma Rampersad- Judicial Secretary
Kendy Jean- Judicial Research Assistant