TRINIDAD & TOBAGO

IN THE HIGH COURT OF JUSTICE
SUB REGISTRY SAN FERNANDO

HCA NO. S-337/99

BETWEEN

RICHARD RAMNARACE

Plaintiff

AND

THE ATTORNEY GENERAL OF
TRINIDAD & TOBAGO

Defendant

Before: The Hon. Justice Nolan Bereaux

Appearances: Mr A. Ramlogan & S Samodie for Applicant
Mr M Julien for Respondent

JUDGMENT

The applicant seeks redress under section 14 of the Constitution for alleged breaches of his liberty under sections 4(a) and 4(b). He alleges that he was arrested and imprisoned from 10th August, 1998 to 12th August, 1998; that the arrest and imprisonment were unconstitutional and illegal and that he was refused an attorney or was not advised of his right to retain and instruct one without delay. He also alleges that he was not informed of the reason for his arrest or detention.

It is becoming more and more fashionable to seek constitutional redress in respect of police action for which there is an appropriate common law remedy. The right to pursue constitutional redress is expressed however to be without prejudice to *"any other action with respect to the same matter which is lawfully available"* (per section 14(1) of the Constitution). The consequence has been that more and more constitutional motions are being filed in courts by persons aggrieved by police action rather than seeking redress by way of ordinary writ action.

The applicant seeks damages for the breach of his rights including aggravated and exemplary damages.

A total of thirteen affidavits were filed in this motion. Three affidavits were filed on behalf of the applicant, the first by the applicant, the second by his brother, Mitra Ramnarace and the third by the applicant in answer to the affidavits of the respondent.

The applicant was cross-examined by Mr Julien for the respondents and Corporal Roland Gay and Constable Anand Bahadur were cross-examined by Mr Ramlogan on behalf of the applicants.

Facts

The applicant was shot in the face at Boodoosingh's Bar, Gopie Trace, Penal by the proprietor, Visham Boodoosingh who is also a police officer. The applicant's evidence is that he was drinking with friends at the Bar when he was shot. The applicant deposed that an altercation broke out between two other patrons. His friend, Dale Singh told the men:

> ***"to stop fighting and one of them pushed Dale away and wanted to fight. I got up and attempted to part the men who were arguing and threatening to fight. Whilst doing so, the barman, one Visham Boodoosingh came from behind me and slapped me on my face. The barman then held me in a head lock and put the barrel of a hand gun to the right side of my face and I then heard an explosion. I was taken to the San Fernando General Hospital. On 10th August, 1981, I woke up at the San Fernando General Hospital. There was a police officer sitting next to my bed."***

He was hospitalised from 9th August to 19th August, 1998. He contends that between the period 9th August, 1998 to 12th August, 1998, while hospitalised he was effectively under arrest. There were police guards at his bed and that between 1.00 am to 6.30 am on 11th August, 1998, he was handcuffed to the hospital bed. During that period he was also heavily sedated and was fed intravenously through tubes attached to his hand.

At paragraph 10 of his affidavit the applicant deposes as follows:

> ***"On the [sic] 10th day of August, 1998, the police officer informed me [sic] that I was under arrest and in police custody. When I woke up, there was a needle in my left hand with a tube attached to it and to a bag of drips which was suspended on a stand.***
>
> ***Para 11. From the time I woke up until around 7.00 am on the 11th day of August, 1998 there was always at least one police officer by my bed.***
>
> ***Para 12. "On the 11th day of August, 1998 at around 1.00 am a police officer [sic] placed a handcuff on my right hand and handcuffed me to the bed post. At the time I was still being administered drips."***

According to the applicant the handcuffs were removed at around 7.00 am on 11th August, 1998.

It is not disputed by the respondents that the applicant was shot by Visham Boodoosingh and that he is a police officer. In his affidavit on behalf of the respondent, Corporal Gay deposed that at 1.35 am on the 9th August, 1998 while

at the Penal Police Station he received a telephone call from Mr Boodoosingh who informed him that a robbery had occurred at the Bar. He spoke by telephone with one Corporal Nelson who was at the San Fernando Criminal Investigation Department about the message, and as he put it, *"about certain information"*. He again spoke to Corporal Nelson by telephone about fifteen minutes later. As a result of that latter conversation he proceeded to the San Fernando General Hospital.

On his way to the hospital he stopped at the Bar where he spoke with Boodoosingh, and three of his employees. Mr Boodoosingh's account of the incident was that at 1.00 am on 9th August the plaintiff came onto the premises and attempted a robbery. A struggle ensued between them during which he drew a Taurus .38 special revolver and shot him.

Corporal Gay later proceeded to the San Fernando General Hospital where he saw the applicant. Except for his eyes, the applicant's face was covered with bandages. He was not handcuffed to the bed or restrained in any way. There were no other police officers or anyone else at his bedside. Based on the information he received from Corporal Nelson and the telephone conversation with Mr Boodoosingh, he attempted to interview the applicant. The applicant had difficulty speaking and he could obtain no information from him. He then left the hospital. He never told the applicant that he was under arrest nor did he have instructions to remain as a police guard at the applicant's bedside.

He proceeded to the San Fernando C.I.D. where he met Kevin Ali, Mitra Ramnarace and Dale Singh who were with the applicant when he was shot. They accompanied Corporal Gay to the Penal Police Station where he recorded statements from them. The statements support the applicant's version of what occurred at the Bar.

Later on 9th August, 1998 Corporal Gay interviewed Doodnath Radhakissoon, Premnath Ramlogan and Deoraj Singh at the Penal Police Station and obtained statements from them. The accounts of Mr Radhakissoon and Mr Deoraj Singh support the account which Corporal Gay said was given to him by Mr Boodoosingh. Premnath Ramlogan denied witnessing the incident. Corporal Gay said that he handed over the statements of Messrs. Ali, Ramnarace and Deoraj Singh to Inspector Singh of the Siparia C.I.D. on or about 10th August, 1998.

In essence both Mr Singh and Mr Radhakissoon support Mr Boodoosingh's account of a robbery attempt by the applicant. Mr Radhakissoon, in his account describes *inter alia* a struggle between the applicant and Mr Boodoosingh during which the applicant was shot. Mr Singh, while he was not a witness to the actual shooting, gives an account which provides circumstantial evidence that a robbery had been attempted at the bar.

On 10th August, 1998, therefore, the police would have had in their possession conflicting statements of what occurred in the early morning of 9th August, 1998 with respect to the shooting of the applicant.

There is a civil action brought by the applicant against Mr Boodoosingh. It is to proceed before me upon the completion of this action. Consequently, I shall make no factual findings which touch upon the issues in that action.

The applicant underwent surgery on 9th August, 1998. He was later examined by Dr Marcus Daniel, an Oral and Maxillo-Facial Surgeon at about 3.00 pm on 10th August, 1998, who later performed re-constructive surgery on the applicant. Dr. Daniel describes him as being *"in a sedated (semi-conscious) state"* at the time of his examination. Dr. Daniel also confirms that the applicant could not engage in conversation due to the injuries to his face.

Police guards were placed at the applicant's bedside sometime after 4.11 am on the morning of 9th August, 1998. The instruction to remove them was recorded at 4.35 am on 12th August, 1998. It is during that period that the applicant contends he was under arrest and was denied access to an attorney of his choice.

The order that a guard be placed at the bedside of the applicant was given by Cpl. Nelson at 4.11 am on 9th August, 1998. That order was transmitted by telephone message to the San Fernando Police Station. The message was received by Special Reserve Policeman Valentine and was recorded in the station's telephone message book as follows:

> ***"You are required to supply a guard at San Fernando General Hospital at Ward 8 re Richard Ramnarace a robbery suspect who was shot and is now detained at the San Fernando General Hospital."***

Cpl. Nelson has since died. Corporal Sagar Ramsaran and Annette Hunte both deposed that such a telephone message constitutes a direction *"to parade and dispatch a police guard for duty"*. That task is performed by the senior police officer in charge. Both officers testify to having dispatched guards during the period. Both state that they were duty bound to comply until the order was rescinded. Both say that a direction to remove the police guard (coming from A C P Billy) was recorded at the station's telephone message book. Cpl. Ramsaran states that it was recorded by Senior Superintendent Peters at 9.35 am on 12th August, 1998. The police guard would have been removed sometime thereafter.

During that period some visitors of the applicant were not permitted to speak with him. Indeed, on the morning of 12th August, 1998, three persons who turned up to see the applicant were refused permission to speak with him for security reasons by Constable Bahadur.

The evidence is that for some period between the 9th and 10th August, 1998 while under police guard the applicant was unconscious. One of the issues in this case is whether the applicant in those circumstances could be considered to have been under arrest. Added to that legal equation is the fact that during his state of unconsciousness he was heavily sedated and attached to drips through which he was receiving medication; that is to say, he was himself under a form of medically induced restraint.

For the purposes of the arrest therefore, we are dealing with two periods:

(1) From 9th August to 10th August during which the applicant was unconscious.

(2) From 10th August when he regained consciousness to mid-morning of 12th August when the police guard was removed.

9th to 10th August, 1998

The evidence as to the period of consciousness is not clear. The applicant deposed that he regained consciousness on 10th August, 2002. He gave no specific time. Police Constables Dodol and Lee who guarded the applicant both deposed that during their tour of duty on 10th August, 2002, the applicant was unconscious. Constable Dodol's tour ended at 3.30 am on the 10th August. He was relieved by Police Constable Julien who himself was relieved by Constable Lee at 7.05 am. Constable Lee's tour appears to have ended sometime after 4.00 pm.

Dr Daniel deposed that he saw the applicant at 3.00 pm on 10th August, 1998 and that he was in a sedated semi-conscious state. Taken together with the applicant's evidence that he awoke on 10th August, 1998, I hold that the applicant was sufficiently conscious on or about 3.00 pm on 10th August.

I turn now to whether it was necessary for the purposes of an arrest that the applicant be conscious of being under restraint by the police.

Leigh on Police Powers in England & Wales 1985 at pg. 54 states:

> ***"In order for there to be an arrest, whether with or without warrant, there must normally be a seizure of the body. The mere pronouncing of words of arrest is not an arrest unless the person sought to be arrested submits to the process. There is no arrest where a person fails to submit to words of arrest. Provided that there is touching, it is not essential to an arrest that the arrestee be handcuffed or put in such a situation as to make detention of him effective.***

Halsbury's Law of England 4th Ed. Vol. II(1), re-issue 1990 edition at para 693 states that words may amount to an arrest:

> ***"…If in the circumstances of the case, they are calculated to bring, and do bring to a person's notice that he is under compulsion and he thereafter submits to the compulsion."***

In **Alderson v Booth** (1969) 2 All E R 271 it was held that an arrest is constituted where any form of words is used which were calculated in the circumstances to bring and did bring to the accused's notice that he was under compulsion and thereafter he submitted to that compulsion. Lord Parker C J stated at pg 273:

> ***"There are a number of cases, both ancient and modern, as to what constitutes an arrest, and whereas there was a time when it was held that there could be no lawful arrest unless there was an actual seizing or touching, it is quite clear that that is no longer the law. There may be an arrest by mere words, by saying "I***

arrest you" without any touching, provided of course that the accused submits and goes with the police officer. Equally it is clear, as it seems to me, that an arrest is constituted when any form of words is used which, in the circumstances of the case, were calculated to bring to the accused's notice, and did bring to the accused's notice, that he was under compulsion and thereafter he submitted to that compulsion.

Looked at in that way, I for my part have little doubt that just looking at the words used here "I shall have to ask you to come to the police station for further tests" they were in their context words of command which one would think would bring home to an accused that he was under compulsion.

The issue is a question of fact to be determined on a case by case basis. No doubt an arrest can be effected by the placing of a police guard at the bed of a hospitalised patient which conveys to him that he is under compulsion to submit to the arrest. In those circumstances, words are as unnecessary to the arrest as is a touching.

The question however is whether the person must be aware that he or she is under arrest. There is conflicting authority.

In **Meering v Grahame-White Aviation Co. Ltd**. 122 L.T.R. 44 one of the questions on appeal was whether there was evidence sufficient to support a finding by the jury that the plaintiff had been wrongfully imprisoned by the company.

The relevant facts are peculiar if not entirely clear. The facts as I have gleaned from the judgments were that there was an investigation into the theft of items from the defendant's premises. The plaintiff was an unwitting suspect who was

asked by members of the defendant security to accompany them to the defendant's premises. The plaintiff was taken or invited to go to the waiting room of the offices to wait until he was wanted. The plaintiff asked what he was there for and threatened to leave if not told. He was then told that he was there to make inquiries with respect to things stolen and he was wanted to give evidence whereupon the plaintiff relented. The door to the office was open and he was not bound or told to consider himself in custody. There were other members of the security force who, if they had intended and thought it fit could have prevented him from departing.

The jury's finding that there was an imprisonment was affirmed. It was held *inter alia* that the fact that a person is not actually aware that he is being imprisoned does not amount to evidence that he is not, it being possible for a person to be imprisoned in law without his being conscious of the fact and appreciating the position in which he is placed.

Atkin L J in concurring with Warrington L J (Duke L J dissenting) said at pgs. 53-54:

> ***"It appears to me that a person could be imprisoned without his knowing it. I think a person can be imprisoned while he is asleep, while he is in a state of drunkenness, while he is unconscious, and while he is a lunatic. Those are cases where it seems to me that the person might properly complain if he were imprisoned, though the imprisonment began and ceased while he was in that state. Of course, the damages might be diminished and would be affected by the question whether he was conscious of it or not.***
>
> ***So a man might in fact, to my mind, be imprisoned by having the key of a door turned against him so that he is imprisoned in a room in fact although he does not know that the key has been turned. It may be that he is being detained in that room by***

persons who are anxious to make him believe that he is not in fact being imprisoned, and at the same time his captors outside that room may be boasting to persons that he is imprisoned, and it seems to me that if we were to take this case as an instance supposing it could be proved that Prudence had said while the plaintiff was waiting: "I have got him detained there waiting for the detective to come in and take him to prison" - it appears to me that that would be evidence of imprisonment. It is quite unnecessary to go on to show that in fact the man knew that he was imprisoned.

If a man can be imprisoned by having the key turned upon him without his knowledge, so he can be imprisoned if, instead of a lock and key or bolts and bars, he is prevented from, in fact, exercising his liberty by guards and warders or policemen. They serve the same purpose. Therefore it appears to me to be a question of fact. It is true that in all cases of imprisonment so far as the law of civil liability is concerned that 'stone walls do not a prison make,' in the sense that they are not the only form of imprisonment, but any restraint within defined bounds which is a restraint in fact may be an imprisonment.

Under those circumstances, it appears to me that the sole issue in this case is whether there is evidence upon which the jury could find, quite apart from the plaintiff's knowledge of what the real fact was - that he was in fact imprisoned in the sense which I have mentioned, so that his liberty was in fact restrained; so that he was substantially in the same position as if the key had been turned in the door of the waiting-room where he was in fact waiting.

I think that there is evidence."

Duke L J who dissented used the subjective test. At pg 51 he said:

> ***"It is a matter of very great nicety to determine whether upon those facts there is sufficient to warrant a verdict that the person complaining was imprisoned. What constitutes imprisonment has been long ago defined. It is to be found in a work of very good authority in the application of the common law – namely, 'Termes de la Ley' – in these words: "Imprisonment' is no other thing, but the restraint of a man's liberty, whether it bee in the open field, or in the stocks, or in the cage in the streets" – referring to now obsolete methods of imprisonment – "or in a man's owne house, as well as in the common goale; and in all the places the party so restrained is said to be a prisoner so long as he hath not his liberty freely to goe at all times to all places whither he will without baile or main, prise or otherwise."***
>
> ***Can it be said upon what is affirmatively proved here that there is evidence upon which the jury could act that the plaintiff was so restrained as that he had not his liberty freely to go whither he would? To my mind there is a conclusive fact proved in the case with regard to that matter, which is, that the plaintiff himself does not show the slightest indication of a suspicion that he was restrained of his liberty to go if he had thought fit to go."***

In **Herring v Boyle** 149 E R 1126 the defendant, a schoolmaster, improperly and under a claim for money due for schooling, refused to allow the mother of an infant scholar to take her son home with her, and the son, though frequently demanded by the mother, was kept at school during a part of the holidays. There was no proof that the infant knew of the demand or denial, or that any restraint

had been put upon him. When an action for assault and false imprisonment was brought by the infant it was held that it was not maintainable.

Bolland B. stated at page 1127:

> ***"I cannot find any thing upon the notes of the learned judge which shews that the plaintiff was at all cognizant of any restraint. There are many cases which shew that it is not necessary, to constitute an imprisonment, that the hand should be laid upon the person; but in no case has any conduct been held to amount to an imprisonment in the absence of the party supposed to be imprisoned. An officer may make an arrest without laying his hand on the party arrested; but in the present case, as far as we know, the boy may have been willing to stay; he does not appear to have been cognizant of any restraint, and there was no evidence of any act whatsoever done by the defendant in his presence.***

Alderson B. said further at pg 1127:

> ***"There was a total absence of any proof of consciousness of restraint on the part of the plaintiff. No act of restraint was committed in his presence;…"***

Gurney B. added at 1128:

> ***"There was no evidence of any restraint upon him. There was no evidence that he had any knowledge of his mother having desired that he should be permitted to go home, nor that anything passed between the plaintiff and defendant which shewed that there was any compulsion upon the boy; and there was nothing***

to shew that he was conscious that he was in any respect restrained."

Such authorities as have been cited before me are thus in conflict. The decisions are purely persuasive. Although the decision in **Meering** is significantly later in time, I am inclined to the view that on the facts and circumstances of this case the applicant could not be considered to be under arrest during the period of his unconsciousness. It is consistent with an arrest that one's will be under restraint. The applicant's lack of consciousness militates against such a restraint, so too the fact that he had been sedated by his doctors. Such sedation would itself have operated on the applicant's will and in such a manner as to render it unlikely that the applicant would have had any resolve to leave his immediate environment.

In my judgment the applicant was not under arrest during the period 4.15 am on 9th August, 1998 to 3.00 pm on 10th August, 1998.

10th August to 12th August

As to the period 10th August to 12th August, 1998 when the police guard was removed, I have no doubt that the applicant was under arrest in its widest sense. He contends that for some five to six hours during the morning of 11th August, 1998, he was actually handcuffed to the bed by a police officer. That is denied by Constable Anand Bahadur under cross-examination.

On the totality of the evidence including cross-examination of Constable Bahadur, I am not satisfied that he was handcuffed. But the placing of the guard was sufficient to convey to the applicant that he was not free to leave the hospital if he wished. Family members who attempted to see him were not permitted to. He was effectively under police restraint. I am fortified in that view by the decision of the Court of Appeal in **Francis Gomez v Attorney General and the Commissioner of Police**, Civil Appeal #71 of 1993. In my judgment therefore,

the applicant was under arrest between 3.00 pm on 10th August to, on or about 9.35 am, 12th August, 1998.

Reasonable and probable cause

The next issue is whether there was reasonable and probable cause for the arrest during that period. The respondent's case on reasonable and probable cause was put in the alternative in the event that I found that there was an arrest. The existence of reasonable and probable cause also would be relevant to the period commencing 4.15 am on 9th August, 1998 to 3.00 pm on 10th August, 1998 in the event that I am wrong as to the arrest of the applicant during that period.

There having been no warrant for the arrest Mr Julien for the respondent relied on section 3(4) of the Criminal Law Act, Chap. 10:04 which provides that a police officer with reasonable cause may arrest without warrant anyone who he suspects to be guilty of an arrestable offence.

In **Holgate-Mohammed v Duke**, 1984 A.C. 437 at 445 Lord Diplock stated:

> ***"My Lords, there is inevitably the potentiality of conflict between the public interest in preserving the liberty of the individual and the public interest in the detection of crime and the bringing to justice of those who commit it. The members of the organised police forces of the country have, since the mid-19th century, been charged with the duty of taking the first steps to promote the latter public interest by inquiring into suspected offences with a view to identifying the perpetrators of them and of obtaining sufficient evidence admissible in a court of law against the persons they suspect of being the perpetrators as would justify charging them with the relevant offence before a magistrates' court with a view to their committal for trial for it.***

> ***The compromise which English common and statutory law has evolved for the accommodation of the two rival public interests while these first steps are being taken by the police in twofold: (1) no person may be arrested without warrant (i.e. without the intervention of a judicial process) unless the constable arresting him has reasonable cause to suspect him to be guilty of an arrestable offence;… (2) a suspect so arrested and detained in custody must be brought before a magistrates court as soon as practicable…."***

The normal approach is to assess the information upon which the arresting officer acted. In this case a series of police guards successively guarded the applicant. The basis upon which they acted was Cpl. Nelson's telephone message which indicated that the applicant was a robbery suspect who was shot and detained at San Fernando General Hospital. The question is whether the information relayed to the San Fernando Police Station from Cpl. Nelson was information upon which the arrest could have been made.

The information was handed down by superior officers to the police guards on duty who in turn briefed their relieving details.

In **O'Hara v Chief Constable of the Royal Uster Constabulary** (1997) AC 286, (1997) 1 All E R 129 it was held that reasonable grounds for suspicion did not have to be based on the officer's own observations but could arise from information he had received even if it was subsequently shown to be false, provided that a reasonable man, having regard to all the surrounding circumstances would regard them as reasonable grounds for suspicion. A mere order by a superior officer would not suffice. Several authorities were considered.

Lord Hope of Craighead who delivered the leading judgment at pg. 299 quoted with approval the speech of Lord Roskill in **Mc Kee v Chief Constable for Northern Ireland** (1984) 1 W L R 1358 at pg 1361-1362 as follows:

> ***"… what matters is the state of mind of the arresting officer and of no one else. That state of mind can legitimately be derived from the instruction given to the arresting officer by his superior officer. The arresting officer is not bound and indeed may well not be entitled to question those instructions or to ask upon what information they are founded."***

Castorina v Chief Constable of Surrey, The Times 15th June, 1988 was another decision considered. In that case Sir Frederick Lawton said:

> ***"Suspicion by itself, however, will not justify an arrest. There must be a factual basis for it of a kind which a court would adjudge to be reasonable. The facts may be within the arresting constable's own knowledge or have been reported to him. When there is an issue in a trial as to whether a constable had reasonable cause, his claim to have had knowledge or to have received reports on which he relied may be challenged. It is within this context that there may be an evidential issue as to what he believed to be the facts, but it will be for the court to adjudge what were the facts which made him suspect that the person he arrested was guilty of the offence which he was investigating."***

The facts upon which the police guards were placed at the applicant's bedside and upon which they would have been briefed were that the applicant was a robbery suspect who had been shot. Further, the person who had shot him was a police officer. Those facts would, in my view, give rise to reasonable suspicion that the applicant was so involved. Investigations were on-going. Corporal Gay's

evidence was that he interviewed several persons who were witnesses to the incident. These statements were handed over to a senior police officer for further investigations. There were conflicting accounts of what actually occurred. Given that there were conflicting eyewitness accounts, it would have been necessary to conduct further investigation into the incident and in such circumstances it was reasonable to place the applicant under police guard until the investigation was complete.

That investigation was completed sometime prior to 9.35 am on 12th August and the guard removed. The removal of the guard without the laying of charges against the applicant did not render the arrest subsequently unreasonable.

I find that there was reasonable and probable cause for the placing of the police guard at the bedside of the applicant during the period 9th August, 1998 to 12th August, 1998.

Right to an attorney

The applicant contends that he was refused an attorney or was not advised of his right to retain and instruct one without delay. No doubt, this complaint is directed to the period during which he was conscious. He also alleges that he was not informed of the reason for his detention.

There is no evidence that the applicant requested an attorney and was refused. The applicant was not told of the reason for the police guard nor was he advised as to his right to retain an attorney but I do not accept that there was any prejudice to the applicant as a result thereof. The applicant's right to an attorney of his choice and his right to retain and instruct one relates to the protection or enforcement of the his rights under section 4 of the Constitution. The presence of an attorney serves to protect against self-incrimination. At the time of his imprisonment the applicant’s mouth was severely injured from the gun shot. His face was heavily bandaged and he was unable to speak. By his own admission he

had to communicate by sign language. During that period no attempt was made to retrieve any information which might have incriminated him in any way. Prior to the placing of the guard, Corporal Gay did attempt to interview him but was unable to because of his bandages.

Further, the applicant's medical condition would also have made it highly unlikely that he could have spoken with his attorney. I can see no prejudice to the applicant and I can find no breach of the applicant's rights.

The applicant's notice of motion is dismissed. I shall make no order as to costs.

NOLAN P.G. BEREAUX
Judge

9th January, 2001