

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2008-01559

BETWEEN

EKULE NELSON

MICHELLE BOREL

CLAIMANTS

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

DEFENDANT

BEFORE THE HONOURABLE MR JUSTICE R. BOODOOSINGH

APPEARANCES:

MR ASAF HOSEIN AND MRS INDRA RAMDIAL FOR THE CLAIMANT

MISS GISELLE JACKMAN AND MISS FLORENCE RAMDIN FOR THE DEFENDANT

Dated: 29 June 2012

REASONS

1. This is a claim for malicious prosecution and false imprisonment. The second claimant gave no evidence. She took no part in the trial. Her claim is dismissed. She must pay the defendant's costs in the sum of \$14,000.

2. At 4:30 am on 30 April 2004, the police went to the first claimant's home. He was there with the second claimant, his girlfriend. His brother David Philbert was also in the house. He and his brother lived there.

3. The police conducted a search. According to the police they found a firearm, gun magazine and ammunition. PC Sifontis gave evidence that he had information concerning David Philbert in relation to a firearm. Having conducted the search, the police found the firearm and other items under the bed of David Philbert.

4. The house is a small house. There are two bedrooms.

5. The police arrested the claimants and David Philbert. All 3 were charged with possession of a firearm and ammunition without a user's licence. The claim against the first claimant was eventually dismissed when the police complainant, PC Sifontis, did not attend court.

6. The first claimant was kept in custody over the weekend. When he appeared before the magistrate he was given bail. He attended court every three months until the matter was dismissed 3 years after.

7. The first issue concerns whether PC Sifontis had reasonable and probable cause to arrest and charge the first claimant.

8. **Section 30 (2)** of the **Firearms Act, Chap. 16:01** states that where a police officer finds a firearm or ammunition on premises, the police officer making the search may arrest without warrant any person found on the premises or in the place whom he has reason to believe to be guilty of an offence.

9. **Section 6 (1)** of the Act provides that a person may only be in possession of firearms and ammunition if he is the holder of a Firearm User's Licence with respect to such firearm or ammunition.

10. **Section 5 (2)** provides that in any prosecution for an offence under Part One or Part Four, a person who is proved to have had in his possession or under his control anything

whatsoever in or on which is found any firearm or ammunition shall, until the contrary is proved, be deemed to have been in possession of such firearm or ammunition.

11. The evidence of PC Sifontis is that he found the firearm under the bed identified as that of David Philbert. This was in a house where to his recollection the rooms were not demarcated by doors but by curtains or “other similar partitions”. This was denied by the first claimant. I accepted Officer Sifontis’ evidence on this point.

12. Now, under section 30 of the Act, the officer may have arrested the first claimant once he had reason to believe him to be guilty of an offence. It is clear that the first claimant was an occupier of the premises. He admitted to paying the bills. He said both he and his brother, David Philbert, lived there. He denied knowing anything about any firearms or ammunition. None was found in his presence. He did, however, say that his brother’s room was not searched in his presence.

13. The case of **Koonjan Ramdass and Carla Ramoutar v Richard Knights** C.A. Mag. 13/2002, a case of drug possession, was cited to me. This case was distinguishable. In that case the defendants were visitors to the premises. They did not live there. They could not be said to be in possession of the premises or occupiers of it.

14. At the stage of an arrest, the officer would have had to satisfy himself that the first claimant was found in premises and he had reason to believe he had committed an offence. The officer said he had found the firearm and ammunition along with other items that seemed strange in relation to the premises in question. He may, in those circumstances, have had reasonable cause to believe the first claimant had committed an offence. I so found.

15. It could not simply be that because the firearm and ammunition was found under David Philbert's bed that this meant that the first claimant may not have been culpable. In cases like this it would be prudent for the officer to conduct further investigations. Where more than one party lives in premises, it may be that one person would admit to the crime. Or there may be strong reasons for believing that it is the property of one of the parties. Cases like these pose serious difficulties for police officers. It does not necessarily follow that because a firearm is found on or under one person's bed that that person is in exclusive possession of it or in control of it or knows of it to the exclusion of all others. In the absence of any other evidence, it may well be that the police officer will have to put the persons likely to have connection with the firearm before the court for the court to decide which if any of the persons are culpable. It may happen, for example, that one person will accept responsibility for the item. This proposition can be tested this way. If a person wants to conceal that they are in possession of an item, all they would need to do is to put it in a place that it appears to

be under the control of someone else. If the only person held is the person with the apparent closest connection to it, this could well lead to the person who is in fact culpable escaping unscathed.

16. In these circumstances, it can be said that the officer had reasonable and probable cause when he laid the charges. This is so given the nature of the premises and that both the first claimant and his brother lived there.

17. There was also nothing on the evidence to suggest that the police officer was actuated by malice. His evidence was straightforward that he found the firearm under the brother's bed; the first claimant denied all knowledge of it; in fact, the officer said the first claimant told him that his brother "did his own thing".

18. Here there was a clear nexus between the first claimant and the premises on which the illegal items were allegedly found. There was also no evidence on his witness statement that the first claimant's brother occupied his room to the exclusion of the first claimant and all others. The police, therefore, could not in those circumstances simply conclude that the brother should be the sole person to be charged for the offence.

19. The law in this area has understandably caused judicial officers considerable difficulty regarding the application of the principles of who is an occupant, who is in possession, and who has custody. In cases where there is reasonable and probable cause, the police will be justified to bring the parties before the courts. Each case has to be examined on its own facts.

20. There was nothing to suggest that the officer acted with malice. Further, on a balance of probabilities I accepted his evidence that he had an honest belief in the guilt of the claimant because of his finding of the illegal items and considering the operation of the provisions of the **Firearms Act**.

21. The officer at that stage was not required to show a prima facie case, but reasonable and probable cause for bringing the charge and an honest belief in the claimant's guilt: see **Glinski v McIver [1962] AC 726**. In circumstances where a sub-machine gun and ammunition was found in a small house and where none of the parties admitted to knowing of it, it was not unreasonable to expect that the occupants of the house would be charged. It could not be that merely because it was found under the bed of one of the persons that that person would be culpable or be solely culpable. In such circumstances, it may be necessary for further investigations or for the court to make a determination based on all of the evidence.

22. This was also a case of inconsistencies in the version of the first claimant. There was no explanation for the failure to bring additional witnesses of the second claimant or his brother. One might reasonably have expected that they would have relevant evidence to give on the matter.

23. It follows from what has been said that the officer was not wrong to detain the first claimant. He was brought to court after the weekend. There was no false imprisonment in these circumstances given the provisions of the Firearms Act and the evidence. No claim was brought and no evidence was led in chief regarding the items the first claimant says were taken from his home.

24. The claim is therefore dismissed. The first claimant must pay the defendant's costs in the sum of \$14,000. I am grateful to the attorneys for their submissions in this matter.

Ronnie Boodoosingh

Judge