

PTHE REPUBLIC TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

BETWEEN

CV 2008-03079

DWAIN KIRBY HENRY

Claimant

AND

P.C. RAGOOBAR #15704

P.C. SPRING # 16663

P.C. LINCOLN # 16911

ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendants

Before The Hon. Madam Justice C. Gobin

Appearances:

**Mr. A. Pierre instructed by Mr. V. Primus
for the Claimant**

**Ms. J. Baptiste instructed by Ms. D. Jean-Baptiste
for the Defendants**

JUDGMENT

Background

1. The following facts which are not seriously in dispute provide a sufficient background to this case:

- (i) On Saturday 18th August 2007 the claimant and several other young men were “liming” (the word used by at least three police witnesses) in the vicinity of Mendoza Street, Matura Village, Matura.
- (ii) The officers, who were all attached to the Sangre Grande Police Station, had been on an assignment in the area. They had been called out to assist their colleagues from the Matura Police Station following a report of an armed robbery there.

- (iii) On their way back from the scene at Mathura, the police came upon the group of persons which included the claimant. The young men were not suspects in the robbery. They were just liming.
- (iv) The officers stopped, had some interaction with the group of men, as a result of which the claimant was arrested and taken to the Sangre Grande Police Station. During the encounter, the claimant suffered personal injury and was taken to the Sangre Grande Hospital by police officers. A medical report from that institution recorded “swelling on right side of face over the right eye and bruise around the left ear”.
- (v) The claimant’s father is Sargeant of Police, Augustine. He turned up at the station at some point while the claimant was detained there.
- (vi) The claimant was released from the police station a few hours later without being charged. He visited the Arima Hospital where he was seen at the casualty department and the following injuries were recorded –
 - (a) Left ear laceration with bleeding.
 - (b) Right occipital area swelling and tenderness.
 - (c) Right forearm abrasions and bleeding.
- (vii) Before his release from the police station the claimant signed a statement which was written in the hand of one of the officers.

2. Then, there are two conflicting accounts of what happened at the scene and how the claimant came to sustain his injuries.

The claimant's version of the encounter

3. The claimant maintained that the police officers alighted from a vehicle, approached the group of young men, someone called out generally to their group, "what is your name?", "where do you live?", and that he never understood these questions to have been directed to him. When he heard the questions repeated in a firmer tone, he looked around and realized that they had been addressed to him. Sgt. Joseph told him he could "get lock-up for not answering the police". Before he had the time to respond, P.C. Ragoobar tapped him "real hard behind his head" grabbed on to his hand and attempted to put handcuffs on him. The claimant said he pulled away because he had done nothing wrong and there followed a vicious attack by the three police defendants. The handcuffs were too close, they caused bruising. He was then thrown into the police vehicle and P.C. Ragoobar continued hitting him about the head with a hard object.

4. He was taken to the Sangre Grande Police Station, the Sangre Grande Hospital, and upon his return to the station he was asked to sign a document admitting the entire incident was his fault. This he did out of fear and because he just wanted to get out. He was subsequently released at about 5:45a.m. He then went on his own to the Arima Hospital where he was examined once again.

5. The claimant's evidence in relation to the events up to the time the officers drove off with him was supported by his cousin Kevin Celestine who was one of the group of persons liming. The witness explained that they (i.e. the group of persons) had earlier on attended the claimant's mother's birthday party at a home nearby. They had left the party and moved to lime on the roadside.

The defendants' version

6. All the defendants and Inspector Joseph, (who was at the time in charge it seems), gave a different account of their encounter with the claimant. They claimed that earlier on before the incident they had passed the group of men on the roadway, at Mendoza Street, identified themselves and enquired as to the reason for their being there at that time of the morning. They told the group they were investigating a report of robbery. There was no proper response from the men and they left.

7. On their way back they saw the same group in the road under a tree. Again they stopped, identified themselves and different officers approached individual men of this group (now numbering about 10) asking for their names and addresses. Sgt. Joseph approached the claimant who responded "I doh have to give you my name, I ent do nothing". P.C. Ragoobar intervened and told him that if he failed to give a proper account of himself it would amount to the offence of loitering. P.C. Ragoobar repeated the

enquiry, the claimant refused to answer, the officer then attempted to arrest the claimant, he resisted and there was a skuffle during which the claimant fell to the ground. The other officers came to P.C. Ragoobar's assistance. They took him to the vehicle, the other young men converged on the vehicle shouting "leave him alone" "you can't lock him up". Fearing for their safety the officers retreated and left for the Sangre Grande Police Station.

8. The claimant was arrested because he was loitering and refused to give his name and address. At the station for the first time the claimant volunteered the information. He indicated he was an applicant to the police service and his father was one Sgt. Augustine. He apologized for his conduct. He was asked if he wanted medical attention for the "scratch" over his left ear, the only visible injury. The claimant was not too interested, but Sgt. Joseph insisted that he be taken to the Sangre Grande Hospital. He was so taken and he received attention.

9. When they returned to the station, the claimant's father was there and asked to speak with Sgt. Joseph. The latter told the father of his son's unbecoming conduct and the father promised to speak with him. The claimant later apologized once more. He was asked if he wanted to give a statement, he agreed and dictated a statement which was recorded by P.C. Spring. The claimant was subsequently warned and released without charge at about 3:30 a.m. They decided to give him a chance.

The Issues

10. On the facts including those in dispute, the issues for determination were:

- (1) Whether the claimant was loitering within the definition of S.36 (1) (e) of the Police Service Act Ch.15:01. (Revised by the Police Service Act 2006 – S 46 (c)).
- (2) If he was, did he fail to give a proper account of himself or was he not given an opportunity to give an account of himself to the police.
- (3) If the police were justified in arresting the claimant in any case, did he sustain the injuries in the circumstances as he described or as described by the defendants.
- (4) The extent of the injuries sustained.
- (5) The number of hours of the claimant's detention and the circumstances of his release including whether he signed the statement with the apology and his admission of bad behaviour voluntarily.
- (6) The quantum of damages if the claimant is entitled to same.

Liming/Loitering

11. The resolution of the first issue will be determinative of several of the others. The defendants said that the claimant and the others in his group were "liming". Their case seems to be that by liming at that time of the morning, that is by simply being on the road and hanging out these persons were committing the offence of loitering and were bound to give an account

of themselves. It is therefore necessary for me to consider whether the liming amounted to loitering.

12. As far as I am aware, the words “liming” and “lime” are uniquely and proudly Trinidadian. In any gathering whether of Caribbean people or others from outside the region, the use of this expression readily distinguishes the Trinidadian from the rest. The recently published Dictionary of Caribbean English Usage (Richard Allsopp Oxford University Press) defines “liming” as “The habit or action of intentional idling in a public place and “a lime” as “an unorganized social gathering (usually of young people) to pass the time away in chat and banter”. In our own Trinidad and Tobago Dictionary Cote ci, Cote la, it is defined as an act “to hang out in public with one’s friends”.

13. I am clear in my mind that what the defendants and Sgt. Joseph saw the claimant and the other young men doing was no more than liming as contemplated above. In fact, in their answers to me the police officers agreed that liming was socializing, hanging out. They accepted too that there was nothing illegal about young men “liming”. The officers confirmed too that the men were never suspects in the robbery investigation. Indeed, they said they were concerned to warn them of the robbery, “for their own safety and protection”. The behaviour of the claimant’s group did not arouse any suspicion at all. Their activities presented no threat to

public order. It was never suggested that they were in any way disturbing the peace or even obstructing the roadway.

14. So the question is why then did things end up the way they did at Mendoza Street that morning. The defence as pleaded, I think, gave a good indication of what misguided the actions of the officers. Paragraph (4) set out the following:

- (a) While driving along Mendoza Street, the said officers observed a group of men standing on the roadway and under a tree near the roadway.
- (b) The said officers stopped and indentified themselves to the group of men by means of their Trinidad and Tobago Police Identification card. The said officers informed them that they were loitering, that it was unsafe and that a robbery had occurred in the area sometime before.
- (c) The group of men who were liming and drinking beers, made responses such as “yeah” and “whatever boss” and the said officers continued on their patrol in search for the robbery suspects.
- (d) Approximately half an hour later, the said officers returned and saw the same group of men liming. The said officers stopped and again identified themselves to the group of men by means of their Trinidad and Tobago Identification Card and asked them for their names and addresses.
- (e) The claimant was informed that it is an offence to refuse to give his name and address to the police and that he was loitering which is also an offence.

15. Then these statements in the evidence of Sgt. Joseph threw further light on the matter.

“On our way back to the Sangre Grande Police Station and still patrolling the Matura Area in relation to the report of robbery we again passes by Mendoza Road where I saw the group of men liming in the road under a tree. We again stopped the said police vehicle, identified ourselves by our Police Identification Cards and then set about asking the group of men for their names and addresses and warned them that they were loitering. The group of men had grown to about ten (10) in number and I observed that the men were drinking alcoholic beverages as I observed bottles of scotch and chaser on the ground. While the other officers approached other persons in the group I approached a man who I now know to be the claimant herein. I asked him for his name and address. When the claimant was asked his name he refused, and he began to walk away saying “I doh have to give you my name, I ent do anything”.

“At that time P.C. Ragoobar approached the claimant and told him that if he failed to give a proper account of himself that would amount to the offence of loitering. If a person is found in a public place between the hours of 8:00p.m. and 5:00a.m. and refuses to give a proper account of himself, it constitutes an offence of loitering”. (para (5) and (6) witness statement of Sgt. Joseph)

16. It seems clear that the officers believed that liming and loitering are one and the same thing. In other words that if you are liming between 8:00p.m. and 5:00a.m. you are loitering and have to account. This misunderstanding of the law was perhaps what prompted the police action. But a misunderstanding it was. In approaching the group, the police were

purporting to act on their authority under S.36 (1) (e) of the Police Service Act Ch. 15:01 which provided:

36 (1) Any police officer may arrest without a warrant.

(e) Any person whom he finds lying or loitering in any highway, yard, or other place between the hours of eight o'clock in the evening and five o'clock in the morning and not giving a satisfactory account of himself.

Under the revised Act of 2006 S 46 (1) he may arrest without a warrant

(e) A person whom he finds lying or loitering in any public or private place or building and who does not give a satisfactory account of himself

The stipulation as to time is omitted but nothing turns on this.

17. On the defendants' case, there was no justification for a finding or even a suspicion of loitering on the part of the claimant. The gathering of the young men for the purpose of socializing and hanging out was not loitering for the purposes of the section above. I have derived much assistance in coming to this conclusion from the judgment of Lord Keith of Kinkel in the case of **Attorney General of Hong Kong and Sham Chuen 1986 1 AC 887**. In that decision of the Privy Council, the court was called to consider the offence of loitering in a similar provision under the Hong Kong Crimes Ordinance. The following paragraph is instructive (pg. 896 letter c – e and pg. 897 A).

*In their Lordships' opinion subsection (1) is also concerned with loitering of a particular character, namely loitering which calls for a satisfactory account of the loiterer and a satisfactory explanation for his presence. Obviously a person may loiter for a great variety of reasons, some entirely innocent and others not so. It would be unreasonable to construe the subsection to the effect that there might be subjected to questioning persons loitering for plainly inoffensive purposes, such as a tourist admiring the surrounding architecture. The subsection impliedly authorizes the putting of questions to the loiterer, whether by a police officer or by any ordinary citizen. **The putting of questions is intrusive, and the legislation cannot be taken to have contemplated that this would be done in the absence of some circumstances which make it appropriate in the interests of public order. So their Lordships conclude that the loitering aimed at by the subsection is loitering in circumstances which reasonably suggest that its purpose is other than innocent.** (emphasis mine)*

As the first ingredient of the offence is loitering under suspicious circumstances, the police officer at the trial of the alleged offence must necessarily give evidence as to what these suspicious circumstances were, and it would plainly be prejudicial to the accused if he had not been invited, before his apprehension, to explain satisfactorily these suspicious circumstances.

18. Counsel for the claimant Mr. Pierre, has also referred to the case of **Eversley v Burrough 1966 10 WIR 134** in which Wooding C.J. considered the definition of loitering albeit under the Summary Offences Ordinance Ch.4 No.17. At p.136 G - H the learned C.J. said –

But perhaps the most apposite definition which we have seen so far is the one from Australia in Wilson v O'Sullivan ([1962] S.A.S.R. 194) where Travers, J., said at p. 199 that:

“‘loiter’ in the Police Offences Act meant ‘to remain in a restricted but not necessarily defined area without any apparent or legitimate reason’”.

That is the definition which we think ought to be applied to this kind of offence, and when I say ‘this kind of offence’ I have in mind what was said about the word having to be interpreted according to the subject to which it is applied. In the view of this court, “loitering’ in a case such as this means remaining in or hanging around a restricted but not necessarily defined area without any apparent or legitimate reason. (emphasis mine)

19. These cases confirm that the act of ‘loitering’ involves the offender having a purpose that is other than innocent or legitimate. On the facts here there was not even a suspicion of an illegal purpose. But liming in our culture requires no explanation or apparent reason. By definition it is an activity which involves idling, socializing, chatting and bantering for recreational purposes. If the police officers recognized that the claimant and his friends were liming, that to my mind ruled out the requirement for any explanation as to why they were there. They had a right if they wished to be there to do just that, to lime. Liming is not the same as loitering. My appreciation for our Trinidadian culture and our language precludes me from coming to any other conclusion.

20. In the light of my findings on this aspect of the matter the actions of the police raise another issue. Their warnings of loitering offences and their demands for an account of themselves by the persons there in the absence of

any cause, all constituted an unwarranted intrusion on the activities of the group. Their aim was clearly to put an end to the lime. But the claimant's right to personal liberty and freedom of movement entitled him to be there if he wished, so long as he broke no law. Viewed in the context of our Constitutional guarantees, the actions of the defendants may be considered not simply unjustifiable but positively intrusive and offensive.

21. On this aspect of the matter I have considered from the judgment of George J.A. of the Court of Appeal in Guyana in the case of *Ransom v Barker (1982) 33 WIR 183*. In that case, the plaintiff and two other persons were discussing the conduct of the police while his car was parked on a public roadway. Officers approached the claimant, asked for the reason for his presence there, held on to him digging into his arm and eventually caused him, albeit reluctantly, to leave the scene. On the facts the learned judge found that the actions of the police were unlawful. George J.A. then went on to say at pg. 205 para. (e) –

“Personal liberty has been stated by Blackstone in his Commentaries on the Laws of England to –

“include the power of locomotion, of changing situation, or removing one's person to whatever place one's inclination may direct without imprisonment or restraint, unless by due process of law”.

In this regard, I would construe the right of locomotion to include the right to tarry on the highway for a reasonable time. And in his work on Constitutional Law (9th Edn), Dicey described the right as “the right not to be subjected to imprisonment arrest or other physical coercion in any

manner that does not admit of legal justification”. In other words, the concept contemplates not only the freedom of movement but also the inviolability of the person against all unjustifiable acts of trespass: “It is the antithesis of physical restraint or coercion”. Accordingly, the acts of the police in taking hold of the appellant’s arm as well as the other acts against his person, all done in the apparent pursuit of the general instructions given to them before they left their Brickdam headquarters, and in the presence of senior members of the force, amounted to a deprivation without just cause of the appellant’s right to his personal liberty as guaranteed by article 5 of the Constitution. They were all done in an effort to coerce him to remove from the spot where he and his companions had chosen to stand, but without lawful cause or excuse”.

22. In this case the police simply sought to break up the “lime” by a misinformed threat of a loitering charge. The claimant had a right to be there to enjoy his lime. The attempt to handcuff the claimant and to arrest him for liming was unlawful. There was no justification for the actions of the police officers. As in the Ransom case above, their actions resulted in a deprivation of the claimant’s right to personal liberty and to freedom of movement. There was no question of his having to give an account of himself since he was not loitering. His failure to do so then as alleged, could not justify the arrest by the defendants. His arrest was unlawful. This is not to say I believe the defendant’s version of the encounter. It simply makes it unnecessary for me to determine several other factual issues.

The Assault

23. I turn to the issue of the assault. On this I prefer the claimant’s evidence to that of the defendants. The injuries reflected on both medical

certificates are more consistent with the account of the claimant. I do not believe they were sustained in a skuffle and a fall to the ground as the defendants alleged. The head injury and the bleeding ear is consistent with the claimant having been hit on the head with an object like a gun. The description of his injuries by Sgt. Joseph as “a scratch” did not help the defendants’ credibility. The claimant alleged that he sustained even more injuries. Although this is not supported by the medical reports which were produced, I accept his evidence. The fact that the contents of two medical reports from two separate public health facilities produced within a space of hours could be so different confirms that these reports may sometimes not be as reliable or as comprehensive as they ought to be. I accept that the claimant received the blows as described. If he missed pointing out to the examining doctors some areas of his body where he allegedly received blows to the examining doctors, that is perhaps understandable given the ordeal he had experienced and his anxiety to go home.

24. The other item of suspicion which persuaded me that the claimant did not fall in the circumstances as alleged by the defendants was the obvious insertion of the word “falling” in the statement which was written by PC Spring. This I find to have been an after thought, inserted by the writer in a weak attempt to explain the claimant’s injuries.

25. In any event, even if the claimant resisted when the attempt to arrest him was made, he was entitled so to do. It was an unlawful arrest and the claimant was within his right. There was therefore no question of the defendant's right to subdue him. On the whole I prefer the evidence of the claimant and his witness. In particular, the attempt by the defendants in their evidence to introduce some element of fear for their own safety and a hasty retreat when they arrested the claimant did not impress me. These were all armed officers who had been called out to assist the Matura Police in relation to a report of armed robbery. That ten unarmed limers caused them to fear for their safety, especially when they themselves were originally concerned for the safety of the group was a shift which further weakened their credibility. If the limers were shouting "you can't lock him up" and "leave him alone", it was probably in response to the unwarranted and unjustifiable attack on the claimant.

Damages

26. I have considered the submissions on damages and award the claimant damages for assault and battery in the sum of \$35,000.00. Damages for four hours unlawful detention \$16,000.00 and aggravated damages in the sum of \$20,000.00, a total of \$71,000.00 with interest at the rate of 6% from 19th February 2010 to payment.

27. The defendants shall pay the claimant's prescribed costs of this action in the sum of \$18,200.00.

Dated this 18th day of February 2010

CAROL GOBIN

JUDGE