

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2009-01530  
(Formerly H.C.A. S1554 of 2004)

BETWEEN

MAURICE KOON KOON

Claimant

AND

THE ATTORNEY GENERAL OF  
TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice Vasheist Kokaram

Appearances:

Mr. E. Roopnarine instructed by Mr. T. Dassyne for the Claimant  
Mr. K. Douglas instructed by Mr. Smart for the Defendant

## **JUDGMENT**

### **Introduction**

1. This is a claim for damages for false imprisonment and trespass to property for the unlawful detention of motor vehicle PCE 8347 (“the Claimant’s motor vehicle”). The claim arises out of a very simple set of facts.

2. On 6<sup>th</sup> January 2009 at around 7:00 pm the Claimant was at Ralph's Garage in Cunupia. The premises were owned by Riaz Mohammed. The Claimant's motor vehicle was being serviced at that time at the garage. While he was there a party of police officers entered the premises led by Sergeant Derek Stewart to execute a search warrant for firearms and ammunition. They questioned the persons in the garage including the Claimant. Sergeant Stewart observed a silver lancer motor vehicle with parts cut out of it and that the firewall and chassis number was missing ("the tampered vehicle"). At that time there was also a large police exercise in the central division involving several vehicles suspected of being stolen or fraudulently obtained. Sergeant Stewart became suspicious and continued his search. He also noted the Claimant's vehicle and something aroused his suspicion. The Claimant was questioned by Sergeant Stewart about the ownership of the vehicle however the Claimant did not have his documents of ownership for the vehicle. He explained to the officers that his documentation were at his home.
3. The Claimant was previously charged with larceny of a motor vehicle although he was never convicted. An Inspector Boxhill later arrived at the scene at around 2:30 pm. The Claimant and the Claimant's vehicle was then transported and detained at the Central Police Station at around 3:25 am on 7<sup>th</sup> January 2009.
4. On 8<sup>th</sup> January 2009 the Claimant was released after the relevant documentation was produced to the police officers by the Claimant's wife and after securing a written statement from the Claimant. The Claimant's vehicle however had been submitted for further forensic investigation. This was also eventually returned to the custody of the Claimant on 26<sup>th</sup> February 2009. The forensic report revealed that the Claimant's vehicle was not tampered with. No charges were laid against the Claimant.
5. It is common ground in this case that the Claimant was imprisoned by Sergeant Stewart.<sup>1</sup> The sole issue for determination, on the issue of liability, is whether there

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<sup>1</sup> Paragraph 4 of the Defendant's written submissions and cross examination of the Claimant.

was lawful authority to justify the Claimant's imprisonment, whether Sergeant Stewart or Inspector Boxhill had any reasonable or probable cause to arrest the Claimant.

### **Reasonable and probable cause**

7. Section 3 (4) of the Criminal Law Act provides the power to arrest without a warrant:

“Where a police officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence.”

8. Similarly in section 35(b) of the Police Service Act Chapter 51:01 a police officer has the power to apprehend and bring before Justices “persons found committing any offence rendering them liable to arrest without a warrant or whom they may “reasonably suspect of having committed any such offence.”

9. Accordingly, before a Police Officer can lawfully arrest someone without a warrant: (1) he must have reasonable cause to suspect that an arrestable offence has been committed and, (2) he must have reasonable cause to suspect that the person to be arrested is guilty of the offence or (3) he must have reasonable suspicion that the person has committed an offence.

10. The test of reasonable and probable cause has both subjective and objective elements<sup>2</sup>. In *Harold Barco v the Attorney General*<sup>3</sup> Mendonca J (as he then was) referred to the test to determine reasonable and probable cause as follows:

(a) did the officer honestly have the requisite suspicion or belief?

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<sup>2</sup> The objective test was stated by Dip lock LJ in *Allison v Caffrey* [1997] 3 AER p 619

<sup>3</sup> HCA 1388 of 1989

- (b) did the officer when exercising the power honestly believe in the existence of the “objective” circumstances which he now relies on as the basis for that suspicion or belief?
- (c) Was his belief in the existence of these circumstances based on reasonable grounds?
- (d) Did these circumstances constitute reasonable grounds for the requisite suspicion or belief?
11. 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*<sup>4</sup> 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 the person whose arrest is contemplated committed it or was a party to its commission?
12. At the same time however it is the duty of the police officer to avoid mistaking the innocent for the guilty. Where there is no danger of escape by the suspect or some other reason which will justify swift action, they should make reasonable enquiries and act on the assumption that their prima face suspicion is ill advised.<sup>5</sup>

**The evidence:**

13. The Claimant alone gave evidence in support of his claim. The Defendant led evidence through Sergeant Stewart and Inspector Boxhill. There was agreement by the parties to a bundle of documents comprising:

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<sup>4</sup> [1965]8 W.I.R 177

<sup>5</sup> See in *Dumbell v. Roberts* [1944] 1 All E.R. 326 Scott L.J  
Page 8 of 10

- Search warrant dated 6<sup>th</sup> January 2009
- Forensic Certificate of Analysis dated March 12<sup>th</sup> 2009
- Central Police Station Prisoner Register extract dated January 8 2009
- Claimant's invoices and pictures of his vehicle

14. The Claimant: The Claimant's evidence was uncomplicated. At no time was he given a reason for his arrest. He was detained at Ralph's Garage from 7:00 pm on 6<sup>th</sup> January 2009 until 3:00 am when Inspector Boxhill arrived. The Claimant explained to the officers that his documentation to prove ownership were at his home. However they still proceeded to take him to the Central Police Station where he was further detained until the following day. At the police station he was placed in a cell which he described as filthy. He explained that his incarceration was embarrassing. He spoke to his lawyer on 7<sup>th</sup> January 2009 and at 11:00 am Inspector Boxhill told him to give a written statement as to how he came in possession of ownership of the vehicle. After doing this he was released at around 12:00 noon on 8<sup>th</sup> January 2009. He made numerous phone calls subsequently for the release of his vehicle. The Claimant's vehicle was eventually released on 26<sup>th</sup> February 2009. On inspection he found the four door handles beginning to rust and the tyres became dry rotted. The Claimant stated that the police had no good reason to arrest him as he could have provided them with all his documents had he been given a chance to do so. Even after he gave them the documents he was still kept in custody.
15. The Claimant remained unshaken under cross examination. He gave clear admissions and explanations. He admitted that he was previously charged for larceny but was never convicted. The first time he saw Inspector Boxhill was at the premises. His explanation of the circumstances in which his vehicle was at Ralph's garage was credible and consistent. He explained that there was a problem with the vehicle's braking system. The vehicle was wrecked and dropped off at the garage

while he got a drop from one of his workers at the garage. His intention was to check on the vehicle and to find out whether the problem could have been fixed. The Claimant admitted that the vehicle had no insurance and therefore could not have been driven on the road. He explained that he had the relevant documentation to prove his ownership of the vehicle which was a receipt, the transfer form, a photograph and two forms of identification. He denied that Inspector Boxhill told him that he had charges for larceny or that Inspector Boxhill said that he knew the Claimant. He explained that the conversation was limited to questions surrounding the documentation of the vehicle and the Claimant's explanation that the documentation was at home. He offered to carry the officer to his home to get the documents. However they refused. He was not told that he would be interviewed or that he would be interviewed by someone from the stolen vehicle department. His statement given to Inspector Boxhill at the station was done after Inspector Boxhill informed him that he obtained the relevant documents from the Claimant's wife.

16. The Defendant: The Defendant's witnesses however contradicted one another. Under cross examination Sergeant Stewart appeared not to be convinced that he had any good reason to arrest the Claimant. He shifted that responsibility unto Inspector Boxhill. Inspector Boxhill himself proved to be a poor witness under cross examination as critical aspects of his conversation with the Claimant contradicted his evidence in chief. I found the overall testimony of both of these officers unreliable and lacking of the type of evidence that will fortify a view that there was reasonable and probable cause to arrest the Claimant.
17. Sergeant Stewart testified that on 6<sup>th</sup> January 2009 he took out the search warrant for firearms and ammunition to search the home of Riaz Mohamed. At 6:30 pm he arrived with other officers at the premises and identified himself to Riaz Mohammed. The premises was searched and he observed the tampered vehicle as well as the Claimant's vehicle. He became suspicious and made checks on the other vehicles on the compound. In relation to the Claimant he questioned the Claimant

about his documents for the vehicle. He said that the Claimant told him that he was previously charged for larceny of a motor vehicle. Sergeant Stewart explained that due to the poor light he was unable to determine if the vehicle was tampered with and therefore he seized the Claimant's vehicle. The vehicle was transported to the VMCOTT compound IATF base Betham Estate and the Claimant was taken to the central police station.

18. Notably absent in this officer's evidence in chief was any explanation given to the Claimant as to the reason for his arrest or detention. There was no explanation given to the Claimant by Sergeant Stewart why his presence in the police station was necessary. There is also no clear statement by Sergeant Stewart as to the reason why he believed it was necessary to detain and arrest the Claimant. The Court is left to surmise that the basis of the Claimant's detention and arrest was (a) that the Claimant did not have his documentation to prove ownership for his vehicle with him on his person although those documents existed and were available for production and/or (b) the officer was unable to determine whether the Claimant's vehicle was tampered with. He does not say whether the Claimant's admission that he was previously charged for larceny operated on his mind at all to justify his arrest. Under cross examination it became evident that this admission simply did not inform his judgment at all to justify the arrest of the Claimant.
19. Under cross examination, the very first question asked of Sergeant Stewart was "did you know as far as you know that he (the Claimant) was charged for any offence whatsoever?" The answer was a simple "no". Whether or not the Claimant was charged previously for the offence of larceny of a motor vehicle was simply not a reason for this officer's arrest of the Claimant.
20. During the course of his cross examination it appeared that Sergeant Stewart had no reason to arrest the Claimant at all, or that if he had a reason, he himself was not convinced that it was a good reason. He admitted that his enquiries revealed that

the Claimant's reason for bring the vehicle to the garage was true. He admitted that he received an explanation from the Claimant that his documentation of ownership was at home. Sergeant Stewart admitted that he is now satisfied that the Claimant is the owner of the vehicle. He simply states that the Claimant was detained at the garage because "the exercise" was not yet completed.

21. It appeared from his testimony that Sergeant Stewart was not even prepared to seize the Claimant's vehicle. He stated quite clearly that he only had the intention of using only one wrecker (for the "tampered vehicle"). He had made the request for only one wrecker and this was to be used to seize Mr. Mohammed's vehicle:

*"Q: So now did you know him (the Claimant) before? A: No sir.*

*Q: So having regard to his answers ...you don't know you phone someone you were determined to move two vehicles? A: No I was determined to move one vehicle, the wing road.*

*Q: Now at the time that you were talking to him and before 12 midnight did it occur in your mid that you were going to remove the vehicle? A: No sir.*

*Q: Did it occur in your mind that you were going to detain him? A: No sir.*

*Q: Did you ask senior officer Boxhill to bring two wreckers? A: Only one wrecker.*

*Q: At that stage you had intention to move one vehicle? A: Yes.*

*Q: Not his vehicle? A: Not at that time.*

*Q: You asked your senior officer to bring a wrecker to move the vehicle? A: Yes.*

*Q: And the vehicle is another one not his? A: Yes sir."*

22. However Sergeant Stewart's apparent lack of interest in the Claimant changed after he spoke to Inspector Boxhill who came on the scene around 2:00 am. He states under cross examination:



Q: You phoned Boxhill to a bring wrecker? So Boxhill come after 2:00 am?

Q: So senior officer come and you spoke to him first? A: Yes.

Q: What happened after you spoke to the officer in relation to Koon Koon?

A: He says he knows Mr Koon Koon. Mr. Koon Koon and Boxhill had a conversation. He said "I know you and you also know me and I know you are involved in car stealing". Mr. Koon Koon said "yes I was previously involved in that kind of activity." Mr. Boxhill then checked the particulars and asks "why don't you have it previously. He asks the same question why he did not have certificate of insurance. He said he does not have it.

Q: He said why he did not have it? A: He said he have it home....

Q: Is it at that stage you decide to send him down to the cell? A: I had a conversation with my inspector, Mr. Boxhill.

Q: Is it at that stage you decide to send him down to the cell? A: Yes sir.

23. I formed the impression that Sergeant Stewart under cross examination was not interested in justifying his reason for the detention of the Claimant based on his own knowledge. He was content to demonstrate that he was influenced in this decision to detain the Claimant by Inspector Boxhill. Curiously there is no mention of any conversation with Inspector Boxhill in Sergeants Stewart's evidence in chief. As the case unfolded therefore and as Sergeant Stewart sought to shift responsibility for the detention of the Claimant unto Inspector Boxhill, Inspector Boxhill's testimony became critical to determining whether there was lawful justification for the detention of the Claimant.
24. Inspector Boxhill: It is evident from reading Inspector Boxhill's witness statement that he was not the arresting officer. Further he took no part in the arrest and detention of the Claimant. He contradicts Sergeant Stewart's testimony when he stated both in his evidence in chief and under cross emanation that it was Sergeant Stewart who requested two wreckers. Critically Inspector Boxhill stated that when he arrived, Sergeant Stewart had already seized the Claimant's vehicle and he needed transport to remove it. This was certainly not what Sergeant Stewart said in

his cross examination and gives the lie to the suggestion that Sergeant Stewart was acting on orders in the seizure of the Claimant's vehicle or in sending him to the Central Police Station.

25. There was passing reference to the Claimant's previous charges of larceny in Sergeant's Stewart's evidence in chief which was undermined in his very first answer in cross examination. Similarly there is passing mention of the Claimant's previous charges of larceny by Inspector Boxhill in his evidence in chief. Further in his evidence in chief Inspector Boxhill did not say that he had any conversation with the Claimant about these charges. It was Sergeant Stewart who under cross examination volunteered that Inspector Boxhill specifically raised these previous charges with the Claimant at the premises. However the following exchange in cross examination undermines the Defendant's ability to rely on the Claimant's previous charges as a reason to justify the Claimant's detention:

“Q: Did you ask him how he got in possession of that car? A: No I did not ask him in that way. I asked him if he is the owner of the car and he say he purchase the car.

Q: Was there any further conversation? A: I requested documents from him. He responded he had no documents on him with respect to the car. He indicated the car was in an accident and he had to collect it that night words to that effect....Yes previously he said it was in an accident and he come to collect it....That was not the only thing ...I can't recall the exact sequence of the conversation but he said he did not have the documents and he drew to my attention that the doors and fenders did not line up properly as a result of an accident.

Q: Any further part of the conversation? He told me a few other things I cannot now recall.

Q: Anything you wish to tell us about this conversation which you cannot now recall? A: No sir.

Q: Did you arrest him? A: I did not.”

26. The cross examination of Inspector Boxhill was also remarkable for the lack of knowledge displayed by this witness of the chronology of events or the details of the detention of the Claimant. Defendant’s attorney at law in his re-examination of Inspector Boxhill made a vain attempt to have this witness draw a connection between the Claimant and Inspector Boxhill through the previous charges laid by him against the Claimant, however his witness disappointed him:

*“Q: How you know him? A: I have interfaced with him previously when I was at the stolen vehicles section back in the 1980 I conversed with him and I went to his home where he lived and operated a garage and I recall an occasion when his brother was shot and killed and he spoke to me relative to that incident.”*

This response demonstrated once again the lack of significance in this alleged “history” of charges for larceny against the Claimant as a reason to detain the Claimant.

27. Also of significance was the absence of any explanation in the station diary for the detention of the Claimant. The station diary extract described the Claimant as “prisoner” and at 3:25 am he arrived with Corporal Ali “for safe keeping” In the prisoner’s register the offence is recorded as “Enquiry re stolen vehicle”.

**Submissions of the Parties:**

28. In summary the Claimant submitted that Sergeant Stewart did not have reasonable cause to suspect the Claimant for the larceny of the motor vehicle as he was given

an adequate explanation for the missing documentation. The Claimant although previously charged with larceny was never convicted.

29. The Defendant's submissions can be summarized as follows:

- What is material is that which was in the mind of the arresting officer Sergeant Stewart at the time of the arrest.
- Sergeant Stewart exercised the authority given to him under section 35(b) of the Police Service Act.
- The fact that the Claimant was known to the police and had several charges to answer concerning the larceny of motor cars was also a compelling factor.
- There is no evidence of bad faith or dishonesty on the part of the police officers
- The Claimant is deceptive with the Court with regard to his past interaction with Inspector Boxhill
- The Defendant relies on the authority of *Mc Ardle v Egan and others*<sup>6</sup> and "*Civil Actions against Police*" Richard Clayton, to support the submission that a police officer can rely on a suspect's criminal record or association as constituting reasonable grounds. It is noted however that those authorities refer to previous convictions and not charges. There are no previous convictions of the Claimant for larceny in this case.
- There were reasonable grounds for believing that the vehicle was stolen and therefore was justified in seizing the vehicle.
- The detention of both the Claimant and the vehicle was for a period that was no longer than was necessary to conduct enquiries.

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<sup>6</sup> [1933] AER 611

## Analysis

30. From the review of the evidence above, I am of the view that the arresting officer Sergeant Stewart did not have reasonable and probable cause either to arrest and detain the Claimant or to seize the Claimant's vehicle. Both witnesses for the Defendant contradicted one another. They sought to pass responsibility on to one another to justify the arrest. Sergeant Stewart had no reason to suspect the Claimant as having committed an offence nor that he needed the Claimant's vehicle to be seized until Inspector Boxhill arrived. According to Inspector Boxhill however when he arrived Sergeant Stewart had already seized the vehicle and the Claimant and it was Sergeant Stewart who had made the request for the second wrecker for the Claimant's vehicle.
  
31. Insofar as previous charges were concerned, there were no previous convictions of the Claimant. I am satisfied based upon the answers given by the Defendant's witnesses under cross examination that the previous charges played no factor in his detention. According to Sergeant Stewart it was only when Inspector Boxhill arrived did he relate to the Claimant that he knew about his previous charges. As far as Sergeant Stewart was concerned however, he simply did not know if the Claimant was charged previously with larceny of a motor vehicle. However Inspector Boxhill when asked to tell the Court what conversation he had with the Claimant made absolutely no mention of this alleged conversation concerning the Claimant's previous charges.
  
32. Officer Stewart was satisfied that the Claimant's vehicle had a mechanical defect in that the brakes were not working. The lighting at the garage was according to him sufficient for him to review documents and they had with them flashlights. There was no evidence of tampering with the Claimant's vehicle and there was nothing in Sergeants Stewart's testimony which would support a reasonable suspicion that the vehicle was stolen.

33. It would be wrong therefore in light of this highly unsatisfactory state of the Defendant' evidence to hold that the Defendant has demonstrated that the arresting officer held any honest suspicion or belief or that there was any objective criteria upon which Sergeant Stewart relied to arrest the Claimant.
34. The Defendant's witnesses contradicted one another and there was no reliable evidence on which I could hold that there was lawful justification or reasonable and probable cause to arrest the Claimant. The Defendant's evidence in my view simply amounted to bureaucratic bungling and an inability to accept responsibility for the detention of the Claimant.
35. Having considered the documentation, the testimony of the Claimant and the Defendant, I conclude that the Claimant was falsely imprisoned by the Defendant.

**Damages:**

36. The Claimant was detained together with the other persons at the garage from around 7:00 pm when Sergeant Stewart executed his search warrant. The wrongful arrest and detention of the Claimant however took place when Inspector Boxhill arrived at 3:00 am. It was at that stage the vehicle was detained and the Claimant was taken to the police station. There is no evidence of the length of time taken by the officer in the search the premises pursuant to the lawful warrant. Having regarded to the evidence of the Claimant and the Defendant it is clear that the arrest took place at the latest at 3:00 am on 7<sup>th</sup> January 2009, when Inspector Boxhill arrived. When Sergeant Stewart was asked in cross examination why he did not release the Claimant after he received his explanation he replied "the exercise was not completed".

37. For the purposes of the unlawful detention therefore I will use this time, 3:00 am as the starting point. It would be an exercise of speculation to ascribe a specific time prior to that which represented the end of the execution of the lawful warrant and the commencement of the illegal detention of the Claimant.
38. The Claimant was therefore detained from 3:00 am on Wednesday 7<sup>th</sup> January 2009 to 12 noon on Thursday 8<sup>th</sup> January 2009. This represents a period of 32 hours.
39. A principal head of damages for false imprisonment is the injury to liberty, the injury to feelings and injury to reputation. In *Walter v All tools* (1944) 61 T.L.R. 39 “a false imprisonment does not merely affect a man’s liberty it also affects his reputation.” See also **Mc Gregor on Damages** 14<sup>th</sup> Ed. para. 1357, 1358 and HCA S 1597/86 *Kamal Ramsarran v Romiel Rush*. In HCA 350 of 1997 *Dilip Kowlessar v AG* the Court awarded the sum of \$38,000.00 as general damages inclusive of aggravated damages where the Court held that the detention of the Applicant for two days. The facts of that case are more serious than the one under consideration. The Applicant was placed in a cell with 12 other prisoners. The Court held that there was no evidence that he was treated harshly by the police but he would have suffered great distress, inconvenience and embarrassment. The Court awarded the sum of \$12,000.00 in damages for false imprisonment for keeping the Plaintiff unlawfully in a police station for three hours in HCA 160 of 1993 *Albert Joseph v A Melville and the AG*. See also the useful guidance offered by Pemberton J in *Ed Jacob v R Small* at pages 2-3.
40. During that period of time the Claimant was detained in a cell which was filthy and had cockroaches and smelt of urine. He was unable to sleep or eat because of the stench. He used an exposed washroom in the cell which was very embarrassing. He was arrested and taken to the police station in front of Ralph’s family. He felt very ashamed and humiliated by this. He was unable to see his family for that period of detention.

41. I have considered the period of the detention and the circumstances of his incarceration. I am of the view that this is a fitting case for aggravated damages having regard to the conditions under which the Claimant was detained. There was however no assault on the Claimant and the Claimant's transport to the station and detention was largely uneventful, save of course for the conditions of the cell. The Court will therefore award a global award taking into account the aggravating circumstances of \$35,000.00.
  
42. I am not of the view that this case warrants an award for exemplary damages. There was no malice or bad faith on the part of the officers. The officers can be described as bungling, indifferent or lax. Their actions can be described as improper and are no way is it to be condoned but I cannot characterize these actions as high handed, arbitrary, reckless or oppressive which justifies an additional award.
  
43. With regard to the wrongful seizure of the motor vehicle there is no evidence adduced as to the loss suffered by the Claimant as a result of his deprivation of the use of his property. The vehicle itself was uninsured and defective. I would award nominal damages in the sum of \$5,000.00. I will also award special damages as proven in this case. This consists of the evidence of the repairs to the vehicle which was unchallenged in cross examination. Special damages are awarded in the sum of \$4,300.00.

## **Conclusion**



44. The Claimant therefore succeeds on his claim for damages for false imprisonment and trespass to the property. There shall be judgment for the Claimant against the Defendant for:

(a) Damages for false imprisonment in the sum of \$35,000.00 inclusive of aggravated damages together with interest thereon at the rate of 6% per annum from 1<sup>st</sup> May, 2009 to the date of this judgment.

(b) Damages for trespass to goods in the sum of \$5,000.00 together with interest thereon at the rate of 6% per annum from 1<sup>st</sup> May, 2009 to the date of this judgment representing general damages and special damages in the sum of \$4,300.00 with interest thereon at the rate of 3% per annum from 7<sup>th</sup> January 2008 to the date of judgment.

45. The Defendant shall pay to the Claimant prescribed costs in the sum of \$13,250.00.

Dated this 4<sup>th</sup> day of July 2010.

Vasheist Kokaram

Judge