

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A 2969 of 2003 (P.O.S)

BETWEEN

MARLON FRANCIS M<sup>C</sup> QUEEN                      Plaintiffs

And

THE ATTORNEY GENERAL OF  
TRINIDAD AND TOBAGO                      Defendant

**Before the Honourable  
Mr. Justice Peter Rajkumar**

**Appearances:**

Ms. Cindy Bhagwandeem  
for the Plaintiff

Ms. Karen Reid  
for the Defendant

**JUDGMENT**

**Facts**

The Plaintiff was arrested on Friday October 3 2003. He claims that he was seated outside a pub when 2 persons came up to him, roughly grabbed him, dragged him to an unmarked vehicle and transported him, in handcuffs, to the Morvant Police Station.

He was roughed up while being placed in a cell, after his socks and shoes and other belongings were taken from him. The conditions in the cell were unhygienic and uncomfortable.

In the course of his detention a person whom he alleged to be a hardened criminal was also placed in the same cell with him. On Saturday October 4 2003 he claims, inter alia, that he was not given any food .On October 5 2003 he was transported to the Port of Spain CID in handcuffs and taunted by a female Police Officer.

He was provided with breakfast on that day which was inedible, stale, and contained weevils. He was released at approximately 2.30 p.m. on Monday October 6 2003.

The Plaintiff claims, in an action begun by writ of summons,

- (i) that his arrest was unlawful,
- (ii) that his subsequent detention was unlawful, and
- (iii) that his constitutional rights were infringed in the course of his unlawful arrest and detention.

In particular the Plaintiff alleges that

- (a) his right to be informed of the reason for his arrest and detention,
- (b) his right to retain and instruct an attorney or to hold communication with him, and
- (c) the right to make a telephone call were infringed.

## **RELIEF SOUGHT**

- (i) A declaration that his arrest and detention were unconstitutional and illegal;
- (ii) A declaration that the refusal and/ or omission of the police to charge the Applicant for an offence after being arrested was unconstitutional and illegal;
- (iii) A declaration that the refusal and /or omission of the police to inform the Applicant upon his arrest and /or detention of

his right to retain and /or instruct without delay a legal advisor of his choice and to hold communication with him was unconstitutional and illegal;

- (iv) A declaration that the refusal and /or omission of the police to inform the Applicant upon his arrest and /or detention of his right to communicate with a friend or relative by way of a telephone call and/ or to allow him to make such a telephone call is unconstitutional and illegal.

The Plaintiff filed a statement of issues on January 19 2005 in which it is claimed that the sole issue is whether the defendant is liable for the wrongful arrest and detention of the Plaintiff.

However I find that the following issues set out below also arise.

**Issues:**

1. Whether the arrest of the Plaintiff was unlawful.
2. Whether the detention of the Plaintiff or any portion of that detention was unlawful.
3. Whether the Plaintiff is entitled to seek constitutional redress in an action begun by writ.
4. Whether any constitutional rights of the Plaintiff were infringed.

In particular

- (i) Was the refusal and/ or omission of the police to charge the Applicant for an offence after being arrested unconstitutional and illegal.
- (ii) Whether the police refused or omitted to inform the Plaintiff of his right to retain and instruct without delay a legal advisor of his choice and to communicate with him.
- (iii) Whether the police refused or omitted to inform the Plaintiff upon his arrest or detention of his right to

communicate with a friend or relative by way of telephone call.

### **Disposition:**

I find

- (i) that the initial arrest of the Plaintiff was not unlawful.
- (ii) that his detention in consequence of that arrest was not so excessive in these specific circumstances as to cross into the realm of unlawfulness (though it could well have done so if the Plaintiff had not been released on the Monday following his arrest as he was)
- (iii) that the Plaintiff is entitled to bring a claim for constitutional redress in an action begun by writ .
- (iv) that based on the facts that I have found, the evidential foundation for the alleged infringements of the Plaintiff's constitutional rights is not established.

Accordingly his claim for constitutional redress must fail.

### **ORDER**

The Plaintiff's claim is dismissed with costs certified fit for advocate attorney to be paid by the Plaintiff to the defendant, to be taxed in default of agreement.

Liberty to apply.

### **Analysis**

#### **1. Was the arrest of the Plaintiff unlawful?**

#### **Law**

Section 3 (4) of the Criminal Law Act Ch 10.04 provides that Police Officers can arrest "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.”

The onus is on the police to justify the arrest of the Plaintiff in an action for unlawful arrest and to establish reasonable and probable cause for the arrest.

**(Dallison v Caffery 1965 Vol 1 Q.B. 348 at 370).**

The test required was stated in **O’ Hara v Chief Constable of the Royal Ulster Constabulary (1997) 1 AER 129 p 138 (j –139a) per Lord Hope of Craighead** as partly objective and partly subjective.

The test is subjective because the arresting Police Officer must have formulated a genuine suspicion within his own mind that the accused person has committed the offence.

Further, the test is partly objective as reasonable grounds for the suspicion are required by the arresting officer and this must be judged at the time when the power is exercised.

(See also the judgement of Mendonca J as he then was in **Harold Barcoo v A.G of T. & T. and Browne – HCA** 1388 of 1989 delivered December 19, 2001 page 5 –6 where he adopted the following analysis from the text (**Clayton & Tomlinson Civil Actions against the Police (1987).**)

The test whether there was reasonable and probable cause has both subjective and objective elements.

1. Did the officer honestly have the requisite suspicion or belief.
2. 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.

3. Was his belief in the existence of these circumstances based on reasonable grounds.
4. Did these circumstances constitute reasonable grounds for the requisite suspicion or belief?

The first two are subjective and the second are objective and as Mendonca J, as he was then, pointed out, if the answer to any one of these questions is no then the officer would not have had reasonable grounds.

**The undisputed/admitted facts**

- (i) The Plaintiff was arrested.
- (ii) The Plaintiff was detained from Friday night to the following Monday afternoon.
- (iii) The Plaintiff was told that he was being arrested for the robbery of a maxi taxi.
- (iv) The Plaintiff was identified, rightly or wrongly, by one of the victims of that robbery, Mark Swift, and in consequence of that report / complaint / identification by Mark Swift, the Plaintiff was almost immediately arrested and detained by Police Officers from the Morvant Police Station.
- (v) The Plaintiff was never charged with any offence, and was eventually released on Monday afternoon.

**Did the Plaintiff know the reason for his arrest?**

I find that he did for the following reasons:

- (i) Because he admitted that the arresting officer told him at the time of his arrest.
- (ii) Because Mark Swift himself approached the Plaintiff before his arrest that night.
- (iii) Because Mark Swift told him after his arrest in the police vehicle on the journey back to the Police Station.

**The right to be informed promptly and with sufficient particularity of the reason for arrest and detention**

The Plaintiff admitted in cross-examination that he was told that he was being arrested for the robbery of a maxi taxi.

His assertion in his witness statement, repeated in his statement of claim that at no time during his arrest or detention was he told of the reason for his arrest and detention must therefore be disregarded.

I find that in substance he knew the reason for his arrest as technical or precise language need not have been used - SEE Christie v Leachinsky (1947) 1 All E R 567

I had the opportunity to assess his evidence and found him to have tried to render an account of what was clearly a traumatic and disorienting experience.

I should state here that I do not consider the Plaintiff to have deliberately tried to deceive the court for the reason I referred to above. Whatever the reason however I consider this is a matter that goes to the Plaintiff's fundamental credibility.

Further, I find that as the Plaintiff's evidence contains a fundamental departure from his pleaded Statement of Claim and this causes me to treat the evidence of the Plaintiff with scepticism though not outright disbelief. This impacts upon his credibility and assumes importance when it comes to assessing his allegations on a balance of probabilities.

The witness for the Plaintiff, Mr. George Roberts, testified that a man, whom he knew from seeing previously, had come up to the Plaintiff earlier that night and said he looked like someone who had robbed him some time ago.

He repeated this in cross-examination.

The Plaintiff denied this but he testified to the fact that a person was seated in the vehicle that transported him to the Morvant Police Station after his arrest who allegedly had conversations with him about elements of the robbery.

I accept the evidence of Mr. George Roberts, the Plaintiff's witness that such a conversation in all probability occurred earlier that night. I also accept the evidence of the Plaintiff that the alleged victim of the robbery was seated in the vehicle.

I conclude therefore that the police did have reasonable and probable cause to go in search of the Plaintiff, and to arrest him, based on the positive identification, rightly or wrongly, by the victim Mark Swift. Furthermore, that Mark Swift himself accompanied them when the Plaintiff was arrested and was in the same vehicle as the Plaintiff on the return journey to the Police Station. In fact, the Police Officers acted with commendable dispatch.

This is a totally separate matter from the question of guilt or innocence of the Plaintiff. The law is clear that what has to be established is whether the arresting officers had reasonable and probable cause to arrest.

I find accordingly that they did and all 4 elements - objective and subjective were established as set out hereunder.

**1. Did the arresting officer honestly have the requisite suspicion or belief**

It is inconceivable that he would not have the requisite belief in those circumstances – a positive identification by an eyewitness and victim of the crime. I find that he did.

**2. 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.**

It is undisputed that Mark Swift had made a report of this crime to the Morvant Police Station and accompanied the arresting officer at the time of arrest. I find that the arresting officer honestly believed in the existence of a positive identification of the Plaintiff as the perpetrator of the crime.

**3. Was the officers' belief in the existence of these circumstances based on reasonable grounds.**

It cannot reasonably be contended that they were not. Any suggestions that the officers in those circumstances had an obligation themselves to conduct further investigations and check, for example, the initial police report are unsustainable.

**4. Did these circumstances constitute reasonable grounds for the requisite suspicion or belief.**

I conclude that these circumstances did constitute reasonable grounds. The police did not take it upon themselves to just arrest the Plaintiff for no reason. They did have a reason, and the fact that the Plaintiff may have turned out not to be the party who committed the crime does not detract from that fact. I therefore find that the initial arrest of the Plaintiff was lawful.

**2. Was the length of the Applicant's detention unreasonable.**

Was the Plaintiff's detention beyond 3 hours unlawful as it was in the case of **Mondesir v Attorney General-HCA 1903 of 1997?**

An arrest involves a trespass to the person which is prima facie tortious. This trespass by the arrestor continues so long as he retains custody of the

arrested person. The arrestor must justify the continuance of his custody by showing that it was reasonable. See *Dallison v Caffrey* per Diplock L.J. at pages 370, 371 cited by Sinanan J. in *Mondesir v the Attorney General, HCA No. 1903 of 1997 at 27*.

In the *Mondesir* case, Sinanan J. held that in those circumstances the applicant in that case should have been charged within three hours of his arrest. In that case, the police had all the evidence that they were likely to have by the time of their interview with the applicant and the reason given for not charging the applicant, namely, the delay in locating a potential co-accused, was found not to be satisfactory. In that case, he held (at page 32):

*“The failure to charge the applicant had important consequences for the applicant. It denied him the opportunity of being bailed that evening, that is, the evening of the 21<sup>st</sup> or being brought before a Magistrate at 9:00 a.m. the following day in accordance with his right as preserved by Section 5(2)(c)(iii) of the Constitution”.*

It was in those circumstances that he found that his detention was unnecessarily protracted and was excessive and unreasonable.

In the instant situation, the Plaintiff was arrested late on Friday night. He was detained over the weekend first at the Morvant Police Station and then at the Central Police Station. It would not have been possible to bring the Plaintiff before the Magistrates’ Court before Monday morning. If he secured bail then, it is not likely that he would have been released much earlier than he in fact was at around 2:00 p.m. on Monday.

Those circumstances are different from those in the *Mondesir* case. There was no suggestion in this case that the police acted maliciously to arrest the Plaintiff on the weekend deliberately so intending thereby that he would not be in a position to be brought before the Magistrates' Court or secure bail.

In this case his arrest on Friday night was caused directly by the fact that it was on Friday night that Mark Swift had recognised the Plaintiff and sought to have the police arrest him.

I would have found the position considerably different if the police had been informed by Mark Swift of his suspicion that the Plaintiff was the perpetrator of the robbery at some earlier time during the week but had delayed arresting the Plaintiff until Friday evening. This would be conduct deserving of an enquiry as to the reason for the delay and consequently deserving of an enquiry into whether such reasons, if not sufficient or satisfactory, would render the period of arrest excessive and consequently unlawful.

However, I find this is not the case here. Unfortunately for the Plaintiff, his identification took place on Friday night. Equally unfortunately for the Plaintiff, the Magistrates' Courts would not have been operation until the following Monday.

The Plaintiff had to be transferred to the Central Police Station from the Morvant Police Station. It was not unreasonable, given the time of night at which the Plaintiff was arrested, for him to have remained at the Morvant Police Station. See *Dallison v Caffrey* [1965] 1 Q.B. at page 367: B -D

*“When a constable has taken into custody a person reasonably suspected of felony, he can do what is reasonable to investigate the matter, and to see whether the*

*suspicious are supported or not by further evidence. He can, for instance, take the person suspected to his own house to see whether any of the stolen property is there; else it may be removed and valuable evidence lost. He can take the person suspected to the place where he says he was working, for there he may find persons to confirm or refute his alibi. The constable can put him up on an identification parade to see if he is picked out by the witnesses. So long as such measures are taken reasonably, they are an important adjunct to the administration of justice. By which I mean, of course, justice not only to the man himself but also to the community at large. The measures must, however, be reasonable.”*

See also Lord Justice Diplock at page 374C of his Judgment in ***Dallison v Caffrey***:

*“It cannot be credibly suggested that Dallison would have been brought to a Magistrate’s Court or bailed by the police at Dunstable one moment earlier if he had been taken direct to Dunstable. This of course is a relevant consideration. Seeing that he was protesting his innocence, it was in Dallison’s own interest, and it was, in part at least, at his request, that he was taken to his place of work to see if his alibi was verifiable, for had it been credibly confirmed he would have been released. He suffered no harm by being taken to his own house, and it was in his own interest, if he was innocent, that the search of his house, which he knew would have negative results, should take place without delay and in his presence. Furthermore, the defendant as a Police Officer had a duty to seek to recover the proceeds of the theft and for that purpose to search the house of the suspected thief as soon as possible.*

*In all the circumstances, the Judge was quite right in holding that he acted reasonably.”*

Accordingly, I find that the police were entitled to make further enquiries and take such further steps as may have led to the exoneration of the Plaintiff. Such steps could have included contacting other alleged victims of the crime or making arrangements for an identification parade. It is not known whether such steps were taken but it is clearly adverted to by Lord Justice Diplock that some delay after arrest may be justifiable if explained by the taking of such steps, and that such delay may actually be in the arrested person's interest as it may result in his release without charge. In fact, the Plaintiff in this case was released without charge, though the reasons for that are unclear.

I find in addition, however, that like in *Dallison v Caffrey*, it cannot be credibly suggested that the Plaintiff would have been brought before a Magistrates' Court or bailed by the police one moment earlier than he actually was released. Though it is conceivable but unlikely, that he could have been sufficiently fortunate to have his matter dealt with as soon as the Magistrates' Court began, there would still have been the need for processing of bail documents.

I find therefore that the failure to charge the Plaintiff in this case occasioned no prejudice to him and in fact spared him the additional expense and trauma of protracted Court proceedings and risk of conviction.

I find that the period of his detention without charge was not excessive in these specific circumstances.

### **Conditions of detention**

If I am wrong on the validity of the Plaintiff's initial arrest, or on my finding that his detention though initially lawful, did not become unlawful as a result of excessive delay, I need to consider and make findings of fact on the circumstances and conditions of detention, which are potential matters in aggravation of damages.

#### **Whether the cell had a make shift toilet**

No evidence was led as to what this allegation meant, and I am unable to find this allegation substantiated.

I do not accept the defendant's evidence that the toilet in the cell was sanitary. I consider that this evidence a little too convenient a rebuttal of the evidence of the Plaintiff in this regard, especially as it was a weekend when it was unlikely that cleaning staff, if any existed, would have been available. The evidence was that it was functioning however, and there was no assertion that it was not.

#### **Whether the cell was cold.**

One of the police officers testified that the cell was not cold, though as the station has been rebuilt and is now air-conditioned, the prisoner's cell may well now be cold.

I conclude that the cell was probably not cold. Cold is a subjective term. For the cell to be sufficiently cold as to justify and form the basis of a complaint to the High Court, in a tropical country as this, its temperature would have had to be artificially lowered. There is no evidence that it was air-conditioned at the time of the Plaintiff's detention. I do not accept the Plaintiff's evidence in this regard. Further, I conclude it is a matter that goes towards credibility. Again I do

not disbelieve him. I have no reason to doubt that the Plaintiff did feel cold. But I consider that while subjectively he may have felt cold, especially in the context of the shock and trauma of a sudden and unjustified incarceration, objectively it was on a balance of probability, unlikely to be cold. This I consider to be an example of the Plaintiff viewing matters, as he is entitled to, through his own lenses. The function of the court however is to objectively and dispassionately weigh the evidence.

**Whether the Plaintiff was placed in a cell to which a hardened criminal was introduced.**

The evidence as to why he formed the impression that such a person was a hardened criminal was that the officer placing him in the cell said ‘you back here giving trouble.’ I find the evidence of the Plaintiff in this regard unconvincing and suggestive of a propensity to exaggerate or distort, albeit not necessarily deliberately with intent to mislead.

**Whether the Plaintiff had his shoes and socks removed**

I find that the Plaintiff had his laces removed in accordance with standard procedure. There is no reason for me to accept that standard practice was not followed in relation to the Plaintiff’s shoes. I do not accept therefore, in light of the Plaintiff’s propensity to remember a reconstructed version of events, that his shoes were taken from him and his lack of credibility on the major issue of whether he was informed of the reason for his arrest.

**3. Can constitutional redress be granted in an action begun by writ?**

Having reviewed the several authorities cited by attorney for the Plaintiff and in particular the case of **Belfonte v Attorney General Civ Appeal 84 of 2004** at page 13. I hold that the Plaintiff is entitled to bring a claim for constitutional redress in an action begun by writ and that this court should not close its eyes to allegations of infringement of the constitution, the supreme law of the land, based upon any technicality of procedure.

#### **4. Whether any constitutional rights of the Plaintiff were infringed.**

In particular was the refusal and/ or omission of the police to charge the Applicant for an offence after being arrested unconstitutional and illegal.

#### **The Effect of Releasing the Plaintiff without charge**

The evidence before this court suggests that in all probability the Plaintiff was the unfortunate victim of mistaken identity. This is corroborated by the failure of the police to pursue any charge against the Plaintiff, and to release him after his arrest.

The police are entitled to release a suspect after a lawful arrest. In fact they should do so where it becomes clear in the course of investigations subsequent to a lawful arrest, that a mistake has been made. I do not accept the suggestion on behalf of the Defendant that the Plaintiff's release may have been in error, and I agree with the Plaintiff's attorney that this would be highly improbable. However, a release cannot render the initial arrest unlawful, once such initial arrest was lawful.

**LAW**

**Wiltshire v Barrett (1966) 1 QB 312 at 329 G:**

*...“once the officer in charge has satisfied himself that the man is innocent, any further detention in custody would be false imprisonment. In any event, it is impossible to see how a failure to so detain him could render unlawful the arrest which ex hypothesi was originally lawful.”*

Although this case was based on in the UK Magistrates’ Court Act 1952

I find the reasoning equally applicable here.

**Whether the police refused to inform the Plaintiff of his right to retain and instruct without delay a legal advisor of his choice and to communicate with him.**

**Whether the police refused or omitted to inform the Plaintiff upon his arrest or detention of his right to communicate with a friend or relative by way of telephone call.**

The evidence of the police is that the Plaintiff was informed of his legal rights, that is, his rights to a telephone call, to communicate with a relative, friend or Attorney of his choice, and he made no requests.

I am mindful that the temptation to also reconstruct events after several years and testify conveniently on some issues may also influence the defendants’ evidence. I note however that both Police Constable Walker and Corporal Lezama denied that the Plaintiff was told of the date of the alleged offence, when it might have seemed convenient for them to answer that he had been so informed.

I accept the evidence of the police witnesses in this regard and conclude that their evidence was given in a forthright manner.

The Plaintiff's evidence is that the Plaintiff's mother did visit at the Morvant Police Station, that no attorney-at-law attempted to make contact with the Plaintiff, and that members of the Plaintiff's family were aware that if he were not at the Morvant Police Station he would have been at the Besson Street Police Station.

I am also mindful of the observations of de la Bastide CJ in **Marcel Honore Civ. Appeal 20 of 1995 and delivered February 22, 1999.** In that case the Appellant was taken from his home before 4 a.m. kept at Gasparillo Police Station until 8.00a.m and released at 4.15 pm. At 8.30a.m he saw an attorney who had been contacted by his father. In that case the Appellant was

- (i) not informed of his right to a lawyer
- (ii) was compensated for wrongful detention.

It was held to be merely a technical breach. I conclude that in this case however there was enough time in the course of the Plaintiff's detention for a lawyer to have made contact or attempted to make contact with the Plaintiff if he required.

The instant circumstances are distinguishable from those in the **Honore** case. I place no weight on the fact that as it turned out no lawyer did attempt to contact the Plaintiff. It is the Plaintiff's right. He can choose to avail himself of it or not. If he had not been informed of that right I consider that that would be an infringement of his constitutional right. He cannot be deprived of that right

by an assertion that it would have made no difference as he would not have availed himself of it anyway. I do note that no allegation or complaint arises that any attempt was made to record a statement from him without an Attorney present. That would have been an issue that would have compounded the infringement of the constitutional right to be informed on arrest of the right to have an attorney, as suggested by de la Bastide CJ in the (**Honoré**) case.

On balance I find that nothing would have been gained by the police in failure to inform the Plaintiff of his constitutional rights and it is recorded in the Station Diary that he was so informed. Equally I find that the Plaintiff may well have not registered such information, despite it having been provided, given the suddenness of his arrest and incarceration. I accept the evidence of Police Constable Walker, the arresting officer, that the Plaintiff was informed of his legal rights.

I find therefore

- (i) I find therefore that the arrest of the Plaintiff was based on reasonable and probable cause;
- (ii) I find as a fact that he was informed of the reason for his arrest and detention;
- (iii) I find that the period of his detention in the circumstances was not excessive;
- (iv) I find that on a balance of probabilities, he was informed of his right to contact, retain and instruct an attorney-at-law and the right to communicate with a friend or relative by way of a telephone call.
- (v) I decline to make the declarations sought including that the Plaintiff's arrest and detention were unconstitutional or

illegal or that the omission to charge the Plaintiff is unconstitutional.

The Plaintiff's claim is therefore dismissed with costs certified fit for advocate attorney to be paid by the Plaintiff to the defendant, to be taxed in default of agreement.

Liberty to apply.

Dated the 22<sup>nd</sup> day of February, 2008.

Peter A. Rajkumar,  
Judge.