

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2014-03391

BETWEEN

KEITH HAMILTON

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

BEFORE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES

Mr. Ulric Skerritt instructed by Ms. Safiya Charles for the Claimant

Ms. Gibbons-Lenn instructed by Mr. Nairob Smart for the Defendant

ORAL JUDGEMENT

Background

1. The claimant was, and still is a police officer. He was arrested in the private premises of a doctor while a cheque in the sum of \$10,000.00 was being collected from the doctor by one Marilla L, following earlier and increasing demands by her - first for \$5000.00, and then for \$20,000.00 - (the names are edited as the matters involving her and a co-accused are still before a court).

2. The doctor, the alleged victim, (no connection with the court despite the coincidental name), alleges, in effect, that he was the victim of extortion, and the money was being demanded of him by Marilla on the basis of threats to falsely report him to the police for criminal unprofessional behavior.

3. The presence of a uniformed and armed police officer was allegedly part of the threat by Marilla, who allegedly indicated that she had a friend who was an Inspector of Police, that the Inspector would send an officer to witness the transaction, and that payment was required to avoid a police prosecution on false charges.

4. The impression of the Claimant's involvement in the extortion was therefore apparently corroborated by the presence on that day of an armed and uniformed police officer in the person of the Claimant.

5. There was other material that implicated the claimant in what was apparently a scheme to blackmail the doctor.

Reasons for arrest

6. At paragraph 16 of his Witness Statement Sgt. Daniel itemized the reasons for his belief that the Claimant was involved in that scheme:

- *Despite the fact that he said he was not involved in the crime, he offered **no explanation** for his presence;*

- *He was **outside of his jurisdiction** (the Priority Bus Route) **with a police vehicle**;*
- *He was **recorded giving the victim the crime a wrong name**, designation and place of employment;*
- *The female suspect was **recorded** as saying that an **Inspector friend of hers told her to request \$10,000.00** and a written statement from the victim and that it would be the end of it and that the **Inspector had sent an officer** to witness the transaction;*
- *Due to these factors, myself and the other police officers believed that that in itself amounted to a crime;*

7. The claimant's explanation for his presence on private premises at a private transaction that day, away from the Priority Bus Route where he normally patrolled when he was not on Process (service) duty, was that on the Monday 10th June, 2013 he was asked by Marilla to meet her at the doctor's office as a witness for the collection of a cheque. (This was subsequent to an earlier demand by Marilla for \$5000.00 at which the claimant was not present).

8. In fact his evidence is that Marilla had indicated that the doctor owed her \$10,000.00 and **he, the doctor**, wanted someone present to witness the receipt of the cheque. Of course the claimant was a person completely unknown up to that time to the alleged victim. Why the alleged victim would want as a witness someone whom he did not know has never been explained.

9. The doctor wrote a cheque in the sum \$10,000.00 to Marilla and handed it to her.

10. It was in those circumstances that the Claimant was arrested by Sgt. Daniel, who had, together with other officers, been concealed in an adjoining room. He told him that he was being arrested and the reason for his arrest.

11. The Claimant was detained from Monday 10th June, 2013 around 2:30p.m to Thursday evening 13th June, 2013 at 7:05 p.m.

12. On Thursday 13th June, 2013 around 7:05p.m. He was released without being charged for any offence after instructions were received from the Director of Public Prosecutions (the DPP).

Issues

13. (a) Whether it was lawful to arrest the Claimant in the circumstances;
(b) Whether the length of the detention was unreasonable and consequently unlawful.

14. It was conceded after trial in written submissions that the claimant's arrest was **not** wrongful.

15. The evidence of the Claimant is simply that he was at the doctor's office to witness the receipt of a cheque by Myrilla, allegedly because the **doctor** wanted a witness.

16. Why he would want a stranger whom he might never see again as a witness, rather than someone that he knew and could contact in the event that the witness needed to verify or testify to the matter witnessed, was never explained. Nor was even an attempt made to explain why the claimant, a policeman of 34 years service, would accept such an illogical reason as requiring his presence.

17. He claimed that in his conversation with Marilla it sounded urgent and he did not have time to ask questions about it. What is clear is that however urgent the request may have allegedly sounded, it was suspicious in the extreme – his **urgent** presence as a police officer in uniform to **witness**, at the **request of a person that he did not know**, and had never met, a **cheque for a large sum being handed over**, for **reasons never communicated** to him, and about which **he never asked**.

18. If that were true it would have put any reasonably sensible person, far less a very experienced police officer, upon immediate inquiry that something highly suspicious was taking place. The urgency of Marilla did not have to be accepted by the claimant without question, especially as he was being asked to lend his presence, as an armed and uniformed police officer, to the witnessing of a transaction of which he alleges he knew nothing.

19. In fact the reasonable inference from the circumstances, and one that Sgt. Daniel was fully entitled to draw, was that the claimant was an accomplice of Marilla, that his presence there was not as a “*witness*”, but as part of the operation to intimidate the alleged victim, and thereby extort money from him.

20. In those circumstances Sgt. Daniel was fully entitled to believe that he had, both objectively and subjectively, reasonable and probable cause to arrest the claimant, as he did. His actions at that point cannot be criticized.

21. The evidence of Sgt. Daniel contained in his Witness Statement is clear as to the reasons that gave him cause to arrest the Claimant.

The Length of the Detention – Was it Unreasonable and Consequently Unlawful

Reasons for continued detention

22. The evidence of Sgt. Daniel under cross examination was as follows:

“Monday morning we had arrested two (2) other persons who were interviewed. He said he was constantly trying to contact you. On Tuesday night he wanted another opportunity to contact with you. On Wednesday morning he said he spoke with you and you said go ahead with interview but answer no questions. On Wednesday night - We had discussed with the Director of Public Prosecutions. He asked for some further work to be done. And on Thursday morning he indicated that he wants the gentleman to be released, he would not be proffering any charges against him.”

23. His evidence was straightforward and largely accords with the documentary contemporaneous evidence. It is therefore accepted, in preference to that of the Claimant, whose evidence was demonstrably inconsistent with the documentary evidence.

24. It was submitted that Sgt. Daniel, armed with this information, should have either **charged** the Claimant, **released** him or **immediately sought the advice** of the Director of Public Prosecutions, and that there was absolutely no justification for detaining him for the purpose of further questioning him.

25. The evidence of the Claimant under cross examination that at no point did he ask for a telephone call to his attorney at law, nor was he able to contact an attorney at law, cannot be believed. He was a police officer. He must himself have advised persons of their right to communicate upon arrest with an attorney at law. He received a visit from the representative of the police welfare association on Tuesday. Despite his denial, he received a documented visit from his wife on that day also. It defies belief that he would not only have requested, but insisted upon the opportunity to consult with an attorney at law.

Whether the fact that the Claimant could not contact his Attorney-at-Law on Monday 12th June or Tuesday 13th June was a sufficient reason for the Claimant's continued detention

26. Sgt Daniel, whose evidence was straightforward, internally consist, and consistent with the contemporaneous records, testified that the claimant had indicated that he was not prepared to give a statement **unless** his attorney was present, and that there were ongoing attempts by him to contact an attorney. In fact on Wednesday the claimant indicated that he had in fact managed to contact his Attorney at Law, (and his name is recorded in the Station Diary), who had advised him not to give a statement.

27. This corroborates the evidence of Sgt Daniel to the effect:-

- i. that the claimant was making ongoing efforts to contact his attorney at law,
- ii. that his position as to providing a statement would be determined by the advice of that attorney,
- iii. that the claimant had so communicated to Sgt Daniel,
- iv. that when he did manage to contact his attorney and receive advice as to whether or not to provide a statement, he acted upon that advice and communicated, unequivocally, and for the first time, that he would not be providing any statement.

Chronology

28.

- a. The Claimant was arrested at 2:15 pm on Monday 10th June, 2013 and taken to the Central Police Station at St. Vincent Street.
- b. At 10:15 pm on Monday 10th June he was removed from the Central Police Station and taken to the Barataria Police Station.
- c. Two (2) other persons were arrested on the said day, Shurland and Myrilla.
- d. The Claimant was interviewed on Wednesday 12th June, 2013 which interview ended around 10:30 a.m.
- e. On Thursday 13th June, 2013 between 3.45 and 5.15pm Sgt. Daniel and other officers met with and sought the advice of the Director of Public Prosecutions (**D.P.P.**)
- f. The Claimant was released on Thursday 13th June, 2013 at 7:05p.m

Law

29. In **Dallison v Caffrey [1964]2 All ER 610** it was explained:-

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

30. The Claimant was detained from Monday 10th June, 2013 around 2:30 p.m to Thursday evening 13th June, 2013 at 7:05 p.m.

31. It was conceded that the Claimant's detention to Tuesday 11th June at 9 a.m can be justified.

32. It was contended however that for the further period from **Tuesday 11th June at 9:01 a.m to Thursday 13th June at 7:05 p.m** has not been justified.

33. The claimant's contention is that the options available to Sgt Daniel at time of arrest were:-

- a. **Release** without charge
- b. Alternatively, **charge** and allow Claimant to seek bail.

34. Claimant contends that at the time of his arrest the defendant's Sgt. Daniel had enough evidence to charge the claimant. Accordingly any detention beyond Tuesday 11th June at 9 a.m - could not be justified and was therefore unlawful.

35. That evidence was:-

- a. The apprehension of the claimant - at **private** premises - at a **location which was outside his usual jurisdiction (Priority Bus Route)** - when there was a **cheque for \$10000** being handed over to his friend/ long standing acquaintance.
- b. His **explanation** that, though armed and in uniform and apparently on duty, he was there for a **private** purpose- "*witnessing*" that transaction.
- c. The fact that that transaction was on its face **suspicious**, coupled with the complaint that this was actually the second handover of money that had been demanded with menaces.
- d. The contention by Sgt. Daniel that the claimant - or someone he believed to be the claimant - had earlier given a false name on the phone to the alleged victim.

36. Sergeant Daniel had reasonable grounds for suspicion to lead to the arrest of the Claimant. The objective grounds included:

- i. The **report** from the victim;

- ii. The **recorded telephone call** where someone believed to be the Claimant initially introduced himself by another name;
- iii. The Claimant's undeniable **presence on the scene** accompanying Marilla to collect money from the victim on 10th June 2013;
- iv. The **Written Agreement** signed by the Claimant;
- v. The **cheque** in the sum of **\$10,000.00** made out to Marilla.

In view of the circumstances release without charge would not have been realistic.

37. In fact, in view of that state of affairs the claimant decided after trial not to pursue its earlier claim for damages for wrongful arrest. That concession was extremely well judged as the claimant could not possibly have contended that there was not reasonable and probable cause, both objectively and subjectively:

- (i) to suspect that he was very much implicated in the commission of a criminal act; and
- (ii) for his arrest in those circumstances.

38. However it cannot be accepted that there was at that time sufficient evidence to charge. The DPP did not think so. When he was eventually approached the evidence was no different from what existed at the time of arrest. He gave instructions for the claimant's release on the state of that evidence.

39. The issue therefore is as contemplated in **Dallison v Cafferey**, namely whether the actions of the police in detaining the claimant were reasonable and could be justified by the need to make further investigations.

40. In this regard it is necessary to examine what the defendant was doing from the time of arrest to the time of release. The timeline needs to be examined carefully.

i. Claimant was arrested Monday 10th June, 2013 around 2:30 p.m

ii. Claimant was requested to give a statement on Tuesday. It is accepted that the claimant could not be asked to incriminate himself and he had the right to decline any such invitation. However that would not necessarily have been the only purpose of such a statement.

41. It was conceivable that **he** could have provided an explanation which could have exonerated him. It was conceivable that one or **other** of the other **parties** arrested in relation to the incident could have provided information that could have exonerated him.

42. It is possible that the virtual complainant/ victim could have further implicated the claimant when he gave his own statement.

43. The fact is that those matters, and possibly others, needed to be investigated and eliminated before a decision to charge or release the claimant.

44. The claimant was asked whether he was prepared to give a statement. His response was that he would not give one unless his attorney was present. He had not been able to contact his attorney at that time. His response did not eliminate the possibility that he would be prepared to give a statement in the presence of his attorney. It was only on Wednesday morning that the claimant unequivocally communicated, as recorded in the Station Diary that he had spoken to his attorney and was declining to provide a statement.

45. His continued detention on Tuesday has been justified in that further investigations were continuing and that he was trying to contact his attorney to determine his position on giving a statement.

46. On Wednesday by 11.00am given that the claimant was not providing a statement and that statements / interviews had by then been recorded from all concerned, (Shurland and the victim), except for Marilla, it would have been clear that no further evidence, save possibly from Marilla, was likely to be forthcoming. A decision had to be made on the adequacy of the evidence to support a charge. Sgt. Daniel says that they spoke with the DPP on Wednesday and he asked for further investigations to be conducted. In fact on Wednesday at 5.00 – 6.00pm Marilla was interviewed. Thereafter they consulted with the DPP again on Thursday.

47. Interference with the liberty of a citizen is a very serious matter. Unnecessary or unjustified detention can never be condoned. It might therefore be queried whether from Wednesday 12th June, 2013 at 11.00a.m. to Thursday 13th at 7.05pm the defendant could justify the detention of the claimant.

48. The claimant was and remains a police officer. The charge being contemplated was a very serious one, involving demanding money with menaces. It may be noted that the claimant's explanation as to why, as an armed and uniformed police officer, he took time away from his duties and found himself "*witnessing* " a highly suspicious transaction - the handover of a cheque for \$10,000.00, yet never inquired as to why this money was being handed over to Marilla, whom he had known for decades, rang hollow. He claimed he *didn't have enough time* to have asked her and he *trusted her*.

49. Insofar as issues of fact arise I prefer the straightforward evidence of the defendant's witnesses, consistent as it was with such documentary evidence as exists.

50. This may be contrasted with the evidence of the claimant whose evidence was not forthright, and was in many cases inconsistent with the existing documentary evidence. For example, his denial that his wife visited him on Tuesday, his denial that he made attempts to contact his attorney, his denial that he was able to take a bath while in detention, are all contradicted by the entries in the Station Diary.

51. Sgt. Daniel took the cautious step of seeking advice from the D.P.P. instead of unilaterally preferring a charge that could have wrecked the claimant's career. It would be unrealistic to ignore the practicality of arranging that interview. Given the likely demands upon the time of such a senior official it could not be expected to be instantaneous. The fact that it occurred within 30 hours cannot be criticised. Taking that step, and the relatively minimal delay in the circumstances attendant thereon, actually spared the claimant the ordeal and costs of a protracted prosecution, as well as saving his career. The other persons involved are still before the court.

52. In the circumstances the actions of the investigating officers were justified by the need to make enquiries, by the need to make investigations, by the need to take advice, and by the need to make a proper decision as to whether to charge or not. The effect of that caution and those investigations was the release and exoneration of the claimant. If it is that the claimant's submissions were to have been accepted, that the defendant should have preferred the charge on

Monday itself or at the latest Tuesday morning giving the claimant the opportunity to be bailed, the claimant would still be before the court facing a very serious charge and possibly being on suspension.

53. In the specific circumstances of this case I find that the claimant's detention from Monday to Thursday has been justified.

54. **Orders**

In the circumstances:

- a. the Claimant's claim is dismissed.
- b. it is ordered that the Claimant do pay to the Defendant costs in the sum of \$14,000.00.

Dated this 8th day of October, 2015

Peter A. Rajkumar
Judge.