

THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
Port of Spain**

Claim No. CV2017-02478

BETWEEN

MARTIN PERMELL

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mme. Justice Jacqueline Wilson

Date of Delivery: December 13, 2018

APPEARANCES:

Mr. Lee Merry and Mr. David Francis Attorneys at law for the Claimant
Ms. Daniella Boxhill, Mr. Andre Cole and Ms. Leann Thomas Attorneys at
law for the Defendant

JUDGMENT

THE CLAIMANT'S CASE

1. The claimant has brought this action against the defendant seeking damages for his unlawful arrest and detention by the servants and/or agents of the defendant from 16 to 20 January 2015.

2. The claimant alleges that at approximately 11:30 pm on Friday, January 16, 2015, he left his place of employment at National Petroleum on Richmond Street, Port of Spain, and took a taxi to Independence Square. On arrival there he was approached by a uniformed police officer who grabbed his arm and told him that he was under arrest for murder. The officer took him to a nearby Mobile Police Post where he was handcuffed and taken in a marked vehicle to the Central Police Station on St. Vincent Street, Port of Spain.

3. On his arrival at the Central Police Station, the claimant was made to remove his belt and shoe laces and to empty his pockets before he was placed in a holding cell for ninety-two (92) hours. The claimant was released, without charge, on Tuesday, 20 January 2015.

4. The claimant alleges that during the period of his detention he was not interviewed by any officer or given details about the murder for which he was allegedly being investigated. He states that his Attorney-at-law visited him on 20 January 2015 and informed him that the police intended to conduct an identification parade. He was taken to Kentucky Fried Chicken (KFC) on Independence Square, Port-of-Spain at approximately 5.00 pm on 20 January 2015 and was placed on what was described to him as a public identification parade. He was not identified as the perpetrator of the offence and was taken back to the Central Police Station where he was allowed to retrieve his belongings and to leave.

5. The claimant alleges that the cell in which he was detained was filthy and the food served was unpalatable. He alleges that he was not at any time

informed of his right to an Attorney or of the reason for his arrest and detention.

THE DEFENDANT'S CASE

6. The defendant alleges that there was reasonable and probable cause to arrest and detain the claimant and that the officers involved in his arrest held a reasonable suspicion that he had committed an offence.
7. Police Constable Hosten and Acting Sergeant Shawn Ammon gave evidence on behalf of the defendant. By consent of the parties, the witness statement of Inspector Heeraman Singh was tendered as his evidence-in-chief notwithstanding that he was not available to attend the trial.
8. At the time of the incident PC Hosten was attached to the Criminal Investigation Department (CID) and was responsible for investigating reports of serious crime. He has been a police officer for approximately seven years. PC Hosten gave evidence that on 21 September 2014 he received a report of serious wounding/attempted murder. The complainant received serious injuries to his mouth and a dislocated jaw and was warded at the Port of Spain General Hospital for some time. Upon his discharge, PC Hosten went to the complainant's home in the Besson Street District and recorded a statement from him. The statement was not available at the time PC Hosten prepared his witness statement on 16 April 2018, but it was produced at the trial.
9. PC Hosten received the initial report of the incident and a description of the suspect from the police records. The suspect was described as being of mixed race, light-skinned, about 5 feet 10 inches tall, with a rasta

hairstyle and as wearing a brown striped t-shirt and three-quarter length pants.

10. Upon receiving this information, PC Hosten visited the scene of the incident, which reportedly took place at Kew Place in the vicinity of Sacred Heart Girls' School. PC Hosten stated that the incident occurred in an area that he frequently patrols. He spoke to several persons there. He stated that the description of the suspect given by the complainant and the location of the incident together with his knowledge that the claimant frequented the area in question and associated with individuals there, led him to believe that the claimant could assist with the investigations.
11. PC Hosten stated that on 16 January 2015 he was involved in a road block exercise with Cpl Ammon when he observed the claimant alighting from a motor vehicle in the vicinity of Scotiabank on Independence Square. He approached the claimant, identified himself as a police officer and informed the claimant of the report he had received. He informed the claimant that, based on investigations, he fit the description of the suspect. He cautioned the claimant and informed him of his rights and privileges. The claimant denied knowledge of the incident.
12. PC Hosten put the claimant in handcuffs and took him to the CID Headquarters in a marked police vehicle. They arrived there at approximately 1.00 am on 17 January 2015.
13. PC Hosten spoke to Inspector Singh the following day regarding the conduct of an identification parade with the claimant.

14. Ag. Sergeant Ammon gave evidence that at the time of the incident he was attached to the CID, Port of Spain, as the Corporal on duty. In that capacity he was responsible for supervising PC Hosten. Ag Sgt Ammon stated that a report of attempted murder was made at the Central Police Station on 21 September 2014 and that, based on information given by the victim, he and PC Hosten interviewed several persons and obtained additional information. In the course of investigations they obtained information that the suspect resided at Richplain Road and Factory Road, Diego Martin. Ag Sgt Ammon gave instructions to PC Hosten to interview the suspect at his home but the suspect was not seen until 16 January 2015 when he was identified by PC Hosten during the road block exercise.
15. The claimant was arrested and taken to the CID where he was handed over to Ag Cpl Maharaj as the Corporal in charge of the CID at the time.
16. Ag Sgt Ammon stated that he knew the claimant as they lived in the same area. He was aware that the claimant was employed at the National Petroleum Company and worked at several gas stations in west Trinidad. Ag Sgt Ammon stated that prior to the claimant's arrest, efforts were made to find him at his workplace and other employees were interviewed to determine his whereabouts.
17. The witness statement of Inspector Heeraman Singh states that on 20 January 2015 he was based at the St. Clair Police Station when he received a telephone call from Constable Hosten requesting assistance with the conduct of an identification parade. Inspector Singh proceeded to the CID Reports Office and informed the claimant of the procedures for the conduct of an identification in a public place. Inspector Singh told

the claimant that he was entitled to have a representative present at the identification parade and that he was free to walk about the area where the parade was conducted. Inspector Singh explained to the claimant that he could object to a public identification parade, in which event another form of identification would be undertaken. The claimant indicated that he did not object to the public identification parade.

18. The identification parade commenced at 4.30pm on 20 January 2015 at KFC, Independence Square, Port of Spain. The claimant's Attorneys were present. The establishment was fairly busy at the time. The complainant was invited to move about the establishment and to indicate whether he was able to identify the suspect. The complainant did not identify a suspect and the claimant was so informed. He was subsequently allowed to leave the CID Reports Office.
19. The question for determination is whether at the time of the claimant's arrest PC Hosten and Ag Sgt Ammon had reasonable and probable cause to suspect that he was guilty of the offence of attempted murder.

REASONABLE AND PROBABLE CAUSE

20. The test of reasonable and probable cause is well established by authority. In ***Dallison v Caffery (1964) 2 All ER 610 at p 619***, the test was articulated by Diplock LJ (as he then was) as follows:

"The test for reasonable and probable cause has a subjective as well as an objective element. The arresting officer must have an honest belief or suspicion based on the existence of objective circumstances which can reasonably justify the belief or suspicion. A police officer need not have evidence amounting to a prima facie

case. Hearsay information including information from other officers may be sufficient to create reasonable grounds for arrest as long as that information is within the knowledge of the arresting officer: **O'Hara v Chief Constable** (1977) 2 WLR 1; **Clerk and Lindsell on Torts** (18th ed.) para. 13-53. The lawfulness of the arrest is to be judged at the time of the arrest.”

21. In **Harold Barcoo v the Attorney General of Trinidad and Tobago HCA No 1388 of 1989 at p.6** Mendonca J. (as he then was) discussed the requirements as follows:

*“The person who must entertain the requisite suspicion (belief) is the arresting officer (prosecutor). It is his mind that is relevant. The arresting officer in order to satisfy the subjective elements of the test must have formed the genuine suspicion in his own mind that the person arrested has committed an arrestable offence and he must have honestly believed in the circumstances which formed the basis of that suspicion. The objective test was put this way by Diplock L. J. in **Dallison v Caffery [1965] 1 QB 348 (at page 619)**: “The test whether there was reasonable and probable cause for the arrest or prosecution is an objective one, namely whether a reasonable man, assumed to know the law and possessed of the information which in fact was possessed by the defendant, would believe that there was reasonable and probable cause.” ”*

22. In **Dumbell v Roberts [1944] 1 All ER 326**, Scott LJ articulated the limited nature of the requirement:

“The protection of the public is safeguarded by the requirement, alike of the common law and, so far as I know, of all statutes, that the constable shall before arresting satisfy himself that there do in fact exist reasonable grounds for suspicion of guilt. That requirement is very limited. The police are not called upon before acting to have anything like a prima facie case for conviction.”

23. Similar pronouncements were made by the Privy Council in ***Shaaban & Ors v Chong Fook Kam & Anor [1969] 3 All ER 1626 at 1630***, where Lord Diplock held that:

“Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: “I suspect but I cannot prove”...Their Lordships have not found any English authority in which reasonable suspicion has been equated with prima facie proof.”

24. In ***Nigel Lashley v the Attorney General of Trinidad and Tobago***, Narine JA discussed the exercise of the discretionary power of arrest as follows:

“The power to arrest is by its very nature a discretionary one. A police officer may believe that he has reasonable and probable cause to arrest a suspect, but may decide to postpone the arrest, while he pursues further investigations. His exercise of the discretion may be based on the strength or weakness of the case, the necessity to preserve evidence, or the need to ensure that the suspect does not abscond to avoid prosecution. The exercise of the discretion must be considered in the context of the particular circumstances of the case. The discretion must be exercised in good faith and can only be challenged as unlawful if it can be shown that it was exercised “unreasonably”... Arrest for the purpose of using

the period of detention to confirm or dispel reasonable suspicion by questioning the suspect or seeking further evidence with his assistance is an act within the broad discretion of the arrestor... A police officer is not required to test every relevant factor, or to ascertain whether there is a defence, before he decides to arrest... Further, it is not for the police officer to determine whether the suspect is in fact telling the truth. That is a matter for the tribunal of fact.” (Paras 18 and 19)

DISCUSSION

25. The defendant’s evidence is that the reasonable and probable cause for suspicion of guilt that motivated the claimant’s arrest included the following factors:
- i. A report was made by the complainant that he was the victim of a violent attack;
 - ii. The complainant sustained serious injuries in the attack as a result of which he was hospitalised;
 - iii. The complainant’s description of the alleged offender fit the description of the claimant;
 - iv. In the course of investigations PC Hosten visited the complainant’s home and took a statement from him;
 - v. Further investigations were conducted by the officers in the area where the offence was reported to have taken place and other persons were interviewed;
 - vi. The officers made unsuccessful efforts to locate the claimant at his home and workplace;
 - vii. Ag Sgt. Ammon had prior knowledge of the claimant as a person who lived in his neighbourhood; and

viii. PC Hosten recognised the claimant in a road block exercise several months later.

26. Counsel for the claimant submitted that both the arrest and the continued detention of the claimant were unjustified. Counsel relied on the officers' failure to interview the claimant while he was in custody or to disclose details of the information obtained by them in the course of their investigations to support his argument.
27. Counsel for the claimant relied heavily on what he considered to be inconsistencies in the defendant's evidence as undermining the requirements of reasonable and probable cause. Counsel contended that certain distinguishing features of the claimant formed no part of the description given by the complainant or the arresting officers. These included the claimant's missing tooth, a mole on his left cheek and a scar on his neck below the jaw line.
28. Counsel for the claimant argued that the claimant was approximately 6 feet 2 inches tall while the police report gave his height as 5 feet 10 inches. Counsel argued further that the complainant did not state the height of the suspect in his statement to PC Hosten and that the complainant specifically stated that he could not tell the suspect's height as he was lying on the ground when he came face-to face with the suspect. Counsel asserted that the description of the assailant given by the complainant was limited to his skin colour and hairstyle and failed to address other identifying features such as his age, height and built.
29. In my view, while the distinguishing features upon which Counsel for the claimant relies may be identifiable upon close examination, there is nothing to suggest that they are immediately apparent or would be so

evident to someone who was being subject to a vicious attack. There is, in any event, nothing to confirm that the claimant had a missing tooth or a visible scar at the time of the incident.

30. Having regard to the information that was available to the arresting officers as a whole, the inconsistencies identified by Counsel were not sufficiently material to undermine the reasonable and probable cause that did exist to justify the claimant's arrest. The authorities make it clear that a police officer is not required to test every relevant factor or to determine whether there is a defence before he decides to arrest. Neither is he required to have a prima facie for conviction. These are matters for the court to decide.
31. The material time at which the reasonableness of the officers' belief must be assessed is the time of the arrest. It is relevant that approximately four months had elapsed between the date on which the offence was alleged to have been committed and when the claimant was ultimately arrested. During the intervening period the investigating officers obtained a statement from the complainant giving details of the attack and a description of the perpetrator. Efforts to locate the claimant both at his home and his workplace proved futile. The claimant was known to Ag. Sgt. Ammon and resided in the same neighbourhood. When questioned by the court, PC Hosten also stated that the claimant was known to him.
32. Notwithstanding the officers' prior knowledge of the claimant, there was no evidence that they acted prematurely or in bad faith in arresting him. The claimant's arrest took place at an advanced stage of the investigative process and when the opportunity ultimately presented itself.

33. In all the circumstances, I am of the view that there was reasonable and probable cause for the officers to suspect that the claimant was guilty of the offence for which he was arrested.
34. The reasonableness of the period for which the claimant was detained arises for consideration.
35. In cross examination PC Hosten confirmed that no further investigations were carried out while the claimant was kept in police custody. PC Hosten was frank in his admission that the claimant was detained until an identification parade could be conducted.
36. Counsel for the defendant readily accepted that there was nothing in the defendant's case to justify the four-day period of detention, apart from the fact that the officers were required to locate persons who bore a likeness to the claimant for the purposes of conducting an identification parade. Counsel submitted that in the circumstances of the case a period of detention of 48 hours was reasonable.
37. It must be reaffirmed that, it was within the broad discretion of the officers to detain the claimant until an identification parade could be conducted to dispel or confirm their suspicions, provided that the period of detention was not unreasonable and the decision to detain the claimant was made in good faith: ***Nigel Lashley v the Attorney General of Trinidad and Tobago.***
38. The evidence establishes that the claimant was detained for more than three and a half days before an identification parade was conducted. It appears that there was some difficulty in identifying willing participants

who bore a likeness to the claimant. The matter was ultimately addressed by conducting a public identification parade on the afternoon of Tuesday, 20 January 2015.

39. However, no details are given by the defendant of the efforts that were made during the claimant's detention to identify suitable participants for an identification parade or the period over which the efforts continued or when the efforts were finally aborted. In the absence of such evidence, it cannot be suggested that the continued detention of the claimant for the entire period was reasonable.
40. In addition, there is conflict in the defendant's evidence regarding the date on which Inspector Singh was asked to conduct the identification parade. PC Hosten's evidence is that he contacted Inspector Singh on Saturday, 17 January 2015, whereas Inspector Singh states in his witness statement that he was first contacted on Tuesday 20 January 2015. Inspector Singh was not available for cross-examination.
41. Counsel for the claimant cross-examined PC Hosten extensively on the discrepancy. Notwithstanding that Inspector Singh's evidence was not tested on cross-examination, I am of the view that his version of events was more credible than that of PC Hosten and that Inspector Singh was in fact contacted on 20 January 2015 to conduct the identification parade.
42. Bearing in mind that the claimant was taken into custody at around midnight on 16 January 2015 and that certain measures would be required to convene an identification parade and that further arrangements would also be necessary to conduct a public identification parade, I am of the view that a period of detention of 48 hours was

reasonable in all the circumstances. The claimant's continued detention thereafter was unlawful.

43. An appropriate award for the claimant's unlawful detention must now be considered.
44. Counsel for the defendant submitted that an award of general damages in the region of \$60,000.00, inclusive of aggravated damages, was appropriate. Counsel relied on the award that was made by the court in similar circumstances in the case of ***Andrew Bruce v the Attorney General CV2014-04553***. Counsel submitted that an award of exemplary damages should not be made as there was nothing oppressive in the conduct of the arresting officers to justify such an award.
45. Counsel for the claimant submitted that the award of general damages in the ***Andrew Bruce*** case was reasonable if it were found that the claimant's arrest was lawful.
46. As indicated above, the relevant period of the claimant's unlawful detention was less than two days. I find that there were no aggravating features surrounding the claimant's detention. The claimant was arrested during a roadblock and he was handcuffed and taken to the Police Station in a marked vehicle. His allegation that he was not informed of the right to an attorney-at-law is unsustainable in circumstances where his attorney visited him while he was in custody and witnessed his participation in the identification parade. The claimant's allegations regarding the filthy condition of the prison cell and the poor quality of food served to him were denied by the officers. However, no positive evidence was adduced to contradict the claimant's assertions.

47. Further, there was no evidence of oppressive, arbitrary or unconstitutional conduct by the officers to support an award of exemplary damages to the claimant.
48. Having considered the authorities relied on by Counsel, the period of claimant's unlawful detention and the circumstances of this case, I am of the view that an award of \$60,000.00 in general damages is appropriate.
49. The claimant is awarded interest on the award of damages at the rate of 2.5% from the date of this judgment to the date of payment.
50. The defendant shall pay the claimant's prescribed costs in the sum of \$16,000.00.

Jacqueline Wilson
Judge