

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No: 267 of 2011
Claim No. C.V. 2009-01274

BETWEEN

NIGEL LASHLEY

Appellant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent

PANEL:

P. Weekes J.A.

A. Yorke-Soo Hon J.A.

R. Narine J.A.

Appearances: Mr. S. Roopnarine and Mr. T. Dassayne appeared on behalf of the Appellant.
Ms. R. Caesar instructed by Ms. P. Alexander appeared on behalf of the Respondent.

Date Delivered: 25th July, 2013

I have read the judgment of Narine J.A. and agree with it.

P. Weekes
Justice of Appeal.

I too, agree.

A. Yorke-Soo Hon
Justice of Appeal.

JUDGMENT

Delivered by R. Narine J.A.

1. This is an appeal against the decision of Rajkumar J, who dismissed the Appellant's claim for damages for false imprisonment and/or unlawful detention for a period of approximately 36 hours from 3.00 am on 11th September, 2008 to 3.00 pm on 12th September, 2008. The Appellant's claim originally included damages for trespass, detainee and conversion of a motor vehicle but this claim was not pursued after evidence was led at the trial.

2. The basic facts as found by the trial judge are as follows:

- i. On or around 9th November 2008, the police received information that the Appellant was storing arms and ammunition at his home at La Romain, without being the holder of a firearms licence.
- ii. On 10th September 2008, the police conducted surveillance at the Appellant's premises. They observed motor vehicle PBO 1282 at the premises. A check

of the police data base revealed that registration number TBO 1282 was assigned to an agricultural bell trailer owned by one Sunil Samaroo.

- iii. A search warrant was obtained to search the premises for arms and ammunition.
 - iv. On 11th September 2008, at around 3.00 am a party of police officers executed the search warrant at the Appellant's home.
 - v. No arms and ammunition were found. However, the Appellant was interviewed with respect to motor vehicle PBO 1282. The police told the Appellant of their information with respect to the vehicle, showed him a computer print out with respect to TBO 1282, and asked him to produce his certified copy of ownership of the vehicle. He was unable to produce one. However, he showed the police a receipt for the sum of \$25,000.00 (from one Rodney Lopez) from whom he claimed to have purchased the vehicle.
 - vi. The Appellant was then arrested by PC Hosein and taken to the San Fernando Police Station on suspicion of having stolen PBO 1282.
 - vii. PC Hosein continued inquiries and traced the vehicle by its engine and chassis numbers. The inquiries revealed that the vehicle was in fact PCA 2196 which was owned by Auto Wreck Japan Limited. The stolen vehicle squad was contacted to assist in finding the current owner, who turned out to be one Kenrick Davis from whom the vehicle was stolen in June 2007. The vehicle was subsequently returned to Kenrick Davis.
3. On these facts the trial judge determined the issues to be:
- i. Whether the search of the Appellant's premises and the seizure of the motor vehicle were lawful.
 - ii. Whether there was reasonable suspicion to justify the arrest of the Appellant.
 - iii. Whether the police had reasonable grounds for detaining the Appellant for the period that they did.
 - iv. Whether the Appellant was informed of his rights including his right to an attorney.
4. The Appellant abandoned the claim for trespass, detainee and conversion of the vehicle after evidence was led at the trial. Accordingly, the legality of the search and

seizure of the vehicle was no longer a material issue in the case. Even so, the trial judge found as a fact that the police officers were in possession of a warrant to search the premises for arms and ammunition.

5. After a careful analysis of the evidence and the relevant law the trial judge found on a balance of probabilities that:

- i. the arrest of the Appellant was based on reasonable and probable cause;
- ii. the period of his detention was not excessive, and
- iii. he was informed of his constitutional rights.

6. In his written submissions the Appellant summarized the grounds of appeal to be

- i. Whether the learned trial judge was correct to find that a search warrant was issued.
- ii. Whether the trial judge was correct to intervene in the proceedings to elicit evidence from the Respondent's witnesses as to the absence of the search warrant.
- iii. Whether the trial judge erred in failing to hold that even if the power of arrest arose, the police officers in the circumstances of this case ought to have conducted further investigations before arresting the Appellant.
- iv. Whether the learned trial judge erred in failing to hold that the Appellant's detention after his arrest was a continuing tortious act which the Respondent failed to justify.

7. The first and second grounds relate to the issue as to whether or not the police were in possession of a search warrant at the time they entered the Appellant's premises. The trial judge considered the evidence before him and came to a finding of fact that the officers had obtained a warrant to search the premises for arms and ammunition. Since the police did have a warrant to search the premises, the judge found that the search and seizure of the Appellant's vehicle was not unlawful.

8. It is well settled that an appellate court will not disturb a finding of fact made by a judge who has had the benefit of seeing and hearing the witnesses and assessing their credibility. In **Carol Etienne v. Thelma Etienne** (unrep.) Civil Appeal No. 116 of 1996,

de la Bastide CJ considered the circumstances in which an appellate court will disturb a finding of fact made by a trial judge (at page 8):

“An appellate court ought not to upset a trial judge’s finding of fact simply because the appellate court would have come to a different conclusion. Due weight must be given to the advantage which the trial judge has as a result of being able to see and hear the witnesses give their evidence and to form an impression from that of their credit-worthiness. For his finding to be upset there must be some demonstrable flaw in the process by which he reached it. It may be for instance that he drew an inference which was not justified or failed to draw an inference which was. Another ground on which the appeal court may interfere is that the trial judge failed to take account of some relevant piece of evidence or to appreciate its proper significance, or conversely that he took into account something which he ought not to have taken into account or attributed to it a significance which it did not rightly have. It is with those principles in mind that one must examine what the learned judge did or did not take into account in reaching his finding and the route by which he arrived there”.

9. In this case, we are not persuaded that the trial judge did not take advantage of seeing the witnesses give their evidence and assessing their credibility, nor are we persuaded that there was any “demonstrable flaw” in the process by which the judge arrived at his finding. It was open to the judge to accept the explanation given by the Respondent’s witness PC Jameer Hosein for his inability to produce the search warrant to the court, because it was destroyed in a fire at the San Fernando Police Station in February 2009. While it is true that no documentary evidence, such as a station diary entry, a warrant book, or a pocket diary, were produced as secondary evidence, it is noted that no request was made by the Appellant for these documents, nor was there any cross-examination on the issue of the existence or availability of these records. Having considered the evidence that was before the trial judge, we are not persuaded

that there is any reasonable basis for disturbing his finding of fact. Nor do we find any merit in the criticism of the trial judge for asking questions on the issue of the search warrant, since it is clear from the record that the attorneys had not explored the issue adequately in cross-examination or re-examination. In such circumstances a trial judge is not required to sit silently and act on the basis of insufficient evidence for fear of being criticized for entering into the arena. He is entitled to ask questions in order to clarify matters that he needs to consider in order to properly adjudicate on the issues in the case.

10. As noted earlier in this judgment, at the trial, after the evidence was completed, the Appellant jettisoned his claim for damages for trespass, detinue and conservation of the motor vehicle. The presence or absence of a search warrant is relevant to this aspect of the claim only. It is not relevant to the claim for false imprisonment and/or unlawful detention.

11. The police did not require a search warrant to arrest and detain the Appellant. They were legally empowered to arrest without warrant in this case, by virtue of section 3(4) of the **Criminal Law Act** Ch. 10:04 and section 46(1)(d) of the **Police Service Act** Ch. 15:01, which provide:

Section 3(4)

“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”.

Section 46;

(1) *“A police officer may arrest without a warrant*

... ..

(d) A person in whose possession anything is found which may reasonably be suspected to have been stolen or who may reasonably be suspected of having committed an offence with reference to such things”.

12. The Appellant contends further that even if the power of arrest arose, the police ought to have conducted further investigations before arresting the Claimant.

13. These are in fact two issues:

- i. Was the police officer entitled, as a matter of law, to arrest the Appellant at the time that he did, and
- ii. Was this a wrongful exercise of the discretion to arrest?

14. It is well settled that the onus is on the police to establish reasonable and probable cause for the arrest: **Dallison v. Caffery** (1964) 2 All ER 610 at 619 D per Diplock LJ. 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 that the suspect had committed an offence, and this belief or suspicion must be 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.

15. In this matter, at the time of the arrest the police were in possession of the following information:

- On 9th September 2008 PC Hosein received information that the Appellant was storing arms and ammunition at his home without being the holder of a firearm user's licence.
- On 9th and 10th of September PC Hosein conducted surveillance of the premises, where he observed the Appellant's motor vehicle PBO 1282. A check of the police data base revealed that the registration number TBO 1282 was assigned to an agricultural bell trailer owner by one Sunil Samaroo of Barrackpore.
- PC Hosein obtained a warrant to search the Appellant's premises.

- On 11th September, 2008 PC Hosein and other police officers executed the warrant at the Appellant's premises. No arms and ammunition were found.
- The Appellant was shown a computer printout of vehicle TBO-1282.
- The appellant showed PC Hosein a receipt for the sum of \$25,000.00 dated 11th July, 2007 signed by one Rodney Lopez, in full payment for PBO 1282. However, he was unable to produce a certified copy of ownership for the vehicle. PC Hosein asked him whether he had made efforts since July, 2007 to obtain a certified copy, to which the Appellant replied in the negative.
- From the information in his possession PC Hosein was satisfied that the vehicle bore a false registration, and believed that it was a stolen vehicle.
- PC Hosein then arrested the Appellant for the suspected larceny of the vehicle, informed him of the reason for his arrest and advised him of his constitutional rights and privileges. The Appellant remained silent.

16. Based on the evidence rehearsed above, taken from the witness statement and viva voce evidence of PC Hosein, it is clear that once the trial judge accepted this evidence, it was open to him to find that the Respondent had discharged the burden of proving both the subjective and the objective elements of reasonable and probable cause for the arrest. No cogent argument has been advanced by the Appellant that provides any basis for disturbing the judge's finding on this issue.

17. However, the Appellant's submission is double edged. He contends that in the circumstances of this case, even if the power of arrest arose, the police should have conducted further investigations before effecting the arrest.

18. 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” under the principles laid down by Lord Greene M.R. in **Associated Picture House Ltd. v. Wednesbury** (1948) 1 K.B. 223. 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: **Clerk and Lindsell on Torts** (18th ed.) para. 13-54.

19. A police officer is not required to test every relevant factor, or to ascertain whether there is a defence, before he decides to arrest: **Herniman v. Smith** (1938) AC 305 per Lord Atkin. Nor is he under a duty to resolve conflicts of evidence, and his knowledge of such conflicts does not of itself show a lack of reasonable and probable cause: **Dallison v. Caffery** (supra) at 622 E per Lord Diplock. 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.

20. On the facts of this case, it is difficult to impugn the exercise of the discretion to arrest. The arresting officer was in possession of strong prima facie evidence that the motor vehicle was a stolen vehicle which bore false number plates. When asked for an explanation as to how he came into possession of the vehicle, the Appellant was unable to produce a certified copy of ownership for the vehicle, albeit as a matter of law he is not required to produce a certified copy. However, when pressed as to why he did not have such a document after more than one year of purchasing the vehicle, he was unable to provide an explanation. In addition, the receipt itself provided further ground for suspicion in that it reflected a purported sale at a significant undervalue. In these circumstances, the arresting officer can hardly be criticised for exercising his discretion in favour of arresting at that time and carrying out further investigations the following day. This was 3.00 am on 11th September, 2008. There was the possibility to consider that the vehicle might be compromised for evidential purposes or the suspect might abscond before a prosecution could be initiated.

21. Finally, the Appellant contends that the period of detention was longer than could be reasonably justified. The period of detention was from about 3.00 am on 11th September, 2008 to 3.00 pm on 12th September, 2008 – about 36 hours. The trial judge

considered the evidence with respect to the further investigations carried out by the police during this period and concluded that the period of detention was not excessive in the circumstances.

22. It is well settled that a police officer is entitled to arrest a suspect and conduct further enquiries in order to see whether or not his suspicions are supported by further evidence. As long as these enquiries are reasonable they are an important adjunct of the administration of justice: **Dallison v. Caffery** (supra) at 617 B – D per Lord Denning M.R.

23. In this case, after the Appellant was arrested and taken to the San Fernando Police Station, further inquiries were conducted. Efforts were made to trace the vehicle. The investigation revealed that the vehicle was in fact PCA 2196 owned by auto Wreck Japan Limited. The Stolen Vehicle Squad was also contacted. They assisted in locating the current owner of the vehicle.

24. In his oral submissions, the Appellant's attorney submitted that the actual investigations that were subsequently effected involved checks on the police data base and telephone calls to other divisions of the police service, which would have taken a matter of minutes in each case. We do not find merit in those submissions. In assessing these matters, one has to take a realistic view of police operations. The arrest was made at 3:00 am. Police Officers go on operations that involve irregular hours, after which they go off duty. Their duties are not limited to the investigation of one particular offence. Their duties after the arrest may involve other investigations. Their communications with other divisions may not produce instantaneous results. They may need to contact particular sources several times before they obtain the relevant information. In this case, from the evidence it appears that the police were able to make sufficient progress within a fairly short period of time. Having regard to the results of the post-arrest investigations the Appellant may consider himself fortunate to have escaped prosecution for larceny if not for unlawful possession of the motor vehicle.

DISPOSITION:

25. In the premises, we find no merit in the grounds of appeal adduced. The appeal is dismissed and the orders of the trial judge are affirmed. The Appellant will pay the costs of the Respondent assessed at 2/3 of the costs below.

Dated the 25th day of July, 2013.

Rajendra Narine,
Justice of Appeal.