

**TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**H.C.A. No. 1136 of 2000**

**BETWEEN**

**MICAH RULLOW**

**Plaintiff**

**AND**

**THE ATTORNEY GENERAL  
OF TRINIDAD AND TOBAGO**

**Defendant**

**Before the Honourable Mr. Justice Ventour**

**Appearances:**

Ms. Rose and Mr. Merritt for the Applicant  
Ms. Noel and Ms. Persad for the Defendant

**JUDGMENT**

The power of the police to arrest without a warrant is limited by statute. Section 3 (4) of the Criminal Law Act Chap. 10:04 (the Act) states:

**“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.”**

This is what Lord Diplock had to say with respect to section 2(4) of the United Kingdom Criminal Law Act 1967 (which is identical to section 3(4) of our Act) in the well known case of **Holgate-Mohammed –v- Duke [1984] 1 aer 1054** at page 1057:

**“Section 2(4) of the 1967 Act makes a condition precedent to a constable’s having any power lawfully to arrest a person without a warrant that he should have reasonable cause to suspect that person to be guilty of the arrestable offence in respect of which the arrest is being made. Whether he had reasonable cause is a question of fact for the Court to determine.”**

The test to be applied in determining whether an arrest is lawful is an objective test. Mendonca, J. explained the application of the test in the case of **Shannon Smith – vs- The Attorney General of Trinidad and Tobago, H.C.A. S1522 of 1996** where at page 11 the learned Judge said:

**“The enquiry is not limited to whether the arresting officer believes that he had reasonable grounds to make the arrest but whether the existing facts and information available to the Police at the time of the arrest gave them reasonable cause to suspect the person to be guilty of the offence. The onus in matters such as this is therefore on the Respondent when an arrest is challenged to put before the Court the facts and information in the possession of the arresting officer at the time of the arrest so the Court may consider whether such facts and information, viewed objectively, afforded reasonable cause to arrest.”**

On the 5<sup>th</sup> September, 1999 a young lady by the name of Carol Quash reported to Corporal Payne of the Arima Police Station that she was the victim of a criminal act i.e.

rape, on the night of September 4, 1999. She gave a description of her assailant to the Investigating Officer, the said Corporal Payne, in the following terms:

**“5 feet 8 inches, slim built, low hair cut, sharp features and dark complexion.”**

Ms. Quash also gave the name of her assailant as “Ed” and she also reported to the police that he drove a white sentra motor vehicle and worked at the Piarco Airport.

As a consequence of the report Corporal Payne conducted certain investigations and on 29<sup>th</sup> October, 1999 at approximately 8:00 a.m. he, in company with another police officer, went to the work place of the Applicant at H.E. Robinson Enterprises Ltd., Southern Main Road, Curepe and there arrested the Applicant. The Applicant was placed in a marked police vehicle and taken to the Tunapuna Police Station and then to the victim’s workplace at the Trinidad and Tobago Bureau of Standards, Macoya, Tunapuna and thereafter to the La Horquetta Police Station. They arrived at the police station at approximately 10:45 a.m. The Applicant was placed in a cell where he was kept until 9:00 a.m. the following morning, when Ms. Quash was brought to the cell and confirmed that the applicant was not her attacker. The Applicant was then released from the cell and after giving Corporal Payne a statement he was allowed to leave the station.

On 12<sup>th</sup> May, 2000 the Applicant filed a motion seeking the following reliefs:

- (1) A declaration that his constitutional rights were infringed between 8:00 a.m. on 29<sup>th</sup> October, 1999 and 8:50 a.m. on 30<sup>th</sup> October, 1999 when he was arrested and detained by police officers including Corporal Payne at his place of work;

- (2) A declaration that his arrest by police officers including Corporal Payne was arbitrary, unlawful and unconstitutional and contravenes his right to liberty and the right to the security of the person and the right not to be deprived thereof except by due process of law, within section 4(a) of the Constitution;
- (3) A declaration that his detention on 29<sup>th</sup> October, 1999 in a police vehicle and later at the La Horquetta Police Station was arbitrary, unlawful and in contravention of his right as enshrined within section 4(a) of the Constitution to liberty and the right not to be deprived thereof except by due process of law;
- (4) A declaration that the failure and/or omission and/or refusal of the Respondent's servants and/or agents to inform him of his rights to retain and instruct and to hold communication with a legal adviser of his choice was illegal and unconstitutional and an infringement of the Applicant's rights under sections 4(b) and 5(2)(c) of the Constitution;
- (5) A declaration that the failure and/or omission and/or refusal of the police officers including Corporal Payne to take him promptly before an appropriate judicial authority contravened his right as enshrined at section 4(a), section 4(b) and section 5(2)(c) and (h) of the Constitution;
- (6) An order that monetary compensation including aggravated and/or exemplary damages in respect of the damages and loss suffered by the Applicant as a result of the aforementioned contraventions and infringements of his constitutional rights be assessed and paid to him;

(7) All such further and/or other relief as the case may require and such orders and such directions as it may consider appropriate for the purpose of ensuring the enforcement of his rights;

(8) Costs certified fit for Senior and Junior Counsel.

The grounds upon which the several reliefs are sought are stated in the Notice of Motion. In support of the said Motion the Applicant swore and filed an affidavit on 12<sup>th</sup> May, 2000 and in opposition the Respondent filed the following two affidavits:

(a) Affidavit of Police Corporal Glen Payne, sworn and filed on 30<sup>th</sup> June, 2000;

(b) Affidavit of Police Corporal Allan Ramai, sworn and filed on 6<sup>th</sup> July, 2000;

It was agreed between Counsel for the parties that the affidavit of Corporal Ramai is not relevant for the determination of any of the issues which this Court is being called upon to decide. It is clear that the evidence of Corporal Ramai is intended to challenge the testimony of the Applicant and to say that the prison cells at La Horquetta Police Station were not in the condition that the Applicant said they were. Such evidence will be material for the purpose for quantifying the measure of damages to which the Applicant will be entitled in the event that this Court finds that his constitutional rights were infringed by virtue of the arrest.

In my respectful view the simple issue for determination by this Court therefore is whether the Applicant's arrest by Corporal Payne on 29<sup>th</sup> October, 1999 was lawful. Counsel for the Respondent has submitted that Corporal Payne had lawful authority derived from section 3(1) and (4) of the Criminal Law Act to arrest the Applicant without

a warrant and that therefore the arrest and imprisonment was lawful. I do not believe that there has been any challenge to the lawfulness of the authority of the police to arrest the Applicant without a warrant. What is in issue is whether in the circumstances of the particular case, the arresting police officer had reasonable cause to suspect that the Applicant was guilty of the offence for which he was arrested.

Counsel for the Respondent submitted that the information possessed by Corporal Payne prior to the arrest of the Applicant was sufficient to arouse a reasonable suspicion that the Applicant was guilty of the offence. She agreed that it was not incumbent upon the police officers to make a conclusion as to guilt or innocence and that even if Corporal Payne came to the wrong conclusion when he arrested the Applicant for the offence, his action ought not to be challenged as long as the suspicion which he entertained was reasonable.

In support of the submissions Counsel relied upon the following authorities, viz:

- (1) **Shannon Smith –v- The Attorney General, H.C.A. S-1502 of 1996;**
- (2) **Irish –v- Barry 8 WLR –177;**
- (3) **Hussein –v- Chong Fook Kam [1970] A.C. -942;**
- (4) **Dumbell –v- Roberts [1944] AER 326;**
- (5) **Holgate Mohammed –v- Duke [1984] 1 AER 1054;**
- (6) **Mc Ardle –v- Egan & oths. [1933] AER 611;**
- (7) **Lennox Phillip & oths. –v- D.P.P. & Attorney General,  
Civil Appeal No.140 of 1990.**

I hope Counsel will forgive me if I don't analyse each of the cases to which reference has been made because it appears that they all deal in some way or the other

with the role of the police and their powers of arrest whether derived from the Common Law or from Statute. I am particularly attracted to the passage taken from Pollock on Torts (15<sup>th</sup> Edition) on pg. 167 and to which reference was made by Phillips, J.A. at page 195 in the case of **Irish –v- Barry** (supra). That passage which was relied on by Counsel for the Respondent reads as follows:

**“The only thing which can be certainly affirmed in general terms about the meaning of “reasonable cause” in that connection is that on the one hand a belief honestly entertained is not enough, the defendant must show facts which would create a reasonable suspicion in the mind of a reasonable man; per Lord Campbell, C.J. in Broughton –v- Jackson (1952) 18 QB at pg. 383; on the other hand a man is not bound to wait until he is in possession of such evidence as would be admissible and sufficient for prosecuting the offence to conviction, or even on the best evidence which he might obtain by further inquiry. It does not follow that because it would be very reasonable to make further inquiry, it is not reasonable to act without doing so.”**

What is instructive coming out of that passage is the fact that whether the arresting officer honestly entertained the belief that he had reasonable cause to suspect that the person arrested was guilty of the offence was not enough for justifying the arrest. As Lord Campbell, C.J. states in the case of **Broughton –v- Jackson** (supra) the arresting officer must show facts which would create a reasonable suspicion in the mind of a reasonable man.

On the other hand Counsel for the Applicant Ms. Rose submitted that on the evidence put before the Court there is absolutely no basis upon which the police officer could reasonably justify the arrest of the Applicant. In support of her submissions Counsel referred the Court to the following authorities:

- (1) Holgate-Mohammed –v- Duke [1984] 1 AER 1054;
- (2) Mc Ardle –v- Egan & oths. [1933] AER 611;
- (3) Hussein –v- Chong Fook Kam [1970] AC 942;
- (4) Shannon Smith –v- The Attorney General H.C.A. No.S1522 of 1996;
- (5) Dallison –v- Caffery [1964] 2 AER 610.

It is well accepted that once the lawfulness of the arrest is challenged the onus then shifts to the police to justify the arrest. This Court must therefore examine the evidence of the Respondent, in particular, that of Corporal Payne in an effort to determine whether the officer, on the information he had in his possession, had reasonable cause to suspect that the Applicant was guilty of the offence.

Ms. Quash told Corporal Payne that the assailant had telephoned her at home at about 10:00 p.m. on the night of the crime and, as part of his investigation, Corporal Payne had secured from TSTT a list of all the telephone numbers from which calls were made to the home of Ms. Quash on the day of the assault. The officer testified that he had shown Ms. Quash the list and that she had pointed out one number which was unfamiliar to her. That information led Corporal Payne to a particular address on Sergeant Street, Tunapuna, where one of the occupants, a gentleman, informed Corporal Payne that several of his friends would visit and use his telephone. Corporal Payne said that none of the occupants of that address fitted the description of the assailant given to

him by Ms. Quash but the gentleman at the said address, informed the officer that the description fitted a friend of his by the name of Micah Rullow, the Applicant herein.

Corporal Payne said further that he found out where the Applicant was employed and on the morning of 29<sup>th</sup> October, 1999 he went to the Applicant's place of employment H.E. Robinson Enterprises Ltd., Southern Main Road, Curepe where he met the Applicant. This is what Corporal Payne had to say in paragraph 14 of his affidavit:

**“The Applicant came into the Manager’s office and I identified myself and Police Constable Bernard to him. When I saw the Applicant I assessed his height and features and found that the description did match him. Further I consider that he might be able to overpower Ms. Quash because of her very slight build.”**

After making an assessment of the Applicant Corporal Payne said he told the Applicant that he is investigating a charge of rape committed against one Carol Quash and asked the Applicant if he knew Carol Quash. The Applicant responded in the negative. He said he then cautioned the Applicant and told him he was under arrest.

Under cross-examination Corporal Payne admitted that the description of the Applicant given to him by Ms. Quash fitted thousands of men so that he could not rely primarily on the features of the assailant as described by Ms. Quash for the purpose of making an arrest. He also admitted under cross-examination the following facts:

(1) That the Applicant was tall as distinct from being described as average height.

In fact it was agreed that the Applicant was a little over 6 feet in height;

(2) That the Applicant did not answer to the name of “Ed”; and

(3) That the Applicant did not drive a white sentra motor vehicle as reported by Ms. Quash. The evidence revealed that he drove a gold coloured sentra.

Having regard to the time the offence is alleged to have been committed and the time of the arrest, I do not believe that the “low haircut” of the assailant played any part in the officer identifying the Applicant as having committed the offence. What is left by way of description of Ms. Quash’s attacker are the sharp feature, slim built and dark complexion. As indicated earlier Corporal Payne admitted that there is an obvious risk in arresting someone for rape on the basis of such a description since there are thousands of men who could easily be so described. What other information then did Corporal Payne rely upon to reasonably suspect that the Applicant was guilty of the offence of rape.

There is no evidence before this Court linking the Applicant to the telephone call to Ms. Quash’s home on the day the offence is alleged to have been committed or on any other day for that matter. There is no evidence that the Applicant was at the Sergeant Street home on the day in question. Absolutely no nexus has been established between the Applicant and the telephone call alleged to have been made from the Sergeant Street residence to Ms. Quash’s home on the night of the attack. On what basis then, could Corporal Payne have had reasonable cause to suspect that the Applicant was guilty of the offence of rape to warrant his arrest.

It has not been disputed that the Applicant co-operated fully with the officers and Corporal Payne admitted that he arrested the Applicant primarily for the purpose of conducting an ID parade. But he also admitted under cross-examination that if the

suspect is willing to submit himself voluntarily for an ID parade then in such a case the police will not readily exercise the power of arrest.

When asked by this Court why then did he arrest the Applicant if on his own admission the Applicant had indicated he was willing to submit himself voluntarily to an ID parade and that the Applicant was cooperative in every other respect. Corporal Payne responded by saying that it was a criminal offence and that he thought it best that the Applicant accompany them to the station pending the outcome of the trial.

It would appear therefore that Corporal Payne was not prepared to take any chances and proceeded to arrest the Applicant on the information he had and placed him in a marked police car and drove to the work place of Ms. Quash, presumably to arrange for her to attend the La Horquetta Police Station where the ID parade was to be conducted. At no time did Corporal Payne consider the possibility of Ms. Quash seeing the Applicant in the police car, in the custody of the Police, at her place of employment could have contaminated the process of the ID parade. Be that as it may Ms. Quash did not attend the police station until about 9:00 a.m. the following morning and did there and then confirmed to the officers on duty that the Applicant was not her attacker.

Could it be argued that on the evidence before this Court, Corporal Payne had reasonable grounds to suspect that the Applicant was guilty of the offence. As I have indicated earlier the test to be applied is an objective one. In the case of **Dumbell –vs- Roberts (1944) 1 AER 326**, Scott, L.J. at page 329 said:

**“The protection of the public is safeguarded by the requirement, alike 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 suspicion of guilt. That requirement is very limited.”**

I have carefully assessed the evidence placed before this Court and I am of the view, that based on the information he had in his possession, Corporal Payne may have acted prematurely when he arrested the Applicant on the morning of October 29, 1999. Applying the objective test as I do, I do not believe that a reasonable man acting on the facts which Corporal Payne had in his possession, would have entertained any suspicion that the Applicant was guilty of the offence of rape to justify his arrest. I therefore hold that the Applicant’s arrest on 29<sup>th</sup> October, 1999 was unlawful and unconstitutional. Having so found it follows that the Applicant’s subsequent detention was also unlawful and unconstitutional.

Counsel for the Respondent conceded in her written submission filed on 6<sup>th</sup> June, 2001 that there was an infringement of the Applicant’s right under section 4(b) as particularized under section 5(2)(c) of the Constitution. In view of the finding of this Court that the arrest of the Applicant in the circumstances was unlawful and unconstitutional, the concession made by Counsel for the Respondent affecting the Applicant’s right to retain and instruct and to hold communication with a legal adviser of his choice in breach of section 4(b) and section 5(2)(c) of the Constitution, adds nothing to the Applicant’s claim herein. So too is the failure and/or omission and/or refusal of the police officers to take the Applicant promptly before an appropriate judicial authority contrary to the provisions of the constitution.

Further there is absolutely nothing highlighted in the conduct of the police officers which would lead this Court to consider an award of aggravated or exemplary

damages by way of compensation to the Applicant for the infringement of his constitutional rights as proven.

Before granting the reliefs sought by the Applicant in the Notice of Motion I would like to comment very briefly on the recent decision of the Privy Council in the case of **Thakur Persad Jaroo –v- The Attorney General of Trinidad and Tobago, Privy Council Appeal No. 54 of 2000**. That decision was delivered on 4<sup>th</sup> February, 2002, that is, sometime after the instant case was argued before this Court. Neither Counsel for the parties has had the opportunity to address this Court on the procedural issue raised in the said case as it relates to the Notice of Motion filed under section 14 of the Constitution for alleged breaches of constitutional rights and freedom.

In criticising the procedure used by the Applicant in the Jaroo’s case as an abuse of process, this is what their Lordships had to say at paragraph 36 of the Judgment:

**“Their Lordships wish to emphasise that the originating motion procedure under section 14(1) is appropriate for use in cases where the facts are not in dispute and questions of law only are in issue. It is wholly unsuitable in cases which depend for their decision on the resolution of disputes as to fact. Disputes of that kind must be resolved by using the procedures which are available in the ordinary courts under the common law.”**

And commenting further on Lord Diplock’s strictures expressed in the case of **Harrikisson –vs- The Attorney General of Trinidad and Tobago (1980) AC 265** on the use of such a procedure this is what their Lordship had to say at paragraph 38 of the said judgment:

**“The point to which Lord Diplock drew attention was that the value of the important and valuable safeguard that is provided by section 14(1) would be diminished if it were to be allowed to be used as a general substitute for the normal procedures in cases where those procedures are available.”**

In the instant case the Applicant has however sought redress for the alleged wrong by filing a Notice of Motion under section 14(1) of the Constitution alleging that his rights under section 4(a) and 4(b) of the Constitution have been infringed. I don't think that he can be criticized for choosing that procedure since on the evidence before the Court there really is no dispute on the facts of the case. The issue arising on the facts of the case appears to be one of law, that is, whether or not the arrest of the Applicant was lawful.

On the totality of the evidence before the Court and having carefully considered the submissions made by Counsel for the parties I make the following declaration and order:

- (1) That the arrest of the Applicant by the Police on 29<sup>th</sup> October, 1999 and subsequent detention from 8:00 a.m. on the 29<sup>th</sup> October, 1999 to 8:50 a.m. on the 30<sup>th</sup> October, 1999 are arbitrary, unlawful and unconstitutional and contrary to the Applicant's right, as enshrined under section 4(a) of the Constitution.

- (2) An order that damages for the unlawful arrest and subsequent detention as aforesaid be assessed before a Master in Chamber on a date to be fixed by the Registrar.
- (3) The Respondent will pay the Applicant's cost of the Motion certified fit for advocate Attorney.

**Dated this 29<sup>th</sup> day of November, 2002**

**Sebastian Ventour  
Judge.**