

N/M/L/S

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO. 2006 HCV 00008

BETWEEN DESMOND PRESCOTT CLAIMANT
A N D THE ATTORNEY GENERAL DEFENDANT

Arlene Harrison-Henry for claimant.

Stephanie Orr instructed by Director of State Proceedings for defendant.

Heard 15th 16th and 18th April 2008

Campbell, J.

- (1) The claimant is a Jamaican citizen who is resident in the United Kingdom since May 2002. He works in that country as a security supervisor. Prior to his departure from Jamaica, he served as a police officer. Firstly as a member of the Island Constabulary Force for eight years and later in the Jamaica Constabulary Force for four years. His transfer from the ISCF was recommended by his superior officers at the ISCF. He has unrefuted evidence before this court that he has never had disciplinary proceedings brought against him, whilst he served in the force.
- (2) He contends that he migrated to England to join his wife, who had taken employment as a teacher there in September 2001. He resigned his service in the Force on the 24th May 2002. He states that he had matters to attend to so he returned to Jamaica on the 6th December 2003. He was scheduled to return to England on the 20th January 2004
- (3) He claims to have arrived at the airport some 45 minutes before his flight was scheduled to leave, and whilst completing the boarding process, he was accosted by two uniformed police officers. One of the officers, Woman Constable Carla Josephs demanded to see his

travel documents. He handed the documents to her; these included his current passport, boarding pass and his travel itinerary. She examined them and handed them to her male colleague. She then inquired of him, how many times in the last two (2) years he had travelled. The claimant told her two or three times. W/Cons. Josephs then ordered him to sit in a guardroom.

- (4) The claimant said he started to argue with the officers as to the reason for their action. He was told that they were awaiting the arrival of a senior officer. He waited inside the room for 5-8 minutes. Sgt. Gordon arrived, and wanted to know how frequently he had travelled to Jamaica since his departure. The claimant showed him his expired passport which had his occupation as a police officer. The sergeant was undeterred; he was asked if he was carrying drugs. The claimant denied this and volunteered that his luggage had been searched, to that the sergeant said, "Not pon you", the claimant countered by inviting the sergeant to search him. The response was "no inna you".
- (5) The sergeant then told him that he could have him x-rayed. Despite the protestations of the claimant, he was handcuffed and "draped" (held in the pants waist). In his cross-examination, he testified that he was taken in handcuffs from the small room and led through the departure area in full view of members of the public. He was placed in a cage at the airport station. At about 1:00am he was taken away in handcuffs to KPH, where he was registered and x-rayed. He was returned to the police station. He said he was finally released at about 3:00am on January 21.
- (6) The claimant denies that he was interviewed at the airport, or at the guardhouse. He said the incident left him feeling humiliated and embarrassed. He said his dignity and pride were hurt. He says there was no justification for anyone to suggest that he had drugs on him. He complained that at no time during the incident, was he told that the police had received a tip. He was not told the type of drug. He said he was not interviewed. Whilst he waited in the cell, there was a bench on which he laid down, his legs resting on the floor.

- (7) The claimant filed an action for false imprisonment and assault and battery; this was later amended to seek damages for breach of his constitutional right to privacy, and a claim for damages for post traumatic stress disorder.
- (8) The main issue for the court's determination as agreed by both sides was whether the police on duty and in particular, Carla Josephs, had a reasonable cause to suspect that the claimant ingested cocaine pellets. Both sides contended that the burden was on the other side to prove that the arresting officer acted on reasonable and probable cause.

The Respondent's Case

- (9) Carla Josephs was on her regular duties at the Norman Manley Airport, in a section called the search area. Her duties she describes as searching persons leaving the island as well as their luggage. She said while she was so engaged, she received a call from a Det. Cpl. Taylor of the airport station. The call was to the effect that one Desmond Prescott had narcotics substance in his possession and was travelling to England on Air Jamaica flight number 0005. This call came at 5:00pm to 6:00pm. She did not know before and the system she employed to identify him was to search the travel document of a majority of the males who were boarding that flight.
- (10) Having identified Desmond Prescott, the claimant, Josephs states that she accosted him and told him she was informed that he was in possession of narcotics, she said she notice that he had no hand luggage. She asked him to accompany her in a room and he did. She said that she asked if she could search him and he consented. She said that she conducted a body search of him and found nothing.
- (11) This bit of evidence from W/Cons. Josephs is difficult to understand, bearing in mind what the caller, Det. Cpl. Taylor, testified that his information was that the claimant had ingested drugs. Why the search which was contrary to the information received? The claimant's testimony was that Officer Taylor, when he came, had insisted that the claimant had ingested drugs.

- (12) He was removed from the room that was used to search persons, to another room. She searched the claimant and found nothing; she was removing him from the room where search is normally conducted, according to her evidence, to a room that contains a machine that is usually used to detect narcotic substance. That machine was known to have been unserviceable that day. She then informed her supervisor what had transpired and agreed with him that "based on the information received there was a possibility that the claimant may have ingested the narcotics. She was unable to say if his luggage had been searched. Josephs said she went to the boarding gate and advised Air Jamaica that the claimant would not be making the flight.
- (13) What was of importance to the officer, according to her, is that when the claimant was taken to the CIB office and interviewed, he was perspiring profusely although the office was air-conditioned. This led her to form the view that the claimant was being untruthful. Josephs said based on the information received and his suspicious behaviour, she decided that the best thing to do was to have an x-ray done to determine whether he had ingested any narcotic substance. However, in cross-examination, she said it was her supervisor's decision to send him to KPH for the x-ray to be done. It appears clear that the officer was not given a specific type of narcotic substance that the claimant should be carrying.
- (14) The claimant was transported to Kingston Public Hospital. The officer agreed that the only information she had received in relation to the claimant was from the phone-call. She had gotten the information between 5 o'clock and 6 o'clock; saw Prescott at about 10:00pm - 11:00pm. She said that she had asked her supervisor what she should do. She explained she needed advice whether she should have allowed him to board the flight or not. She said at the time she asked the supervisor, she was unsure of how to proceed.
- (15) Did Josephs, as arresting officer, honestly believe that the claimant had ingested cocaine? Her behaviour suggests that she entertained doubts after searching the claimant, questioning him and viewing his travel documents. In **Dallison v Caffery** (1965) 1 Q. b. at page 370,

Lord Diplock explains the requirement of reasonable and probable cause, in the arresting officer, along the following lines:

"Where a felony has been committed, a person whether or not he is a police officer, acts reasonably in making an arrest without a warrant if the facts which he himself knows or of which he has been credibly informed at the time of the arrest makes it probable that the person arrested committed the felony. This is what constitutes in law a reasonable and probable cause for the arrest."

- (16) In **O'Hara v Chief Constable** (1997) 1 All E. R. 129, the court concluded that the provision 12(1) Prevention of Terrorism (Temporary Provisions) Act 1989, was not unique, but had been a familiar feature of British law for more than half a century. Lord Steyn at page 134 of the judgment felt that the statute fell in the first set of statutes described by Feldman in his Civil Liberties and Human Rights in England and Wales. That group the learned author describes as follows:

"Where reasonable grounds for suspicion are required in order to justify the arrest of someone who turns out to be innocent (The Police and Criminal Evidence Act) requires that the constable personally has reasonable grounds for the suspicion and it would seem to follow that he is not protected if, knowing nothing of the case, he acts on orders from another officer who, perhaps does have such grounds."

..... The rationale for the principle in such cases is that in framing such statutory provisions, Parliament has proceeded on the long-standing constitutional theory of the independence and accountability of the individual constable.

- (17) At letter j, Lord Steyn, continues:
Given the independent responsibility and accountability of a constable under a provision such as s12(1) of the 1984 Act, it seems to follow that the mere fact that an arresting officer has been instructed by a superior officer to effect the arrest is not capable of amounting to reasonable grounds for the necessary suspicion within the meaning of s12(1).

- (18) What constitutes the requisite suspicion? In **Castorina v Chief Constable of Surrey** (1988) Times, 15 June, Sir Fredrick Lawton said:

"Suspicion by itself, however, will not justify an arrest. There must be a factual basis for it of a kind which a court would adjudge to be reasonable. The facts may be within the arresting constables own knowledge or have been reported to him. When there has been at trial whether a constable had a reasonable cause, his claim to have had knowledge or to have received reports on which he relied may be challenged. It is within this context that there may be an evidential issue as to what he believed to be the facts, but it will be for the courts to adjudge what were the facts which made him suspect that the person he arrested was guilty of the offence which he was investigating."

- (19) It is the duty of the police officers who are effecting the arrest, thereby depriving the citizen of his right to provide the court with his reasons for doing so, s13 of Constabulary Force Act places that duty squarely at the feet of the arresting officer. There is recognized a subjective and an objective element. The arresting officer must state the grounds that render the arrest legal, i.e. why was he suspicious? That is the subjective element; those grounds must be examined objectively. I find it difficult to find that Josephs, who admits that she was unsure of what to do, and who acted contrary to the terms of the information that she ought to have received from her informant, Det. Cpl. Taylor, could have satisfied the subjective element. Even where she had embarked on a course for searching for any narcotic she could find on the claimant, as opposed to looking for a person who ingested cocaine, she did not even look at his travelling luggage.
- (20) Even if she had the necessary grounds to satisfy the subjective element. There was not one title of evidence before the court to show that the arrest was reasonable. The information that the informant conveyed was paltry at best. It cannot be faulted that a name was not given by the caller; one recognizes that law enforcement would be ham-strung, if all informants were to be required to provide their

names. However, the police, having received information that the suspect was an ex-policeman from St. Thomas, it certainly would have bolstered their position to make enquires of this twelve (12) year veteran of the Force. Their queries would have revealed that he had an unblemished record. This informant's call at between 5 o'clock to 6 o'clock, provide the officers sufficient time not only for such queries but to watch the officer from a earlier time, immediately after checking in for the hour before flight to confirm whether his actions supported the claim. If, for example, he was observed having a snack before boarding, would that have provided a clue as to whether he had ingested the cocaine or any narcotic? If on the other hand he appeared out of sorts and was making frequent trips to the bathroom, would that have been of assistant to the police. These inquiries would not have been done to provide a defence for Prescott but to ascertain whether there was a reasonable and probable cause for his detention.

- (21) Taylor states that a majority of "drug mules" are males. Are there signs that the police are alerted to detect such persons? What were those? The police have the burden of discharging that the legal responsibility of "reasonable and probable cause". I do not see how the claimant, being upset and raising his voice, could provide reasonable and probable cause. Or is that to be expected of a Jamaican who has had his lawful trip interrupted. In *Dallison v Cafferty* (1964) 2 ALL E.R. 610, Lord Justice Diplock defines 'reasonable and probable cause', in this way;

"Where a felony has been committed, a person, whether or not he is a police officer, acts reasonably in making an arrest without a warrant if the facts, which he himself knows of which he has been credibly informed at the time or of the arrest, make it probable that the person arrested committed a felony. That is what constitutes in law reasonable and probable cause."

The police officer however, has wider powers than those of the private citizen, in this circumstance, Lord Denning observes at page 617,

"A constable however, has a greater power, 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 suspicions are supported by further evidence."

- (22) The claimant was deprived of his liberty from 10:15 pm to 3:00am, a period of five hours. \$100,000.00, injury to feelings -
The assault was constituted by the placing of the handcuffs, \$250,000.00

Aggravated Damages

The claimant was taken in handcuffs and paraded from the search area to the airport in full view of the travelling public. He was handcuffed at the hospital. The claimant being draped was in full view of the public and other police officers. He was a uniformed police officer, and would have felt humiliated, and suffered a loss of dignity and pride; subjecting the claimant to a body search and x-ray; being placed in a cage at the airport lock-up etc. \$150,000.00

- (23) No award is made for breach of the plaintiff's constitutional rights.
- (24) There is no evidence before the court to support a claim for post traumatic stress. I have admitted the medical certificate. There is no evidence from the relevant, psychotherapist before this court.

(25) **SPECIAL DAMAGES**

In loss of income	\$258.50
Travel	\$2,800.00
Medical report	\$40.00
Total	J\$2,800.00 and \$298 .00

Interest at 6% from the 20th January 2004, to 18th April 2008.

Interest on General Damages at 6% from 4th January 2006, to 18th April 2008.