

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN COMMON LAW  
SUIT NO. C.L. 2002/H - 096

BETWEEN	HEADLEY HYATT	CLAIMANT
AND	DAVE ROBB	FIRST DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	SECOND DEFENDANT

Lord Anthony Gifford QC instructed by Gifford, Thompson & Bright for the claimant

Miss Kathryn Denbow instructed by the Director of State Proceedings for the first  
and second defendant

May 31, 2004 and June 16, 2004

SYKES J (Ag)

#### MALICIOUS PROSECUTION

The law and issues in this case are not in dispute. It is a case that depends upon the credibility of the witnesses. There was only one witness for each party: Mr. Headley Hyatt, the claimant and Constable Dave Robb, the first defendant. There can be no dispute that the claimant has established that the criminal law was set in motion against him and that the prosecution was determined in his favour. He has failed to establish (i) malice and (ii) that the prosecution was without reasonable and probable cause. I accept the version given by the police officer. I will now briefly set out the evidence and indicate my reasons for accepting the police officer's testimony.

### The claimant's case

Mr. Hyatt said that on Saturday October 22, 1994 he drove to the May Pen bus park, Clarendon, to pick up a passenger. While parked there, Constable Dave Robb came up to him and asked him for the papers for the car. He said that he gave them to the police officer who then told him that he was going to seize his car. The police officer did not give him any reason. Mr. Hyatt states that eventually he was taken to the May Pen Police Station where he was arrested and charged with (a) obstructing a police officer (b) not having a road licence and (c) no insurance coverage for a public passenger vehicle.

### The defendant's case

The police officer's version is quite different. He says that on the same day as stated by the claimant he was on motorcycle patrol along the main street in May Pen when he noticed that the line of traffic that had been moving freely along the main street had now stopped and began to create a congestion. He went to investigate when he saw a car with its front partially blocking one lane of the road and its rear in the gate way of the bus park. In this car the police officer saw the claimant receiving payment from passengers who were in the car.

The officer approached the car. According to Constable Robb, Mr. Hyatt was so engrossed in what he was doing he was not aware of the presence of the officer until the police officer spoke to him. After speaking to the claimant he charged him with the offences stated by the claimant.

### The claimant's submissions

Lord Gifford QC submitted that the court should not accept the police officer's account because it has been shown that he has been inconsistent and perhaps untruthful in at least one area. This inconsistency occurred when the

police officer was challenged that he told the learned Resident Magistrate at the criminal trial that there were six persons in the car. This, according to Lord Gifford QC, was inconsistent with his testimony before me when he said he saw several persons in the car. By several he meant more than three.

This inconsistency is not such that it goes to the heart of the matter and neither is it necessarily an indication of untruthfulness. This incident took place in 1994. The criminal trial took place in March 1996 and this trial is taking place in 2004. Given this, is it unreasonable to accept that the police officer may at this point give a different number from that which he gave the Resident Magistrate? I think not.

Lord Gifford QC submitted that where there are only two witnesses on either side of an issue, as in this case, the court should seek to resolve the issue of credibility by as objective a means as is possible. Up to this point this submission is acceptable. What is objectionable is the logic of this proposition as developed by Queens Counsel. This, said Lord Gifford, meant looking at the evidence including any inconsistency without resort to demeanor which, if included, permits an increased chance of subjective assessment on the part of the judge. The corollary of this is that demeanor is inherently incapable of objective assessment since it depends up on the subjective interpretation of the judge. This led to the ultimate submission that where, as here, there is no inconsistency on the part of the claimant but a proved inconsistency on the part of the defendant, the claimant should come out ahead in the credibility stakes, particularly where the standard of proof is a balance of probabilities. I do not agree.

It would have the unfortunate effect of focusing too much on the actual text of the spoken word without also looking at the context and internal logic of the account and weighing that against the common sense and experience of the decider of fact. You cannot look at the spoken word in isolation from the context. This would be similar to listening to the spoken word but ignoring the tone. Demeanor is nothing more than the lawyer's word for body language. Communication is not just what is said but the manner and tone is also part of the

process. The trier of fact has to take into account the text, context, internal logic, body language and tone, among other things.

#### Analysis and conclusion

A preliminary question for me is this: what is it that precipitated contact between the police and the Mr. Hyatt? On Mr. Hyatt's version the answer is nothing. He says he was in the bus park in which there is an allocation of spots for private citizens to park inside. On his account he was lawfully in the bus park and not doing anything to attract the attention of the police.

The police officer's attention was drawn to the line of traffic. I am of the opinion that the context given by the police and his subsequent conduct provides a more logical and credible account of the circumstance that led to the police meeting the claimant. His reason for investigating the back up of traffic is a natural and normal response that is expected of the police in the circumstances of free flowing traffic coming to a standstill. It is important to note that the police did not say that as soon as he saw the car, he immediately saw what was happening inside the car. His account is consistent with the kind of gradual revelation that one expects as the observer draws closer to the object of his observation: he sees the car; he then noted how it was parked; and as he got closer, he saw what was happening and then he spoke to the driver.

I find one aspect of Mr. Hyatt's account quite incredible. He says that on the day he was convicted, in the absence of his attorney, the Resident Magistrate never allowed him to put forward his version and neither was he asked to do so. When pressed in cross examination he conceded that the judge *might* have asked him if he had anything to say to Mr. Robb. This was said after he conceded that the Resident Magistrate did ask him if he had any questions to ask the police officer. In effect Mr. Hyatt is asking me to accept that he was convicted without being given the opportunity of presenting his case. I believe that it is Mr. Hyatt who is embellishing his story. In sum he is saying that he was the victim of (a) a lying

and corrupt police officer who maliciously set in train against him the criminal process (b) a lawyer who was absent on the day he was convicted and (c) a Resident Magistrate who convicted him in breach of natural justice.

The police officer's version, which I accept, provides a reasonable basis for his actions. He did have reasonable and probable cause to believe that the claimant was breaching the law in respect of the three offences for which he was charged. I also find that there was no malice on the part of the police officer.

I therefore give judgment for the defendants with costs to be determined in accordance with appendices B and/or C to Part 65 of the Civil Procedure Rules.