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Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO. C.L. 1998/M 196

BETWEEN	GLENVILLE MURPHY	CLAIMANT
AND	CONSTABLE SATCHELL	FIRST DEFENDANT
AND	CONSTABLE MORGAN	SECOND DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	THIRD DEFENDANT

Dennis Daley Q.C. instructed by Daly Thwaites & Company for the claimant
Lisa White instructed by the Director of State Proceedings for the defendants

October 2, 3, 5 and 9, 2007

FALSE IMPRISONMENT, REASONABLE SUSPICION, SECTION 13 OF THE CONSTABULARY FORCE ACT

SYKES J.

1. Stripped of all its excesses, the issue in this case is whether the information given to the police by Mrs. Venice Lawrence-Beckford as well as the condition they saw the alleged victim in when they went to arrest Mr. Murphy provided reasonable grounds for the police to suspect that Glenville Murphy had committed the crime of incest or indeed any other crime.

2. It is agreed that Mr. Murphy was arrested by the police on April 5, 1998, at his home in Glengoffe in the parish of St. Catherine and taken to the nearby police station where he was kept until either Monday, April 6 or Tuesday, April 7, 1998. Whether he was released on the 6th or 7th of April is for all practical purposes the sole issue of fact to be resolved in this case. At this early stage there is a preponderance of evidence showing that Mr. Murphy was released on Monday, April 6 and not Tuesday, April 7 as alleged by him. There is the testimony of Deputy Superintendent Duetress Foster Gardner to the effect that after the alleged victim was examined and the doctor found no evidence of sexual intercourse, she called the Glengoffe Police Station and directed District Constable Marie Morgan to release Mr. Murphy. District Constable Morgan testified that she received the call from the Superintendent and thereafter released Mr. Murphy. The contemporaneous records kept by the police are consistent with a Monday release. I therefore find that Mr. Murphy was released on Monday, April 6, 1998. This leaves to be resolved the issue identified at the commencement of this judgment.

3. It is agreed by both sides that the police can arrest on reasonable suspicion. The defendants rely on section 13 of the Constabulary Force Act which reads in the material parts:

> *The duties of the Police under this Act shall be to keep watch by day and by night, to preserve the peace, to detect crime, apprehend or summon before a Justice, persons found committing any offence or whom they may* ***reasonably***

suspect of having committed any offence, or who may be charged with having committed any offence ... and to do and perform all the duties appertaining to the office of a Constable ... (my emphasis).

4. Lord Devlin in ***Chook Fook Kam*** defined suspicion in these terms at page 948:

> *Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: "I suspect but I cannot prove." Suspicion arises at or near the starting-point of an investigation of which the obtaining of prima facie proof is the end.*

5. The police do not have to have evidence amounting to a prima facie case. An arrest has been defined by Lord Devlin in ***Shaman bin Hussien v Chong Fook Kam*** [1970] A.C. 942, 947 as:

> *An arrest occurs when a police officer states in terms that he is arresting or when he uses force to restrain the individual concerned. It occurs also when by words or conduct he makes it clear that he will, if necessary, use force to prevent the individual from going where he may want to go. It does not occur when he stops an individual to make inquiries.*

6. The arrest in this case occurred when Mr. Murphy was told by the police who went to his house that he was being taken to the police station. It was made clear to Mr. Murphy that he had no choice in the matter. Based on the documents and all the evidence I find that Mr. Murphy was taken from his house at approximately 8:30am - 9:00am on Sunday, April 5, 1998 and was released 10:00am on Monday, April 6, 1998. The station diary entry which was said to have been written at 11:00am was relied on by Miss White to suggest that Mr. Murphy was arrested at 11:00am. This submission does not take account of the evidence from the police in this case that Mr. Murphy was taken into custody well before 11:00am. In fact the evidence was that they left the police station at approximately 9:30am and the total time for the trip was 40 minutes which would mean that the police would have returned by the latest 10:20am. I accept Mr. Murphy's evidence that he was taken from his house at approximately 8:30am - 9:00am.

7. From the Constabulary Force Act and case law we get the idea that it is quite legitimate for the police to be in a state of conjecture or surmise that a particular person has committed an offence. However the adverb *reasonably* which qualifies or cuts down on the prima facie broad meaning of the verb *suspect* must have some role in the definition of the expression *whom they may reasonably suspect* as used in section 13. The police may suspect and arrest but the suspicion must be reasonably held. This imports an objective element into the expression. Thus we arrive at the position that the police officer himself must suspect but his suspicion must have a reasonable basis. As a matter purely of language, the word *reasonable* and the adverb *reasonably* imports a standard outside that of the specific police officer. The police officer is not permitted to set his own standard and act on that. If that were so, it would be difficult if not impossible to detect arbitrary arrest.

8. It has been suggested that because the objective and subjective elements are so intertwined that any attempt at separating them is highly undesirable. This was the view of Potter L.J. in ***Jarrett v Chief Constable of West Midlands Police*** [2003] EWCA Civ. 397 (delivered 14th February 2003) who had to consider the expression *reasonable grounds for suspecting* found in section 25 of the Police and Criminal Evidence Act, 1984. His Lordship said at paragraph 28:

> *... the test as to whether there are reasonable grounds for suspicion to justify an arrest is partly subjective, in that the arresting officer must have formed a genuine suspicion that the person being arrested was guilty of an offence, and partly objective, in that there must be reasonable grounds for forming such a suspicion. Such grounds can arise from information received from another, even if it subsequently proves to be false, provided that a reasonable man, having regard to all the circumstances, would regard them as reasonable grounds for suspicion. While in theory and for the purposes of legal analysis it may be possible to separate out the subjective and objective strands of the test, in the context of a case of this kind it seems to me that they are, save in rare cases, inextricably intertwined and that to seek to decide whether a police officer has objectively got reasonable grounds of suspicion that an offence has been committed by a particular person without first determining, as a matter of fact, whether the suspicion to which he speaks is genuine is highly undesirable.*

9. Thus, while accepting that the police can act on reliable information from a variety of sources, the passage from Lord Justice Potter does not give sufficient weight to the objective element in the test. It is this objective element that gives protection to the citizen against arbitrary arrest. It would appear that Lord Justice Potter regarded any attempt to analyse the reasonable grounds for suspicion in terms of the subjective belief by the police officer and the objective component would be theoretical and impractical. This approach to the matter would give too much power to the police and has within it the potential to facilitate abuse of the power of arrest. What if the police officer is unduly credulous and thereby predisposed to believing the flimsiest of reports made to him?

10. His Lordship relied on the House of Lords decision of ***O'Hara v Chief Constable of the Royal Ulster Constabulary*** [1997] AC 286. In that case the House was considering the expression *reasonable grounds for suspecting* in section 12 (1) of the Prevention of Terrorism (Temporary Provisions) Act 1984 which reads in the material part *a constable may arrest without warrant a person whom he has reasonable grounds for suspecting.* The House distinguished two categories of statutes. First, there were those that said that the particular officer must have reasonable grounds for suspecting. Second, there were those that simply state that reasonable ground must exist for the suspicion. In the latter case, the person doing the actual arrest need not himself have the suspicion as long as objectively viewed such grounds exist. In this latter case, the actual arrestor is protected if he simply followed orders to arrest the person. In the former situation the actual arrester is not protected if he simply

followed orders and he himself had no reasonable grounds for the suspicion. In ***O'Hara*** the statute was a first category one and the House held that the particular officer passed the test because he acted on the information given by his senior at a briefing. The remarkable thing is that no one knew what that information was. ***O'Hara*** went on to the European Court of Human Rights and while the claimant in that case was unsuccessful, largely because, it was said, of his failure at trial to explore fully the background to the arrest, the court took the opportunity to emphasise the following at paragraph 34:

> *The court emphasises that the "reasonableness" of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention laid down in Article 5(1)(c) of the Convention. This requires the existence of some facts or information which would satisfy an objective observer that the person concerned may have committed the offence, though what may be regarded as reasonable will depend on all the circumstances of the case.*

11. It seems to me that the European Court of Human Rights correctly emphasises the importance of the objective element. It is that element which is crucial for the protection of the persons from arbitrary detention and arrest. The European Court was dealing with an arrest under terrorism laws. Honest belief by the police that the arrested person committed a crime is insufficient.

12. Before leaving the ***O'Hara*** case in the European Court of Human Right I must refer to the partly dissenting judgment of Judge Loucaides. He agreed with the statement of the law of the majority but he profoundly disagreed with the majority on its application to the facts. His reasoning is worth citing at length because it shows the importance and the necessity of insisting on the objective element. His reasoning is to be preferred. He stated at page 828 that:

> ***O-I2*** *My disagreement with the majority does not concern the legal principles expressed in the judgment, but only their application to the facts of this particular case. I, myself, would emphasise the principle mentioned in paragraph 34 of the judgment according to which*
>
> *the 'reasonableness' of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention laid down in Article 5(1)(c) of the Convention. This requires the existence of some facts of information which would satisfy an objective observer that the person concerned may have committed the offence, though what may be regarded as reasonable will depend on all the circumstances of the case.*

13. Judge Loucaides continued at pages 829 - 831:

> ***O-I5*** *Therefore, the question in this case boils down to whether the*

respondent Government furnished "at least some facts or information capable of satisfying the Court that the arrested person was reasonably suspected of having committed the alleged offence". The burden is on the Government to provide evidence of such facts or information, which must of course have existed at the time of the arrest.

***O-I6** It is common ground that the evidence produced before the domestic courts by the prosecution in order to justify the existence of reasonable suspicion against the applicant was simply that the arresting constable was told by a superior officer that the applicant was suspected to have been involved in the murder under investigation. No more information was given. The arresting constable did not state that his superior officer had told him the grounds for his own suspicion, nor was he asked by counsel for either party.*

***O-I7** Can we regard this concrete information placed before the domestic courts as providing an objectively sufficient basis for a "reasonable suspicion"? In my view, the answer must, without any hesitation, be in the negative. If we accept the contrary, we will be legalising a general formula for justifying any arbitrary arrest: any arrest could always be justified by the mere statement of the arresting constable that his superior ordered him to arrest a person because the latter was suspected, no grounds at all being given for such suspicion. In the absence of any information as to why the suspicion was reasonable, how can a court decide whether the arrest was arbitrary or not?*

***O-I8** The trial judge in this case himself described the evidence produced before him in support of the existence of reasonable suspicion as "scanty". The same description was repeated in the judgment of the House of Lords. Nevertheless, we read the following finding in one of the judgments of the House of Lords shared by the majority of the judges:*

> *The trial judge described the evidence as scanty. But he inferred that the briefing afforded reasonable grounds for the necessary suspicion. In other words the judge inferred that some further details must have been given in the briefing. The legal burden was on the respondent to prove the existence of reasonable grounds for suspicion. Nevertheless I am persuaded that the judge was entitled on the sparse materials before him to infer the existence of reasonable grounds for suspicion.*

***O-I9** I find that there is a good deal of speculation in support of the conclusion that the trial judge did in fact infer "that some further details*

must have been given in the briefing" and "that the judge was entitled on the sparse materials before him to infer the existence of reasonable grounds for suspicion". Personally, I fail to comprehend why further details relating to the reasonableness of the suspicion must necessarily have been given in a briefing of a constable by his superior officer which resulted in an order to arrest the applicant. Moreover I cannot understand why the trial judge was entitled on the sparse material before him to infer the existence of reasonable grounds for suspicion. He did not have before him any information at all regarding the grounds of suspicion. He only had a statement that the arresting constable had been told by his superior that the applicant was suspected of involvement in the murder of Kurt Konig and that the constable had consequently been ordered to arrest the applicant.

O-I10 *The majority in the judgment of our Court invoked the fact that the arresting officer was not cross-examined by the applicant's counsel as to what information was given at the briefing. The majority went on to state that "nor were any steps taken to have other officers involved in the arrest and detention, such as the briefing officer, called to give evidence" and concluded with the following finding: "To the extent therefore that the applicant complains before this Court that no information was elicited during the domestic proceedings concerning the briefing, the Court considers that this was the consequence of the way in which the applicant pursued his claims."*

O-I11 *However, the legal burden of establishing a reasonable suspicion to the satisfaction of the judicial authorities responsible for preventing possible abuses rests with the arresting law enforcers, and this was expressly admitted by the House of Lords in the relevant domestic proceedings. Therefore, the trial court had a duty to determine whether the material produced before it was in actual fact sufficient to satisfy the requirement of the "existence of some facts or information capable of satisfying the Court that the arrested person was reasonably suspected of having committed the alleged offence". What really matters is the actual material, produced before the court, and not the tactics used by the parties in respect of the presentation of that material. In other words, at the end of the day, the judge has to decide whether the relevant requirement is satisfied exclusively on the basis of the evidence before him. Whether more or less evidence could have been produced as a result of greater or lesser effectiveness in the questioning by the parties would not have affected the task of the court. In fact, this is true in respect of any determination of factual issues by courts: they have to make findings on the basis of the evidence before them without any speculation as to the existence or non-existence of other evidence which might or might not have come to light through the conduct of the proceedings by the parties.*

O-I13 In the proceedings before the European Court, the Government explained that the information which led the police to arrest the applicant was obtained independently from four separate informers, who had proved previously reliable and whose information concerning the murder was consistent. According to the Government it was this information which was the basis of the decision to arrest the applicant and in respect of which instructions were given by the briefing officer to the arresting officer, Detective Constable S. The applicant disputed that this information had in fact been received or that it could be regarded as reliable, since he had not been involved in the incident. The majority seem to have accepted this information and dismissed the position of the applicant, mainly on the ground that "no challenge was made in the domestic proceedings by the applicant to the good faith of any of the officers involved in the arrest or detention". In this connection the majority added the general statement that "There is no basis in the material provided for the Court to reject the Government's submissions on this point".

O-I14 For my part, for the reasons I have given above, I consider the additional information given by the Government to the Court 15 years after the event to be inadmissible. In any event, it is doubtful whether the information strengthens to an adequate degree the Government's position, given that it does not cover the grounds of suspicion or the nature of the applicant's alleged involvement in the crime in question, let alone the fact that this information was not produced before the trial court at the material time.

14. I have set out the minority judgment at some length because it highlights the serious difficulties with the application of the law to the facts by the House of Lords and the majority of the European Court of Human Rights. Judge Loucaides is pointing to the undoubted principle that liberty of the citizen is the legal norm. This is true in Jamaica. If that is so then surely it is for those who deprived the citizen of his liberty to establish the legal basis for the detention. It cannot be for the citizen to establish that his arrest was unlawful because the law already confers on him the right of liberty. He does not need to justify his freedom. This is supported by the fact that the tort of false imprisonment is actionable per se. There is no need to prove special damages. This has been the common law position that has been reinforced by international conventions and the Constitution of Jamaica which place a high value on liberty.

15. The House of Lords and the majority in the European Court of Human Rights seem to be saying that the difficulty for the claimant was caused by how he pleaded his case and how the case developed at trial. With respect, this seems to be the wrong way of looking at the matter. The House indeed indulged in speculation because there was no evidence of what was said at the briefing. As a matter of sheer rationation, how can anyone infer that something must have been said to ground the reasonable suspicion when no evidence of what was actually said was put before the court? The House and the majority of the European Court were prepared

to assume the very point in issue, namely, whether the police had, on objective grounds, a reasonable basis for the arrest. Thus even by affirming the principle that there must be objective material to ground the suspicion, the House of Lords and the majority of the European Court of Human Rights undermined the value of the protection against arbitrary arrest in its application to the facts.

16. The correct way must be as Judge Loucaides has stated the matter. He places a positive duty on those who arrest to state the grounds on which they have arrested, that is to say, the reasons for the arrest must be stated and laid bare. He, quite rightly, was not prepared to give the benefit of the doubt to any senior police officer or any officer for that matter. Liberty and freedom are not preserved by giving state officials the benefit of the doubt when it comes to arresting citizens but by insisting on the right to freedom with detention being the exception. The high premium on liberty must be maintained and reinforced.

17. Fortunately in the case before, I do not have to infer from the absence of evidence that the police had reasonably suspected Mr. Murphy of committing an offence. The burden is therefore on the police to show that they had not just suspicion but reasonable suspicion. In the case before the court, Mrs. Veneice Lawrence-Beckford told the police at the Glengoffe Police Station that she was told by members of the community and the mother of the alleged victim that Mr. Murphy was sexually molesting his daughter. Mrs. Lawrence-Beckford did not purport to be a witness. This was the sum total of the information in the possession of the two District Constables when they left the police station. Miss White added to this the fact that District Constable Morgan, on arrival at Mr. Murphy's house, saw the alleged victim looking dirty with sores and when she attempted to speak to the alleged victim she was silent. All this, according to Miss White, meant that the police were entitled to reasonably suspect that a crime, if not incest, had been committed. She relied on the wording of section 13 of the Constabulary Force Act.

18. Miss White distinguished ***O'Hara*** from the case before the court on the basis that the statutes in those cases were differently worded than section 13 of the Constabulary Force Act. She is quite correct in what she says but the purpose of citing the cases was not so much for the actual interpretation of the relevant statutory provisions as it was to show that whenever the adjective *reasonable* or the adverb *reasonably* is used an objective element is imported into the statute. Once that is the case, the question becomes whether the objective element is satisfied in any particular case. Eventually, Miss White accepted the proposition.

19. From the evidence presented in this case none of the police officers asked Mrs. Lawrence-Beckford who might be able to provide any information about the alleged crime. Neither did the police contact the mother of the alleged victim. When District Constable Satchell was pressed on what precisely Mrs. Lawrence-Beckford said he seemed unable to recall what was said with any great clarity but was prepared to say that she had indicated that some time in the past a previous report had been made against Mr. Murphy involving the same alleged victim. This response of the District Constable seemed to be an answer designed to meet the awkward pause that followed the question enquiring what exactly Mrs. Lawrence-Beckford told the police. According to the District Constable, the assertion by Mrs. Lawrence that Mr. Murphy had done the same thing in the past led him to believe that she was

an eyewitness. It appeared to me that officer was trying to justify the arrest by seeking to say that he believed that Mrs. Lawrence-Beckford was an eyewitness. This attempt was not successful because it appeared that the officer failed to recall that he had said earlier in his testimony that a Constable Campbell, one of the police officers at the station, asked Mrs. Lawrence-Beckford how she knew of the allegations she was reporting, and she had replied from persons in the community. If this is so, why would the officer have any good reason to think that she was an eyewitness?

20. I conclude that the police officers in this case may have honestly believed that the claimant had committed the crime. However, I do not think that the objective part of the test has been satisfied. Mrs. Lawrence-Beckford did not purport to be an eyewitness. There is no evidence that she had made previous reports to the police and she had proven to be reliable. There is no evidence that the police contacted the mother of the alleged victim to see if she in fact made the complaint to Mrs. Lawrence-Beckford. The police did not ask whether there was any person in the community who might be able to provide some solid basis for the accusation. In effect, the police acted on rumour. I do not see how the failure of the alleged victim to speak and having sores can improve the position of the police. I am not of the view that a reasonable person apprised of this complaint and seeing the alleged victim at the house in the condition described by District Constable Morgan could say that reasonable grounds existed for suspicion that the claimant had committed the crime alleged. The three defendants are therefore liable for the tort of false imprisonment.

21. The remaining question is the quantum of damages to be awarded. The claimant was also subject to the indignity of being placed to sleep "on the cold hard concrete, without a bed, pillow or mattress". There was no bedding of any kind in the cell in which he spent twenty four hours. He was not provided with any meal or refreshment.

22. In assessing damages for false imprisonment there are a number of matters that are taken into account. These are loss of liberty; injury to feelings, that is to say, the indignity, disgrace and humiliation and mental suffering arising from the detention. There is the injury to reputation. In this case, Mr. Murphy has stated that he had to leave the community because of the allegation. It is well known in Jamaica that an accusation or suspicion of incest is deeply damaging to one's image and character. The cases to which I was referred by counsel do not adequately reflect that all the matters mentioned above should be taken into account. They tend to focus mainly on the loss of liberty. That may explain in part why the awards for false imprisonment tend to be so low.

23. In recent times there has been a review of the approach to the assessment of damages for false imprisonment and malicious prosecution by the Court of Appeal of England and Wales. In the case of ***Thompson v Commissioner of Police of Themetropolic*** [1998] Q.B. 498, a jury awarded very substantial damages to claimant in a false imprisonment case. That case was one of a number of cases in juries were obviously outraged by the conduct of police officers in the United Kingdom and gave expression to this in the damages awarded. To give a flavour of how outraged the jurors were I shall give a few figures. In ***Thompson*** the jury awarded £20,000.00

for damages including aggravated damages and £200,000.00 as exemplary damages. The damages were reduced on appeal. The court used the opportunity to express this view through Lord Woolf M.R. at page 515:

> *In a straightforward case of wrongful arrest and imprisonment the starting point is likely to be about £500 for the first hour during which the plaintiff has been deprived of his or her liberty. After the first hour an additional sum is to be awarded, but that sum should be on a reducing scale so as to keep the damages proportionate with those payable in personal injury cases and because the plaintiff is entitled to have a higher rate of compensation for the initial shock of being arrested. As a guideline we consider, for example, that a plaintiff who has been wrongly kept in custody for 24 hours should for this alone normally be regarded as entitled to an award of about £3,000. For subsequent days the daily rate will be on a progressively reducing scale. (These figures are lower than those mentioned by the Court of Appeal of Northern Ireland in Oscar v. Chief Constable of the Royal Ulster Constabulary [1992] N.I. 290 where a figure of about £600 per hour was thought to be appropriate for the first 12 hours. That case, however only involved unlawful detention for two periods of 30 minutes in respect of which the Court of Appeal of Northern Ireland awarded £300 for the first period and £200 for the second period. On the other hand the approach is substantially more generous than that adopted by this court in the unusual case of Cumber v. Chief Constable of Hampshire Constabulary, The Times, 28 January 1995; Court of Appeal (Civil Division) Transcript No. 95 of 1995, in which this court awarded £350 global damages where the jury had awarded no compensatory damages and £50 exemplary damages.)*

24. Lord Woolf continued by saying that the awards should be adjusted for future inflation. He also expressly drew an analogy between false imprisonment cases and awards in personal injury cases. I have pointed out this so that the submission that the Consumer Price Index should not be used to update false imprisonment awards – a submission commonly heard from the Attorney General – should be put to rest.

25. The point there is that the Court of Appeal has seen it fit to bring greater rationality to this area of assessment. I am not saying that we must use the same figures but it is not impossible for there to be some judicial consensus on what is an appropriate base figure. His Lordship emphasised the importance of the shock of the first hour of arrest. I shall use this approach. The Master of the Rolls went to speak of what would be an appropriate sum for a twenty hour false imprisonment. I shall also take into account that in false imprisonment it is quite legitimate to take account the injury to feelings and injury to reputation. I shall itemise each aspect of the award. I apply all this to the facts as I have found them.

26. Mr. Murphy was particularly incensed by the fact that he was treated worse than an animal, that is to say, being locked up without food or refreshment for twenty four hours. In addition, Mr. Murphy testified that there was no bed in the

cell and he had to sleep on the concrete. It would seem to me that this kind of treatment must be regarded as aggravating the loss of liberty. Taking all matters into consideration as well as previous cases the award is as follows:

a. loss of liberty - $100,000.00
b. injury to feelings - $300,000.00
c. injury to reputation - $200,000.00

27. The claimant is seeking special damages which he says is for loss of contract to plant two acres of coffee. The contract is said to be worth $250,000.00. He gave the name of the company that awarded him the contract as Ifat, a Japanese company. According to Mr. Murphy, he had to forfeit the contract because he had to flee his home because persons in the community physically attacked him. The information about the contract is too sparse. There were no documents in support. Mr. Murphy did not say when he got the contract, when it had to be performed and so on. The special damages claimed were not satisfactorily proved.

Conclusion

28. Mr. Murphy has established his claim for false imprisonment. The award is $600,000.00 at 3% interest from August 10, 1998, to October 9, 2007. The claim for special damages fails. Costs to the claimant to be agreed or taxed.