

IN THE EASTERN CARIBBEAN SUPREME COURT
FEDERATION OF SAINT CHRISTOPHER AND NEVIS

IN THE HIGH COURT OF JUSTICE
SAINT CHRISTOPHER CIRCUIT

(CIVIL)

CLAIM NO. SKBHCV2010/0248 & 0249

BETWEEN:

[1] KIMBERLY WARD
[2] JOEL DANIEL
[3] KASHIF DANIEL

Claimants

AND

[1] THE CHIEF OF POLICE
[2] THE ATTORNEY GENERAL OF SAINT CHRISTOPHER
AND NEVIS

Defendants

Appearances:

Mr Terrence V. Byron and Ms Talibah Byron of Byron & Byron for the Claimants
Mrs Tashna Powell Williams of the Attorney General Chambers for the Defendants

2013: May 7

November 27

JUDGMENT

[1] **THOMAS J (AG.):** By way of claim forms and amended claim forms filed on August 06, 2010 and October 26, 2010 the claimant, in Claim No. SKBHCV2010/0248 Kimberly Ward and the claimants in Claim No.

SKBHCV2010/0249, Joel Daniel and Kashif Daniel seek certain reliefs against the defendants.

- [2] The pleadings in both matters are similar so that for the purpose only of giving a preliminary indication of their content, those pleadings advanced by Kimberly Ward will dominate. However, the variations will be reproduced.
- [3] The reliefs sought are damages for malicious procurement of a search warrant, damages in trespass for wrongfully interfering with goods in the possession of the claimant[s] damages for assault¹, damages for false imprisonment² and wrongful arrest, damages for false arrest³, aggravated damages, exemplary damages, costs as well as such other relief as the court shall think fit.
- [4] The actions rests on an allegation is that on February 7, 2010 there was a forcible into the home of one Joel Daniel of Conaree Village where the claimant was staying as a lawful visitor. This forcible entry is stated to be by a group of police officers of the Royal Saint Christopher and Nevis Police Force under the command of the 1st named defendant and who are servants of the Government of Saint Christopher and Nevis and represented in these proceedings by the 2nd named defendant.
- [5] In her statement of claim the 1st claimant avers that she is 25 years old who works as a freelance professional make-up artist with her home base at Green Tree Project, St. Kitts. According to the claimant, she spends most of her time at the home of her boyfriend, Joel Daniel at Conaree Village.
- [6] In averment by the claimant with respect to activities of the 1st claimant between February 06 and 07, 2010 the claimant says she attended a party at the home of the Daniel family and then returned to the home of her boyfriend sometime after midnight and then went to bed in the nude.

¹ This relief is only in respect of Joel Daniel and Kashif Daniel. In the case of Joel Daniel and Kashif

² Daniel the prayer is for false imprisonment

³ This relief is only sought by Joel Daniel and Kashif Daniel

[7] The events from approximately 4:59 a.m. on Sunday, February 07, 2010 are detailed by the 1st claimant in paragraphs (5) to (17) of the statement of claim and include: loud shouting at the front door of the house; intrusion into the home by three police officers after the door was opened by Joel Daniel; the three police officers entered the bedroom where the claimant lay naked; the officers who entered the house included Sgt. Glenroy Browne, and Constable Matthew Maguire; Sgt Browne was requested by the claimant to show a search warrant but he refused to do so, Sgt Brown when asked by the claimant what they are after replied 'guns, drugs and or ammunition'; no guns, drugs or ammunition were found; the police officers then said "declare all electronics", thereupon the claimant produced her laptop and three cellular phone. Sgt Browne indicated that he was looking for an Apple computer but he took away the claimant's HP mini-computer; on the outside the officers requested the 1st claimant to open her car which was a rented car, R661; the 1st claimant refused to open the vehicle and requested to be shown a search warrant; Sgt Brown in response said that they did need a search warrant to search for everything and that they could get a warrant of the fact; Sgt Brown indicated to the claimant that he was going to take the claimant's car into custody; the claimant's car was taken into custody and the claimant travelled in said car to the Frigate Bay Police Outpost; the 1st claimant was detained at the Frigate Bay Outpost questioned about her activities on 25th January 2010 and released around 10:00 a.m. on the said Sunday, February 2010; when the rental car was returned but the three cell phones were kept in police custody for several more days before they were returned; the claimant has not been informed she was charged with any offence.

[8] The claimants hold fast to the issue of malice with respect to the actions of the police and certain particulars are pleaded.

Defence

[9] In an amended defence filed on November 26, 2010, the amended claim and amended statement of claim are disputed on a number of grounds including the

contention that the 1st claimant, Kimberly Ward, has no locus standi to bring an action for malicious procurement since no warrant was issued in relation to her. And further that the claimant was not falsely arrested but lawfully detained on the morning of February 7, 2010.

[10] The defendants admit the date of Sunday February 2010 but owner that they did not arrive at the premises at 4:54 a.m. but rather at approximately 6:15 a.m. at which time Sgt Glenroy Browne, accompanied by Constable Matthew McGuire and WPC Nekeisha Thomas entered the claimants' premises and Brown knocked on a door. The claimants' contention that they were startled out of their sleep is neither admitted nor denied. Further, that it is not within the knowledge of the defendants that the door was that of a bedroom door where the claimant was sleeping.

[11] At paragraph 15 of the defence the averments relate to the procedure followed by Sgt Brown including a request to open the door the possession of a warrant to search for guns, drugs ammunition and goods suspected of being stolen, entry into the house after Joel Daniel after being shown the warrant allowed the officers into the house.

[12] In so far as the search is concerned, the defendants contend that it was conducted peacefully, that there was no unlawful conduct on the part of any of the officers present, and that the claimant and other occupants of the house were asked to declare all electronic goods prior to the conduct of the search.

[13] At paragraph 12 of the amended defence the following is pleaded:

"12. In relation to paragraph 12 it is admitted that Sgt Brown indicated that among the electronic items reported stolen from the Frigate Bay area was a Mac Pro laptop. The Defendants deny that the Claimants H8 mini any other laptop computer was taken away by the police officers. The Defendants rely on the entry (copy exhibited herewith as 'AG2') in the exhibit book of the Frigate Bay Police Station showing items taken into custody on February 7, 2010 which clearly shows that no laptop computer was among the items taken into custody from the premises of Joel Daniel or from the Claimant on February 7, 2010".

[14] The regards the claimants' contention regarding her query to Sgt Browne as to whether or not she was under arrest, the defendants' contention is that the claimant was informed at the premises that she was being arrested on suspicion of larceny and being in possession of stolen goods.

[15] At paragraph 15(b) of the amended defence the following is pleaded:

"At the Frigate Bay Police Station, the Claimant was only questioned about matters relevant to the suspected stolen items in particular the blackberry phone. At no time did Sergeant Browne or my other officers question the Claimant about any alleged activities on the 25th January 2010 or in relation to my matter connected with general election or any video allegedly taken by her on that date. The defendants state that it was the claimant who voluntarily rambled on about persons allegedly voting in other places on Election Day and taking a video and or pictures of such alleged activities. Sergeant Browne posed no questions to the Claimant about election day on any alleged activities of the Claimant on that day as the same was irrelevant to the instant investigation".

[16] At paragraph 17 of the amended defence the defendants "deny that any person acting under the authority of the defendants falsely and maliciously and without reasonable or probable cause the issuance of the search warrant and deny further that the search warrant was not procured in any way to cause damage to the claimant". And at the later stage in defence it is denied that the search was politically motivated.

[17] The amended defence goes on to deny the particulars set out in the amended statement of claim and states that the search warrant was procured upon reasonable and probable cause; and upon lawful grounds to include the following: a high incidence of break-ins and larceny in and around January 2010; investigations led Sgt Brown and other investigating officers to believe that a person named Joel Daniel alias "Cartoon" living in Conaree was involved in the commission of these crimes; the police at all times acted under the genuine and reasonable belief that Joel Daniel was involved; and the claimants' car was a white rental car parked in front of the premises of Joel Daniel which led the police officers to the reasonable belief that it may have been involved in the criminal activities under investigation.

[18] Finally, the defendants deny that any items of the claimant were unjustifiably or unlawfully seized by the police and further deny that claimants' HP mini computer or any other computer belonging to the claimant was seized by the police. As a consequence the defendants deny that the claimant is entitled to the relief claimed.

Reply (1st Claimant)

[19] In her reply the claimant avers that she does have locus standi to bring an action for malicious procurement of a search warrant.

[20] With respect to paragraph 1 of the amended defence the contention is that the defendants have confirmed that the claimant was falsely arrested as they have not, as they are obligated as a matter of law to do, given any or sufficient grounds for the arrest of the claimant. At the same time the arrival time of 6:15 a.m. for the defendants' is denied. And the matter of Joel Daniel or any other occupant seeing the warrant is disputed.

Reply (2nd and 3rd Claimants)

[21] Regarding paragraph 10 of the amended defence the claimants contend that the defendants have confirmed that the claimants were falsely arrested as their actions are not based on their legal obligation, or given any or any sufficient grounds for the arrest of the claimants.

[22] The pleaded arrival time of 6:15 a.m. is denied as well as the contention that Joel Daniel or any other occupant of the premises saw the warrant despite repeated requests in this regard.

EVIDENCE

- [23] In her witness statement Kimberly Ward says she lives in Green Tree Housing Project, St Kitts with her mother and also in Conaree with her boy friend, Joel Daniel.
- [24] Ms Ward gives details of her activities on Monday, 25th January 2010 and Sunday 7th February 2010.
- [25] With respect to the letter date that says she was at the residence of her boyfriend's house in Conaree and that at 4:54 a.m. she was awakened by a loud knocking on the door of the bedroom which continued until the door was opened by her boyfriend. At this time she was naked in bed.
- [26] According to the witness, Sgt Glenroy of the Frigate Bay Police Outpost was at the house and came into the bedroom and that after she was dressed the officer was asked to show her the warrant. This was refused and the officer was asked what they were after and he replied "drugs, guns and ammunition".
- [27] Evidence was ext given about the search of bedroom at which time one officer asked her and her boyfriend to declare all electronics. As a result, she took out her laptop and 4 cellular phones from her bag ad handed them to the officer. Some receipts relating to the said equipment were also handed over. At the same time her boyfriend took out his video game ad DVD player. Her further evidence in this regard is that the police took her boyfriend's camera; the cell phones and the DVD player were taken into custody by the police.
- [28] The actions of the police in relation to her boyfriend, his brother, the witness rented a car, R661, the search of said vehicle at the Frigate Bay Police Outpost are all detailed by the witness.
- [29] Questions posed to the witness by Sgt Browne and Cpl Liburd concerning the taking of pictures by her on Election Day is also part of the witness' evidence. According to the witness she did not know what he was talking about.

- [30] It is the claimant's further evidence that Joel Daniel, Kashif Daniel and herself were released from custody at the Frigate Bay Police Outpost at about 10:35 a.m. on the said Sunday, 7th February 2010 and all the equipment was returned.
- [31] In cross examination Kimberly Ward said she did not see Sgt. Browne show anything to Joel Daniel her boyfriend who was in the room with her. The witness also said that WPC Thomas asked to see her hands after Sgt Browne left the room. In that context the witness testified that she asked McGuire to leave the room but he did not. And when it was put to her by counsel for the defence she said: "I firmly disagree".
- [32] Kimberly Ward also testified that the police took certain property from the house including her cell phones and laptop which was black and had a picture of her on a sticker.
- [33] It is the witness' evidence that she was not told why she was taken into custody. But she did testify that Sgt Browne did say to Sgt Liburd that they were taking her car to the Frigate Bay Police Outpost in her presence.
- [34] In re-examination Kimberly Ward said that she did not know the date when the laptop was alleged to have been stolen. She added that prior to that her boyfriend was never in trouble with the law.
- [35] Regarding Sgt Browne the witness said that he asked her a lot of questions and she did not tell any lies when she answered. She also said that Sgt Browne asked her questions about laptops and whether there were other cameras and electronic items. She added that the conversation became personal when she was asked about her boyfriend.

Kashif Daniel

- [36] In his witness statement Kashif Daniel says that he lives in Conaree and is a mechanic by trade. He also says that Joel Daniel is his brother.

- [37] Regarding Sunday, February 7, 2010, the witness says that around 5 o'clock in the morning he was awakened his brother and Sgt Browne; and that when he went outside and when he returned he said six police officers searching his room for a long time. It is also Kashif Daniel's evidence that he was handcuffed by the police with a lot of people being on the street.
- [38] At paragraphs 8 and 9 of the witness statement the witness gives details of the manner in which he and his brother, Joel Daniel, were transported, shackled and handcuffed to the Frigate Bay Police Outpost in the squad bus.
- [39] According to the witness he was not charged and that at about 10:30 a.m. on the said Sunday 7 February 2010 he was released.
- [40] Under cross-examination Kashif Daniel testified that his bedroom has a dressing table and there are also shelves. It is also said that six police officers were in his room; and when it was put to his that only three officers entered his room this was rejected.
- [41] Kashif Daniel testified further that he was questioned at the police station and he was hand cuffed to the burglar bars for more that 3 hours, and insisted that this is correct.

Matthew McGuire

- [42] Matthew McGuire states in his witness statement that he is a Constable in the Royal St. Christopher and Nevis Police Force and that he is stationed at the Frigate Bay Police Station.
- [43] According to the officer there were approximately twenty-one breakings in the Frigate Bay area in the month of January 2010 and that the dominant items stolen were electronic items such as cell phones particularly blackberries.
- [44] Against the foregoing background, the witness gives the information obtained in early February connecting a person named Cartoon who had a stolen Mac Pro

laptop for sale and the subsequent operation on February 07, 2010 at the home of Joel Daniel at Conaree.

- [45] In his evidence the witness goes on to detail the events at the home of Joel Daniel including the warrant involved; the searching of the two bedrooms occupied by Kimberly Ward and Joel Daniel, the request to declare all electronic items, the questioning of Kimberly Ward, Joel Daniel and Kashif Daniel to the Frigate Bay Police Station for further questioning.
- [46] Under cross-examination PC Matthew McGuire testified that on the day of the search of the house in Conaree he had a concealed weapon but he did not cross his hand that Kimberly Ward could have seen his weapon. He also insisted that he left the room where Kimberly Ward was and returned after about 3 minutes.
- [47] In re-examination the witness said that he did not follow up the Buchanan story because the information regarding his stolen firearm may have been lost as a matter of priority.

Wayne Williams

- [48] Wayne Williams is a Police Constable in the Royal St. Christopher and Nevis Police Force attached to the Special Branch.
- [49] It is the officer's evidence that in the course of his duties he became aware of a break-in at the St. Christopher's Club on or about January 30, 2010. According to PC Wayne Williams, a number of items were missing from the club including a laptop. It is his further evidence that in the course of investigating the reported break-in he learnt that someone called Cartoon had Mac Pro Laptop for sale, that Cartoon drive a white rental vehicle and he lived in Conaree Village. Cartoon's real name was Joel Daniel and Kashif Daniel is his brother.
- [50] Constable Williams also testified in the course of his duties in early February 2010 he informed Sgt. Browne and PC McGuire of the high incidence of break-ins in Frigate Bay.

[51] Under cross examination Officer Williams said that he was aware of the raid on February 7, 2010 but he was not part of it. He also said he was not aware of the search warrant.

Elson Michael

[52] Elson Michael is a Constable in the Royal St. Christopher and Nevis Police Force assigned to the Frigate Bay Police Station since 2008.

[53] At paragraph 2 of his said witness statement gives evidence that between January and February 2010 there were a lot of reported break-ins in the Frigate Bay area and that some of the reported items missing were laptops, digital cameras, studio sets, PSP video games, nintendo, blackberry cell phones, Wii and Xbox360.

[54] The reported break-in at the St. Christopher Club is detailed at paragraph 3 of his witness statement and his actions thereafter with WPC Alicia Maloney, and WPC Movel Whattley of the Frigate Bay Police Station.

[55] In the remainder of his witness statement PC Michael gives evidence of information gathered as a result of his investigation with the name of Cartoon being associated with the break-ins in Frigate Bay.

[56] According to PC Michael, as a result of certain instruction from Sgt. Browne in the matter he secured a search warrant after he made an application to a Justice of the Peace for the purpose of searching the premises of Joel Daniel to search for drugs, arms, ammunitions and goods suspected of being stolen.

Nekiesha Thomas

[57] Nekiesha Thomas says in her witness statement that she is a Woman Police Constable in the Royal St. Christopher and Nevis Police Force.

[58] It is the evidence of WPC Thomas that on February 06, 2010 she received a phone call and as a result she became involved in a search and was part of a team led by Sgt Browne. She says that her team left the Basseterre Police Station

and arrived at a house in Conaree at approximately 6:15 or 6:20 a.m. on February 07, 2010.

[59] In her further evidence the witness said the initial encounter at the house with a young clear complexion young man who opened the door. Her evidence continues in this way:

"Sergeant Browne told the young man 'we have a warrant to search the premises for guns, drugs, ammunition, anything used in the commission of a crime and stolen goods'. He held up the warrant in front of the young man's face showing it to him. Sergeant Browne asked him if he was Joel Daniel and if he is known as Carton. The young man answered yes. He opened the door and we entered the bedroom".

[60] Officer Thomas in her further evidence described the dirty room, its "foul adour" and Kimberly Ward, whom she knew from Old Road, lying in bed covered by a sheet up to her neck.

[61] An account of the search is given by the officer to include the items found, items taken into custody for further investigation which was told to Joel Daniel and Kimberly Ward. The officer also gives evidence of Kimberly Ward, Joel Daniel and Kashif Daniel being taken to the Frigate Bay Police Station as well as a white car that was parked outside the house, The officer also says that at the Frigate Bay Police Station she conducted a search of the said car in the presence of Kimberly Ward.

[62] Under cross-examination WPC Thomas said that she knew the claimant, Kimberly Ward previously and whom she saw once per year.

[63] With respect to the search of the premises at Conaree, WPC Thomas said that it began at 6:30 a.m. and she went on to testify that she did not know when she left Conaree but the sun was coming up. The witness also said that she cannot say how long the search lasted.

[64] After WPC Thomas gave evidence of the composition of the search party, it was put to her that her party arrived at the house at 4:54 a.m. she responded by saying that they fell in at 5 a.m. at the Basseterre Police Station.

Oral Liburd

[65] In his witness statement Oral Liburd says he is a Sergeant in the Royal St. Christopher and Nevis Police Force and in charge of Frigate Bay Police Station.

[66] According to Sgt Liburd, there were 30 reports of crime in the Frigate Bay area in January 2010. These crimes included break-ins, larceny, and robberies where computers (including a Mac Pro laptop) cell phones, particularly blackberry and xbox and other digital games and cartridges for the games and music CDs were also reported stolen.

[67] The officer gives evidence of weekly meetings with Sgt Browne to discuss crime and at one such meeting the name of a person known as Cartoon who was offering for sale one Mac Pro laptop, stolen from the Frigate Bay area for sale.

[68] This information led to two teams being put together for the purpose of dealing with the intelligence at hand. He says that he was in charge of one of the teams which, after 6:00 a.m. on February 07, 2010, left the Basseterre Police Station for Conaree to carry one of the searched.

[69] The remainder of the officer's evidence consists of an account of the search of the house at Conaree where Joel Daniel and others lived, the search of a whole car parked outside said house and the transporting of Kimberly Ward, Joel Daniel and Kashif Daniel to the Frigate Bay Police Station for questioning.

[70] In the final paragraph of his witness statement this is the evidence:

"After we interviewed them Sergeant Browne informed me that he would release Kimberly Ward, Joel Daniel and Kashif Daniel pending further investigations. The three were released the same morning after 10:00 a.m. She got back the car and its contents. She got back her cell phone but we kept Joel Daniel's phone and the other items to compare them with items reported stolen. I returned Joel Daniel's phone to him on February

08, 2010. The remaining items were collected by Joel Daniel on March 3, 2010. There are entries in the station exhibit book shows that the items were returned";

[71] In commenting on the evidence of Kimberly Ward concerning the last General Elections and the taking of picture, Sgt. Liburd comment was that it is a false as they had no such conversation on our way back. He added that these questions were brought up by Kimberly Ward at the Frigate Bay Police Station.

[72] In cross-examination Sgt Liburd testified Kimberly Daniel was taken to the Frigate Bay Police Station because she knew Joel Daniel's sister and pointed her out, and she was cooperating.

[73] Regarding the composition of the police party, Sgt Liburd said he could not remember the exact composition in terms of officers from the SSU, Drug Squad and Army officers. He went on to say he was in charge of one of the groups. He also said he did not see the search warrant before but he was told it was done.

Alecia Maloney

[74] Alecia Maloney is a Woman Constable attached to the Frigate Bay Police Station.

[75] The officer gives evidence of being on duty on January 29, 2010 and receiving a report of a break-in at the St. Christopher Club and as a result a number of officers went to investigate the matter.

[76] The officer also speaks of the raid on a house at Conaree at which time she remained on the outside if the house and saw three persons being taken into custody.

[77] Finally, the witness testified as to the writing up of the custody form and three persons who were placed in police custody. They were Kimberly Ward, Joel Daniel and Kashif Daniel.

[78] There was no cross examination of this witness

ISSUES

[79] The issues for determination are as follows:

- (1) Whether the search warrant executed by the police officers at the home of Joel Daniel and Kashif Daniel was procured maliciously and without reasonable cause.
- (2) Whether the claimants were wrongfully and unlawfully and falsely imprisoned or were the defendants justified in arresting and detaining the claimants.
- (3) Whether the actions of the defendants in handling and seizure of the goods and rental car in the possession of the claimants amounted to wrongful interference with goods or trespass to goods.
- (4) Whether the circumstances of the alleged violations by the police officers should be redressed by the award of aggravated damages or of exemplary damages.

ISSUE NO.1

Whether the search warrant executed by the police officers at the home of Joel Daniel and Kashif Daniel was procured maliciously and without reasonable cause.

[80] Central to this issue is the matter of the search warrant given under the hand of the District Magistrate on 6th February, 2010. The submissions on the issue are copious.

[81] On behalf of the claimants learned counsel for the claimants attacks the search warrant on several grounds.

[82] After citing the case of **Brian Gibbs and others v John Mitchell Rea**⁴, on the elements of malicious procurement of a search warrant the submissions included the following:

- (a)"14. The search warrant entered into evidence at the trial listed 'controlled drugs, arms, ammunitions and stolen goods relating to the commission of the crime alleged to have been stolen and unlawfully kept on premises of Joel Daniel alias Cartoon.
15. The defendant have not submitted any authority to the court for the issue of the search warrant. The claimants contend that this is the subject of statutory provision which is found in section 44 of the **Magistrate Code of Procedure Act**, Cap 3.17.
17. Suffice to say for this the time being that the search warrant in this case does not state that the Justice was satisfied by the information on oath".

[83] The submissions go on to show the absence of probable cause with respect to the items in the warrant to which the search was concerned: 'controlled drugs', 'arms', 'ammunition', 'stolen goods'.

[84] The essence of the submission on behalf of the defendants is to be found in the following:

- "9. It should be stated from the outset that the Claimant have not challenged the validity of the warrant itself. They have not challenged the right to make the application for it issue on the Justice of the Peace decision and action in issuing it. Therefore they must be deemed to have accepted that the warrant on its face is valid, lawful and lawfully issued by the Justice of the Peace. The Claimants have only challenged the basis of the events precedent to the issue of the warrant, that is, they have challenged the basis upon which the police procured the issue.
10. The Defendants contend that the warrant was properly and lawfully procured upon the reasonable ground that the police was responding to information received in the investigation of a criminal offence and for no improper motive.
11. The Defendants further contend that the Claimants must prove that the police were not actuated by malice.
12. The Defendants base this contention upon the premises that the Claimants cannot prove the various components to operate

⁴ [1998] 3 WLR 72, 80

cumulatively, and not seriatim, much that the failure to prove any of the four components to the entire claim".

- [85] The submissions go on to identify the elements of the tort malicious procurement based on the Privy Council decisions in **Brian Gibbs and others v John Mitchell Rea**⁵.

Reasoning

- [86] Section 44 of the Magistrate's Code of Procedure Act imbues a Magistrate with the power to grant a search warrant. The wording of the section is as follows:

"44(1) Where a Magistrate is satisfied on evidence on oath that there is reasonable cause to believe that any property whatsoever on or with respect to which any larceny or other felony has been committed is in any place or places for such property, and if this same or any part thereof be found there to bring the same before the Magistrate granting the warrant or some other Magistrate of the State".

- [87] It cannot be doubted that the provision cited placed a heavy onus on the magistrate to be 'satisfied', as distinct from being of the opinion, that there is reasonable cause to believe based on evidence upon oath. Therefore, ultimately reasonableness must prevail. It is not a subjective requirement⁶. And based on the warrant obtained to search the premises of two of the claimants, being Joel Daniel and Kashif Daniel, the said warrant was by way of malicious procurement.

- [88] It is common ground that malicious procurements rests on four conjunctive limbs which are:⁷

- (1) The defendant made or caused to be made a successful application for a search warrant
- (2) The defendant did not have reasonable and probable cause to make the application.
- (3) The defendant acted with malice

⁵ Loc cit

⁶⁶ See: *Ali of Jamaica v Williams*

⁷ *Brian Gibbs and others v John Mitchell Reas*, *Supra*

(4) Damage to the claimant resulted from the issue or execution of the warrant.

[89] These limbs must be examined individually, but the court must hasten to add that with respect to the first limb, the issue of the search warrant is accepted on all sides, except to say that one submission by learned counsel for the claimants advances the proposition that the search warrant in this case does not state that the Justice was satisfied upon the information on oath.

[90] To begin with, the warrant is a prescribed form with no space or requirement for such words. The power to issue is like any other that can be challenged for various and related doctrines.

[91] In this case the form contains these words: "Evidence on oath has been given this ... by ... that there is reasonable cause to believe that certain property, to wit ... alleged to have been ... is on certain premises to wit ... you are therefore hereby commanded with proper assistance, to enter the said premises, by force and breaking doors, if necessary, and to search the same, and if such property as aforesaid on any part thereof be put therein, to bring the same, before this court to be dealt with as the law directs".

[92] It is therefore the determination of the court that the first limb of malicious procurement has been established, notwithstanding the fact that the warrant does not state that the magistrate was satisfied by information on oath. Such a challenge belongs to the other limbs of the tort.

Absence of reasonable and probable cause

[93] It will be recalled that learned counsel for the claimants seized on the fact that no controlled drugs, no arms, no ammunition or stolen goods resulted from the execution of the search at the time of Joel and Kashif Daniel. In this connection various submissions are made to secure the malicious procurement. They include the following:

- "44. If the information was in fact that Cartoon was trying to sell a Mac Pro laptop, why not take this approach⁸ rather than going to the trouble of procuring a search warrant? Where is the need for a search warrant, if there was honest belief in this information? If Cartoon wanted to get this laptop off his hand, would it be unreasonable to believe this laptop in his possession on 7 February 2010, much less at his home?
45. It make no sense that someone would steal the Prime Minister's laptop on 30 January and keep it at his home until over a week later, up to 7 February. It is simply improbable and against common sense.
46. It is plain as day that these grounds cannot meet the standard of reasonable and probable cause for procuring a search warrant for stolen goods".

[94] It must be fair to say that search warrants are not drawn in specific terms but in general terms since at the end of the day it is further evidence that is required. Therefore, if what is indicated on the warrant is found then the matter goes forward, if not then other means to gather the evidence must be used. The following submission on behalf of the defendants is in this direction:

"19. The fact that the search did not ultimately lead to the stolen goods or prosecution of the claimants should not be viewed as an indication of an absence of reasonable and probable cause existed at the time when Constable Michaels applied for the search warrant. Lord Hope of Craighead in the dissenting judgment of Gibbs Rea stated in relation to this:

'It should be remembered that in order to have a reasonable suspicion the police officer need not have evidence amounting to a prima facie case. Information from an informer or tip off from a member of the public made be enough to satisfy him that he would be justified in applying for a warrant to search premises. Yet it cannot be said that a police officer who obtains a search warrant on the basis of information which has been provided to him in the form of a tip off was acting maliciously simply because in the eventyields no interest'."

⁸ The approach suggested at para. 43 of the submission sit eh police officers should have approached 'Cartoon' and seek to buy the Mac Pro laptop

Malice

[95] Guidance on this sub-issue is provided by the Privy Council in the case of **Gibbs**.

This is the dictum:

"It is sufficient if the defendant is shown to have used the machinery of the Courts for an improper purpose not in contemplation of the authorizing statute, as for example to conduct a fishing expedition against a person against whom no reasonable ground of suspicion is entertained".

[96] The particulars of malice pleaded by the claimants are in these terms:

- (a) The search warrant was taken out without reasonable or probable cause.
- (b) The search warrant was taken out for the purpose of humiliating the claimant.
- (c) The police officers knew that there was no reasonable or lawful grounds on which the search warrant was taken out".

[97] The submissions on behalf of the claimants are premised on the contention that the defendants were guided by an improper motive when they intruded in Joel Daniel's home, searched and seized the claimants' belongings arrested the claimants and falsely arrested them, all in the utter absence of reasonable and probable cause.

[98] The submissions in this vane as follows:

"Further, the Claimants assert that there was an improper motive on the part of the Defendant in that their procurement of the search warrant was motivated by the fact that Kimberly Ward had published some photographs which she took of votes in Constituency No. 4 during General Elections on 25 January 2010.

It is submitted that the police officers knew that they were motivated by improper motive and, because the raid turned up absolutely nothing on any of the Claimants, they worked backwards fitting in details about the Claimants they gleaned after the raid in order to try to get their story straight so that they could force in some justification for their actions into the story with which they tried to mislead this Honourable Court.

[99] The submissions on behalf of the defendants are, in part, as follows:

“The Claimants have based this bold assertion of malice on a single alleged conversation, supposedly occurring between Sergeant Browne and Kimberly Ward on the morning of the execution of the warrant.

Even if this conversation took place in the form and words contended by the Claimants, which is stridently denied and unequivocally rejected by the Defendants, it does nothing to indicate that any such matter influenced Sergeant Browne to give an order for the procuring of the warrant; nor that it was brought to bear on the mind of Constable Michaels at the time he applied for the warrant. Further, it does nothing to vitiate the reasonable grounds and probably which clearly existed for suspecting that Joel Daniel was involved in the robberies and that stolen goods may be found on his premises. For this reason, the claim for malicious procurement of a search warrant must fail, for at its very kernel, it is flawed. As stated by Lord Goff and Lord Hope in **Gibbs v Rea**, “Conjecture and suspicion will not be enough, as it is proof of malice which the law requires”.

Reasoning

[100] The point has already been made that the duties of the police is to prevent crime, to investigate crimes and bring the alleged offenders before the courts. They are not judicial officers. Accordingly, in their investigation of crimes they speak to people and they get tips which go down as part of their investigation.

[101] The matter of the malice, as the defendants contend, rests on the allegation of action on the part of the police for the actions of the 1st claimant in taking certain photographs. But this turns entirely on the evidence of Kimberly Ward and Sergeant Liburd.

[102] The whole matter was denied by the officer and the court accepts his evidence given the circumstance of an election day.

[103] Beyond that the court accepts the evidence by numerous police officers of the spate of break-ins in Frigate Bay in January 2010 in Frigate Bay. And with respect to this area of St. Kitts the court can take judicial notice of the fact that the nature of the area, which is not a common area of residence, but rather an area of

business and resort business where leading counsel and persons of that calibre reside.

[104] The evidence which the court accepts is that there were the break-ins and the police received a tip off that Joel Daniel was offering an, electronic item matching the description of such an item stolen from Frigate Bay.

[105] To the law is that the action of the police must be based on reasonable suspicion⁹. This is not a requirement of guilt, but reasonableness in all the circumstances. And the fact that the defendants were not charged does not thereby create malice. It goes back to the reasonableness of the action. This proposition is captured by Lord Goff and Lord Hope in **Gibbs v Rea**:

“Yet it cannot be said that a police officer who obtains a search warrant on the basis of information which has been provided to him in the form of a tip off was acting maliciously simply because it yields no result.

[106] In this instance there were the numerous reports of break-ins plus a tip off that the 2nd claimant was seen offering an electronic item, matching one reported stolen from Frigate Bay plus the 2nd defendant was seen driving a white car. It is not a finding of guilt but of reasonable suspicion.

Damage

[107] The matter of damage can only arise from wrong doing by the other side. In this regard the court has already ruled that the search warrant was obtained in accordance with law and there was no malice involved for these reasons no question of damage arises.

Conclusion

[108] It is the determination of the court that the warrant executed at the home of Joel Daniel

(a) was obtained based on reasonable and probable cause

⁹ See: Police Act, 2003 No. 6, section 6(1)(a)

- (b) was not obtained based on the malice of the defendants
- (c) does not give rise to damage to the defendants since the actions of the defendants were in accordance with law.

ISSUE NO. 2

Whether the claimants were wrongfully and unlawfully arrested and unlawfully and falsely imprisoned or were the defendants justified in arresting the claimants.

[109] The submissions on behalf of the claimant rest on the contention that the warrant obtained was not in accordance with law.

[110] Further submissions are as follows:

“It is well settled that therefore that it is for the person arresting the individual to provide justification for the arrest which deprives the individual of his liberty. The onus is on the defendants to show grounds for the arrest and not on the claimants to do so”.

[111] For the defendants it is submitted that even although the police officers did not have an arrest warrant, the arrest was lawful and justified in the circumstances and authorized by the powers vested in the officers by the **Police Act** and at common law.

[112] A further submission on behalf of the defendant is that:

“Where there is no wrongful or unlawful arrest that a claim for false imprisonment must fail. The lawfulness of the arrest will clothe also the detention of the claimants pursuant to the arrest. It should be noted that the claimants were released promptly after the interviews were conducted at the Frigate Bay Outpost when the officer in charge decided that they need not hold than any longer. In the same view as Dallison, the claimants herein were detained only long enough for the officers to make appropriate inquiries”.

Reasoning

[113] This issue need not detain the court for long as the path taken on behalf of the claimants runs entirely counter to section 6(1) of the **Police Act**. That section provides as relevant as follows:

“A police officer may without a warrant, arrest a person

- (a) he reasonably suspects of having committed an offence;
- (b) in whose possession anything that may reasonably be suspected to be stolen is found on who may reasonably be suspected of being stolen property is found or who may reasonably be suspected of having committed an offence with reference to the property”.

[114] In interpreting ‘reasonably suspects’ some guidance is provided by Lord Diplock in **Dallison v Caffery**¹⁰ in speaking to reasonable and probable cause’. This is what he said:

“The test whether there is reasonable and probable cause for the arrest or prosecution is an objective one, namely, whether a reasonable man, assumed to know the law and possessed the information which in fact was possessed by the defendant, would believe that there was reasonable and probable cause. Where that test is satisfied, the onus lies on the person who has been arrested or prosecuted to establish that this arrestor did not in fact believe what ex hypothesis he would have believed had he been reasonable”.

[115] So as it well known reasonableness point to the objective rather than the subjective. Therefore, the question becomes whether a person armed with the knowledge that: (a) There in January 2010 there were some thirty crimes; in the Frigate Bay area (b) the crimes included break-ins, larceny, and robberies involving computers (including a Mac Pro laptop) cell phones, especially blackberry and xbox and other digital games and cartridges for the games and music CDs; (c) there was a loss of electronic items as a result of the break-ins; (d) there was a tip off to the police that Joel Daniel aka Cartoon was offering a Mac Pro laptop for sale; and (e) the name Cartoon on Joel Daniel were associated with break-ins in the Frigate Bay area; and (f) Joel Daniel lived in Conaree.

¹⁰ [1964] 3 WLR 385, 402

[116] The answer to the foregoing in the affirmative. Again, the court must remind itself that this is not a requirement to establish guilt, it is merely reasonable suspicion based on information received from whatever source, including police officers.

[117] With the matter of reasonable suspicion being established, the claimants have not advanced any evidence which contradicts the reasonable suspicion.

[118] In this context learned counsel for the claimants makes these further submissions that the defendants rely on section 6(1) of the Police Act to ground their actions on reasonable suspicion. And a further submission is this:

“128 In other words, for an arrest without warrant the only question is whether the police officer had reasonable suspicion to arrest the individual without warrant.

129. Your Lordship would no doubt have already noted, as has been submitted hereinbefore, that the police found no controlled drugs, arms, ammunition during their raid. Further the police found no ‘stolen goods’ and certainly did not find any Mac Pro lap top which featured saliently in the witness statements of the defence witnesses as being reported stolen during the break-in”.

[119] The foregoing points to where learned counsel fell into error in thinking that an item on the search warrant must be found as otherwise the search and arrest will become unlawful. That is clearly not the case as the consequence would be unbearable for any society.

[120] In this case the occupants of the house were asked to declare all electronic items and these were taken and examined against what was reported stolen and returned shortly thereafter. And further all 3 defendants were released by 10:00 a.m. on the said day of their arrest.

Conclusion

[121] Based on the powers of the police under section 6(1)(a) of the **Police Act**, the defendants acted lawfully in arresting the defendants upon a reasonable suspicion based on what they knew of crimes in the Frigate Bay area and the information that the 2nd defendant was linked to these crimes.

ISSUE NO. 3

Whether the circumstances of the alleged violations by the police officers should be redressed by the award of aggravated damages or exemplary damages.

- [122] This issue turn out to be academic as the court has not determined that there was any wrongdoing by the defendants. Accordingly, the matter of exemplary, usually award in one instance for high handed actions by a state official or aggravated damages, which rest or have no basis for such awards.

ISSUE NO. 4

Who is liable to pay costs, if any?

- [123] Having been unsuccessful the claimants must pay costs to the defendants in accordance with Part 65.5(b)(ii) of **CPR 2000**. And for this purpose the value of the claim is fixed at \$60,000.00 and costs will be \$9,000.00.

ORDER

- [124] **IT IS HEREBY ORDERED AND DECLARED** as follows:

- (1) The warrant executed at the home of Joel Daniel
 - (a) was obtained based on reasonable and probable cause, in the circumstances
 - (b) was not obtained based on malice on the part of the defendants
 - (c) does not give rise to damage to the defendant since the actions of the defendants were in accordance with law.
- (2) Based on the powers of the police under section 6(1)(a) of the **Police Act**, the defendants acted lawfully in arresting the defendants upon a

reasonable suspicion based on what they knew of crimes reported in the Frigate Bay area, and the 2nd claimant was linked to these crimes.

- (3) The matter of exemplary damages and aggravated damages cannot be awarded to the claimants since the court has not determined that there was wrongdoing or malice on the part of any of the defendants.
- (4) The defendants must pay the defendants costs in the amount of \$9,000.00 in accordance with Part 65.5(b) (ii) of **CPR 2000**.

Errol L Thomas
High Court Judge (Ag)