[2016] JMCA Civ 3

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL NO 2/2014

BEFORE: THE HON MR JUSTICE DUKHARAN JA
THE HON MRS JUSTICE MCDONALD-BISHOP JA (AG)
THE HON MRS JUSTICE SINCLAIR-HAYNES JA (AG)

BETWEEN	**RICHARDO ROBINSON**	**APPELLANT**
AND	**THE ATTORNEY GENERAL**	**1ST RESPONDENT**
AND	**CONSTABLE MARK GRANT**	**2ND RESPONDENT**

Miss Jacqueline Cummings instructed by Archer Cummings & Company for the appellant

Dale Austin instructed by the Director of State Proceedings for the respondents

29, 30 July 2015 and 15 January 2016

DUKHARAN JA

[1] I have read in draft the reasons for judgment of my sister Sinclair-Haynes JA (Ag) and agreed with her reasoning and conclusion. There is nothing that I can usefully add.

MCDONALD-BISHOP JA (AG)

[2] I too have read in draft the reasons for judgment of my learned sister Sinclair-Haynes JA (Ag). The reasons she has given for dismissing the appeal do accord with my views. So there is nothing that I could usefully add.

SINCLAIR-HAYNES JA (AG)

[3] On 10 January 2012, the claim of Mr Richardo Robinson (the appellant) against the Attorney General (the 1st respondent) and Constable Mark Grant (the 2nd respondent) for false imprisonment and malicious prosecution was dismissed with costs to the respondents by Her Honour Mrs Stephanie Jackson-Haisley, Resident Magistrate for the Corporate Area, Civil Division. On 29 and 30 July 2015, we heard his appeal against the decision of the learned Resident Magistrate. The appeal was dismissed with costs to the respondents. We promised to put our reasons in writing and this is a fulfillment of that promise.

Appellant's case

[4] On or about 3 or 4 December 2008, Ms Donna Brown, the appellant's cousin, agreed to lend him (the appellant) her camera consequent on his telephone call requesting permission. The following day he went to Ms Brown's house and she told him to call Mari (her boyfriend) for information about the location of the camera. Upon

receiving the relevant information from Mari, he took the camera from a drawer in her room.

[5] The appellant, with camera in his possession, went on vacation. Whilst on vacation, the lens of the camera broke. Ms Brown and Mari were duly informed upon his return. While awaiting their instructions whether to repair or replace the camera, on 28 December 2008, he received a call, from Ms Brown demanding the camera.

[6] The following morning, police officers went to his house and accused him of stealing the camera. According to him the officers said, "weh de camera de wey you tief". He was told to produce the camera. He went for the camera and handed it to the policemen.

[7] He alleged that he was brutalized by the policemen, searched, placed in handcuffs and transported in a police car to Hunts Bay Police Station which was outside of his area. His protests at being taken to Hunts Bay Police Station fell on deaf ears.

[8] It is important to quote his evidence regarding the manner in which he was treated. At page 51 of the record of appeal, he said:

> "...The officers sat in their car projecting their voice [sic] on the verandah asking for me…went to the gate, saw the police officer in the car along with Donna. Police officers started to say 'weh de camera de wey you tief. Me want the camera go fi it carry come now'. By this the officer come out of the car beside the yard and I said 'what camera I tief. I don't tief no camera'. The officer said to me 'Boy go fi the camera carry come...'...I went for the camera, brought it to them. I said to Donna while she was in the car 'what kind of

> excitement this?' [a police officer] said 'boy no chat to her, no chat to her'.
>
> I did not know those police men before. I see none of them here in court today. I said to him 'so why me can't talk to her'. He said 'as a matter of fact gimme a search'. He put me towards the gate, kick my foot open then push [sic] me outside on the car, push my foot again and search me even though I was in a [sic] shorts and a merino. The officer say 'boy me a go lock you up', put me in handcuffs, force me down in the car, the police car then they drove out on Olympic Way. We were passing Olympic Gardens Police Station and I said to him 'This is the station responsible for my area'. He said 'Boy shut up'. I was now speaking to the other police and asking him what is it that I am going to the station for. The police that came for me said I should shut up again. The police that was driving said 'weh you a go charge him for'. The other one in the passenger side said 'Me a go find something charge him fah, mi affi lock him up, a my girl that, a me a 'f' her. He spoke the word. He said 'Me a go show you say, you no fi romp with police' to me..."

[9] At the Hunts Bay Police Station he was placed in the custody by the 2nd respondent who processed him. Without providing him with any reason, the 2nd respondent locked him in a cell after he was processed. He was released on bail 4 hours later with instructions to attend the Half Way Tree Resident Magistrate's Court in January 2009.

[10] In January 2009, he attended court but his name was not called. He was subsequently served with a summons to attend the Corporate Area Resident Magistrate's Court at Half Way Tree in March 2009. On 6 March 2009, he attended court but the matter was adjourned without a trial and the judge told him "it's a no case thing". He appeared on three occasions before the Half Way Tree Resident Magistrate's Court. On 25 March 2009, the last occasion, he replaced Ms Brown's

camera with a new one. The appellant was, at all material times, adamant that Ms Brown had loaned him the camera.

[11] It was the appellant's evidence that he was detained by the policemen at about 11:00 am and released about 5:00 pm. He refuted the suggestions about being detained at 12:05 pm and bailed by 2:10 pm.

The respondents' case

[12] The respondents' defence was that at all material times Constable Grant acted reasonably, with probable cause and without malice towards the appellant, when he arrested and charged him in connection with a complaint that was made by Ms Brown pertaining to a stolen camera. In support of their case, they relied upon the testimony of the 2nd respondent and Ms Brown. The 2nd respondent testified that on 28 December 2008, about noon, whilst he was on station guard duty, Ms Brown, whom he did not know before, attended the station.

[13] She reported that the appellant had taken her camera without her consent. A statement was taken from her. As a result of her statement, he caused the appellant, whom he did not know before, to be taken to the station. In Ms Brown's presence, he informed the appellant of her complaint against him of simple larceny. He cautioned the appellant but he did not reply.

[14] Ms Brown identified a camera as that which was removed from her home without her consent. Thereafter, he arrested and charged the appellant with the offence of

simple larceny. He testified that the only basis for the appellant's arrest and the charge which was laid against him was Ms Brown's statement.

[15] He denied that the appellant was detained for 4 hours. According to him, the appellant was detained at about noon. He was placed into the lock up and released on station bail approximately 2 hours after. It was the 2nd respondent's evidence that the appellant was bailed to attend court on 12 January 2009. The papers however were not placed before the court. As a result he was summoned to attend court.

[16] At the instigation of the learned Resident Magistrate, the parties arrived at a rapprochement. Consequently on 25 March 2009, the third occasion, the appellant attended court, he handed over a replacement camera to Ms Brown, who then indicated she no longer wished to pursue the matter. Consequently, a 'no order' was made.

Ms Brown's evidence

[17] Ms Brown's evidence was that on 3 December 2008, the appellant telephoned her desiring to borrow her camera. She refused his request. Upon her arrival home, she discovered that her camera was missing. She forthwith demanded that he return the same but he ignored her demand. On 28 December 2008, she went to Hunts Bay Police Station and reported the matter to the 2nd respondent, who was a stranger to her.

[18] The appellant eventually replaced the camera after she attended the Corporate Area Resident Magistrate's Court at Half Way Tree on about two or three occasions. She

consequently discontinued the matter against him. Ms Brown was insistent that she did not permit the appellant to borrow her camera. She however conceded that in her statement she did not state that the appellant had stolen the camera or that she had told him that he could not borrow the camera. It was her evidence that she was of the impression that he was not going to return same.

The learned Resident Magistrate's findings

[19] The learned Resident Magistrate found that the appellant was arrested and charged for simple larceny by the 2nd respondent as a result of Ms Brown's report. She identified the following as the issues for her determination:

(a) whether the 2nd respondent had reasonable and probable cause to arrest and charge the appellant for simple larceny; and

(b) whether the 2nd respondent was actuated by malice in arresting and charging the appellant.

[20] It was the finding of the learned Resident Magistrate that the 2nd Respondent had reasonable grounds to believe that the appellant had committed the offence of simple larceny of Ms Brown's camera. Accordingly, she found that there was legal justification for the 2nd respondent to have detained the appellant. On the issue of malice, she found that, prior to the report, the 2nd respondent did not know either the appellant or Ms Brown. She noted that the appellant was himself uncertain as to whether the 2nd respondent was malicious towards him. Consequently, she concluded

that in arresting the appellant, the 2nd respondent acted without malice and with reasonable and probable cause to arrest and charge the appellant for simple larceny.

[21] In respect of the claim for false imprisonment, it was however contended on the appellant's behalf that his period of detention was inordinately long. The learned Resident Magistrate however found that the appellant's detention did not exceed 4 hours. It was her finding that the 2nd respondent adhered to the proper procedures during and after the arrest of the appellant hence she found that the appellant's case for false imprisonment was without merit.

[22] Regarding his claim for malicious prosecution, the learned Resident Magistrate found that the 2nd respondent was under no duty to enquire into the appellant's motive nor to determine whether the appellant had an intention to permanently deprive Ms Brown of her camera. She found that:

(i) it was not the 2nd respondent's role to determine where the truth lay;

(ii) on a balance of probabilities the 2nd respondent was justified in charging the appellant; and

(iii) the appellant had, in the circumstances, failed to satisfy her that the 2nd respondent was actuated by malice when he arrested and charged the appellant.

The appeal

[23] The appellant, being dissatisfied with the learned Resident Magistrate's findings, on 23 January 2012, filed the following grounds of appeal:

> "**Findings of fact**
>
> a. The Learned Resident Magistrate erred when she held that the 2nd Respondent/Defendant acted on proper and sufficient grounds when he arrested the Appellant/Plaintiff on the 28th day of December 2008 [sic]
>
> b. The Learned Resident Magistrate erred when she held that the Appellant/Plaintiff was granted bail within two hours after he was arrested.
>
> c. The Learned Resident Magistrate failed to take into account material inconsistencies on the evidence of the Respondent/Defendants' witnesses
>
> d. The Learned Resident Magistrate erred in her findings [sic] that the 2nd Respondent/Defendant had sufficient grounds to believe that the Appellant/Plaintiff has committed the offence of larceny as all the ingredients of the offence of larceny were not evident from the allegations.
>
> e. The Learned Magistrate erred in her findings [sic] that the 2nd Respondent/Defendant is a credible witness [sic]
>
> **Findings of law**
>
> a. That the Learned Resident Magistrate erred in her findings [sic] that the 2nd Respondent/Defendant did lawfully arrest and detain the Appellant/Plaintiff without any reasonable and probable cause on the 28th day of December 2008 [sic]
>
> b. That the Learned Resident/Magistrate [sic] erred in her finding that the 2nd Respondent/Defendant did not initiate criminal prosecution against the Appellant/Plaintiff through malice [sic]

c. That the Learned Resident/Magistrate [sic] erred in her findings [sic] that the 2nd Respondent/Defendant had no duty to assess whether an offence has been committed by the Appellant/Plaintiff."

[24] The following supplemental grounds of appeal were filed on his behalf on 16 June 2014:

(a) The learned Resident Magistrate erred in her finding that there existed reasonable grounds to believe that the appellant had committed the offence of simple larceny.

(b) The learned Resident Magistrate erred when she accepted that, in all the circumstances, the 2nd respondent acted without malice and with reasonable and probable cause.

(c) The learned Resident Magistrate erred when she found that the 2nd respondent adhered to all the proper procedures during and after the arrest of the appellant and so the respondents were not liable for false imprisonment.

(d) The learned Resident Magistrate erred when she held that it would not have been the duty of the 2nd respondent to enquire into the motive of the appellant or to determine whether the appellant had

an intention to permanently deprive Ms Brown of her camera.

[25] Leave was sought by Miss Cummings to rely on both the original and supplemental grounds of appeal. The court acceded to her request.

Malicious prosecution

Appellant's submissions

[26] Miss Cummings posited that the issues for the learned Resident Magistrate's determination were:

(i) whether the 2nd respondent acted without reasonable and or probable cause in initiating criminal proceedings against the appellant; and

(ii) whether the 2nd respondent without reasonable and or probable cause unlawfully arrested the appellant.

[27] She contended that the elements of malice were sufficiently proven because the 2nd respondent had no reasonable or probable cause to arrest and charge the appellant. For that proposition she relied on the cases **Brown v Hawkes** [1891] 2 QB 718, 722 and **Irish v Barry** (1965) 8 WIR 117, 179. It was her firm contention that the evidence before the learned Resident Magistrate demonstrated that the 2nd respondent

had no reasonable or probable cause to arrest and charge the appellant. In support of her contention, she enumerated the following portions of the evidence, *inter alia*:

(a) Ms Brown did not tell the appellant "no" when asked to borrow the camera;

(b) She did not tell the policemen that the camera was stolen;

(c) the absence of evidence that the appellant intended to permanently deprive Ms Brown of her camera;

(d) the appellant and Ms Brown were cousins;

(e) the appellant was arrested, charged and granted bail for simple larceny, but subsequently, summoned for larceny from the dwelling; and

(f) the arrest of the appellant was before Ms Brown's statement was taken.

Respondents' submissions

[28] In respect of the appellant's claim for malicious prosecution, Mr Austin agreed that the appellant's prosecution was in fact set in motion by the 2nd respondent. He contended that there was evidence before the learned Resident Magistrate which supported the fact that the 2nd respondent had genuine suspicion that the appellant had committed the offence of simple larceny. There was also ample evidence that the 2nd respondent acted upon Ms Brown's report and statement.

[29] Further, he submitted, the appellant remained silent when he was confronted by Ms Brown about her camera in the presence of the 2nd respondent. He argued that the 2nd respondent acted in accordance with section 13 of the Constabulary Force Act which empowered him to apprehend and charge the appellant, whom he honestly suspected committed an offence.

[30] He relied on section 33 of the Constabulary Force Act, in support of his proposition that there was a presumption that once the appellant was detained, charged and prosecuted by the 2nd respondent, he did so without malice and with reasonable and probable cause. The section, he argued, further provides that in the absence of malice or unreasonable or improbable cause judgment must be entered in favour of the 2nd respondent.

[31] It was his submission that the effect of sections 13 and 33 of the Constabulary Force Act placed the burden on the appellant to prove absence of reasonable and probable cause. He said that there was no evidence of malice, ill-will, ill-motive or any other motive by the 2nd respondent against the appellant.

Law and analysis

[32] Wooding CJ in **Wills v Voisin** (1963) 6 WIR 50, enumerated the elements which the appellant must prove, on a balance of probabilities, in order to succeed on his claim for malicious prosecution. At page 57, he enunciated:

> "…in an action for the vindication of the right to be protected against unwarranted prosecution, which is the action for malicious prosecution, a plaintiff must show (a) that the law was set in motion against him on a charge for a criminal offence; (b) that he was acquitted of the charge or that otherwise it was determined in his favour; (c) that the prosecutor set the law in motion without reasonable and probable cause; and (d) that in so setting the law in motion the prosecutor was actuated by malice…"

[33] The learned Resident Magistrate correctly found that the appellant's detention by the 2nd respondent was "consequent upon the report made to him by Donna Brown". It was conceded by Mr Austin that it was however the 2nd respondent who had set the law in motion (see Lord Keith's statement in **Martin v Watson** (1996) AC 74). The burden rested squarely with the appellant to prove on the preponderance of possibilities that the 2nd respondent had no genuine belief in the prosecution instituted by him (see **Neville Williams v Janine Fender, Carlton Henry and The Attorney General** HCV 00126/2005, delivered on 1 July 2009).

[34] The appellant was also required to prove that he was acquitted of the charge or that the matter was determined in his favour. There was in fact no finding of insufficiency in the evidence against the appellant, nor was there any determination as to his guilt or innocence. A "no order" ruling was made because the camera was replaced and Miss Brown's expressed desire to discontinue the matter. The matter was therefore neither determined in Ms Brown's favour nor his. (see **Attorney General of Jamaica v Keith Lewis** SCCA No 73/2005, delivered on 5 October 2007 and **DPP v Feurtado and Attorney General** [1979] 16 JLR 519). The learned Resident

Magistrate however found that the matter was "determined in favour of the plaintiff", that is, the appellant in this matter. Mr Austin sought to challenge the learned magistrate's finding that the matter had concluded in the appellant's favour. The required counter notice, pursuant to rule 2.3(3) of the Court of Appeal Rules, was not filed. He was therefore not entertained.

Did the 2nd respondent act without reasonable and probable cause?

[35] Examination of the law is illuminating. Lord Devlin's speech in **Glinski v McIver** [1962] 2 WLR 832 at page 856 has been recognized by this court as having correctly established that in order to succeed on a claim for malicious prosecution:

> "...the plaintiff must prove both that the defendant was actuated by malice and that he had no reasonable and probable cause for prosecuting..."

[36] Section 33 of the Constabulary Force Act requires a claimant alleging malicious prosecution in an action against a constable, committed in the execution of his duty, to prove that the defendant acted either maliciously or without reasonable and probable cause. It is helpful to quote the section.

> "Every action to be brought against any Constable for any act done by him in the execution of his office, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such act was done either maliciously or without reasonable or probable cause: and if at the trial of any such action the plaintiff shall fail to prove such allegation he shall be non-suited or a verdict shall be given for the defendant."

[37] Reasonable and probable cause was defined with clarity by Devlin LJ in **Hicks v Faulkner** (1978) 8 QBD 167. At page 171, he said:

> "...I should define reasonable and probable cause to be, an honest belief in the guilt of the accused based upon full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed..."

[38] In support of her contention that the 2nd respondent acted without reasonable or probable cause, Miss Cummings cited the fact that no statement was taken from anyone else to prove the offence and that the complainant's evidence regarding the removal of the camera from the house was hearsay. It however must be borne in mind that Ms Brown made the allegation against the appellant in the presence of the 2nd respondent and although it was his right, he remained silent.

[39] Although the 2nd respondent could have interviewed Mari, there was nevertheless, neither hint of malice nor a shred of evidence that the 2nd respondent knew either the appellant or Ms Brown before the incident from which some improper motive could be imputed. He was not required to test every possible relevant fact before he took action (Lord Atkins in **Herniman v Smith** (1938) AC 305, 319). Additionally there was no evidence that the 2nd respondent either sanctioned or was aware of the mistreatment which was meted out to the appellant by the policemen who took him from his house and transported him to the station. The statements made by

the policemen who transported him to the station cannot, without more, be attributed to the 2nd respondent.

[40] Before this court, Miss Cummings sought to rely on Ms Brown's written statement to demonstrate that the 2nd respondent acted in the absence of reasonable and probable cause. At the hearing of the matter before the learned Resident Magistrate, she had however objected to a copy of the statement being tendered into evidence. The learned Resident Magistrate upheld her objection and disallowed its admission. The learned Resident Magistrate's decision, therefore, was not predicated on the statement. In any event, Miss Cummings' submissions regarding the content of the statement could not however have advanced the appellant's case.

[41] It is necessary to scrutinize the salient aspects of Ms Brown's statement to the 2nd respondent. The statement reads as follows:

> "…He asked [me] if I was at home. I told him no.
>
> He told me he wanted to borrow my Sony DSL-5500 digital camera… I told him to contact my boyfriend to find out if he was home. I immediately sent a text message to my boyfriend Mr. Maurice Harrison to tell him not to give the camera to Mr. Robinson.
>
> My Boyfriend sent me a please call me and I called me and I called him back immediately and he told me that Richard Robinson call [sic] him and he to [sic] Mr. Robinson that he was not at home.
>
> …when I arrived home …my son…told me…that Richard Robinson searched the draws [sic] to my dresser draw [sic] and took my camera. This was done without my consent as I did not gave [sic] permission to Mr. Robinson to go into my room and take my belongings.

> On seen [sic] that my camera was truly missing I telephoned Richard Robinson immediately and told him that he should bring back my camera on the 4th December 2008 which was the next day. He told me that I have [sic] to get a different camera because he was going to use it.
>
> On the 10th of December 2008 I call [sic] Mr. Robinson to tell him to return my camera and he told me that my camera was broken.
>
> He however told me that his girl friend [sic] would send me a camera in seven (7) days time.
>
> I have been call [sic] him to get compensation for my camera but he is not cooperating with me and I need my camera as [sic] often use it to assist in my projects at school."

[42] A reading of the statement could possibly have led to the conclusion, given the relationship between the parties, that at the point in time that the appellant removed the camera from the drawer he was not forbidden from doing so although there was no expressed permission. It is apparent that Ms Brown did not wish to frankly deny the appellant permission as her instruction to her boyfriend was that he should not give the camera to the appellant. The fact however, is that she did not expressly give him permission.

[43] Although her response to his request might be open to another construction and another police officer might have approached it differently, in light of the parties relationship, it cannot be properly asserted that the 2nd respondent acted without reasonable or probably cause. It was Ms Brown's statement that the camera was taken without her permission.

[44] Regarding Miss Cummings' contention that there was no evidence that the appellant intended to permanently deprive Ms Brown of the camera, Ms Brown, did state that the appellant was not cooperating with her although she had also said that he had told her that his girlfriend would have replaced it in seven days. The camera was taken on 3 December 2008. On 10 December 2008, she demanded its return without success and eighteen days later on the 28 December 2008 when she gave her statement it had not been returned.

[45] It cannot therefore reasonably be asserted that her statement was bereft of any material which could provide the 2nd respondent with reasonable and probable cause. In the absence of evidence that he was actuated by malice or that he acted without reasonable or probable cause in prosecuting the appellant, supplemental grounds 1, 2 and 4 failed.

[46] As aforesaid, the 2nd respondent could have attempted to resolve the matter differently in light of the parties' relationship, however he was under no legal obligation so to do. Further, the appellant chose to remain silent in the face of the allegations. There was therefore no denial of the allegations and little if anything at all before the 2nd respondent which could, in the circumstances, have impelled him to attempt mediation.

[47] The fact that the appellant "was arrested, charged and granted bail for simple larceny, but subsequently, summoned for larceny from the dwelling" cannot be

supportive of the appellant's claim that the 2nd respondent acted either maliciously or without reasonable or probably cause. In light of the evidence, a charge of larceny from the dwelling was not without merit.

[48] The complaint that the arrest of the appellant was before Ms Brown's written statement was taken is also immaterial. The 2nd respondent acted on Ms Brown's oral complaint. Supplementary grounds 1, 2 and 4 failed. So too grounds a, and c challenging the findings of fact.

False imprisonment

Appellant's submissions

[49] Miss Cummings contended that, in respect of the claim of false imprisonment, there was an absence of reasonable and probable cause to arrest and imprison the appellant. She contended that the appellant's detention and deprivation of his liberty began at the time he was removed from his house to the point of his release on bail.

[50] She acknowledged that the 2nd respondent, under section 13 of the Constabulary Force Act, had the power to arrest without a warrant on reasonable suspicion that a person had committed an offence. It was however her submission that the 2nd respondent did not exercise the requisite caution in arresting and charging the appellant. She said he acted hastily in arriving at his conclusion on grossly inadequate grounds. She referred the court to the cases **Irish v Barry** and **Dumbell v Roberts and Others** [1944] 1 All ER 326, 331 in support of her contention.

[51] It was her further submission that even if the arrest was lawful, the failure of the arresting officer to adhere to the proper procedure during and after the arrest may render the arrest unlawful. She submitted that persons detained and arrested are entitled to be told the reason for their detention and arrest. For that proposition she relied on **Dennis Palmer v Charles Morrison** [1963] 1 Gl LR 150. She submitted that the 2nd respondent failed to inform the appellant of the charge laid against him thus he failed to adhere to the proper procedure.

Respondents' submissions

[52] On the other hand, Mr Austin submitted that in respect of the claim for false imprisonment, the objective test was not applicable because the appellant failed to provide evidence, on a balance of probabilities, that at the time the 2nd respondent arrested and charged him, he (the 2nd respondent) did not have a genuine or honest suspicion. He relied on the case **The Attorney General v Glenville Murphy** [2010] JMCA Civ 50. He argued that there was sufficient evidence before the learned Resident Magistrate that the 2nd respondent lawfully arrested the appellant. He cited the case of **Peter Flemming v Det Cpl Myers** and **The Attorney-General** (1989) 26 JLR 525, as support for his contention.

[53] He argued that the 2nd respondent genuinely believed the appellant had committed the offence consequent on the report made and statement given by Ms Brown and also the silence of the appellant when Ms Brown confronted him about the camera. Further, he contended, Ms Brown gave a statement which she signed as being

true and when warned about possible prosecution if the statement was untrue, she did not change same. Mr Austin further submitted that it was not the duty of the 2nd respondent to try the matter, but to put the matter before the court once there was some evidence on which to proceed.

Law and analysis

[54] Section 13 of the Constabulary Force Act, empowers a police officer, to detain or arrest any person reasonably suspected of having committed an offence. The relevant portion of the section provides:

> "The duties of the Police under this Act shall be to… apprehend or summon…, persons…whom they may reasonably suspect of having committed any offence,…"

[55] Wooding CJ in **Irish v Barry**, at page 182, outlined the factors an officer ought to be mindful of, in determining the reasonableness of suspicion, in the exercise of his right to arrest, as follows:

> "…The right or power to arrest without warrant ought never to be lightly used. Those who possess it ought, before exercising it, to be observant, receptive, and open-minded, not hasty in jumping to conclusions on inadequate grounds. Caution should be observed before depriving any person of his liberty, and more especially so when no prejudice will result from any consequent delay…What is important is that,…no person should exercise the power of arrest unless he had proper and sufficient grounds of suspicion. If he does, then he is acting hastily and/or ill-advisedly. In all cases, therefore, the facts, known personally and/or obtained on information, ought carefully to be examined…"

[56] In the absence of legal justification, the detention of a person against his will constitutes the tort of false imprisonment. Carey JA, at page 530, in **Flemming v Myers and the Attorney-General**, opined that "an action for false imprisonment may lie where a person is held in custody for an unreasonable period after arrest and without either being taken before a Justice of the Peace or before a Resident Magistrate".

[57] In rejecting the appellant's claim for false imprisonment, the learned Resident Magistrate said, at page 7 of her reasons for judgment (page 136 of the record of proceedings):

> "...As it relates to False Imprisonment, I accept that Constable Grant did in fact detain the [appellant]. I accept that this was consequent upon the report made to him by Donna Brown and the fact that when the [appellant] was brought to the Police Station so too was the camera in question. I accept that there existed reasonable grounds to believe that the [appellant] had committed the offence of Simple Larceny of the digital camera of Donna Brown. I therefore find that at the time he detained the [appellant] he had legal justification for doing so..."

[58] It certainly cannot be properly asserted that the 2nd respondent's arrest of the appellant was unsubstantiated or that he acted ill-advisedly or hastily. As previously stated, the appellant did not counter the allegation which was made in his presence. The 2nd respondent was also in possession of a statement from Ms Brown in which she asserted that the appellant had removed her camera from a drawer without her consent and that he intended to deprive her permanently of same. Although it is true that in sending the appellant to her boyfriend (which she stated in her statement), the

appellant could have genuinely believed that she was consenting, the fact is that she did not expressly give him permission to take the camera.

[59] The 2nd respondent was under no duty in his capacity as arresting officer to determine the guilt or innocence of the appellant. There was no obligation on him to ensure that Ms Brown's allegations led ineluctably to the conclusion that the appellant had stolen the camera. That responsibility rested with the Resident Magistrate who would have tried the criminal matter against the appellant. Supplemental ground 3 therefore failed. Additionally, so did ground c of the appellant's challenge to the findings of law.

[60] The learned Resident Magistrate's finding that the 2nd respondent's detention of the appellant was legally justified, cannot therefore be disturbed in the absence of evidence that he was actuated by malice or that he acted without reasonable or probable cause or without sufficient grounds for suspicion. This ground therefore failed. Supplementary ground 2 also failed.

[61] Regarding the conflict in the evidence as to the period the appellant was detained, the learned Resident Magistrate found, at page 8 of her reasons for judgment (page 137 of the record), as follows:

> "...It is undisputed that the [appellant] spent no more than four hours in custody. Constable Grant says he offered him station bail within minutes of putting him into custody. Constable Grant also gave evidence of the process involved in accessing bail, which he says contributed to a two hour delay in the processing of bail, a delay which cannot be attributed to him. Under those circumstances I do not accept that the [appellant]

> was subject to any undue delay. I do not accept that Constable Grant failed to adhere to proper procedures during and after arrest. I accept that he was informed of the charge and was charged and then placed into custody. I find that all proper procedures were adhered to. In all the circumstances I do not find the [respondents] liable for False Imprisonment."

[62] The learned Resident Magistrate's acceptance of the 2nd respondent's evidence that the appellant's period of detention was approximately 4 hours cannot be faulted. As arbiter of the facts, it was entirely within her purview so to find. As regards the appellant's complaint that the 2nd respondent failed to inform him of the offence for which he was charged, it was entirely for the learned Resident Magistrate to accept the 2nd respondent's evidence that the appellant was informed. Issues of credibility and the nuances of the law were for the judge and not the constable. Indeed her finding ought not to be disturbed unless the same was palpably wrong. See the dicta of Morrison JA, as he then was, in **New Falmouth Resorts Ltd v International Hotels Jamaica Ltd** [2011] JMCA Civ 10. Grounds b, c and e of the appellant's challenge to the findings of fact cannot be sustained

Disposal

[63] For the foregoing reasons, I agreed that the appeal should be dismissed with costs to the respondent to be agreed or taxed.