

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Law Division

2025/PUB/Crim/con

**IN THE MATTER OF ARTICLES 17(1), 20(1), 20(4), 21(1) OF THE
CONSTITUTION OF THE COMMONWEALTH OF
THE BAHAMAS**

AND

**IN THE MATTER OF AN APPLICATION BY JOSEPH ROLLE FOR
CONSTITUTIONAL RELIEF**

BETWEEN

JOSEPH ROLLE

AND

THE ATTORNEY GENERAL

Plaintiff

Respondent

Before: The Honourable Mr. Justice Franklyn K M Williams MB KC

Appearances: The Applicant pro se

Mr. Brent McNeil for the Respondent

Hearing Date: 15 April 2025

RULING

WILLIAMS, J.

Introduction

[1.] The applicant Joseph Rolle was arrested and charged with Indecent Assault contrary to section 17(1)(a) of the Sexual Offences Act, Chapter 99 and Attempted Procurement, contrary to section 7(a)(v) of the Sexual Offences Act, Chapter 99. He filed an Originating Motion on 2 April 2024, seeking declarations that various constitutional and other rights were breached in relation to his arrest, detention and being charged. The motion was not attended by an affidavit. The proper party, the Attorney General has not been named; in fact, no party is named.

[2.] The Director of Public Prosecutions has entered an appearance, seeking a dismissal of the applicant's motion.

Factual Background

[3.] On Sunday 15 October, 2023, the applicant was arrested on suspicion of having committed the aforementioned offences at 17 Hanna Road, which premises he shared with his paramour and lessee of those premises, Ms. Charmaine Poitier and her children.

[4.] On Monday 16 October 2023, the applicant was interviewed concerning the allegations, the details of which are recorded on an official police interview form.

[5.] On that same date, Inspector Donna Barr obtained ex parte, an order authorizing the further detention of the applicant for a period of no more than seventy-two hours to take effect from 5:20 p.m. on Tuesday 17 October 2023

[6.] At 1:26 p.m. on Friday 20 October 2023, the applicant was charged with the offences of Indecent Assault and Attempted Procurement.

[7.] The applicant was brought before the Magistrates' Court on Monday 23 October 2023, having been detained for a period of sixty four hours or just under three days after the expiration of 17 October 2023 order.

The applications

[8.] The applicant applies for the following declarations and reliefs, including damages:

- i) A declaration that the applicant was unlawfully arrested
- ii.) A declaration that the applicant's residence was unlawfully searched
- iii.) A declaration that the applicant was improperly placed upon an identification parade
- iv.) A declaration that the case against the applicant is fabricated
- v.) A declaration that the applicant was unlawfully detained
- vi.) A declaration that the applicant is unlikely to receive a fair trial
- ii) A declaration that the applicant's right to due process afforded him by the Constitution of The Bahamas is being violated
- iii) A declaration that a permanent stay of prosecution is the required relief in the circumstances

Applicant's claims

[9.] The applicant claims that he was arrested by Assistant Superintendent of Police ("ASP") Edward E. Pratt without warrant and without caution. ASP Pratt placed him in the police truck, staged a crime scene, and then proceeded to search the applicant's bedroom without first having obtained a warrant to do so.

[10.] The applicant claims that having been arrested on Sunday 15 October 2023, he was thereafter continuously and unlawfully detained for one hundred and eighty-five hours.

[11.] The applicant claims, that in breach of the Royal Bahamas Police Force ("RBPF") policy, and in the face of his refusal, an identification parade was conducted.

[12.] The applicant claims that during the conduct of interview, Corporal Roger Strachan uttered the words "What?! No man! I can't let her (allegedly, the complainant) say that; they (judge and jurors) will think she's lying. I have to call her back in and let her change this statement."; that this is evidence of collusion between the RBPF and the complainant in a fabrication of the case against him.

The Law

[13.] The Police Force Act [CH.205] lays out the powers of a police officer on arrest:

PART V

POWERS, DUTIES AND PRIVILEGES OF POLICE OFFICERS

31. (2) Without prejudice to the generality of the foregoing or any other provision of this Act, a police officer may, without warrant, arrest a person –

- (a) he reasonably suspects of having committed an offence:**

[14.] The Criminal Procedure Code Act lays out the powers of a police officer to detain upon arrest without warrant:

“18. A peace officer making an arrest without a warrant, in exercise of any power conferred upon him by the Penal Code, the Police Act or any other law for the time being in force, shall, without unnecessary delay and not later than forty eight hours after such arrest, take or send the person arrested before a magistrate appointed to preside in the magistrates’ court having jurisdiction in the case, unless persons arrested be earlier released on bail...;

“19. (1) Notwithstanding section 18 or any other law, a police officer of at least the rank of inspector may make an ex parte application of a magistrate, to have any person arrested for any offence specified under the First Schedule to the Bail Act detained for a further period not exceeding seventy two hours where the inquiry into that offence is incomplete and where the police officer –

- (a) has to secure or preserve evidence relating to the offence;
 - (b) has reasonable grounds for believing that the person arrested will interfere with or harm the evidence connected with the offence or interfere with or cause physical injury to other persons;
 - (c) has reasonable grounds for believing that the persons arrested will alert other persons suspected of also having committed the offence who have yet to be arrested; or
 - (d) has reasonable grounds for believing that the person arrested will hinder the recovery of any property obtained as a result of the offence.
- (2) Subject to subsection(1), where further detention is authorized the person arrested –
- (a) shall be told the reason for such further detention; and
 - (b) the reason shall be noted on his custody record.”

[15.] Article 19 (1)(c) states:

“No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases –

- (a) ...
- (b) ...
- (c) for the purpose of bringing him before a court in execution of the order of a court;

(d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;

...

(3) Any person who is arrested or detained in such a case as is mentioned in subparagraph (1)(c)(d) of this Article and who is not released shall be brought without undue delay before a court; ...”

[16.] Set out in the Standing Orders of the Royal Bahamas Police Force are guidelines for the conduct of identification parades, in particular Standing Order 7:

“Arrangements for the parade and its conduct shall be the responsibility of an officer not below the rank of inspector who is not involved with the investigation (‘the identification officer’). No officer involved with the investigation of the case against the suspect may take any part in the arrangements for, or the conduct of, the parade.

- i. An officer of the rank of sergeant or above shall be responsible for supervising and directing the showing of photographs. The actual showing may be done by a constable.”

[17.] The Penal Code speaks to the fabrication of evidence:

“~~423.~~ (3) a person fabricates evidence if he causes any circumstance to exist, or makes any false entry in any book, account or record, or makes any document containing a false statement, or forges

any document, with intent to mislead any public officer, judge, magistrate, juror, or member of a tribunal acting in any judicial proceeding;

...

426. Whoever fabricates evidence, with intent to defeat, obstruct or pervert the course of justice in any proceeding, shall be liable to the same penalties as if he had committed perjury in that proceeding."

Discussion

[18.] The report of ASP Edward E. Pratt speaks to the circumstances of the applicant's arrest and the search of the his residence, in particular his bedroom. Also present were the complainant and her mother, both of whom provided information to ASP Pratt. Whilst speaking to the mother of the complainant, also the applicant's paramour and lessee of the premises, ASP Pratt obtained her permission to search those premises. I am satisfied that the information provided ASP Pratt as well as the search, founded his reasonable suspicion that the applicant committed the offences for which he was arrested and cautioned.

[19.] The applicant declined to participate in an identification parade, and was subsequently identified by the complainant, his photograph being picked from the showing of photographs of twelve men of similar features. In my view, the complainant having identified the applicant to ASP Pratt at their shared premises, there is no issue of any failure of the RBPF's identification parade policy.

[20.] I do not accept that Corporal Strachan made any such utterance as alleged , or if made, such interpretation as placed thereon by the applicant. Given the admissions alleged to have been made by the applicant in interview, which he does not here deny, and which are not the subject of any declaration sought, the possibility of fabrication is remote, the allegation itself a trifle.

[21.] My consideration of these three claims raised above [12. – 14.] notwithstanding, none admit of constitutional breach. The application referencing these is, in my view, an abuse of process; they may be dealt with during the trial process, failing which, taken on appeal. Adequate alternative remedies avail the applicant.

Unlawful detention

[22.] The applicant was arrested without warrant; applying section 18 CPC, he was lawfully detained for a forty – eight hour period; applying s.19 CPC, he was detained for further seventy – two hours, which lawful detention expired at 5:20 p.m. Friday 20 October 2023. Thereafter, the applicant was detained without lawful authorization for sixty –three hours, which period ended upon appearance before a magistrate on Monday 23 October 2023. Thereafter, the applicant was remanded to the Bahamas Department of Corrections (“BDOCS”). Notwithstanding the grant of bail on 11 March, 2025, the applicant appeared before me on his application in custody of BDOCS, seemingly not having taken up bail.

[23.] The applicant claims breach of his Article 17(1) rights in that he has been subjected to inhuman and degrading treatment during remand; specifically, he complains of insanitary conditions, the lack of toilet. Chief Corrections Officer Ornald Bain refutes this claim, indicating that the applicant is housed in the “recently” renovated section of the Remand Center in Cell I – 06 in which there is a toilet.

[24.] In **Thomas and Another v Baptiste and Others** [199] UKPC J0127 -1, the Privy Council considered the corresponding article to article 17 in the Trinidad and Tobago Constitution (albeit in the context of persons convicted of the death penalty):

“...the question for consideration is whether the conditions in which the appellants were kept involved so much pain and suffering or such deprivation of the elementary necessities of life that they amount to treatment which went beyond the harsh and could properly be described as cruel and unusual. Prison conditions in third world countries often fall lamentably short of the minimum

standards which would be acceptable in more affluent countries. It would not serve the cause of human rights to set such demanding standards that breaches were commonplace. Whether or not the conditions in which the appellants were kept amounted to cruel and unusual treatment is a value judgement which it is necessary to take account of local conditions both in and outside the prison.”

[25.] In **Feizal Khan** 2006/PUB/con/0001 Klein found:

“The cases all emphasize that to meet the threshold for inhuman or inevitable hardship associated with lawful imprisonment. The assessment is not based on a single factor (such as lack of space, or unsanitary conditions, or prolonged confinement) considered in isolation but on the cumulative effect of all conditions of detention (see **Grant v Ministry of Justice, Thomas v Baptiste**). The cases equally show, however, that certain conditions such as overcrowding, unsanitary conditions and prolonged confinement may, depending on the circumstances, cross the Article 17 threshold and constitute degrading and inhuman treatment.”

[26.] I do not accept, the applicant’s claims in this regard. Taking judicial notice of local conditions, and taking into consideration the applicant’s complaint, I do not find that the extent of those conditions as described amount to cruel and inhumane treatment. In my view, the conditions as described by him to be existing at the time of his complaint and affecting him are exaggerated. At any rate, Chief Corrections Officer, Ornald Bain has rebutted the applicant’s claims.

[27.] I deem the applicant’s initial arrest and detention lawful. I find the period of detention between Friday 20 October 2023 5:20 p.m. and Monday 23 October 2023 10.am. to be unlawful, and a breach of the applicant’s constitutional right. The applicant does not plead loss and damage, pain and suffering. He does not speak to interruption or cessation of employment, or any consequential loss of wages. He does not claim any brutality, deprivation of nourishment.

[28.] In **Kevin Renaldo Collie v Attorney General** (2016) CLE/gen/00916, the plaintiff Customs Officer, was arrested at work, and was awarded \$35,000 for unlawful arrest and false imprisonment. In **Gilford Lloyd v Chief Superintendent Cunningham et al** (2016) CLE/gen/00062, a shotgun was put to the plaintiff’s forehead when the police searching for illegal contraband, entered the wrong house. Mr. Lloyd being made to stand in handcuffs for thirty minutes in the presence of his neighbours, soiled himself. In **Jinnah Forde and others v Attorney General** 2015/CLE/gen/00702, the plaintiff husband and wife were awarded \$32,000 and \$35,000 respectively for unlawful arrest and false

imprisonment, \$5,000 each for assault and battery, \$10,000 each for being made subject to humiliation and degrading behaviour.

[29.] Having considered the authorities, and adjusting for the particular circumstances of this case, the applicant is awarded \$5000.00 with interest to run at 3% from date of filing of claim until judgement and the statutory rate of 6.25% from the date of judgement until payment.



Franklyn K M Williams KC J

13 July 2026