

Neutral Citation No: [2019] NIQB 39

Ref: HUD10902

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

Delivered: 11/4/2019

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

APPEAL AGAINST A COUNTY COURT DECISION

THE CHIEF CONSTABLE OF THE POLICE SERVICE FOR  
NORTHERN IRELAND

Defendant/Appellant

v

CONOR SMITH

Plaintiff/Respondent

**HUDDLESTON J**

**Introduction**

[1] This is an appeal against the decision of the County Court for the Division of Fermanagh and Tyrone (HHJ Duncan) awarding the Plaintiff damages of £3,550 for injury, loss and damage sustained by reason of the negligence, wrongful arrest, false imprisonment and breach of statutory duty. Mr Fee BL appeared for the plaintiff/respondent and Mr Reid BL for the defendant/appellant.

**Background**

[2] On the morning of 14 November 2016 the PSNI was called to an incident at 46 Mourne Crescent, Coalisland. The incident was reported by a neighbour who requested police assistance but was drunk and abusive. The call was logged at 10:07 as "injured female conscious and breathing" and at 10:09 "female has been assaulted she has facial and head injuries".

[3] Subsequently, at 10:20, the suggestion was reported that the Injured Party ("IP") had "jumped" from a first floor window of her home at 46 Mourne Crescent and that officers in attendance at the scene were intending to make a forced entry to

her property. A forced entry was required because the front door was jammed shut with a wooden support and the rear door was locked.

[4] The PSNI attended the property to which the IP had been removed (No. 27 Mourne Crescent) where they found her covered with blood and disorientated. Constable Summers who gave evidence suggested that she “*mumbled something about two people attacking her*”.

[5] On the IP’s removal by ambulance it was reported by Constable Summers that “[he] believe[d] it [had] been an assault”. A crime scene investigation was commenced.

[6] On the inspection of the IP’s house PSNI found that the upstairs bedroom window was open and that the blinds had been disturbed. The radio beside the IP’s bed was on and there was a mobile phone charging from which D/S Crothers reported he could read a message [delivered three hours earlier] stating “*have you managed to get rid of Conor?*” The Enquiry Log Report contains the following entry:

*“[The mobile phone] was locked but on the home screen had missed calls from a person called Clare and a mobile number [actual number given but redacted for the purposes of this judgment]. The person Clare had also sent a message stating “did you manage to get rid of Conor?” or words to that effect.”*

[7] Below the open window there was a pool of blood where the IP had fallen.

[8] An elderly next door neighbour then confirmed to police that there had been a party in the IP’s property the previous night attended by a local male and directed the police to No. 28 Mourne Crescent.

[9] Enquiries were made directly at No. 28 Mourne Crescent the address of a known associate of the IP, Barry Corry. Mr Corry initially indicated that he had not seen the IP “*in about three months*”. Present in the dwelling with Mr Corry at that time were three other persons, one of whom included the Plaintiff, Mr Smith. All were described by the investigating officers as “highly intoxicated”.

[10] Investigations continued throughout the morning and the forensic team were called to carry out an investigation of the scene.

[11] As the house to house investigations continued and circled back to No. 28, Mr Corry changed his story and produced from his back pocket a back door key for the IP’s property. He confirmed that he had, in fact, been in the IP’s house the evening before and had taken the key with her consent. This was consistent with the story that had been told to the police by Lucy Patterson who had also been there. He, the Plaintiff and the other parties who were present in the property were

subsequently arrested on suspicion of attempted murder and taken to Dungannon Police Station. In the Plaintiff's case he was held there for 10 hours before being released following it being established that no crime had in fact been committed. By that stage it had become apparent that the IP had jumped from the first floor window of her own volition upon hearing a fire alarm.

[12] The court heard evidence from seven police officers who attended the scene. From their evidence it appeared collectively that they had formed the view that:

- an offence had been attempted;
- an assault had been alleged by the IP which may have been an attempted murder;
- as the front and back doors of the IP's property had been secured the likely perpetrator was someone who had a means of access to the subject property;
- Mr Corry specifically in that regard had initially lied and then changed his story and did, in fact, possess a means of access;
- as regards the Plaintiff there was a possible linkage between the text message referring to "Conor" and the Plaintiff/Respondent.

[13] Taking those factors into account it was suggested to the court that:

- (a) The investigating officers had a reasonable suspicion on which to ground an arrest pursuant to the requirements of Section 26(2) of the Police and Criminal Evidence (NI) Order 1989.
- (b) That such an arrest was necessary:
  - given the nature and relationship between the co-accused in relation to the incident;
  - to protect evidence;
  - to protect the IP against further injury - although it was accepted at the trial that as the IP had been removed to hospital this in reality was of limited actual concern at the time of the arrests.

[14] In relation to this Appeal and as against that the Plaintiff asserts that:

- (a) there were objectively no reasonable grounds for the arrest;
- (b) the case of necessity has not been made, in the sense that no other preliminary or investigative steps were taken; and
- (c) the arrest was, therefore, unlawful and the Plaintiff is entitled to damages.

## Discussion

[15] Article 5 of the European Convention of Human Rights provides for the right to liberty. A person may not be deprived of his/her liberty except in certain cases which, for the purposes of this case, include a lawful arrest.

The question, therefore, for this court is whether the arrest was lawful on the facts.

[16] In *O'Hara v The Chief Constable* [1997] AC 286 Lord Steyn provided guidance in relation to the arresting powers of constables, adopting the following principles:

- for an arresting constable to have a reasonable suspicion did not mean that he had to have evidence sufficient to ground a prima facie case;
- that hearsay evidence may afford sufficient grounds for an arrest;
- that the information which creates the suspicion must be known to the arresting constable at the time when the arrest is made;
- that the executive decision to arrest is vested in the constable and not in his superior officer.

[17] In *Salmon v Chief Constable* [2013] NIQB 10 Weatherup J (as he then was) put it thus:

“a reasonable suspicion requires the existence of some facts or information which would satisfy an objective observer that the person concerned may have committed the offence.”

[18] It falls to this court to satisfy itself, firstly, if the arresting constable had reasonable grounds to carry out the arrest and, secondly, (if the answer to that is yes) if the arrest was necessary.

[19] Having heard each of the members of PSNI who gave evidence I have no doubt that they had a reasonable suspicion that a serious offence may have been committed. I say this for the following reasons:

- the address of the IP was one that was already known to PSNI - as (on the evidence) was the association between the IP and Mr Corry;
- the initial call and reporting of the events by the neighbours were all suggestive of a serious assault – as the reporting log to which I referred above confirms;

- when initially examined the IP was disorientated and on the evidence of Constable Summers did appear to indicate initially that she had been the subject of an 'assault' or an 'attack' by two persons who may or may not have been known to her. He may or may not have been correct in his hearing in that regard – Constable English who was in attendance with him told the court in cross-examination that she did not clearly hear those words from the IP. Nonetheless, the IP clearly presented as someone who had sustained severe injuries and at that point of time with which this court is concerned no cogent explanation as to how they had happened. Those injuries were sufficient to put in the minds of the police that they were possibly dealing with a case of attempted murder;
- the investigation of the locus was consistent with an attack – as was the pooling of blood on the concrete beneath the open window;
- access to the property had been secured from the inside and entry had not been forced - factors which together were suggestive of a third party who had an available means of accessing the property;
- Mr Corry had initially lied in relation to his relationship with the IP and subsequently changed his story confessing that he knew the IP, that he had attended the property the evening before and did have such a means of access to the subject property.

I have no doubt that those factors when taken collectively gave rise to a “reasonable suspicion” in the mind of the arresting officers that an offence had been committed. What, however, were the connecting factors that suggested that Mr Conor Smyth may have been guilty of such offence? They were, in the final analysis, limited to:

- (a) the fact that he was present in No. 28 Mourne Crescent with Mr Corry; and
- (b) that his forename “Conor” was the same as that which was found on the IP’s mobile phone.

[20] Counsel for the Plaintiff/Respondent challenged this final aspect of evidence and questioned why no attempt had been made to contact the sender of the text message and/or to investigate the circumstances of the text. He put, quite reasonably, that “Conor” was a common name and that the PSNI did nothing to check out the provenance or history of the text. The Constables who were questioned and cross-examined in relation to the point indicated that firstly the PSNI did not actually have access to the phone at that stage (or at least did not have the ability to unlock it) and, secondly, that the timescale was such that faced with an IP with quite severe injuries – sufficient in their minds to ground the potential of an offence of attempted murder – felt that they had to act quickly.

[21] Whilst I accept that – and the pressurised timescales involved – the text message was the only factor upon which the PSNI ultimately relied to base Mr Smith’s detention. In addition, according to the log entry to which I have made reference at para 6, they clearly did have the mobile number of the sender of the text. In my view, that does not meet the test of “*facts or information which would satisfy an objective observer*” that Mr Smith committed the offence (Salmon [supra at para 16] applied.)

[22] Mr Smith, on his evidence, had been out for the night in Cookstown. He ended up at Mr Corry’s home. When interviewed by PSNI he made it clear that he did not know the IP and that he had not been present in her home the night before or at all. The investigating constables – one assumes tainted by Mr Corry’s change of story – did not believe him but in reality relied solely on the text which appeared on the IP’s phone to ground his arrest. Contrary to their initial inclinations they did have the means of contacting “Clare” as the sender of the text and, notwithstanding the urgency of the situation, had a reasonable period between their arrival and investigation of the IP’s home at c.11:00am until the arrests were made at c.13:00 to make those additional inquiries.

[23] In my view the objective observer would have anticipated more than was done before Mr Smith was detained. The test set down in Salmon is not satisfied.

[24] For that reason the appeal fails and is dismissed. Judgment of £3,550 in favour of Mr Smith is confirmed.