



JUDICIARY OF  
ENGLAND AND WALES

**Mr GRAHAM MOUNCHER & OTHERS**

- v -

**SOUTH WALES POLICE**

**Neutral Citation Number: [2016] EWHC 1367 (QB)**

**SUMMARY OF JUDGMENT BY  
MR JUSTICE WYN WILLIAMS**

**14 JUNE 2016**

**CARDIFF CIVIL JUSTICE CENTRE**

**Background to the Claims:**

1. Just before 9pm on Sunday 14 February 1988, a young woman called Leanne Vilday walked into the Butetown police station in Cardiff and told the officers present that she was concerned for the safety of her friend Lynette White. She asked the officers to go with her to a flat which she had been renting at 7 James Street which was situated a short distance away. Two police officers agreed to accompany her to the flat. Once inside, the two officers went into the bedroom where they discovered the mutilated body of Lynette (as I shall call her). It was obvious to the officers that Lynette had been subjected to a brutal and sustained attack with a knife or knives.

2. That same night South Wales Police (SWP) launched an extensive investigation. All the Claimants in these proceedings were then serving police officers of SWP and they all participated to a greater or lesser extent in the investigation as it unfolded.
3. On 7 December 1988 six men were arrested and detained; they were Stephen Miller (SM), Anthony Miller (AM), Ronald Actie (RA), Yusef Abdullahi (YA), Martin Tucker (MT) and Rashid Omar (RO). On 9 December two more men, Anthony (Tony) Paris (TP) and John Actie (JA) were arrested and detained. All these men were interviewed under caution at length.
4. In due course, AM, MT and RO were released without charge. However, on 11 December 1988 the other five men were charged with Lynette's murder.
5. In October 1989 their trial began at the Swansea Crown Court. Just before he was due to sum up, the trial judge, McNeill J, died suddenly. A second trial took place between April 1990 and November 1990; the trial judge was Leonard J. After a long period of deliberation the jury convicted SM, TP and YA of murder and acquitted JA and RA. The three convicted defendants appealed to the Court of Appeal (Criminal Division). Their convictions were quashed in December 1992.
6. In 1999 a decision was made by the then Chief Constable of SWP to commission an independent review of the investigation which had led to the prosecution of the original defendants. The review commenced in June 1999 and was carried out by two experienced retired senior police officers unconnected with SWP, namely William Hacking and John Thornley. They reported their findings in May 2000. On 23 August 2000, SWP formed an inquiry team to reinvestigate the murder of Lynette. The reinvestigation was given the name "Operation Mistral". Subsequently this investigation also became known as LW2 although I shall refer to it as Operation Mistral.

7. As a consequence of Operation Mistral a man called Jeffery Gafoor (JG) was charged with Lynette's murder. On 4 July 2003, before Royce J sitting in the Crown Court at Cardiff, JG pleaded guilty as charged.
8. Very shortly after JG's plea, Sir Anthony Burden, then Chief Constable of SWP, decided that there should be an investigation into the events which had led to the charging and prosecution of the original defendants. Initially, the terms of reference of the investigation were:

"To identify and investigate any criminal or disciplinary offences arising from the Original Investigation."

This investigation became known as LW3. The investigation began, in earnest, within days of JG's conviction.

9. On various dates in 2005 all the Claimants, except Mr Hicks, were arrested on suspicion that they had committed the offences of conspiracy to pervert the course of public justice, misconduct in public office and false imprisonment during the course of carrying out their duties in the original investigation. The Claimant, Mr Hicks, was arrested on suspicion of having committed those offences on 26 June 2007. For ease of reference, hereinafter, I will refer to the original investigation as LW1.
10. On 2 March 2009 a prosecution was launched against all the Claimants save for Mrs Coliandris and Mr Morgan. A decision had been made before that date that those two persons should not be prosecuted. All the prosecuted Claimants were jointly charged with the offence of conspiracy to pervert the course of public justice. Mr Moucher was also charged with offences of perjury. The following year a decision was taken not to continue with the prosecution against Mrs O'Brien on account of her ill-health.
11. On 4 July 2011 a trial began before Sweeney J and a jury; the defendants in that trial were the Claimants Messrs Moucher, Powell,

Jennings, Stephen, Seaford, Greenwood, Daniels and Page together with 2 other persons, Violet Perriam and Ian Massey, who had been witnesses in the trials of the original defendants. On 1 December 2011 leading counsel for the prosecution informed the trial judge that no further evidence was to be offered against those persons and verdicts of not guilty were duly recorded. On 8 December 2011 the Crown Prosecution Service withdrew the charges it had laid against Messrs Gillard, Pugh, Murray and Hicks.

### **The Claims**

12. In these proceedings the Claimants allege the following:-

(a) Claimants 1 to 8, inclusive, allege that officers under the control of the Defendant who participated in LW3 committed against them the torts of false imprisonment and misfeasance in public office;

(b) Claimants 9, 10, 11 and 12 also allege that they were the victims of those torts but allege, additionally, that they were victims of the tort of malicious prosecution;

(c) Claimant 13 alleges that he was the victim of misfeasance in public office and false imprisonment;

(d) Claimants 14 and 15 allege they were victims of false imprisonment and, additionally, they pursue claims under the Human Rights Act 1998.

All Claimants claim compensatory, exemplary and aggravated damages but my task is to adjudicate upon the issue of liability. To the extent that liability and causation overlap it will be necessary to consider both issues together.

13. I stress that my task is to reach conclusions about whether the Claimants have been the victims of the wrongs they allege as formulated and particularised in their pleadings. I accept, of course, that in order to make a judgment about whether the Claimants were the

victims of the torts they allege it will be necessary to relate in some detail the evidence adduced before me relating to LW1 and Operation Mistral. I also accept that to a limited extent it will be necessary for me to reach conclusions about some of the events which are said to have occurred during the course of those investigations. However, I cannot emphasise too strongly that it is not my task to adjudicate upon the guilt or innocence of the Claimants in respect of the offences for which they were all arrested or upon the guilt or innocence of Claimants 1 to 13 in relation to the offences with which they were charged and in respect of which they were prosecuted. It is the conduct of the police officers who were engaged in investigating the Claimants as part of LW3 which is, primarily, under the microscope in these proceedings. Stripped to its essentials, I have to make a number of judgments about the thought processes, decisions, acts and omissions of those officers as LW3 ran its course.

### **My judgment**

14. All the claims for misfeasance in public office fail and they are dismissed.
15. Mrs Coliandris and Mr Hicks succeed in their claims that they were the victims of false imprisonment. It remains to be seen whether their claims are, nonetheless, barred by limitation. That will be determined at a future hearing (when the amount of the damages to which they are entitled will also be assessed, if necessary). The remaining Claimants fail in their claims for false imprisonment and those claims are dismissed.
16. Mr Daniels, Mr Gillard, Mr Page and Mr Hicks fail in their claims for malicious prosecution and their claims are dismissed.
17. Mrs Coliandris fails in her claim that that her rights under Article 8 ECHR have been infringed. Accordingly, her claim under section 7 Human Rights Act 1998 is dismissed. I refuse to permit Mr Morgan to amend his pleadings to allege a breach of his rights under Article 8 of

ECHR since, on the merits, his claim would be indistinguishable from that of Mrs Coliandris and it would be bound to fail.

## **Reasons**

### **The claims for misfeasance in public office**

18. The Claimants' case, in summary, was that the Defendant's officers committed misfeasance in public office by deliberately or recklessly acting beyond their powers in the LW3 investigation, prosecution and trial. It is said that the Defendant's officers prejudged the central issues of the investigation, adopting a mindset of guilt in relation to the Claimants from the outset, and pursued the investigation of the Claimants in a wholly disproportionate way, despite the manifest weaknesses of the available evidence, foreseeing the likelihood that their actions would injure the Claimants. It is also said that in the course of LW3 the Defendant's officers falsely imprisoned the Claimants and, throughout the investigation, a number of officers acted in bad faith.
19. The Claimants have failed to prove these allegations. On the basis of the evidence as a whole I concluded that no officer of SWP either deliberately or recklessly exceeded his/her powers during the course of discharging his/her duty during the course of LW3. Further, and very importantly, I found that no officer of SWP acted in bad faith when discharging his/her duty during the course of LW3. Bad faith on the part of a public official is a core element of the tort of misfeasance in public office.

### **False imprisonment**

20. There was no dispute that all the Claimants were arrested and taken into custody on suspicion of having committed the offences mentioned in paragraph 9 above. That being so, the onus was upon the Defendant to prove that there were reasonable grounds for suspecting that the Claimants had committed one or more of the offences for which they

were arrested. In respect of all Claimants except Mrs Coliandris I found that the Defendant had proved, on balance of probabilities, that there were reasonable grounds to suspect that the Claimants had committed one or more of the offences for which they were arrested. I reached that conclusion by reference to all the information which was known to the Senior Investigating Officer of LW3, Mr Coutts, his deputy Mr Penhale and the officers who carried out the arrests as at the date of the various arrests. In the case of Mrs Coliandris I found that there were no reasonable grounds for suspecting that she had committed any of the offences for which she was arrested. In her case, too, I reached that conclusion on the basis of the information available to Mr Coutts, his deputy Mr Penhale and the arresting officers as at the date of her arrest.

21. By the date of the arrest of Mr Hicks the power of arrest was exercisable only if the arresting officer had reasonable grounds for believing, for reasons specified in the Police and Criminal Evidence Act 1984, that it was necessary to arrest him. The onus was upon the Defendant to prove that such reasonable grounds existed. I concluded that the Defendant had failed to prove, on the balance of probabilities, that reasonable grounds existed for believing that it was necessary to arrest Mr Hicks. In making that judgment I acted upon the information known to the relevant officers as at the date of the arrest.

### **Malicious Prosecution**

22. In order to succeed in a claim for malicious prosecution it was necessary for the Claimants alleging this tort to prove that (1) SWP was “the prosecutor” as opposed to the Crown Prosecution Service (CPS) (2) the prosecution was brought without reasonable and probable cause and (3) it was malicious. I decided that the prosecution had been brought by the CPS and that, in any event, there was reasonable and probable cause for bringing the prosecution and it was not brought maliciously.

### **Human Rights**

23. Mrs Coliandris brought a claim under Section 7 Human Rights Act 1998 alleging that her rights under Article 8 of the European Convention on Human Rights had been infringed. She claimed that her right to respect for her private and family life had been infringed because her home was searched following her arrest and she was kept on bail for an inordinate period of time. I decided that there was proper legal justification for the search of her home and that the time she spent on bail did not infringe her right to respect for her private and family life. Mr Morgan sought to amend his claim to pursue a claim which was, for all practical purposes, identical to the claim brought by Mrs Coliandris. I refused him permission to amend his claim because there was no realistic prospect that it could succeed in the light of my conclusions in relation to the claim brought by Mrs Coliandris.

**NOTE**

This summary is provided to assist in understanding my decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and this judgment will be available upon request to the Royal Courts of Justice Press Office - Telephone:- 0207 947 7836.

The Honourable Mr Justice Wyn Williams  
2016

14 June

-ENDS-