

**EASTERN CARIBBEAN SUPREME COURT
ANGUILLA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. AXAHCV2023/0018

BETWEEN

DAVIS FLEMING

Claimant

and

**ATTORNEY GENERAL OF ANGUILLA
JACOB PIERRE
HENFORD RUAN**

Defendants

Before: His Lordship The Honourable Justice Ermin Moise

Appearances:

Mr. Kennedy Hodge of counsel for the Claimant.
Mr. Theon Tross of counsel for the Defendants.

2025: March 19;
May 6;
July 18.

JUDGMENT

[1] **MOISE, J.:** This is a claim for wrongful arrest, assault by a police officer and false imprisonment. The claimant asserts that on 24th June 2023, he was forced out of his taxi at the Clayton J Lloyd International Airport by the 2nd and 3rd defendants who are police officers. In the process of doing so, he claims that he was physically assaulted. He asserts that he was then subsequently arrested with no justification and falsely imprisoned at the Police Headquarters in The Valley. The claimant asserts that, as a result of these actions, he suffered physical pain and injury and seeks compensatory and other damages from the court.

- [2] Having examined the facts of this case, I have determined that there were reasonable grounds to justify the claimant's arrest and detention, and that the force used in doing so was reasonable. I have therefore dismissed the case with costs. These are the reasons for my decision.

The Facts

- [3] The claimant is Mr. Davis Fleming (Mr. Fleming). He is a taxi driver who plies his trade at the Clayton J Lloyd International Airport and at the Ferry Terminal in Blowing Point. Mr. Fleming states that on 24th January 2023 his Toyota Hiace Minibus was parked in the airport parking lot. He was awaiting his turn as there was an American Eagle's flight which had landed in Anguilla with a number of passengers on board. There is a taxi rank at the airport which accommodates 5 vehicles. Taxis on duty are numbered in a queue with taxis in queue positions 6 or greater having to wait in the airport's parking lot until a vehicle slot in the taxi rank becomes available. Mr. Fleming states that, on the day of the incident, he was awaiting his turn to enter the taxi rank.
- [4] Mr. Fleming states that at around 2pm it was his turn to move into the rank. As he proceeded to do so, the defendants, Police Constable Jacob Pierre and Special Police Constable Henford Ruan (Officers Pierre and Ruan), who were both dressed in police uniform, approached his vehicle and shouted that he was under arrest. In his pleadings, Mr. Fleming asserts that he continued to attempt to park his vehicle in the taxi rank whilst enquiring as to the basis of his arrest. He states that the officers then ordered him to reverse out of the taxi rank lane. He complied, and in the process of doing so, when his motor vehicle was partway across the entrance, another vehicle was crossing behind him. The officers then ordered him to stop. He did so with the result of him partially blocking the taxi lane.
- [5] Mr. Fleming states in his evidence that he knew both Officers Pierre and Ruan prior to the incident on that date. He states that he had a prior confrontation with Officer Pierre who then placed his name in his pocketbook and stated that he would remember him. He also knew Officer Ruan as he too operates a taxi at the Airport and Blowing Point Ferry Terminal.
- [6] Mr. Fleming states that Officer Ruan then reached inside his taxi and switched off the engine. He then yanked the driver's side door open and twisted Mr. Fleming's right arm behind the driver's seat. This caused an injury to Mr. Fleming's shoulder, and he was in excruciating pain. Mr. Fleming goes on to

assert that Officer Ruan simultaneously grabbed his left arm, which prevented him from being able to shift his position to reduce the damage being done to his right shoulder and ease the pain he was experiencing.

- [7] Mr. Fleming claims that the officers then both manhandled him, using excessive and damaging force. He states that they dragged him along the right-hand side of his taxi from the front to the rear, banging his head and his back against the side of his vehicle. They allegedly dragged him alongside the vehicle, causing injury and damage to his back. Mr. Fleming also asserts that this was done in the presence of a number of visitors who had disembarked the American Eagle flight. He states that the officers never informed him of the reasons for his arrest. They then took him into a police vehicle leaving his own motor vehicle unattended with personal documents and cash in it. He also notes that his vehicle was blocking the flow of traffic at that point.
- [8] Mr. Fleming states that he was able to impress upon the officers that his vehicle should be removed from its position. He states that they eventually agreed to allow him to move his vehicle to another location at the airport. Mr. Fleming states that the location which the officers wanted him to park his vehicle was not appropriate as it was across the Airport's high-security air-side main access gate labelled with clearly visible 'No Parking' and 'Restricted Area' signs. He stated that the officers then agreed to allow him to drive his motor vehicle to his home in Rey Hill, which was not far from the airport. It was Mr. Fleming's case that the police knew he was taking his vehicle to his home and that it was his expectation that they would follow him.
- [9] Despite this, Mr. Fleming states that a contingent of police officers, who appeared to be armed, came on to his premises. He had some difficulty disembarking his vehicle due to the pain he was experiencing from the alleged assault earlier. As he was attempting to call out to his partner and his son, the police "seized" him by the arm and shoved him into a police van. Mr. Fleming states that Officer Ruan shoved him causing him to land on his buttocks in the cage of the police van. This caused further pain in his back. He instructed his family to call a lawyer for him and was thereafter taken to the police station.
- [10] Mr. Fleming asserts that upon arrival at the police station, the desk sergeant made enquiries of Officers Pierre and Ruan as to the reasons for Mr. Fleming's arrest. Officer Ruan responded by saying that Mr.

Fleming attempted to bite him. It was pleaded that the desk sergeant. did not accept the reasons given for Mr. Fleming's arrest and immediately ordered his release. No charges were laid against him.

[11] Mr. Fleming states that whilst he was about to leave the police station, Officer Pierre demanded that he write a letter of apology to the Anguilla Air and Sea Ports Authority for his behaviour. Mr. Fleming states that he refused. Officer Pierre then wrote something down in a pocketbook and asked Mr. Fleming to sign. Mr. Fleming signed the entry but asserts that he is unable to read and understand official documents and the entry in the pocketbook was not read over to him. He also states that he initialed the entry because he was in pain and wanted to get to the hospital. In fact, he goes on to state that during his time at the police station, he requested that he be taken to the hospital, and this was refused by the police.

[12] Mr. Fleming states that he was taken to the hospital by his son where an x-ray was done on his shoulder. Upon the doctor's examination of the results of the x-ray, Mr. Fleming states that he was referred to the surgical clinic where he was examined by a Trinidadian doctor. He goes on to state that he was examined by the doctor on 7th February, 2023 and was prescribed pain killers and advised to undergo therapy. An MRI was also recommended, and this was done in St. Martin. After examining the results of the MRI, the specialist noted that surgery was not recommended due to Mr. Fleming's age.

[13] In his statement of claim, Mr. Fleming pleaded that he can no longer operate his taxi as a result of his injuries and continues to undergo physiotherapy. He is also unable to look after his cows and has lost income as a result of the death of a 6-month-old cow. However, in his witness statement he states that after physiotherapy he was able to resume driving his second vehicle after one year. He drives this vehicle because it is lower to the ground and is easier to operate.

[14] Whilst giving evidence in court, Mr. Fleming acknowledged that he is currently still operating a taxi but claimed that he is still experiencing pain. He also stated that since the signing of his witness statement he had been examined by a bone specialist who requested that he undergo surgery in December 2024. Mr. Fleming's evidence is that he was advised that the surgery was necessary if he had to walk comfortably.

[15] In cross-examination, Mr. Fleming denied that he was blocking the traffic when he was approached by the police officers. He continued to insist that he was simply told that he was under arrest but was not told the reasons for his arrest. He stated that he complied with the various orders of the police, except

the order to switch off his vehicle. Mr. Fleming denied that he was ever instructed by the police to circle around in order to ease the traffic. He insisted that he was simply awaiting his turn to enter into the queue.

[16] Mr. Fleming stated in cross-examination that he did form the view that where he was being asked to park his vehicle was not appropriate because of the security regulations. He remained adamant that the police gave him permission to drive his bus home and denied that he simply left the scene on his own.

[17] Mr. Fleming denied that he signed the police pocketbook on his own volition. He stated that he signed when he was about to leave the station. He also stated that he did not know what a pre-existing injury is and insisted that he had never suffered that type of injury before. He was confronted with the medical form from the doctor but continued to deny that he had any medical condition prior to the incident.

[18] I have noted the medical evidence filed in this case. The reports indicate that upon arrival at the hospital Mr. Fleming claimed to have been suffering from pain in his right shoulder and lower back. It was noted that Mr. Fleming had an abnormal gait and station. However, there was no misalignment, asymmetry, crepitation, defects, tenderness, masses, effusions, decreased range of motion, instability, atrophy or abnormal strength or tone in the head, neck, spine, ribs, pelvis or extremities. As it relates to the injuries to his shoulder, it was noted that the right shoulder had a reduced range of motion but there was no swelling or tenderness. He was recorded as having pain in the right shoulder secondary to trauma.

[19] An X-Ray was recommended and the results revealed that there was posterior subluxation of the shoulder joint, probably with superimposed tendinosis/rupture of the rotator cuff. There was also Moderate AC and glen humeral arthrosis. During the course of evidence the doctor indicated that *"subluxation is more like when you have something that's off of its axis slightly as opposed to a dislocation. It was not displaced but slightly off its axis."* It was also confirmed that subluxation is not degenerative and that, although Mr. Fleming suffered from other degenerative issues such as arthrosis, the injury to his shoulder would not be one of them.

[20] Officers Pierre and Ruan vehemently deny the allegations made by Mr. Fleming. They assert that at around 2:00pm on the day in question, while on their 6am to 2pm shift, they received a report from the Security Office at the Airport. It was reported that Mr. Fleming was obstructing the flow of traffic at the airport with his van. The officers responded to the call and, upon arrival at the airport, observed the obstruction themselves. They state that Mr. Fleming's vehicle was parked diagonally on the driveway at

the Entrance/Exit of the Airport, blocking the flow of traffic. The defendants stated that Officer Ruan approached the vehicle and introduced himself to Mr. Fleming. He then asked Mr. Fleming to remove his vehicle as it was obstructing the flow of traffic. Mr. Fleming repeatedly refused to comply with the request. Instead, he argued with Officer Ruan and stated that it was his turn to join the taxi queue to collect the incoming passengers and refused to move his vehicle.

[21] Officer Ruan states that he repeated his instructions to Mr. Fleming on a number of occasions, but he refused. This was despite the fact that there were multiple vehicles that were unable to exit the Airport due to the obstruction caused by Mr. Fleming. Those vehicles had to reverse and exit through an alternative route. This impasse lasted for approximately 5 minutes. It is alleged that Officer Ruan became frustrated with the fact that Mr. Fleming was defying his instructions. He therefore stepped away from the vehicle and Officer Pierre approached Mr. Fleming. He informed Mr. Fleming that the situation had become overbearing and that he was being placed under arrest for obstructing a Police Officer in the execution of his duties. The defendants assert that it was necessary to arrest Mr. Fleming in order to prevent him from continuing to obstruct the free flow of traffic at the Airport, which, at that point, had become busy. Mr. Fleming was then informed of the reasons for his arrest.

[22] The officers assert that despite claiming to be a sickly man, Mr. Fleming defied requests to disembark the vehicle. Officer Pierre states that he reached in to take hold of Mr. Fleming's left hand which was on the steering wheel of the vehicle. At that time the door was open. Mr. Fleming then bit the police officer on his arm. Mr. Fleming denied that this was what he was attempting to do.

[23] The defendants state that for the next 3 to 5 minutes a scuffle ensued as they attempted to get Mr. Fleming out of the vehicle. Although Officer Pierre managed to get him out, he continued to resist and struggled to the point of knocking himself against the vehicle. It was stated that Officer Ruan was not in possession of handcuffs at the time. He then held on to Mr. Fleming's right hand. One of Officer Ruan's hands was placed on Mr. Fleming's shoulder and the other on his wrist. He was then taken to the police van, where he was placed in the back seat.

[24] The police officers denied manhandling Mr. Fleming. Instead, they claimed to have used reasonable force in effecting an arrest in order to clear the obstruction to the traffic he was causing at the Airport. The officers asserted that this was necessary to prevent a further prolonged obstruction of the flow of

traffic, given that the Airport was very busy at the material time and Mr. Fleming had been obstructing the flow of traffic for at least 10 minutes.

[25] The defendants confirm that permission was granted for Mr. Fleming to move his vehicle to another area near the airport. This was done as he complained about the fact that his vehicle, documents and cash were left unsecured. It is stated that Mr. Fleming initially followed Officer Pierre to the location where he was directed to park. However, upon arrival at the location, Mr. Fleming revved his vehicle and drove off. In fact, it was stated that Officer Ruan had to stagger backwards and move out of the way to avoid getting hit. Officers Pierre and Ruan then left the scene in a police vehicle and headed towards Rey Hill, where they knew Mr. Fleming resided. Two other officers who had recently taken over their shift, WPC Thompson and PC Lea-Hing, also followed them in their own police transport.

[26] The defendants state that upon their arrival at Mr. Fleming's residence in Rey Hill, the officers pulled into his yard and saw him exiting his vehicle. They stopped their vehicles alongside his and noticed his wife and stepson coming into the yard. Mr. Fleming then instructed his wife to call his lawyer. Officer Pierre stated that he then explained what had transpired to Mr. Fleming's wife and informed Mr. Fleming that he had committed the offence of escaping lawful custody and that he assaulted SC Ruan by almost hitting him with his vehicle when he drove off recklessly. Mr. Fleming was then handcuffed and placed in the police van and transported to the Valley Police Station. The officers denied Mr. Fleming's allegations of him being pushed into the police van.

[27] The defendants assert that upon arrival at the Valley Police Station, Mr. Fleming was taken to the cell block area for processing. Whilst doing so, Mr. Fleming asked Officer Pierre to "give me a break please". PC Pierre stated that he did not respond to this. While at the cell block area, Sgt. Prosper, who was the supervisor on shift at that time, was called to the cell block area by PC Pierre. It was stated that the officers then proceeded to inform Sgt. Prosper what had transpired. This was done in the presence of Mr. Fleming. Sgt. Prosper also listened to Mr. Fleming's side of the story. He complained that he was a sick man with a bad shoulder and that he was in possession of X-rays to prove it. Mr. Fleming then asked for the police to be lenient with him and to give him a break. He apologised to Officers Pierre and Ruan and offered to write an apology to the Airport Authority for the way he behaved in the presence of tourists.

[28] Officer Pierre states that he then made an entry into a pocketbook highlighting Mr. Fleming's disrespectful behaviour. Mr. Fleming agreed and signed the entry. It was pleaded that Mr. Fleming did so on his own

volition and that no inducements were used to solicit this from him. Mr. Fleming was then released from custody. The defendants therefore deny that Mr. Fleming has suffered any injury as a result of this incident. In fact, it was pleaded that Mr. Fleming acknowledged that he was suffering from pre-existing health issues. They also denied having any malice towards Mr. Fleming.

[29] Sgt. Prosper largely corroborated the evidence of Officers Pierre and Ruan insofar as it relates to his role in the matter. He stated in his own witness statement that he had a conversation with the police officers who informed him of what transpired. He then spoke with Mr. Fleming and made the decision to release him on medical grounds and also because he acknowledged that he was being disrespectful and offered to give an apology to the airport authority. He also stated that Mr. Fleming signed the pocketbook of his own free will.

[30] In cross-examination, Officer Ruan indicated that he was the one who received the phone call from the security booth of the airport on the day in question. The caller reported that Mr. Fleming was obstructing traffic at the airport. Officer Ruan indicated that after receiving the phone call he, along with Officer Pierre, was instructed to attend to the report. They then left the police station and arrived at the airport around 2.05pm. Officer Ruan denied that on arrival Mr. Fleming was moving his vehicle forward. He insisted that Mr. Fleming was stationary and obstructing traffic at the time. He stated that Mr. Fleming's bus was an obstruction to both the exit and entrance to the airport.

[31] Officer Ruan also went on to state that it was in fact not Mr. Fleming's turn to enter the taxi rank and that there was no room in the slot for him to park. He indicated that when Mr. Fleming was instructed to drive around in order to clear the traffic, it would have been his turn to enter the rank when he returned. However, he refused to follow the instructions of the police. Officer Ruan stated that when he approached Mr. Fleming's vehicle, he did not tell him that he was under arrest. Instead, he informed him that he was a police officer and that he came to attend to a report.

[32] Officer Ruan insisted that Mr. Fleming was instructed to park in a grassy area near the airport and was never told that he could drive his vehicle home. Officer Ruan also stated that at no time did he or Officer Pierre hold Mr. Fleming's hand behind his back. He insisted that his hand was on Mr. Fleming's shoulder when he was being escorted to the police van. He stated that even before this, Mr. Fleming said that he is a sick man, and he had injuries before.

[33] In cross examination Officer Pierre stated that he worked the 6am to 2pm shift on that day. He was cross-examined on the fact that his shift ended at 2pm but the incident took place after that time. He denied allegations put to him of misleading the court in that regard. Officer Pierre insisted that a report was made via telephone from security guards at the airport. He was not aware of who made or answered the call.

[34] Officer Pierre states that he and Mr. Fleming were neighbours at Rey Hill and were friends for 14 years. He stated that they had a falling out but denied that what transpired on the day in question was an attempt to get at Mr. Fleming. He stated that on arrival at the airport Mr. Fleming's vehicle was parked and was not moving. He could not recall who turned off the engine to Mr. Fleming's vehicle.

Analysis and Findings

[35] The law on wrongful arrest and detention is not novel and no elaborate exposition is necessary in order to address the issues in this case. Put simply, the police in Anguilla have constitutional, legislative and common law powers to arrest, without a warrant, any person who he or she has reasonable cause to believe has committed or is about to commit an arrestable offence. In addition to this, the law includes a power of arrest in circumstances where a person commits a breach of the peace and where a person's actions obstruct a police officer while in the execution of his duty¹.

[36] As was noted in the case of *Irish v. Barry*², ***[w]hat is important is that in such a case as this, 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 to be carefully examined.*** In the circumstances of this case, the police witnessed for themselves what they claimed to have been an obstruction to the free flow of traffic at the airport as a result of Mr. Fleming's actions. This was after a report had already been made to the police station by the security personnel at the airport. They also personally experienced what they described as Mr. Fleming's defiance of their orders to him to drive his vehicle around so as to ease the obstruction to the traffic. He is also alleged to have fled the scene in defiance of the police's orders and assaulted the police.

¹ See sections 19 of the Police Act and 360 of the Criminal Code.

² [1965] 8 WIR 177

[37] Mr. Fleming's counsel refers to section 64 of the **Vehicles and Road Traffic Act**³ which states that an offence is committed by "[a]ny person who – ... (d) wilfully loiters or remains on any roadway in such a manner or in such circumstances as to be likely to cause danger of obstruction to persons driving or propelling vehicles in the road; ..." It is submitted that the act defines a roadway as "any street, road or open space to which the public are granted access and any bridge over which a road passes and includes any privately owned street, road or open space to which the public are granted access either generally or conditionally." Counsel goes on to refer to the Cambridge Dictionary which defines loitering as "moving slowly around or standing in a public place without an obvious reason."

[38] It is submitted firstly that Mr. Fleming was not loitering when the police came on the scene. He was trying to get his vehicle into the taxi rank slot. Secondly, it is submitted that there was no evidence presented to suggest that the area where Mr. Fleming's vehicle was parked is a roadway as the public does not have general access to that area. Thirdly, it is submitted that the area where Mr. Fleming's vehicle was parked was marked Taxis only and was therefore not a public road.

[39] I do not accept these submissions. Firstly, I find, as a matter of fact, that Mr. Fleming was obstructing the free flow of traffic at the airport. This was to the point where the security personnel thought it necessary to make a report to the police. I accept the evidence from Officers Pierre and Ruan where they state that Mr. Fleming's vehicle was stationary and that traffic entering and exiting the airport was obstructed. The fact that part of the lane was reserved for taxis is of no moment to the issue. The police did not initially seek to arrest Mr. Fleming for where he was parked. What they were attempting to do was to ease the flow of traffic and the disruption it was causing to a very important public place. They have a duty to maintain the peace and Mr. Fleming's obstruction was interfering with this.

[40] I also find, as a fact, that the officers did instruct Mr. Fleming to drive around in order to ease the traffic and that he refused to do so. In doing so Mr. Fleming was indeed interfering with or obstructing the police in the execution of their duties. The length of time of this defiance justified an arrest. I make the observation here that even after initially arresting Mr. Fleming, the police gave him time to move his vehicle. Instead, he revved his vehicle causing a danger to Officer Ruan and fled the scene. I had the opportunity to examine the witnesses in this case, and I find that the police officers were telling the truth

³ R.S.A. c. V10

about Mr. Fleming's actions. I did not believe him when he said he was given permission to take his vehicle home. This was yet another instance where Mr. Fleming was defying the lawful orders of the police. In my view, there were sufficient grounds to arrest him.

[41] It follows from those findings that Mr. Fleming's detention was also lawful. He has claimed that he was assaulted by the police. Given that he may have suffered injuries during the execution of his arrest, the question is whether reasonable force was used in doing so. I am satisfied that not only did Mr. Fleming defy the lawful directions of the police, but he physically resisted the arrest and assaulted the police officer by attempting to bite him. I accept the evidence of the officers. In fact, Officer Ruan initially moved away from him in frustration and allowed Officer Pierre to take over. Mr. Fleming nonetheless continued his defiance.

[42] I have taken into consideration the physical injuries which Mr. Fleming suffered as a result of his arrest. I agree that there is evidence of pre-existing injuries and that Mr. Fleming was not telling the truth to the court when he stated that he does not know what this means. However, the medical evidence also suggests that there was some measure of dislocation to his shoulder which was not degenerative in nature and therefore not pre-existing. However, I find that Mr. Fleming suffered those injuries because of the extent to which he was resisting arrest and that the Officers' actions were not disproportionate to the circumstances.

[43] As far as the events in the police station are concerned, I have considered the differences in accounts given by Mr. Fleming and the police in order to determine the issue of credibility. I find that the police were telling the truth. Mr. Fleming did say to the police that he was a sick man and asked for some leniency. He did offer an apology to the police and the Airport Authority. However, ultimately, it is the events at the airport which are germane to the issues and I am satisfied that there were reasonable grounds for arresting Mr. Fleming and that the force used in doing so was justified. Mr. Fleming was therefore not assaulted by the police and is not entitled to the remedies which he seeks.

[44] In the circumstances, the case is dismissed, and Mr. Fleming is ordered to pay prescribed costs in the sum of EC\$7,500.00.

Ermin Moise
High Court Judge



BY THE COURT

REGISTRAR