

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA

Claim No: DOMHCV 2012/019

BETWEEN:

ANTHONY MARTIN

Claimant

AND

[1] ATTORNEY GENERAL

[2] ALLEYNE MAXIMEA

[3] VIVIAN AUGUSTINE

Defendants

Appearances:

Gina Dyer Munro of Dyer & Dyer for the Claimant
Jo-Anne Xavier Cuffy with Kayan Toussaint State Counsel of the Attorney General's
Chambers for the Defendants

2022: July (Closing Submissions filed)

2023: 9th June

JUDGMENT

[1] **Stephenson J.:** : Being the victim of a wrongful arrest can be a traumatic and embarrassing experience. Wrongful arrest can also lead to long-term damage to a person's reputation and lead to both physical and psychological injury. There must be a lawful reason for police to make an arrest.

- [2] For an arrest to be lawful, police must first have reasonable grounds to believe you have been involved in a crime, are in the process of committing a crime, or are about to commit a crime. Police can arrest you anywhere including your home, workplace, or on the street.
- [3] Before the court is a lawsuit brought by the claimant against the defendants for damages for wrongful arrest and detention on the part of the second and third defendants who were police officers on duty on the day in question. The first named defendant is sued pursuant to the State Liability Act, and it is the claimant's contention that the second and third defendants were at all material times acting for and on behalf of the first named defendant.
- [4] The claimant has brought a claim for damages, exemplary and aggravated damages, costs and other relief against the defendants arising out of a stop, search and his brief arrest on the 18th July 2011.
- [5] The claimant in his statement of claim amongst other allegations claims that the second and third defendants were actuated by malevolence and spite towards him and acted with the intention to and did humiliate him in the presence of member of the public and one of his tenants.
- [6] The claim is essentially one for wrongful arrest and false imprisonment by the defendants.
- [7] Wrongful arrest and false imprisonment are considered to be two distinct yet related torts. They are torts which involve trespass to the person, and they arise where the defendants are accused to act without lawful authority.
- [8] Having heard the evidence and statements of case in the case at bar this court finds that the facts attendant to this case is as follows. On 18th July 2011, the police who are the defendants and who were on the date in question member of the Drug Squad of the Commonwealth of Dominica Police Force acting on credible information that a white hummer left Portsmouth enroute to Roseau with illegal drugs, arms and ammunition on board, proceeded to the Mahaut Public Road where they stopped the vehicle and the claimant's person was searched and a cursory search of his vehicle was conducted. The Claimant was subsequently handcuffed and placed in the back seat of his vehicle and along with his female passenger was then transported to the Roseau Police Station/Police Headquarters where a thorough search of his vehicle was conducted, the female passenger was also searched by a female police officer. Nothing liable for seizure was found and after about 45 to 50 mins the claimant and his passenger were duly released from police custody.

- [9] It is the claimant's case that the police officers had no right to arrest him or search him or his vehicle or to arrest him on the day in question. The claimant contends that the police officers could have simply invited him to the police station pursuant to the "*credible information*" which they supposedly received.
- [10] The claimant contends that he was told by police officers that he was being taken into custody for a further search to be conducted on his person and on his vehicle however, no further search was conducted on his person at the Roseau Police Station and that his arrest was simply to humiliate him. The claimant further contends that at all material times he cooperated with the police and there was therefore no need for him to be handcuffed at Mahaut until he got to the Roseau Police Station. The claimant further contends that the defendants have failed to prove to the court that there was any reasonable suspicion on their part.
- [11] Counsel Dyer Munro on behalf of the claimant submitted that the evidence as adduced by the defendants through their witnesses officers Vivian Augustin, Alleyne Maxime and Bernard Daniel was insufficient to establish reasonable suspicion.
- [12] The first issue to be considered by this court is whether or not the claimant's arrest was wrongful as if there is a finding that the arrest was not wrongful then the action for false imprisonment must fail as would the claim for damages.
- [13] The critical issue to be determined is whether the defendants had reasonable and probable cause to arrest and detain the claimant. Has the claimant satisfied the ingredients of the tort of wrongful arrest or that he was arrested without reasonable or probable cause?
- [14] It was repeatedly submitted by counsel on behalf of the claimant that in all the circumstances of the case at bar there was no need for the claimant to have been placed in handcuffs and transported to Roseau Police Station from Mahaut.
- [15] The Defendants admit to having arrested the claimant and to detaining him for a period of about 50 minutes. They also admit to having searched him on the Mahaut Public Road and placing him in handcuffs and transporting him to Roseau where a further and thorough search of his vehicle was conducted and that he and his passenger were released after nothing liable to seizure was found in his vehicle.

[16] In the case at bar the burden is on the defendants to justify the arrest that is, that they did so upon reasonable and proper grounds¹. One must also consider whether or not the claimant was arrested for an arrestable offence. It is well established law that before a police officer can lawfully arrest a person without a duly issued warrant that officer has to have reasonable cause to suspect that the person who is being arrested has committed an arrestable offence and the police must have cause to suspect that the person who is being arrested is possibly guilty of such an offence.

[17] The Privy Council in the case of **Ramsingh -v- The Attorney General of Trinidad and Tobago**² fleshed out the principles to be considered to include that the officer must subjectively suspect that the person has committed an offence and have reasonable grounds or reasonable and proper cause to make the arrest.

[18] In the case at bar Counsel Gina Dyer Munro on behalf of the claimant contends that the defendants in their pleaded case claim to have acted on credible information received and that they acted pursuant to the provisions of the Drug Prevention and Misuse Act³. Counsel submitted that section 24(1) which the defendants seek to rely on does not give the police the power to stop and search and further that the section as relied on by the defendants does not apply to the facts of the case at bar.

[19] Counsel Dyer Munro maintained that the stop and search of her client was at all times unlawful and that the defence as pleaded was an invalid one. Further, the evidence adduced by the defence is inconsistent and in the circumstances of the case judgment ought to be entered in favour of the claimant.

[20] On the date of the incident the claimant was the Regional Product Manager at Lime formerly Cable & Wireless now known as FLOW.

[21] Under cross examination the claimant said he was not roughed up by the police officers on the date of the incident. He contends however, that there were weapons pointed at this head by the second and third defendants. He also claims that he was handcuffed in public and placed in the back seat of his vehicle by the said officers. That he attempted to make a phone call but was denied the opportunity to do so and was therefore denied the opportunity to consult his lawyer or anyone.

¹ In *Liversidge -v- Anderson* [1942] AC 2056 it was held that in English Law every imprisonment is prima facie unlawful and it is the person directing an imprisonment

² [2012] UKPC 16

³ Chapter 40:07 of the Revised Laws of The Commonwealth of Dominica 1990.

[22]The claimant contends that he was arrested and detained without reasonable and probable cause for 45 minutes. The thrust of the claimant's case is that there was no need to arrest him and transport him from the village of Mahaut to the Police Headquarters, having searched him and his vehicle at Mahaut Police Station which was closer.

[23]It is the claimant's submission that when he was searched at Mahaut nothing liable for seizure was found nether were any weapons found on his person.

[24]It is the claimant's submission that the defendants in their pleaded case claimed to have acted pursuant to the terms of the Drug Prevention and Misuse Act⁴ and that the issue for determination by this court is whether section 24(1) of the said Drug Act gave the second and third defendants the right to stop and search the claimant and his vehicle on the 18th July 2011.

[25]It is contended by Counsel Mrs Dyer Munro on behalf of the claimant that the defendants in their pleaded case relied on the section 24 (1) and that his section did not give the defendants the power to stop and search the claimant and in fact does not apply to the claim at bar.

[26]Counsel further submitted that their common law powers do not arise. Counsel Submitted that in the circumstances that the court is duty bound to consider the defendant's pleadings.

[27]Counsel made reference to Part 10.5 of CPR 2000 and also made reference to the statement of truth as provide by Rule 3.12 of CPR 2000 and submitted that the defendants cannot resile from the certificate of truth which was not executed by them.

[28]Counsel further submitted that the law relating to stopping and the searching of persons is a statutory right which must be for reasonable cause. Counsel Dyer Munro cited and relied on **The Secretary of State for Home Department -v- GG**⁵. Counsel submitted that Sedley J ruled⁶ at paragraph 7 of his judgment that

"The House upheld the use of the power in the circumstances of that case, but Lord Bingham at the outset of his speech said: 'It is an old and cherished tradition of our country that everyone should be free to go about their business in the streets of the land, confident that they will not be stopped and searched by the police unless reasonably suspected of having committed a criminal offence. So jealously has this tradition been guarded that it has almost become a constitutional principle. But it is not

⁴ Op cit

⁵ [2010] 1 ALL E R 721

⁶ See paragraph 71 of Counsel's closing submissions

an absolute rule. There are, and have for some years been, statutory exceptions to it.' The principle referred to by Lord Bingham will extend to a search of anyone at home, or in any place in addition to on the streets. There must be a clear statutory provision which permits a search of the person. It may well be that the same principle applies to a search of a person's home, but there is in section 1(4)(k) a clear statutory provision permitting it."⁷ (counsel's emphasis)

...
three principle or primary articles; the right of personal security, the right of personal liberty; and the right of private property: because, as there is no other known method of compulsion, or of abridging man's natural free will, but by an infringement or diminution of one or other of these important rights, the preservation of these, inviolate, may justly be said to include the preservation of our civil immunities in their largest and most extensive sense."⁸

[29] This court pauses here to note that the words as quoted by counsel Dyer Munro was not in fact a ruling by Sedley J. A reading of the decision as referred to by counsel shows that the court was considering submissions made to the court regarding the lawful powers of the police contained specifically in the Terrorism Act 2000. The learned judge was quoting the submissions before the court for consideration as to lawfulness of the control order and renewals, pursuant to legislation providing that proceedings could continue to be heard. This was not meant to be a general statement as to the law. This court notes however the court's consideration of the sanctity of the principle that a person may not be subjected to random stop and search by the police. Further this case is not relevant to the issue at bar as the consideration before the court was regarding police powers and the state's power regarding control orders imposed on persons who were suspected of being terrorists.

[30] It was counsel Dyer Munro's further submission that there must be a clear statutory provision which permits a search of a person. Counsel submitted that the 2nd named defendant in his evidence said that he arrested the claimant, but counsel submitted that this could not be so as the information for arrest was within the knowledge of another officer namely Officer Bernard Daniel.

[31] Counsel stressed that the information in the arresting officer's mind is crucial and submitted that there was no evidence in the possession of the arresting officers and onus was on them to establish this. Counsel on behalf of the claimant went to submit that should the court accept that the officers were acting pursuant to credible evidence as a basis for the arrest that this was nullified as her client was arrested after a search was conducted at Mahaut.

⁷ Ibid at paragraph 7

⁸ Ibid at paragraph 12

[32] The test for reasonable and probable cause has been held to be both objective and subjective.

Counsel on behalf of the claimant cited and relied on the authority of **Raissi and another -v- The Commissioner of Police of Metropolis**⁹. The claimants in this case sued the Commissioner of Police of the Metropolis for wrongful arrest and false imprisonment. The claimants were arrested on the suspicion that they were terrorists and involved in the 911 attacks in the USA. The claimants were arrested and interviewed by the police and released without being charged. The claimant Mohammed was detained for 4 and ½ days and he succeeded in his claim at first instance. The Judge found that the arresting officer had no reasonable grounds for suspicion. This decision was appealed by the Commissioner of police and the consideration was whether the trial judge erred in considering the Terrorism Act 2000 sections 40 and 41. The judgment of the court was handed down by Sir Anthony Clarke MR.

[33] The court of appeal agreed with the trial judge that the facts which the police officers relied on were not sufficient to for a reasonable suspicion. In that case Mohammed Raissi was the brother of a person who was associated with the 911 terrorist attack and with whom he lived physically closely and shared a good fraternal relationship.

[34] In considering whether or not the police acted reasonably. Lord Hope of Craighead said:

“... The question is whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the arresting officer. It is the arresting officer's own account of the information which he had which matters, not what was observed by or known to anyone else. It is the arresting officer's own account of the information which he had which matters, not what was observed by or known to anyone else. The information acted on by the arresting officer need not be based on his own observations, as he is entitled to form suspicion based on what he has been told. His reasonable suspicion may be based on information which has been given to him anonymously or it may be based on information, perhaps in the course of an emergency, which turns out later to be wrong. As it is the information which is in his mind alone which is relevant however, it is not necessary to go on to prove what was known to his informant or that any facts on which he based his suspicion were in fact true. The question whether it provided reasonable grounds for the suspicion depends on the source of his information and its context, seen in the light of the whole surrounding circumstance.”

[35] The claimant contends that he was not told why he was stopped and searched, the evidence adduced by the defendants says different. Sgt. Daniel who at the time of giving his evidence was an Inspector said that he identified the officers as being police and that he placed his Police Identification card on the outside of the right front window of the claimant's vehicle and that after

⁹ [2008] EWCA Civ 1237

the claimant rolled down his window he informed them that they were suspected to have firearms, ammunition and illegal drugs on board their vehicle. This court accepts this officer's evidence.

[36] This court accepts that the officers on duty that day and involved in the stop and search were members of the unit known as the Drug Squad. The officer in charge of the operation on the day, the supervising officer was then Sgt Bernard Daniel, the officers would have been acting under his command and direction.

[37] Officer Daniel in his evidence stated that a crowd started to gather on the Mahaut Public Road and traffic started to build up. This court takes judicial notice of the physical situation on the roadway in that area in that the road is very narrow and to carry out any kind of operation there can cause a buildup of traffic.

[38] Officer Daniel said he was of the view that the area was becoming congested and he felt that it was necessary for them to relocate to Police Headquarters referred to as the Roseau Police Station by the claimant.

[39] Officer Daniel also told this court that he subsequently informed the claimant that he was being arrested on suspicion of being in possession of illegal drugs, arms and ammunition. The defendants in their submissions acknowledged the provisions of the Constitution of the Commonwealth of Dominica which speaks to a person not being deprived of their liberty save as may be authorised by law "*upon reasonable suspicion of his committing a criminal offence under the law of Dominica*"¹⁰

[40] This court notes the test as to "reasonable grounds" as was stated by Diplock LJ in **Dallison v Caffrey**¹¹

"....whether a reasonable man, assumed to know the law and possessed of the information which in fact was possessed by the defendant, would believe that there was reasonable or probable cause...."

¹⁰ Re: Section 3(1) of the Constitution of the Commonwealth of Dominica

¹¹ [1965] 1 QB 348, at p. 371:

[41] It is the defendant's case that the detention of the claimant was brief and was lawful as they were acting on reasonable suspicion that an offence was being committed based on creditable information received.

[42] Counsel for the defendants made reference also to Section 12(4) of the Criminal Law and Procedure Act¹² which provides

“Where a constable with reasonable cause suspects that a felony has been committed he may arrest without a warrant anyone who he has reasonable cause or suspects to be guilty of the offence”

[43] Counsel for the defendant cited and relied on the **Nathan Thomas -v- Jerome James & The Attorney General**¹³ where the power of the police to stop and search a person suspected of committing a crime was considered. Justice Glasgow in considering the police powers to stop and search accepted the test for reasonable grounds as adumbrated in the case of **Dallison -v- Cafferty**¹⁴ where Lord Diplock said *“that it is for the trial judge to objectively determine whether the suspicion held by a police officer and used to justify an arrest was reasonable and that whether there are such grounds is a question of law”*.

[44] The test is whether there was reasonable and probable cause for the arrest or prosecution is an objective one namely whether a reasonable man assumed to know the law and possessed of the information was in fact was possessed of the information which in fact was possessed by the defendants would believe that there was a reasonable and proper cause.

[45] Having reviewed the evidence adduced by both sides and the submissions of counsel with the authorities and a few additional authorities this court has formed the view that the officers' actions were not actions directed against the claimant in any way that was malicious or that they acted with the intention to embarrass or humiliate the claimant as he has claimed.

[46] This court finds that the officers acted based on the creditable information received and relayed to them and under the direction and command of their supervising officer.

[47] The fact that nothing was found on the vehicle or on the persons in the vehicle liable to be seized or rendering the information received to be inaccurate or untrue the defendants' actions were

¹² Chapter 12:01 of the Laws of Dominica

¹³ GDAHCV2019/0445

¹⁴ [1965] 1 QB 348

reasonable at the time and this court does not accept the submissions made by Counsel Dyer Munro.

[48] For the avoidance of doubt this court is clear that the test to be applied is whether or not the officers had reasonable grounds for suspecting that the claimant committed an offence based on the information received. This court has considered the case made out by the defendants and has come to the respectful view that based on the facts as found and believed by this court and upon consideration of the relevant law, that at the time of stopping and searching the claimant, handcuffing him and arresting him the officers were acting based on credible information which was relayed to them from a creditable source.

[49] This court has also considered whether or not there was reasonable cause for the officers to take the actions they took against the fact that the burden which rested on them (the defendants) to prove their case to the requisite standard on a balance of probabilities. This court is of the view that they have proved their case by acting upon reasonable suspicion in all the circumstances of the case.

[50] Reference is made to the words of Lord Devlin in **Hussien v Chang Fook Kam**¹⁵ when he said
“Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: 'I suspect but I cannot prove'. Suspicion arises at or near the starting point of an investigation of which the obtaining of prima facie proof is the end....”

[51] It is also noted that the threshold for the existence of reasonable grounds for suspicion is low as stated by Sir Anthony Clarke MR in **Raissi Case**¹⁶ and this court notes that the difference in the evidence as to how things occurred on the road as stated by the various officers is a normal situation where persons seeing the same thing focus on different aspects of what is unfolding before them and does not in and of itself mean that the persons are being untruthful. This court is of the view that the inconsistencies in the evidence of the officers does not undermine the reasonableness of the suspicions held by the police officers on the day in question.

[52] For the sake of completeness and in light of the conclusions arrived at by this court, this court does not accept that the defendants were acting with or were activated by malicious thoughts or

¹⁵ [1970] 942 (PC), at p.948

¹⁶ Op cit at para [20].

intentions and that on the day in question they acted on reasonable suspicions based on the intelligence that they received.

[53] The finding of this court is that the defendants were acting on creditable information and had reason to believe that the claimant had committed a crime and was therefore in all the circumstances of the case justified in arresting him. The claimant's case is therefore dismissed in its entirety.

[54] It is to be noted that this court has reviewed the submissions filed by both counsel in this matter. Reference has been made to those submissions which were considered necessary to explain the court's conclusions. It is to be noted that failure to make specific mention of any point of submission does not mean that it has been ignored or there has been a failure to take it into account. Similarly, a good many issues and points have been raised by both counsel which in the court's view is not necessary to discuss in order to resolve or to decide the main issue in the case at bar.

[55] This case is of some antiquity and the judgment in this case has long been outstanding. This court wishes to apologise to the parties before the court and to counsel for the delay in rendering the judgment. However it should be noted that both counsel in this matter did overlook the date by which the closing submissions were to be filed and filed same only in July of 2022 subsequently the court as was relocated and proceeded to sit in another circuit of the court hence the delay. This court also wishes to thank Counsel for their assistance rendered.

M E Birnie Stephenson
High Court Judge

THE COURT

REGISTRAR

