

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2019/0070

BETWEEN:

BRUCE GARRAWAY

Claimant

and

[1] CARL GRAHAM

[2] THE ATTORNEY GENERAL

Defendants

Before:

The Hon. Mr. Justice Raulston L. A. Glasgow

High Court Judge

Appearances:

Mr. Derick Sylvester with him Ms. Hazel Hopkin and Ms. Alicia Lawrence for the
Claimant

Mr. Adebayo Olowu for the Defendants

2021: October 29;
December 20;
2022: February 1.

JUDGMENT

[1] **GLASGOW, J.:** This is a claim for assault and battery allegedly committed by the defendants against the claimant (Mr. Garraway). Mr. Garraway alleges that he suffered multiple injuries during his attempted arrest by the first defendant, (Mr. Graham) a police officer. The incident occurred on 5th December 2018 along the St. Paul's main road in the vicinity of Morne Delice in parish of Saint George.

Mr. Garraway's case

- [2] On or about 5th December 2018 at about 7:40 pm Mr. Garraway was driving his motor vehicle bearing registration number P 3775 along the St. Paul's main road. He was heading toward his home in Morne Delice in the parish of Saint George. He claims that when he got close to his home, he observed a vehicle parked in the middle of the road. He then applied his brakes and pulled his car to the side of the road but the vehicle in front of his car remained in the same position. He tooted his horn and began to manoeuvre his vehicle to the left side of the road. At that point, he observed Mr. Graham having a conversation with a villager on the side of the road. Mr. Garraway avers that he tooted his horn again.
- [3] Mr. Garraway pleads further that Mr. Graham approached his vehicle and demanded that he produce his driver's licence. He says that he informed Mr. Graham that his licence was at his home which was less than one (1) minutes' drive away from the scene of the incident. Mr. Garraway says that Mr. Graham then struck him in his face with a truncheon. Mr. Graham then forcefully removed him from his vehicle and proceeded to beat him all over his body with the same truncheon. Mr. Garraway claims that his wife and young children who were present at the time pleaded with Mr. Graham to stop hitting him. However, the assault and battery continued for approximately 5 minutes. Mr. Garraway asks the court to award him special and general damages and other relief for the injuries that he allegedly suffered.

Defendant's case

- [4] The defendants' answer is that on 5th December 2018 at about 7:30 pm, Mr. Graham and other police officers were on patrol duty. While in Morne Delice the officers observed Mr. Garraway's car driving along the side of the road. The vehicle then came to a stop. They aver that Mr. Garraway, who was the driver of the car, pushed his head out of the window and began to utter obscenities. Mr. Graham approached Mr. Garraway and informed him that the use of obscene language was an offence.

Mr. Graham then asked Mr. Garraway to exit the vehicle, but he refused to comply. Eventually, Mr. Garraway exited the vehicle and Mr. Graham placed his hand on Mr. Garraway's shoulder to confirm the arrest. Mr. Garraway began to behave aggressively.

- [5] Mr. Graham admits to striking Mr. Garraway near his buttocks with a baton. The parties began to scuffle, and they both fell to the ground. PC Wickham immediately came and assisted Mr. Graham to restrain Mr. Garraway, but he continued to struggle with them. The defendants allege that Mr. Garraway grabbed Mr. Graham by his throat and ripped two buttons from his clothing. Further, they claim that Mr. Garraway bit Mr. Graham's leg. Mr. Garraway was eventually subdued and taken to the St. Paul's Police Station where he was charged.

Discussion and Analysis

Mr. Garraway's argument on the lawfulness of the arrest

- [6] Mr. Garraway contends that his arrest was unlawful since he did not commit any crime during his first interaction with the police when he attempted to drive past their vehicle. He avers that Mr. Graham suddenly struck him in his face after he gave an explanation as to why he was unable to produce his driver's licence. The defendants deny this version of the incident and say in response that Mr. Garraway's use of obscene language was the reason for his arrest.
- [7] I must state my reservations about Mr. Garraway's argument that there was no reason for his arrest. He does not deny that Mr. Graham asked him to produce his driver's licence. Mr. Graham is a police officer. He is empowered by law to issue such a request to any driver using the roads of Grenada. That order must be followed by a driver, except where he or she is lawfully exempted from so doing. Mr. Garraway has not shown this court that he is exempt from following the order to produce his driver's licence.

[8] Section 44 of the **Road Traffic Act**¹ as amended confers on the police the power to request a driver on the road to produce his or her driver's licence. The section reads:

“44. Production of driving licences

(1) **The driver of a motor vehicle on a road shall, on being required by a member of the Police Force, produce his or her driving licence for examination.**

(2) Any person who fails to comply with subsection (1) commits an offence and shall be liable on summary conviction to a fine of five hundred dollars or to imprisonment for six months or to both such fine and imprisonment.” (My emphasis)

[9] The defendants' further evidence is that Mr. Garraway's use of obscene language was the reason for the arrest. It is beyond dispute that the use of obscene language is a violation of the law. Section 133 (b) of the **Criminal Code**² prohibits the use of obscene language by a person and prescribes:

“Whoever —

(b) makes use of any threatening, abusive, insulting, obscene, or profane language, or sings any insulting or offensive song or ballad, to the annoyance of any person in any place;

shall be liable to imprisonment for three months, or to a fine of one thousand dollars, or to both.” (Underlining supplied)

[10] Mr. Graham would have been empowered to make an arrest for the use of the obscene language. If Mr. Garraway felt aggrieved by his arrest on that ground, there were legal channels open to him to challenge the lawfulness of that arrest. He did not have the authority to resist or challenge his arrest at that time. In any event, his cause of action is not concerned with the lawfulness of the arrest, but whether he was Mr. Graham assaulted and battered him and whether the use of force was reasonably necessary in the circumstances.

¹ CAP 289A of the 2010 Continuous Revised Edition of the Laws of Grenada

² Cap 72A of 2010 Continuous Revised Edition of the Laws of Grenada

Whether Mr. Graham assaulted and battered Mr. Garraway

- [11] **Halsbury's Laws of England** states the following with respect to assault and battery:

"A person commits an assault if he intentionally or recklessly causes another person to apprehend the application to his body of immediate, unlawful force.

A person commits a battery if he intentionally or recklessly applies unlawful force to the body of another person. The slightest degree of force, even mere touching, suffices. It is not necessary that the victim should feel the force through his clothes: a touching of a person's clothes is the equivalent of touching him³."

- [12] Mr. Garraway's counsel submits that whether or not an assault or battery has occurred is a matter of fact to be deduced from the evidence. The first enquiry on the present facts must therefore be whether at the material time Mr. Graham was attempting to effect a lawful arrest.

- [13] There is some divergence in the evidence as to which party to the claim initiated the above-mentioned fracas between Mr. Garraway and Mr. Graham. Mr. Garraway alleges that because he was unable to produce his driver's licence, Mr. Graham struck him in the face with his truncheon or baton. I do not accept that this is what happened. I prefer and accept Mr. Graham's evidence that when he heard Mr. Garraway using obscenities, he went to him and demanded to see his driver's licence. This is a logical and rational explanation. At that time, Mr. Graham was well within his power to arrest Mr. Garraway if he formed to view that Mr. Garraway had used obscenities in contravention of the law.

- [14] I am satisfied that Mr. Garraway was upset when he saw the vehicle blocking his approach to his residence. He then used obscenities when he attempted to overtake the vehicle blocking his approach to his home. On hearing the foul language used

³ Halsbury's Laws of England/Criminal Law 5th Edn, Vol. 25 (2020), paras. 1-552; Vol. 26 (2020) paras. 553-1014).

by Mr. Garraway, Mr. Graham approached Mr. Garraway to speak with him. Mr. Graham demanded that Mr. Garraway produce his driver's licence which Mr. Garraway failed or refused to do.

- [15] Further, I am satisfied that after Mr. Graham notified Mr. Garraway that he was under arrest for the use of the obscenities and requested that he exit the vehicle so as to effect the arrest, Mr. Garraway again refused. Mr. Garraway resisted the attempt by Mr. Graham to arrest him which precipitated the use of force by Mr. Graham. A scuffle thereafter ensued between the two men.

Was Mr. Graham's use of force reasonably necessary?

- [16] It is now well accepted law that the police are allowed to use force that is reasonable when attempting to arrest a person. This power to use reasonable force is provided by statute and common law. The question then remains whether the force that was used to make this arrest was reasonable in all the circumstances.

The statutory provisions on the use of force

- [17] In respect of the use of force by a person making an arrest, sections 54, 55 and 60 of the **Criminal Code**⁴ as amended prescribe:

54. Grounds on which force or harm may be justified, within prescribed limits

Force may be justified in the cases and manner, and subject to the conditions, hereafter in this Title mentioned, on the ground of either of the following matters, namely—

.....

- (d) authority to arrest, and detain for a felony; or
- (e) authority to arrest, detain or search a person otherwise than for a felony; or
- (f) necessity for prevention of or defence against crime; or

⁴ Cap 72A of the 2010 Continuous Revised Edition of the Laws of Grenada

(g) necessity for defence of property or possession or for overcoming obstruction to the exercise of lawful rights;

55. General limits of justifiable force or harm

Notwithstanding the existence of any matter of justification for force, **force cannot be justified** as having been used in pursuance of that matter—

(a) **which is in excess of the limits** hereinafter prescribed in the section of this Title relating to that matter; or

(b) **which in any case extends beyond the amount and kind of force reasonably necessary for the purpose for which force is permitted to be used.** (My emphasis)

60. Use of force to arrest, detain, or search a person otherwise than for a felony

Whoever has authority, by warrant or other legal process or under the provisions of any statute, **to arrest**, detain, or search another person otherwise than for a felony, **may justify any necessary force not extending to a blow, wound, or grievous harm**, if the other person has notice or believes that the force is used by virtue of any such authority. (My emphasis)

[18] In essence, section 54 empowers the police to use reasonable force where it is necessary in furtherance of making an arrest. It must be reiterated that the force used must be reasonable. Section 60 goes further to state that the force used by the person making the arrest must not extend to a blow, wound or grievous harm.

[19] With respect to the use of a truncheon or baton by members of the police force, regulation 65 of the Police Regulations⁵ as amended states:-

He or she should never use his or her truncheon, except in cases of extreme necessity; for example—

(a) to prevent the escape of a prisoner; or

⁵ Police Regulations SRO 26 of 1960 as amended (subsidiary legislation to the Police Act Cap. 244)

(b) when his or her (the Constable) or any other person's life is in danger, and then he or she should be careful that he or she strikes about the shoulders, arms or legs and not the head. (My emphasis)

[20] The medical evidence reveals that as result of fracas, Mr. Garraway received the following injuries: –

- (1) Multiple large hematomas in both lower limbs. One on the left thigh measuring 4 ½ inches transversely by 2 ½ inches vertically. On the right thigh another measuring 3 ½ inches transversely by 2 ½ inches vertically. Multiple abrasions were noted on both left and right knees;
- (2) In upper limbs; lateral aspect of left arm a hematoma measuring 3 inches vertically by 2 inches transversely, on the medial aspect of the said left arm another hematoma of 1 inch in diameter;
- (3) A large hematoma was noted on the left shoulder measuring 3 ½ inches vertically by 2 inches transversely with abrasions on its surface;
- (4) The medial aspect of the right upper limb another hematoma measuring 3 .inches vertical by 1 ½ inches transverse;
- (5) On the right pectoral region (chest) multiple minor abrasions were also observed;
- (6) In the mouth; a broken right incisor was observed. Upon palpation of the right retro auricular region pain was referred.

[21] The defendants assert that during the scuffle Mr. Garraway held Mr. Graham by his throat and began to bite him on his leg. There were two other officers present with Mr. Graham on the scene — Corporal #890 Marcus Wickham and Police Constable #549 Kevin Antoine. The other officers gave evidence that they assisted Mr. Graham to restrain and subdue Mr. Garraway. I find that the three police officers were more than capable of subduing and restraining Mr. Garraway without having to resort to the extent of the force used which produced these severe injuries.

[22] Significantly, Mr. Garraway was unarmed throughout this incident. Mr. Graham was armed with a truncheon and admits that he used the truncheon to deliver a blow around the area of Mr. Garraway's buttock. This evidence from the defendants is in direct conflict with Dr. Justin La Rose's medical evidence which reveals, and I accept that Mr. Garraway suffered multiples blows to his limbs, arms, chest, shoulder and mouth. Mr. Graham clearly inflicted more than just a blow around the area of Mr. Garraway's buttocks.

[23] The facts as I have discussed above do not suggest that the force used in this case to effect the arrest was necessary and/or proportionate. I have therefore concluded that Mr. Garraway was assaulted and battered by the police officers.

Damages

[24] Mr. Garraway asks the court to award special damages; general damages for assault and battery/breach of statutory duty; aggravated and/or exemplary damages.

[25] In relation to the special damages, the claim sets out the sum of \$750.00 for medical expenses which include the costs of his consultation with Dr. La Rose and cost of the medical report. Mr. Garraway has sufficiently pleaded and particularised these expenses. Therefore, I award him the sum of \$750.00 as special damages.

[26] Mr. Garraway also prays for the costs of future dental care in the sum of \$4,100.00. This item of damage is incorrectly pleaded as special damages, but I note from the medical evidence that Mr. Garraway suffered injuries to his mouth for which he will require future medical care. There is medical evidence that the sum claimed is an estimate of the future cost for this head of loss. Mr. Garraway is awarded the sum of \$4,100.00 for future dental care.

[27] Mr. Garraway prays for compensatory damages by way of aggravated and exemplary damages. Halsbury's Laws of England⁶ notes that:

"Aggravated damages take into account the defendant's motives, conduct and manner of committing a wrong in so far as they may have aggravated the claimant's damage by injuring his proper feelings of dignity and pride. The defendant may, for example, have acted with malevolence or spite, or behaved in a high-handed, malicious, insulting or aggressive manner".

[28] Exemplary damages, on the other hand, it is said that exemplary damages are punitive in nature and seek to punish and deter the defendant for their wrongdoing or unlawful act as explained in **Rookes v Barnard**⁷. The award is usually granted in one or more of the three categories set out in **Rookes v Barnard** –

"oppressive, arbitrary or unconstitutional actions by servants of the government; wrongful conduct which has been calculated by the defendant to make a profit for himself which may exceed the compensation payable to the claimant; and any situation where such an award is authorised by statute"

[29] It is said that a party claiming exemplary and/or aggravated damages must "*include in the particulars of claim a statement to that effect and the grounds for claiming such damages.*"⁸ Aside from praying for relief by way of exemplary and aggravated damages there is no basis set out in the statement of claim for the grant of the same. In any event, the evidence suggests that there was a tussle between Mr. Garraway and Mr. Graham while Mr. Graham was trying to arrest Mr. Garraway. This, notwithstanding, I find that that force used to effect the arrest was quite disproportionate. However, I do not find that Mr. Graham's actions were motivated by malice or were arbitrary and oppressive to award aggravated damages. Additionally, while the police's actions were unlawful, there is no basis and indeed none has been shown for an award of exemplary damages.

[30] In respect of general damages for assault and battery, counsel for the claimant filed submissions on 5th February 2021 and referred the court to the cases of **Jessica**

⁶ Halsbury's Laws of England, 5th edn., Vol 29 2019, para. 323,

⁷ [1964] 1 All ER 367 at page 407 per Lord Devlin

⁸ Halsbury's Laws of England 5th Edn., Vol.32, para.687

Ledger et al v Heslyn Codougan et al⁹, Mercedes Delplesche v Samuel Emmanuel De Roche¹⁰, Danny Edwidge v The Attorney General of Saint Lucia¹¹ Danny Severin v The Attorney General¹², Helious Trocard v Nigel Edmund and Another¹³, among others. **Danny Severin**, and **Danny Edwidge** provide useful guidance in determining a comparable award. Both decisions concern circumstances where claimants were beaten by police officers and suffered injuries as a result.

[31] The claimant **Danny Severin** was assaulted and beaten by five police officers. In that case, the court awarded Mr. Severin the sum of \$12,000.00 in general damages for pain and suffering. In **Danny Edwidge**, the claimant was detained by police for four hours and was beaten with a stick which resulted in him having lesions on his forearm and a broken thumb. In that case, the court awarded him \$10,000.00 in damages for assault and battery and false imprisonment.

[32] Mr. Garraway seeks general damages for pain and suffering. He has not provided any details about the extent of his pain and suffering. Nonetheless, the extent of the injuries that have been highlighted in the medical report suggest to me that he would have endured serious pain and suffering as a result of the assault and battery. I award him a nominal sum with assistance from the awards given in the above decisions. I am of the view that the sum of \$20,000.00 will adequately provide compensation to Mr. Garraway for his pain and suffering.

Conclusion

[33] For all these reasons, Mr. Garraway's claim is granted. Accordingly, Mr. Garraway is awarded:

- (1) Special damages in the sum of \$750.00.
- (2) General damages for future dental care in the sum of \$4,100.00.

⁹ SVGHCV2013/007 (delivered 10th June 2016)

¹⁰ SVGHCV2012/0041 (delivered 19th April 2013)

¹¹ SLUHCV2018/0271 (delivered on 29th July 2019)

¹² SLUHCV2008/0973 (delivered on 10th February 2011)

¹³ DOMHCV2008/0206 (delivered 12th May 2010)

- (3) General damages for pain and suffering as a consequence of assault and battery in the sum of \$20,000.00;
- (4) Interest on the special damages at a rate of 3% per annum from the date of the incident to the date of trial;
- (5) Interest on the general damages for pain and suffering at a rate of 3% per annum from the date of service of the claim to the date of trial;
- (6) Interest on the total sum at a rate of 6% per annum from the date of this judgment to the date of payment;
- (7) Costs in the sum of \$4,000.00

Raulston L.A. Glasgow
High Court Judge

By the Court

Registrar