

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

GRENADA

CLAIM NO. GDAHCV2023/0047 (formerly GDAHCV2017/0202)

BETWEEN:

SHAUN DINNAH

Claimant

and

THE ATTORNEY GENERAL OF GRENADA

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Miss Celine Edwards for the Claimant

Mr. A. Olowu for the Defendant

2023: February 14
May 2

JUDGMENT

- [1] **ACTIE, J.:** This is a claim for assault and battery against a member of the Royal Grenada Police Force. The court is of the view that the claimant has failed to prove his claim and accordingly dismisses the claim for the reasons outlined below.
- [2] It is the claimant's claim that he was approached by Constable Celestine on 28th April 2017 while standing outside the Gouyave Postal Service Office/Inland Revenue Department office.
- [3] The claimant states that Constable Celestine grabbed hold of his arm and started pulling him away without saying anything. The claimant avers that he pulled away his arm and proceeded inside of the Postal Service building, whereupon

Constable Celestine followed and aggressively held on to his arm and started pulling him in an attempt to get him outside of the Postal Service office.

- [4] The claimant avers that during the course of the incident, Constable Celestine said “you are too rude come and let we go to the station.” The claimant states he replied “don’t pull me I have two foot I gone walk.” The claimant states that the constable administered an aggressive blow to his back causing him to stumble forward. The claimant contends that at no time was he told he was being detained or arrested, or the reason for his detention or arrest. He asserts that he was not informed of the reason he was being pulled away.
- [5] The claimant states that he was charged with the offence of violent language which was dismissed at the magistrate’s court.

Defendant’s case

- [6] The defendant avers on that day Constable Celestine was standing outside the Gouyave Magistrate Court when he first met the claimant whom he had cause to warn for saying to sundry persons outside of the court that “all the statements we make, police throw all of them”. The defendant states that Constable Celestine warned the claimant that those statements were improper to be made in the precincts of the court while the court was in session.
- [7] The defendant avers that thereafter Constable Celestine heard the claimant utter the words “they doh doing me nothing. Anytime they doh me anything and I meet them under four eyes, I go deal with them.”
- [8] The defendant states that Constable Celestine considered the claimant’s statement to be threatening and violent language in relation to the police, having regard to the earlier occasion when Constable Celestine had cause to warn the claimant.
- [9] The defendant contends that thereafter Constable Celestine attempted to speak to the claimant about his remarks and approached him, but the claimant walked

away in the direction of the Gouyave Postal Office. While the claimant was inside the post office, Constable Celestine said to the claimant that he heard the comments the claimant made and was annoyed by them, and that he was arresting him for the offence of violent language and held on to the claimant's wrist to arrest him.

[10] The defendant avers that the claimant pulled away his hand and refused to go to the Police Station with Constable Celestine, who then pushed the claimant in the direction of the Police Station.

[11] The defendant avers that Constable Celestine was acting in the lawful execution of his duties when he arrested the claimant and states that no assault or battery occurred in the circumstances.

Legal Analysis

Whether the claimant was assaulted and battered

[12] According to **Halsbury's Laws of England**¹:

"Assault is an intentional and overt act causing another to apprehend the infliction of immediate and unlawful force. The threat of violence exhibiting an intention to assault will give rise to liability only if there is also a present ability (or perhaps a perceived ability) to carry the threat into execution. An assault may be committed by words or gestures alone, provided they cause an apprehension of immediate and unlawful force."²

And

"A battery is an act of the defendant which directly and intentionally or recklessly causes some physical contact with the person of the claimant without his consent."³

[13] According to Dana Seetahal in **Commonwealth Caribbean Criminal Practice and Procedure**⁴:

¹ (2021) Vol 97A

² (2021) Vol 97A para 127

³ (2021) Vol 97A para 128

⁴ (4th edn, Routledge)

“An arrest is often defined as the seizing or touching of the person of an individual with a view to restraining him.”

- [14] An arrest is lawful where the executing officer has reasonable cause for suspecting that an offence was committed, the burden being on the defendant in this case⁵. An arrest occurs when a police officer takes a person into custody or by words or actions restraining him/her from moving anywhere beyond the police's control.
- [15] It is the evidence that the claimant uttered words which Constable Celestine found to be inimical to law and order for which he was of the view that the claimant should be arrested and removed from the court precincts.
- [16] The claimant was charged with the offence of violent language contrary to **Section 133(a) of the Criminal Code CAP 72A** by virtue of the comments made in the presence of Constable Celestine. It was the evidence at trial that the charge was dismissed in the magistrate's court.
- [17] Constable Celestine admits that he applied force by gently pushing the claimant forward towards the police station when the claimant appeared to offer some resistance. It is the pushing forward by the constable that the claimant alleges that the tort of assault and battery was committed against his person.
- [18] Both the claimant and defendant have differing stories with respect to the execution of the arrest. Thus, it is a matter for the court to decide on a balance of probabilities. According to Baroness Hale in the House of Lords decision in **Re B (Minors)**⁶:

“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not... It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event

⁵ *Dallison v Caffery* [1965] 1 QB 348

⁶ (2008) EWCA Civ. 282

occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.”

Whether the claimant was assaulted

- [19] The text **Clerk and Lindsell on Tort** distinguishes an assault and battery as follows:

“An assault is the threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact. Battery covers intentional or reckless use of unlawful force on another person, resulting in harmful or offensive contact. Thus, anything that amounts to a blow whether inflicted by hand, weapon or missile is a battery.”

- [20] To constitute an assault there must be an apprehension of fear of the use of force or possible harm being inflicted against the person. The push from behind as alleged by the claimant cannot constitute an assault as the claimant has not provided any evidence to establish an apprehension of application of force by the defendant constable.
- [21] The court finds that the claimant has not established the element of fear or apprehension of imminent infliction of physical bodily contact at the time of the arrest to constitute an assault. Accordingly, the claimant’s claim for assault fails and stands dismissed.

Whether the force used by the agent of the defendant constituted a battery

- [22] Police officers are empowered under statute to use reasonable force as necessary in conducting an arrest. **Sections 54 and 55 of the Criminal Code CAP 72A** as amended respectively prescribe the following:

“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—

...

- (e) authority to arrest, detain or search a person otherwise than for a felony;...

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

...

(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.”

[23] **Section 60** of the **Criminal Code** also permits the use of reasonable force in executing an arrest. The **Section** reads:

“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.”

[24] In order for **Sections 54, 55** and **60** to apply for the purposes of the determination of this issue therefore, there must have been a lawful arrest and detention of the claimant. The claimant made much about the fact that there was not a lawful arrest.

[25] An arrest occurs when a police officer takes a person into custody or by words or action restraining him/her from moving anywhere beyond the police’s control. In **Murray v Ministry of Defence**⁷ ‘it was held that where a person was detained or restrained by a police officer and knew he was being detained or restrained, that amounted to an arrest even though no formal words of arrest were spoken by the officer. The court is of the view that the arrest was lawful as the claimant was aware that he was being detained by the police and also the reason for the detainment.

[26] It is the law that any touching of another’s body is, in the absence of lawful excuse, capable of amounting to a battery and a trespass to the person. The claimant made much about the fact that the case against him was dismissed at the magistrate’s court. However, the extant claim before the court is not for unlawful

⁷ [1988] 1 WLR 692

arrest or malicious persecution. The issue is whether the application of force by the police constable was unreasonable in the circumstances to constitute a battery.

[27] The defendant argues that **Section 60** of the **Criminal Code CAP 72A** authorises the use of force by police officers to execute an arrest and detain someone who has committed an offence.

[28] The claimant stated that after making the comment, he began to make his way inside of the post office when Officer Celestine came across to the front of the post office and started tugging and pulling at him. The claimant stated that he was pushed aggressively by Officer Celestine from behind causing him to fall forward.

[29] It is the defendant's case on the other hand that when Constable Celestine held on to the claimant to enable him to carry out a lawful arrest, the claimant resisted, thus the use of force by pushing the claimant in the direction of the police station was justified.

[30] There is only one witness of the incident before the court, and that is of the evidence of Leslie Isaac.

[31] It is the undisputed evidence that the constable applied some force when he pushed the claimant forward towards the police station. The evidence suggests the claimant's resistance to move forward to the station as was directed by the constable. Constable Celestine admits to pushing the claimant with his right hand on his lower back.

[32] It is also the evidence that the constable had to be assisted by another police officer as a result of the claimant's resistance to go along with constable.

[33] The issue is whether the action of the constable in pushing the claimant forward was reasonable in the circumstances. The court had the opportunity to observe the claimant's demeanour during the trial. He responses in cross examination and his body language suggested a personality of insolence. The court accepts the

defendant's evidence that the claimant resisted the officer's order to proceed to the police station which resulted in the constable pushing him forward. It is also the evidence that the constable had to seek assistance of another police officer to effect the arrest and to get the claimant to proceed to the police station.

- [34] Both the claimant and the defendant admit that the push by the constable did not cause any harm or injury to the claimant. The court having regard to the totality of the evidence is not of the view that the officer acted in a high-handed manner or used excessive force in effecting the arrest or that the pushing the claimant forward in the direction of the police station was unreasonable in the circumstances. Accordingly, the claim for battery stands dismissed.

ORDER

- [35] For the foregoing reasons, it is ordered and directed as follows:
- (i) The claimant's claim for assault and battery stands dismissed.
 - (ii) The defendant agreed costs to be paid by the claimant in the sum of \$ 2000.00,

Agnes Actie
High Court Judge

By The Court

Registrar