

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

GRENADA

CLAIM NO. GDAHCV2013/0514

BETWEEN:

CORINE CLARA

Claimant

and

ATTORNEY GENERAL OF GRENADA

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

VIA ZOOM

Appearances:

Ms. Celia Edwards Q.C with Ms. Celene Edwards and Mr. Zuriel Francique for the Claimant

Ms. Karen Reid Ballantyne, Solicitor General, with Ms. Alleyna Cheesman for the Defendant

2021: November 8

2022: March 8

JUDGMENT

- [1] **ACTIE, J.:** The claimant in a statement of claim filed on 15th October 2013 seeks general damages and exemplary damages among other reliefs in a claim for unlawful arrest and false imprisonment.

Claimant's Case

- [2] The claimant pleads that on 15th October 2013 at about 7.30 a.m., she was approached at the front door of her home by three persons who identified themselves as members of the Royal Grenada Police Force attached to the Financial Intelligence Unit (hereafter "FIU").
- [3] The officers informed her that they would have to detain her in relation to an investigation on a complaint made by one Nancy Greene against whom she (the claimant) had taken civil action. The claimant immediately contacted her attorney who advised her not to answer any questions posed by the police. The claimant alleges that she was forcibly imprisoned by the officers who proceeded to place her in an unmarked vehicle and took her to the offices of the FIU.
- [4] The claimant said she was placed in an interior room at the FIU. The questioning was led by Tafawa Pierre, Acting Superintendent of Police (hereafter "ASP"), in the presence of her legal practitioner, Ms Karina Johnson. The claimant did not answer any of the questions and the questioning ended at about 11.25 am. The claimant states that she was informed that she could not leave and would not be going anywhere soon. She was released at about 3.00 p.m. after the claim was filed at 2.28 p.m. on the same date.
- [5] The claimant contends that her arrest was unlawful and claims damages for false imprisonment. The claimant also contends that the actions of the officers were arbitrary, oppressive, highhanded, and completely against the law.

Defendant's Case

- [6] The defendant admits that the claimant was detained for questioning in connection with certain reports made to the FIU by one Nancy Green on behalf of her stepmother Mable Phillips.

- [7] The defendant states that the claimant was asked to accompany the officers to the FIU and she entered the vehicle on her own without the use of any force by the officers.
- [8] The defendant concedes that the claimant was interviewed by Sergeant Sheldon Thomas and ASP Tafawa Pierre. The claimant refused to answer any of the questions put to her by the officers in the furtherance of the investigation.
- [9] The defendant states that the claimant was released from questioning at approximately 3.00 pm on the same day and well within the statutory hold period of 48 hours prescribed by Section 22(3) of the Police Act. The defendant denies that the claimant suffered any damage, loss or injury as alleged.

Claimant's Submissions

- [10] Counsel in submissions filed on 18th May 2015 contends that the officers detained the claimant from approximately 8.00 am to 3.45 pm despite the claimant making it patently clear that she would not respond to any question on the advice of her lawyer. Ms Celia Edwards, QC for the claimant contends that the only justification in law presented by the police under Section 22(3) was that the claimant could have been detained for questioning for a period not exceeding 48 hours.
- [11] Ms. Edwards QC submits that the unlawful detention of the claimant started from the minute she indicated her intention not to answer questions and her continued detention was unlawful. Queen's Counsel contends that the claimant was not formerly arrested or charged and accordingly that detention was contrary to law.

The Defendant's Submissions

- [12] The defendant in submissions filed on 15th May 2015, relies on Section 5 of the Financial Intelligence Unit Act¹ which states that the police officers seconded to the Financial Intelligence Unit shall retain their powers of arrest, search and seizure under the Police Act and implicit in that power is the power to detain for questioning for a period of forty- eight (48) hours.
- [13] The defendant states that Sergeant Sheldon Thomas, Sergeant Terrance Mason and Officer Andrea Thomas identified themselves and explained to the claimant that she was being detained for questioning on suspicion in relation to the report made to the FIU by one Nancy Green on behalf of her stepmother, Mable Phillips.
- [14] The claimant was interviewed by Sergeant Sheldon Thomas and ASP Tafawa Pierre in the presence of the claimant's attorney at law. The claimant refused to answer any of the questions asked of her in furtherance of the investigation.
- [15] The defendant asserts that the police acted in conformity and within the authority conferred by Section 22 (3) of the Police Act. The defendant contends that the claimant was released from questioning on the same day within the permitted forty-eight (48) hours statutory period.

Law and analysis

- [16] The main issue is whether the claimant's detention was unlawful and can satisfy the claim for false imprisonment.
- [17] The statutory power to detain a person is governed by Section **22 (3) of the Police Act**². The section provides-

¹ Chapter 102 A, Revised Laws of Grenada

² Chapter 244, Revised Laws of Grenada

“(3) It shall be lawful for any police officer to detain for questioning, for a period not exceeding forty-eight hours, any person whom he or she believes upon **reasonable suspicion** to have committed or to be about to commit a criminal offence.” (Emphasis added)

- [18] The condition precedent to exercise the statutory power to detain an individual for questioning is whether the police officer at the time of the detention had or believed to have had reasonable suspicion that the detainee had or was about to commit a crime.
- [19] Firstly, Ms. Celia Edwards QC argued that the claimant’s detention was unlawful as the police did not expressly state that she was under arrest and neither did they state the statutory crime that the claimant allegedly committed. Queen’s Counsel contends that the detention of the claimant on the ground of mere suspicion was insufficient to justify an arrest.
- [20] Lord Viscount in **Christie v Leachinsky**³ said that it is the constitutional right of every citizen to know why he is being detained so that he will be in a position to know whether he is entitled to resist arrest, it is not necessary for the ground of arrest to be expressed in precise technical language. It is sufficient if the arresting officer conveys to the arrestee the substance of the alleged offence⁴.
- [21] It is the undisputed evidence that the officers from the initial approach at the claimant’s home informed the claimant that she was being detained for questioning in relation to a report made by one Nancy Green. The evidence of Patrick Clara, the claimant’s husband, both in his witness statement and in cross examination confirms that the police informed the claimant of the reason for her detention. It is also the evidence that the claimant’s attorney, Ms Karina Johnson, was informed that the claimant was being arrested on suspicion in relation to the report.

³ [1947] AC 573

⁴ Gilbert Kodilinye, *Commonwealth Caribbean Tort Law* (5th edn, Routledge 2015) 40

[22] In **Murray v Ministry of Defence**⁵ ‘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.

[23] The Privy Council in **Betaudier v Attorney General of Trinidad and Tobago**⁶ citing Bingham LJ in **Chapman v Director of Public Prosecutions**⁷:

“It is not of course to be expected that a police constable in the heat of an emergency, or while in hot pursuit of a suspected criminal, should always have in mind specific statutory provisions, or that he should mentally identify specific offences with technicality or precision. He must, in my judgment, reasonably suspect the existence of facts amounting to an arrestable offence of a kind which he has in mind.”

[24] 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. The evidence before the court is clear that the police informed the claimant that she was being detained and the reason for the arrest was sufficiently conveyed to the claimant at the time of the arrest. The police also conveyed in very clear terms the reason for the detention from the initial approach at the claimant’s home. It was not necessary that the claimant be informed of the specific statutory offence at the time of the arrest as the police was merely investigating based on a report. The court is of the view that the claimant’s arrest was not unlawful in the circumstances.

[25] The issue now turns to whether the police acted reasonably and justifiably in detaining of the claimant. The Privy Council in **Betaudier v Attorney General of Trinidad and Tobago**⁸ cited with approval the principles stated by Lord Clarke in **Ramsingh v Attorney General of Trinidad & Tobago**⁹, and summarised as follows:

⁵ [1988] 1 WLR 692

⁶ [2021] UKPC 7 (delivered 29th March 2021)

⁷ (1988) 89 Cr App R. 190, 197 para 15

⁸ [2021] UKPC 7 (delivered 29 March 2021)

⁹ [2012] UKPC 16; [2013] 1 LRC 461, para 8

“(i) The detention of a person is prima facie tortious and an infringement of section 4(a) of the Constitution of Trinidad and Tobago.

(ii) It is for the arrestor to justify the arrest.

(iii) A police officer may arrest a person if, with reasonable cause, he suspects that the person concerned has committed an arrestable offence.

(iv) Thus the officer must subjectively suspect that that person has committed such an offence.

(v) The officer’s belief must have been on reasonable grounds or, as some of the cases put it, there must have been reasonable and probable cause to make the arrest.

(vi) Any continued detention after arrest must also be justified by the detainer.”

[26] The burden shifts on the defendant to establish that the arrest was reasonable and the continued detention of the claimant was justifiable. It is the evidence that Sergeant Thomas executed the arrest on the instructions of ASP Tafawa Pierre. ASP Tafawa Pierre in his witness statement and in cross examination states that he started the investigation and directed Sergeant Thomas to arrest the claimant and bring her to the FIU for questioning in relation to the report.

[27] The authorities are clear that the police at the time of the arrest must have reasonable grounds for the arrest. The Board in **Betaudier v Attorney General of Trinidad and Tobago**¹⁰ cited Lord Hope in **O’Hara v Chief Constable of the Royal Ulster Constabulary**¹¹ where it is stated:

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“The information acted on by the arresting officer need not be based on his own observations, as he is entitled to form a 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

¹⁰ [2021] UKPC 7 (delivered 29th March 2021)

¹¹ [1997] AC 286

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 circumstances.” (Emphasis added)

- [28] The reasonableness of an arrest is determined by what was on the police officer's mind at the time of the arrest. In considering whether there was reasonable cause for an officer's suspicion that a person has committed an arrestable offence, it is necessary to focus on the offence which the arrestee is suspected of having committed. The officer must have in mind facts which are capable of supporting a reasonable suspicion that the person arrested committed an offence of the particular kind which the officer has in mind. It is an objective test to be judged based on the information when exercising the arrest. It is evidence that the officer was sufficiently informed of the nature of the complaint under investigation and directed his mind to that specific offence. The information was not from his personal knowledge but from a directive received from by ASP Pierre. The court is of the view that the defendant has discharged the burden to prove that the arrest was justified based on the knowledge of allege offence at the time of the arrest.

Whether the police power to arrest ceased once the arrestee refuses to answer question

- [29] Ms. Edwards QC further contends that the limited power of the police ceased immediately once a person indicates they are unwilling to answer questions posed by the police. Accordingly, counsel contends that the police power to arrest the claimant ceased from the minute that the claimant intimated that she would not be answering any question on advice of her lawyer. QC contends that the detention of the claimant from 7.45 am until her discharge about 3.00 pm was therefore unlawful and amounted to false imprisonment. This assertion was not supported by any legal authority.

[30] It is the evidence that the questioning of the claimant was led by ASP Pierre from 9.20 am to 11.45 pm in the presence of her legal practitioner. The claimant did not answer any of the questions posed on the advice of her legal practitioner. The claimant was not allowed to leave immediately at the end of the questioning but was asked to wait in the waiting room.

[31] A lawful arrest is not rendered unlawful by reason of the fact that the arrestee refuses to answer questions or is not charged. The claimant's refusal to answer is not a bar to the police duty to investigate in furtherance of the alleged offence. A police officer is under a duty to diligently pursue his investigation to produce prima facie proof in the evidence¹². The interview was directed towards an attempt to investigate the suspicion on which the claimant was arrested. The questioning in the case was uninformative as the claimant refused to answer any of the fifty-six (56) questions posed by ASP Pierre. Sergeant Thomas said that he has had experience where an accused person may refuse to answer in the presence of counsel and would give information sometime later. Sergeant Thomas said that he was of the view that even if the claimant had not answered any of the questions there was still a need to ask relevant questions in furtherance of the investigation. Sergeant Thomas said there may have been just one question that the claimant would have answered.

[32] The House of Lords in **Regina v. Governor of Her Majesty's Prison Brockhill Ex Parte Evans**¹³ said:

“The tort of false imprisonment is a tort of strict liability. But the strict theory of civil liability is not inconsistent with the fact that in certain circumstances the harm complained of may have been inflicted justifiably. This is because it is of the essence of the tort of false imprisonment that the imprisonment is without lawful justification.”

[33] Lord Denning in **Dallison v Caffery**¹⁴ held that when a constable has taken into custody a person reasonably suspected of a crime, he can do what is reasonable to

¹² Ramsingh v AG [2012] UKPC 16

¹³ [1997] QB 443

¹⁴ [1964] 2 All ER 610

investigate the matter and to see whether the suspicions are supported or not by further evidence.

- [34] The court having examined the evidence is of the view that the detention and arrest of the claimant was justifiable. The officers acted on reasonable grounds based-on information received that the claimant had committed an arrestable offence and the detention was lawful in the circumstances. The claimant has failed to prove that her detention post interview was unreasonable and unjustifiable in light of the fact that the questioning was uninformative as she failed to answer any of the questions. The police did not act unreasonably in detaining the claimant post the interview with a view that she may have responded under further questioning. It is the evidence that the claimant was offered refreshments and bathroom breaks. There is no evidence of high handedness on the part of the police. The claimant was released within the statutory time limit allowed under Section 33 of the Police Act. Accordingly, the court is of the view that the claimant has failed to make out a case unlawful arrest and false imprisonment.

Order

- [35] For all the forgoing reasons, it is ordered and directed as follows:

- (1) The claimant's claim for false imprisonment and reliefs sought stands dismissed;
- (2) Costs to the defendant in the sum of \$7,500.00

Agnes Actie
High Court Judge

By the Court

Registrar