

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

GRENADA

CLAIM NO: GDAHCV2019/0445

BETWEEN:

NATHAN THOMAS

Claimant

and

**[1] JEROME JAMES
[2] ATTORNEY GENERAL**

Defendants

Before:

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

High Court Judge

Appearances:

Mr. Francis Williams for the Claimant

Mr. Adebayo Olowu for the Defendants

2021: October 14;
2022: January 3.

JUDGMENT

[1] **GLASGOW, J.:** This is a claim brought by the claimant, Nathan Thomas (Mr. Thomas) against the defendants, Jerome James and the Attorney General of Grenada seeking damages for wrongful arrest and unlawful search; assault and battery; breaches of constitutional rights not to be arbitrarily searched and not to be deprived of liberty, among other relief.

Background

- [2] On 6th June 2019 at about 11:00 pm Mr. Thomas was walking carrying a backpack on his back near the Sugar Mill roundabout heading in the direction of Grand Anse Valley, Saint George. He was approached by occupants of a vehicle driving in the same direction. The occupants of the vehicle subsequently identified themselves as police officers attached to the South St. George Police Station. They indicated that they were conducting a mobile patrol in the area.
- [3] When the police officers saw Mr. Thomas walking in the direction of Grand Anse Valley, they decided to approach him in their vehicle. He was asked to stop but he continued walking. The police officers then blocked his path with their vehicle and alighted from it in order to surround him. Thereafter, Mr. Thomas and the police were involved in a scuffle, but he was eventually restrained. One of the police officers then searched his backpack. Apart from clothing, nothing was else found in Mr. Thomas' backpack. The police officer then returned Mr. Thomas' backpack to him. Mr. Thomas filed these proceedings seeking relief against the defendants for the police's actions on the night in question.

Mr. Thomas' case

- [4] Mr. Thomas states that he is a kitchen assistant by profession. He resides at Grand Anse Valley in the parish of Saint George, Grenada. On 6th June 2019, he was walking from work. He was returning to his home which is located near the Sugar Mill roundabout. As he was walking home, he was approached by a van carrying three men and a woman. The three persons alighted the van and he was searched.
- [5] Mr. Thomas claims that when the group informed him that they were police officers, he respectfully asked them to produce their police identification. He says that they refused his request. He further pleads that two of members of the group drew their guns and pointed the guns at him. One of them "cranked" his gun and pointed it towards him. A bullet fell out of the gun onto the ground.

A member of the group kicked his foot several times while others collared him and “roughed him up”. He complains that while he was being restrained, the group searched his bag.

- [6] Mr. Thomas avers that this ordeal with the police was a frightening experience for him. He had not previously encountered the police in this manner. He pleads that this experience caused him to feel distressed, humiliated, belittled and embarrassed.

Defendants’ case

- [7] In response to the claim, the defendants deny Mr. Thomas’ complaints with respect to the stop and search. The defendants plead that:

- (1) Sometime in the month of June 2019, the first defendant, Police Corporal Jerome James, (Corporal James) together with Constable 506 Pascal and Constable 366 Richardson, who are all attached to the South St. George police station conducted a mobile patrol in the area.
- (2) The aim of the patrol was to increase police presence in the south St. George area due to increased reports by residents in the area of housebreaking and stealing.
- (3) The officers were dressed in plain clothing using an unmarked police transport which was driven by Corporal James.
- (4) At around 11:00 pm, the officers were headed towards the Grand Anse Valley area. When they reached the Sugar Mill area, they saw Mr. Thomas, a tall, well-built man, wearing dark clothing, walking alone. He was carrying a backpack on his back which looked bulky. Mr. Thomas turned towards the vehicle and quickly looked away.
- (5) Given the numerous of reports of stealing and housebreaking offences, Mr. Thomas’ appearance, the presence of a bulky looking bag pack and the fact that he was walking alone, Corporal James became reasonably suspicious that Mr. Thomas may have committed an offence.

- (6) Corporal James drove alongside Mr. Thomas and asked him to stop. Mr. Thomas refused to stop. Corporal James then drove the vehicle in front of Mr. Thomas to block his path.
- (7) The officers exited the vehicle and Corporal James took out his police identification card and showed it to Mr. Thomas.
- (8) Mr. Thomas was asked for his name and address which he refused to provide to the officers. Corporal James then informed Mr. Thomas that he suspected him of carrying stolen items and wanted to search him. Mr. Thomas stated that they could not search him. At that point, two of the other officers then held on to both of Mr. Thomas' arms and tried to remove his backpack.
- (9) A struggle then ensued and Corporal James fearing that Mr. Thomas would break free decided to draw his firearm and engaged it to calm Mr. Thomas who was resisting.
- (10) Further, the officers deny that the gun was pointed at Mr. Thomas. After the gun was engaged, Mr. Thomas calmed down and his backpack was searched by Corporal James who found some clothing in the bag.
- (11) Mr. Thomas was not roughed up, kicked or collared by Corporal James or the other officers. The entire stop and search lasted about five minutes.

Discussion and Analysis

- [8] The powers of the police to stop and search a person suspected of committing a crime have not been in dispute in this case. Indeed the parties accept that the police possess narrow powers to do so on reasonable grounds that a crime has been or is being committed. Phulgence J in **Rashaad Joseph and Another v The Attorney General**¹, observed that, as in Grenada, there was in that case, no express power at statute to permit the police to stop and search a citizen while conducting an arrest. Her Ladyship opined, however that-

"I have searched but have been unable to find any English authority which explicitly states that there is a common law police power to

¹ SLUHCv2017/0189

stop and search persons on having reasonable grounds to suspect that an offence is being or is about to be committed. However, I have come across several English, Caribbean and Canadian cases which suggest that this power does exist at common law. In the absence of any authority that contradicts the existence of a common law police power to search on reasonable grounds to believe that an offence is being or is about to be committed, I accept that there is such a power, albeit a very restricted one.”²

[9] The common law powers of the police that are referenced by her Ladyship are also recited at sections 22 (1) of the **Police Act**³ which reads –

“22. Powers of the police

(1) Every police officer shall have throughout the island of Grenada and in the several bays, creeks, and inlets thereof, and also on board any vessel in which any indictable offence, or any offence punishable on summary conviction is or may be suspected to be committed, all such authorities, privileges, protection and advantages, and be liable to all such duties and responsibilities as any police officer duly appointed now has or is subject or liable to or may hereafter have or be subject or liable to either by the common law of England or by virtue of any law which now is or which may hereafter be in force in Grenada.”

[10] After reviewing a number of authorities on the issue, her Ladyship concluded that -

“On the basis of these authorities, I therefore accept that a police officer has the power to stop and search where he or she has reasonable grounds to believe that the person is committing or is about to commit an offence or breach of the peace, albeit a very restricted power. I am of the view that the test for reasonable grounds is the same test as applies to cases of arrest without warrant, articulated in **Dallison v Caffery**. That test is whether a reasonable man, assumed to know the law and possessed of the information which was in fact possessed by the defendant, would believe that there was reasonable and probable cause to search. If the police have the power to arrest without warrant on reasonable suspicion that an offence has been, is being or is about to be committed, then it seems only logical that the police would also have the power to search on the same basis. This appears to me to be a necessary corollary of the powers of the police to carry out their duties to preserve the peace, detect crime and apprehend persons suspected of having committed, committing or being about to commit a crime.

Of course, the manner in which any search is conducted must be reasonable and admit of the least interference with the fundamental

² SLUHCV2017/0189 at para. 33 per Phulgence J

³ Cap. 244 of the 2010 Continuous Revised Edition of the Laws of Grenada

rights of dignity, freedom and privacy of the person for achieving the purpose for which the power is exercised. The Court is ever mindful of the constitutional right of the citizens of the State of Saint Lucia to be protected from the search of his or her person or property without consent or authority of law which makes provision that is reasonably required for among other things, public safety, public order and for the purpose of protecting the rights and freedoms of other persons.⁴

[11] Mr. Thomas stated that he does not challenge the police's power to stop and search, but he contends that the police had no reasonable ground to suspect him of committing any crime. As such, he argues that the stop and search was unlawful.

[12] In the Court of Appeal decision of **Devon Calliste v The Queen**⁵, Satrohan Singh JA made reference to **Archbold Criminal Pleading and Practice**⁶. His Lordship explained that:

“Reasonable suspicion does not require certainty. The officer does not have to be satisfied beyond a reasonable doubt. **Reasonable suspicion in contrast to mere suspicion must be founded on fact. There must be some concrete basis for the officer's suspicion related to the individual person concerned, which can be considered and evaluated by an objective third person. Mere suspicion, in contrast, is a hunch or instinct which cannot be explained or justified to an objective observer. Reasonable suspicion may arise from suspicious behaviour of the person concerned or those with him.** Reasonable suspicion cannot be supported on the basis simply of a higher than average chance that the person has committed or is committing an offence.”⁷ (My emphasis)

[13] With regard to the test on what may amount to reasonable suspicion albeit in the context of an arrest, Lord Diplock LJ elucidated in **Dallison v Caffery**⁸ that:

“Where a felony has been committed, a person, whether or not he is a police officer, acts reasonably in making an arrest without a warrant if the facts **which he himself knows or of which he has been credibly informed at the time of the arrest make it probable that the person arrested committed the felony**⁹.”

⁴ SLUHCV2017/0189 at paras. 48-49 per Phulgence J

⁵ Grenada Criminal Appeal No. 12 of 1993 at pages 3 to 4

⁶ John Frederick Archbold (43rd edn., Sweet & Maxwell 1988) page 1195

⁷ *Devon Calliste v The Queen* at pages 3-4

⁸ [1964] 2 All ER 610

⁹ *Ibid* at page 619

In that same paragraph Lord Diplock LJ continued:

“The test 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 which in fact was possessed by the defendant, would believe that there was reasonable and probable cause.**”¹⁰ (My emphasis)

[14] The defendants in the pleadings and evidence have tendered the following bases to ground their reasonable suspicion that Mr. Thomas had committed a crime:

- (1) The police received an increased number of reports of housebreaking within the South St. George policing district;
- (2) Mr. Thomas was walking alone late at night and carrying a bulky looking backpack on his back;
- (3) Mr. Thomas was a tall, well-built man and was wearing dark clothing;
- (4) When they approached him, Mr. Thomas turned towards the vehicle and quickly walked away;
- (5) Mr. Thomas was asked to stop but he refused to stop.

[15] The facts and evidence presented by the defendants do not, in my view, satisfy the threshold of reasonable suspicion or cause as explained by the courts in **Dallison** and **Devon Calliste**. I do not believe that the mere fact that Mr. Thomas was wearing dark clothing at night and carrying a bulky backpack or that he did not respond to the police’s questions while walking meet the standard of reasonable suspicion. It must always be borne in mind that reasonable suspicion has to be more than a mere hunch. It must be based on some concrete facts. It can also be based on suspicious behaviour but the behaviour must be such that any objective bystander would conclude that in all likelihood an offence has been committed or is being committed.

[16] In this case, the police were justifiably concerned with the escalation in crime in the area. However, a little more was necessary to form the requisite reasonable suspicion in this case. In this regard, I can see nothing suspicious

¹⁰ Ibid

about a person walking late at night with dark clothing or with a seemingly bulky bag or refusing to answer the questions posed by the police. Instructively, the police, who were not in uniform, posed their queries to Mr. Thomas before they had identified themselves to him as police. It would not be unreasonable of anyone to refuse to answer questions posed to them by persons in plain clothes who were not identified as police officers. I would add that even if they did identify themselves before asking the questions, there was nothing objectively suspicious about a person refusing to answer those questions. It is well known that the Sugar Mill area is quite busy at all hours of the day and at night. Many persons reside in that area or in the very nearby neighbourhood of the Grand Anse valley. It would not be farfetched to find persons going to and from their places of employment to their homes or to and from places of entertainment at that time of the night. I find that that the police would need a more concrete basis to conclude or reasonably suspect that a person had committed an offence as they have asserted.

[17] I would think that without delineating all the possible scenarios, reasonable suspicion may arise, if for instance, Mr. Thomas was concealing his identity or was seen entering or attempting to enter a residence or property or otherwise acting in a clandestine manner. The circumstances in this case do not suggest to me that Corporal James had reasonable grounds to suspect that Mr. Thomas had committed a crime or was committing a crime. Accordingly, I find and so rule that the stop and search of Mr. Thomas by Corporal James and the other police officers was unwarranted and was accordingly unlawful.

Redress for the illegal stop and search

[18] Counsel for Mr. Thomas referred the court to the case of **James Bristol v Attorney General of Grenada and Commissioner of Police**¹¹, where Pemberton J awarded \$7,500.00 inclusive of aggravated damages to the claimant, James Bristol, who was unlawfully searched by police officers at a traffic stop. The court in **Matthew McMillan v Alonzo Carty and The**

¹¹GDAHCV2002/0507

Attorney General of Saint Kitts and Nevis¹², awarded a claimant the sum of \$13,000.00 for the unlawful search and seizure of his property including luggage, mobile phone and a laptop. The facts reveal that Mr. Thomas' property was not seized. More significantly, the restraint and search lasted no more than 5 minutes. I find the sum of \$7,000.00 is an appropriate and fair award of damages for Mr. Thomas' wrongful arrest and unlawful search of his person and property in the circumstances.

Redress for assault and battery

[19] It is uncontroverted that some restraint and force was utilised by the police to detain and search Mr. Thomas and his property. However, there is no evidence that Mr. Thomas sustained any physical injuries as a consequence of the scuffle between him and the police during the search of his person. He has not pleaded and stated a case that they inflicted such injuries on him. With regard to the law on assault and battery or trespass to the person when detaining a person on suspicion of committing an offence, Lord Diplock LJ in **Dallison v Caffery**¹³ opined:

"Since arrest involves trespass to the person and any trespass to the person is prima facie tortious, the onus lies on the arrestor to justify the trespass by establishing reasonable and probable cause for the arrest. The trespass by the arrestor continues so long as he retains custody of the arrested person, and he must justify the continuance of his custody by showing that it was reasonable."¹⁴ (My emphasis)

[20] In essence, any trespass to the person that is not grounded on reasonable suspicion is actionable. It is well-established principle that trespass to the person is actionable per se, even without proof of damage.¹⁵ In **Danny Severin v The Attorney General**¹⁶, Belle J stated:

"Since there could have been no true basis for arrest, the purported arrest was unlawful, and damages flowing directly

¹²SKBHCV2017/0380

¹³ [1964] 2 All ER 610

¹⁴ Ibid at page 619

¹⁵ *Royal George v The Attorney General of Commonwealth of Dominica* DOMHCV2014/0021 at para.9 and See also Halsbury's Laws of England, Damages (Volume 29 (2019)), 4. Measures of Damages, (2) Nominal Damages, 319. Nominal damages.

¹⁶ SLUHCV2008/0973

from the unlawful act are recoverable since trespass is actionable per se. See: Clerk & Lindsell on Torts 20th Edition, Michael A. Jones, London, Sweet & Maxwell 2010 at page 988. In this regard it would be impossible to extrapolate from the facts that the injuries suffered by the Claimant were caused by anything other than the assault of the police officers.”¹⁷ (My emphasis)

[21] Having found earlier, that the police had no reasonable ground to suspect Mr. Thomas of committing any crime, Mr. Thomas is entitled to relief, even though he has not specifically pleaded or proved any special damages. In **The Attorney General of Grenada v Muhammed Ehsan**¹⁸, Blenman JA, in delivering the unanimous judgment of the Court of Appeal stated:-

“It is well-established that the judge, in seeking to award compensation, must pay particular regard to the evidence that was adduced. Where the evidence is scant or non-existent to support an award of compensation or damages, the judge is usually able to make a nominal award so as to vindicate the person’s rights.”¹⁹

[22] I am of the view that in the absence of any evidence that Mr. Thomas suffered any injuries or losses, he is entitled to nominal damages for assault and battery in the sum of \$3,000.00.

Redress for breaches of constitutional rights

[23] The Constitution of Grenada provides protection against a deprivation of one’s personal liberty under section 3 (1) and arbitrary search under section 7(1). The said sections provide:

Section 3 (1) e

“No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say:-

...

e. upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Grenada;”

And section 7 (1)

(1) “Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

¹⁷ Ibid at para.52

¹⁸ GDAHCVAP2019/0020

¹⁹ Ibid at para. 122

- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provisions **that is reasonably required in the interests of defence, public safety, public order, public morality**, public health, town and country planning, the development and utilisation of mineral resources or the development or utilisation of any property for a purpose beneficial to the community.” (My emphasis)

[24] Given the finding that the police did not have reasonable grounds to suspect Mr. Thomas of committing or being about to commit any crime, the stop and search of his person and property were violations of his constitutional rights not to be subject to arbitrary search and not to be deprived of his personal liberty. These breaches of his rights must be vindicated.

[25] In respect of relief for breaches of constitutional rights, Lord Hope of Craighead in **Angela Inniss v Attorney General of Saint Christopher and Nevis**²⁰ stated:

“The function that the granting of relief is intended to serve is to vindicate the constitutional right. **In some cases a declaration on its own may achieve all that is needed to vindicate the right. This is likely to be so where the contravention has not yet had any significant effect on the party who seeks relief.**”²¹ (My emphasis)

[26] I accept that the detention and search of Mr. Thomas and his property only lasted for a few minutes. The defendants in their evidence state that Mr. Thomas’ backpack was searched and then immediately returned to him, since only clothing was found in it. The search, while illegal, lasted no more than five minutes. I have stated above that Mr. Thomas was not “roughed” or seriously injured. I am satisfied that a declaratory order to vindicate those breaches is appropriate in the circumstances and will suffice. This declaration does not in any way diminish the fact that Mr. Thomas’ detention or arrest and police’s search of his person were clear breaches of his constitutional rights not to be subject to arbitrary search and not to be deprived of his personal liberty.

Aggravated and Exemplary damages

²⁰[2008] UKPC 42

²¹Ibid at para. 21

[27] Mr. Thomas asks the court to award relief by way of aggravated damages and exemplary damages. Exemplary damages are generally awarded in cases where the public or statutory bodies conduct their functions in a manner that is found to be arbitrary, outrageous or unconstitutional²². Aggravated damages are usually awarded when the defendant's motive or conduct has aggravated the claimant's injury to his feelings of pride or dignity²³.

[28] There is no evidence that the actions of the police in this manner were motivated by malice or bad faith. While I am of the view that the actions of the police were misguided and consequently unlawful, I do not see any evidence of malice or oppressive conduct or highhandedness towards Mr. Thomas. In any event, Mr. Thomas has failed to lead such evidence. Therefore, I am not satisfied that it is appropriate to make an award of aggravating and/or exemplary damages. Accordingly, Mr. Thomas' prayers for exemplary and/or aggravated damages are refused.

Conclusion

[29] For all these reasons, Mr. Thomas' claim as amended and filed on 4th February 2020 is granted. I order as follows:

- (1) The first defendant breached the claimant's constitutional rights not to be deprived of his personal liberty under section 3(1) of the Constitution and not to be subject to arbitrary search in accordance with section 7(1) of the Constitution.
- (2) The first defendant's stop and search of Mr. Thomas and his property was unlawful.
- (3) Mr. Thomas is awarded damages for wrongful arrest and unlawful search in the sum of \$7,000.00.
- (4) Mr. Thomas is awarded damages for assault and battery in the sum of \$3,000.00.
- (5) Mr. Thomas' prayers for exemplary and aggravated damages are refused.

²² *Rookes v Barnard* [1964] 1 All ER 367 at page 410

²³ *Halsbury's Laws of England: Damages* (Volume 29 (2019)) 4. Measures of Damages (4) Aggravated Damages 322. Aggravation by the defendant's conduct.

- (6) Mr. Thomas is awarded interest on the judgment sum at a rate of 6% per annum from the date of this judgment to the date of satisfaction.
- (7) Mr. Thomas is awarded costs on this claim in the sum of \$3,500.00.

Raulston L. A. Glasgow
High Court Judge

By the Court

Registrar