

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO: SLUHCv2018/0271

BETWEEN:

Danny Edwidge

Claimant

and

The Attorney General of Saint Lucia

Defendant

APPEARANCES: Mrs. Maureen John-Xavier for the claimant
Mrs. Karen Barnard for the defendant

2019: June 17
July 29

Judgment

[1] **ACTIE J. [Ag.]**:- In a claim form and statement of claim filed on July 10, 2018, the claimant seeks damages for assault and false imprisonment, exemplary and aggravated damages as a result of the actions of four police officers.

[2] It is the claimant's evidence that on 14th January 2018, he was detained by four police officers and taken to an isolated area off the main road in Black Bay, Laborie. He was beaten with a stick resulting in lesions on his forearm and a fractured thumb. The claimant also alleges that the police squeezed his neck. The policemen drove away leaving the claimant in excruciating pain at the isolated area. The claimant was taken to the emergency room at the St. Jude's Hospital.

A finger splint was placed on the injured finger and referred to the Orthopedic Clinic for further management.

- [3] The claimant reported the incident to the Police Complaint's Commission on the 15th January 2018, the following day after the incident.

Defendant's Evidence

- [4] Four officers gave evidence in support of the case for the Defendant. They were Officers Norbert, Timaitre, Xavier and SPC Raggie. It is the defendant's evidence that on 14th January 2018, a team of officers from the Drug Squad Unit in the Quarter of Castries were detailed on an island wide mobile patrol on board an unmarked police vehicle. The policemen were all dressed in civilian attire wearing blue vests with the word "Police" printed in white on the front and back of the vests.
- [5] The policemen proceeded along the west coast of the island, the police recovered small quantities of cannabis, knives and scissors from several persons who were all cautioned and released.
- [6] While driving to a beach area on the other side of Rudy Beach in Laborie, the Police Officers observed a group of approximately 12 to 20 persons playing cards, smoking and gambling near an old fisherman's locker room located close to the Laborie Police Station. There was a strong smell of burnt cannabis.
- [7] The police officers disembarked the vehicle, identified themselves and ordered everyone to place their hands where they could be seen. It was noted that the claimant was attempting to remove something from the right side of his pants pocket. The police officer ordered the claimant to place his hands where they could be seen but he refused. Officer Xavier said that he removed the claimant's hands from his pocket fearing that he had a weapon. The claimant opened his clenched hand revealing a quantity of cannabis.

- [8] Officer Xavier said he noticed that the claimant's eyes were red and suspected that he was under the influence of drink or drug. Officer Xavier directed the claimant to place his hands on the side of the vehicle in order to search him but the claimant refused. Officer Xavier said he held the claimant's hand and claimant said, "gasah I have a bad hand".
- [9] The officers said that the claimant was cautioned and informed of his arrest for the use and possession of the illegal substance. The claimant held onto the door of vehicle and refused to enter the police vehicle. Officers Timaitre and Xavier held the claimant by the back of his pants and pushed him into the back seat between Officer Xavier and SPC Reggie.
- [10] The police officers made a decision to take the claimant to the Vieux Fort Police Station instead of the nearest police station at Laborie. While on their way to Vieux Fort they noticed a four wheel ATV motorcycle with a young male individual and a toddler turning off the main road onto a dirt road. The officers pursued the ATV motor cycle and drove for about ten (10) minutes on the dirt road but lost sight of the ATV. The driver, Officer Norbert, said he eventually brought the vehicle to a halt to allow SPC Reggie to urinate. It was at this point that the officers decided to exercise their discretion to give the claimant a chance and released him.

Issues

- [11] The issues arising on the facts and submissions filed are two-fold, namely;
- (1) Whether the claimant was assaulted and the injury sustained resulted from an unlawful action of the police officers?
 - (2) Whether the Claimant was falsely imprisoned by the police officers?

Assault

- [12] **Section 115 of the Criminal Code** defines an assault as:
- "A person who intentionally or recklessly applies force to, or causes any impact on, the body of another person without that person's consent or

where the act is likely to cause injury to another person, with or without that other person's consent.'

- [13] The claimant's evidence is that the police officers forcibly took him into the vehicle and drove past the Laborie Police Station. The policemen told him that they were taking him home but instead drove him to a secluded location. The claimant said one of the officers said they were taking him to the isolated area "so that no one can hear him scream".
- [14] It is the claimant's evidence that while in the van, one of the police officers squeezed his neck. The policemen stopped the vehicle in an isolated area, disembarked, broke a stick and started beating him. The claimant said that he parried the blows with his right arm causing him to sustain lesions on the arm and a broken thumb.
- [15] The claimant's sole witness states that he was cutting grass in the same remote area when he observed the officers beating an individual. It was only later that he discovered it was his best friend, Danny, who was beaten, upon news that the claimant had gone to the hospital.
- [16] The officers vehemently deny the claimant's version of facts. The officers said they made a decision to take the claimant to Vieux Police Station instead of the nearest Laborie Police Station because of the unruly behavior of the persons on the beach when the claimant was arrested.
- [17] In cross examination, PC Norbert said it is standard protocol that an accused who is arrested is taken to the nearest police station. However, the police have a residual discretion to take the accused to the next suitable place which is the next nearest station in certain circumstances.
- [18] The police officers want this court to believe that on the way to Vieux Fort they gave chase to an ATV off the main road and then decided to release the claimant.

[19] Having heard the evidence and observing the witnesses, I am more inclined to accept the claimant's version of facts. It is inconceivable that the policemen, with an accused seated in the back seat of the vehicle would give high speed chase after an ATV Cycle on rugged terrain for approximately ten (10) minutes. An ATV that mysteriously disappeared. However, the police continued to give chase and eventually stopped and turned back to the highway. The police officer in cross examination states that the police siren was not turned on. It was only then that they saw the ATV back on the highway and cautioned the driver.

[20] The evidence is uncontroverted that the policemen drove to an isolated location with the claimant and then released him. The claimant's sole witness states, both in cross examination and witness statement, that he observed the police officers beating an individual. Officer Xavier confirmed in cross examination and in witness statement and supports the witness' evidence when he said that he noticed movements in the bush which suggest that someone was watching. The claimant went to the Emergency Room at St. Jude's Hospital on the same evening of the beating. The injuries in the medical report were consistent with the claimant's version of the abuse. The claimant went further and reported the same incident to the Police Complainant's Commission on the following day. Taking all the evidence in the round, I am of the view that the claimant has, on a balance of probability, proved that he was unlawfully assaulted by the police officers.

False Imprisonment

[21] **Halsbury Laws of England**¹ defines false imprisonment as a "total restraint of the liberty of the person for however short a time by the use or threat of force or by confinement. The police have general powers of arrest and to restrain an individual in the lawful execution of their duties. The issue to be determined is whether the claimant was lawfully arrested?

¹ Vol 97 (2015) para 543.

- [22] The officers all stated that on the day in question they made a unilateral decision not to make any arrest but to caution and release persons found with cannabis. However, the officers said that the claimant was cautioned and arrested. Officer Norbert was asked why the claimant was singled out to be arrested. He responded "I don't know."
- [23] In cross examination, counsel for the claimant questioned the officers about the contents of the operations register. The policemen all agreed that the operations register provides an accurate reflection of what transpired at the end of each patrol day.
- [24] The operations register was exhibited. The officers all admitted that the register was devoid of any note of the claimant's arrest on that date. The register only mentioned that the claimant was cautioned.
- [25] The onus lies on the defendant to show that there was reasonable and probable cause to arrest the claimant. In **Dallison v Caffery**, Diplock LJ said "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".²
- [26] In my view, the defendant has not discharged the burden. From the response of the police officers, it may be said they had the evidence, that the claimant was in possession of a quantity of cannabis and disregarded the police orders when asked to put his hands up. However, there was not any evidence that the claimant was arrested.
- [27] The evidence is pellucid that claimant's liberty was restricted when he was placed in the back seat of the police vehicle between Officer Xavier and SPC Reggie, who were both armed. Complete deprivation of liberty for any time however short

² [1965] 1 QBD 348 at page 370.

without lawful excuse constitutes a false imprisonment. I find the defendants liable for False Imprisonment as the claimant's detention was unreasonable in all the circumstances

Damages

- [28] **Special Damages:** - The claimant pleaded and provided evidence to prove special damages for medical expenses in the sum of \$315.00 and is accordingly allowed.
- [29] **Transportation Expenses:** - The claimant seeks the sum of \$280.00 for travelling expenses from Laborie to Vieux Fort. The defendant suggests an award of \$32.00 as it is the evidence that the claimant was seen at the hospital on four (4) occasions. The claimant did not produce receipts to prove the sum claimed. I award a nominal sum of \$100.00.
- [30] **Loss of income:** - The claimant avers that he was unable to work for one month and claim wages in the sum of \$600.00. He produced a letter from his employer that did not indicate the length of time out of work neither did he produce a medical certificate. The amount claimed in the absence of supporting evidence is refused.
- [31] **General damages for false imprisonment and assault:** - Damages for false imprisonment and assault are non-pecuniary in nature. They are awarded to compensate for injuries to feelings i.e. indignity, mental suffering, disgrace and humiliation and loss of social status.
- [32] The claimant was 19 years at the time of the incident and admitted to have been in the company of persons who were drinking alcohol and smoking cannabis. He was detained for a short period and then released. I am of the view that an award of \$10,000.00 with \$7000.00 for assault and \$3000.00 will provide adequate compensation to the claimant for being falsely imprisoned

- [33] **Aggravated and exemplary damages:** - Exemplary/aggravated damages are not punitive in nature. The purpose of Exemplary Damages is to deter conduct which could be classified as being “oppressive, arbitrary or unconstitutional”.
- [34] Aggravated and exemplary damages are awarded in the well settled categories as laid down by Lord Delvin in **Rookes v Barnard**.³ Those categories are (a) where Government officials act in an oppressive manner; (b) where a defendant’s conduct is calculated to make a profit from his wrong and (c) where a statute expressly provides.
- [35] This claim falls to be determined under the first limb of the **Rookes v Barnard** principles. The claimant suggests a sum of \$10,000.00 and relies on the case in **Malcolm Payne v Chief Magistrate**.⁴ In **Malcolm Payne**, the claimant was arrested by the police with gun drawn while he was waiting for his vehicle tire to be repaired at a tire shop. He was placed in a cell with other prisoners for 6 hours. On the way to the station the police paraded the claimant along Market Street in the police vehicle and stopped twice to cause humiliation. The issue at bar is not as outrageous as **Malcolm Payne**.
- [36] I find that the police officers’ conduct in beating the claimant and releasing him in a remote area was oppressive, arbitrary or unconstitutional. An award of \$5000.00 is granted for exemplary/aggravated damages.

Order

- [37] In summary and for the forgoing reasons, the defendant shall pay the claimant the following sums:
- (1) Special Damages in the sum of \$415.00 with interest at the rate of 3% from the date of the incident to date of judgment and at the rate of 6% for judgment until payment in full.

³ [1964] AC 1129.

⁴ ANUHCV2001/0261.

- (2) Damages for assault and false imprisonment in the sum of \$10,000.00 with interest at the rate of 6% from judgment until payment in full.
- (3) Exemplary Damages in the sum of \$5000.00.
- (4) Prescribed costs pursuant to CPR 65.5.

Agnes Actie
High Court Judge [Ag.]

By the Court

Registrar