

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCv2013/0274

BETWEEN:

FITZMORGAN GREENAWAY

Claimant

AND

THE COMMISSIONER OF POLICE

1st Defendant

THE ATTORNEY GENERAL OF

ANTIGUA AND BARBUDA

2nd Defendant

Appearances:

Sir Clare Robert QC and Ms. S. Roberts for the Claimant

Ms. Bridget Nelson for the Defendants

2014: October 13

October 27

2015: February 13

JUDGEMENT

- [1] **Cottle, J.:** On the afternoon of 5th November, 2012 the claimant telephoned the Liberta Police Station. He reported that he had killed several goats which had trespassed on his farm. The police came to the scene. They took photographs. Nine goats were dead. 4 were injured. They

had all been struck about the body by claimant using a sturdy steel implement. So severe were the injuries suffered by the animals that even the horns of some goats were broken by the impact of the blows.

- [2] The officers left the farm. They later telephoned the claimant and asked him to come to the police station. The police informed the claimant that they proposed to arrest him. He protested that he had perishable produce in his vehicle. The officers allowed him to return home with his vehicle and produce before they effected the arrest and took him to the St. John's Police Station. He was released some 24 hours later. No charges were then laid.
- [3] 3 days later the claimant was asked to return to the Liberta Police Station. He was arrested without a warrant. He was charged with three counts of using violence on the goats. He pleaded not guilty to the summary charges but was convicted before the Magistrates Court and fined.
- [4] The claimant brought the present claim against the defendants for damages for false imprisonment over his detention by the police on 5th November, 2012 and 9th November, 2012 when he was detained for some 4 hours before being released on bail by the police. The claimant also complains that the condition of the cell in which he was kept amounted to inhumane or degrading treatment.
- [5] Counsel for the claimant advanced the position that the issues which fall for determination are as follows:-
- "The following issues are to be considered:
- a. Whether the Claimant was unlawfully arrested.
 - b. Whether the Claimant was unlawfully detained for the period of 24 hours following his arrest on Monday November 5, 2012 and for a further period of 4 hours and 15 minutes following his arrest on Friday November 9, 2012.
 - c. Whether the Claimant was falsely imprisoned.
 - d. Whether the Claimant was subject to inhumane or degrading treatment while imprisoned.

- e. Whether the Defendants are liable for the damages of the Claimant's farm and business
- f. What quantum of damage should the Claimant recover?"

[6] Were the arrests lawful?

[7] Section 22 of the Police Act authorizes the police to arrest without warrant any person who he suspects upon reasonable grounds of having committed a felony. Section 5(1) of the constitution of Antigua and Barbuda provides

"No person shall be deprived of his personal liberty **save as may be authorized by law** in any of the following cases, that is to say- [emphasis added]

(f) upon reasonable suspicion of his having committed or of being about to commit a criminal offence under any law;"

[8] Counsel for the claimant cited the case of Castorina v Chief Constable of Surrey [1988] NLJR 180 in which Lord Justice Woolf sets out a useful checklist to permit assessment of the lawfulness of and arrest.

"1. Did the arresting officer suspect that the person who was arrested was guilty of the offence? The answer to this question depends entirely on the findings of fact as to the officer's state of mind.

2. Assuming the officer had the necessary suspicion, was there reasonable cause for that suspicion? This is a purely objective requirement to be determined by the judge if necessary on facts found by a jury.

3. If the answer to the two previous questions is in the affirmative, then the officer has a discretion which entitles him to make an arrest and in relation to that discretion [sic] has been exercised in accordance with the principles laid down by the Lord Greene MR in Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223, [1947] 2 All ER 680."

[9] Cpl Michael testified that he was the arresting officer. He says he arrested the claimant on suspicion that he had committed the offence of cruelty to animals. Section 32 of the Malicious Damage Act cap 258 of the Laws of Antigua and Barbuda provides

"32. Whosoever shall unlawfully and maliciously kill, maim, or wound any cattle, shall be guilty of felony, and shall be liable to be imprisoned for any term not exceeding five years, with or without hard labour."

[10] When cross examined, Cpl Michael said that Section 32 makes it an offence to kill, maim or wound any cattle. He omitted the words "unlawfully and maliciously". Counsel for the claimant argues that when this omission is coupled with the fact that the claimant was ultimately charged for violence to the goats under the Small Charges Act is indicative of the state of mind of the officer. He did not then suspect that the claimant had committed a felony.

[11] I cannot agree that the fact that the suspensor of the arresting officer later decide to proceed summarily against the claimant offers any evidence as to the state of mind of the arresting officer at the time of the arrest. Nor can the omission of the mens rea as an essential element of criminal responsibility in his testimony amount to a conclusion that the officer did not suspect the claimant of having committed a felony. I accept the evidence of the arresting officer on this point.

[12] Counsel goes on to argue that even if Cpl Michael had such a suspicion, there were no objective grounds for such a suspicion. The evidence at the trial revealed that there was a large herd of goats trespassing on the claimant's farm. Section 23 of the Cattle Trespass Act Cap 77 of the Laws of Antigua and Barbuda permits a landowner to shoot any cattle found trespassing on his land. If the claimant could kill the offending animals by shooting them, counsel argues, "the technicality of the implement used to kill the goats that were trespassing on the claimant's farm could not amount to a felony" with respect to counsel, this argument is flawed. The point is that the proprietor is permitted to kill trespassing cattle in a humane way that minimizes suffering. Battering them to death with a blunt metal pole is of an entirely different order of cruelty. It is this type of action that the legislature has prohibited. I find that there were objective grounds for the suspicion of the arresting officer.

[13] Counsel for the claimant further submits that even if these two criteria are satisfied, there remains in the arresting officer a discretion whether to arrest. This discretion has to be reasonably exercised. He cites the dicta in Hayes v Chief Constable of Merseyside Police 2011 EWCA GV 911 at para 13

“It was well recognized, however, that even if this double condition was met, not every case justified an arrest. The constable had a discretion which he had to exercise. If he exercised it in a manner which was *Wednesbury* unreasonable, the arrest would be unlawful.”

[14] In the present case the claimant was co-operative with the police. He was the one who called them in. He attended at the station when required. He was not a flight risk. He was also a local pastor, farmer and businessman with clear ties to the community.

[15] The arresting officer testified that he knew the claimant well. There was thus no need to arrest him as there was no suggestion that the claimant would or even could in anyway hamper any police investigation.

[16] For this court to agree with this submission by counsel for the claimant, it would have to conclude that no reasonable officer, applying his mind to the applicable principles would have decided to arrest the claimant. I do not arrive at that position. I find that the decision to arrest falls within the perimeters where reasonable arresting officers may reasonably arrive at different positions as to the need to arrest the claimant.

[17] The claimant complains that he was not told of the reason of his arrest. Under Section 5(2) of the Constitution of Antigua and Barbuda holds

“Any person who is arrested or detained shall be informed orally and in writing as soon as reasonably practicable, in language that he understands, of the reason of his arrest or detention.”

- [18] It was not until November 9th, 2012 that the claimant was given a written copy of the charges against him. The claimant in his evidence said that Cpl Michael did not tell him the reason for his arrest. Cpl Michael says he did inform the claimant orally of the reason for his arrest. Cpl Williams said that he did not tell the claimant why he was being arrested. He did not hear Cpl Michael do so. I prefer to accept the testimony of Cpl Michael at this point. In any event it would have been clear to the claimant why he was being arrested. He was the person who reported to the police that he had committed an offence. The fact that he did not believe his conduct to have been criminal is neither here nor there. There can be no complaint in the circumstances that he was not aware of the reason for his arrest.
- [19] Counsel submits as well that whatever the position of the oral notification, the constitution requires the claimant to be notified in writing as well. There was no notice in writing concerning the first arrest on 5th November, 2012. The writing of the charges on 9th November, 2012 could not be as soon as reasonably practicable after the arrest.
- [20] In my view the matter must be looked at as a whole. There may well be cases where an arrested person may be liable to a wide array of potential charges. The police may well wish to seek guidance from the DPP as to which charges will eventually be laid. Here the claimant was actually released while the police decided on the eventual charges he would face. In all the circumstances I do not find this ground of complaint justified. The position of the written charges on 9th November, 2012 suffices as reasonably prompt notification in writing.
- [21] The claimant was detained for 24 hours on 5th November, 2012 and for some 4 hours on 9th November, 2012. Counsel says that in the circumstances of this case as outlined earlier, this period of detention was excessive. In his pleadings the claimant did not aver that the length of his detention rendered his detention unlawful. Consequently this was not responded to by the defendants in the pleaded defence. It was in his closing submissions that counsel for the claimant sought to argue that the period of detention was excessive.
- [22] It would not be just to permit the claimant to argue a point that was not raised on the pleadings at this late stage.

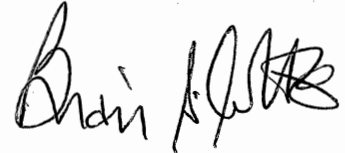
Inhumane or degrading treatment

- [23] In his statement of claim, the claimant avers that the cell in which he was detained was wet, dark and water ridden with a strong odor of urine and faeces. The claimant said that he had to sit or stand all night. Counsel cited dicta from R. v Deputy Governor of Parkhurst Prison Ex p Hague per Lord Bridge

“The logical solution to the problem, I believe, is that if the conditions of an otherwise lawful detention are truly intolerable, the law ought to be capable of providing a remedy directly related to those conditions without characterising the fact of the detention itself as unlawful. I see no real difficulty in saying that the law can provide such a remedy. Whenever one person is lawfully in the custodian of another, the custodian owes a duty of care to the detainee. If the custodian negligently allows, or a fortiori, if he deliberately causes, the detainee to suffer in any way in his health he will be in breach of that duty. But short of anything that could properly be described as a physical injury or an impairment of health, if a person lawfully detained is kept in conditions which cause him for the time being physical pain or a degree of discomfort which can properly be described as intolerable, I believe that could and should be treated as a breach of the custodian's duty of care for which the law should award damages.”

- [24] The police officers who gave evidence as to the condition of the cells did not agree with his characterization of the conditions of the cell. The claimant's evidence on this point did not satisfy me on a balance of probability. I do not find that the conditions of incarceration in the main police station in the capital of the city St. Johns in the 21st century can be so lightly described as intolerable to the extent of warranting an award of damages for citizens detained therein.
- [25] The claimant also seeks to be compensated for damages to his farm and business. He says his absence for 24 hours caused him to lose crops and business. I have already determined that the claimant's detention was not unlawful. There is no reason advanced why the claimant's workers and family could not have carried on in his absence. Even if the defendants had been liable it would have remained the claimant's duty to mitigate his losses.

[26] I conclude that the claimant has failed to prove his case and I dismiss the claim accordingly. It has become the norm in claims against the state with elements of constitutional relief to make no order as costs against an unsuccessful claimant. I make no order as to costs.

A handwritten signature in black ink, appearing to read 'Brian Cottle', with a stylized flourish at the end.

Brian Cottle

High Court Judge