

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

**GRENADA**

**CLAIM NO. GDAHCV2006/0160**

**BETWEEN:**

**ALBERTHA STEPHEN**

CLAIMANT

and

1. **THE ATTORNEY GENERAL OF GRENADA**
2. **MARCIA TOUSSAINT**

DEFENDANTS

**Appearances:**

Mr. Ruggles Ferguson and Ms. Anyika Johnson for the Claimant  
Mr. A. Olowu for the Defendants

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**2009: May 18**  
**November 4**  
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**JUDGMENT**

- [1] **MICHEL, J:** By Claim Form and Statement of Claim filed by the Claimant on 3<sup>rd</sup> April 2006 the Claimant, Albertha Stephen, claimed against the Defendants, the Attorney General of Grenada (pursuant to the Crown Proceedings Act) and Marcia Toussaint, general damages for assault and battery, special damages for damage to property, interest and costs.

- [2] On 28<sup>th</sup> April 2006 the Attorney General's Chambers filed an Acknowledgement of Service and on 6<sup>th</sup> June 2006 they filed a Defence on behalf of the Defendants.
- [3] Directions for trial of the matter were given by Master Brian Cottle (as he then was) on 5<sup>th</sup> July 2006 and a trial window was fixed for January 2007. The matter was not however heard until 18<sup>th</sup> May 2009.
- [4] At the trial, Mrs. Albertha Stephen gave evidence on her own behalf and called no witnesses. The Defendant, Marcia Toussaint, a police officer, gave evidence on her own behalf and the defence called two other police officers as witnesses, Corporal Marvin Regis and Inspector Clevroy Antoine.
- [5] The Claimant's evidence was that on 2<sup>nd</sup> September 2005 she went to the Carenage Traffic Department where she saw the Second Named Defendant standing in a doorway talking to someone. When the Second Named Defendant was finished speaking to the person she turned and came towards the Claimant. The Claimant spoke to the Second Named Defendant who then said to the Claimant "woman I am going to arrest you today, I am going to put my handcuff on you today." Upon the Claimant inquiring with the Second Named Defendant "why are you going to arrest me, what is it I have done," the Second Named Defendant walked up to the Claimant and punched her on her face, pitching the Claimant's glasses in the process, and then kept punching the Claimant on her face, her forehead, her shoulders, her chest and all over her body. The Claimant kept on bawling "murder help, murder help," while the Second Named Defendant kept pulling and tugging the Claimant and kept punching her. Other police officers then joined the assault upon the Claimant. As a result of the assault upon her, the Claimant's pelvis has been affected, she has to wear a cane and a plaster on her back and, up to nearly fifteen months afterwards, she is still experiencing a lot of pain and has to take pain killers almost every day. Both her glasses and her watch were broken in the course of the assault and had to be replaced.

- [6] The Claimant produced no witnesses, no broken glasses or watch nor any other person or thing to corroborate her evidence other than a medical report which indicates that the Claimant had complained to a doctor that she was punched in the face earlier that day. The only medical finding by the doctor, apart from what the Claimant herself reported, was a finding of haematoma of her right cheek. An x - ray done in the United States of America in December 2005 was largely insignificant in terms of any real connection to the evidence of the Claimant.
- [7] The Defendants' evidence came from three different witnesses. The evidence of the Second Named Defendant was that the Claimant came to the Traffic Department at the Carenage while the Second Named Defendant was standing in the doorway of the office of Sergeant Antoine (as he then was) engaged in conversation. As the Second Named Defendant turned towards the Claimant to address her, the Claimant started in an aggressive manner and in a loud tone of voice - while pointing her hand in the Second Named Defendant's face - to say that she did not want the Second Named Defendant to attend to her because they are enemies. The Claimant also left the public area and came behind the counter, at which stage the Second Named Defendant called out to Sergeant Antoine to let him know what was happening. The Second Named Defendant then asked the Claimant what she was doing there and told her to get out from behind the counter because she was not supposed to be there. The Second Named Defendant then received a blow to her face from the Claimant, who said "ah doh want you to attend to me." The Second Named Defendant asked the Claimant what she was doing, to which the Claimant replied: "you ain't here ah say ah doh want you to attend to me" and then struck another blow to the Second Named Defendant in an angry and aggressive manner. When the Second Named Defendant tried to arrest the Claimant, the Claimant fought with her and swung her handcuff after her, with the Second Named Defendant having to get out of the way to avoid being hit in her face with the handcuff. Both Sergeant Antoine and Corporal Regis had to assist the Second Named Defendant and Sergeant Antoine had to fight with the

Claimant to take the handcuff away from her. The Claimant was eventually taken to Central Police Station by the Second Named Claimant, with the assistance of Corporal Regis. Even on the way to Central Police Station the Claimant was still fighting. Throughout all this and despite receiving several punches from the Claimant, the Second Named Defendant never struck the Claimant, other than by touching her to confirm arrest and attempting unsuccessfully to place handcuffs on her hands.

[8] The evidence of Corporal Marvin Regis was that on 2<sup>nd</sup> September 2009 he was in the office of Sergeant Antoine at the Carenage Traffic Department when the Second Named Defendant came to the office to inform Sergeant Antoine that there was a lady in the charge room who did not want her (the Second Named Defendant) to deal with her complain. Sergeant Antoine then went to the charge room, while he (Corporal Regis) went to another room in the station. He then went to the charge room about two minutes afterwards and observed Sergeant Antoine holding the Claimant and heard the Second Named Defendant saying that she is going to arrest the Claimant for hitting her. He then saw the Second Named Defendant go into her handbag and take out a handcuff which she placed on the desk and the Claimant - who was pulling away from Sergeant Antoine and trying to get at the Second Named Defendant - take the handcuff from the desk and try to hit the Second Named Defendant with it. At the request of Sergeant Antoine he then took the Claimant over to the nearby Central Police Station and handed her over to the diarist there as a prisoner.

[9] The evidence of Inspector Clevroy Antoine was that on 2<sup>nd</sup> September 2005 he was in his office at the Carenage Traffic Department when the Second Named Defendant entered his office and complained about the Claimant not wanting her to attend to her. On entering the area from which the Second Named Defendant operated, he observed the Claimant standing next to the desk behind the counter exchanging words with the Second Named Defendant. He then saw the Claimant grab hold of the Second Named Defendant's shirt and threw some punches at her,

but he (Inspector Antoine) quickly restrained the Claimant by holding her hands. The Second Named Defendant then informed the Claimant of the offences committed by her and took out her handcuff, but the Claimant snatched the handcuff and lashed at the Second Named Defendant with it. He managed to block the Claimant's hand but it appeared that the Second Named Defendant might still have been struck with the handcuff because the Second Named Defendant was evidently bruised on her face. The Second Named Defendant eventually arrested the Claimant but, because of what had just transpired, he (Inspector Antoine) allowed Corporal Regis to carry the Claimant to Central Police Station. The Claimant and the Second Defendant were both givers and takers of blows to and from each other on that day.

[10] I find both versions of the events which transpired at the Carenage in St. Georges, Grenada on the morning of 2<sup>nd</sup> September 2005 between the Claimant and the Second Named Defendant to be incredulous. It is difficult to believe that the Claimant - a seventy year old lady - walked into a police station in the city in mid morning and requested to speak to a particular officer and, without more, a police officer started to punch her in the face and about her body, breaking her spectacles in the process, damaging her watch and causing such severe injury to her that she has remained in pain for over one year thereafter, and that while she bawled out for help none of the other persons in the station at the time came to her assistance and instead either or both a police sergeant at the time (now an inspector) and/or a police corporal joined in the assault upon her, following which the police corporal carried her to the Central Police Station to be detained and processed as a prisoner.

[11] It is equally difficult to believe that a seventy year old lady walked into a police station in the city and for no apparent reason proceeded to punch a police officer in the face, punch her again and, when the officer tried to arrest her, she grabbed the officer's handcuff and swung it at her with a view to striking her with the handcuff. Further, that when a senior police officer intervened, the old lady

proceeded to fight with him as well until she was restrained and controlled by the said senior officer.

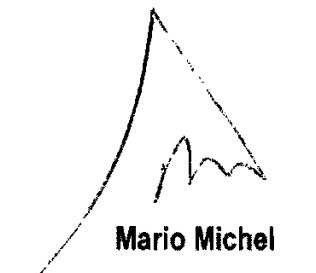
[12] I am not assisted in deciding who to believe by the demeanour in court of the witnesses – both the Claimant and the Defendant were defensive and defiant under cross examination, while the corporal and inspector's evidence was – in the language of the doctors – unremarkable, in terms of the expressiveness of their demeanours. There were inconsistencies in the evidence of the defence witnesses, for instance, as to whether or not the Second Named Defendant removed the handcuff from her handbag during the altercation with the Claimant, whether Corporal Regis was present or absent from the theatre of activity at the time when the handcuff was in play, whether or not the Second Named Defendant left the Traffic Department with the Claimant and Corporal Regis to go over to Central Police Station and whether blows were being exchanged by the two protagonists on that day. But all three defence witnesses testify to the Claimant being the aggressor on that day and needing to be restrained.

[13] In the end a decision in this case will come down to two things. One is that the evidence of the Claimant, incredulous as it already was, was not corroborated by anyone or anything. There was no evidence (say) from the person who came to meet her upon her release from Central Police Station or anyone who saw her immediately following her release to testify to her bruised and battered condition from the severe beating she claimed to have received at the police station. There was no broken glasses or damaged watch exhibited, especially considering that the Claimant said that both of these items had to be replaced, so that it isn't that they were repaired and not therefore available to be exhibited in their damaged condition. There was a single medical report from a doctor who saw the Claimant on the day of the incident and no evidence of follow up medical visits to corroborate the Claimant's evidence of continued pain and suffering over a year after the incident, and the findings of the doctor described in the medical report are at least as consistent with the Claimant being involved in a two-way physical

altercation or even just aggressively resisting arrest as they are with being beaten by another person, although they are hardly consistent with the Claimant being visited with the level of violence that she claimed was inflicted upon her on that day.

[14] The second decisive factor in the determination of this case is the issue of the burden of proof. The Defendants are not required to prove their case. It is the Claimant who must satisfy this Court on a balance of probabilities of the merits of her case. Having listened to the evidence of all the witnesses in this case, having observed their demeanours in Court and having perused the documents exhibited, I am not satisfied on a balance of probabilities that the Second Named Defendant assaulted and beat the Claimant and caused her pain and suffering and damaged her property as alleged by the Claimant.

[15] The Claimant's case is accordingly dismissed. The Court will, however, exercise the discretion accorded to it under Rule 64.6 of the Civil Procedure Rules 2000 to make no order as to costs.



**Mario Michel**  
High Court Judge