

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

DOMHCV 2010/0176

Between:-

**JUSTIN PEMBERTON**

Claimant

And

1. The Attorney General of the Commonwealth of Dominica
2. Inspector Mervin Pendenque
3. Police Constable Delbert Constance

Defendants

**Appearances:**

Mr Geoffrey L Letang for the Claimant

Miss Tameka Hyacinth and Miss Sherma Dalrymple for the Defendants

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2012: June 8 and July 13

2013: February 6  
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**JUDGMENT**

[1] **STEPHENSON J:** The Claimant filed a suit against Inspector Mervin Pendenque and Police Constable Delbert Constance claiming damages for assault, battery, false imprisonment and wrongful arrest, aggravated and/or exemplary damages, interest at the rate of 5% per annum from the date of the incident to the date of judgment, statutory interest of 5% annually from the date of judgment, compensation for damage to cell phone and wrongful seizure of one GPS and TV mobile phone, costs and such or other relief. The Attorney General is sued pursuant to the State Proceedings Act.

[2] The trial took place on the 8<sup>th</sup> day of June and the 13<sup>th</sup> day of July 2012 and closing written submissions were to be filed by the 31<sup>st</sup> August 2012. I now render my decision.

[3] The Claimant gave evidence and also relied on the evidence of Cornelia Coipel and Wayne Sanderson. The second and third named Defendants gave evidence on their own behalf and called no additional witnesses.

#### **Brief Background:**

[4] There is no dispute about the following:

- I. On the 22<sup>nd</sup> April 2010 the Claimant's fishing boat registered LYUJ7-051 and another boat was intercepted at sea in a joint exercise between the Commonwealth of Dominica Police Force Coast Guard Division and one of their foreign counterparts and the Claimant's boat was taken to the Coast Guard Base at Fond Cole for further investigation.
- II. On the morning of the 5<sup>th</sup> of May 2010 the Claimant uplifted his boat from the Coast Guard Base and returned there in the afternoon to complain that his GPS was malfunctioning. The Claimant said in his evidence in chief that he gave the GPS to Inspector Pendenque.
- III. That there was an incident between the Claimant and the Defendants on the afternoon of 5<sup>th</sup> May 2010 at or in the vicinity of the Coast Guard Base at Fond Cole.
- IV. That the Claimant on the 5<sup>th</sup> day of May 2010 was arrested at the Coast Guard Base in Fond Cole and that he was charged and taken before the Magistrate's Court, or that the Claimant did receive some injuries on the said day and was taken to the Princess Margaret Hospital where he was seen by Dr. Munro who issued a medical certificate of the Claimant's injuries.

[5] In the case at bar the Defendants contend that they did not assault the Claimant as alleged and that whatever injuries he may have suffered it was as a result of his resisting lawful arrest.

[6] The first issue to be resolved is what really happened immediately before the Claimant was arrested?

#### **The Evidence**

##### **The Claimant's version:**

[7] The Claimant said in his Witness Statement (which was treated as his evidence in chief), that on 5<sup>th</sup> day of May 2010 at around 2:30 in the afternoon, "*I was standing (emphasis mine) ... on the side of the Fond Cole Public Road adjacent to the entrance gate, east of the Coast Guard Base speaking to someone on my Blackberry phone and viewing the construction of a bridge by the Chinese when the 2<sup>nd</sup> Defendant in the presence of the 3<sup>rd</sup> Defendant and another police officer whose name I cannot recall demanded from me that I should disclose who I was speaking to on my cell phone. ...*"<sup>1</sup>.

[8] The Claimant went on to say, "*The 2<sup>nd</sup> Defendant, in full view of the public, motorist, pedestrians and passersby using the Fond Cole public road, began verbally abusing me and falsely accused me of speaking to someone on my cell phone who he the 2<sup>nd</sup> Defendant referred to as a "damn ass lawyer."*"<sup>2</sup> He further stated "*I then proceeded peacefully walking away from the entrance gate of the Coast Guard Base to the public road when the 2<sup>nd</sup> Defendant, the 3<sup>rd</sup> Defendant and another police officer whose name I cannot recall, pushed me on the fence, assaulted, punched, beat and forcibly escorted me inside the Coast Guard Base building*

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<sup>1</sup> Paragraph 3 of the Claimant's witness statement filed on the 16<sup>th</sup> December 2010

<sup>2</sup> Paragraph 4 ibid

*thereby imprisoning me. The 2nd and 3rd Defendant told me that they are going to beat me up inside the coast guard building because too many people outside would see ...*<sup>3</sup>

[9] The Claimant in his *viva voce* evidence differed from his witness statement when he commented on the Witness Statements of the second and third Defendants and again under cross examination the Claimant's version of what happened that day again differed from what he said in his Witness Statement.

[10] When commenting on the Witness Statement of the Second named Defendant the Claimant introduced new facts into the case as it regards to what happened outside the coast guard base. The Claimant introduced a conversation which purportedly occurred between him and the second named Defendant. It is to be noted that in his Witness Statement no mention was made of that conversation at all.

[11] When commenting on paragraphs 3,4,5 and 6 of the Second Defendant's witness statement<sup>4</sup> the Claimant had this to say

*"... I was outside of the Coast Guard Base. I was on the west side of the Coast Guard, of the road where the Chinese was building the bridge, of the road close to the Coast Guard Base. I was about 40 feet away from the main gate when the Inspector Mervin Pendenque was on the east side of me; he was watching a Chinese construction site, where the Chinese were pouring. It was appearing that he was viewing the construction site of the Chinese. When he saw me and he said to me "I know you will come back". Then he told me "why you standing on the other side Mr. Pemberton, then I crossed the road, then I told him that I have a slight problem officer. He said he asked me "what was the problem" and I told him that my GPS not working.*

*However, he told me, before that he told me "Oh Mr. Pemberton, are you ready to tell me who is the big guys you working for?" I told him which big guys. I told him that I am working for Amba Rolle and Phillip Rolle and or for myself when I am fishing.*

*Then after I told him that the GPS was not working how I left it. Then after he left me and he cut cross the road, he called one of the officers that was in the yard and he handed over the device over to the other officer.*

*When I went across to speak to the Inspector I was about 50 to 60 feet from the Coast Guard gate.*

*I handed the GPS and he crossed the road and handed the device to one of the officers. That officer was inside the Marine Base.*

*He stayed outside and handed the device to the officer. I was on the other side of the road at the same spot where he left me. That was about 20 feet (the width of the road the other officer left with the device then he called me that is the*

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<sup>3</sup> Paragraph 5 *ibid*

<sup>4</sup> Witness Statement of 2<sup>nd</sup> Defendant Inspector Mervyn Pendenque filed on the 25<sup>th</sup> March 2011.

*Inspector and he told me "Mr Pemberton are you scared of me?" and I left and went over to the Inspector. He asked me again "if I am scared of him..." I replied to him "no I am not scared of him" then he answered and he told me in a loud voice that "I should be scared of him".*

*I did not really take him on then he told me "... all you young fellows believe that all you could do whatever all you want then I did not take him on. He said "do you know I am an Inspector and I could do you whatever I feel like" I did not take him on.*

*Then the other police officer came back with the device telling him that the GPS was doing that because it had three hours of charge.*

*Then after that he took it over the fence once more then he handed it back to me.*

*Then I turned walking to the Northern side of Dominica which is facing Fond Cole down to my village and then my BB cell phone rang, then I picked it up I answered it then he told me who is calling me "oh your damn ass lawyer is calling you" (emphasis mine)*

[12] Again under Cross examination from Miss Hyacinth, Learned Counsel for the Defendants, the Claimant again said he was walking in a northerly direction when his phone rang. This is a far cry from standing on the side of the road speaking on the phone looking at the construction when the Second and Third Defendants and another Police Officer demanded who he was speaking to.

[13] The evidence of the two witnesses for the Claimant does not assist the Claimant's case in any material way. I find that they were not truthful witnesses and were witnesses of convenience.

[14] Essentially they both say that they were passersby on the day in question.

[15] Miss Cornelia Coipel said that she was a passenger on a bus that afternoon and that the bus stopped outside the Coast Guard Base to pick up the Claimant when she allegedly saw the Police Officers beating up the Claimant inside the base. She said that the bus stayed there for five minutes waiting for Justin and at the same time Justin was inside the Coast Guard Base being beaten by the police officers. In her cross examination she said "... I did not see the police beat him outside the gate...". She also said the road did not have any traffic and that she did not see any motorcycle at the time that the beating took place. Now any reasonable Caribbean person travelling on a minibus would know that it is unlikely that a passenger bus would stop for so long for someone especially in circumstances as stated and I do not accept her evidence as being the truth as to what happened that day.

[16] Mr Wayne Sanderson said he was on a bike passing the Coast Guard Base that day and stopped to look on at what was going on. Contrary to what Miss Coipel said he said the beating took place outside the Coast Guard Base. He also said that there was traffic on the road and that his bike is a "Street bike" he described as a 600 R6 and that the engine was on. He said he stopped to watch what was happening and that he did not see the

bus parked higher up ... which was the bus Miss Coipel said she was on that stopped for five minutes. This witness also said that he heard what the Claimant said. I find this to be hardly likely and I find it that he is not entirely a witness of truth and reject his evidence.

#### **The Defendants version:**

- [17] The Defendants' version of the event that led to the Claimant's arrest was quite different. Essentially the police officers said that on the afternoon in question the Claimant came to the Coast Guard Base with his GPS to complain that his GPS was not working. One of the police officers present took the GPS into the base to have it examined and said to Second named Defendant that the GPS was okay and that it was just that the GPS batteries were weak.
- [18] The GPS was handed back to the Claimant who turned to leave the Base and in doing so he was saying "*all you spoil my GPS*" that there was an exchange between the Second Named Defendant which culminated in the Claimant saying to him "*today is yours, but I must kill you*"
- [19] In his Witness Statement the Inspector said that "*he immediately opened the gate and held on to the Claimant and informed him that I was arresting him for threatening language*" ...Inspector Pendenque said that the Claimant then resisted and was pulling away in a violent manner and held on to the gates of the Base and that the Claimant failed to comply with instructions to let go of the gate.
- [20] Inspector Pendenque in his witness Statement said that the third named Defendant came to his assistance and that the Claimant continued to resist and put his GPS on the ground and violently resisted. They were joined by another police officer and eventually the Claimant was arrested and taken inside of the Marine Base.
- [21] Inspector Pendenque said that he and the Claimant were not on the outside of the Coast Guard Base, that there was no exchange between him and the Claimant outside of the Base and that it was when the Claimant was leaving the Base that he uttered a threat for which he was subsequently charged.
- [22] The Third named Defendant, Constable Constance, in his Witness Statement gave essentially the same version of the event as Inspector Pendenque. Under cross examination this witness essentially stuck to his story that that Claimant was arrested as he was about to leave the Coast Guard Base. Based on the questions asked of him by Learned Counsel for the Claimant Mr. Geoffrey Letang the Defendants gave more details as to how the arrest took place and how the officers handled the Claimant as he resisted the arrest.

#### **Discussion of the Evidence**

- [23] I do not believe the Claimant as to what happened before he was arrested by the Police Officers on the day in question. Neither do I accept his version of the arrest as an accurate precise and truthful version of what happened that day. I reiterate I do not accept the testimony of the witnesses called in support of his case as I find their evidence not to be truthful.

- [24] The witness sought to say first that he was standing looking at the construction and talking on the phone when he was approached by the second and third Defendants, which to my mind conveys that he was on the side of the road talking on his phone doing his own thing when the second and third named Defendants attacked him. This is quite different from what he said in his viva voce evidence that there was this exchange between he and the Inspector and that he was walking away when he was "attacked" for want of a better word from the police officers.
- [25] I find this discrepancy between what the witness said in his Witness Statement and what he said in his viva voce evidence in court and under cross examination to be a serious one. I am unable to reconcile what the Claimant said in his Witness Statement and what he said here in Court and I am of the view that this is so serious that I am doubtful as to the truth of the Claimant's version as to what happened outside the Coast Guard base and in fact as to what led to his arrest.
- [26] I was not impressed with all of the oral evidence of the Defendants in that I do not accept that the Claimant necessarily threatened to kill them. I do however believe taking all the circumstances into account that the Claimant was angry that his GPS was not working after it was returned to him by the Officers earlier that day and I do believe he did say something inappropriate however I do not believe that he threatened to kill the Second Defendant. It is clear to me that the Defendants sought to arrest the Claimant after whatever it is that he said and I do believe that the Claimant was inside of the Coast Guard Base as stated by the officers. I do not accept however that the Claimant made the exact threat as stated by the officers.
- [27] Having reviewed the evidence and having observed the witnesses being cross examined. This Court does not find the Claimant to be a truthful witness as he contradicted himself in a material way. Further this Court prefers the Defendants' version of the events than that of the Claimant and his witnesses.
- [28] The real matter for the Court to determine at this stage is whether or not the Claimant was wrongfully arrested.
- [29] The Claimant contends that on the day in question based on what happened outside the Coast Guard Base he was wrongfully arrested, that the Second and Third Defendants had no reason to arrest him and if they are relying on the fact that he used threatening language that that offence is not an arrestable offence and in the circumstances it was unreasonable for him to have been arrested and his subsequent incarceration brief as it was, was illegal. That the second and third Defendants' action on that day was unconstitutional, harsh and unreasonable entitling him to aggravated and exemplary damages.
- [30] The Defendants contend that the Claimant was arrested for threatening language and because of his behavior for resisting arrest. The Defendants say that they never beat or threatened the Claimant as alleged and they contend that he was lawfully arrested, charged and kept in custody. The Defendants contend that at all material times the Claimant was informed of his rights and they deny that they beat him or threatened him as alleged.
- [31] The Defendants also contend that on the said afternoon the Claimant was transported to Roseau Police Station and taken to the Magistrate's Court the following morning and formally charged and placed on bail by the Learned Magistrate.

[32] On behalf of the Defendants it was therefore contended that the Second and Third named Defendants did not assault and or batter the Claimant as claimed. That on the day in question the Claimant was angry as he believed that the two Defendant Police Officers had interfered with his GPS and that he made threats against the Second Defendant and that when they sought to properly arrest him, he violently resisted the said arrest. It is also contended by the Defendants that the Claimant has failed to make out his case on a balance of probabilities.

[33] Such being the facts I turn now to consider the issues canvassed in the case at bar.

**Submissions:**

[34] **The Claimant:** Learned Counsel for the Claimant Mr. Geoffrey Letang urged the Court to not accept the evidence of the Defendants as to how the Claimant was arrested. Counsel submitted that the Court ought not to accept the evidence of the Second and Third named Defendants on the ground that they were discrepancies in their evidence and that the explanations offered by the Defendants defied logic and common sense.

[35] I do not agree with Counsel in this regard, having rejected the Claimant's version as to how the arrest took place particularly that it happened on the outside. I find as a matter of fact that while the Claimant was going through the gate to exit the Coast Guard Base he made an utterance that caused the second named Defendant to "grab" (my word) onto him. It is in my view that whilst exiting the compound the Claimant made some utterances because he was upset, even though I do not necessarily accept that the Claimant threatened to kill the 2<sup>nd</sup> Defendant. I also find it hard to accept also that the Claimant gently placed his GPS as demonstrated in the Court. I am of the view the in an effort to fight off the officer he may have dropped the GPS onto the ground.

[36] There is no doubt that the Claimant was arrested on the day in question by the second and third named Defendants for using threatening language. It is my view that the issue now for determination here is whether the arrest was lawful.

[37] Learned Counsel for the Claimant submits that Section 12 of the **Criminal Law Procedure Act**<sup>5</sup> spells out what offences are arrestable. The section states:

- " 12. (1) *The powers of summary arrest conferred by the following subsection shall apply to felonies.*
- (2) *Any person may without arrest without warrant anyone who is, or who he with reasonable cause suspects to be, in the act of committing a felony or to be about to commit a felony.*
- (3) *Where a felony has been committed, any person may arrest without warrant anyone who is, or whom he with reasonable cause suspects to be guilty of an offence.*

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<sup>5</sup> Chapter 12:01 of the Laws of Dominica

- (4) *Where a constable, with reasonable cause, suspects that a felony has been committed, he may arrest without warrant anyone whom he with reasonable cause suspects to be guilty of the offence.*
- (5) *A constable may arrest without a warrant any person who is, or whom he with reasonable cause suspects to be about to commit a felony.*
- (6) *For the purpose of arresting a person under any power conferred by this section a constable may enter (if need be by force) and search any place where that person is or where the constable with reasonable cause suspects him to be.*
- (7) *This section shall not affect the operation of any enactment restricting the institution of proceedings for an offence, nor prejudice any power of arrest conferred by law apart from this section.*

[38] Mr. Letang relies on this provision to support his contention that the power of summary arrest (without a warrant) is only in relation felonies. He further contends that felonies has been defined in Section 3(2)<sup>6</sup> as follows:

*"...an offence for which the sentence is fixed by law or for which a person (not previously convicted) may under or by virtue of any enactment be sentenced to imprisonment for a term of five years, or an attempt to commit such offence; and the expression "misdemeanor" means any indictable offence"*

[39] Learned Counsel Letang further submitted that *"The offence of threat for which the Claimant has been arrested is not one which is fixed by law or one which attracts a 5 years term of imprisonment. Hence, it is submitted that this is not an arrestable offence within the meaning of section 12 which entitled the Second Defendant to execute the powers of summary arrest"*<sup>7</sup>

[40] Mr. Letang submitted that the *question that the Court is asked to consider is "...whether, the offence of threat in question, if made to the second Defendant, an arrestable offence and if not, why didn't the Second Defendant proceed by way of summons rather than by arrest? "*<sup>8</sup>. He made reference to Part 1 of the **Criminal Law and Procedure Act**<sup>9</sup> which is entitled "Arrest of Certain Offenders' in support of his submission that Sections 3-7 of the said act identifies what offences that are arrestable. Counsel further submitted that sections 46 and 36(2) which are the sections under which the Claimant was charged do not indicate in any material way that they are offences that are arrestable.

[41] Mr Letang further submitted that the offence of making a threat is not an arrestable offence and cited Halsbury in support of his submission that "the service of a summons rather than an arrest should be used to institute summary proceedings for a non-arrestable offence unless the person is unknown and will not be found, or the police officer has doubt whether the name and address of the person is correct ..."<sup>10</sup>

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<sup>6</sup> *ibid*

<sup>7</sup> Page 19 Paragraph 55 of the Claimant's Closing submissions filed on the 1<sup>st</sup> August 2012.

<sup>8</sup> Page 20 Paragraph 58 of the Claimant's closing submissions filed on the 1<sup>st</sup> August 2012.

<sup>9</sup> Chapter 12:01 of the Laws of Dominica

<sup>10</sup> 4<sup>th</sup> Edition Volume 11 (1) at paragraph 707 of page 707

[42] **Defence:** Learned Counsel for the Defence Miss Hyacinth contends that the arrest of the Claimant was lawful and that in order to determine whether an arrest is lawful the question is whether there was reasonable cause for the arrest of the Claimant<sup>11</sup>.

[43] The Defendants' contention is that both the Second and Third named Defendants heard the Claimant utter what I have construed to be threatening words and in the circumstances they had reasonable cause to arrest the Claimant pursuant to the provisions of Section 46 of the **Small Charges Act**.<sup>12</sup> Learned Counsel for the Defendant further contends that when the Claimant resisted that gave the two Defendants even more reason to arrest him.

[44] Miss Hyacinth also submitted that a police officer has the power to arrest without a warrant and that this power is derived from Section 8(1) of the **Criminal Law and Procedure Act** <sup>13</sup> which states:

*"Any person, found committing an offence punishable either under indictment or upon summary conviction, may be immediately apprehended by any constable of peace officer, without a warrant, or ... and shall be forthwith taken before a Magistrate to be dealt with according to law"*

[45] Learned Counsel made reference to **R-v-Jones**<sup>14</sup> which held that the statutory power of arrest conferred is one which is generally contemporaneous or in fresh pursuit. Learned Counsel Miss Hyacinth submitted that the arrest in the case at bar was contemporaneous with the alleged offence committed by the Claimant and in the circumstances the Defendants were entitled to arrest the Claimant. It was further submitted on behalf of the Defendants that "... A police officer is statutorily empowered to arrest without a warrant, any offence, whether summary of indictable, which he witnesses or finds, being committed."<sup>15</sup>

[46] Learned Counsel Miss Hyacinth submitted that the authorities do not support the Claimant's submission that the offences for which the Claimant was arrested were not arrestable offences or that the Defendants had no power of arrest.

[47] Before I get my analysis and ruling on this aspect of the Claimant's case I must mention this. Learned Counsel for the Claimant made mention that the Second named Defendant admitted that he arrested and charged the Claimant without cautioning him and in doing so made reference to page 106 of the transcript of proceedings of the Second Defendant's evidence<sup>16</sup>. I have perused the page referred to by Learned Counsel for the Claimant and note that page 106 of the transcript does not say that the Second Defendant failed to caution the Claimant.

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<sup>11</sup> Re: Dallison –v- Caffery

<sup>12</sup> Op Cit

<sup>13</sup> Op Cit

<sup>14</sup> [1970] 1 All E R 209 (as referred to in Dana Seetahal Commonwealth Caribbean Criminal Practice and Procedure 2<sup>nd</sup> Edition)

<sup>15</sup> Paragraph 26 of the Defendant's submissions.

<sup>16</sup> Page 10 Paragraph 29 of the Claimant's submissions

## Was the arrest unlawful?

- [48] An Arrest has been defined as "... *the taking or restraining of a person from his liberty in order that he shall be forthcoming to answer an alleged or suspected offence*"<sup>17</sup> In civil matters the burden of proof falls on the Police Officers who were effecting the arrest to establish on the balance of probabilities that they had reasonable and probable grounds for arresting the Claimant. They have to prove that he had reasonable cause to believe that that Claimant was guilty of the offence.
- [49] The Claimant in the matter at bar was arrested by the Second named Defendant without a warrant on the ground that he uttered threatening words to him. The Claimant was arrested, detained, charged and taken before the Magistrates Court where he was placed on bail. Learned Counsel on behalf of the Claimant submits that the offence of threat for which the Claimant was arrested is not an arrestable offence as provided for by Section 12 of the Criminal Law Procedure Act <sup>18</sup>. That the said offence is not a felony. Learned Counsel Mr. Letang submits that the power of summary arrest (without a warrant) is available only in relation to felonies which would be offences for which the sentence is fixed by law or by which a person (not previously convicted) may be sentenced to a term of 5 years.
- [50] Learned Counsel for the Defendant submits that the arrest of the Claimant was lawful and that even though the offence with which the Claimant was charged is a summary offence under the Small Charges Act section 8 of the said Criminal Law Procedure Act empowers a police officer to arrest without a warrant any person found committing an offence.
- [51] Learned Counsel for the Defendant submitted that the test to be applied in the circumstances would be the objective test that is whether there was reasonable cause for the arrest of the Claimant. That the words uttered by the Claimant to the police officer were threatening therefore in uttering them the Claimant committed an offence in the presence of the arresting officer thereby making it reasonable and legal for him to be arrested.
- [52] I am in agreement with Learned Counsel for the Defendants that Section 8 of the **Criminal Law Procedure Act** <sup>19</sup> gives the Police officer the power to arrest a person for a summary offence where that person is found committing the offence. I do not accept Mr. Letang's submission that the **Criminal Law Procedure Act** only permits summary arrest where the offence is a felony. I find that the Officer was legally permitted to effect the arrest.
- [53] Was there reasonable cause in the circumstances for the arrest? I have reviewed the evidence adduced by the Claimant and the Defendants and find that, based on the facts as I have found them and on the law applied to those facts that the Claimant was not wrongfully arrested. I find that the Defendants have proved on the balance of probabilities they had reasonable and probable cause to believe that the Claimant committed the offence of using threatening language and I also find that the Police do have the power to arrest a person for such a summary offence. In fact, in the case at bar, I accept Miss Hyacinth's submission that

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<sup>17</sup> Police Law Primer – Kenneth Sloan – 5<sup>th</sup> Edition page 35

<sup>18</sup> Op Cit

<sup>19</sup> Op Cit

the Claimant committed the offence of using threatening language in the view of the Officers and therefore his arrest was contemporaneous with the commission of the alleged offence.

#### **False imprisonment:**

[54] The Claimant said that he was taken inside the building on the Coast Guard Base and whilst he was inside the building he was beaten on his left hip with a piece of wood and he was hit behind his head. That the Second and Third Defendant further threatened and intimidated him in the most aggressive and hostile manner saying to him *“you know we can kill you and nobody can do anything about it and don’t forget is fishing you do<sup>20</sup>”*, thereby making him more afraid and fearful of his life. That he was taken to the Roseau Police Station where he was issued a medical form and taken to the Princess Margaret Hospital and he was seen by the doctor and returned to the cell and kept in the cell overnight and the following day he was served with two charges and taken before the Magistrate’s court.

[55] The Claimant was charged with:

- (i) *Threatening the Second Defendant under section 46(b) of the Small Charges Act<sup>21</sup>;*
- (ii) *Resisting the Second Defendant while in the execution of his duty under section 36 (2) of the Small Charges Act<sup>22</sup>.*

[56] The Claimant also claims that he suffered personal injuries and the GPS which he had in his hand at the time he was approached by the Second and Third Defendants was damaged as well as his blackberry phone.

[57] The Claimant exhibited the cash receipts for the cost of his Blackberry phone and GPS in support of his claim of EC\$2,004.64 for the Blackberry and EC\$1,799.38 for the GPS.

[58] Learned Counsel for the Defendants submitted that if the Court agreed that with the Defence case that the Claimant was lawfully arrested that it follows that there was no false imprisonment, assault and battery and that in the circumstances the Defendant would not be liable for the damages as claimed.

[59] I agree with learned Counsel that if it is found that there was a lawful arrest then there is a valid defence to an action for false imprisonment. Kodilyne<sup>23</sup> states *“It is a defence to an action for false imprisonment (as well as for assault and battery) that the restraint upon the plaintiff was carried out in the course of a lawful arrest<sup>24</sup>”*

[60] When dealing with “Arrest without warrant” Kodilyne again states *“At common law certain powers of arrest without warrant are given to police officers and private citizens. One who carries out an arrest within the scope of such power will have a good defence to an action for false imprisonment as well as for assault and battery<sup>25</sup>”* Accordingly I do not find that the Defendants falsely imprisoned the Claimant.

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<sup>21</sup> Chapter 10:39 as amended by Section 15 of Act no 15 of 1999

<sup>22</sup> Ibid

<sup>23</sup> The Law of Torts in the West Indies Cases & Commentary

<sup>24</sup> Ibid page 14

<sup>25</sup> Ibid page 16

[61] The Defendants stated that the Claimant's items are at the Coast Guard Base for the Claimant to uplift and that he has not made any attempts or seen it fit to go collect his items and Mr. Pemberton is advised to make arrangements to retrieve his property.

[62] Having considered the facts, the submissions and the law in this case I am of the opinion that Mr. Pemberton has failed to prove on a balance of probabilities that the Defendants wrongfully arrested him. I find based on the facts as I have found them that the Claimant committed an offence in the view of the Defendants and in the circumstances that the Defendants were entitled to arrest him. The arrest was lawful and as such the Claimants claims for wrongful imprisonment, assault and battery must fail as lawful arrest is a defence to these claims.

[63] In view of the above circumstances and for the above reasons I dismiss Mr. Pemberton's claims and there is no order as to costs.

[64] It is noted that in this matter the Case Management Order dispensed with Pre Trial Review and as a result the requirement to file trial bundles was overlooked and I wish to bring it to Counsel's attention that this is not to be as Part 39 of the CPR 2000 makes provisions for the filing of the trial bundles in any event and they are not filed only pursuant to Court Order.

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M E B Stephenson  
High Court Judge