

COMMONWEALTH OF DOMINICA

DOMHCV2011/0039

BETWEEN:

JOSEPH REGISTE

Claimant

and

THE ATTORNEY GENERAL

Defendant

Before: The Hon. Justice Brian Cottle

Appearances:

Ms. Lisa de Freitas for the Claimant

Ms. Tameka Hyacinth for the Defendant

[2013: February 21st]

[March 21st]

JUDGMENT

- [1] **COTTLE J:** In February 2011, in the Commonwealth of Dominica there existed widespread public alarm and concern. This was because a minor child had been abducted. Photographs of her were widely published and there was immense pressure on authorities to act to secure her safe return to her family. The police had information that she had been taken away by one Webster Edmund of Layou. He was reported to be armed and dangerous. Subsequent events proved that the information of the police was substantially correct.
- [2] After forty days and nights the minor girl was found in the heights of Layou. Webster Edmund when arrested was found to be in possession of an unlicensed firearm and ammunition. At his trial he pleaded guilty to kidnapping, statutory rape and unlawful possession of arms and ammunition. It was against this backdrop that the police, having received information that Edmund and the missing child were to be found in a house at Layou Park, went to that house. Outside it they saw a white Suzuki Escudo vehicle. Edmund was known to drive a white Suzuki Escudo.
- [3] The police party knocked at the door. They shouted Police! Police! to identify themselves. This went on for a protracted period. Through a window the officers could see a pot on a lighted stove. They believed the house to be occupied. No one answered the repeated requests for entry. The officers summoned the Task Force officers to the scene. This is a special unit staffed by officers who have military as well as police training. They carry heavier weaponry. The Task Force party

eventually arrived. Those officers also knocked on the door. They too shouted Police! Police! When they were not admitted they broke the door and entered the premises.

- [4] It turned out to be the home of the claimant. The white vehicle parked outside was his. He was not involved in any criminal activity. He certainly was not involved in the kidnapping and repeated rape of the missing minor girl. It had all been an unfortunate mistake. The claimant brought a civil claim against the police. He says he was assaulted and beaten. He seeks damages, including exemplary damages, for the trespass to his home and person. The defendants deny liability. They say the actions of the police were justified in the circumstances.

The Claimant's Case

- [5] The claimant says he was at home in the early evening when he heard a noisy commotion outside his house. Male voices were shouting "Uncle, open up." Those voices identified themselves as police officers. He opened a door to see and the light illuminating the front of his house was broken. He concluded that the persons outside did not wish to be identified. He did not believe them to be police. Anxious, and now in fear for his life he took refuge in his bathroom. He remained there for "quite a while". There was a quiet interlude after which the demands that his door be opened were resumed. He did not comply. He then heard a loud noise. A party of men entered his bathroom. Guns were pointed at him. He was ordered to lie on the floor. He refused. The guns were 'cranked". He then lay on the floor. The guns were placed firmly against his body.
- [6] He enquired the reasons for the behavior of the police. He was told that there was a criminal at large who drove a vehicle like the one parked outside his house. He explained that the vehicle was his. The police then permitted him to stand. He felt humiliated by the incident. The police left, promising to return to secure the door they had broken to gain entry. They did not do so. The claimant says he covered behind his broken door all night fearful of the criminal on the loose. He lodged a complaint with the police authorities. He submitted a bill for the repair of his door. The police paid the bill in full without demur.
- [7] The claimant says the incident has left him traumatized. He now has difficulty sleeping. He is alarmed by the simplest noise.
- [8] For their part the police do not deny that they broke and entered the home of the claimant. I accept that they pointed guns at him and ordered him to lie on the floor. I accept as well that he was searched. Once the officers were assured that he was not the man they were looking for and posed no danger to them they released the claimant. The police say they helped the claimant secure his door before they left. The claimant is a building contractor by profession. He had tools at his home. I cannot understand why he would not secure his door temporarily, whether with or without the assistance of the police.

The Submissions

- [9] Counsel for the claimant characterized the actions of the police as completely unwarranted and unlawful. She goes further. She says the conduct merits an award of exemplary damages in that it was oppressive, arbitrary and unconstitutional.

Section 12 of the Criminal Law and Procedure Act Chap 12:01 of the Laws of the Commonwealth of Dominica reads:-

The powers of summary arrest conferred by the following subsections shall apply to felonies.

Any person may arrest without warrant anyone who is, or whom he with reasonable cause suspects to be, in the act of committing a felony or to be about to commit a felony.

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 the offence.

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.

A constable may arrest without warrant any person who is, or whom he with reasonable cause suspects to be about to commit a felony.

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.

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

- [10] Ms. de Freitas submits that in order to invoke the application of section 12 the police must satisfy the court that the entry was for the purpose of making an arrest. None of the witnesses for the defendant say so in their evidence. They merely testify that they were in "pursuit of Webster Edmund" who they believed to be armed and dangerous and to have kidnapped a minor girl child and to be holding her captive. Ms. de Freitas concludes that without evidence that they were in pursuit of Edmund to arrest him the entry into the claimant's house is unlawful. I cannot conceive of any reason why police officers would pursue an armed and dangerous kidnapper if not to arrest him. There is no merit in this submission.
- [11] The issue which falls for consideration next, according to Ms. de Freitas, is whether the police officers had reasonable cause to suspect that a person whom they reasonably suspected to have committed a felony was in the home of the claimant at the material time. Counsel for the claimant and counsel for the defendant are ad idem as to the applicable legal position. It is as can be seen in the case of Raissi and another v Commissioner of Police of the Metropolis [2008] FWCA CIV 1237.
- [12] Applying the learning to the present case this court must ask itself if given the state of the information that the police possessed was it reasonable for them to act as they did. The evidence showed that the officers knew that a crime had been committed. The suspected criminal was from Layou. He drove a vehicle similar to that parked outside the claimant's home. The make, model and colour of the vehicle are not uncommon in Dominica. The police knew as well that the home they wished to enter was occupied and that the occupant was refusing to respond to their repeated demands for entry. There is also some evidence, though contested, that the police had been told that Webster Edmund had been seen in the house. I accept the claimant's evidence that they broke the light which illuminated the front of his building. The police also knew that the man they

sought was armed. They had good cause to be concerned for their safety and that of the missing child.

- [13] Ms. de Freitas says that this was not sufficient. They could have enquired of neighbours- some 100 ft away. I pause to say that there is no evidence that those neighbours were at home.
- [14] This case demands the balancing of competing imperatives. The claimant has the right to enjoy the sanctity of his home and castle. The police are charged with the detection and suppression of criminal activity. In this case there was also the safety of a missing girl to consider. As it turned out the man they sought was not in the claimant's home but one can well imagine the public outcry if it turned out that he had been there and the police had not entered to rescue her, leaving her at the mercy of her captor while they enquired of neighbours. What if this delay had permitted her captor to injure or kill her?
- [15] It is easy after the event to be wise. The actions of the police must be judged by the state of their knowledge at the time. The threshold of reasonableness must be set at a low level even if this causes inconvenience to some citizens at times. That is the price which must be paid. At the end of the day I cannot say that the police acted unreasonably in the circumstances.
- [16] The actions they took were proportionate to the threat that they reasonably perceived. The claimant was not injured. Searching him was reasonable. They were looking for an armed man. Heightening their sense of alarm was the sight of what appeared to be a rifle in the building. That this turned out to be only a "pellet" gun is of no moment. The entire episode was unfortunate. The claimant says he did not answer the calls of the police as he was afraid. Anyone could have been shouting "Police! Police! His reaction is understandable. So too were the actions of the officers. Breaking the light as a security measure was not unreasonable. The police officers did the best they could in difficult circumstances. I cannot ascribe blame to them in this case. I note that the claimant has already been compensated for the damage to his door.
- [17] The claim is dismissed but because I consider the claimant's behavior to be understandable I make no order as to costs against him.

High Court Judge
Brian Cottle