

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV2004/0447

BETWEEN:

WILTON GRIMES
BRIAN GRIMES

Claimants

and

DARWIN SMITH
ISLAND SECURITY LIMITED

Defendants

Appearances:

Mrs. Celia Edwards, Q.C with Ms. Thandie Lyle for the Claimants
Mr. Ruggles Ferguson with Ms. Anyika Johnson for the Defendant

2014: December 4

JUDGMENT

- [1] **PRICE FINDLAY, J.:** This claim brought by the Claimants is for damages for assault and battery arising out of an incident which took place on or about the 28th July 2004 at a business place called Creative Do-It Best Hardware Store which is situated in the Spiceland Mall, Morne Rouge in St. George's Grenada.
- [2] The First-Named Claimant died prior to the hearing of the matter so that the first witness for the Claimant was the Second-Named Claimant, Brian Grimes.
- [3] Brian Grimes is a Customs Officer and resides at Grand Anse, St. George's. The First-Named Claimant was his father.

- [4] He testified that on the 28th July 2004, when he arrived from work he was told that a security officer had assaulted his father, and that the incident had something to do with the parking of a vehicle. He was told this by one Jason Pilgrim.
- [5] He left home and went to the Spiceland Mall to find out what had transpired as he was of the view that his father, due to existing medical conditions, would not have initiated a confrontation.
- [6] When he arrived at the Mall he went to Creative Do-It Best, he approached a security guard in the uniform of Island Security Ltd. and inquired if he knew which guard had assaulted his father earlier that day.
- [7] He testified that a conversation took place between himself and the guard and that the guard asked him to accompany him to a different area of the building.
- [8] Once they got to the area the guard informed him that he was the person who had the confrontation with the Claimant's father earlier that day. He said he asked the guard why he had done so, and if being a security guard gave him the right to assault people. He said while he was speaking to the guard he was gesticulating. The guard remained silent.
- [9] He then saw the guard look around and he stated that he was suddenly attacked by the guard. He described the guard as lunging himself at him in a football style tackle. The guard pushed him down on the floor and held him there. They fought for a while before three other security guards intervened. He testified that he did not hit the guard first, and that any injury suffered by the guard occurred in the fight after the guard attacked him.
- [10] After he and the guard were separated he was placed in handcuffs and one of the guards started to choke him with his baton. Persons who were present called out to the guard and he stopped choking him.

- [11] Another person not in uniform joined the guards and this person grabbed him by his collar and started dragging him. He told the person that what he was doing was uncalled for because he was prepared to go peacefully. He was placed in a room and told to sit.
- [12] Whilst in the room he was verbally abused. Approximately forty-five minutes later the police arrived and asked that the handcuffs be removed. This was done. He informed the police of what had happened and went with them to the South St. George Police Station.
- [13] The guard who had fought with him also came to the police station, and before the Claimant left the station he was charged with the offence of causing harm. It was at that time that he learnt the name of the guard who attacked him, Darwin Smith.
- [14] In cross-examination, he stated that he was a Class 2 Customs officer and was working at the Port in St. George's.
- [15] He testified that he lived in an area close to the post office in Grand Anse, and if one were driving it would take about less than ten minutes to get from his home to the Mall where the incident occurred.
- [16] On that day he went to the Mall by bus. He came out of the bus by the area known as Wall Street and it took him about five (5) minutes to walk to the Mall.
- [17] He stated that he had not spoken to his father about the incident before he got home from work that day or before he went to the Mall. It was as a result of what his mom and Jason told him that he went to the Mall. He was at home for about twenty minutes.
- [18] When he went to the Mall he intended to investigate what had happened with his father as he was told that his father had been pushed.

- [19] He said that in his mind, whatsoever happened between the security guard and his father, the security guard was wrong. He said he was not angry when he got to the Mall; he was concerned about the incident because he felt they had done an injustice to his father. When he left home, he was distraught.
- [20] It is not true to say that he went to challenge the security guard, he went to inquire what had happened. He said that he went with an open mind to speak with the guard; he went to have a civil discourse. He said he spoke to the guard about the incident which occurred.
- [21] He repeated his approach to Darwin Smith and repeated what happened when they walked to another area of the store.
- [22] He said that he was not loud nor was he aggressive in his approach to Smith, but he admitted that Smith was shorter than him.
- [23] He said he wanted to speak with Smith privately as he felt it was a private matter. He did not recall going within inches of Smith's body, he was approximately one foot away from Smith, a distance which he described as a "respectable distance".
- [24] He could not recall the exact words he used to describe to Smith what he believed was done to his father. He asked Smith why he pushed his father but only after Smith had admitted that he was the guard involved in the incident.
- [25] After Smith admitted that it was he who was involved in the incident with his father, he did not get more angry. Once Smith admitted that he was involved with his father it was no longer an allegation. He simply asked Smith why he had to do that.
- [26] Upon hearing admission he said he became more distraught and he was gesticulating. It was during this phase of the proceedings that he asked Smith if

he had the authority to push old people around because he was wearing a uniform.

[27] He said Smith did not say much during this exchange. He said that while he was speaking, Smith could not move back but he could move sideways or forward. He admitted that he was close to Smith when he was speaking to him and that he was pointing in his direction, although he did not agree that his finger came within six inches of Smith's hat. His arm was stretched some distance from his body pointing towards Smith's hat. He denied touching Smith or his hat.

[28] He denied punching Smith before the altercation took place. He said he did not know how Smith got injured but he was defending himself once Smith pushed him to the ground and they were fighting.

[29] It was the other security officers who separated them. He admitted that he was charged as a result of the incident, but he denied that the injuries he suffered were as a result of the aggression he displayed or the security officer's attempts to restrain him.

[30] As a result of the assault by the First-Named Defendant the Second-Named Claimant stated that he suffered the following injuries:

- Contusion to the throat with a whiplash type injury to his neck.
- Contusion to the right hand and damage to the right radial nerve.
- Lower back strain.

He tendered a medical report from Dr. Michael Radix a medical doctor dated 30th July, 2004 in support of his claim.

[31] The Claimant's second witness was Sheldon Lawrence, who resided at La Mode. He is a DHL courier.

- [32] He stated that on 28th July 2004 he was at the Spiceland Mall with his family. They stopped at Do-It Best Hardware Store and while browsing he saw Brian Grimes. They greeted each other and as he moved on he heard Mr. Grimes utter some words but did not hear all that was said. He later heard Mr. Grimes say "I just need to ask him a question." He said he heard the guard reply "that's me." This happened close to the exit of the store. He said he was paying attention to what was going on because the tone being used by Mr. Grimes suggested that this was a serious matter.
- [33] He said he heard Mr. Grimes ask the guard why he hit his old man. Mr. Grimes was pointing his fingers at the guard.
- [34] The guard boxed Mr. Grimes hand away and the two men, Mr. Grimes and the guard, started scuffling. Everything happened quickly.
- [35] Both men fell to the ground, while they were scuffling on the ground other security guards came to where the altercation was going on and a small crowd of persons also gathered around.
- [36] He said the other guards removed Mr. Smith and about three of them went on top of Mr. Grimes. One held his hand, one held his feet and the third leaned over and placed a baton across Mr. Grimes' neck and applied pressure. He heard Mr. Grimes say "You want to kill me."
- [37] The gathered crowd stated "They going to kill the guy", "They choking the guy." He saw a tall, red-skinned man pull two of the guards off Mr. Grimes including the one who was choking him. Someone hand-cuffed Mr. Grimes after lifting him up.

- [38] Mr. Grimes repeated "All you trying to kill me." The guards, about five of them removed Mr. Grimes to another part of the building. While moving Mr. Grimes, he observed a man with a tie banging and pushing Mr. Grimes against a wall.
- [39] In cross-examination he acknowledged that he knew the Claimant from TAMCC around the years 1994-1996 and that they are friends, but not good friend. They have a professional relationship.
- [40] When he heard Mr. Grimes speak he was about three feet away from him, and Mr. Grimes was ahead of him. Apart from hearing the guard say "That's me" he did not hear him say anything else.
- [41] He stated that he would describe Mr. Grimes' tone to the guard as firm rather than aggressive.
- [42] He saw the Claimant pointing his finger at the guard, but he did not hear the guard say that he had hit the Claimant's father. The Claimant's finger was within inches of the guard's face but he recalls the Claimant standing directly in front of the guard.
- [43] He was of the view that the guard could have moved back a bit during the incident but saw if he had tried to move forward he would have bounced into the Claimant.
- [44] He said that there was approximately 2-3 feet of space for the guard to move behind him and he would be surprised if someone were to say that there was no room behind the guard for him to move.
- [45] The incident happened very quickly and lasted for about 2-3 minutes. He could not recall if the Claimant gained the upper-hand in the struggle, all he could say is that it was a fight and he could not say who won the fight.

- [46] At some point during the altercation he moved because he had his young son with him and he moved closer to the Real Value entrance. At that time there were persons in front of him blocking his view, but from what he had seen the Claimant was not vigorously resisting the guards.
- [47] The defence called one witness, the First-Named Defendant, Darwin Smith. Mr. Smith testified that at the time of the incident, he had been employed as a security officer with the Second-Named Defendant from 29th June 2001.
- [48] On the day of the incident he was stationed at Spiceland Mall at Do-It Best Hardware Store. He was in uniform; he had a baton, handcuffs and a radio.
- [49] The First-Named Claimant came into the Mall with a vehicle and parked in front of the Mall. He approached Wilton Grimes and asked him to find a park in the designated parking lot, and that he should not park where he had.
- [50] According to him, the First-Named Claimant left the car where it was, came into the building and asked if the First-Named Defendant knew who he was and said that he had shot two men already, and don't let him be the third. He further threatened to go to his vehicle and get his gun.
- [51] The Manager of Do-It Best came and spoke to Wilton Grimes and he eventually moved his vehicle and re-entered the Mall.
- [52] When Mr. Grimes re-entered the building he said to Smith, "I shoot two men already don't let you have to be the third."
- [53] He further testified that around 6 pm that evening the Second-Named Claimant came to the Mall. He described him as biting his lip and pounding his hand into his fist.

- [54] He said the Second-Named Claimant came up into his face and asked for the person that had the conflict with his father earlier that day. The Second-Named Claimant said that he was told that Smith had chuck his father.
- [55] He testified that the Second-Named Claimant was loud and furious, he said he told him he did not punch his father, the Second-Named Claimant asked him why he pushed his father.
- [56] He said he was trying to reason with the Second-Named Claimant, but being unable to do so he began to walk away when the Second-Named Claimant punched him in his face. The punch busted his mouth and nose.
- [57] After he got punched he pushed the Second-Named Claimant against the tool kit, he lost his balance and they both fell to the floor. Whilst on the floor he was repeatedly punched in the face by the Second-Named Claimant.
- [58] Mr. Ali and Kendall Sylvan parted them. The Second-Named Claimant was handcuffed and the supervisor came on the scene. He was taken to the bathroom where he was tended to; he later went to the hospital. As a result of the incident his shirt and his walkie talkie were damaged.
- [59] In cross-examination, he stated that he may have made physical contact with the First-Named Claimant by touching him on his shoulder but stated that this touching was not intentional. The first encounter with the Claimant was inside of the building where the cashiers were.
- [60] He said that he was not afraid of the First-Named Claimant even though the First-Named Claimant had said he would go to his car to get his gun. He stated that he had the guts to stand up to him.

- [61] He denied that Mr. Ali escorted the First-Named Claimant into the store to get what he had come for and then Wilton Grimes left the store and the Mall.
- [62] Later that evening the Second-Named Claimant came to speak with him. He was taller than him, he tried to reason with him; he told him he had no conflict with his father. He could not recall the words he used to the Second-Named Claimant.
- [63] He repeated that the first blow came from Brian Grimes and not him, and it was only after Brian Grimes hit him that he pushed him onto the tool kits and they fell to the ground.
- [64] He stated that it was totally wrong to say that before they fell on the tool kits that the Second-Named Claimant did not punch him. He agreed that he tackled the Second-Named Claimant but only after he received punches to his face from him.
- [65] He agreed that after being separated from Brian Grimes by colleagues, that he kept going back and had to be restrained.
- [66] He could not say who had the baton choking Brian Grimes, nor could he say who handcuffed Brian Grimes. When he went to the back where the cameras were being monitored, he saw that Brian Grimes had been handcuffed.
- [67] He said his lip was busted, his uniform was bloodied and his radio was damaged. He could not recall his tie getting damaged even though he claimed it in his defence.
- [68] He insisted that he was defending himself and he insisted that his injuries occurred when the Second-Named Claimant punched him before they both fell to the ground and not as a result of the fight after they both fell.
- [69] He denied making up a story to justify attacking the Second-Named Claimant.

- [70] There was also video tape evidence in this matter. Having viewed the tape, it clearly showed that there was no punch thrown by the Second-Named Claimant at the First-Named Defendant prior to the football style tackle that sent both of them to the floor. From looking at the tape where it showed that the Second-Named Claimant was clearly animated and that he was gesticulating at the First-Named Defendant, the Court did not see any evidence on that tape that suggested the Second-Named Claimant hit the First-Named Defendant at all, prior to the tackle.
- [71] Further, with respect to the first incident with Wilton Grimes, the First-Named Defendant said in evidence that when Wilton Grimes returned to the store he went up to the First-Named Defendant and threatened him.
- [72] From a viewing of the tape, this Court finds that there was no contact either verbal or physical between the First-Named Claimant and the First-Named Defendant once the First-Named Claimant returned to the Mall.
- [73] I have no doubt that when Brian Grimes went to the Mall that evening that he was angry at what was reported to him, regarding a confrontation between the First-Named Defendant and his father.
- [74] But having seen the tape I am also convinced that he did not throw any punch or punches at the First-Named Defendant before the First-Named Defendant tackled him.
- [75] Brian Grimes was gesticulating at the First-Named Defendant and he was clearly agitated while doing so, no doubt he was berating the First-Named Defendant for the injustice he perceived had been done to his father.
- [76] But I find the evidence of the First-Named Defendant lacks credibility. There are many inconsistencies in his evidence, and I find that he was not truthful about the confrontation with both Claimants.

- [77] With respect to the First-Named Claimant, he said that he politely touched the First-Named Claimant in his defence yet under cross-examination he denied touching him at all. Then later on he stated that there may have been an accidental touching, then even later he stated he may have intentionally touched him.
- [78] I have already addressed the issue of the punches he alleged were thrown by the Second-Named Claimant and will not repeat my findings.
- [79] The alleged damage suffered by the First-Named Defendant also changed. He claimed injuries suffered and referred to a medical form which was not tendered to the Court. Further he made claim for damage for a shirt, vest and tie but in his evidence stated that a walkie talkie was also damaged.
- [80] I find that the inconsistencies in his evidence, that is between his oral testimony and his witness statement as well as the inconsistency of his evidence with that which I saw on the tape, lead me to conclude that Darwin Smith was not a truthful witness.
- [81] I do not find that the Second-Named Claimant assaulted the First-Named Defendant on the day in question, as stated before I do believe that he was angry but he spoke to the First-Named Defendant trying to find out what happened with his father.
- [82] I believe his witness, Sheldon Lawrence, who saw and observed the initial interaction between Brian Greaves and Darwin Smith stated that Mr. Greaves was pointing his finger at Mr. Smith but at no time did he see him punch Mr. Smith. I am fortified in that conclusion, having seen the tape myself.

[83] I also find that the Defendant Company through its servants and/or agents continued to assault the Second-Named Claimant and inflicted injuries on the Second-Named Claimant after he had fallen to the ground.

[84] I find that he was choked and dragged on the floor and that he was pushed into the wall.

[85] In the circumstances, I find for the Claimant the Counterclaim is dismissed. I order as follows:

1. Judgment for the Second-Named Claimant in the amount of \$15,000.00.
2. Costs to the Second-Named Claimant in the sum of \$4,500.00
3. Interest at the rate of 3% from the date of filing of the action to the date of judgment and 6% thereafter until payment.

Margaret A. Price Findlay
High Court Judge