

THE EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS

IN THE HIGH COURT OF JUSTICE

CLAIM NO. NEVHCV2014/0006

BETWEEN:

Dwight Cozier

Claimant

vs

Shawna Pemberton

1st Defendant

and

The Attorney General of St. Kitts and Nevis

2nd Defendant

Appearances:-

2018: February 23

(Written Closing Submissions filed on 2018: April 6 and November 2)

2018: December 7

JUDGMENT

- [1] WILLIAMS, J.: By an Amended Claim Form filed on the 9th January 2015, the Claimant Dwight Cozier claims against the Defendants jointly and severally for wrongful arrest and or false imprisonment on or around the 15th July 2013 at Newcastle, St. James Parish Nevis and against the 1st Defendant for maliciously and/or without reasonable or probable cause arrested and/or imprisoned the Claimant in the course of her duty with the 2nd Defendant.

- [2] The Claimant therefore claims the following relief;
- 1) Damages for wrongful arrest and/or false imprisonment
 - 2) Aggravated damages
 - 3) Exemplary damages
 - 4) Statutory interest on damages
 - 5) Costs
 - 6) Such further relief as the Court considers just.
- [3] In his Amended statement of claim, the Claimant sets out the events on or about the 14th July 2013 at about 10:25pm when he received **a message that “Choice FM Radio” was off the air, and again on the 15th July 2013.** When the Claimant visited Choice FM Radio site he found that the wire fencing surrounding the Trinity **Broadcasting Network (TBN) had been forced open from the owner’s side** of TBN. Further the Claimant claims that he found fresh scratches on the door of the storage shed where radio transmission equipment belonging to Choice FM was stored and on entering the shed he discovered that the Transmitter and Receiver belonging to Choice FM and valued over \$50,000.00 were disconnected and missing from the room.
- [4] The Claimant avers that the 1st Defendant arrived at the scene of the burglary two hours after the incident and as a result of her actions she neglected and/or refused to continue to the Transmission site and investigate the report of the theft of the Transmission equipment belonging to Choice FM of which the Claimant is the Chairman of the Board that owns the Radio Station.
- [5] The Claimant pleads particulars in this regard at pages 14, 15, 16 and 17 of the Amended statement of claim.
- [6] **It is the Claimant’s contention that his arrest by the 1st Defendant was wrongful, unreasonable and excessive.**
- [7] The particulars pleaded are as follows;
- a) That the purported offence for which the Claimant was arrested was not a criminal offence, but a civil dispute.
 - b) That the 1st Defendant was actuated by malice towards the Claimant and was excessive in all the circumstances.

- [8] At paragraph 60 of the Amended Statement of Claim the Claimant details the events after he was told of his arrest on suspicion of larceny of an antenna at the Newcastle Police Station.
- [9] At paragraphs 80-87 of the Amended Statement of Claim, the Claimant sets out the particulars of malice of the 1st Defendant and at paragraphs 88-94, the Claimant again sets out the particulars of False Imprisonment by the 1st Defendant.
- [10] At paragraph 100, the Claimant states that by the 1st **Defendant's actions, she** exceeded her powers and acted in breach of her statutory powers and outside of Section 5 of the Police Act Cap 19.07.

Defence

- [11] In their Defence the 1st and 2nd **Defendants dispute the Claimant's Statement of Claim** on a number of grounds including the following:
- 1) That the 1st Defendant visited the site of the said TBN Tower on the date of **the Claimant's arrest accompanied by Arthur Gilbert who was also under arrest** and had consented to a voluntary search of his properties in Nevis.
 - 2) The 1st Defendant states that she observed at the Round Hill site;
 - a. That there were three communication Towers and/or antennas located at the Round Hill transmission site.
 - b. That two were purportedly owned by TBN and the other one by Trinity Towers Ltd ostensibly owned by Arthur Gilbert.
 - c. That there appeared to be two storage areas beneath the said Towers which Arthur Gilbert said was where the radio transmission equipment was stored.
 - d. That the TBN Towers and the storage area were separated by wire fencing from the Trinity Towers and both had separate gates.
 - e. That there were holes in the said fencing and it was bent and dilapidated.
 - f. That access could be gained to either area without using the gates.

- g. That there did not appear to be any visible marks of force on the portion of the fence between the Towers.
- h. That the scratches on the door to the storage area bore marks which did not appear to be fresh and were rusty.
- i. That there were several marks around the lock suggesting that the said lock had been forced open on more than one occasion.

[12] The 1st Defendant avers that at all material times, she acted properly and within the purview of both her common law authority and her statutory powers as contained in the Police Act Cap 19.07 and details the events in which she avers that her conduct was reasonable, sensible, lawful and commendable in paragraph 24(i) to (vii).

[13] The 1st **Defendant denies the Claimant's contention that his arrest was wrongful**, malicious and excessive. Instead the Defendants aver that the Claimant was informed of the offence for which he was being arrested. The Defendants further contend that it was the Claimant who behaved in an aggressive, boisterous and ill-behaved manner, openly trading insults with Mr. Gilbert. The Claimant persisted in a shouting match and was adamant that Mr. Gilbert had stolen the transmission equipment from Choice FM.

[14] The 1st Defendant avers that it was the unrelenting anti-social behavior, the accusations leveled by both parties through their acrimonious discourse and the information that she had ascertained from her prior investigations that caused her to form the opinion that both the Claimant and Mr. Gilbert had committed the offence of Larceny.

Issues

[15] The Issues before the Court for determination are;

- 1) Whether the 1st **Defendant's detention was unlawful** and amounted to the Tort of false imprisonment of the Claimant.
- 2) Whether the Claimant is entitled to Damages for wrongful arrest, false imprisonment, aggravated damages and exemplary damages.

Issue No. 1

[16] Whether there was a wrongful arrest for false imprisonment of the Claimant by the 1st Defendant on or around the 15th July 2013 at Newcastle, St. James Parish.

[17] It is not in dispute that on or around the 15th July 2013, the Claimant Dwight Cozier was arrested by the 1st Defendant for the offence of larceny and detained for 8 hours at the Newcastle Police Station.

The Claimant contends that the action of the 1st Defendant constituted wrongful arrest and false imprisonment. The 1st Defendant contends that the arrest was lawful and within the common law authority and statutory power as contained in the Police Act Cap 19.07.

[18] The submissions of the Claimant in summary form are as follows;

a) That the Claimant as Chairman of the Board of Directors of SKN Choice Times Limited a company that owned radio station Choice FM visited the Choice FM Transmitter site located on the Trinity Broadcasting Network Tower at Round Hill, Nevis on Monday 15th July 2013.

b) That the Claimant made certain observations regarding the burglary of the Transmission equipment and subsequently placed a telephone call to the Newcastle Police Station and made a report of the burglary to the Sergeant in charge of the Police Station and named the subjects involved in the burglary to Sergeant Harris.

c) That the Claimant explained to Sergeant Harris the basis for his suspicions and detailed the alleged facts and circumstances at paragraphs 7 (a) – (g) of his written submissions.

[19] The written submissions on the arrest commence from paragraphs 12 to paragraph **33 and I find no need to reproduce them. At paragraph 33 the Claimant states “In fact half an hour into the questioning the 1st Defendant informed the Claimant that he was under arrest on suspicion of larceny of the antenna bracket, which was part of the STL transmitter antenna which St. Kitts Nevis Choice Times Ltd. had bought from the old Choice FM since 28th February 2012.**

[20] The Claimant avers that he was eventually released at 18:30hrs, on the 15th July 2013, seven hours after he had been arrested. He also avers that he was forced by

the 1st Defendant to pay the sum of \$5000.00 to Mr. Gilbert for a bracket that had been previously bought by St. Kitts Nevis Choice Times Ltd.

[21] The Claimant further avers that he wrote to the Defendants complaining of the conduct of the 1st Defendant and the Defendants have never followed up on the **Claimant's report of the burglary and to date the stolen transmission equipment has not been recovered.**

The Defendants submissions

[22] On behalf of the Defendants, the salient aspects of their submissions are that;

1. The right to liberty is enshrined and protected by the Constitution of St. Christopher and Nevis 4th schedule to the West Indies Act Cap 1.01. However the provision that protects liberty, limits that right in certain cases including where police suspect a person of having committed a crime.
2. Section 6 of the Police Act Cap 19.07 states that a police officer may without a warrant, arrest a person he or she reasonably suspects of having committed an offence and in order for an arrest to be lawful at common law, an arresting officer must satisfy himself that there exists reasonable suspicion of guilt.

See: Dumbell vs Roberts¹

3. The Defendants cite the case of Everette Davis vs Attorney General² per Ramdhani J;

"The law gives the police the right to detain and or arrest anyone upon reasonable and probable cause that that person has or is about to commit an offence. The test as to whether there is reasonable and probable cause is both subjective and objective.... It does not matter if the information available to the police officer leads equally or more to a view that the person may be innocent of the offence once it leads reasonably to a conclusion that he may have committed or is about to commit the offence, that is sufficient to ground the arrest.

¹ [1944] 1A11ER 326

² SKBHCV2013/0220

There is no need for the officer to have admissible evidence amounting to a prima facie case to found reasonable suspicion when it comes to mere detention without charge. A lower standard is permissible and can be **founded on inadmissible evidence.**”

- [23] Section 5(2) and 5(3) (b) of the Constitution of St. Christopher and Nevis prescribes a 48hr period in the first instance and a maximum of 72hrs that a person can be kept in custody without being taken to court; the intention of the section is not to allow the police to simply detain and keep persons in custody for either 48 or 72 hours without charge and then released. In the usual case the police will detain someone for inquiries to question and interrogate them with regard to allegations or information received by the police.
- [24] The Defendants state that the Claimant was arrested and remained at the police **station for a few hours. Consequently there was no breach of the Claimant's** constitutional rights and the police acted within the purview of the law.
- [25] The Defendants dispute that there was false imprisonment of the Claimant by the 1st Defendant and say that the 1st Defendant had reasonable and probable cause to arrest the Claimant based on her investigations.
- [26] **The Defendants submit that the Claimant's arrest and detention was lawful** and not contrary to the Constitution or any other law of St. Christopher and Nevis.

The Law

- [27] The Police Act Cap 19.07 of the Laws of St. Christopher and Nevis at Section 6 states that;
- A police officer may without a warrant arrest a person;
- a) He or she reasonably suspects of having committed an offence
 - b) Alleged to have committed aggravated assault in any case in which the police officer reasonably believes that the assault has been committed although not in his or her presence, and that by reason of the recent commission of the offence, a warrant could not have been obtained for the apprehension of the offender
 - c) Who commits a breach of peace in the presence of the police officer

- d) Who obstructs a police officer while executing his or her duty
- e) Who has escaped or attempts to escape from lawful custody
- f) In whose possession anything that may reasonably be suspected to be stolen property is found or who may reasonably be suspected of having committed an offence with reference to that property
- g) Who, without giving satisfactory account of himself the police officer finds lying or loitering in any highway, yard, or other place
- h) Whom he or she finds in any highway yard, or other place between the hours **of eight o'clock in the evening and five o'clock in the morning** and whom the police officer suspects upon reasonable grounds to have committed or being about to commit a felony.
- i) **Found between the hours of eight o'clock in the evening and five o'clock in the morning** having in his or her possession without lawful excuse, any house breaking implement;
- j) For whom the police officer has reasonable cause to believe that a warrant of arrest has been issued.

[28] Additionally, the said Police Act speaks to the statutory duty of a police officer under Section 5(a) - to preserve the peace, prevent and detect crimes, and other infractions of the law.

[29] At paragraph 33 (a)-(d) of the 1st **Defendant's Defence she contends that by her** repeated orders to the Claimant and Arthur Gilbert to stop their unlawful behavior, that she sought to preserve the peace, prevent and detect crimes and other infractions of the law from occurring.

[30] In the case of Christie vs Leachinsky³, the Court held that in normal circumstances, an arrest without a warrant either by a policeman or a private person can be justified only if it is an arrest on a charge made known to the person arrested. It is a condition of lawful arrest that the party being arrested should know on what charge or suspicion of what crime, he is being arrested.

[31] The essence of the pleadings in the 1st **Defendant's Defence is stated at paragraph 35;**

³ [1946] KB 145

“The 1st Defendant contends that she informed both parties that they were under arrest simultaneously for the offence of Larceny. At paragraphs 36-48 of the said Defence the 1st Defendant details the chronology of events leading up to the arrest of the Claimant and contends that the Claimant was not falsely imprisoned.

[32] The power of arrest contained in Section 6 (1) of the Police Act is enacted as follows and I recite it briefly:

“A police officer may, without a warrant, arrest a person;

a) He or she reasonably suspects of having committed an offence...”

[33] Therefore, in terms of arrest, the authority under Section 6 (1) of the Police Act is exercisable in the circumstances detailed in that section of the Act.

Under cross-examination the 1st Defendant states that the Claimant came to the interview room so that she could continue investigations. The Claimant she says behaved in a boisterous aggressive, and ill-behaved manner. She also says that Mr. Cozier was a suspect in the Larceny of the Antenna bracket according to what Mr. Gilbert had said to her.

[34] Under Section 7 of the said Police Act Cap 19.07 a constable is given the power to arrest someone on the basis of reasonable suspicion and to similarly be empowered to charge them on reasonable grounds.

[35] The power of police to detain, arrest and charge a person on reasonable suspicion is both subjective and objective.

See: Allen vs Wright⁴

The perceived facts must be such as to allow the reasonable third person and actually cause the officer in question to suspect that the person has committed or is about to commit a crime. See: Hing vs Gardner⁵

It does not matter if the information available to the police leads equally or more to a view that the person may be innocent of the offence, once it leads reasonably to a conclusion that he may have committed or is about to commit the offence, that is sufficient to ground the arrest.

⁴ [1838] 8C&P522

⁵ [1980] 71CrApp 13

The reasonable police officer is assumed to know the law and possessed of the information, and would have believed that the Claimant was guilty of the offence for which he was arrested.

The term “reasonable suspicion” relates to the existence of facts at the time. It does not relate to a perception on the state of the law.

See: Todd vs D.P.P⁶

- [36] It is significant to note that there is no need for the officer to have admissible evidence amounting to a prima facie case to ground reasonable suspicion when it comes to mere detention without charge. A lower standard is permissible and can be founded on inadmissible evidence.

See: Hussain vs Chook Fook Kam⁷

Such reliance on either admissible or inadmissible evidence must be shown to have actually existed and was reasonable in the circumstances.

See: Clarke vs Chief Constable of North Wales Police⁸

- [37] If a criminal charge is to be laid, it must be clear that no criminal charge can be laid against anyone unless the police ground their suspicion that the person has committed that offence on Admissible evidence.

- [38] When a police officer detains or arrests on the basis of reasonable suspicion they are not entitled in law to simply keep the person in custody for the full statutory period without charge unless it is reasonable to do so. The Constitution of Saint Kitts and Nevis by prescribing a 48 hour period in the first instance and a maximum of seventy two hours without being taken to court did not intend to allow the police to simply detain and keep persons in custody for either 48 hours or 72 hours without charge and then released. By the end of the 48 hour period, the police should, pursuant to Section 5 (2) of the said Constitution inform the person being detained of the reason for his arrest or detention, and be afforded reasonable facilities for private communication and consultation with a legal practitioner of his/her choice.

- [39] In the case of Dallison vs Caffery⁹ the Court held that;

⁶ [1996] Crim App L.R. 344

⁷ [1970] AC 942

⁸ [2000] Indp

⁹ 2 A11 ER 610 Court of Appeal

“When a constable has taken into custody a person reasonably suspected of felony, the constable may without becoming liable for false imprisonment do what is reasonable to investigate the matter; he may take a suspect to his house to see whether any of the stolen property is there and is not bound to take the suspect immediately and directly to the police station or before a Magistrate.

The constable will not be protected from liability if the measures that he takes were not reasonable.

[40] The same approach has been taken in the context of other statutory powers where the question has been raised whether the constable who exercised the power had reasonable grounds to suspect that an offence had been committed.

In the case of Castorina vs Chief Constable of Surrey¹⁰ the Court stated that;

“Suspicion by itself however will not justify an arrest. There must be factual basis for it of a kind which a Court would adjudge to be reasonable. The facts may be within the arresting constable’s own knowledge or have been reported to him.

Where there is an issue in a trial as to whether a Constable had reasonable cause, his claim to have had knowledge or to have received reports on which he relied may be challenged; It is within this context that there may be an evidential issue as to what he believed to be the facts but it will be for the Court to adjudge what were the facts which made him suspect that the person he arrested was guilty of the **offence which he was investigating.”**

The Evidence

[41] The 1st and 2nd Defendants evidence is that on or around the 10th July 2013 at about 2:15pm the 1st Defendant received a report at the Newcastle Police Station from Sergeant Mitcham of Charlestown Police Station that Mr. Arthur Gilbert had made a report to him and he was on his way to the Newcastle Police Station.

Mr. Gilbert made a report to the 1st Defendant of Larceny of an Antenna bracket and identified Mr. Dwight Cozier as the suspect in the matter. The 1st Defendant visited Mr. Dwight Cozier on the following day after she commenced investigations and informed Mr. Cozier about the report made against him where it was alleged he stole

¹⁰ The Times 15th June 1998 C. Appeal

an antenna bracket from Trinity Towers Ltd at Round Hill Estate from Arthur Gilbert. Mr. Arthur Gilbert had furnished her with an Agreement for Sale regarding the sale of the Radio Station Choice FM with all the transmitters and equipment affiliated with the Radio Station.

[42] The 1st Defendant avers that she continued making inquiries and recorded a statement from Mr. Geebood who was an employee of Trinity Towers Ltd. and who was the person who mounted the base of the antenna to the Tower.

Mr. Geebood had on the 3rd July 2013 **witnessed the turning over of all Choice FM's** equipment to its technicians, but when he returned on the 8th July 2013, he observed that a bracket was missing from the Trinity Tower Communication and that the bracket that was given to Choice FM technicians was still located in the same place.

[43] The 1st Defendant avers that on 15th July 2013 a report was made to Newcastle Police Station by Mr. Dwight Cozier where he reported that some radio equipment had been stolen from the transmitting hut at Round Hill and the radio station was off air.

[44] At paragraphs 8, 9,10,11,12 of the 1st **Defendant's** Witness Statement filed on the 7th September 2015, the 1st Defendant gives details of her encounter with the Claimant before they both arrived at the Newcastle Police Station.

[45] The 1st Defendant further avers that both the Claimant Dwight Cozier and Mr. Arthur Gilbert were adamant that the transmission equipment had been stolen by one of **them, and that Mr. Gilbert's allegations had been corroborated by Mr. Geebood.**

[46] Sergeant Pemberton states that when both parties arrived at the station chaos ensued in the interview room and she informed Sergeant Harris that she was seized of sufficient information to arrest the Claimant and Mr. Gilbert and he instructed her to do what was best.

The 1st Defendant avers that she informed Mr. Cozier and Mr. Gilbert that she was arresting both of them for the offence of larceny of an Antenna bracket.

The 1st Defendant states that the Claimant remained in custody while she accompanied Mr. Arthur Gilbert to Trinity Towers at Round Hill Estate.

She did not find any visible marks of forced entry on the fence between the TBN and TTL towers and the scratches and locks on the door to the tower and locks on the door to the tower did not appear to be fresh.

Further she searched other properties of Mr. Gilbert and found a link receiver which she kept in police custody.

[47] The 1st Defendant states at paragraph 28 & 29 of her Witness Statement that she received a telephone call from Sergeant Harris while she was investigating the matter with Mr. Gilbert that Mr. Cozier had agreed to give Mr. Gilbert back the bracket or pay him for it.

Mr. Gilbert had asked for payment of the bracket, consequently she brought Mr. Gilbert back to the Newcastle Police Station where she met the Claimant who handed Mr. Gilbert a cheque in the sum of \$5000.00. According to the 1st Defendant Mr. Cozier insisted that the receiver was his but never provided documentation to establish ownership of the said receiver which remains at the Newcastle Police Station to this present time.

[48] The 1st Defendant states that the Claimant was detained at the New Castle Police Station from approximately 11:00am to 7:00pm on the 15th July 2013.

Analysis

[49] I have already defined in the previous paragraphs what amounts to reasonable and probable cause and this definition was approved by the House of Lords in Harniman vs Smith¹¹; the Court stated;

“That the question of reasonable and probable cause depends in all cases not upon the actual existence but upon the reasonable bona fide belief in the existence of such a state of things as would amount to a justification of the course pursued in making the accusation complained of.”

[50] Further the case of Dallison vs Caffrey is instructive and begs the question whether the measures taken by the police officer was reasonable.

[51] In this case it is my opinion that the measures taken by the 1st Defendant was reasonable upon receiving the instructions of a report made by the Claimant where

¹¹ [1938] AC 305

she proceeded to investigate the matter. The Constitution of St. Kitts and Nevis allows a police officer to arrest or detain a person for 48 hours after such arrest and no later than 48 hours to 72 hours be brought before a Court. The Claimant was detained for 7 hours.

I am not of the view that the 1st Defendant acted maliciously and without reasonable and probable cause in detaining the Claimant in police custody.

I am of the opinion the 1st Defendant honestly believed in the guilt of the Claimant and this was based on reasonable grounds since both parties had accused each other of larceny.

I accept that Sergeant Pemberton believed what she was told and I hold that she entertained a genuine suspicion that the Claimant had played some part in the larceny of the equipment.

Consequently I do not hold that the arrest and detention of the Claimant to be unlawful or amount to false imprisonment.

[52] The Claimant was detained for approximately 7 hours during which time the 1st Defendant states that she carried out her investigations.

In the case of Ramsingh vs A.G of Trinidad and Tobago¹² the Court adumbrated the principles under which a person may be detained. One of the relevant principles is that;

- i. It is for the arrestor to justify the arrest.
- ii. A police officer may arrest a person if with reasonable cause he suspects that the person concerned has committed an arrestable offence.

[53] The evidence from the 1st Defendant is that Mr. Cozier the Claimant was a suspect while she was making inquiries into a report made by Arthur Gilbert and on the 15th July 2013, she arrested the Claimant because she had completed her inquiries.

[54] The Claimant has claimed for aggravated damages and exemplary damages. In the case of Rookes vs Barnard¹³, the Court opined that Aggravated Damages **only applied where “taking into account the motives and conduct of the Defendant** where they aggravate the injury done to the Plaintiff; there may be malevolence or

¹² [2012] UKPC

¹³ 1964 AC 1129

spite or the manner of committing the wrong may be **such as to injure the Plaintiff's proper feelings of dignity and pride.**"

[55] Aggravated damages are compensation for hurt feelings, they are not punitive. Under cross examination by Mr. Granderson, Mr. Cozier stated that he agreed that the officers were polite and professional to him.

Mr. Cozier also stated that the 1st Defendant had an open iPad and was on Facebook during the interview with him tapping actively on her tablet and that she had leaked information on his arrest to Facebook followers.

In my opinion this does not constitute evidence for hurt feelings since there is no evidence to show that it was the 1st Defendant who leaked information to Facebook.

[56] In Winfield and Jolowicz on Tort, the law relating to aggravated and exemplary damages is stated in part as follows;

"In Torts like libel, an award for damages are often said to be "at large". What is meant by this is that damages cannot be precisely quantified in money terms; but the Claimant is entitled to a substantial award for the wrong against him, part of the award in these cases will reflect the injury to the Claimant's feelings and the mutual distress he suffered as well as the need to vindicate his rights. The injury to feelings and distress may however be increased by the bad motives or willful behavior of the Defendant."

[57] The submission on behalf of the Claimant is that aggravated damages and exemplary damages should be awarded because of the 1st **Defendant's spite**, malice and ill will towards the Claimant.

[58] The 1st Defendant has categorically denied that she acted with spite, ill will or with bad motives and I accept her evidence and make no award under this heading.

I am of the opinion that there was no injury to the Claimant's feelings that was caused by the 1st Defendant's actions and no evidence to support that claim.The Claimant is therefore not entitled to Damages as claimed.

Conclusion

[59] Having regard to the relevant findings of fact, the submissions and authorities of both parties.

I am of the considered opinion that the 1st Defendant acted with reasonable and probable cause and within the scope of her duties as prescribed under the Police Act of the Laws of Saint Christopher and Nevis Cap 19.07 and the Constitution of **the Federation of Saint Christopher and Nevis, and that the Claimant's arrest and detention was lawful and did not constitute false imprisonment.** Consequently the Claimant is not entitled to the relief claimed or any part thereof.

The Claim is therefore dismissed against the 1st and 2nd Defendants.

[60] Costs to the Defendants to be agreed upon or assessed pursuant to part 65.5 of the CPR.

[61] I thank Counsel on both sides for their patience in the delivery of this judgment and for their helpful submissions in the matter.

Lorraine Williams

High Court Judge

By the Court

Registrar