SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2008/0973

BETWEEN:

DANNY SEVERIN

Claimant

and

THE ATTORNEY GENERAL

Defendant

Appearances: Horace Fraser for the Claimant
Dwight Lay for the Defendant

2010	September 28th
2011	February 10th

Judgment

[1] **Belle J.** The Claimant Danny Severin pleaded that on 7th April , 2008 at about 1:10 p.m. a squad of police officers stopped the vehicle he was driving in the area of Bexon and conducted a search of his person and car and then allowed him to go after certain words were exchanged. There is a dispute as to the exact words stated and whether those spoken by the Claimant amounted to a threat on a police officer. These words will be addressed later.

[2] After the Bexon search the Claimant proceeded driving for sometime behind the police officers who had stopped and searched him, until he reached Roseau Valley. At Roseau Valley while at his friend's home or shop about to have a drink he was approached and assaulted by the members of another squad of police officers who purported to be arresting him for the threat he made on the fellow officer Tana Monlouis at Bexon. The Claimant says he was beaten by about five or more police

officers and allegedly suffered injuries as a result of this assault. He was then taken into custody and held for more than twenty four hours at the Marchand police station. He also claimed that after the arrest police officer St. Rose drove his vehicle negligently and caused damage to the said vehicle.

[3] The Defendant mounted a defence which basically denied that the Claimant was assaulted and alleged that he resisted the police officers' legitimate attempt to arrest him for the threat he had made to a fellow police officer Constable Tana Monlouis.

Arguments

[4] In the process of his argument counsel for the Defendant submitted that an objective test should be applied to determine whether the officers of the drug squad had reasonable cause to arrest and detain the Claimant. He prayed in aid the decision **Dallison v Caffery** (1964) 2 All ER 610, where Diplock LJ stated:

> *"The test whether there was reasonable and probable cause for the arrest or prosecution is an objective one, namely , whether a reasonable man, assumed to know the law and in possession of the information which in fact was possessed by the Defendant, would believe that there was a reasonable and probable cause."*

[5] To defend this position counsel argued that a reasonable police officer assumed to know the law and possessed of the information in the possession of the arresting officer would have believed that the Claimant was guilty of the offence for which he was arrested. Counsel further relied on the evidence of constable St Rose who in turn relied on the second hand report of another police officer that Constable 220 Monlouis had informed him that an individual by the name of Danny of Dennery driver of a green Toyota Corolla, registration number PE 9215, made threats to him and kept on following him and his team after they had conducted a search of his vehicle.

[6] Counsel further submitted that having received this report the arresting officers honestly believed that there were reasonable grounds for suspecting that the Claimant was guilty of the offence for which he was arrested and subsequently detained and charged. As far as counsel was concerned the subsequent dismissal of the charge for want of prosecution is irrelevant in determining whether there was reasonable and probable cause for the arrest. This is so because the circumstances which obtained at

the time of the arrest are the only relevant circumstances for the court's consideration as to whether the objective test in **Dallison v Caffery** was satisfied.

[7] On the issue of the quality of the evidence of constable Monlouis, counsel argued that in spite of his admission that his evidence in chief did not contain any statement that the Claimant shouted in Bexon as he had said under cross- examination, Const. Monlouis remained adamant that the Claimant did shout while using the threatening words. Counsel argued that Monlouis' evidence was corroborated by Constables 421 Leo and 24 Luncheon and that he should be believed.

[8] As far as the allegation of assault and battery was concerned counsel argued that the tort of assault was insufficiently pleaded by the Claimant since the statement of claim did not specify the nature of the assault with sufficient particularity. Counsel cited the case of **Fowler v Lanning** [1959] ALL ER 290 at page 298 where Diplock LJ stated:

> *"The plaintiff must allege either intention on the part of the Defendant, or, if he relies on negligence, he must state the facts which constitute negligence. Without either of such allegations the bald statement that the Defendant (did the act to) the plaintiff in unspecified circumstances ... discloses no cause of action.... So bare an allegation is consistent with the defendant having exercised reasonable care."*

[9] Pleadings were required even if not as extensively as in the days prior to the mandatory filing of witness statements, counsel submitted relying on dicta of Lord Wolf in **McPhilimemy v Times Newspapers Ltd** [1999] 3 All ER 775.

[10] Counsel added that there was nothing in the pleadings or in the evidence which related to fear felt by the Claimant when the alleged assault occurred.

[11] Asking the court to believe the Defendant's witnesses, counsel submitted that Constable 463 St. Rose was telling the truth when he said that he approached the Claimant, displayed his identification card and informed the Claimant that he was about to arrest him on suspicion that he made threats to Constable 220 Monlouis, because this evidence was corroborated by Corporal 472 Voudroque and to some extent by the Claimant's witness Mr. Patrick who stated that Constable 463 St. Rose did in fact speak to the Claimant.

[12] Counsel also focused on the allegation of resisting arrest arguing that based on the totality of the evidence the court should find that the Claimant was at the premises of his friend Patrick when the arrest was made and not on the main road as alleged by the Claimant's witness Miss Seminor. He also urged the Court to accept that Constable St. Rose held the Claimant by his pants only after he realised that the Claimant was resisting arrest. The Claimant continued to resist arrest by pulling away from Constable St Rose and officer Voudroque assisted in the arrest by placing handcuffs on the Claimant.

[13] Counsel argued that the injuries suffered by the Claimant were minor and would suggest that the circumstances were more in keeping with the evidence of the Defendant's witnesses. Nevertheless the Claimant's evidence that his eyes were so badly swollen after the beating that he could not see was contradicted by his statement that he could see who was driving his vehicle back to the station and the manner in which he drove it. Furthermore the medical report made no reference to any such injury.

[14] Counsel also attached some importance to the fact the Claimant waited some 3 days before he visited a doctor putting in doubt his account as to the severity of the injuries suffered.

[15] Counsel submitted that the alleged damage to the Claimant's motor car by the police is not to be accepted because of the previous contradiction in relation to his injuries and his ability to see. To this should be added the fact that the evidence was that the Claimant was seated between two police officers and handcuffed making it very difficult to observe what was happening on the road behind him. Counsel also noted that the vehicle inspection report was done some 6 weeks after the alleged damage was done.

[16] Counsel also argued that the police officers were acting pursuant to their common law powers and The Crown would not be responsible for their alleged acts pursuant to section 4. of the Crown Proceedings Act..

[17] After assessing the facts and arguments of both sides I determined that the issues in the case are as follows:

(a) Were there reasonable grounds for the arrest of the Claimant?
(b) Did the arresting police officers use excessive force in arresting the Claimant?
(c) Did the police officers assault the Claimant and cause him injury?
(d) Was the claimant wrongfully imprisoned?
(e) Did the arresting police officers cause damage to the Claimant's motor vehicle as alleged?
(f) Whether section 4 of the Crown Proceedings Act justifies the claim against the Defendant for alleged wrongful arrest inter alia

[18] It should be noted that if the Defendant succeeds on the last issue there would be no need to consider the others because it would have been determined that the true tortfeasors would not be before the court. The analysis of this particular issue must start with a conclusion on the facts which will be analysed more thoroughly later. But my preliminary view is that the facts lead to the conclusion that the initial words of the Claimant at Bexon were not considered sufficiently threatening by the police to justify an arrest there and then. However the officers either became nervous or were angered by the fact that the Claimant followed their police vehicle for some distance and remembering the language used by the Claimant decided to retaliate. It is evident that the police team which had the first encounter with the Claimant called in the Drug Squad officers to deal with this man Danny Severin who in their view, was possibly going to be a problem.

[19] I further hold that the planned retaliation was in common language conceived to "put Mr. Severin in his place." The evidence shows that the police officers' account that Officer St Rose went to Mr. Severin at Roseau and immediately said, "Danny Severin you are under arrest" is to be weighed against the statement of the Claimant's witness who said that one of them shouted at him "you come here!" I find the Claimant's witness' account credible since it sounds more in keeping with the way people with authority communicate in this kind of context, in this part of the world.

[20] The intention of the police squad in my view, at the time, was not to effect an arrest but to discipline Mr. Severin and deter him from any possible intended threatening behaviour towards a fellow police officer. The facts do not support the argument that the police officers went directly to find and arrest Mr. Severin. The kind of violence reported by the Claimant's witness Mr. Patrick betrays the true intention of the officers at the time. Nevertheless these were acts carried out by police offices in the course of their duties.

[21] That being said, it is clear then that at best the police officers were using their own discretion to possibly deter a citizen from committing a breach of the peace or some other criminal act. A warning issued would have been a lawful attempt to deter a possible breach of the peace. But such an attempt should have been restricted to a verbal warning. There would have been no need to use physical force in that context. Even if the excessive use of physical force followed words which arguably could have made police officers uncomfortable, on the facts there was nothing said which warranted this kind of retaliation.

[22] I agree that **Ramson v Barker** (1982) 33 W.I.R 183 referred to by the Defendant's counsel is good authority for the proposition that the State cannot be held liable for the acts of police officers done pursuant to their common law powers. In that case the state was held liable for breaches of the constitution. No such allegation has been made by the Claimant in this matter.

[23] But the law in St Lucia is not restricted to the Common Law. There is a statute in St Lucia which codifies the law. Counsel for the Defendant argued that it is a well established rule of the common law that members of the police force are not 'employees' but rather independent office holders exercising 'original authority' in the execution of their duties . In support of this proposition he relied on the decision in **Enever v The King** [1906] 3 CLR 969 and on **Ramson v Baker** already referred to above. However he conceded that the independent discretionary principle was abolished by section 4(3) of the **Crown Proceedings Act** but only in relation to the exercise of a statutory (as distinct from a common law) power. In the footnote to this submission counsel submits further that Parliament is presumed not to have intended to change the common law unless it has clearly indicated such intention either expressly or by necessary implication. In support of this proposition he cited: **Maxwell on the Interpretation of Statutes** Twelfth Edition; p.116.

[24] It is therefore necessary for me to quote section 4. of the Crown Proceedings Act Chapter 2.05 of the Revised Laws of St Lucia 2001:

Liability of the Crown in Delict.

"(1) Subject to the provisions of this Act, the Crown shall be subject to all those liabilities in delict or quasi delict to which, if it were a private person of full age and capacity , it would be subject –

(a) in respect of delicts or quasi-delicts committed by its servants or agents ,

(b) In respect of any breach of those duties which a person owes to his or her servants or agents under the Civil Code by reason of being their employer; and

(c) In respect of the duties attaching under the Civil Code to the ownership, occupation , possession or control of property

(2) However, proceedings shall not lie against the Crown by virtue of paragraph (a) in respect of any act or omission of a servant or agent of the Crown unless the act or omission would apart from the provisions of this Act have given rise to a cause of action in delict or quasi-delict against that servant or agent or his or her estate.

(3) Where any functions are conferred or imposed upon an officer of the Crown as such by any enactment having the force of law in Saint Lucia and that officer commits a delict or quasi-delict while performing or purporting to perform those functions, the liabilities of the Crown in respect of such delict or quasi-delict shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Crown."

[25] In analysing the issues raised in the relevant sections of the Crown Proceedings Act I firstly recognise that the force of the legislation is triggered by the delicts committed by servants or agents of the crown. I do not think that it can be argued that in the context of St Lucia the police officers who appear in this case are servants or agents of the Crown and so acted at all material times in this case. The agency known as the police force is an agency of the state and its employees would be regarded as agents of the state or Crown.

[26] While I understand the contention of Defence counsel that there has been no specific evidence as in **Ramson V Barker** that there were orders being followed from superiors in furtherance of state policy I do not agree that it cannot be implied from the evidence that the officers were purporting to act in accordance with an enactment which conferred functions on them.

[27] No officer approaches a member of the public and announces that he is acting pursuant to powers conferred by the Police Act. Neither would any police officer announce that he is acting pursuant to powers conferred by the common law. We have to rely on the evidence which in summary in this case suggests that the police officers purported to act pursuant to their lawful authority to arrest a member of the public on suspicion of having committed an offence namely uttering threats to a police officer.

[28] Counsel's argument that the police officers were acting pursuant to their common law powers is not evidence but an opinion based on the evidence namely, the failure of the officers to state that they were acting pursuant to their statutory functions. Indeed it is open to me to interpret the facts differently and state that the police officers were purporting to act according to their statutory functions and I determine this issue accordingly.

[29] In support of my conclusions on the law I rely on the decision of Edwards J as she then was in SLUHCV 2004/0502 **Michael Christopher v Ravien** consolidated with SLUHCV 2006/0182 **Tamara Barrow v PC 240 John Flavien** where the learned judge stated:

> "Having regard to the evidence of the Defendants' witnesses, it is clear that PC Flavien was in the execution of his public duty as a police officer. The breadth of Section 4 (3) of the Act appears to trap and make the Crown liable for any delict committed by a police officer while he is acting within the scope of his employment and he is performing a public duty. This section seems to make the Crown liable for any such delict even where that police officer in pursuance of his statutory authority commits the delict outside statutory or other legal justification.
>
> I therefore conclude that the Crown, represented by The Attorney General, is liable for this delict committed by PC Flavien."

[30] **Flavien** was a case in which the police officer claimed that he was not a servant or agent of the attorney general but he was acting as an employee of the Government of St Lucia according to his duties and in good faith when he fired a firearm and caused injury to the Claimants in that case. Yet the learned judge was able to conclude that he was acting within the **scope** of his duties. I accept this approach to the Crown Proceedings Act and I adopt the learned judge's reasoning. The Crown cannot avoid liability by claiming that the police acted pursuant to their common law powers.

Discussion of the Evidence

[31] Counsel for the Defendant submits that the arresting officers had sufficient information to believe that the Claimant had committed an offence to ground reasonable and probable cause to justify his arrest, detention and prosecution ; that the Claimant's total evidence is inconsistent in so far as it has been adduced to substantiate the claim for assault and battery and damage to his motor vehicle; that the force used by the arresting officers was reasonable in the circumstances and if the Claimant suffered injury, which is denied , it was caused by his own unlawful acts in resisting the lawful arrest of Constable 463 St. Rose.

[32] However I do not think that the arresting officers in this case had reason to suspect that the Claimant had committed an offence. Such evidence is necessary for their arrest to be lawful. See **Cedeno v O'Brien** (1964) 7 W.I.R. 192. I believe that they had information which led them to conclude that the Claimant was as a "trouble maker" who should be put in his place for his "rudeness" to another police officer. As stated earlier this was the purpose for approaching the Claimant at Roseau Valley.

[33] In **Cedeno v O'Brien** Wooding CJ sitting on the Court of Appeal of Trinidad and Tobago had this to say:

> *" Likewise I hold that " an officer having reason to suspect" does not mean and cannot mean" an officer thinking that he has reason to suspect." In my judgment, "reason to suspect" is no less a positive fact capable of determination by our courts than , to refer to a familiar issue, "reasonable cause to suspect" that goods which a person has in his possession or control have been stolen or unlawfully obtained"*

[34] The obvious inference is that if there was no basis for the allegation of threats being made to Cont. Monlouis then no other police officer could have a reasonable suspicion that such a threat took place.

[35] The Claimant's counsel began by indicating that the Defendant had not denied that the police officers inflicted the injuries on the Claimant but only impliedly in their pleadings alleged that the injuries were caused as a result of the Claimant resisting arrest and the police in response applying reasonable force to affect his arrest. Yet, counsel

argued, the Defendant's witnesses stated in their evidence before the court that none of them hit the Claimant and none of them saw any other police officer hit the Claimant. The question which arises is, how were the injuries caused? Saying "resisting arrest" does not provide an answer.

[36] Counsel argued that on the quality of the evidence the Claimant and his witnesses were candid and clear about what they were saying while the Defendant's witnesses contradicted each other and in some cases corroborated the Claimant's witnesses. He therefore asked the court to believe the Claimant and his witnesses.

[37] By way of example counsel cited the following instances where the Defendant's witnesses corroborated the claimant's witnesses:

(1) WPC Leo Simeon said she saw a crowd gathered (at Roseau).

(2) Police constable Luncheon said 5 officers went to Roseau to arrest the Claimant, he was part of the squad, he had a gun in his hand and he was not the only one with a gun in his hand.

(3) Corporal Voudroque said 3 officers arrested the Claimant and he saw constable St Rose pull the Claimant out of the shop.

(4) Police Constable St Rose said he did hold on to the Claimant's trousers after he (the Claimant) refused to come to him. A crowd had gathered, the crowd was maybe 10 or more people.

[38] Counsel argued that this is consistent with the evidence of the Claimant that about 8 - 10 officers with guns in their hands beat the Claimant after he was pulled out of the shop and a crowd of people had gathered and persons in the crowd chided and berated the Police for their actions.

[39] Counsel argued there were clear discrepancies relating to Const. Tana Mon Louis' explanation for not arresting the Claimant on site at the time of the threat. Mon Louis had claimed that his group were on a special mission at the time while WPC Leo Simeon said they were on regular patrol. But PC Luncheon said that the mission was before the incident involving the Claimant and was not the reason why he did not affect an arrest on the Claimant.

[40] Counsel for the Claimant argued that the arrest was unlawful because there was no ground for the arrest. Although the words used are in dispute; at their highest the words "Tana you hot, you hot, we have plans for you in the Valley" do not constitute a threat which caused apprehension at the time they were said, because no arrest was affected there and then. He argued that the inference to be drawn from this is that the Constable did not view the words as threatening. Hence no offence was committed and therefore the purported arrest was unlawful.

[41] Counsel argued that the words alleged "we have plans for you in the valley," do not constitute a specific threat and the perpetrators have not been identified. The allegation that the threat continued when the Claimant drove behind the police officers without mens rea or actus reus should also be rejected.

[42] I must say that I find the submissions of the Claimant's counsel make sense. Indeed Constable Mon Louis at no time says that he apprehended any action at the time the Claimant made his alleged threat. Only later did he communicate some fear because the Claimant was driving behind him. I do not see how these actions by the Claimant could constitute a threat when the alleged fear does not coincide with the alleged threatening words.

[43] Since the court has already concluded that the officers never intended to effect an arrest on the Claimant I do not think that it is surprising that I would also state that the evidence on the issue of the arrest is somewhat inconsistent, beginning as counsel has stated with the words Corporal Voudroque ascribes to Mon Louis which Mon Louis did not himself say that he used.

[44] However I do not consider counsel's argument in relation to ground 4, that issuing threats was not an arrestable offence, to be properly submitted since it does not refer to any analysis of a St. Lucian statutory provision to support the argument that an arrestable offence is one for which the penalty is at least five (5) years imprisonment or is fixed mandatorily by law. Indeed the excerpt cited by counsel in support of the submission, **Commonwealth Caribbean Criminal Practice and Procedure**, by Dana Seethal, at page 41 cannot be read in that light since it specifically refers to "Private

citizens (arrests)" and not police powers of arrest which are obviously different, a point signalled by a footnote on the same page.

[45] Nevertheless my conclusions of the facts and law in this case favour the Claimant. I have already stated the reason why I thought that there was never an intention to affect an arrest and that the arrest was an afterthought when the pent up animosity turned to violence. I must also state that I agree that the Claimant's witnesses, with one exception, are to be believed over those of the Defendant even though the Claimant himself is guilty of some falsehood.

[46] An example of the latter is the Claimant's allegation that the police officer St Rose drove his vehicle in such a way that it sustained damage. I have concluded that this allegation has not been proven and should be rejected. The Claimant clearly could not have seen the Police officer driving his vehicle carelessly as he alleged. His eyes were swollen according to him and he was sandwiched by two officers in the police vehicle after being arrested. Furthermore the time which passed between the alleged damage and the inspection to determine the damage, more than a month, puts the cause of the alleged damage in further doubt.

[47] I also conclude that the witness Alvira Seminor could not have seen the incident which the Claimant complains of because she speaks of an incident on the road and not at the premises of Mr. Tennison Patrick which everyone else speaks about. She did not see the Claimant being pulled out of the house by his pants yet she saw the police approach the Claimant and begin to beat him. I therefore reject her evidence.

[48] On the question whether the police constable St. Rose did tell the Claimant that he was under arrest for threatening a police officer, I believe that he did use words amounting to giving the reason for an arrest. However in my view he would or should have been aware that the allegation was not substantiated and therefore stating the reason for the arrest was merely precautionary.

The Pleading of Assault

[49] Defence counsel mounted a defence that there was insufficient pleading of assault. I reject this argument firstly on procedural grounds since the time to attack the pleadings

was at Case Management and the time to attack the witness statement was at Pre-trial review. This does not mean that no attack would be entertained at trial but firstly there must have been a good reason for not raising the issue at Case Management or Pre-trial review and secondly the objection should be one which totally undermines the Claimant's evidence. In this case I do not think these conditions apply.

[50] My understanding of the law relating to assault however is, that apprehension of the use of some immediate, unlawful force to the person, is an ingredient of the offence or the unlawful act. But the apprehension referred to is not synonymous with alarm. See: **Clerk and Lindsell on Torts 20th Edition**, Michael A. Jones, London: Sweet & Maxwell, 2010 page 991. Indeed a brave person who is not alarmed by threats or attacks of a minor nature could never plead that he was assaulted if counsel's submission was correct. The law is that the apprehension need therefore be no stronger than awareness of possible harm being inflicted without one's permission. As long as permission is granted in the sense stated above there can be no assault.

[51] Neither the evidence of the Claimant nor the Defendant discloses anything which reveals a possible agreement to be assaulted. While there may have been no specific reference in the pleadings to the ingredients of the assault there is sufficient evidence of the police officers inflicting blows on the Claimant to constitute an assault and battery. I therefore hold that the pleadings and the evidence together are sufficient to establish the ingredients of assault.

[52] Since there could have been no true basis for arrest, the purported arrest was unlawful, and damages flowing directly from the unlawful act are recoverable since trespass is actionable per se. **See**: **Clerk & Lindsell on Torts 20th Edition**, Michael A. Jones , London, Sweet & Maxwell 2010 at page 988. In this regard it would be impossible to extrapolate from the facts that the injuries suffered by the Claimant were caused by anything other than the assault of the police officers.

[53] As far as the false imprisonment is concerned the Claimant would have suffered public humiliation and loss of his liberty in the process. This would be sufficient to justify the application for aggravated damages. Such aggravation continues until it is shown that the arrest was wrongful. See: **McGregor on Damages Fourteenth Edition** page 922,

para. 1357 and page 924 para. 1362. The evidence is that the Claimant was detained for more than 24 hours on a false accusation.

[54] As far as total damages are concerned based on similar cases I would award the claimant $12,000.00 for pain suffering and loss or amenities based on the assault and battery. I also award $8000.00 for false imprisonment.

[55] I am of the view that the circumstances were aggravated because the Claimant suffered the indignity of a public beating and a false accusation for which he was detained. This is behaviour which amounted to an assault on the constitutional liberties of the Claimant even though not pleaded as such, and in order to compensate for the nature of the act including the humiliation suffered I add a further $12,000.00 to the claim for general damages.

[56] I have determined that the Claimant failed to prove that the Defendant was responsible for damage to his motor vehicle which was driven from the location of the incident in Roseau Valley to Castries by a police constable. However the legal fees incurred in making representation for the Claimant at the Police station where the Claimant was detained and the subsequent Magistrate Court appearances are proved as claimed. These special damages amount to $3500.00.

[57] I therefore award the total sum of $32,000 general damages plus interest from the date of the Judgment to the date of payment at the rate of 6% per annum and the sum of $3500.00 special damages from 7th April 2008 to the date of payment at 6% per annum.

[58] I also award costs to the Claimant pursuant to Part 65 of the CPR 2000.

Francis H V Belle
High Court Judge