

GRENADA

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. GDAHCV2007/0296

BETWEEN:

KISHOLA ANTONIA LEVINE, A MINOR
(By her Guardian and Next Friend Bernadette Olive Levine)

Claimant

and

KENNY SMART
THE ATTORNEY GENERAL OF GRENADA

Defendants

Appearances:

Mr. A. John, with him Ms. P. John and Ms. N. Pivotte for Claimant
Mr. A. Olowu for Defendants

2011: July 11, September 22

JUDGMENT

[1] This is a claim brought by the guardian and next friend of the Claimant (a minor) for the following relief:

- (i) Damages for unlawful detention of the Claimant on or about the night of January 19, 2007;
- (ii) Such further or other relief as the Court shall deem just; and
- (iii) Costs.

[2] This claim arises out of a series of events which took place at the residence of the Claimant and her family on January 19, 2007, where her father was arrested and charged with various drug-related offences and the Claimant herself was taken to the South St. George Police Station and held there for approximately four (4) hours until she was released.

- [3] The Claimant was 12 years old at the time of these events. At the time of the incident she lived at Hilltop View, Grand Anse, with her parents Bernadette and Michael Levine and her brother Mikheal Levine. At the time of the incident her mother was in New York, United States, and so was not a witness to the events in question.
- [4] She got a phone call while in the US informing her that her husband and daughter had been taken to the South St. George Police Station.
- [5] She called Grenada and spoke with Peter David.
- [6] She says that her daughter, the Claimant, is still troubled by the incident and is embarrassed that her friends are aware that she was taken away from her home by the police.
- [7] On Friday, 19th January 2007, the Claimant was at home with her father. It was around 7:35 p.m. She was in her mother's bedroom talking to someone on the telephone. Her father was in the garden in front of the house. No one else was at home.
- [8] While she was in the bedroom she heard voices shouting and dogs barking. She looked outside, it was dark but she saw flashlights and people running about in the garden. She did not recognize any of these persons. She went to the front door, she called her brother on the telephone; she told him to come home.
- [9] She went to the dining room, she saw men in the yard approaching the door. They entered the home through the dining room door. It was unlocked. They asked who was in the home. She went to meet the voices. She met these persons in the corridor leading from the dining room to the bedroom.
- [10] She saw four persons; her father was not with them. They asked, "Where is the man?" She responded that there was no one inside the home but her. The persons were all in civilian clothes.

- [11] The persons went towards her parents' bedroom. She followed them. The persons did not identify themselves to her. She guessed that they were police officers. She had never seen any of them before.
- [12] The men started to search. She was asked to assist and she did so. They searched not only her parents' bedroom but her brother's bedroom, computer desk and closets. They searched the living room, dining room and kitchen. The search lasted about 1½ hours, and her father was absent. No one identified themselves to her, and no documents were shown to her, nor did they tell her what they were looking for. She later came to know the officer who conducted the search was the 1st Defendant, Officer Kenny Smart.
- [13] They went outside. She followed them. She saw her father coming into the yard from the back of the house. The men held him and placed plastic bands on his hands. They questioned her father.
- [14] Her father was brought back to the house and another search took place. Her brother had arrived at the house. She heard his voice.
- [15] Officer Smart asked that she shorten the chain for the dog. Her brother offered to do so as she could not. Her brother did so and Officer Smart went into the washroom near the dog house. He searched it. The officers searched all the dog houses. They searched the downstairs portion of the house. Officer Smart went into the garden and stayed away for about 15 minutes.
- [16] On Smart's return, the police stated that her father and herself had to go with them. She was told that she was seen using her cell phone so she had to go with them. Two officers took her father's vehicle and she and her father were transported to the South St. George Police Station in a police vehicle. They arrived at the station at around 8:30 p.m.
- [17] Officer Smart questioned her at the station. He asked if she knew why she was there. She did not. She was questioned about her father and his movements. She was told she would be taken to St. Paul's Police Station and kept until the

following day. She was kept at South St. George Police Station until after midnight. She was then released. She has not been charged with any offence. She was taken home by a family friend.

[18] She stayed at the police station for about four (4) hours. She did not go to the washroom; she just stayed on the bench. She stated that her father had no control over her while she was at the police station. She was never told by the police that she was taken to the police station for her safety. She never felt free to leave the station. She understood that she was in police custody and under their control. She was traumatized and humiliated by the experience. She knew that her brother had come to collect her at some time during the night. She was not released to her brother.

[19] Mikheal Levine also gave evidence. He testified that on the day in question he got a call from his sister. He was in St. George's at the time. He immediately left and went to his residence. At the time he was 17 years old.

[20] On approaching the house he observed two men, one with a flashlight spotting into the bushes outside. He entered the yard and was approached by a man pointing a gun at him. He observed other men in the yard. One of the men was in handcuffs. He was asked who he was and what he was doing there. He replied that this was his home.

[21] He said one of the men said that they were going with everyone that night and that he should have stayed away. He was asked to put his hands on the vehicle and spread his legs. He was searched. The search was so rough that his pants slipped. The men laughed. He was told that his father could not train him properly because he was into cocaine and ganja.

[22] He asked for his father, and one of the men, who he came to know as Officer Alexander, told him he was not his father's keeper.

[23] He saw three men come into the yard with his father, who was handcuffed.

- [24] The police then searched the area of the dog house and the area and found nothing. They then said that they were going to the police station. He heard one of the men say, "Leave her, she is only a child."
- [25] He heard Officer Alexander say that he did not care whether she was a child, she must know something and she had to go.
- [26] The police left with his father and sister and the other man he saw in the yard. He was left alone at home at about 10:00 p.m. His sister did not return until about 1:00 a.m. the next morning.
- [27] He did not go inside the house throughout the time the police were at the home.
- [28] He did not know why his sister was being taken away.
- [29] The last witness for the Claimant was Maureen Scott. She lives at Grand Anse Housing Scheme, a short distance from the Levine's. She is friendly with the Levine family.
- [30] She recalled the day in question. She knew that Mrs. Levine was in the United States. She received a phone call from Mrs. Levine asking her to go to the South St. George Police Station. She was asked to go and see what was going on as the Claimant and her father had been taken to that station.
- [31] Mrs. Levine's nephew and son picked her up and they all went to the police station. They got there at about 9:00 p.m.
- [32] On arrival at the station they saw the Claimant sitting on a bench in the station. She was crying.
- [33] They asked Officer Smart, who was at the front desk, if the Claimant could leave with them. He responded no. Ms. Scott pointed out that the Claimant was a child but the officer said that she could not be released and that if Ms. Scott was at the Levine's home when the Claimant was picked up, she, Ms. Scott would have been

picked up too. Officer Smart also told her that the Claimant was to be transferred to St. Paul's Police Station where there were facilities for holding females.

- [34] While she spoke to Officer Smart she did not see the Claimant's father.
- [35] After speaking with Officer Smart, they were told they could leave the station. She got the impression that Officer Smart and the other officers present were not taking her seriously.
- [36] She was told by another officer that the Claimant could not be released because she was involved.
- [37] They left the station, leaving the Claimant sitting on the bench.
- [38] She left the station but returned at around 10:30 p.m. - 11:30 p.m. She met Peter David, a lawyer, and the Claimant's father inside the station. The Claimant's father was now sitting on the bench next to her. She said that Mr. David got the Claimant released sometime near midnight and she left the station in her company, along with her brother.
- [39] She knows that the Claimant and her brother were at home alone on the night of the incident. She sent her son to stay at the home with them. Her son was arrested the following day. She was told by Officer Smart that her son fit the description of a man who was seen running from the Levine's home the night before.
- [40] She stated categorically that she did not give evidence because of the arrest of her son.
- [41] The Defence called two witnesses, the first was the Defendant, Kenny Smart, a Sergeant of Police and a member of the Royal Grenada Police Force for 22 years.
- [42] He stated that on the day in question he along with other police officers was on mobile patrol when he observed one Stephen Anthony of Woburn in a vehicle with another individual.

- [43] He smelt cannabis and became suspicious. He turned around and followed the suspect vehicle. The vehicle went into the Levine's yard and the officers observed Michael Levine open a red van while other men were in the yard talking. He and the other officers approached; Levine and the other men ran away. Officer Smart held on to Stephen Anthony. The other officers ran after Levine and the other man. The smell of cannabis persisted as he moved closer to Mr. Levine. He checked the van and saw a dry substance he suspected to be cannabis.
- [44] Levine was captured and brought back to the yard, where the officers confronted him with the substance he found in the van. Levine and Anthony were subsequently arrested. The Claimant was found in the house and taken to the station because there was no one in the house at the time.
- [45] The Claimant was asked to sit in the Charge Room. The other persons were taken for questioning.
- [46] During questioning the Claimant's father asked for her to be present. Officer Smart complied with the request to encourage the Claimant's father to cooperate. He could not recall if he asked the Claimant any questions.
- [47] After this, the Claimant was returned to the Charge Room. She was not questioned with respect to the incident or the substance found.
- [48] In cross-examination, paragraph 3 of the Defence was put to Officer Smart. It reads as follows:

"Save that the Defendants admit that on January 19, 2007 at about 7:35 p.m. the First Defendant entered the home of the Claimant where she was alone, paragraph 4 is denied. The First Defendant and other officers of the Drug Squad responded to a report of illicit drug activities in the Grand Anse area. While in the vicinity, the officers witnessed several persons conducting suspicious activities in the front yard of the Claimant's home. The Claimant was among them. When the officers approached the group, all the persons present fled from the scene, including the Claimant. The

First Defendant and other officers pursued persons they saw run into the house while other officers pursued those who ran away from the house. On entering the house, the First Defendant saw the Claimant who informed him that there was no one else in the house. The First Defendant and another officer remained at the house with the Claimant while the other officers pursued the other persons. The other officers returned to the said yard with Michael Levine, the father of the Claimant and another person who had also been pursued and captured."

[49] When confronted with the allegation therein that the Claimant was involved in the suspicious activities in the front yard, his response was, "I did not draft the defence", and said that he saw the Claimant standing in the doorway of the residence.

[50] He stated he smelt unlit cannabis, "the raw one". He said that anytime cannabis passes close to him, he smells it.

[51] He said there was no contradiction between paragraph 3 of the Defence and paragraphs 4 & 5 of his witness statement.

[52] Paragraphs 4 & 5 of the witness statement are as follows:

"4. As the vehicle passed, I got the smell of cannabis and I became suspicious and so I asked my driver to turn around which he did and we followed the vehicle.

5. The vehicle went into the yard of Michael Levine and I told my driver to stop and came out of the transport and was looking to see any strange movements. I observed Michael Levine opened his red van while other men remain in the yard were talking to each other."

[53] He went on in cross-examination to say that the Claimant was in the doorway of the house and she was approaching her father. He then observed the Claimant run to the inner part of the house.

- [54] He further testified that when he entered the house he saw the Claimant. He admitted that his witness statement did not say that he saw the Claimant at the doorway of the house.
- [55] He did see the Claimant's brother at the house and he knew how old he was. He said he was of the view that he was past 17 years of age. He knew that Mikheal Levine was a minor. He left Mikheal at the residence alone when he went to the police station with Stephen Anthony, Michael Levine and the Claimant.
- [56] He did not know where Mikheal's mother was. Mikheal told him that he would stay at the home as he had friends coming over.
- [57] He said that he did not know the strength of the character of these friends. He thought it dangerous to leave the Claimant there at the home. It is significant that this explanation is not contained in his witness statement, nor was any suggestion of this pleaded in the Defence. He said at the time he did not consider it necessary to include these explanations in his witness statement.
- [58] It is somewhat bemusing that the officer felt it was unsafe to leave the Claimant at the home because he doubted the character of the brother's friends but he left the brother, also a minor, at the home alone.
- [59] While at the station the Claimant was in the Charge Room. He testified that while questioning her father he requested that his 12-year-old daughter be brought into the room. He was questioning the father about drugs and his reason for fleeing the scene.
- [60] He said the father asked for the Claimant to be in the room while he was being questioned because he was concerned that she would be worried being outside by herself.
- [61] He testified that the Claimant's father was crying and saying that he would not see his daughter for a while. The officer said that he felt it was an injustice for him to wait until he completed his questioning of the father for the father to see his

daughter. He cited his training as a social worker as the rationale for his decision. He said he knew what grief and sadness were and he felt that allowing the Claimant into the room while questioning Michael Levine would make him more comfortable.

[62] To say that I find this scenario astonishing is an understatement. Why would an officer of such experience (17 years at the time of the incident) allow someone who is not a suspect into an interrogation in progress is beyond comprehension.

[63] The Claimant's father had been arrested on a suspected serious offence, possession of cannabis, yet the same officer who refused to leave the Claimant at her home because he was not satisfied as to the character of the friends of her brother, thought it prudent to allow the Claimant to be present while he questioned her father, in what he described as confrontation interrogation.

[64] He denied telling Maureen Scott that the Claimant could not leave the police station. He said it was a lie with a capital L. He denied having any conversation with Maureen Scott regarding the Claimant. He said that at the time the South St. George Police Station had facilities for females. He said he did not know whether St. Paul's Police Station had facilities for females. He accused Maureen Scott of fabricating her evidence. He had no idea who Maureen Scott's son is.

[65] Again, I am taken aback that such an experienced police officer is unaware of the facilities at police stations in Grenada.

[66] The officer cannot remember if he questioned the Claimant while she was in the room with her father. I believe that he did question the Claimant while she was at the police station about her father's activities.

[67] He also testified that he did not depart from established procedures that night. He admitted that the Claimant was in his control at the police station and not in the control of her father. He said he had to follow the correct procedure before the Claimant could leave the police station that night.

- [68] He said the proper procedure was for the Claimant to be released to a capable adult. He concluded that Maureen Scott was not a capable adult. He had no reason for concluding that she was not a capable adult, because prior to that night he did not know Maureen Scott. He also did not speak to Ms. Scott that night.
- [69] He eventually released the Claimant to the custody of Mr. Peter David, Counsel.
- [70] Officer Devon Phillip also gave evidence. He in large part supported the evidence of Officer Smart.
- [71] He received a call and he proceeded to where Officer Smart was. He met Smart in the Levine's yard. Officer Smart was already in the yard. It was around 6:40 p.m. It was still light outside, it was not yet dark. The home was not in light. There were other officers present.
- [72] He saw Stephen Anthony in the yard, but the Claimant's father was not present when he arrived, neither was the Claimant's brother. He said the brother did not come home while he was at the home, even though he left the residence with Officer Smart. He insists that if it was said that Mikheal Levine was present that evening "that would be wrong".
- [73] He saw the Claimant sometime during the operation. He first saw her in front of the door. He did not go inside of the home. The Claimant came from inside the house and stood in front of the main door. This, too, is in stark contrast to the pleadings in the Defence.
- [74] He recalls the Claimant sitting on a chair in the Charge Room at the South St. George Police Station, but he did not stay at the station for very long. He only stayed a few minutes and then he left. He had no knowledge of what happened with the Claimant at the South St. George Police Station.
- [75] Looking at the evidence as a whole, I find the evidence of the Claimant and her witnesses to be more compelling than that of the Defendants.

- [76] I find that the Claimant was in the custody and control of the Defendant and not her father from the time she left the home to the time of her release from the South St. George Police Station.
- [77] I find that the Defendants had no cause to detain the Claimant in the circumstances of what transpired at the Levine's residence on the 19th January 2007.
- [78] It is not disputed that the Claimant was removed from the residence by the police on the day in question. As the evidence shows, she was not at liberty to leave the police vehicle or the police station of her own free will once she was under the control of the police.
- [79] I have already indicated that I do not accept the evidence of the Defendant that the Claimant was removed from the premises for her safety due to the character of the friends her brother had invited to the home. I find that explanation to be a recent fabrication of the Defendant, Officer Smart.
- [80] I also find that the Claimant was questioned by Officer Smart while she was at the South St. George Police Station.
- [81] A person can be imprisoned although not conscious of the fact.
- [82] The imprisonment must amount to the total restraint of his liberty for some period, however short. Partial obstruction will not suffice.
- [83] There need not be an arrest or a charge for a claim of false imprisonment to be made out, merely that the person so complaining be restrained or confined. The lack of a charge or arrest does not affect the claim for false imprisonment.
- [84] "A restraint by authority to which the Claimant submits may be an imprisonment although he is not actually touched" - **Warner v Reddiford** [1858] 4 CB 180.
- [85] I find that there was absolutely no basis for the detention of the Claimant as contended by the Defence in their submissions.

[86] "Any total restraint of the liberty of the person for however short a time, by the use or threat of force, or by confinement is an imprisonment.

To compel a person to remain in a given place is an imprisonment ..."

[87] "The gist of the action of false imprisonment is the mere imprisonment. The Claimant need not prove that the imprisonment was unlawful or malicious, but establishes a prima facie case if he proves he was imprisoned by the Defendant, the onus then lies on the Defendant of proving a justification"- Halsbury's Laws 4th Ed. Vol. 45 para 1325.

[88] "If a police officer tells a person charged that he must go with the officer and the person charged submits and goes , this is an imprisonment" – **Horner v Battyn** [1739] BULL NP 61.

[89] Here in this case, while the Claimant was not charged, she was told that she had to go with the officers, she was given no choice. She remained under the custody and control of the police, not being free to leave until she was released to Counsel. This was some four hours after her detention commenced.

[90] False imprisonment is a tort actionable without proof of damage.

[91] In an action for false imprisonment the Claimant is entitled to recover general damages.

[92] He may rely in aggravation of the general damages on the circumstances attending the imprisonment and on any facts in the conduct of the Defendant at the time of or before or after the imprisonment which show malice.

[93] As I have already indicated, I find that there was no justification for the detention of the Claimant, and I would award damages to her in the sum of \$10,000.00 for her unlawful detention.

[94] "There are two senses in which it can be said that a Claimant's damage has been aggravated by the Defendant."

In the first sense of the word, the Defendant's motives, conduct or manner of inflicting the injury may have aggravated the Claimant's damage by injuring his proper feelings of dignity and pride."

[95] Where damages are at large, the Court may take into account the Defendant's motives, conduct and manner of committing the tort, and where these have aggravated the Claimant's damage by injuring his proper feelings of dignity and pride, aggravated damages may be awarded." – Halsbury's Laws 4th Ed. Vol. 12 paras 1186 & 1189.

[96] Here the Claimant has said and the Court believes that she felt humiliated and embarrassed at her detention. Her feelings were wounded, she felt badly at the way she was treated.

[97] The Court finds that the Defendant's behaviour especially that which he displayed at the police station was high handed, aggressive and uncalled for.

[98] As a result, the Court would award the sum of \$5,000.00 as aggravated damages.

[99] I therefore order as follows:

- (i) General damages in the sum of \$10,000.00
- (ii) Aggravated damages in the sum of \$5,000.00
- (iii) Costs in the sum of \$3,000.00

Margaret Price Findlay
High Court Judge