

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2019/0274

BETWEEN:

ELCARDO JACOBS

Claimant

and

[1] ANTHONY WALTERS

1st Defendant

**[2] THE ATTORNEY GENERAL OF
SAINT CHRISTOPHER AND NEVIS**

2nd Defendant

Appearances:-

Ms. Vadeesha T.N. John for the Claimant.

Mr. Leslie Roberts, Senior Crown Counsel, and Ms. La Shaun K. Smart, Crown Counsel, for the Defendants.

2022: February 11
July 29

JUDGMENT

- [1] **WARD, J.:** This is a claim for damages for assault and battery, wrongful arrest and false imprisonment. The claimant, Elcardo Jacobs, alleges that on 28th April 2019 he was arrested without reasonable and probable cause by the 1st defendant, Police Constable Anthony Walters (PC Walters), who committed an act of assault and battery on him before unlawfully detaining him at a cell of the Basseterre Police Station for approximately seven hours. No issue arises as the vicarious liability of the 2nd defendant in the event that the 1st defendant is found liable.

The claimant's evidence

- [2] Mr. Jacobs' witness statement was admitted as his evidence-in-chief. He stated that he is a Stevedore by profession. However, he was employed by "Party Central" on a part-time basis to erect and dismantle stages and tents at events. On 27th April 2019, he was working as part of a team employed by Party Central at an event called "Blu Wave" at an area commonly called "the Strip" at Frigate Bay. The team was responsible for the erection of the stage and for dismantling it at the end of the event. He was also part of the team responsible for monitoring the stage during the event to make any necessary adjustments as circumstances required. At about 5:45 a.m. he was on his way to his truck to pack up some items and equipment when he heard a person shout, *"Aye, hold on!"* After he heard the person shouting, he stopped and looked around to ascertain to whom the person was speaking, as there were several persons leaving and entering the venue. He saw the 1st defendant, whom he later learnt was 796 PC Walters of the Special Services Unit (SSU). PC Walters shouted, *"Aye...come here!"* At this point, they were about an arm's length from each other. Mr. Jacobs stood up and looked around still trying to determine who PC Walters was addressing. Immediately after he stopped, PC Walters seized him by the shirt and pulled him towards him in a violent and aggressive manner. Mr. Jacobs said he became fearful and felt intimidated and embarrassed. He was confused as up to that point there was no indication that PC Walters was referring to him and he had no idea why PC Walters had pursued and grabbed him in that manner. He then asked PC Walters what happened and asked what he had done. PC Walters responded by shouting, *"Boy you ain't know when police call you, you supposed to come?"* With that, PC Walters then held Mr. Jacobs' hands up, grabbed him and attempted to throw him to the ground. Mr. Jacobs broke the fall by skipping over his foot. He kept asking PC Walters what he had done. PC Walters repeated, *"When police call you, you supposed to come."* He then seized Mr. Jacobs, lifted his body and slammed him violently to the ground. He landed on his back. PC Walters stood over Mr. Jacobs and placed his (Mr. Jacobs') hands behind his head. Just then, Mr. Ian "Rookie" Phipps, owner of Party Central, appeared near the incident, along with a group of patrons who gathered around. PC Walters retrieved the knife and passed it to Mr. Phipps. Mr. Jacobs remained on the ground and continued to ask PC Walters what the problem was and what had he done. PC Walters then said to him, *"Just get up come let we go."* PC Walters then escorted him to the police motor pickup. He

opened the tail gate of the pickup and instructed Mr. Jacobs to sit. At this point, Mr. Jacobs again asked him what he had done. PC Walters told him that he was disrespecting his boss, meaning Mr. Phipps. Mr. Jacobs asked him how so. PC Walters then said, *"Only because of 'Rookie', get up out of my pickup."* Mr. Jacobs said he felt humiliated and embarrassed.

[3] As a result, he caught a taxi and went to the Basseterre Police Station to make a complaint against PC Walters. Upon arrival at the station, he met Sergeant Pemberton (now deceased), who processed his complaint. While making his complaint, PC Walters entered the station in company with two officers. Upon seeing him, Mr. Jacobs identified PC Walters to Sergeant Pemberton as the officer who had "violated" him. Sergeant Pemberton then called PC Walters over. However, PC Walters shouted, *"What he doing here? Making complaint on me? I ain't coming!"* before storming off upstairs. Mr. Jacobs completed processing his complaint. He was given a copy of a "Citizen Complaint Form". He then left the station and went home as he was in some pain from being thrown to the ground by PC Walters. Mr. Jacobs stated that about an hour later, he received a call from his boss, Mr. Phipps. As a result of the telephone conversation, he left his home and returned to the Basseterre Police Station. He got there at about 7:00 a.m. and observed his boss and PC Walters in the parking lot. He continued walking towards the station. PC Walters then moved and entered the station. When he got to where PC Walters was, PC Walters grabbed him and told him that he was under arrest. Mr. Jacobs asked him why he was under arrest. PC Walters told him, *"For battery, you bang me over Frigate Bay."* "Bang" is a colloquialism for "beat." Mr. Jacobs said he was totally shocked by what PC Walters had said as he had not touched him or "banged" him at Frigate Bay as PC Walters was the one who physically abused him. At about 7:05 a.m. he was taken into custody and placed in a cell. He was then presented with a document showing that he was charged for beating Anthony Walters while in the execution of his duty contrary to section 37 (2) of the Small Charges Act Chapter 4.36; for wilfully obstructing Anthony Walters while in the execution of his duty contrary to section 37 (2) of the Small Charges Act Chapter 4.36; and for resisting Anthony Walters while in the execution of his duty contrary to Section 37 (2) of the Small Charges Act. He remained in custody and in the cell from about 7:05 a.m. to about 2:00 p.m., at which point he was offered station bail, which was successfully processed. He was then allowed to leave the station

[4] A few months later he was served with three (3) summonses which were filed in the Magistrate's Court on August 29, 2019, in respect of the said charges. He appeared before the Magistrate's Court

in Basseterre on 7th October 2019 but the case was adjourned to 4th November 2019 on which date, the charges against him were dismissed. PC Walters did not attend court.

Cross-examination

- [5] Under cross-examination, Mr. Jacobs denied the suggestion that when he looked back to determine to whom PC Walters was speaking, he must have realised that PC Walters was addressing him. He said that he went to the Basseterre Police Station immediately after his encounter with PC Walters. He agreed that one should go to a doctor if injured and feeling seriously unwell but accepted that he did not see a doctor that day and had not submitted a medical report. It was then put to him that PC Walters did not slam him to the ground, but he disagreed with the suggestion. He said he had a headache and a little back pain. He testified that after PC Walters told him to “get up, let’s go,” he was not in handcuffs, and he was not placed in the police pick up; he sat on the tailgate. He denied that he had been placed under arrest at Frigate Bay. It was suggested to Mr. Jacobs that he had not left the station and returned after an hour since the complaint form showed him making the report at 6:22 a.m. and his evidence in chief was that he returned to the station at 7:00 a.m.; instead, immediately after making his complaint, PC Walters held him and told him he was under arrest. Mr. Jacobs explained that when he said he returned to the station at 7:00 a.m. that was an approximate time.

The defendants’ evidence

- [6] The witness statement of PC Walters was admitted as his evidence-in-chief with some amplification on its contents with leave of the court. He is a police officer No. 796, at the Royal St. Christopher and Nevis Police Force. He stated that on 27th April 2019 he was detailed for mobile patrol in motor pick up PA4565 from 7:45 p.m. to 8:00 a.m. on 28th April. He was accompanied by No. 817 PC Rogers and Private Sylvester. At approximately 3:45 a.m. they stopped to observe the BLU Wave Fete that was taking place at the Frigate Bay Strip. The party of officers separated, with Officers Rogers and Sylvester going off in a different direction to him. He observed a confrontation between two unknown persons, so intervened by restraining the person he regarded as the aggressor and took him away from the crowd. The person was reluctant and was resisting arrest, but PC Walters said he was able to restrain him. Suddenly, Mr. Jacobs approached from the right side and pushed him aggressively on the side of his arm, causing him to immediately stumble to the ground. The person whom he had been holding was pulled away by a group of men and he walked away quickly.

As a result, PC Walters said he left the area in search of Mr. Jacobs but did not find him. He later saw him and walked immediately in front of him and told him about the offences that he had committed against him. Mr. Jacobs was very reluctant to listen and walked away saying loudly, "I don't want to hear nothing from you, don't touch me or come close to me." PC Walters told him that he was under arrest for battery on a police officer. Mr. Jacobs resisted arrest by swinging his hands, thereby preventing PC Walters from placing handcuffs on him. He eventually subdued Mr. Jacobs to arrest him. He explained that by "subdued" he meant that he walked behind Mr. Jacobs after telling him he was under arrest, grabbed his two arms from behind, stuck out his foot and used police tactics to put him to the ground. However, Mr. Jacobs skipped over his foot and continued to resist. PC Walters executed the same manoeuvre again and successfully pushed Mr. Jacobs to the ground. He told him that he was under arrest for battery and resisting arrest, but Mr. Jacobs yelled "Officer why you holding me and why am I on the ground?"; all the while kicking and swinging his hands. According to PC Walters, Mr. Phipps then came over inquiring about his employee, so he explained to him that his employee was under arrest and that he was involved in police interference. Mr. Phipps then tried speaking to Mr. Jacobs saying 'boy cool out, calm down and listen to the police.' Mr. Jacobs continued to kick and swing his hands while yelling. Other bystanders tried to calm him down. PC Walters asked Mr. Jacobs to stand and he complied. PC Walters stated that Mr. Phipps asked him for the sake of his business to release Mr. Jacobs. He said he didn't know him personally but knew he was in charge of Party Central. He made a tentative decision to release Mr. Jacobs to allow him to finish his work but with the intention to take him to the station afterwards. PC Walters said that he told Mr. Jacobs: "You are under arrest. I am giving you a chance to finish up things for your boss but you are under arrest. You are going to the station afterwards." He subsequently contacted his immediate supervisor, Corporal Haywood, via cellular phone and told him about the situation. Corporal Haywood told him to make a complete arrest by bringing Mr. Jacobs to the Police Station. He searched for Mr. Jacobs but did not find him. He then told Mr. Phipps that he could not find Mr. Jacobs and requested that he make a statement at the Police Station and call Mr. Jacobs to tell him to come to the Police Station. When he arrived at the Police Station, he saw Mr. Jacobs at the front desk making a report. He allowed him to finish. When he was through, he arrested him in the parking lot for the offence of battery and resisting arrest. A search was done on Mr. Jacobs and then he was placed in the cell and later formally charged.

Cross-examination

- [7] Under cross-examination, PC Walters said it was about fifteen minutes after arriving on the strip that he observed the confrontation between the two unknown persons. It was dark at that time. There was a crowd in the area where the confrontation occurred, but he was focussed on restraining the aggressor. He disagreed with the suggestion that he did not observe the person who pushed him for a long period of time. He said when he saw Mr. Jacobs, he told him he was under arrest but said this was before Mr. Phipps arrived in the area where they were. Asked to clarify how he was able to apply his police tactics to put Mr. Jacobs on the ground given his description in evidence-in-chief of their respective positions, he stated: "I am holding his arms from behind while being at the side of him sticking out my foot." He said that although Mr. Jacobs was the one who had pushed him earlier, causing him to fall, he was not riled up when he saw him the second time. He said while Mr. Jacobs was on the ground, he was not being restrained. He obeyed his commands to get up, to accompany him to the police vehicle and to sit on the tailgate. He said he released Mr. Jacobs because Mr. Phipps asked him to. He said he was not in the habit of releasing someone he had arrested upon a civilian's request but had exercised his discretion to do so here. He explained that he had called Corporal Haywood to get advice on how to deal with the situation. When asked why he didn't call for advice before releasing Mr. Jacobs, he then said he didn't call Corporal Heywood for advice but just to let him know what was happening. Heywood told him to make a complete arrest. He said there is no such thing as an incomplete arrest. PC Walters said that although he had stuck by Mr. Jacobs' side after he decided to allow him to work, after speaking to Corporal Heywood, he could not find Mr. Jacobs. He searched for him but did not find him. He said although he had stuck by his side, he had lost him because he became distracted by the phone call to Corporal Heywood.
- [8] As it relates to subsequent events at the police station, PC Walters said when he saw Mr. Jacobs making his complaint, Sergeant Pemberton did not call him over. He knew that Mr. Jacobs was making a complaint against him because he heard when Mr. Jacobs identified him to Sergeant Pemberton. He said he had not allowed Mr. Jacobs to leave the police station after making his complaint and had not arrested him in the parking lot. He was referred to paragraph 4 of his witness statement in which he had stated: "When I arrived at the Police Station, I saw Mr. Jacobs at the front desk making a report. I allowed him to finish. I arrested him in the parking lot for the offence of battery

and resisting arrest.” He said he didn’t think it prudent to arrest him in the station. He denied the suggestion that he had arrested Mr. Jacobs in the parking lot when he was returning to the station. His explanation for what was contained in his witness statement was as follows:

“Based on my statement, I said I arrested him in the parking lot. I allowed him to finish then told him he was under arrest. I followed him into the parking lot and told him again that he was under arrest and carried him inside. When I had told him while in the station that he was under arrest he just ignored me and walked into the parking lot.”

- [9] He denied that he had only charged Mr. Jacobs because he found him making a complaint against him. Under re-examination PC Walters said that when Mr. Jacobs was making his complaint, he (Walters) was in the guard room where the complaint was being made but left to go into the parking lot.

Evidence of Ian Phipps

- [10] The other witness for the defence was Ian Phipps, also called “Rookie”. He is the owner of Party Central. On 27th April 2019, he was responsible for assembling and disassembling the stage and organizing the bar at BLU Wave Fete at Frigate Bay. Mr. Jacobs was assisting him with packing up tables and coolers in the truck. He told him to go for the truck while he would pack the tables by himself. Mr. Jacobs went towards the truck on the eastern side of the venue. As he was walking away, he observed Police Officers going towards him but paid it no mind since Mr. Jacobs was popular. He continued to pack the tables. After a while, he heard Mr. Jacobs shouting. He moved to get a better view and saw Mr. Jacobs on the ground. He went over and told PC Walters that he and Mr. Jacobs were doing some work together. PC Walters then told him that there was a situation in the event earlier in the evening and it was police interference. He said while Mr. Jacobs was on the ground PC Walters was standing over him and did not hit him at any point while he was there. PC Walters was, at most, trying to talk to him and calm him. PC Walters told him “in a police situation, you are not supposed to interfere.” Mr. Jacobs was on the floor kicking up and shouting. Two other officers looked on but didn’t get involved. Mr. Jacobs was yelling, “Do what you all want, Ru is police officer and does beat up people.” PC Walters then said to Mr. Jacobs, “I can’t believe you are moving like this; I will give you a break because of Rookie.” PC Walters then removed himself from over Mr. Jacobs, who started to yell at him. PC Walters then told him he was under arrest. Mr. Phipps asked PC Walters if he could allow Mr. Jacobs to finish his work first. PC Walters then said to Mr. Jacobs,

"I don't know what to do this, I just want you to understand that what you did was wrong. Rookie is a good yute, he is your boss, I don't know why you are disrespecting your boss like that." He then released Mr. Jacobs, who told Mr. Phipps that he was leaving. PC Walters then came back and asked Mr. Phipps to accompany him to the Station and to call Mr. Jacobs to come to the station. He drove behind PC Walters to the Station, where he gave a statement. When PC Walters came out, he asked if Mr. Jacobs needed to be bailed but PC Walters told him he would be granted station bail so he then left the station.

Cross-examination

- [11] Under cross examination, Mr. Phipps said he didn't see Mr. Jacobs resisting arrest. He said after PC Walters took Mr. Jacobs to the pickup he released him after that. He said he did not hear PC Walters say anything to Mr. Jacobs about going to the station with him. Mr. Jacobs told him he was going home. He said he called Mr. Jacobs that morning and told him to come to the police station because PC Walters wanted to speak to him. He further testified that: "When he got to the parking lot of the police station, I was there standing with Walters. It was at that point Walters arrested him."

Issues:

- [12] The issues to be determined in this case are whether Police Constable Walters committed an assault and or battery on the claimant; whether the claimant's arrest was unlawful; and whether the claimant's detention following arrest amounted to false imprisonment. If the defendants are found liable, what is the appropriate measure of damages to be awarded to the claimant?

The Law

Lawfulness of the arrest - Reasonable suspicion.

- [13] Section 5(1)(f) of the Constitution of Saint Christopher and Nevis authorizes the arrest of a person upon reasonable suspicion of him having committed, or being about to commit, a criminal offence under any law. Further powers of arrest without warrant are conferred upon a police officer by virtue of Section 5 (2) (b) of the Police Act, Cap. 19.07 which states that a police officer may "apprehend any person found committing any arrest rendering him liable to arrest without a warrant or whom he may reasonably suspect of having committed an offence. Similarly, Section 6(1) (a) of the Police Act, provides that a police officer may, without warrant, arrest a person whom he reasonably suspects of having committed an offence.

- [14] The question is: how does one determine whether the arresting officer had reasonable suspicion? In **Castorina v. Chief Constable of Surrey**¹ Lord Wolf suggested that the question whether an arrest was lawful required three questions to be posed. For present purposes, the first two are germane: (i) did the arresting officer suspect that the person who was arrested was guilty of the offence? (ii) if so, was there reasonable cause for the suspicion? The first test is subjective as it relates to the state of mind of the arresting officer at the material time. The second question requires an objective assessment whether the grounds for the officer's suspicions were reasonable in the circumstances.
- [15] In **O'Hara v Chief Constable of the Royal Ulster Constabulary**² the House of Lords held that there must be sufficient material from which an inference could be drawn that the officer had reasonable grounds for his suspicion. Such material may include information known to him, though not necessarily from his own observation. He could form a view based on what he had been told and it was not necessary to prove that any of the facts on which he based his suspicions were true.
- [16] The question whether the facts disclose reasonable grounds for an arrest is a question of law to be decided by the judge: **Dallison v. Caffrey**.³ The threshold for establishing reasonable grounds for suspicion is a low one. **Buckley and others v Chief Officer of the Thames Valley Police**⁴
- [17] In summary, there is both a subjective and objective element to the test of reasonable suspicion. Applied to the case at bar, the subjective test asks whether, at the time PC Walters exercised his power of arrest, he held an honest belief, based on reasonable grounds, that Mr. Jacobs had committed an offence. The objective test asks whether a reasonable man, assumed to know the law and possessed of the information which in fact was possessed by PC Walters, would believe that there were reasonable grounds to suspect that Mr. Jacobs had committed the offences. Both questions must be answered in the affirmative for the arrest to be lawful.
- [18] The evidence capable of supporting the subjective test is PC Walters' own evidence, if believed, that he saw the claimant push him to the ground while he was acting in the execution of his duty. His

¹ (1988) LG Rev 241.

² (1997) Crim LR 432, HL.

³ [1965] 1 QB 348.

⁴ [2009] EWCA Civ 356.

subjective belief derives from what he observed himself. That he honestly held the belief may be inferred from his subsequent actions when he confronted Mr. Jacobs and arrested him at Frigate Bay. It may also be inferred from the evidence of Rookie that while restraining Mr. Jacobs, PC Walters had told him that there was a situation in the event earlier in the evening and there was police interference and had further said to Mr. Jacobs: "In a police situation, you are not supposed to interfere." I therefore find that at the time of making the arrest, PC Walters did believe that Mr. Jacobs had committed the offences of battery and wilful obstruction of a police officer in the execution of his duties.

[19] I must next ask myself whether the reasonable man knowing the law and possessing the information that PC Walters would believe that there were reasonable grounds for suspecting that Mr. Jacobs had committed these offences? See **Dallison v Caffrey**. In my view, the reasonable man would be taken to know that PC Walters made his observation at 3:45 a.m. in an area that he said was dark; that the person approached him from the right side among a crowd of persons and pushed him at a time when he said he was focused on restraining the person he had apprehended, and immediately disappeared. The reasonable man would think that PC Walters got no more than a fleeting glance of his assailant. The reasonable man would be entitled to form that conclusion given that PC Walters gave no evidence of previously knowing or having seen the claimant prior to that morning and gave no description of his assailant's physical appearance, such as his build, race or complexion and gave no description of how his assailant was attired to make a connection between his assailant and Mr. Jacobs. The reasonable man would be taken to know that two hours elapsed between the time PC Walters said Mr. Jacobs assaulted and obstructed him and the time when he says he next saw him. The reasonable man would also be taken to share PC Walters' knowledge that upon being confronted, Mr. Jacobs from the inception, continually asked what did he do, suggesting that he had no idea why he was being confronted by PC Walters? The reasonable man might well conclude that this was a case of mistaken identity.

[20] This gives rise to an issue not addressed by counsel in their written submissions: if PC Walters honestly, but mistakenly, believed that Mr. Jacobs was the person who pushed him and obstructed him in the execution of his duties, would that mistaken belief mean that he did not have reasonable grounds for suspicion? In **Castorina v. Chief Constable of Surrey**, Sir Frederick Lawton said: "Suspicion by itself, however, will not justify an arrest. There must be a 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. When 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."

[21] In **Dryburgh v. Galt**⁵, Lord Justice-Clerk Wheatley said:

"Suffice it to say that the fact that the information on which the police officer formed his suspicion turns out to be ill-founded does not in itself necessarily establish that the police officer's suspicion was unfounded. The circumstances known to the police officer at the time he formed his suspicion constitute the criterion, not the facts as subsequently ascertained. The circumstances may be either what the police officer has himself observed or the information which he has received."

[22] In my view, mere mistake of fact does not in itself negate reasonable suspicion. Rather, the reasonableness of the grounds for the arrest must be assessed based on all the surrounding circumstances.

[23] The dicta of the court in **Dumbell v Roberts**⁶ is apt:

"The duty of the police when they arrest without warrant is, no doubt, to be quick to see the possibility of crime, but equally they ought to be anxious to avoid mistaking the innocent for the guilty. The British principle of personal freedom, that every man should be presumed innocent until he is proved guilty, applies also to the police function of arrest-in a very modified degree, it is true, but at least to the extent of requiring them to be observant, receptive and open minded, and to notice any relevant circumstance which points either way, either to innocence or to guilt. They may have to act on the spur of the moment and have no time to reflect and be bound, therefore, to arrest to prevent escape; but where there is no danger of the person who has ex hypothesi aroused their suspicion that he probably is an 'offender' attempting to escape, they should make all presently practicable enquiries from

⁵ 1981 J.C. 69, 72

⁶ (1944) 1 All ER 326.

persons present or immediately accessible who are likely to be able to answer their enquiries forthwith. I am not suggesting a duty on the police to try to prove innocence-that is not their function; but they should act on the assumption that their prima facie suspicion may be ill-founded. That duty attaches particularly where slight delay does not matter because there is no probability, in the circumstances of the arrest or intended arrest, of the suspected person running away.”

- [24] The requirement that the suspicion must be founded on reasonable grounds is an essential component of the safeguard against arbitrary arrest and detention which is laid down in the Constitution. The factual matrix that informed the officer's subjectively held belief that he had reasonable suspicion to arrest is a matter to be interrogated by the court. Having weighed the evidence relating to what grounded PC Walters' suspicion of Mr. Jacobs against all the surrounding circumstances, I am drawn to the conclusion that the reasonable man fixed with the knowledge/information possessed by PC Walters at the time, would not find that there were reasonable grounds to suspect that Mr. Jacobs had committed the offences of which PC Walters suspected him. Accordingly, I hold that his arrest, both at Frigate Bay and later at the Basseterre Police Station, was unlawful.

Whether PC Walters committed an assault and/or battery on Mr. Jacobs.

- [25] An assault is defined as an intentional or reckless act that causes someone to be put in fear of immediate, unlawful physical harm. A battery is a direct intentional act of the defendant which has the effect of causing contact with the body of the claimant without the latter's consent'. It is not necessary that any physical harm should have been caused to the claimant. Further, it has been held that it is battery to hold a man's arm in the process of arresting him unlawfully, **Collins v Wilcock**⁷.
- [26] I accept Mr. Jacobs' evidence that upon being seized by PC Walters he became fearful of harm. In view of my finding that the arrest was unlawful, in intentionally seizing Mr. Jacobs by the hands and throwing him to the ground, PC Walters committed an assault and battery against him.

Whether Mr. Jacobs' detention amounted to false imprisonment

⁷ [1984] 3 All ER 374.

[27] False imprisonment is the act of arresting or imprisoning a person without lawful justification or otherwise preventing a person without lawful justification from exercising his right of leaving the place in which he is: **Davidson v. Chief Constable of North Wales**.⁸

[28] In this case, Mr. Jacobs was detained at the Basseterre Police Station upon his arrest and detained in a cell for seven hours. These acts constitute false imprisonment as they flowed from an unlawful arrest.

Quantum of damages.

[29] The Claimant claims general damages inclusive of aggravated damages and exemplary damages for assault, battery, unlawful arrest, and false imprisonment. Within the jurisdictions of the Eastern Caribbean Supreme Court, it is usual to have regard to the quantum of damages awarded in comparable cases.

General damages - assault and battery

[30] General damages are normally assessed by reference to the well-known guidelines laid down in **Cornilliac v St. Louis**⁹ which, broadly speaking, compensate for actual injuries sustained, pain and suffering, loss of amenities and loss of pecuniary prospects.

[31] The claimant submits that having regard to the circumstances of this case and to awards made in comparable cases in the region an appropriate award of general damages would be in the order of \$15,000.00.

[32] The defendant submits that the only sub-head that is applicable is the pain and suffering endured since the claimant has not pleaded any particulars in his Statement of Claim to deal with the other sub-heads of damage. I agree. The only evidence adduced by the claimant is in relation to a head ache and back pain which he experienced.

[33] Both parties have referred the court to certain authorities as a guide to determine the appropriate award in the circumstances of this case. These include **Kevin Casimir v. Michel Ettiene**¹⁰ where the sum of \$5,000 was awarded to the defendant/counterclaim who had been dealt several blows to

⁸ [1994] 2 All ER 597.

⁹ (1965) 7 WIR, 491.

¹⁰ DOMHCV2013 of 310.

his shoulder. In **Maurius Peltier v. Police Constable Jefferson Drigo, Police Corporal Chaucer James, and the Attorney General of the Commonwealth of Dominica**¹¹ the claimant was punched and kicked about his upper body and head causing small scalp hematoma, cervical muscle spasms, blunt trauma to the chest, soft tissue injuries to the elbow, lumbalgia, and orchitis. He was awarded the sum of \$15,000.00. In **Cain Alexander v. The Attorney General of Saint Vincent and the Grenadines**¹² a police officer grabbed the claimant by her hand, pulled her up a flight of stairs, struck on her nose causing her nose to bleed before arresting her. She was detained for about three (3) hours in the Police Station and then released without any charges proffered against her. She was awarded the sum of \$7,000.00 for assault and battery, false imprisonment, and wrongful arrest.

- [34] Using the foregoing authorities as a guide, general damages being within the discretion of the court, it is evident that awards on the upper end of the range are made where there is evidence of ascertainable, multiple injuries. Here, the claimant's evidence is that he experienced a headache and some back pain on account of being thrown to the ground. No evidence was given as to the severity or duration of the pain and no medical evidence was adduced. Accordingly, the sum of \$7,000.00 is awarded as general damages for assault and battery.

Damages - wrongful arrest and false imprisonment

- [35] The claimant submits that the 1st defendant behaved in a high handed, malicious, insulting and aggressive manner. The assault and battery occurred in a public place where patrons of the 'Blu Wave' event were present, causing embarrassment to the claimant and tarnishing his reputation as a hardworking and law-abiding citizen. The claimant submits that an appropriate award would be \$10,000.00. As it relates to the tort of false imprisonment, the claimant submits that the claimant was imprisoned for a total of seven hours. During that time the claimant experienced feelings of distraught, shock, frustration, worry, disgrace and injury to his reputation. For those reasons the claimant submitted that an award of \$30,000.00 would be appropriate.
- [36] The defendants submitted that the Statement of Claim of the claimant does not include any express particulars of the circumstances of the arrest and detention or of any affront to the claimant's dignity. Further, the defendant contends that there would not have been any or much shock felt by the

¹¹ DOMHCV2012/0267.

¹² SVGHCV2006/0150.

claimant given that he committed the offences and ought not to have been shocked when PC Walters found him and effected an arrest on 'The Strip'. The defendant submits that the claimant ought not to be awarded more than XCD\$5,000.00) for any shock that he may have felt on being initially arrested and detained.

- [37] As it relates to damages for the remainder of his imprisonment, the defendant submitted that the claimant was initially arrested and detained on 'The Strip' for just a few minutes then conditionally released. He was rearrested and detained about an hour or two hours thereafter at the Basseterre Police Station and was deprived of his liberty by PC Walters. The defendant cited several authorities as examples of comparable awards and submitted that overall, the award to the claimant for initial shock of arrest and each hour detained from the time of arrest to the time of release ought not to exceed the global sum of Thirteen Thousand Three Hundred and Sixty-Three Dollars and Eighty-Nine Cents (XCD\$13,363.89).

Discussion

- [38] The Trinidad and Tobago case of **Millette v. McNicolls**¹³ is oft cited in this jurisdiction and has been cited by the claimant and the defendant, as providing guidance as to the relevant factors a court should consider when assessing damages for false imprisonment. Chief Justice de la Bastide identified them in the following terms:

“there is an element of initial shock when a person is first arrested and imprisoned which must first be taken into account and compensated in the assessment of damages for wrongful arrest and false imprisonment, regardless of whether the term of imprisonment is long or short. The extent of the compensation for the initial shock will depend on the facts of the case (and not the length of the imprisonment) and factors which may be relevant include: the way in which the arrest and initial imprisonment are effected, any publicity attendant thereon, and any affront to dignity of the person. While any normal person will adjust to some extent to the circumstances of imprisonment, the longer the imprisonment lasts the more burdensome it becomes: and the length of the imprisonment is to be taken into account in this context. Damages in such cases should not however be assessed by dividing the award strictly into separate compartments (initial shock, length imprisonment, etc) but by taking all

¹³ (2000) 60 WIR 362.

such factors into account and then approaching the appropriate figure in the round”...All the factors are to be taken into account and an appropriate figure awarded.”

- [39] The Eastern Caribbean Court of Appeal has also provided binding guidance on this issue. In **Wakeem v Guishard v The Attorney General of the Virgin Islands**,¹⁴Farara, J.A. stated:

“When quantifying the damages to be awarded to a claimant for wrongful arrest and false imprisonment, the court must approach such an award by considering the amount of compensation applicable to two periods of the claimant’s detention in arriving at an appropriate total sum. The first is the initial or ‘shock period’, that is, the period of the claimant’s arrest and initial imprisonment; and the second, the remainder of the period of the claimant’s imprisonment by the State...In determining the amount of damages for the initial or ‘shock period’, the court must take into account all relevant factors. These include the manner in which the claimant was arrested, his initial imprisonment, the conditions under which he was detained by the police, any harsh or inhumane treatment meted out to him at the hands of police officers, any undue publicity attendant with his arrest and detention, and any affront to his dignity. The amount of compensation for the initial or ‘shock period’ will depend upon the circumstances of each case and the quantum of any comparable awards for initial shock.”

- [40] From these authorities, I derive that the correct approach in quantifying the total sum to be awarded as general damages for wrongful arrest and false imprisonment is to consider first the initial or ‘shock period’, which is the period of the claimant’s arrest and initial imprisonment; and, secondly, the remainder of the period during which the claimant was detained. Matters pertinent to the assessment of damages for the first period include, the manner and circumstances of the claimant’s arrest, his detention conditions and treatment meted out to him during that time. It is also appropriate to consider comparable awards.

- [41] Adopting this approach, the task is to determine what is an appropriate award of damages having regard to the initial or ‘shock period’, which is the period of the claimant’s arrest and initial imprisonment; and, secondly, the remainder of the period during which the claimant was detained. Taking first the initial shock, the claimant was initially arrested at about 5:45 a.m. at a time when he

¹⁴ BVIHCVAP2018/0006.

was in the process of packing up after the 'Blu Wave' event. Persons were still entering and leaving the venue when PC Walters accosted him in an aggressive manner and brought him forcefully to the ground. This drew a group of patrons and the claimant's boss, who all gathered around. The evidence of Mr. Phipps is that the claimant is quite a popular person. He was eventually ordered to get up and to accompany PC Walters to the Police vehicle. That initial period of arrest in those circumstances must have come as quite a shock to the claimant, who was completely ignorant of the reasons for his arrest. The public spectacle created by the arrest must have been humiliating and an affront to the claimant's dignity. The measure of this may be gauged from his reaction upon being released. He immediately made his way to the Basseterre Police Station to make an official complaint. The events that subsequently led to his re-arrest and detention require my findings of fact to be explicitly stated since the versions of the parties in relation to those events conflict sharply, and, depending on the facts as I find them, may bear on the question of aggravated and exemplary damages also.

[42] I completely accept the claimant's evidence that while making his complaint, PC Walters entered the station. Sergeant Pemberton called out to him, but he refused to report to Sergeant Pemberton, expressing disgust that the claimant was making a complaint against him. I further find that having made his complaint, the claimant left the police station and went home. He received a call from Mr. Phipps and returned to the police station where he saw Mr. Phipps and PC Walters in the parking lot. It was there that PC Walters arrested him.

[43] The version of these events proffered by the 1st defendant is that he had arrested the claimant at Frigate Bay but on the request of Mr. Phipps, he had released him to complete his work. However, he had made it clear to the claimant that he was under arrest and would be conveyed to the police station once he had completed his tasks. However, having taken advice from his senior officer by phone, he decided to take him to the station immediately but could not locate him. He therefore asked Mr. Phipps to call the claimant and have him report to the police station. His evidence is that when he returned to the station and saw that the claimant was making a complaint, he allowed him to finish and then promptly arrested him. He denied that the claimant left the station and was only arrested on his return.

[44] I have no hesitation in rejecting the 1st defendant's version because, first, PC Walters gave contradictory evidence on this point, and secondly, it is flatly contradicted by his own witness, Mr. Phipps. When cross-examined, PC Walters stated that he had not allowed Mr. Jacobs to leave the

police station after making his complaint and had not arrested him in the parking lot. This is flatly contradicted by his witness statement which stood as his evidence-in-chief in which he had stated: "When I arrived at the Police Station, I saw Mr. Jacobs at the front desk making a report. I allowed him to finish. I arrested him in the parking lot for the offence of battery and resisting arrest." He further said he didn't think it prudent to arrest him in the station. He attempted to explain this inconsistency by saying that when he said in his statement that he had arrested the claimant in the parking lot, he meant that he had allowed him to finish making his complaint then told him he was under arrest in the station but because the claimant just ignored him and walked into the parking lot, he followed him into the parking lot and told him again that he was under arrest and carried him inside. I reject this completely as untrue. I am fortified in my view that this evidence is false because under cross examination, PC Walters' own witness, Mr. Phipps, said that after PC Walters took Mr. Jacobs to the pickup, he released him upon his request to have him complete his job. He further testified that he did not hear PC Walters say anything to Mr. Jacobs about going to the station with him. Mr. Jacobs told him he was going home. He said he called Mr. Jacobs later that morning and told him to come to the police station because PC Walters wanted to speak to him. He further testified:

"When he [the claimant] got to the parking lot of the police station, I was there standing with Walters. It was at that point Walters arrested him."

[45] This completely supports the version given by the claimant. The clear inference to be drawn from the facts as I have found them is that PC Walters had completely released the claimant from arrest at Frigate Bay. The sole reason for re-arresting him at the police station was malicious and by way of retaliation because he discovered that the claimant had made an official complaint against him. This second arrest was itself unlawful for the same reasons the first arrest was. To my mind, the circumstances of the second arrest compound the injury to the claimant, who was put through the shock and trauma of arrest again, followed by detention in a cell for seven hours, just when he thought it was over.

[46] In reviewing comparable awards made in the Eastern Caribbean, the following cases proved instructive. In **Shannoid Bass v. Sergeant Venesia Williams and the Attorney General of St Kitts and Nevis**,¹⁵ the claimant was arrested and detained for some 7 hours and 45 minutes at the

¹⁵ SKBHCV2010/0312.

Basseterre Police Station. The claimant sued for damages for unlawful arrest and false imprisonment. The court held that the claimant's arrest was unlawful and constituted false imprisonment and as such the Crown was held vicariously liable for the actions of the 1st Defendant. The Court awarded damages in the amount of \$30,000.00 for false imprisonment and \$10,000.00 as aggravated damages. In that case, the court also cited the unreported decision of **Raymond Warrington and Karl Peters v Cleville Mills and the Attorney General of Dominica**¹⁶, a judgment delivered in 2008, where the High Court awarded the first claimant \$20,000.00 for false imprisonment for six hours and \$25,000.00 to the second defendant for false imprisonment for nine hours and the sum of \$10,000 to each for aggravated and exemplary damages. In **Elihu Rhymer v The Commissioner of Police et al**¹⁷, the Court of Appeal, awarded the claimant/appellant \$20,000.00 for three hours unlawful detention in a situation where none of the charges against the appellant were pursued before the Magistrate, being either struck out or dismissed for want of prosecution." In Suit No. 15 of 1999 **Bernadette Matthew v. The Attorney General of Montserrat**,¹⁸ the claimant, who spent seven (7) hours in custody, and was not manhandled by the police in any way, was awarded \$2,000.00 in nominal damages for unlawful arrest and false imprisonment and \$16,000.00 in exemplary damages.

Aggravated damages

- [47] The claimant also seeks aggravated damages. In **Dolette Cyr Bartholomew et al v Kenton Hazzard**¹⁹ Baptiste J.A., by reference to several authorities, articulated the basic principles governing an award of aggravated damages. Aggravated damages are "...awarded where there are aggravating features about the case which would result in the plaintiff not receiving sufficient compensation for the injury suffered if the award were restricted to a basic award. Aggravating features can include humiliating circumstances at the time of arrest or any conduct of those responsible for the arrest or prosecution which showed that they had behaved in a high handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution...": **Thompson v Commissioner of Police of the Metropolis**²⁰. They

¹⁶ DOMHCV2006/0038.

¹⁷ BVI Civil Appeal No 13 of 199.

¹⁸ GDAHCVAP2021/0020.

¹⁹ GDAHCVAP2021/0020.

²⁰ [1997] EWCA Civ 3083.

are meant to be compensatory and not punitive: **Commissioner of Police of the Metropolis v Shaw**²¹.

- [48] The Court of Appeal endorsed the following dicta in **TVZ and others v Manchester City Football Club**²² as it relates to the approach to structuring such an award:

“The appropriate way of structuring an award will depend on the particular circumstances of each case, always taking account of the need to ensure full compensation but to avoid double recovery and to explain how the award has been calculated. In a straightforward assault case where the injuries are minor a single award may be appropriate, and the making of a separate award for aggravated damages may give the (erroneous) impression that the aggravated award is intended to punish. In cases where the only loss is injury to feelings then, again, it may be appropriate to make a single award to include any element that might otherwise be covered by aggravated damages.”

- [49] The Court of Appeal was careful to point out, however, that there is no blanket inflexible rule that there should be a single award for all non-pecuniary losses or as to whether separate awards should be made; it all depends on the facts of the particular case. The appropriate way to structure the award is determined by having regard to the circumstances of the case, always taking account of the need to ensure proper compensation while guarding against double recovery.

- [50] In the case at bar, the features that justify an award of aggravated damages are the high handed and oppressive manner in which the second arrest and detention was committed and the ill-motive behind it. These features affect the award of compensation because they aggravate the distress and injury occasioned to the claimant by the wrongful arrest and detention. Accordingly, a greater compensatory sum is warranted. Having regard to the fact that in this case the only loss pleaded is really injury to feelings, and mindful of the need to avoid double recovery, the appropriate way to structure the award of damages for wrongful arrest and false imprisonment is to make a single award to include those elements that might otherwise be covered by aggravated damages.

- [51] Taking all of the factors discussed above into account, and approaching the appropriate figure in the round, I award the sum of \$40,000.00 as damages for wrongful arrest and false imprisonment.

²¹ [2012] ICR 464, 16.

²² [2022] EWHC 7 (QB).

Exemplary damages

- [52] The claimant also seeks an award of exemplary damages. It was submitted that during the period of his detention the claimant experienced feelings of distraught, shock, frustration, worry, disgrace and injury to his reputation. I say straightaway there was no such pleading or evidence to ground this submission.
- [53] Exemplary damages may be awarded in a case of false imprisonment. The objects of such an award are punishment of a wrong and publicly indicating that it is unacceptable. "It serves a valuable purpose in restraining the arbitrary and outrageous use of executive power:" **Rookes v Bernard**.²³ Exemplary damages may be awarded over and above compensatory damages where those damages are still inadequate to show disapproval and to deter the defendant: **Cassell & Co. Ltd v Broome**.²⁴
- [54] In my view, in the circumstances of this case, and especially where there is no pleading regarding any injury to the claimant's reputation, the compensatory damages are adequate for the purpose of punishing and marking disapproval of the actions of the 1st defendant. I decline to make an award of exemplary damages. Having regard to the foregoing, I make the following orders:
- (i) The defendants shall pay the claimant the sum of EC\$7, 000.00 as general damages for assault and battery;
 - (ii) The defendants shall pay the claimant the sum of EC\$40, 000.00 as general damages for wrongful arrest and false imprisonment;
 - (iii) Interest on general damages at the rate of 5% per annum from the date of judgment
 - (iv) Prescribed costs on accordance with CPR 2000.

Trevor M. Ward QC
High Court Judge

By the Court

Registrar

²³ [1964] AC 1129.

²⁴ [1972] AC 1027.

