

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

IN THE FEDERATION OF ST CHRISTOPHER & NEVIS

NEVIS CIRCUIT

CASE NECHCV2023/0080

BETWEEN

TONEY DUNDAS

Claimant

AND

WAYNE HANLEY

Defendant

APPEARANCES

Mr Eustace Nisbett for the claimant Dundas

Mr Brian Barnes for the defendant Hanley

2026: MAY 27

JUDGMENT

For assault as bouncer

- 1 **Morley J:** In this claim, Toney Dundas, (dob 03.09.69) now 56, a stonecutter, seeks damages against Wayne Hanley for assault and false imprisonment arising on 26.03.23 at Enrique's Bar, Cedar Trees, Charlestown, where Hanley, a police officer, was working as security, being a 'bouncer' vetting who should enter, and to ensure no one had knives or guns.

- 2 The claim was filed by Counsel Nisbett on 19.06.23, against Hanley and also the Attorney General as representing a soldier named LCpl Assot Eddy who had become involved. Trial bundles were filed on 12.05.26, listing as witnesses Dundas, Hanley and Eddy, but which did not include the witness statement of Javier Green dated 12.02.25, a police officer who on 11.10.23 had gathered cctv of the fight (exhibit 1). Trial began on 14.05.26, at which point the cctv was viewed and immediately it was clear Hanley had assaulted Dundas, and Eddy was in no way culpable as merely trying to help calm matters, so that proceedings against him were withdrawn with no costs. Dundas then gave evidence, where he was required to give his account in chief, rather than through his witness statement prepared on 29.08.24 by counsel. Present in court as now an independent witness, no longer a party, Eddy was called by the court, also to give evidence in chief, the court asking questions, with Counsel Nisbett and Barnes permitted to cross-examine him. Then on 20.05.26, when the case was relisted to hear the evidence of Hanley, he conceded culpability for the assault, but not for false imprisonment, abandoned counterclaim, did not give evidence, and on 21.05.26, there were submissions on whether false imprisonment arose and on the value of the damages, with judgment reserved to today 27.05.26.
- 3 From a review of the materials and evidence, on balance what the court finds happened is as follows, noting the reliable evidence has been the cctv, the testimony of Eddy, and a doctor's note of injury.
 - a. As background, where the details are indistinct,
 - i. on 24.12.22, Christmas Eve, there was an incident between Dundas and Hanley at 'Pickeneys Bar', which led to Dundas making a formal complaint against him as a police officer; and then
 - ii. Hanley investigated Dundas for indistinct impropriety with a Spanish lady named 'Cathelyna'; so that
 - iii. as at 26.03.23, Dundas and Hanley did not like each other at all.
 - b. On 26.03.23, there was an altercation with a knife at Enrique's bar, being evidence from Eddy, who had been outside the bar in company and who witnessed it, where Hanley had tried to disarm a man in black, who had then passed the knife to another.
 - c. Dundas made his way toward Enrique's bar around 21.30hrs, within 5-10mins of the knife fight, per Eddy passed the bar, and was then spoken to by the man in black, which led to

Dundas going onto the bar veranda to confront Hanley, who was seated outside the door for entry into the bar proper.

- d. At this point, what happened can be seen on the cctv, where centre-screen Dundas standing sideways with his right shoulder to Hanley, seated, can be seen talking to him, while the man in black can be seen on the screen-left peering into the veranda to watch the exchange, and Eddy can be seen in company on the screen-right.
- e. Eddy told the court he saw Dundas gesticulating with his right hand, not visible on the cctv, heard Dundas call Hanley a 'punk', and after a moment, Hanley can be seen to rise up and grab Dundas, with his left arm around Dundas' neck and shoulder, and with his right hand can be seen repeatedly to strike Dundas' head with a paddle scanner, while wrestling him, bending him over, as Dundas tries to hold on to Hanley, both tip off the veranda, the wrestling continues, and both fall heavily together on the floor, Dundas on his right side, Hanley still striking Dundas on the head.
- f. At this point, Eddy comes over from the right and tries to calm the situation, pulling at the parties, saying he is a soldier, ultimately separating Hanley from Dundas, Eddy holding Dundas while Hanley, who Eddy knows to be a police officer, is saying he wants to arrest Dundas and take him to the nearby Charlestown police station, the struggle having lasted about 2mins on screen.
- g. All three exit the screen to the right, with Dundas being led, at which point, off screen, per Eddy, where Eddy is saying to Hanley, *'I tell Wayne not to interfere, let me handle the situation and bring him to the station'*, and within moments Dundas grabs a chain to prevent himself being taken to police, where Hanley then chokes him, while Eddy calls police on his phone, who then arrive from nearby as at least two officers within about 2mins.
- h. Dundas immediately makes a complaint to them of being assaulted by Hanley, and who they can see is bleeding, and so he goes willingly with them to the police station, to make a formal complaint, receives a medical examination form, goes to the hospital where he is seen by Dr Crystal Parris Caines, at some point returns to Enrique's bar with an officer for his hat, then finally offering a formal complaint as a witness statement to police on 29.03.23 (exhibit 4, offered not for its truth, but that it was filed).

- 4 Dr Caines recorded the injuries on the medical examination form, (exhibit 3) and on a letter to counsel Nisbett dated 05.04.23 (exhibit 5), while 6 photos were taken of them (exhibit 2), showing sutures needed to the head where Dundas had been beaten with the paddle, and a wound with swelling to the right elbow arising from the heavy fall to the ground. Dr Caines recorded the injuries in summary as follows, when Dundas presented at 23.27hrs to Alexandra hospital.
- a. There was:
 - i. a 3.5-4in laceration to the central frontal region of the head, requiring sutures;
 - ii. deep laceration with multiple abrasions to the right elbow;
 - iii. laceration to the right knee;
 - iv. hematoma to the right hip;
 - v. tenderness to the chest wall on touch and deep breath; and
 - vi. sight of 'multiple wheals to the anterior and posterior of the thorax'.
 - b. There were no fractures and pain medication was prescribed.
- 5 Later, on 23.10.24, following the formal complaint by Dundas, Hanley was fined EC\$150 during internal police discipline, for bringing the police into disrepute, for being a police officer who had got into a fight, following proceedings at which Counsel Barnes had represented Hanley, and where Dundas had given evidence, including that he had been drinking that night.
- 6 At this point, I should make clear after hearing him, I did not accept anything Dundas said without being able to verify it. I am sure in these proceedings he has been given to exaggeration and to saying what is not true. I am satisfied he has approached this event with a calculated mindset to squeeze as much cash from it as possible, making he says, without receipts, at least 10 trips to the doctor, and seeking an mri, to exacerbate injury, so as to expand the damages he can claim. To this end, he sued Eddy as a soldier to get at the possibility of an award payable by the Attorney General, whose pockets are deep, and which was wholly wrong, as Eddy had been trying to help, and who had warned Hanley to desist, whereas, as can be plainly seen in the video, Dundas has in bringing suit deliberately and I am sure dishonestly exaggerated that he had been assaulted by Eddy too.

- 7 Of note, I am particularly sure Dundas was not telling the truth when he told the court he had merely gone onto the veranda to ask to be scanned to enter the bar, being told by Hanley he was an animal and would not be let in, as the video does not show him presenting himself squarely to Hanley offering up his arms for the paddle, while Eddy contradicts him, pointing to the man in black having spoken to Dundas, still on the video peering into the veranda, who had been in the knife fight, clearly therefore on the evidence having been the reason Dundas approached Hanley, then calling him a punk. Further, I find it is highly probable Dundas had been drinking that night, as reported to the court by Counsel Barnes had been said during police discipline, but which Dundas denied saying, including wrongly insisting Barnes had not been counsel, which required the case put back for an unnecessary enquiry of police to establish if Barnes had been present, which he was. In short, in these proceedings, I have not believed what Dundas has said unless it was corroborated.
- 8 Further, I am sure Dundas provoked Hanley, who had minutes earlier been in a dangerous situation attempting disarm of a knife, and at the behest of the man in black who had the knife, confronted Hanley, insulting him, where Hanley was probably still feeling the adrenaline of the knife fight, and in the context Dundas knows Hanley does not like him, and against whom Dundas had filed an earlier police report, so that I surmise Hanley being provoked, he lost his temper in annoyance at Dundas, who had gone looking to bait Hanley. In short, I find Dundas should not have approached Hanley, he had no business doing so, and by doing so to an extent brought the assault on himself.
- 9 The question now is, was there false imprisonment, and what damages arise?
- 10 Considering false imprisonment, the argument is Hanley arrested Dundas unlawfully, in the sense Hanley was the aggressor, so that lawful power of arrest could not arise, while in parallel was off-duty, raising the question whether he could ever arrest someone if so.
- 11 A police officer makes an oath to serve the public, usually to the effect of a solemn promise to uphold the law, protect the community, and serve with integrity. Specifically, on St Kitts & Nevis, under the **s21 and the first schedule of the Police Act** cap 19.07, the oath is, to be updated with the passing of HM the Queen in 2022:

I, do swear that I will well and truly serve Our Sovereign Lady the Queen in the office of in the Federation without favour or affection, malice or ill-will, and that I will cause Her Majesty's peace to be preserved, and will prevent to the utmost of my power offences against the same. So help me God!

- 12 It follows from this there is not a time when an officer is not an officer, just because not in uniform, doing other work, or on weekend leave. Such powers as a police officer has are available to him or her at all times, to uphold law and order. This means on 26.03.23 Wayne Hanley did have power of arrest if he chose to act as a police officer, though he had been working as security.
- 13 However, if he did make an arrest of Dundas, which can be legally effected by uttering the words as a police officer that a person is under arrest, and perfecting the arrest by touching that person, then the arrest would be unlawful here because it is a fact, that though Dundas may have been annoying, he had not done anything to warrant arrest, and did not assault Hanley, who instead assaulted him.
- 14 Looking at the evidence, Dundas claims that Hanley arrested him, but as above I will not rely on Dundas alone. Looking to Eddy, my note of his evidence is as follows:

In chief: ...Wayne told him he would put him under arrest. Wayne told me to help bring Toney to the station to place him under arrest. I tell Wayne not to interfere, let me handle the situation and bring him to the station, I did not want it to escalate again. I called police, in less than a minute they came. I then handed Toney over to the police. Toney was telling a bunch of lies, I said to the police Cpl he is lying...No one said to just take Toney to the station to just lock him up. The police Cpl took Toney and Wayne to the station to deal with it. I went back to the bar....

Under cross by Counsel Nisbett:... When taking him down the road, Toney was under arrest by Wayne, I cannot arrest him. Toney held the chain, that is when I called for assistance, he had gone after Toney again, he then held the chain to go no further, I called police. I told Wayne to let me take him to the station, there had been hardtalk going on, Toney saying he had his head busted, and Wayne was saying he was going to the station.

- 15 Assessing the evidence, I am satisfied Hanley did want to arrest Dundas, though I am not satisfied the arrest was then perfected, in a situation which lasted only perhaps 3 mins before police arrived as called by Eddy. It is clear Hanley wanted to take Dundas to the police station,

and clear when police arrived that Dundas wanted to go to it, but he did not want Hanley taking him there and so held the chain. Though Eddy said Hanley had told Dundas he was under arrest, at the same time Eddy was saying Hanley should leave it to him, telling Hanley not to interfere. Given the shortness of time, the fluidity of the situation, while conceptually it may be that technically Hanley used his police power to arrest Dundas momentarily before police arrived, I find this has not been proved as probably true, but only as possibly true, and that what was rather probably true is Hanley wanted to arrest Dundas, continuing in fracas, but Eddy stopped the arrest, calling police to settle matters; and I do not conclude just because, led under cross-examination, Eddy said Dundas was under arrest that this is therefore correct, weighed against the fluid and momentary situation unfolding. Another way to look at matters is to ask why was Eddy calling police if Dundas was under arrest being taken to the police station; instead, the call shows he was probably not yet under arrest and police were being sought to decide what should happen.

- 16 Put pithily, I conclude both wanted the police, which Eddy arranged.
- 17 The reason it has been important to Counsel Nisbett to establish an arrest is because, even if technical and momentary, he argues it is automatically worth as a starting point EC\$20000, just for uttering the words and touching Dundas. He concludes this from the SKN case of **Everette Davis v AG SKN 2013**¹, but that was a case where the claimant was arrested twice, finally on suspicion of murder, and then held for 230 days before proceedings were dropped, where for each day EC\$500 was further payable, being very different to this case involving a brief skirmish, then leading someone up a road.
- 18 I conclude therefore even if I am wrong to say arrest by Hanley was not strictly proved, if it was, I would view the damages for such a technical event lasting only minutes as being limited to EC\$500, as suggested in argument on 21.05.26 by Counsel Barnes, simply to mark it wrong, though only of a moment.

¹ See SKBHCV2013/0220.

19 Instead, I find the gravamen to be the assault and the damages which follow, pleaded under various heads.

- a. As to *special damages*, for medical expenses, Counsel Nisbett on 21.05.26 conceded he could not seek recovery of an mri fee without receipt, where he had claimed EC\$4320, and so limited his claim to EC\$2300, though unsupported by receipts, which include medical supplies and an asserted 10 trips to the doctor at EC\$150 each, about which I am sceptical, and so will allow 8, making special damages recoverable of EC\$2000.
- b. As to *damages for lost earnings*, claimed as two months off work as self-employed at EC\$300 per day as 28 days per month, making EC\$16800, wholly unsupported by any paperwork, I do accept he will likely have been unable to work for a month, noting the elbow injury in particular as affecting his ability to be a stonecutter, while not accepting he would work every day if self-employed, and so rounding the figure down for a month off work to EC\$8000.
- c. As to *damages for false imprisonment* for unlawful arrest, sought as EC\$20000 as above, as not proved, I award none.
- d. As to *exemplary damages*, sought in argument on 21.05.26 as EC\$10000, for being a police officer effecting an unlawful arrest as an abuse of police power, not finding there was an unlawful arrest proved I award none; and in any event, the incident was too short, and moderated by the calming presence of Eddy, so as to mean to my mind Hanley never arrived into a scenario where he was in full abuse of police powers, even if there had been a momentary wrong arrest.
- e. As to *general damages*, sought in argument on 21.05.26 as EC\$30000, where Counsel Barnes countered with EC\$12500² supported by **Jefry Lewis v Kyle Grant & AG 2021**, I take note of the following:

² See NEVHCV2021/0042.

- i. Hanley can be seen on the cctv repeatedly to strike Dundas in the head with the paddle, using it as a weapon, causing a 3.5-4in laceration seen in the photos requiring shaving of hair and stitching;
 - ii. The injury to the right elbow is notably unpleasant as an open wound; and
 - iii. From the wheals on the neck, it is probable Hanley choked Dundas at the chain.
- f. Weighing general damages, I am further assisted by **Marius Peltier v AG et al 2014**³, a decision of Thomas J, which set out some examples at para 41 of awards thus:

In accordance with the reminder provided by the Privy Council in **Tong v LI Ping Sum 2003**⁴ awards of damages should be confined to the same or neighboring jurisdictions, the court looks at the following awards:

1. In **Mahadeo Sookhai v. AG Trinidad & Tobago** an award of \$25000 was made in 2007 for assault and battery. The medical evidence accepted by the court involved: 1. tender and swollen nose bridge; 2. Bilateral periorbital haematoma (i.e. bilateral black eyes), tenderness and swelling of both temples; 4. Tenderness and swelling of left anterior chest wall; 5. Abrasions anterior aspect of both knees.
2. In **Shayne Richardson v AG Anguilla et al 2009**⁵, EC\$6000 was awarded as damage for assault and unlawful search.
3. In **Myster Peter Matthew v AG**⁶, the damages for assault and battery was \$10000, where this case involved a claimant being shackled with handcuffs and placed on a chair when the claimant attempted to leave the police station. This happened in the presence of the claimant's wife and three minor children.
4. In **Yohanna George v Vernon O'Brien & AG Dominica**⁷, the claimant was awarded \$25000 inclusive of an uplift for aggravated damages. This case involved the claimant being assaulted and beaten by the 1st defendant and suffered injuries.
5. Finally, in **Danny Severin v AG 1964**⁸, \$12,000 was awarded for pain and suffering and loss of amenities based on assault and battery by police officers.

- g. As such, where here there is repeated assault with the paddle as a weapon, and then later choking, I incline to agree with Counsel Nisbett, such that I would assess the general damages for pain and suffering to be as he suggests, being larger than in *Sookhai* and *George* above.

³ See DOMHCV2012/0267.

⁴ See HCA No. S. 184A of 2003

⁵ See AXAHCV2008/0012.

⁶ See Civil Suit No. 472 of 2000

⁷ See DOMHCV2010/0013.

⁸ See [1964] 7 WIR 491.

- h. However, I take the view Dundas provoked the event, affected by drink recklessly confronting someone he does not like, insulting him, at the behest of a man who had been fighting with a knife which Hanley had tried to disarm, where Hanley is doing a difficult job as security, which had been earlier dangerous and while he was still flushed with attempt to disarm, so losing his temper, about which the court has a measure of understanding. While this does not excuse the assault and fracas which followed, it mitigates it, and so it should the general damages, which I then reduce for the provocation one-half to EC\$15000.
- 20 In sum therefore, whereas Counsel Nisbett had sought up to EC\$78420, and Counsel Barnes had countered with up to EC\$13000, I make an award of EC\$25000 for pain, suffering, medical bills and loss of wages, and
- 21 I turn next to the question of costs, where there has here been a *Calderbank* letter, but post rendering the judgement showed an offer of EC\$20000, so that prescribed costs are payable, agreed as EC\$5000, so that in sum, Hanley is ordered to pay \$30000 in damages and costs, and as agreed by counsel, the matter will be listed on 27.11.26 to monitor progress as to payment.
- 22 Finally, *obiter*, this court reminds counsel claims for damages must be realistic, and not pursued as an adventurous excess, as here with Dundas, exaggerating, and while I thank counsel for their efforts, I should say it is frustrating the cctv was not part of the case from the beginning, as this court is troubled by suit of LCpl Assot Eddy, who only tried to help, and who from the video can be seen to be a person who should never have been sued, and who instead is to be commended by the High Court for his intervention to calm events.

The Hon. Mr. Justice Iain Morley KC

High Court Judge

27 May 2026