

EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
[CIVIL]**

SAINT LUCIA

CLAIM NO. SLUHCv2021/0373

BETWEEN:

DELAN FEVERIER

Claimant

And

THE ATTORNEY GENERAL

Defendant

Before:

The Hon. Mde. Justice Cadie St Rose-Albertini

High Court Judge

Appearances:

Ms. Mary Francis for the Claimant

Mr. George K Charlemagne with Ms. Kozel Creese for the Defendant

2023: October 11; 12
November 14; 23
2024: January 23
2025: March 31

JUDGMENT

- [1] **ST ROSE-ALBERTINI, J. [Ag]:** This is a claim by Delan Fevrier ("Delan" or "the claimant") for damages for unlawful arrest, false imprisonment, assault, battery and unlawful shooting, alleged to have been committed by three police officers. The incident occurred on the night of 13th March 2021 near the Central Police Station on Bridge Street in Castries.

- [2] It is common ground that on the night in question, a state of emergency and curfew was in effect, on account of the Covid-19 global pandemic, and all persons were mandated to wear a face mask when out in public. Delan was walking along Bridge Street in the company of two individuals, during curfew hours, and was not wearing a face mask.
- [3] The defendant asserts that the police officers were acting in the lawful execution of their duties when they attempted to arrest Delan for contravening the law. He resisted lawful arrest, was behaving in an aggressive manner, and had to be subdued in order to be transported to the Marchand Police Station. It is said that on the way to the station Delan's behavior became overly aggressive towards the police officers who were guarding him in the back of the police vehicle. As a result he was shot in the right leg with a beanbag round of ammunition by one of the officers, in self-defence.
- [4] The defendant denies the claimant's allegations of assault, battery and false imprisonment, and asks that the claim be dismissed with costs.

The Issues

- [5] The Court must resolve the following questions:
- (1) Was the claimant unlawfully arrested?
 - (2) Was the claimant falsely imprisoned?
 - (3) Did the police officers commit assault and battery against the claimant?
 - (4) Was the claimant shot and wounded without justification, or was the Officer who shot him acting in self-defence?
 - (5) Is the claimant entitled to any of the categories of damages claimed? If so, what is the measure of such damages?

The Claim

- [6] Delan's alleges that on 13th March 2021 he left work at the Bay Gardens Hotel and travelled via the staff bus to Castries. He walked across to the Ciceron bus stop on St. Louis Street but was unable to get a bus travelling to his home from there. He decided to walk over to Bridge

Street in the hope of getting a bus or to hitchhike a ride to his home. Whilst walking, he removed his face mask to smoke a cigarette. He arrived on Bridge Street a few minutes past 7:00pm and still found that it was difficult to get a bus or hitch a ride to his home.

- [7] Whilst standing near the Central Police Station, he saw three (3) police officers. He recognized one of them (Officer Noel) and requested that Officer Noel give him a ride home. Delan was confronted by the officers and a conversation ensued between Officer Noel and himself, when he observed that Officer Noel was not wearing a mask. Following this Officer Noel held him in a neck choke and tripped him, causing him to fall to the ground. He was arrested, beaten, given several blows with the butt of a gun, handcuffed, shot in the thigh area of his right leg, and thrown into the back of a police vehicle. Delan was transported to the Marchand Police Station, despite the fact that he was bleeding from the bullet wound and then to the Owen King-European Union Hospital ("the hospital") where he was treated for his injuries and discharged. Upon being discharged, he was taken back to the Marchand Police Station where he remained in custody from 13th to 15th March 2021.
- [8] On 16th March 2021, Delan visited the private office of Dr. Desmond Long where he received further medical treatment and a prescription. He was placed on sick leave for a period of 6 weeks, during which time he received medical care for the wound on his thigh at the Ciceron Health Centre.
- [9] Delan claims that he sustained loss and damage as a result of the incident, which were particularized as follows:
- (i) Pain and injury with permanent scarring of right thigh from bullet wound;
 - (ii) Loss of liberty from 7:00pm on Saturday 13th March 2021 to 2:00pm on Monday 15th March 2021; and
 - (iii) Emotional shock.
- [10] As further relief, Delan seeks special damages for medical expenses, lost watch, lost shoes, loss of salary, transportation costs and loss of fees for contractual electrical services.

- [11] He also seeks general damages for assault, battery, false imprisonment, aggravated and exemplary damages, costs, and interest pursuant to Article 1009 of the Civil Code¹.

The Defence

- [12] The police officers version of events was diametrically opposed to that of Delan. It is averred that Delan resisted lawful arrest, was extremely aggressive and violent and had to be subdued. He was restrained with hand cuffs, placed in the back of a police vehicle and taken to the Marchand Police Station. Along the way he attacked the police officers who were guarding him and continued to engage in violent conduct by biting, kicking, spitting on the officers, and threatening to kill them. As a result, he was shot by one of the officers in self-defence, and for protection of the other officer present.
- [13] The defendant further avers that Delan was lawfully detained on 13th March 2021. The officers reported the incident to the Criminal Investigations Department ("CID"), and on 15th March 2021 Delan was charged for resisting arrest, violation of the curfew and assault of Police Constable 393 Elisha Julien [this should have been PC 796 Vitus Harris].² He was granted bail on the same day.

The Claimant's Evidence

Delan Fevrier ("Delan")

- [14] Delan stated that he left work at the Bay Gardens Hotel in Rodney Bay at about 5:15pm on 13th March 2021. When he got to Castries he first went to the Morne Du Don bus stop, and then to the Ciceron bus stop on St. Louis Street, arriving there at about 6:45pm, There were no buses on the Ciceron bus stop, so he left there at about 6:50pm and walked across to upper Bridge Street, where he thought he would get a bus. He walked to Bridge Street with Jessie St. Prix and another gentleman (whose name he did not know).

¹ Cap. 4:01 of the Revised Edition of the Laws of Saint Lucia

² See paragraph 8(b) of the defence of page 12 of Trial Bundle 1, which appears to be an error as the Charge and Voluntary Statement Form shown as Exhibit EJ4 on page 70 of Trial Bundle 2, indicates that the charge which was laid on 15th March 2021 was in relation to unlawful assault of PC 796 Vitus Harris.

- [15] While he walked he kept his mask in his pocket and smoked a cigarette. He arrived on Bridge Street near the Central Police Station a few minutes after 7:00pm. He noticed 3 police officers near the station. He recognized one of them as "Nyo" (Officer Noel), and asked Officer Noel to give him a ride home. Officer Noel asked him about his mask, and he responded that it was in his pocket. Officer Noel then told him *"put on your mask for me please"*. Whilst pulling his mask from his pocket, he observed that Officer Noel was himself not wearing a mask, and he questioned the Officer about this. Officer Noel became visibly angry and said, *"boy hurry up put on your fucking mask"*. Before he could do so Officer Noel turned to the two other officers and said, *"You know I taking him down"*. Officer Noel jumped closer to Delan, held him around his neck and tripped him, causing him to fall to the ground and hit his head. Officer Jones placed his foot on Delan's chest whilst he was on the ground, and Officer Noel laid down on Delan and handcuffed him. Delan says he was not given the opportunity to explain to Officer Noel that he had put his mask in his pocket whilst smoking a cigarette, intending to put it back after smoking. He asked the officers why was he being arrested and was told to get into the vehicle. He then told the officers that he would get into the vehicle, once he was told the reason for his arrest.
- [16] The officers became more enraged and proceeded to beat him. Officer Harris hit Delan with the butt of a gun. Officer Noel told him he would be informed of the reason at the police station. Delan dropped the metal railing that he was holding, and was about to enter the vehicle, when he heard a loud explosion and realized that he had been shot in the right thigh by Officer Harris. He fell to the ground, the officers picked him up and threw him into the back of the police vehicle, still not informing him of the reason for his arrest.
- [17] Delan testified that this occurred in full view of several onlookers. Whilst in the back of the van he felt a burning sensation on his right thigh. He removed his pant and saw that he was bleeding. The officers took him to the Marchand Police Station. The Corporal in charge at the station instructed the officers to take him to the hospital because he was wounded. They did so, he was treated, and the bullet was removed from his thigh. He was discharged from the hospital that same night and taken back to the Marchand Police Station where he remained detained. He was placed in a cell with two other men who were themselves not wearing face masks. On 15th March 2021 he was charged for assault, resisting arrest and failure to comply

with the curfew, and released on bail. Upon release he attended the office of Dr. Desmond Long, who prescribed medication. He also attended the Ciceron Health Centre for 6 weeks, to treat the wound on his thigh.

- [18] In cross examination Delan admitted that he stopped at a bar where he drank alcohol before proceeding to the Ciceron bus stop. He accepted that on the night of the incident, he was walking along Bridge Street during curfew hours without a mask covering his face. He denied that he refused to be seated in the back of the police vehicle after being arrested. He reiterated that he told the officers that he would enter the van when he was told the reason for being arrested. He stated that he was handcuffed to the front of his body while on Bridge Street and that he remained handcuffed throughout the trip to the Marchand Police Station. He denied making the comment that he was *"going to make some money on the State"* whilst being treated at the hospital.

Jessie St. Prix ("Jessie")

- [19] Jessie testified that on the day of the incident he met Delan waiting for a minibus at the Ciceron bus stop. Being unable to get a bus, Delan, another gentleman, and himself, proceeded to the bridge on upper Bridge Street. Whilst walking to the bridge, he saw a few police officers near the Central Police Station. It was close to 7:00pm. Delan asked one of the officers (Officer Noel) for a ride to Ciceron. Jessie continued walking with the other gentleman. When he had walked about 2 feet away from Delan and the officers, he looked back, and heard Officer Noel asking Delan about his mask. Delan informed the Officer that he had his mask and asked the Officer for a ride home. Jessie stated that during this interaction Officer Noel was not wearing a mask. At that time, his own mask was below his chin. None of the officers spoke to him but when he heard Officer Noel questioning Delan about his mask, he pulled the mask up from his chin to cover his nose and mouth. Thereafter, he saw Officer Noel grab Delan and shove him to the ground. The other officers joined, a scuffle ensued, and after a few minutes he heard a gunshot.

- [20] Jessie stated that this occurred in the presence of many people. He was able to hear everything that was being said, and did not hear Officer Noel inform Delan that he was under

arrest. After Delan was shot, the officers lifted him and placed him into the police vehicle. Two of the officers jumped into the back while Officer Noel drove the vehicle. The next time he saw Delan he had a limp and was using a cane to walk.

- [21] During cross examination Jessie admitted that Delan was not wearing a mask. He also agreed that Delan was being aggressive towards Officer Noel, and was not compliant when the officer asked him to put on his mask. He confirmed that Delan resisted arrest and told Officer Noel that he was not going anywhere unless the officer told him why he was being arrested. Jessie further admitted hearing Officer Noel inform Delan that it was an offence to not wear a mask in public but stated that he did not hear the officer inform Delan that he could be arrested if he did not wear his mask.

The Defendant's Evidence

Nigel Noel, Corporal 640 ("Officer Noel")

- [22] Officer Noel stated that on 13th March 2021 he was on duty with Officers Harris, Jones and Thomassin. They left the Special Services Unit ("SSU") and proceeded to the Central Police Station for a joint patrol operation. He was carrying an FNC service rifle and a Glock 17 service pistol. He arrived on Bridge Street with his subordinate officers at about 7:45pm and waited for other officers to arrive. All the officers were wearing masks. Whilst waiting he noticed three individuals walking along Bridge Street without masks. He stopped them, enquired about their masks and why they were violating the curfew. Two of the individuals explained that they had just left work. They placed their masks on, and were allowed to leave.
- [23] He asked the third individual, Delan, whether he had a mask. Delan replied that he did, but refused to put it on when asked to do so. Officer Noel then informed Delan that he was being arrested. Delan resisted, and assaulted the officers. A struggle ensued. Delan lost his balance and fell to the ground face up. Officer Noel stated that he placed his knee on Delan and handcuffed him to the front of his body with the help of Officer Jones.

- [24] Delan was escorted to the back seat of the police vehicle, but he refused to enter the vehicle. All the Officers lifted him and placed him in the back tray of the vehicle, and Officers Harris and Jones sat in the back with him. Whilst in the back tray of the vehicle, Delan removed his pants and threw it outside the vehicle. Officer Noel picked up the pants, threw it back in the tray and proceeded to drive to the Marchand Police Station. Whilst driving he heard Officer Jones telling Delan to remain seated and Officer Harris saying, "*stop biting my leg*". When the vehicle was near the Marchand Police Station he heard a loud noise like a gun being fired. He stopped the vehicle and got out to find out what had happened. He observed that Delan was naked and had abrasions on his right thigh. Officer Noel was informed that Delan was shot in self-defence after assaulting Officers Jones and Harris. He then drove to the hospital where Delan was left in the custody of Officer Morgan.
- [25] In the early hours of 14th March 2021 Officer Morgan informed him that Delan was discharged from the hospital and transported to the Marchand Police Station where he was detained in a holding cell. Officers Noel, Harris and Jones subsequently made reports against Delan, at CID, for violation of curfew, failing to wear a mask, resisting arrest, assault, and threats to kill.
- [26] In cross examination Officer Noel stated that at the time of the incident he had been a police officer for 20 years. He admitted that he knew Delan well and had lived close to him when he (Officer Noel) resided at Ciceron. He confirmed that he was commonly called Nyo, all over the island. He agreed that it took 5 to 10 minutes to get from the SSU Headquarters at Tapion to the Central Police Station on Bridge Street. He denied arriving on Bridge Street at about 7:15pm as suggested by Counsel for the claimant, and explained that he did not leave the SSU immediately after the diarist made the entry in the station diary. He stated that they were delayed as it took some time to gear up with bullet proof vests, load their weapons, and brief the shift on the use of firearms and use of force policies. He maintained that he and the other officers arrived at Central Police Station on Bridge Street at about 7:45pm.
- [27] Officer Noel agreed that although Bridge Street had no designated bus stop, persons usually stood there to wait for transportation. This happened even before the Covid-19 pandemic. He denied seeing anyone on the bridge at the time of the incident, and stated that the bridge is lit by a street lamp at the intersection of Brazil and Bridge Streets

[28] He denied approaching Delan, and stated that the 3 individuals were walking toward them. He agreed that he spoke to all 3 individuals to find out why they were not wearing masks. He denied that Delan informed him that he had removed his mask to smoke a cigarette, or that he was coming from work and needed a ride to Ciceron. Officer Noel denied Delan's allegation that he was not wearing a mask at the time of the encounter, and stated that he and the other officers were all wearing masks.

[29] Officer Noel further denied that he failed to inform Delan that he was under arrest, or that he would be told the reason for his arrested, at the police station. He stated that he informed Delan that he was being arrested for failure to put on his mask. He denied holding Delan by his throat and tripping him, and maintained that Delan lost his balance and fell while attempting to resist arrest. He agreed that Officer Harris took away the long rifles that he and Officer Jones were carrying, while they tried to subdue Delan. He admitted that Officer Harris was issued a shot gun, but denied that Officer Harris shot Delan, or that Delan was shot on Bridge Street. He maintained that the incident occurred in the back of the van on the way to the police station. He denied that Delan was turned away by the custody officer at the Marchand Police Station, because he was injured. Officer Noel stated that they never spoke to the custody officer. When questioned about the report made against Delan, he stated that he did not give the investigating officer a witness statement at the time, and disagreed that the charges laid against Delan were false and designed to justify or cover up shooting him.

Vitus Harris, PC 796 (Officer Harris)

[30] Officer Harris testified that he has been a police officer for 13 years and considers himself an experienced officer. He was aware of the Standing Orders of the Royal Saint Lucia Police Force and the Use of Force Policy and was trained in the use of weapons and firearms.

[31] He stated that on 13th March 2021 he was part of a joint patrol operation along with Officer Noel, Special Constable Thomassin and Officer Jones. He was issued with a Glock 17 pistol prior to his departure from the SSU. They proceeded to the Central Police Station, and arrived on Bridge Street around 7:45pm, where they waited for other officers who were also detailed for the joint patrol.

- [32] Whilst waiting, Officer Harris noticed three individuals walking past the police station in the direction of the bridge, and observed that none of them were wearing masks. He stopped the three individuals and asked why they were not wearing masks and violating the curfew. He was in close proximity to Officer Noel, who then asked the individuals to put on their masks. Two of the individuals did so, and informed Officer Noel that they were just coming from work. Officer Noel allowed them to leave.
- [33] Officer Noel then asked the third individual, Delan, whether he had a mask, to which he replied "yes". Officer Noel asked him to put on his mask but he responded, "*I am not wearing any mask*". Officer Noel informed him that it was an offence to not wear a mask in public and if he refuses to comply he will be arrested. Delan replied "*Officer Nyo you can do what you want*" and started walking away. Officer Noel called him by his first name and attempted to hold him. Delan hit Officer Noel's hand and told him "*You not arresting me and if you touch me again I will break your legs and kill you*". Officer Jones ran to the assistance of Officer Noel who was trying to apprehend Delan. At that point Officer Harris took away the long arm rifles from Officers Noel and Jones, which appeared to be hindering them from apprehending Delan, and carried the rifles to the police vehicle.
- [34] Officer Harris stated that he saw Delan kicking and swinging punches at Officers Noel and Jones, some of which hit them, whilst they were trying to arrest him. Delan struggled with the officers for about two minutes, lost his balance, and fell to the ground. Officer Noel placed his knee on Delan's thigh. Officers Noel and Jones placed handcuffs to the front of Delan's body. Officer Noel then escorted Delan to the police vehicle, but he refused to get in. They all lifted Delan and placed him in the back of the vehicle. At that time he observed what appeared to be the smell of alcohol from Delan's breath.
- [35] Officer Harris stated that he and Officer Jones sat in the back of the police vehicle with Delan, and Officer Noel drove the vehicle. Before driving off, Delan removed his pants and threw it out the vehicle. Officer Noel picked it up and placed it back in the vehicle and proceeded to the Marchand Police Station. Delan started removing the rest of his clothes during the drive, and by the time the vehicle got to Brazil Street he was naked and had thrown his clothes out of the vehicle onto the road. Delan made efforts to stand in the moving vehicle, and was told

to remain seated, but he refused to comply. Officer Harris stated that he rested his body on Delan to prevent him from moving. Delan bit his leg, behaved very aggressively, and made threats to kill the officers when he was released. Delan kept kicking and slipping out from under Officer Harris, with Officer Jones trying to assist Officer Harris to subdue him.

[36] Officer Harris testified further that Delan kicked Officer Jones, causing him to almost fall out of the moving vehicle. Officer Jones regained his balance and continued trying to assist Officer Harris. Delan kicked Officer Jones again and spat on him. At that point Officer Jones shot Delan with a beanbag round. Delan then said, *"Is kill you have to kill me"* and continued to behave aggressively. Officer Noel stopped the vehicle moments away from the Marchand Police Station and asked what happened. Delan was bleeding from his thigh, so Officer Noel drove to the hospital. Delan continued to behave aggressively during the drive to the hospital. Upon arrival Delan was placed on a wheelchair, and was left in the custody of Inspector Morgan. Officers Noel, Harris and Jones returned to their joint patrol. The Officers subsequently made a report against Delan at the CID, for resisting arrest, assault, threats to kill, failing to wear a mask and violation of curfew.

[37] In cross examination Officer Harris agreed that persons normally waited for transportation near the bridge on Bridge Street. He admitted that Delan informed Officer Noel that his mask was in his pocket but denied that Delan admonished Officer Noel because the officer was not wearing a mask. He stated that Officer Noel told Delan that he was under arrest for not wearing a mask and made an attempt to hold Delan, and Delan responded by hitting Officer Noel's hand. He denied that Officer Noel held Delan around his neck and tripped him. Officer Harris confirmed that at one point he was holding all the long rifles (having taken them away when Officers Noel and Jones were trying to place handcuffs on Delan) but denied that he shot Delan or hit him with his gun.

[38] Officer Harris also admitted that Delan was being transported from Bridge Street to the Marchand Police Station when he threw his clothes onto Brazil Street, and not Bridge Street. He admitted that he noticed that Delan was injured from Brazil Street but did not inform Officer Noel, so that Delan could be transported to the hospital. He could not recall when the incident was reported to CID or whether he gave a statement to any officer from CID. He stated that

he gave a statement to Officer Noel but could not recall who Officer Noel gave that statement to. He did not recall speaking to Officer Clinson John and stated that he did not return to Bridge Street that night, after the incident with Delan.

Iziah Jones, PC 21 ("Officer Jones")

- [39] Officer Jones testified that he has been a police officer for 17 years. On the night in question he was on duty at the SSU and was detailed to conduct a joint patrol operation with Officers Harris, Thomassin, and Officer Noel (as the shift supervisor). He was issued with a 12-gauge shot gun rifle and 10 beanbag rounds. They boarded a police vehicle and proceeded to the Central Police Station to await the other officers expected to join the patrol, and for further briefing on the joint patrol operation.
- [40] They arrived on Bridge Street around 7:45pm. Whilst there waiting for the other officers, Officer Jones noticed three individuals walking toward the bridge without face masks. Officer Noel stopped the individuals and asked why they were violating the curfew and not wearing masks. He asked them to put on their face masks. Two of the individuals did so and were allowed to leave. The third individual was Delan, who did not comply.
- [41] Officer Noel asked Delan whether he had a mask, and he replied 'yes'. Officer Noel asked Delan to put on his mask several times. Delan replied aggressively that he was not wearing any mask. Officer Noel informed him that it was an offence not to wear a mask and that if he refused to comply, he would be arrested. Delan replied, "*Officer Nyo you can do what you want*" and started walking away. Officer Noel called him by his name and attempted to hold him. Delan hit Officer Noel's hand and threatened him saying, "*if you touch me again, I will break your legs and kill you*". When he noticed that Delan was resisting arrest, he proceeded to assist Officer Noel in apprehending Delan. Officer Harris took away their long firearms so that they could execute the arrest.
- [42] Officer Jones further stated that he and Officer Noel struggled with Delan for about 2 minutes, during which time Delan used obscene language, kicked, and punched them. During the struggle Delan lost his balance and fell to the ground. Officer Noel placed his knee on Delan's thigh and he handcuffed Delan to the front of his body, with help from Officer Jones. When

he tried to escort Delan to the back seat of the police vehicle, he resisted. All three officers lifted Delan and placed him in the back tray of the vehicle. Officer Jones and Harris sat with Delan in the back of the vehicle. Officer Noel drove the vehicle in the direction of the Marchand Police Station.

[43] Officer Jones testified that before Officer Noel drove off Delan removed his pants. He made efforts to stand in the back of the vehicle whilst it was moving. Officer Harris asked him to remain seated, but he refused. Officer Harris rested his body against Delan to restrain him, and he bit Officer Harris' leg and made threats to kill the officers when he was released. In attempting to assist Officer Harris to restrain Delan, Delan kicked Officer Jones causing him to lose his balance. In response, he discharged one beanbag round from his rifle. Delan began to bleed, but remained aggressive, kicking and spitting on him. Officer Noel stopped the vehicle to find out what happened, and Officer Harris explained what had transpired. They were already near the Marchand Police Station, however Officer Noel turned the vehicle around to take Delan to the hospital. Delan continued to behave aggressively on the way to the hospital. Upon arrival he was placed on a wheelchair, escorted inside, and left in the custody of Inspector Morgan. They left the hospital and returned to their joint patrol. Subsequently reports were made against Delan at the CID for violation of the curfew, failing to wear a mask, resisting arrest, assault and threats to kill.

[44] During cross examination Officer Jones agreed that there is an area on Bridge Street close to the bridge where people board transportation. He denied that there were persons on the bridge on the night of the incident. He stated that he and all the other officers were wearing masks when they encountered Delan and the two other gentlemen. He admitted that Delan informed Officer Noel that he was coming from work and that his mask was in his pocket.

[45] He denied that Delan questioned Officer Noel about not observing the protocol by failing to wear a mask. He disagreed that the reason Officer Noel had to admonish Delan about wearing the mask a second time, was because Officer Noel was not wearing a mask and Delan questioned him about it. Officer Jones further denied that Delan was tripped and thrown to the ground by Officer Noel. He stated that during the scuffle between Officer Noel, Delan,

and himself, Delan fell when they tried to arrest him. He agreed that Officer Harris assisted by taking away their long arm rifles and placed them in the police vehicle.

- [46] Officer Jones stated that Delan removed his pants on Brazil Street and not on Bridge Street, and that whilst on Brazil Street he noticed that Delan was injured but did not inform Officer Noel of this, so that Delan could be transported to the hospital, instead of the police station. He denied that Delan was taken to the Marchand Police Station after being shot and that they were instructed by the officer in charge to take Delan to the hospital. He admitted making a report against Delan on the same night, at the CID. When questioned further, he stated that it was Officer Noel who made the report at the CID and that the charges against Delan did not name him because he was not the one who laid the charges, rather it was the CID. He denied Counsel's assertion that the real reason why no charges were brought against Delan in relation to him was because he did not make a report on the night of the incident, but did so in September 2021. Officer Jones denied that Delan was shot on Bridge Street, or that he returned to the scene of the incident with Officer John. He also denied that the officers concocted a story to try to cover up the unlawful shooting and arrest of Delan.

Alex Morgan, Inspector ("Officer Morgan")

- [47] Officer Morgan stated that he has been a police officer for 24 years and considered himself a very experienced officer. On the night of the incident at about 8:00pm he was on duty conducting a joint city patrol to enforce the curfew which was in effect from 7:00pm to 4:00am daily. Whilst on patrol duty he went to the Marchand Police Station to relieve some wardens. At about 9:40pm, while still at the station, he received a call from Officer Noel requesting assistance to secure Delan at the hospital. He proceeded to the hospital and upon arrival around 10:00pm, he had a brief conversation with Officer Noel. He proceeded to the emergency room where Delan was receiving medical attention. Officer Noel and other officers left the hospital. Whilst there, Delan was being very noisy, and made a comment that he would make some money on Government once he was released.
- [48] Officer Morgan stated that Delan was treated, he was discharged at about 12:30am on 14th March 2021, and then transported to the Marchand Police Station. He gave Delan 3 shirts

and food to eat, before handing him over to Special Constable Mischaq Theodore. Delan appeared to be in good health at that time. He was processed and placed in a holding cell.

- [49] In cross examination Officer Morgan agreed that Officer Noel and the other officers left the hospital around 10:15pm. He agreed that Delan was limping when he was discharged from the hospital and stated that he had to help him get into the police vehicle. Officer Morgan stated that Delan was not naked whilst at the hospital and that he left with his pants and vest on.

Elisha Julien, PC 393 ("Officer Julien")

- [50] Officer Julien's evidence is that he has been a police officer for the past 5 years, attached to the CID. Around 7:45pm on the night of 13th March 2021 he was on duty at the CID and was assigned to investigate a report made by Officers Noel and Harris against Delan, for resisting lawful arrest, failing to observe curfew and assault. He received statements from the two officers.

- [51] On the following day he met with Delan at the Marchand Police Station, where he informed him of the reports made against him. He cautioned Delan and invited him to give a statement, however, Delan remained silent. He informed Delan that it was an offence not to comply with the curfew, assault anyone, and resist lawful arrest, and that he had reason to suspect that he had committed these offences. He again asked Delan whether he wanted to give a statement. Delan responded that he did not. He informed Delan of his rights as a prisoner in custody, asked if he understood and whether he wished to exercise any of his rights. Delan indicated that he understood but did not wish to exercise any right. He made a note of Delan's responses on the Rights in Custody Forms. After completing the relevant forms, they were signed by Delan, Constable Emmanuel (as a witness), and himself. Officer Julien stated that he gave Delan a copy of the Rights in Custody Form for each of the offences.

- [52] On 15th March 2021 around 11:30am Officer Julien met with Delan in the presence of Justice of the Peace Francis Artiside and preferred charges against him for failure to observe a curfew, resisting arrest and assault. He read each charge individually to Delan and asked

whether he understood each, to which Delan replied in the affirmative each time. He then cautioned Delan, who indicated that he did not wish to make a statement. He made a note of Delan's response to each charge, and Delan signed in the spaces marked arrested person. Officer Julien stated that he signed as the police officer and the Justice of the Peace signed as the witness. He made a note in the Marchand Police Station diary, and later that day Delan was bailed on his own recognizance.

- [53] During cross examination Officer Julien insisted that he was assigned to investigate the incident at 7:45pm (the same time the incident occurred) although the Daily Crime Summary Form at the CID showed that the report was made at 8:15pm³ and the Daily Station Diary of the SSU documented that the report was made by the officers at 9:10pm⁴. When questioned further on whether Officers Noel, Harris and Jones reported the incident at 8:15pm, Officer Julien stated that they did not report the incident to him. He further stated that he did not receive police witness statements from these officers on the night of the incident. He first stated that he had no statements (from the officers or from Delan) when he laid the charges against Delan. Thereafter he said he received statements from his colleague at the CID, on Sunday 14th March 2021, and that he did not take any statements himself. Officer Julien admitted that when he saw Delan at the Marchand Police Station, Delan was limping and told him that Officer Harris had shot him.

Kimian Henry, Corporal 307 ("Officer Henry")

- [54] Officer Henry testified that he has been a police officer for 15 years. He stated that between 7:00pm and 11:00pm on the night in question, he was assigned as the diarist on duty at the SSU, at La Toc, in Castries. At approximately 7:05pm he issued one shotgun 12-gauge rifle to Officer Jones, together with 10 beanbags. During cross examination he admitted that at the time of the incident he was a police constable and according to the policy which governs the issue of firearms, a police constable is not authorized to issue firearms.

³ See page 51 on Trial Bundle 1

⁴ See pages 55-56 of Trial Bundle 1 – entry no. 30

- [55] He admitted that he issued a sling gun to Officer Harris and that the firearm register showed a record of who he issued weapons to. When told by Counsel for the claimant that a diarist cannot issue firearms and that the duty of the diarist is to record the movement of officers, he stated that authorization is given by the supervisor, to the diarist on duty, to issue weapons to officers performing mobile patrol duties or any other duty which require the use of weapons. He denied that he acted outside of his scope of authority when he issued the firearms. When questioned about injuries caused by beanbag rounds, Officer Henry stated that a beanbag can cause injury when shot at close range.

Clinson John, Acting Corporal 342 ("Officer John")

- [56] Officer John gave evidence that he has been a police officer for 19 years. He stated that at about 6:30pm on 6th September 2021, he was assigned to investigate a report of assault and threatening words made by Officers Jones and Noel, against Delan. He met with the officers, interviewed them and took statements from them. He later went to the scene of the incident on Bridge Street, accompanied by the officers, and they showed him where the incident occurred. Later that day, he met and spoke with Officer Harris and obtained a statement from him.
- [57] Subsequently, at about 9:30am on 10th September 2021 he met with Delan on Coral Street in Castries and informed him of the reports of assault and threatening words made against him by Officers Jones and Noel. He cautioned Delan, who remained silent. He informed him that it was an offence to hit and threaten anyone. He also informed him that he had reasonable grounds for suspecting that he had committed these offences. He recorded Delan's personal information and informed him that he would be lodging complaints against him for the offences of assault and use of threatening words.
- [58] Officer John stated that he lodged the complaints at the First District Court, and prepared summons for the parties to attend on the first court hearing date. He stated that during his investigations he contacted Delan several times in reference to recording a statement from Jessie, who Delan had indicated was present during the incident. However, Jessie never showed up for the appointment.

- [59] In cross examination Officer John admitted that he knew that Officer Julien had already laid charges against Delan for the incident. He confirmed that the complaints which he filed against Delan were dismissed. He denied that these complaints were filed to shield the police officer who shot Delan, and to go along with the story concocted by the police.

Issue 1 : Was Delan unlawfully arrested?

Claimant's Submissions

- [60] Counsel for the claimant, submitted that Delan's arrest was unlawful because there was no ground for the arrest. She argued that he did not intentionally breach the curfew but was forced to be out during the curfew hours because he was not able to obtain transportation to his home. She submits that strict liability was not intended by the framers of section 4(2) of the Constitution of Saint Lucia (State of Emergency) Regulations 2021⁵ since it would unfairly deprive a citizen of his or her right to freedom of movement without proof of intent. Counsel contends that Delan lacked the necessary *mens rea*, thus, the presumption of innocence applied, and has not been displaced in these circumstances.
- [61] Counsel further submitted that the Delan was never informed of the reason for his arrest, neither was he told that he was under arrest. Counsel cited the Police Standing Orders which states that when making an arrest, whether on warrant or not, a police officer 'must inform the person arrested of the offence for which he is being arrested'⁶. Counsel contends that to merely tell the claimant that he **could** be arrested for not wearing a mask did not meet the test for a lawful arrest. She argued that the words stated by Officer Noel suggested a warning rather than a statement of fact, that the claimant was under arrest.
- [62] In support of this proposition Counsel relied on a passage from **Christie v Leachinsky**⁷ where Lord Viscount Simon stated:

⁵ Statutory Instrument No 28 of 2021 - 'A person who does not comply with the curfew imposed under sub-regulation (1) commits an offence...'

⁶ Standing Orders of the Royal Saint Lucia Police Force (Amended) 1990 – S.O. No.43(2)(b)

⁷ (1947) AER 567.

"If a Policeman arrests without warrant on reasonable suspicion of a felony, or other crime of a sort which does not require a warrant he must in the ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words, a citizen is entitled to know on what charge or suspicion of what he is seized."

- [63] In Counsel's view, the true reason for the claimant being arrested was because he spoke back to Officer Noel, which enraged the officer.

Defendant's Submissions

- [64] Counsel for the defendant submitted that police officers are conferred with the power to arrest any individual who for reasonable cause is suspected of committing an offence. Counsel stated that the test for determining whether Officers Noel, Jones and Harris had reasonable cause to arrest and detain Delan is both subjective and objective. He relied on the case of **Everette Davis v the Attorney General**⁸ where Ramdhani J stated:

"... The test as to whether there is reasonable and probable cause is both subjective and objective. The perceived facts must be such as to allow the reasonable third person and actually cause the officer in question to suspect that the person has committed or is about to commit a crime. It does not matter if the information available to the police leads equally or more to a view that the person may be innocent of the offence once it leads reasonably to a conclusion that he may have committed, or is about to commit the offence, that is sufficient to ground the arrest. The reasonable police officer is assumed to know the law and possessed of the information in the possession of the arresting officer, and would have believed that the claimant was guilty of the offence for which he was arrested. The term 'reasonable suspicion' relates to the existence of facts at the time. It does not relate to a perception on the state of the law."

- [65] Counsel argued that once reasonable grounds for suspicion is established, police officers have a discretion whether to exercise the power of arrest. He contends that Officer Noel was well within his right to arrest Delan pursuant to police powers under section 23 of the Police Act⁹ and in accordance with section 570 (3) of the Criminal Code¹⁰ when he observed that he was not wearing a mask whilst walking on Bridge Street during curfew hours on 13th March

⁸ SKBHCV2013/0220 (delivered 30th June 2014), at paragraph 12.

⁹ Cap 14.01 of the Revised Edition of the Laws of Saint Lucia

¹⁰ Cap 3.01 of the Revised Edition of the Laws of Saint Lucia.

2021. Counsel also submitted that Delan's actions, upon being arrested, constituted further criminal offences, pursuant to section 400 of the Criminal Code (resisting lawful arrest); section 426 of the Criminal Code (assault); and section 543(a) of the Criminal Code (use of threatening words).

Analysis

- [66] An arrest occurs when a police officer takes a person into custody or by words or action restrains him/her from moving anywhere beyond the police's control. Such arrest is lawful where the executing officer has reasonable cause for suspecting that an offence was committed¹¹. In **Matthew McMillan v Alonzo Carty et al**¹² Ventose J examined what constitutes a lawful arrest and said the following:

"[33] To constitute a lawful arrest, the arrested person must be informed of the nature of the charge. It is not necessary for this to be communicated formally if circumstances are such that the arrested person must know the general nature of the alleged offence for which he or she is detained: Christie v Leachinsky [1947] AC 573...

[34] In Murray v Ministry of Defence [1988] 1 WLR 692, the House of Lords stated that: The question remains, however, whether the failure to tell the plaintiff that she was being arrested until the soldiers were about to leave the house renders the arrest unlawful. It has been well-settled law, at least since Christie v. Leachinsky [1947] A.C. 573, that a person must be informed of the reason for his arrest at or within a reasonable time of the arrest. There can be no doubt that in ordinary circumstances, the police should tell a person the reason for his arrest at the time they make the arrest. If a person's liberty is being restrained, he is entitled to know the reason. If the police fail to inform him, the arrest will be held to be unlawful, with the consequence that if the police are assaulted as the suspect resists arrest, he commits no offence, and if he is taken into custody, he will have an action for wrongful imprisonment. However, it is made plain in the speeches in Christie v Leachinsky that there are exceptions to this general rule."

- [67] Concerning lawful authority for an arrest, subsection 3(1)(e) of the Constitution of Saint Lucia¹³ provides:

"A person shall not be deprived of his or her personal liberty, save as may be authorized by law in any of the following cases, that is to say —...

¹¹ Dallison v Caffery [1965] 1 QB 348.

¹² Claim No. SKBHCv2017/0380 (delivered 28th October 2019, reissued on 13 November 2019).

¹³ Cap 1.01 of the Revised Edition of the Laws of Saint Lucia

(e) upon a reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under any law."

[68] Subsection 570(2) of the Criminal Code¹⁴ provides that 'a police officer may arrest without warrant anyone who is or whom he or she, with reasonable cause, suspects to be, in the act of committing or about to commit, an offence'. Similarly, subsection 23(1) of the Police Act¹⁵ provides that police officers are conferred with the power to arrest any individual who for reasonable cause is suspected of committing an offence.

[69] It is settled law that the question whether the facts disclose reasonable cause for an arrest is one to be decided by a judge¹⁶ and the threshold for establishing such reasonable cause is a low one¹⁷. It is also well established that informing an arrested person of the reason for an arrest may not be necessary if the circumstances are such that the nature of the alleged offence for which he is being arrested is known to him. Further, the requirement that he should be so informed does not mean that technical or precise language must be used¹⁸.

[70] It is not disputed that at the time of Delan's arrest, a curfew was imposed from 7:00pm to 4:00am daily¹⁹. Regulation 4 of the State of Emergency Regulations stated the following:

- (1) A curfew is imposed each day from 7 p.m. to 5 a.m.*
- (2) A person who does not comply with the curfew imposed under sub-regulation (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding six months or both.*

[71] By a subsequent amendment which came into force on 16th February 2021 the curfew was imposed 'each day from 7pm to 4 am'.²⁰ At the material time, failure to wear a face mask was also a criminal offence for which the penalty was a fine, imprisonment, or both. This was

¹⁴ Supra note 7

¹⁵ Supra note 6

¹⁶ Dallison v Caffrey – supra note 2

¹⁷ Buckley and others v Chief Officer of the Thames Valley Police [2009] EWCA Civ 356.

¹⁸ Christie v Leachinsky [1947] AC 573 at 586-587)

¹⁹ Constitution of Saint Lucia (State of Emergency) Regulations 2021 Statutory Instrument Number 28 of 2021 in force on 3rd February 2021.

²⁰ Constitution of Saint Lucia (State of Emergency) (Amendment) Regulations 2021 Statutory Instrument Number 42 of 2021 in force on 16th February 2021.

mandated by the COVID-19 (Prevention and Control) Act, 2020²¹ and the relevant provisions stated the following:

"Section 21 –

- (1) In an effort to prevent the spread of COVID-19, a person shall –*
 - (a) wear a mask or suitable covering over his or her nose and mouth when in public; and*
 - (b) at all times as far as practicable, distance himself or herself at a prescribed space from any other person.*
- (3) A person who contravenes this section commits an offence.*
- (4) In this section, "public" includes –*
 - (a) outside a person's home;*
 - (b) in the case of a person at a certified accommodation provider –*
 - (i) on the premises of a certified accommodation provider except within the space reserved for the sole use of the person*
 - (ii) outside the premises of a certified accommodation provider.*

.....

Section 63 –

A person who contravenes this Act commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or imprisonment with or without hard labour for a term not exceeding six months or both and forfeiture of goods or money in respect of which the offence has been committed.

[72] Delan agreed that at the time of the incident he was on Bridge Street which is a public place, after 7:00pm, and was not wearing a mask. Although Counsel has argued that he was not informed of the reason for the arrest, nor was he told that he was under arrest, this does not necessarily make the arrest unlawful. In **Christie v Leachinsky**²² Lord Simonds stated that there was no need for a constable to explain the reason for arrest if the arrested man was caught 'red-handed' and the crime was 'patent to high heaven'. Similarly, in **Jude Jack v Attorney General et al**²³ the court found that even though the words "you are under arrest" were never uttered by the police, there was no doubt that the claimant in that case very well knew that the police were trying to disarm him of a weapon, that an arrest would then be effected, and therefore he was no longer a free man.

²¹ Section 21(1)(a), 21(3) and 63 of the Covid-19 (Prevention and Control) Act, Cap. 11:25 of the Revised Edition of the Laws of Saint Lucia.

²² (1947) 1 All ER 567.

²³ Claim No. GDAHCV 2006/0351 (delivered 15th September 2010).

[73] It is correct to say that a reasonable police officer would have suspected Delan of having committed offences, he having been caught red-handed on Bridge Street past the curfew hour and not wearing a mask. Delan admitted that he was aware of the curfew and stated that when he arrived in Castries he had 45 minutes to get a bus to get to his home at Ciceron. However, he made a detour and stopped at a bar where he has drinks, before proceeding to the Ciceron bus stop. Wearing a mask in public was also one of the mandatory protocols implemented during the pandemic. These protocols were widely publicized, and were common knowledge. Delan was questioned by Officer Noel on his reason for being out during the curfew, and failing to wear a face mask in public.

[74] Although the officers agree that they could have exercised discretion when enforcing the Covid-19 Regulations, violation of the curfew and failure to wear a mask in public were strict liability offences, as the public safety and welfare were at stake. Delan's arrest was lawful as he would have been fully aware that he had contravened the curfew, having been out on Bridge Street after 7:00pm, and not wearing a face mask at the time. He would have known based on the exchanges between himself and Officer Noel that he was being arrested by the officers, for committing these offences. In my view the use of technical or precise language by Officer Noel was not an absolute necessity in these circumstances. Consequently, the claim of unlawful arrest fails.

Issue 2 : Was Delan falsely imprisoned?

[75] Counsel for the claimant has argued that Delan's detention amounted to false imprisonment because he was not told that he was being arrested, nor was he informed of the reason for his arrest. Counsel cited a passage from **Christie v Leachinsky**²⁴ where Lord Viscount Simon stated:

"A citizen is entitled to know on what charge or suspicion of what he is seized. If the citizen is not so informed, but is nevertheless seized, the policeman, apart from certain exceptions is liable for false imprisonment".

²⁴ Supra note 20

[76] Counsel for the defendant contends that Delan was lawfully detained from 13th to 15th March 2021, and that based on the test in the **Everette Davis** case, the officers had reasonable and probable cause to arrest Delan who had committed several criminal offences. In support of the argument that the evidence did not support the finding of false imprisonment Counsel referred to the case of **PC 138 Desmond Alfred v Assistant Superintendent of Police Emmanuel Joseph et al**²⁵ in which Cenac-Phulgence J stated:

"The tort [of false imprisonment] is established on proof of: (1) the fact of imprisonment; and (2) the absence of lawful authority to justify that imprisonment. For these purposes, imprisonment is complete deprivation of liberty for any time, however short, without lawful cause... In a claim of false imprisonment, the onus is on the defendant to satisfy the Court that the arrest is lawful. It is therefore for the defendant to satisfy the Court that he or she acted with reasonable cause or upon reasonable suspicion."

[77] It is not disputed that having been lawfully arrested, Delan was placed into the police vehicle and transported to the hospital. After being discharged from the hospital he was kept in custody at the Marchand Police Station for two days. This evidence establishes the fact of imprisonment. However, the legal authorities clearly state that the act of detaining or imprisoning a person without lawful justification or authority is a critical component for establishing false imprisonment.²⁶

[78] Counsel for the claimant says there was no justification or authority for arresting Delan, as he was not told that he was being arrested or given a reason for the arrest. In the very same case of **Christie v Leachinsky**²⁷ which Counsel for the claimant relied on for this proposition, Lord Simonds stated that there was no need for a constable to explain the reason for arrest in circumstances where a person is caught in the very act of committing the wrongdoing and the evidence of guilt is patently obvious. Delan was detained for two days, however the second limb of the test being the absence of lawful authority to justify his imprisonment, has not been satisfied. Indeed, the evidence in relation to breach of the curfew and failing to wear a mask in public remained uncontroverted. Thus, police officers would have had lawful authority to arrest and detain him for these offences.

²⁵ SLUHCv2012/0635 (delivered 24th January 2019) at paragraphs 61 and 64 of the judgment.

²⁶ Davidson v Chief Constable of North Wales [1994] 2 All ER 597.

²⁷ Supra note 20

- [79] I therefore conclude that as Delan's arrest was lawful, the justification or lawful authority for his imprisonment was inevitably present. Consequently, the tort of false imprisonment has not been established and that component of the claim fails.

Issue 3 : Did the police officers commit assault and battery against Delan?

Claimant's Submissions

- [80] Counsel for the claimant contends that Delan suffered assault and battery on his person when Officer Noel held him around his throat in a neck choke, placed his foot behind Delan's legs and tripped him to the ground. In so doing Delan experienced not only the fear of falling but actually fell to the hard concrete pavement, where he was beaten by all the officers and then handcuffed and shot in the upper right thigh by Officer Harris. Counsel submitted that the claimant's evidence establishes intentional and unlawful acts on the part of Officer Noel and the other officers who assisted him. Counsel further stated that Officer Jones' testimony was that Officer Noel placed his knee on Delan's chest whilst on the ground. It is admitted that Delan fell to the ground, and there could have been no need to shoot him.
- [81] Counsel further argued that the defendant's assertion that Delan was drunk and behaved disorderly and nonchalant about the curfew does not add up. Although he admitted to having a few drinks, the attending physician at the hospital stated that all vitals were normal. Counsel says this could not be consistent with a person who was drunk and out of his elements.
- [82] Counsel further argued that Delan was shot at close range while he was subdued, hand cuffed, and posed no threat to the officers. The officers' evidence of the timelines of the incident varied significantly to the entries in the station diary and register, and they could not recall important information. They were only consistent with their version of events in relation to the shooting, to cover up the unlawful shooting of the claimant.

Defendant's Submissions

[83] Counsel for the defendant submitted that the officers did not commit assault and battery against Delan. Counsel cited the case of **Rashaad Joseph et al v The Attorney General**²⁸ in which the court was tasked with determining whether a police officer had committed assault and/or battery during the search of a claimant. Cenac-Phulgence J at paragraph 51 and 52 of the judgment summarized the law regarding assault and battery as follows:

"[51] Assault is an intentional or reckless act that causes someone to be put in fear of immediate physical harm. Battery is the intentional or reckless application of force to someone without his consent and includes anything that amounts to a blow. It may be inflicted by hand.

[52] In order to establish battery, it must be proven on a balance of probabilities that (a) there was intent to commit the act; (b) there was non-consensual contact with the person and (c) the battery caused actual harm meaning physical, mental, or emotional harm. The requisite intent is merely to touch or make contact without consent. The act must be voluntary but there need not be an intention to do wrong and the wrongdoer need not intend to cause the particular harm that occurs. The requirement of intention with respect to both torts is a reasonable inference to be drawn from all the circumstances."

[84] Counsel urged the Court to accept the evidence of the police officers which he says illustrates that the officers lawfully arrested Delan on Bridge Street and at no time did they act in a manner which would have put him in fear of immediate physical harm. It was further submitted that it was Delan who became aggressive and violent when the officers attempted to transport him to the Marchand Police Station and it was only when he assaulted Officer Harris and thereafter Officer Jones, that reasonable force was used to repel these attacks. As it pertains to the tort of battery, Counsel submitted that Officer Jones acted in self defence, in discharging the beanbag round to subdue Delan.

Analysis

[85] In the text, **Commonwealth Caribbean Tort Law**²⁹, the learned author defines assault as *"a direct threat made by the defendant to the plaintiff the effect of which is to put the plaintiff in reasonable fear or apprehension of immediate physical contact with his person"*. It is an objective test and the question to be asked is whether in the particular circumstances a

²⁸ SLUHCv2017/0189 (delivered 25th October 2019, unreported).

²⁹ Gilbert Kodilyne, *Commonwealth Caribbean Tort Law* (3rd Edn., Routledge-Cavendish 2003) 12.

reasonable man might fear violence was about to be applied to him. Battery on the other hand, is defined as the "*intentional or reckless application of unlawful force to the body of another person*".³⁰ Thus, it has been said that anything that amounts to a blow, whether inflicted by hand, weapon or missile, is a battery.³¹

[86] Delan cites two instances in relation to the allegations of assault and battery. Firstly against Officers Noel and Jones for physically beating him, and secondly against Officer Harris for shooting him.

[87] It is not disputed that Delan was shot, however the police officers account of the incident is diametrically opposed to that of Delan. Officers Noel, Harris and Jones denied the particulars of assault, and claim that when Officer Noel informed Delan that he was under arrest and attempted to hold him, Delan hit Officer Noel and told him '*you are not arresting me and if you touch me again I will break your legs and kill you*'. Further, Officer Noel struggled to get Delan in handcuffs as he was resisting arrest by kicking and throwing punches at both Officers Noel and Jones. When he was placed in the back tray of the police vehicle he attempted to stand whilst the vehicle was moving. He bit Officer Harris' leg and made threats to kill him once he was released from custody. When Officer Jones attempted to assist Officer Harris, Delan kicked him almost throwing him off the moving vehicle. Officer Jones then discharged one beanbag round to subdue Delan, who remained overly aggressive.

[88] As the claimant and defendant have differing versions of the events, the standard of proof must be determined on a balance of probabilities. The following statement of Baroness Hale in the House of Lords decision of **Re B (Minors)**³² is instructive:

"The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not... It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur, before, on the balance of probability, its occurrence will be established."

³⁰ Halsbury's Laws of England (2016) vol. 25, para 134.

³¹ See: Clerk and Lindsell on Tort at paragraph 17-03

³² (2008) EWCA Civ. 282.

[89] The evidence reveals that there were three able bodied police officers attempting to arrest Delan and they were each in possession of firearms, as well as lethal and non-lethal ammunition. The officers would have had a physical and tactical advantage over Delan. Their training and years of experience would have equipped them to de-escalate any aggression from Delan who was of slim build, and acting alone, without descending to the level of commotion which ensued. There were numerous inconsistencies in the evidence of the police officers, except in relation to when and where Delan was shot. In this regard their evidence appeared to have been scripted, and at best incredulous.

[90] The claimant on the other hand explained how he was handled by the officers on Bridge Street. His evidence is corroborated in part by Jessie's evidence. On a balance of probabilities Delan's version of events is the more probable and believable account of what transpired. The only inference to be drawn from the evidence is that a fight or brawl ensued when the officers attempted to arrest Delan, and he resisted. I accept that following a confrontational verbal exchange between himself and Officer Noel, he was wrestled to the ground in a scuffle, in order to be handcuffed. Although force may be used when conducting an arrest, engaging in a brawl would have placed Delan in fear of immediate harm or violence to his person, having fallen to the ground in the process, with one of the officers pinning him down whilst on the ground. Such conduct would be sufficient to amount to assault, albeit that there was lawful cause for arresting Delan.

[91] Regarding the shooting, the defendant says Delan was shot by Officer Jones, in the back tray of the moving vehicle in self- defence, and that the use of such force was justifiable. Delan on the other hand says he was shot on Bridge Street by Officer Harris, during the scuffle which ensued with the officers. Thus, I must consider whether self-defence would absolve the officers of assault and battery.

Issue 4 : Was Delan shot and wounded without justification, or was the Officer who shot him acting in self defence?

Claimant's Submissions

[92] Counsel for the claimant submitted that shooting Delan constituted an intentional or reckless use of force, which was unjustified. Delan's evidence, as corroborated by Jessie was that he was shot on Bridge Street. Before he could put on his mask, Officer Noel held him around his neck and tripped him, causing him to fall to the ground and hit his head. Whilst on the ground Officer Jones placed his foot on his chest while Officer Noel laid down on him and handcuffed him. Delan asked why he was being arrested and the Officers became more enraged and proceeded to beat him. Officer Harris hit him with the butt of the gun, and the scuffle continued until the claimant heard a loud explosion. He says he was shot in his right thigh by Officer Harris.

[93] Counsel argued that the evidence shows that Delan was handcuffed and laid helpless on the ground, which dispels any notion that he was resisting arrest, or trying to escape. Counsel further says, that shooting Delan whilst he was pinned against the police vehicle on Bridge Street (supported by Jessie's evidence) leads to the inescapable conclusion that unreasonable and excessive force was used, in breach of the Criminal Code, the common law and the Police Standing Orders. Counsel cited section 571 of the Criminal Code which speaks to use of force in making an arrest. The section provides that:

*"A person may use such force **as is reasonable in the circumstances** in the prevention of Crime, or in effecting or assisting in the lawful arrest of offender or suspected offenders or of persons unlawfully at large."*

[94] Counsel further submitted that if the officers' account is to be believed, that Delan was shot on Brazil Street in the back of the moving van, he would have been sitting handcuffed between two armed police officers and could not have posed any threat to Officers Harris and Jones, to warrant the use of such force to subdue him. Counsel posits that even if the defendant's version of events is accepted, the use of such force would still contravene section 34 of the Criminal Code, and that reasonable force was not used in apprehending Delan.

Defendant's Submissions

[95] The defendant maintained that Delan was shot in the back tray of the police van on Brazil Street. Counsel submitted that Officer Jones acted in self-defence when he discharged the

beanbag round which shot Delan in his thigh, and cited the case of **Okeno Fergus v the Attorney General et al**³³ where Henry J stated:

"Defence of oneself or another will negate liability for assault and/or battery if the force used is not excessive. In such circumstances, the onus is on the defendant to prove that he used only such force as was reasonably necessary or avoided force that was grossly disproportionate to repel the claimant's attack. A person who erroneously and unreasonably believes that he is under attack is not entitled to use force in self defence."

[96] Counsel also relied on the case of **Sophia Louisy v the Attorney General**³⁴ where Cenac-Phulgence J at paragraph 62 of the judgment stated as follows:

"Self-defence can only properly be established in circumstances where there exists, on the defendant's part an honest belief that he or she needed to take action in order to defend himself/herself but also, that the extent of the action taken in defending himself/herself was reasonable, as distinct from excessive."

[97] Counsel further argued that there was sufficient evidence to prove on a balance of probabilities that Officer Jones acted in self defence when he discharged the beanbag round to subdue Delan, and that such force was necessary and proportionate in all of the circumstances. Counsel submitted that Delan was the one who became aggressive and violent whilst the officers were transporting him to the station. Further, it was only when he assaulted Officer Harris and thereafter Officer Jones, that Officer Jones used reasonable force to repel his attacks.

[98] Additionally, Counsel submitted that applying the principles stated in the **Sophia Louisy** case, Officer Jones would have had an honest belief that he needed to take action to defend himself and Officer Harris from Delan's aggression and violent conduct, and in doing so took reasonable action by discharging the beanbag round to subdue Delan.

Analysis

³³ SVGHCV2019/0069 (delivered 14th July 2022) at paragraph 8.

³⁴ SLUHCV2014/0065 (delivered 3rd May 2019).

- [99] It is trite, and I accept that *'Every person is justified in using reasonable force to defend himself ... but the force justifiable is only as is reasonably necessary'*³⁵. Indeed, police officers are empowered by statute to use reasonable force as necessary, when conducting an arrest³⁶.
- [100] The onus is on the defendant to prove that the police officer who shot Delan held an honest belief that it was necessary to use such force to defend himself and his fellow officer, and that such force was used in response to a proportionate attack by Delan. It must be shown that Delan was shot during the attack, and that in response shooting him was "reasonably commensurate" with the attack. It is the law that self-defence will not avail where a person erroneously or unreasonably believed that he was under attack.
- [101] The nub of the defence was that whilst in the back of the police vehicle Delan behaved very aggressively toward the officers going as far as making threats to kill them. It is said that he bit Officer Harris' leg, attempted to grab the officer's crutch, then kicked and spat on Officer Jones causing Officer Jones to almost fall out of the moving van. As a result of his aggressive behavior, Officer Jones had to subdue him to safeguard his and Officer Harris' lives. Counsel therefore submits that Officer Jones acted in self defence, the shooting was justified, and the defendant should not be liable for battery.³⁷
- [102] However, the evidence reveals that Delan was restricted by handcuffs in the tray of the moving van. He had no prospect of fleeing, and was not in possession of a weapon of any kind. While being transported he was guarded by Officers Jones and Harris who were armed. From these facts, I do not accept that Delan could have launched an attack of the magnitude stated by the officers, to warrant shooting him. Having been handcuffed with both hands to the front of his body and seated in the tray of the moving vehicle, it is difficult to perceive that he could have been so violent or aggressive in this constrained position, to justify shooting as a reasonably commensurate response to an attack from him, or in pursuance of a reasonable and necessary need for the officer to defend himself or his fellow officer.

³⁵ Halsbury Laws of England (2015) vol. 97, para 462.

³⁶ Section 571 of the Criminal Code

³⁷ Gibert Kodilyne, *Commonwealth Caribbean Tort Law* (3rd Edn., Routledge-Cavendish 2003) 14 - An assault or battery is justified if committed "in reasonable defence of oneself or another."

[103] Shooting is considered deadly force, albeit with a beanbag, which is not expected to, but may cause injury and even death. The use of such force whether on Bridge Street as alleged by Delan, or in the back of the van on Brazil Street as alleged by the defendant, was out of proportion to any danger, that Delan on his own, could have posed to the officers, at the material time. I therefore conclude that there was no immediate threat of harm to the officers, to justify shooting the claimant, and that such response was disproportionate to any danger that Delan could have posed to the officers. In the circumstances, the plea of self-defence has not been established.

[104] Consequently, the torts of assault and battery by the police officers have been established, and the State is liable to the claimant in damages, for assault, battery and the resulting injury from the gunshot.

Issue 5 : Is Delan entitled to any of the categories of damages claimed? If so, what is the measure of such damages?

Special Damages

[105] Delan claimed the sum of \$3,460.00 as special damages itemized as follows:

- (1) Doctor's fee – \$150.00
- (2) Medication – \$194.00
- (3) Transportation – \$54.00
- (4) Lost wristwatch – \$14.00
- (5) Lost spandex shoes – \$150.00
- (6) Loss of fees for contractual electrical services – \$2,750.00
- (7) Loss of salary for 3 days in custody – N/A

[106] He failed to provide any documentary evidence to support these claims. No receipt or invoice was produced. In cross examination he accepted that he had provided no evidence of the loss which he claims. Counsel for the claimant contends that despite the absence of

documents to prove his claim for loss of wages, he should receive a nominal award, based on the principles espoused in **Greer v Alstons Engineering Sales and Services Ltd**³⁸.

- [107] Counsel for the defendant submitted that the figures pleaded were unsubstantiated and amount to bald assertions, but accepted that **Greer v Alstons Engineering Sales and Services Ltd**³⁹ is authority for an award of nominal damages in circumstances where the value of the loss claimed is unsubstantiated. He referred the court to paragraph 6 of the judgment where the court opined as follows:

"When such (documentary) evidence is not provided, however, it is open to the trial judge to give consideration to an award of nominal damages. In McGregor on Damages (13th edn.) at para 295 it is stated: 'Nominal damages may also be awarded where the fact of a loss is shown but the necessary evidence as to its amount is not given. This is only a subsidiary situation, but it is important to distinguish it from the usual case of nominal damages awarded where there is a technical liability but no loss'. In the present case the problem is simply one of proof, not of absence of loss but of absence of evidence of the amount of loss."

- [108] Counsel proposed that a nominal sum of \$562.00, which represents the special damages claimed, excluding loss of contractual electrical services, is what may be awarded in these circumstances.

Analysis

- [109] It is trite that special damages in the sense of a monetary loss which a claimant has sustained up to the date of trial must be pleaded and particularized. The law is settled in this regard. Nonetheless, nominal damages may be awarded where the fact of a loss is shown but the corresponding evidence to substantiate the value of such loss is not provided.
- [110] Although the claimant provided no evidence to support the amounts claimed as special damages, it is apparent from his evidence, that he incurred loss and expense. I am of the view that the manner in which he was handled by the police officers supports his assertions that he suffered loss of the items mentioned in the claim.

³⁸ [2003] UKPC 46.

³⁹ *Ibid.*

- [111] In the **Attorney General of Antigua & Barbuda v the Estate of Cyril Thomas Bufton**⁴⁰ Barrow JA noted that the failure of a claimant or counsel to provide evidence of value does not mean that the court is inescapably driven to refuse an award for undoubted loss.
- [112] Adopting the reasoning in **Greer v Alstons Engineering Sales and Services Ltd**⁴¹, **Isaac Peters v Grenada Electricity Services Ltd**⁴², and **Attorney General of Antigua & Barbuda v the Estate of Cyril Thomas Bufton**⁴³, in the absence of any evidence to support the value of the items claimed, I award a nominal sum of \$562.00 as special damages.

General Damages

- [113] Counsel for the claimant made no submissions in relation to the claim for general damages for assault and battery.
- [114] Counsel for the defendant proposed the sum of \$10,000.00 for pain and suffering, and referred the court to the following authorities:
- (1) **Jude Jack v The Attorney General et al**⁴⁴ where a court found that shooting was unlawful and deadly force was used, and awarded the sum \$15,000.00 as general damages for pain and suffering. The wound was described as a flesh wound and nothing more.
 - (2) **Criminal Injuries Compensation Board**⁴⁵ where a claimant sought compensation for injuries resulting from the crime of violence against him by the tactical unit responding to a riot at a prison facility and randomly firing rubber bullets at inmates. The claimant was hit by a bullet, suffered red welts and lacerations on his neck, chest and buttock, and claimed compensation for mental injuries, pain, and suffering. The Board found that the use of force was excessive and awarded the sum of \$3,000 Canadian dollars for pain and suffering and \$1,500 Canadian dollars for future counselling to assist with mental injuries.

⁴⁰ Civil Appeal No. 22 of 2004 (delivered 6th February 2006).

⁴¹ (2003) 63 WIR, 388 at paragraphs 7, 8 and 9.

⁴² Grenada Civil Appeal No. 13 of 2005 (delivered 18th September 2006).

⁴³ Ibid 32

⁴⁴ Claim No. GDAHCV 2006/0351 (delivered 15th September 2010).

⁴⁵ 2020 ONCICB 9.

Analysis

- [115] Delan claimed general damages for assault, battery and false imprisonment. It has been determined that his arrest and subsequent detention were lawful. Therefore, he is only entitled to an award of damages for assault and battery inflicted by the officers.
- [116] An award of general damages for assault and battery is determined by the sub-heads laid down by Wooding CJ in **Cornilliac v St. Louis**⁴⁶ and approved by our Court of Appeal in **Alphonso and Others v Deodat Ramnath**⁴⁷. The relevant factors are:
- (a) nature and extent of injuries suffered;
 - (b) nature and gravity of the resulting physical disability;
 - (c) pain and suffering endured;
 - (d) loss of amenities; and
 - (e) extent to which the claimant's pecuniary prospects have been affected.
- [117] Dr. Ragunanan was the attending physician who treated Delan at the hospital. In his report dated 29th September 2021, he stated that Delan was stable on arrival. His examination revealed a single entry wound to the later aspect of the mid right thigh. No active bleeding was noted, however, there was mild swelling and tenderness on palpation. An x-ray revealed that a rubber bullet was lodged in the soft tissue but that there was no obvious fracture or dislocation. The rubber bullet was removed, and the wound dressed. Delan was given a prescription for analgesics and antibiotics and advised to dress the wound.
- [118] The medical report of Dr. Desmond Long dated 16th March 2021, stated that Delan appeared to be in painful distress and limping on his right leg when he attended his office, on the said date. He noted a 4cm circumferential wound, said to be as a result of a gunshot to his right leg. He noted at the time of the visit (which was the day after Delan was released on bail), that the wound was infected. This appears to corroborate Delan's evidence that he was not

⁴⁶ [1964] 7 WIR 491.

⁴⁷ BVIHCVAP1996/0001 (delivered 21st July 1997).

given any of the medication prescribed by the attending physician at the hospital, while he was in custody.

[119] The wound which Delan sustained was a flesh wound. He spent a few hours at the hospital and was discharged into the custody of the police in the early hours of the morning on 14th March 2021. He attended the Ciceron Health Centre for 6 weeks to have the wound dressed. Taken in the round, the evidence conveys that Delan was in pain, and limping after he was shot. The police officers testified that he was bleeding from the area where he was shot. I accept that Delan suffered pain and injury as a result of the gunshot and is therefore entitled to an award for such pain and suffering.

[120] In addition to the authorities cited by Counsel for the defendant, I have considered the following cases:-

- (1) **Mahadeo Sookhai v Attorney General of Trinidad and Tobago**⁴⁸ where an award of \$25,000.00 was made in 2007, in a case involving assault and battery by a police officer resulting in a fractured nose and other minor swelling and abrasions in areas about the body.
- (2) **Myster Peter Matthew v the Attorney General of Dominica**⁴⁹ where the claimant was awarded \$10,000.00 for assault and battery, when he was handcuffed and placed on a chair when he attempted to leave the police station.
- (3) **Shayne Richardson v The Attorney General of Anguilla et al**⁵⁰ where a court awarded the sum of \$6,000.00 as general damages for assault and unlawful search upon the claimant, by a police constable,
- (4) **Yohanna George v Vernon M. O'Brien et al**⁵¹ where a claimant was awarded \$25,000.00 inclusive of an uplift for aggravated damages. There, the claimant was assaulted, beaten, and suffered injuries.
- (5) **Danny Severin v The Attorney General**⁵² where \$12,000.00 was awarded for pain and suffering and loss of amenities based on assault and battery by a police officer.

⁴⁸ CV 2006-00986 (delivered 15th October 2007).

⁴⁹ Civil Suit No. 472 of 2000 (decision of Hunte J delivered in 2006).

⁵⁰ AXAHCV2008/0012 (delivered 7th July 2009).

⁵¹ DOMHCV2010/0013 (delivered 15th April 2013).

⁵² Claim No. SLUHCV2008/0973.

- [121] The injury suffered by the Delan is similar to that of the claimant in the **Jude Jack** case. Although counsel for the defendant says that the case should be distinguished, as lethal rounds were discharged by the police, judging from the resulting injury which Delan sustained from the beanbag round, I consider the principles to be applicable. The claimant is therefore awarded the sum of \$15,000.00 as general damages for pain and suffering.

Exemplary & Aggravated Damages

Claimant's Submissions

- [122] Counsel for the claimant submitted that an award of exemplary damages is necessary to punish the agents of the Crown for their oppressive, unconstitutional and high-handed treatment of Delan. Counsel stated that the claimant was an innocent man coming from work, and being unable to secure transportation to his home before the curfew started, was shot and imprisoned. Counsel argued that the behavior of Officer Noel in arresting and assaulting Delan because he spoke back to him, constituted an abuse of power, and amounted to oppressive and outrageous conduct. She submitted that Officer Noel acted out of spite towards Delan by cursing him and referring to him as "boy".
- [123] Additionally, Counsel submitted that the claimant suffered inhumane treatment after he was shot and injured because he was taken to the police station, instead of the hospital. Counsel argued that he was taken to the hospital in a very undignified manner, in that he was made to walk into the hospital (in the presence of hospital staff and members of the public) trying to hold up his pants to his waist to cover his genitals, while being handcuffed like a criminal. Counsel further submitted that while detained at the police station Delan was left in pain, with no medication, and without dressing his wound.
- [124] In support of the claim for aggravated and exemplary damages, Counsel relied on the following cases:

- (1) **Caldre Chapman and the Attorney General of Saint Christopher and Nevis**⁵³ where the claimant was awarded \$30,000.00 in aggravated damages, in circumstances where he was arrested and placed in a holding cell for 7 days, and was subsequently charged for firearm possession and smuggling of firearm and ammunition. Ten months later the charges were withdrawn for lack of evidence. The claimant complained that his reputation was ruined as a result of the publicity given to the charges against him, which were broadcasted on social media and the internet. After the charges were withdrawn he found employment as a bus driver, but was stopped and searched by the police so frequently that the owner of the bus relieved him from his employment. Prior to his arrest he had worked on the farming program in Canada, and he lost the opportunity to work in that program in 2017.
- (2) **Yohanna George v Vernon M O'Brien & The Attorney General of the Commonwealth of Dominica**⁵⁴ where the claimant was awarded \$10,000.00 as exemplary damages. During a carnival activity a police officer pushed the claimant and demanded that she walked faster on a bridge. She explained that she was unable to do so as the bridge was crowded. She was assaulted and beaten by the police officer, arrested, detained, charged and released on bail. The claimant was acquitted on all charged when the matter came before the court.
- (3) **Shayne Richardson v The Attorney General of Anguilla et al**⁵⁵ where the sum of \$12,000.00 was added to the figure awarded for general damages to compensate the claimant for humiliation. In that case the claimant suffered the indignity of a public beating and a false accusation for which he was detained.

[125] Counsel urged the Court to give some consideration to the fact that the cases cited are dated, and as such an allowance should be made for inflation.

Defendant's Submissions

⁵³ NEVHCV2018/0086 (delivered 1st December 2020).

⁵⁴ DOMHCV2010/0013 (delivered 15th April 2013).

⁵⁵ AXAHCV2008/0012 (delivered 7th July 2009).

[126] Counsel for the defendant submitted that there was no evidence to support a finding that the officers engaged in high handed and oppressive behavior towards Delan's during the arrest and detention, or that there was any ill-motive behind it. Thus, the requisite aggravating element was absent, and as such aggravated damages should not be awarded.

[127] Regarding exemplary damages, Counsel submitted that there was no evidence which showed that during the period of detention Delan experienced feelings of distraught, shock, frustration and injury to his reputation. Counsel argued that in cross examination Delan confirmed that he did not suffer any embarrassment and/or humiliation at the hands of the officers. The evidence suggested that Delan by his own actions removed his pants and boxers and caused embarrassment to himself whilst he was being transported to the hospital. Thus, there was no evidence to justify an award of exemplary damages and that such damages should not be awarded.

Analysis

[128] Aggravated damages may be awarded in a case where the defendant's conduct, manner of committing the assault, and motives for the assault have '*aggravated the claimant's damage by injuring his proper feelings of dignity and pride.*' Of relevance is whether the defendant acted out of '*spite or behaved in a high-handed, malicious, insulting or aggressive manner*'.⁵⁶ As noted in **Rookes v Barnard**⁵⁷ exemplary damages are awarded where the conduct of the servants or agents of government is oppressive, arbitrary or unconstitutional.

[129] I accept that Delan suffered injury to his feelings, by way of indignity, disgrace and humiliation. The circumstances leading to his arrest occurred in the presence of other persons. He confirmed that he was in the company of two other gentlemen who were walking with him to the bridge. He explained that he pulled down his pants in the back of the vehicle, and in the process his boxer came down as well. The reason for doing so was because he felt a burning sensation in his thigh as result of being shot. The evidence was that he had no pants on for

⁵⁶ Okeno Fergus v Attorney General et al SVGHCV2019/0069 ((delivered 14th July 2022)).

⁵⁷ (1964) AC 1129.

part of trip to the station, and to the hospital. He would have suffered embarrassment at the hospital having to hold up his pants to his waist to cover his genitals while handcuffed.

[130] In this regard I have also considered the following authorities –

- (1) **Mahadeo Sookhai v The Attorney General of Trinidad and Tobago**⁵⁸ where the court awarded \$10,000.00 as aggravated damages and \$20,000.00 as exemplary damages, when a claimant was made to walk to the police station after assault and battery by the police, and was further victimized, mocked and jeered at by the police.
- (2) **Myster Peter Matthew v the Attorney General of Dominica**⁵⁹ where the claimant was awarded \$5,000 for exemplary damages, when he was seized by his trousers, forcefully taken to the police station and shackled with handcuffs in the presence of his wife.

[131] Applying the foregoing principles to the facts of the present case, I conclude that an award for aggravated damages is appropriate, and that \$5,000.00 is reasonable, in the circumstances.

[132] With respect to exemplary damages, I do not consider such award to be warranted. The claimant was lawfully arrested and the police officers could not be said to have acted in an oppressive manner in concluding that Delan had committed offences when he breached the curfew and mask mandate and should be arrested.

Conclusion

[133] I therefore make the following orders:

- (1) The claimant's arrest and detention from 13th to 15th March 2021 was lawful.
- (2) The claim for false imprisonment is dismissed.
- (3) The State is liable for assault and battery of the claimant.
- (4) Shooting the claimant amounted to excessive use of force, without justification, and as such was unlawful.

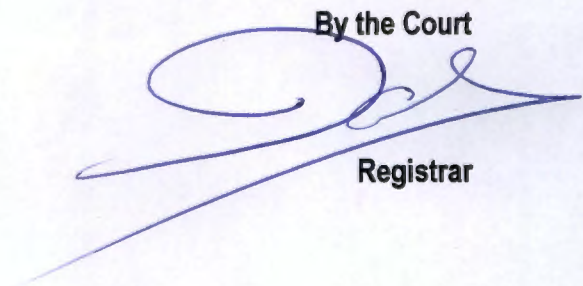
⁵⁸ CV2006-00986 (delivered 15th October 2007).

⁵⁹ Civil Suit No. 472 of 2000 (decision of Hunte J delivered in 2006).

- (5) The claimant is awarded the sum of \$562.00 as special damages, \$15,000.00 as general damages and \$5,000.00 as aggravated damages, with interest on the total sum of \$20,562.00, at the rate of 6% per annum from the date of judgment.
- (6) Prescribed costs is awarded to the claimant pursuant to CPR65.5, in the sum of \$4,100.00.

Cadie St Rose-Albertini
High Court Judge

[SEAL]

By the Court

Registrar