

**EASTERN CARIBBEAN SUPREME COURT
ANGUILLA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO: AXAHCV2021/0025

BETWEEN

TAJ LAFIAMO CHARLES CONNOR

Claimant

-and-

COMMISSIONER OF POLICE

1st Defendant

MARVIN HOLAS

2nd Defendant

ATTORNEY GENERAL OF ANGUILLA

3rd Defendant

Before: His Lordship, The Honourable Justice Ermin Moise

Appearances:

Mr. Darshan Ramdhani KC with Mr. Devin Hodge of counsel for the Claimant.
Dr. Francis Alexis KC with Mr. Theon Tross of counsel for the Defendants.

2024: February 21; 22; 23
December 18; 20
2025: April 4

JUDGMENT

[1] **MOISE, J.:** This is a claim for wrongful arrest and detention, malicious prosecution and misfeasance in public office. Taj Connor (Mr. Connor) challenges his arrest on 16th February, 2020 and his detention in police custody until 19th February, 2020. He was formally charged on 18th February, 2020 for the murder of Conrad Gumbs. Mr. Connor claims that this decision to charge him was malicious, done in bad faith and without reasonable cause. As a result of this prosecution, Mr. Connor was remanded in custody for a further period of 28 days commencing 19th February, 2020. He was eventually granted bail by a judge of the High Court. Mr. Connor also challenges this subsequent

period of detention. He also asserts, in his claim, that the actions of Police Sergeant Marvin Holas (Sgt. Holas), acting on the instructions of the then Commissioner of Police, amount to misfeasance in public office. As a result of this Mr. Connor claims damages, interest and costs.

- [2] I have determined that Mr. Connor has made out his case for malicious prosecution and is entitled to damages. I have, however, dismissed the claims of wrongful arrest and detention and misfeasance in public office. These are the reasons for my decision.

The Facts

- [3] On 16th February, 2020, Mr. Connor was 32 years old. He had then, and continues to have, no criminal record. He had no run-ins with the law before and had never been arrested. He states, in his witness statement, that he has been a practising Christian for most of his adult life. In the documents disclosed by the defendants, the court notes that during the course of the police investigation into the murder of Conrad Gumbs, the police were in receipt of a number of character references in relation to Mr. Connor. Whilst I agree that a character reference from close relatives may be viewed as self-serving, it appears that in general the police were in receipt of credible information regarding Mr. Connor's previous good character and his unstained reputation. These statements were given to the police on 19th February, 2020. That was one day after charges were laid against him. During the course of the trial, witnesses also appeared before me to attest to Mr. Connor's personality and character. I have accepted these as being an accurate reflection of Mr. Connor's personal history and his right to be viewed as an upstanding citizen with an unblemished record.
- [4] Mr. Connor describes 16th February, 2020 as the day his life changed forever. Not only did he narrowly escape with his life, being in the vicinity when Mr. Gumbs was murdered on 12th February, 2020, but he was subsequently arrested and charged with this murder. Having observed Mr. Connor's demeanour in the witness box, it appeared clear to me that he was deeply hurt and offended by this experience. There was also no evidence presented to me of any motive on Mr. Connor's part to commit murder. There was no evidence of his involvement in crimes of violence in any way and no past history of animosity between him and Mr. Gumbs.

- [5] Mr. Connor states that on 12th February, 2020, he was on a blue bench at the Spanish bar in Blowing Point. He was playing a game on his phone and saw Mr. Gumbs' arrival at the bar. They exchanged pleasantries and Mr. Gumbs remained standing near Mr. Connor. Mr. Connor states that he was not really paying attention to what was happening around him but then felt his jacket being suddenly grabbed by Mr. Gumbs. He heard Mr. Gumbs shout out and then saw someone approaching from another direction with an object in hand. Mr. Connor's evidence was that the object looked like a gun. He then pulled away from Mr. Gumbs and jumped out of the way onto the ground.
- [6] Mr. Connor was of the view that Mr. Gumbs was trying to shield himself by grabbing him. He states that, after jumping to the ground, he then heard shots firing. He scrambled to his feet with fright and ran up the road to his home, which is near to the bar. Mr. Connor said that when he was a safe distance away from the scene, on the main road, he looked back and saw Mr. Gumbs outstretched on the road. That was the full extent of his involvement in the incident as he had recounted in his witness statement.
- [7] Mr. Connor went on to state that at 4:00am on 16th February, 2020 police officers came to his home. He was asleep and then awoken by the sound of knocking on the front door of the apartment. He heard voices of people on the inside of the apartment, followed by knocking on his bedroom door. He opened the door and saw several police officers including Sgt. Holas. They immediately entered his bedroom and began searching through his belongings. They searched under the bed, on the nightstands, in the closet, in a safe and in a hamper. Mr. Connor observed the officers taking up his three mobile phones and Sgt. Holas asked him for his passport, to which he obliged. The officers also took up a pair of short jeans pants from the clothes hamper and left the bedroom with these items.
- [8] Mr. Connor stated that he was then informed by Sgt. Holas that, as a result of certain information received, he would be arrested and questioned at the Police Station. Mr. Connor was told to get dressed. He obliged and proceeded to The Valley Police Station along with the police officers. Whilst leaving the house, however, Mr. Connor states that he observed more police officers searching the back porch. He observed an officer take up a slipper which was found during that search.
- [9] At the police station, Mr. Connor was met by Police Officers Leonardo Richardson and Cheslon Matthews in an interview room. DNA samples were requested from him, which he readily provided.

After this was done, another officer by the name of Marius Daniel introduced himself to Mr. Connor. Sgt. Holas was also present and informed Mr. Connor of his desire to interview him. Mr. Connor agreed. Although Mr. Connor states that he was cautioned, he also indicates that he was not aware of the fact that he had the right to an attorney. It was his evidence that he was simply told that he had a right to anyone of his choice being present.

[10] Mr. Connor states that he was extremely nervous about explaining anything to the police. This was his first time in such a situation. He states that he did not want to relive the shooting or the fear he felt at that time. Nonetheless, Sgt. Holas asked Mr. Connor some questions and PC Marius wrote them down. Mr. Connor states that he answered the questions, and his answers were also written down. After the interview he was offered something to eat by an officer but declined, as he was feeling anxious at the time.

[11] Mr. Connor then states that he was taken into a cell after being booked by a police officer. At the time of being booked, he noticed a flyer which indicated that he had a right to an attorney. He requested that a specific lawyer be contacted for him but was informed by the officer that there was no contact information for lawyers at the police station. I note that PC Ainsley Benjamin gave evidence before me in this case. He acknowledged being the officer at the booking station who processed Mr. Connor. He also acknowledged drawing Mr. Connor's attention to a flyer which indicated what his rights were. This was inclusive of his right to an attorney. It was PC Benjamin's evidence that Mr. Connor indicated that he understood and this was recorded in writing. It was PC Benjamin's evidence that he had no further dialogue with Mr. Connor. That was in contradiction to what Mr. Connor had to say on the matter. There was also some discrepancy in the timing of PC Benjamin's interactions with Mr. Connor. What can be gleaned from the cross examination of PC Benjamin was that his notes conflict with the timing of Mr. Connor's processing in the station. A question is therefore raised as to whether Mr. Connor was processed prior or subsequent to the interviews under caution.

[12] After spending some time in the cell, Mr. Connor was returned to the interview room and questioned further by Sgt. Holas. He states that this was about 1pm. This was confirmed by the time of 13.07 which was placed on the interview form. After the interview was over, Mr. Connor was shown a slipper which he identified as belonging to him. Mr. Connor then received a visit from an attorney, Mr. Devin Hodge (Mr. Hodge), who advised him of his rights in custody. Mr. Connor states that he was

subsequently taken back to the interview room and questioned again by Sgt. Holas. This time in the presence of his lawyer. He states that he was questioned about one Jefferson Bontiff, who Sgt. Holas claimed was the one actually responsible for Mr. Gumbs' death. Mr. Connor said he was in fear and did not say anything further to Sgt. Holas. He was then returned to the cell. I note that Mr. Connor was also questioned about Mr. Bontiff during the first interview conducted on 16th February, 2020.

[13] It is important, at this stage, to highlight an inconsistency in Mr. Connor's account of the incident to the police. During his first interview on 16th February, 2020 Mr. Connor was asked a specific question. It was put to him that the police had received some information that he and Mr. Gumbs had some sort of scuffle and/or that Mr. Gumbs used him as a shield to protect himself. It was also put to Mr. Connor that the witnesses informed the police that he fell to the ground. Mr. Connor initially denied this. However, later on in the interview, he acknowledged that he had not told the truth earlier and then gave the account which he had maintained in his witness statement in the case before me. The precise wording of his second account to the police in the interview is as follows:

"Earlier like around 5pm so I was in the area then I went home and come back like after 6pm so when I came back I was playing the game on my phone and I was sitting on the southern side of the bench. Where I was sitting I had a clear view of the Chinese. I saw when a Swift pulled up in the Chinese parking lot and "Mickey" came out of the swift. "Mickey" walked and come around on the western side of the bench and walked in between the bench and the deck and he daps and I daps him back with my left hand and he say "yea Wifer." I replied back "Yea wifer" and I daps him. He stand up by me for like a minute and I continue playing on my phone. He didn't say anything else to me. Within a minute while he was there "Mickey" grabbed onto my left and he was pulling me as if he was trying to shield himself. When he pulled me my reaction was like what he pulling me for and when I turned around in "mickey" direction and when I looked west I saw someone coming walking from west towards us with a gun. I only realized what it be when "Mickey" pulled me and I just shake out and got away. When I pulled my hand away from "Mickey" I jump up on the blue table and run heading towards the Chinese. When I jump up on the table that is when my slippers came out. That's when I heard the "bang bang" that's when I started hearing the gun shots. I just run straight down home."

- [14] From the evidence presented, I understand “Mickey” to be a nickname for Conrad Gumbs. Also, where Mr. Connor uses the term “daps” I understand him to be referring to a fist bump which was a greeting between himself and Mr. Gumbs.
- [15] Mr. Connor states that he received no updates on his imprisonment until 18th February, 2020 when he received a visit from Mr. Hodge. Mr. Hodge informed him that he had spoken with the Commissioner of Police who indicated that people in the community refused to come forward with information. Mr. Connor states that he was bothered by the fact that he was being held in police custody because of a belief that he had information about the shooting which the police wanted and not because it was genuinely thought that he had committed the murder. It was his evidence that he got that impression directly from Sgt. Holas based on what was said during their interactions.
- [16] On the evening of 18th February, 2020, Mr. Connor was again interviewed by Sgt. Holas and PC Marius. He states in his evidence that it was during this interview that the name Jefferson Bontiff was mentioned. He states that his lawyer had already been familiar with the fact that Mr. Bontiff had also been a suspect in Mr. Gumbs’ murder. As I stated earlier, Mr. Connor was questioned about whether Mr. Bontiff was present at the scene of the murder in his initial interview with the police. Mr. Connor describes the interactions between Sgt. Holas and Mr. Devin Hodge as being somewhat agitated. Eventually another police officer came in with PC Marius to conduct the interview, after Mr. Hodge consulted with the Commissioner of Police. During that interview, it was put to Mr. Connor that he had shot Mr. Gumbs. Mr. Connor continued to deny this allegation.
- [17] On 18th February, 2020, Mr. Connor was formally charged for the murder of Conrad Gumbs. The following day he was taken to the Magistrate’s Court where he was remanded into custody. Mr. Connor states that there were approximately 15 members of the public present when he was being escorted to the courthouse. That included members of his own family. He described himself as being broken and embarrassed by this ordeal. The Magistrate set the preliminary inquiry for 4th May, 2020 and Mr. Connor was escorted out of the courtroom in handcuffs. His family members screamed and cried out as a result of this. He was taken to prison and processed there. Mr. Connor stated that he was then taken to a room and searched thoroughly, including having to stoop down and cough without pants or even underwear on. This was done in the presence of a prison officer. Mr. Connor said that he was then provided with prison clothes and placed in a cell by himself.

- [18] During his time in prison Mr. Connor states that he had very limited communication with others because he was kept separate and did not get to engage in recreation with other inmates. He passed the time reading the bible, praying and thinking. He stated that this was one of the most difficult experiences of his life.
- [19] Mr. Connor states that, through his attorney, he requested information about his case because he simply could not understand how he could have been charged with this murder. He further instructed his lawyer to file an application for bail. On 6th March, 2020, a judge of the High Court ordered partial disclosure in the matter. Various documents, including police interviews, were disclosed on Mr. Connor's counsel. On 18th March, 2020, Mr. Connor was granted bail with very strict conditions.
- [20] One significant issue which emerged in this case was that of the inadvertent disclosure of the police crime report. In the material disclosed during the criminal matter, Mr. Connor's attorney, Mr. Devin Hodge, observed a document referred to as a crime report. That document contained information regarding confidential police informants. Mr. Hodge, quite rightly, informed the police and returned this document to their custody. From the evidence presented I note that the report was returned on 26th June, 2020. An application for specific disclosure of this document in the current proceedings was denied by this court on public interest grounds.
- [21] Although the content of the report was not disclosed, the issues surrounding the crime report are important to the matters raised in this case. On 11th December, 2020 the criminal case against Mr. Connor was discontinued. The defendants have insisted that the discontinuance of the criminal proceedings was done on account of the inadvertent disclosure of the crime report. The sentiment expressed was that this compromised the case and the identity of potential witnesses in the matter. This is an issue to which I will return later on in this judgment.
- [22] Mr. Connor, in his own witness statement, referred to Sgt. Holas' statement of 4th May, 2020 which was disclosed during the criminal proceedings. In that statement, Sgt. Holas indicated that there were informants who had refused to give information to the police and declined to give statements in the matter. It would be observed that 4th May, 2020 was the date initially set for the preliminary inquiry before the magistrate. It would seem, therefore, that even after the charge had been laid and the inquiry was set to commence, these confidential informants had either not given information to the

police or not given statements for presentation at the preliminary inquiry. The DNA Analyst's Report also found no DNA belonging to Mr. Connor on Mr. Gumbs.

- [23] Mr. Connor was cross-examined extensively in this case before me. He largely stuck to his account of the incident given in examination in chief. Mr. Connor insisted that he was not informed of his right to an attorney during the police interview. He maintained that he jumped on the table in the process of scrambling away from the scene. He didn't return to look for his slipper because he was fearful for his life. He insisted that Mr. Gumbs held on to him and he broke free in an attempt to save his life. He insisted that there was no scuffle between himself and Mr. Gumbs but he rather broke free from Mr. Gumbs' grip. During cross-examination Mr. Connor also maintained that Sgt. Holas did tell him that he was aware that he did not murder Mr. Gumbs. Mr. Connor also stated that the then Commissioner of Police also told him that his account made no sense and that there was no choice but to charge him. Mr. Connor also stated, in response to a question put to him, that he would not have known if anyone had approached the blue bench after he scrambled away.

Defence Evidence

- [24] In his witness statement in the current proceedings, Sgt. Holas gave his own account of his actions as the lead investigator into the death of Conrad Gumbs. He gave evidence of his arrival at the scene of the murder. He stated that he observed six shell casings a few feet away from the blue bench just outside the bar near to where the shooting incident occurred. Sgt. Holas went on to state that a shell casing was found on the seat of the blue bench itself. He noted that from his experience as a detective, this finding suggested that the shooter was very close to the blue bench. Sgt. Holas also recovered one side of a Lacoste slipper at the scene. This was found underneath the blue bench. Shoe prints were also observed on the tabletop. Sgt. Holas did not state whether there was any attempt to match the shoe print with that of the Lacoste slipper which was found. He noted that one of the rounds that was fired from that location hit a vehicle at the Blowing Point Port some 140 yards away. He observed that, in his opinion, as an investigator, for the bullet to have hit the car, the person firing the shot had to have been elevated. He opined that the shooter must have been standing on the bench at that point in time.
- [25] Sgt. Holas went on to state that between 13th to 15th February, 2020, he spoke with a number of witnesses who preferred to keep their identities a secret. He stated that these persons were

confidential informants. Sgt. Holas stated that these informants told him that Mr. Connor was seen laying on the blue bench just outside the Spanish bar. He was even seen sitting on the bench at one point. According to the accounts allegedly given by the informants, Mr. Gumbs arrived and parked his car near the Spanish bar. He then approached Mr. Connor while he was sitting on the blue bench. Shortly after, they observed a scuffle between the two. At some point, Mr. Connor was seen standing on the bench. Almost immediately after the scuffle, gunshots were heard. Sgt. Holas states that he was told that Mr. Connor and Mr. Gumbs were the only ones near the blue bench when this scuffle happened and when the gun shots were heard.

[26] Sgt. Holas' account of the obtaining and execution of a search warrant on Mr. Connor's premises does not in any way contradict what Mr. Connor had to say in his own evidence. He acknowledged that Mr. Connor was taken to the police station on 16th February, 2020 and an interview under caution was conducted. He states, however, that he informed Mr. Connor of his rights in custody, including his right to an attorney. Mr. Connor signed a form on which the rights were also contained. However, it is worth noting that the only caution contained on the actual question and interview form was that "You are not obliged to answer any of these questions, but if you do the questions and answers will be taken down in writing and may be given in evidence." The form does not include the right to an attorney. The interview was conducted in the presence of PC Marius Daniel. In cross-examination, Sgt. Holas maintained his position that the right to an attorney was communicated to Mr. Connor.

[27] Sgt. Holas stated that Mr. Connor gave him conflicting accounts of what transpired on the evening of 12th February, 2020. I have already highlighted what the conflict in Mr. Connor's account was. However, there is another conflict arising out of this interview and Sgt. Holas' evidence which is worth some consideration. In his witness statement Sgt. Holas gave the account of confidential informants who told him about the scuffle between Mr. Connor and Mr. Gumbs. However, in the interview under caution it was Sgt. Holas who first raised the fact that Mr. Gumbs was trying to use Mr. Connor as a shield. That was a direct issue put to Mr. Connor by Sgt. Holas as part of the information he had received. He then stated to Mr. Connor in the interview, that witnesses had informed him there was some sort of scuffle between himself and Mr. Gumbs and/or that Mr. Gumbs was using him as a shield. Sgt. Holas omitted this, however, in his witness statement and throughout his evidence in chief before this court.

[28] As it relates to his own behaviour during the second interview with Mr. Connor, Sgt. Holas acknowledged that Mr. Devin Hodge was present during the interview. However, contrary to Mr. Connor's account, Sgt. Holas states that it was Mr. Hodge who was being aggressive and instigating an altercation. In any event, he states that nothing of substance came out of the interview, except that Mr. Connor continued to deny that he murdered Conrad Gumbs.

[29] Sgt. Holas indicated that his decision to charge Mr. Connor was on account of the following factors:

- (a) That the information received from the confidential witnesses placed Mr. Connor and Mr. Gumbs at the Spanish bar on 12th February 2022;
- (b) That information also suggested that Mr. Connor and Mr. Gumbs were the only ones near the blue bench and that the both of them had some sort of scuffle, shortly after which gun shots were fired.
- (c) Six (6) shell casings were found near the blue bench, one of which was actually found on top the bench, which suggested that the shooter was near the bench.
- (d) The shoe prints observed on top the table suggested that someone was on top of the table. When this is coupled with the likely trajectory of the bullet which hit the vehicle at Blowing Point Port some 140 yards away, it seemed to Sgt. Holas that a person standing on top the bench firing a weapon could have hit the vehicle at Blowing Point.
- (e) The information from the confidential witnesses did point to Mr. Connor, at some point standing on the bench. In fact, Connor stated in his first interview that he was at some point on top the bench.
- (f) Consistent with Mr. Connor being on top of the bench is the fact that one side of his Lacoste slippers, which he identified as his, was found underneath the table.
- (g) Then the fact that Mr. Connor gave two (2) very conflicting accounts of what occurred at the Spanish bar. Firstly, saying that he was on the bench but that he did not interact with anyone. Then he just heard gunshots, he rolled over onto the ground and ran home. And secondly,

completely changing his account to having a scuffle with Mr. Gumbs who he claims was holding him trying to use him as a shield.

- (h) The account given by Mr. Connor that the shooter was 14 feet away from the blue bench when the shots were fired is not consistent with the placement of the shell casings found on the ground.
- (i) A search was conducted from the west side of the bench where Mr. Connor says the shooter came from and no shell casings were found in that area.
- (j) Two other persons were detained prior to Mr. Connor. One of them, James Hodge gave an account of Mr. Connor actually in the Spanish bar playing dominoes which is contrary to both accounts given by him.

[30] Sgt. Holas went on to state that after the Crime Report was inadvertently disclosed, some of the witnesses declined to give statements because of this. They feared that their identities would have been disclosed and their lives were at risk. Evidence was also led from Inspector Shem Wills regarding the value of confidential informants to the RAPF. It is not necessary to repeat his evidence in full. However, Insp. Wills also shared the view that the inadvertent disclosure of the crime report compromised intelligence gathering and put the lives of confidential informants at risk. Insp. Wills was also cross-examined on whether it was a policy of the RAPF, during that time, to arrest and detain potential witnesses for the sole purpose of pressuring them to give evidence and assist with the investigation. Although Insp. Wills acknowledged that a number of persons in other investigations became witnesses after being detained by the police, he denied that this was a result of a direct policy of the RAPF to pressure those persons into giving evidence.

[31] PC Marius Daniel also gave evidence before the court and confirmed his role in assisting with the police interview. He stated that he indeed cautioned Mr. Connor and read him his rights. After his rights were read to him, Mr. Connor replied, *"Officer ask me anything, don't be afraid to ask me anything"*. Mr. Connor signed the form as having understood his rights. PC Daniel also confirmed that a second interview was conducted with Mr. Devin Hodge being present. He too stated that Mr. Hodge became aggressive in the interview and that, as a result, Sgt. Holas recused himself and PC Prospero continued the interview instead.

[32] I wish, at this stage, to examine, in some detail, the results of the postmortem conducted on the body of Conrad Gumbs. This report was exhibited and referred to by Sgt. Holas at some point in his evidence. Pathologist, Dr. Marisa Jacob-Leonce, submitted her report dated 19th February, 2020. In the report 3 gunshot wounds were identified on Mr. Gumbs' body. It was noted that all 3 of these wounds were inflicted from an intermediate range of fire. The first was a gunshot wound to Mr. Gumbs' torso. No soot, muzzle imprint, gunpowder particles or gunpowder stippling is associated with this entrance wound. The Pathologist also noted that the wound trajectory was forward, leftward and upward. I draw the inference from these findings that this was as a result of a gunshot injury from the back. This caused injuries to Mr. Gumbs' lungs and heart and damage to his ribs. It is apparent from the autopsy report that this may have been the more fatal injury.

[33] The second gunshot injury observed by the pathologist entered through the superior anterolateral left arm. Again, the pathologist observed that there was no soot, muzzle imprint, gunpowder particles or gunpowder stippling associated with this entrance gunshot wound. The pathologist also concluded that the trajectory of this wound was backward, leftward and upward. The third gunshot injury was said to have entered through the medial right wrist, centered approximately 67.3 cm below the right shoulder. No soot, muzzle imprint, gunpowder particles or gunpowder stippling is associated with this entrance gunshot wound. The trajectory of this injury was said to be forward, rightward and downward.

[34] It is important to make certain observations regarding the police investigation leading to the charges against Mr. Connor in light of the findings of this autopsy report. The first observation is that the postmortem on Conrad Gumbs' body was conducted on 19th February, 2020 at 3.35pm. Mr. Connor was charged for the offence of murder on 18th February, 2020. This means that Sgt. Holas took the decision to charge Mr. Connor prior to having the benefit of the autopsy report. Secondly, the report indicates that the bullet wounds to Mr. Gumbs's body were from an intermediate range of fire with no muzzle imprint, gunpowder or gunpowder stippling found on his body.

[35] This evidence must be balanced against Sgt. Holas' account of the information given by the confidential witnesses. He stated that the witnesses all said that Mr. Gumbs and the deceased were the only ones near the blue bench and that the both of them had some sort of scuffle, shortly after which gun shots were fired. If this is an accurate account of what was said, then none of these witnesses actually stated that they observed Mr. Gumbs being shot by Mr. Connor whilst he was

running away from the bench. The range of fire and the lack of gunshot residue or stippling would clearly suggest that those shots were not fired from a close-range scuffle. It begs the question as to how these witnesses observed the scuffle between Mr. Connor and Mr. Gumbs but not the actual shooting itself.

[36] One other observation I make at this stage is that on 18th February, 2020, Sgt. Holas had not secured the commitment of the eyewitnesses to put their evidence in writing. Even as late as December, 2020, according to his own account, he was still “working” on securing those witnesses. However, although Sgt. Holas had visited the crime scene and made observations about the bench and the spent shells, not having the benefit of the autopsy report to consider in light of the witness’ evidence is a factor to take into account. By his own admission, he had also instructed that a full forensic processing of Mr. Connor take place. This was to include testing for gun-shot residue. This was not done and Sgt. Holas didn’t appear to even bother to follow up on these instructions.

[37] Further, Sgt. Holas concluded that Mr. Connor’s account of where the shots were first fired, and the distance and direction of those shots contradicted his own assessment of the scene. However, I do note that Mr. Connor was giving an account of average distances and direction whilst sitting in an interview room at a police station. There was never any reconstruction of the scene in his presence. There was nothing here to suggest motive on Mr. Connor’s part or that he was a man of such character to commit such an offense. To have ruled out Mr. Connor’s account at that stage without clear and admissible evidence to the contrary is a factor which must be considered in the current proceedings.

[38] A number of questions regarding this investigation were put to Sgt. Holas during cross examination. He denied at first that there were any other suspects arrested by the police. When he was cross-examined, he stated that Jefferson Bontiff was a person of interest but not a suspect. When confronted with the interview under caution he accepted that Mr. Bontiff was in fact arrested on suspicion of murder. So too was James Hodge who was interviewed by the police. At various points in the cross-examination Sgt. Holas suggested that he had arrested Mr. Bontiff and Mr. Hodge on account of information he received but noted that that information was not that they had murdered Mr. Gumbs. If that were not the case, then he gave no information as to what would have grounded those arrests. When one examines the content of the interviews under caution however, it is clear that these two men were arrested in connection with this murder and questioned as suspects. Sgt.

Holas also denied that it was a policy of the then Commissioner of Police to use the power of arrest and charge in order to threaten potential witnesses to give information to the police. He also denied that he had arrested and charged Mr. Connor for the sole purpose of getting information from him.

[39] Overall, I found Sgt. Holas' evidence to be unreliable and incredible. As a police officer in charge of an investigation, Sgt. Holas simply did not come across to me as an honest witness giving a credible account of his actions and thoughts during a murder investigation. His omission in what he put to Mr. Connor during the interview, his own evasive approach to questions put to him in cross examination and his demeanour overall left much to be desired. The mere notion that Mr. Connor was charged whilst Sgt. Holas was still "working" on getting the witnesses to come forward and awaiting the results of an autopsy report is not the way in which such an investigation should be conducted, when balanced against the constitutional rights of Mr. Connor. He also did not follow up in any way on the forensic processing of Mr. Connor as he claimed to have instructed. Further the relatively sparse information regarding exactly what these confidential witnesses said is another troubling factor here. On balance it would seem that even Sgt. Holas himself had information that Mr. Gumbs was using Mr. Connor as a shield. Yet, he chose to ignore this in his decision to prosecute.

The Law

Wrongful arrest

[40] The starting point in any allegation of wrongful arrest is to be reminded of the constitutional right to liberty. This is entrenched in the Bill of Rights in section 3 of the **Constitution of Anguilla 1982**. But the right to liberty is not absolute. There are circumstances in which a person's right to liberty can be curtailed. In the constitution itself it states that a person may be arrested upon reasonable suspicion of having committed or of being about to commit a criminal offence under the laws of Anguilla. The question for consideration therefore is whether, at the point of his arrest, there were reasonable grounds to suspect that Mr. Connor had committed a criminal offence.

[41] In the case of *Irish v. Barry*¹ Wooding CJ noted that *[w]hat is important is that in such a case as this, no person should exercise the power of arrest unless he had proper and sufficient*

¹[1965] 8 WIR 177

grounds of suspicion. If he does, then he is acting hastily and/or ill advisedly. In all cases, therefore the facts, known personally and/or obtained on information ought to be carefully examined." There is therefore both a subjective and objective element to the test of whether there are reasonable grounds to suspect that a crime has been committed by a suspect. The police officer must have personally believed that the suspect committed an offence. That is subjective. On the other hand, the requirement that the grounds of suspicion be reasonable employs an objective standard. It is this objective standard which requires of the officer that he carefully examines the information received before taking a decision to curtail the liberty of any person. Even then, this aspect of the test employed by the court is indifferent to whether the officer actually believed that the grounds for arrest were reasonable. The objective element of the test is not subjective in this way but rather assesses the grounds given by the officer from the perspective of the well-informed reasonable man.

[42] In the case of **Buckley and others v. Chief Officer of Thames Valley Police**² it was stated that "**an arresting officer may rely on what he had been told by others who may be civilian informants, reliable or unreliable, or other officers, providing that the information provides reasonable grounds for suspicion.**" The court there went on to note that if "**when challenged, the suspect provides an explanation then the officers should take this into account in deciding whether their initial suspicion can be maintained based on reasonable grounds.**" As I have stated, the task of the arresting officer is to gather information and/or evidence in order to formulate his own opinion on whether it would be proper in the circumstances to arrest the suspect. At that stage in the investigation, the evidence relied on need not be admissible evidence, but it must be sufficient to meet the objective standard of reasonableness. The test was explained in some detail in the case of **Everette Davis v. The Attorney General of Saint Kitts and Nevis**³ which is often cited in our jurisdictions in the OECS. The judgment states as follows:

"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

² [2009] EWCA Civ. 356

³ SKBHCV 2013/0220

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 person 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."

[43] As it relates to the objective element of the test, the following passage from the case of **O'Hara v Chief Constable of the Royal Ulster Constabulary**⁴ is instructive:

The question is whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the arresting officer. It is the arresting officer's own account of the information which he had which matters, not what was observed by or known to anyone else. The information acted on by the arresting officer need not be based on his own observations, as he is entitled to form a suspicion based on what he has been told. His reasonable suspicion may be based on information which has been given to him anonymously or it may be based on information, perhaps in the course of an emergency, which turns out later to be wrong. As it is the information which is in his mind alone which is relevant however, it is not necessary to go on to prove what was known to his informant or that any facts on which he based his suspicion were in fact true. The question whether it provided reasonable grounds for the suspicion depends on the source of his information and its context, seen in the light of the whole surrounding circumstances.

[44] It has also been appreciated that an arrest may at times be necessary in order to facilitate an investigation, as was stated in the case of **Chesterford v Chief Constable of Essex Police**⁵. That does not take away from the need for reasonable suspicion that the arrested person has committed an offence. It must also be noted further that even though there may be initial grounds to justify an arrest, a police officer must also satisfy himself that there are reasonable grounds for the continued

⁴[1997] 1 ALL ER 129

⁵[2013] EWHC 243 (QB)

detention of a suspect after the initial arrest is made. If the suspect gives his own account, this must be taken into account. The Privy Council has gone further to explain the manner in which this power is to be exercised in the case of **Ramsingh v Attorney General of Trinidad & Tobago**⁶ where the following was noted:

“The relevant principles are not significantly in dispute and may be summarised as follows:

- (i) The detention of a person is prima facie tortious and an infringement of section 4(a) of the Constitution of Trinidad and Tobago.***
- (ii) It is for the arrestor to justify the arrest.***
- (iii) A police officer may arrest a person if, with reasonable cause, he suspects that the person concerned has committed an arrestable offence.***
- (iv) Thus the officer must subjectively suspect that that person has committed such an offence.***
- (v) The officer’s belief must have been on reasonable grounds or, as some of the cases put it, there must have been reasonable and probable cause to make the arrest.***
- (vi) Any continued detention after arrest must also be justified by the detainer.”***

[45] There are therefore two issues for consideration. The first is whether the arrest was made on the subjective belief on the part of the police officer which can be justified by the objective standard of reasonableness. The second is whether, after the initial arrest, there are grounds for the suspect’s continued detention.

Malicious Prosecution

[46] In order for a claimant to succeed in a claim for malicious prosecution there are 5 elements of the legal test he must satisfy. This was highlighted in the Privy Council decision of **Stuart v Attorney General of Trinidad and Tobago**⁷ where the following was stated:

⁶ [2012] UKPC 16

⁷ [2022] UKPC 53

"The tort of malicious prosecution has five elements all of which must be proved on the balance of probabilities by a claimant: (1) that the defendant prosecuted the claimant (whether by criminal or civil proceedings); (2) that the prosecution ended in the claimants favour; (3) that the prosecution lacked reasonable and probable cause; (4) that the defendant acted maliciously; and (5) that the claimant suffered damage."

[47] There is no controversy in the first 2 elements of this test insofar as the case before me is concerned.

There is no doubt that Mr. Connor was charged with murder and no doubt that the prosecution ended in his favour. It has been noted in case law that the 2nd element is not limited to an acquittal at a full trial. The withdrawal of a case by the crown would satisfy this element. On the question of whether there was reasonable or probable cause, the Privy Council noted in the case of ***Matadai Roopnarine (Appellant) v Attorney General of Trinidad and Tobago (Respondent) (Trinidad and Tobago)***⁸ that ***"[r]easonable and probable cause means an honest belief based on reasonable grounds that there is a proper case to lay before the court."*** Again, there is a subjective and objective feature in this test. The person commencing the prosecution must have an honest belief but that must be based on reasonable grounds from an objective standpoint.

[48] On the subjective element of the test, it would be the duty of the claimant to prove that the officer did not have an honest belief based on reasonable grounds that there was a proper case to lay before the court. He does so by identifying the nature of the information upon which the prosecution was initiated.⁹ Objectively, the court is to assess whether the reasonable person with knowledge of the information relied on by the police officer would conclude that it was reasonable to proceed with a prosecution on those grounds.

[49] It must be noted that a claimant does not satisfy this test by merely proving his innocence of the crime for which he was charged. As Lord Denning noted in the case of ***Glinski v Mclver***¹⁰

⁸ [2022] UKPC 30

⁹ See *Matadi Roopnarine* at paragraph 22

¹⁰ (1962) 1 All ER 696

“... there are many cases where the facts and information known to the prosecutor are not in doubt. The plaintiff has himself to put them before the court because the burden is on him to show there was no reasonable and probable cause. The mere fact of acquittal gets him nowhere. He will therefore refer to the depositions which were taken before the magistrate: or he may refer, as here, to the statements taken by the police from the witnesses: and he will argue from thence that there was no reasonable or probable cause.”

[50] In *Matadi Roopnarine* the Privy Council cited the following passage from *Clerk & Lindsell* with approval:

“The question of reasonable and probable cause may create difficulties in the conduct of a trial: first, it involves the proof of a negative, and secondly, in dealing with it the judge has to take on himself a duty of an exceptional nature. The claimant has, in the first place, to give some evidence tending to establish an absence of reasonable and probable cause which is operating on the mind of the defendant. To do this, the claimant must identify the circumstances in which the prosecution was instituted. It is not enough to prove that the real facts established no criminal liability against him, unless it also appears that those facts were within the personal knowledge of the defendant. If they were not, the claimant must show the nature of the information on which the defendant acted, which is sometimes done by putting in the depositions which were before the magistrate.”

[51] It is important to make an observation at this stage. As I will examine later on, it is difficult, if not impossible, to conclude that the information contained in the statements disclosed in the criminal trial could establish probable cause for prosecuting Mr. Connor. Sgt. Holas has, however, insisted that this decision to commence criminal proceedings was based on information from witnesses whose identity should remain confidential and who had not yet given statements which would have been admissible against Mr. Connor. Yet, in his evidence before this court, Sgt. Holas had not gone into any detail regarding the precise nature of that information which would have been sufficient to ground the prosecution. In light of this, it is important to give some consideration to the **Code for Prosecutors** which has been promulgated by the Attorney General of Anguilla and was referred to by counsel for

Mr. Connor. I state from the outset, however, that the code does not supersede the law. It is to be viewed as guidance for prosecutors here in Anguilla.

[52] Insofar as it relates to a decision to prosecute, section 5.1 notes that the provisions of the Code apply equally to investigators and prosecutors who make decisions to charge suspects. Section 5.2 of the Code states that **“a prosecutor must review each case and decide if it is right to prosecute.”** Section 5.3 of the Code states that **“a prosecutor will only commence a prosecution if both the evidential and public interest tests are met.”** The Code goes on to state in section 6.2 that **“in the majority of cases prosecutors should only decide whether to prosecute after the investigation has been completed and after all available evidence has been reviewed...”** Section 6.4 goes on to state that **“prosecutors must be satisfied that there is sufficient evidence for there to be a realistic prospect of conviction against each defendant on each charge. Prosecutors will consider what the defence case may be and how it may affect the prospect of conviction.”**

[53] It is stated in section 6.5 of the Code that a realistic prospect of conviction is an objective test which is based upon the prosecutor’s assessment of the evidence and any information he has in relation to the potential defence. This test is whether an impartial and reasonable jury or magistrate is more likely than not to convict the defendant of the alleged charges. When deciding whether to prosecute, the prosecutor must determine whether the evidence upon which he relies can be used and whether it is reliable. The prosecutor must ask whether the suspect’s own explanation is credible in light of the evidence when taken as a whole. He must ask whether the evidence supports an innocent explanation.

[54] As I have mentioned, the code is an internal policy document promulgated by the Honourable Attorney General of Anguilla. It does not supersede the test laid down in the common law for what constitutes malicious prosecution. However, it is important guidance for prosecutors to follow and that includes police investigators who take decisions to charge individuals for crimes. One very important factor here is that the Code requires that, as much as possible, investigations should be complete, and all of the available evidence assessed prior to making a decision to charge. I would not go so far as to suggest that failure to follow this guideline gives rise to a finding of malicious prosecution, but in the circumstances of this case, something must be said about the haste in which the charges against Mr. Connor were brought.

[55] Insofar as it relates to the requirement that malice be proved the Privy Council noted in *Matadi Roopnarine* that “[m]alice means an improper motive. The proper motive for a prosecution is a desire to secure the ends of justice. Malice will be established if it is shown that this was not the motive of the defendant or that something else was. Malice may be inferred from lack of reasonable and probable cause but this will depend on the facts of the individual case.

Misfeasance in Public Office

[56] Where a public authority is guilty of the tort of misfeasance in the execution of his duties, a person who suffers loss and damages as a result is entitled to claim compensation. This tort was described by the authors of *Winfield and Jolowicz on Tort*¹¹ in the following manner:

“The purpose of the tort is to give compensation to those who have suffered loss as a result of improper abuse of public power, it being based on the principle that such power may be exercised only for the public good and not for ulterior and improper purposes. It applied to an unlawful (that is to say, unauthorised) act by a person holding a public office ... provided it is done with the requisite mental element. Although the mental element is restricted to intention or ‘recklessness’ the tort has a considerable reach, for there is no requirement that the conduct should be actionable in damages in its own right: it covers non-actionable breach of statutory duty and a decision which is taken contrary to the requirements of natural justice. The mental element relates both to the validity of the act and its effects upon the claimant. As to the first, the officer must act in bad faith, that is to say he must either be aware that his act is unlawful or be consciously indifferent as to its lawfulness – mere negligence is not enough. As to the effect on the claimant, there are two situations. The first is what has been called ‘targeted malice’, that is to say, the case where the defendant acts with the purpose of causing harm to the claimant. ... This ‘represents a satisfactory balance between the two competing policy considerations, namely enlisting tort law to combat executive and administrative abuse of power and not allowing public officers, who must always act for the public good, to be assailed by unmeritorious actions’.

¹¹ Sweet & Maxwell; 18th edition, 2010

In some circumstances the public officer may be exposed to an action for negligence; judicial review is, of course available on the basis of the invalidity of the act in question and without reference to fault, but there is no claim for damages unless there is a tort”.

[57] The tort therefore addresses the abuse of public power. A public officer, exercising statutory authority, must only use this power for the public good. In general, where there is a failure to properly exercise such authority, or if such authority is exercised in a manner which is unreasonable or unlawful, the decision may be subject to judicial review. However, if a public authority exercises his power for an ulterior or improper purpose, he may be guilty of the tort of misfeasance if he acts maliciously and causes some personal loss or injury to an individual. A claim of misfeasance in public officer therefore encompasses an allegation of bad faith on the part of the public officer. As noted in the case of ***Attorney General v. Kenny D Anthony***¹² “[t]here is no gainsaying the gravity of the allegation of bad faith, and the evidential burden on the respondent is commensurate with the seriousness of the allegation.” A claimant therefore carries a significant burden in proving bad faith in a claim for misfeasance in public office.

[58]

In the case of ***Three Rivers District Council v. Governor and Company of the Bank of England***¹³ the following was noted as it relates to the need for bad faith to be pleaded and proven:

“The tort of misfeasance in public office is a tort which involves bad faith and in that sense dishonesty. It follows that to substantiate his claim in this tort, first in his pleading then at trial, a plaintiff must be able to allege and then prove this subjectively dishonest state of mind. The law quite rightly requires that questions of dishonesty be approached more rigorously than other questions of fault. The burden of proof remains the civil burden – the balance of probabilities – but the assessment of the evidence has to take account of the seriousness of the allegations and, if that be the case, any unlikelihood that the person accused of dishonesty would have acted in that way. Dishonesty is not to be inferred from evidence which is equally consistent with mere negligence.”

¹² SLUHC VAP 2009/031

¹³ [1956] AC 736 at 770

[59] The test of bad faith is therefore somewhat more stringent than what is required in other torts. The court is not concerned here with mere negligence. There is an element of dishonesty which must be proven. The standard remains that of a balance of probabilities. However, the court must approach the assessment of the evidence with more rigor than other allegations of tortious liability.

Claimant's Submissions

[60] It is submitted, on behalf of Mr. Connor, that the facts of this case are not capable of proving that Sgt. Holas held the subjective view that there was reasonable cause to arrest Mr. Connor for the offence of murder. Counsel submits that the evidence shows that the murder in question had occurred in a particular manner, and that was by gunshots. It was argued therefore that there was not an iota of information or evidence that placed Mr. Connor at the scene of the incident as a gunman. It is submitted that in fact, the contrary is true. The evidence, it is argued, shows that what was operating on Sgt. Holas' mind was exculpatory. The court is asked to find that what was conveyed to Sgt. Holas by informants was that Mr. Gumbs had attempted to use Mr. Connor as a shield and that Sgt. Holas had stated in the police station that he knew Mr. Connor had not murdered Mr. Gumbs.

[61] As it relates to the claim of wrongful arrest, counsel for Mr. Connor referred to the case of **Betaudier (Appellant) v Attorney General of Trinidad and Tobago (Respondent) (Trinidad and Tobago)**¹⁴, where the Privy Council noted that:

"In considering whether there is reasonable cause for an officer's suspicion that a person has committed an arrestable offence, it is necessary to focus on the offence which he is suspected of having committed. The officer must have in mind facts which are capable of supporting a reasonable suspicion that the person arrested committed an offence of the particular kind which the officer has in mind."

[62] In light of this it is submitted that Sgt. Holas did not prove to this court that there were reasonable grounds for suspecting that Mr. Connor had murdered Mr. Gumbs. It is argued that Sgt. Holas did not

¹⁴ [2021] UKPC 7

prove specifically that there were facts known to him at the time of the investigation and arrest to lead him to the belief that Mr. Connor had probably possessed a firearm and discharged it at Mr. Gumbs, thereby causing his death. Counsel asks of this court to reject Sgt. Holas' evidence at trial as being unreliable for the following reasons:

- (a) At no point in his own evidence did Sgt. Holas reference the exculpatory information which he had in his possession at the time of Mr. Connor's arrest;
- (b) A reasonable inference to be drawn from the crime scene photographs of the spacing of the shell casings is that of a shooter walking from a further distance discharging a firearm and getting closer, followed by repeated discharges near the blue bench. The approaching shooter is also consistent with Mr. Gumbs moving opposite to a threat and the distance he got to the south by the time he collapsed. This, it is submitted is consistent with the account of Marcy Margarita Retde Diaz in the witness statement she provided to the police. This is also not contradictory to Mr. Connor's own account;
- (c) That no gunshot residue testing was conducted on Mr. Connor or the clothing or other items collected from the search of his home;
- (d) That Sgt. Holas' initial unwillingness to accept that Jefferson Bontiff and James Hodge were also suspected of murder prior to the arrest and charge of Mr. Connor strongly suggests a propensity to exercise powers of arrest absent an honest belief of guilt for the particular kind of offence under investigation;
- (e) That Sgt. Holas was therefore operating in bad faith in his arrest and detention of Mr. Connor.

[63] On the issue of bad faith, counsel submits that the court should consider the cross-examination of Sgt. Holas and Insp. Wills on the use of arrest, detention and charges against potential witnesses as a tool to obtain witness statements for use at trial. It is submitted that there are numerous cases in more recent times when suspects who were initially arrested turned out to become witnesses for the crown. It is also submitted that the totality of the evidence from Insp. Wills in cross examination and the manner of responses provided by Sgt. Holas taken together with the absence of reasonable grounds to suspect Mr. Connor and reasonable and probable cause to institute proceedings, strongly

suggests that there was an oblique motive to pressure Mr. Connor to reveal the identity of the suspected shooter. The court is asked to find that Mr. Connor was telling the truth when he states in his evidence that Sgt. Holas informed him that he knew he was not the shooter.

[64] As it relates to the decision to prosecute Mr. Connor, it is submitted on his behalf that there was no information capable of establishing reasonable and probable cause. In particular, counsel noted the following:

- (a) The giving of admissible evidence by any such confidential informant(s) required the provision of formal witness statements, which never transpired;
- (b) There was no evidence from any witness on behalf of the Defence that an identification procedure had been conducted in relation to Mr. Connor or any other suspect, much less considered;
- (c) There was no evidence given or information contained in a single witness statement from police or any lay witness(es) that the shooter had been recognized; and
- (d) It would be anomalous and irregular for a witness who was not put through an identification procedure, particularly in a murder case or any case where the case rests solely or substantially on identification evidence, to give such an account of an identification for the first time at the trial. Such evidence would ordinarily be inadmissible.

[65] Counsel for Mr. Connor has asked the court to determine that the withdrawal of the case against him on account of the disclosure of the crime report is incredible. It is argued, firstly, that the court should consider the timeline from the laying of charges against Mr. Connor to the date of the withdrawal of the case. Mr. Connor was charged on 18th February, 2020. The crime report was disclosed on 17th April, 2020. That was approximately two months after the criminal case was initiated. It was stated in the evidence of Insp. Wills that Mr. Hodge informed the police of the inadvertent disclosure of this report on 26th June, 2020. At that point, none of the witnesses referred to by Sgt. Holas had given witness statements which were admissible against Mr. Connor in court. That was 4 months after the criminal case had commenced. Notwithstanding this, the charges against Mr. Connor were not

withdrawn until 11th December, 2020. That was almost 6 months after the disclosure of the crime report.

[66] Counsel therefore submits that if, as Sgt Holas testified in cross-examination, it was his duty to inform the informants of the disclosure because of safety concerns, one can assume that he would have done so promptly. If that was the case, then the termination of the prosecution by the Attorney General ought to have taken place soon after the disclosure became known to Sgt. Holas.

[67] It is also submitted that there is sufficient evidence to prove misfeasance on the part of the Commissioner of Police and Sgt. Holas. It is also submitted that if the court were to find that there is no direct evidence of misfeasance on the part of the then Commissioner of Police, the court should hold this office vicariously liable for the misfeasance of Sgt. Holas. The court is asked to find firstly that Mr. Connor was denied his right to an attorney of his choice as he was not informed of such a right and secondly, that the interview under caution, the arrest, detention and prosecution were all designed to put pressure on Mr. Connor to give information to the police regarding Mr. Gumbs' murder.

Defense Submissions

[68] Counsel for the defendants asks this court to find that Mr. Connor has not made out his case. Counsel submits that there are a number of objective facts for the court to consider. These include the fact that both Mr. Connor and Mr. Gumbs were present at the Spanish bar on 12th February, 2020 at the same time. There was also a scuffle between them, shortly after which gunshots were fired. Six (6) shell casings were found near the blue bench, one of which was actually found on top of the bench, which suggested that the shooter was near the bench. Shoe prints were observed on top the table coupled with the likely trajectory of the bullet, which hit the vehicle at Blowing Point Port some 140 yards away. This suggested that someone was standing on top of the bench firing the weapon. Mr. Connor was on top of the bench at one point and one of his slippers was found beneath the bench. Mr. Connor gave two conflicting versions of events on that date. No shell casings were found in the direction and distance from which Mr. Connor claimed to have seen the shooter and Mr. Connor was charged for the offence less than 72 hours from the point of his arrest.

[69] In light of these facts, it is submitted that the evidence in Sgt. Holas' possession which informed his decision to arrest, detain and charge were circumstantial and inferential and therefore sufficient to provide legal justification for his actions. It is submitted, therefore, that Mr. Connor has led no evidence to the contrary and has accordingly failed to negative or demonstrate that, on a balance of probabilities, law enforcement officers of the Crown arrested and detained him without legal justification. Counsel for the defence refers the court to the case of **Glasgow v Attorney General of Saint Christopher and Nevis**¹⁵, where Ventose J, having found that there was evidence upon which a finding of reasonable grounds to arrest and detain can be made noted that “[t]he Claimant has not shown that the officer did not have reasonable suspicion that he committed the offence of murder for the court to declare that his arrest and detention was unconstitutional.” Reference was also made to the case of **Hasani Herbert v The Attorney General**¹⁶ where Innocent J ruled against a claim for wrongful arrest and malicious prosecution although it was conceded that the actions of the police in obtaining DNA and GSR evidence was unlawful so that the evidence was deemed inadmissible at the preliminary inquiry stage. The court has to consider the state of mind of the arresting officer and the officer who decided to charge the suspect at the time those decisions were made. It is the claimant's duty to prove the elements of his case.

[70] It is also submitted on behalf of the defence, that once the claim for wrongful arrest is rejected, then there can be no success in the claim for false imprisonment. If the arrest was lawful, the subsequent detention was also lawful. I take the substance of the defense argument to be that Mr. Connor was detained for a period within the 72 hours prescribed by law. If the arrest was therefore lawful, then there is nothing unlawful about that period of detention. Once the charges had been brought, Mr. Connor was remanded by the courts and as such no claim for false imprisonment can be made for that period of detention. For that proposition counsel cited the cases of **Margaret Joseph v The Attorney General and Another**¹⁷, **Dallison v Caffrey**¹⁸ and **Flemming v Myers and Anor**¹⁹.

¹⁵ SKBHCV2016/0015

¹⁶ AXAHCV2016/0025

¹⁷ (Grenada) Civil Appeal No. 9 of 2003

¹⁸ [164] 3 WLR 385 at 398

¹⁹ (Jamaica) [1990] LRC (Crim) 575, 586 [d] (Forte JA)

[71] In relation to the claim for malicious prosecution, counsel for the defence accepts that the first two elements of the legal test have been met. However, counsel submits that Sgt. Holas' basis for charging Mr. Connor, as was outlined in his witness statement, remained uncontroverted at trial. As such, it is submitted that Mr. Connor has not proven that there was no reasonable or probable cause for commencing criminal proceedings, neither is there proof of bad faith or malice on the part of Sgt. Holas.

[72] It was submitted that Mr. Connor's belief that there was insufficient evidence to justify the case against him was outlined in paragraph 43 of his witness statement. There Mr. Connor referred to Sgt. Holas' witness statement in the criminal proceedings in relation to confidential witnesses where he noted that *"all declined to give statements and were reluctant to provide the police with information"*. Counsel argues that this was not the totality of Sgt. Holas' evidence as he did go on to say that *some witnesses gave bits of information and said witnesses were given alpha numeric code names to protect their identities.*" I take the substance of this argument to be that although some of the witnesses declined to give statements, others did in fact give information to the police sufficient to justify Sgt. Holas' actions. It was also submitted that Mr. Connor failed to prove that Sgt. Holas had commenced the criminal proceedings in order to pressure him into identifying the shooter.

[73] Counsel for the defence therefore submits that *"this Claim falls due to the infirmity of the Claimant's case and the absence of reasonable and probable cause. It matters not whether the proceedings were terminated in the Claimant's favour. The Claimant has failed to establish the very foundation of the claim for malicious prosecution and consequently, it is not sustainable and ought rightly to be dismissed."*

[74] As it relates to the claim for misfeasance in public office, it is submitted simply that the facts of this case do not rise to the level of misfeasance and, in any event, the presence of reasonable and probable cause negates a claim for misfeasance.

The Court's Conclusions

[75] Whilst this is a claim brought by Mr. Connor, who for the most part bears the burden of proving his case, the substance of this litigation calls upon the court to first consider the account given by Sgt. Holas of his actions in this investigation. As has been noted in **Everett Davis**, the police exercise a

very significant power of arrest, detention and prosecution. The exercise of this power must be balanced against the constitutional right to liberty and the need to always secure the ends of justice.

[76] The reconciliation of cases such as the present calls upon the court to examine the basis and rationale for the decisions taken by the police as agents of the crown and by extension the credibility of the account given. The facts of this case are compounded by the assertion from the defense that much of the information provided to Sgt. Holas remains confidential. Insofar as it relates to certain elements of this case, Mr. Connor's only way of proving what was in the mind of Sgt. Holas is to rely on the information of informants, depositions and witness statements he had in his possession. If some of this remains confidential, then it increases the need for Sgt. Holas to be reliable and forthright with the court regarding this investigation.

[77] Having examined the evidence and observed the witnesses I express serious doubt as to the honesty and forthrightness of Sgt. Holas in his account of what transpired in relation to his arrest, detention and charging of Mr. Connor. None-the-less it is important for this court to decide, based on the evidence presented, what was the subjective reason for Mr. Connor's initial arrest and detention and then consider whether that was based on reasonable grounds. This must be separated from the decision to prosecute which calls for different considerations.

[78] I find that Sgt. Holas did have information from informants that Mr. Gumbs and Mr. Connor were involved in some sort of scuffle just prior to shots being fired. I do find that Mr. Connor was at one point standing on the blue bench during this scuffle and that one side of his slipper was left beneath the blue bench. However, I also find that, based on what was put to Mr. Connor in the police interview, Sgt. Holas was informed that Mr. Connor may have been used as a shield against gunfire and that this may have been the reason for the scuffle. I accept, as submitted by counsel for Mr. Connor, that there was no evidence to suggest that anyone identified a gun in Mr. Connor's hand or saw him fire at Mr. Gumbs. I have considered the photographs regarding the placement of the shell casings and considered what was said by the various witnesses whose statements were disclosed during the preliminary inquiry stage. I have also considered the autopsy report and the various interviews with Mr. Connor, Mr. Jefferson Bontiff and Mr. James Hodge in coming to my conclusions.

Wrongful Arrest

[79] Despite my concerns with Sgt. Holas' reliability as a witness, I am satisfied that he held the subjective suspicion that Mr. Connor had committed the offence of murder at the point of his arrest. I do not accept the submission of counsel for Mr. Connor that it was necessary to show that a witness had identified Mr. Connor as the gunman in order to ground a reasonable suspicion. As noted by counsel for the defense, suspicion can be based on circumstantial evidence and inferences. Here Sgt. Holas would have been seized with information that there was some sort of scuffle between Mr. Gumbs and Mr. Connor. He was standing on the bench at one point in time and shots were fired. Mr. Connor's slipper was found at the scene under the bench. All of this took place within a short space of time. Whilst it is true that Sgt. Holas was also in possession of potentially exculpatory information, that would have been based on the perception of the informants of what they observed. It would not negate the fact that a scuffle did potentially take place and was enough to ground a suspicion in Sgt. Holas. I hold the view that the reasonable man would have concluded that the suspicion was based on reasonable grounds at the time.

[80] It is also important to give consideration to the actions of Sgt. Holas and the police after Mr. Connor's arrest. The case law establishes that once an explanation is given by the suspect, the police must justify the continued detention. I do not agree with counsel for the defence that merely because the detention was within the 72 hour period it remains lawful. What the law requires is that this detention, even within that period, must be for the purpose of continued investigation. The police must continue to account for their actions during that time. However, I note that Sgt. Holas interviewed Mr. Connor again on 18th February, 2020. There is evidence on the record to state that the investigation continued, and a charge was preferred on 18th February, 2020. I am satisfied therefore that the initial arrest and detention of Mr. Connor was for reasonable and probable cause and was therefore lawful. However, before moving on to address the issue of malicious prosecution, I make just a few comments on the allegations raised by Mr. Connor during the initial period of his detention.

[81] Mr. Connor's allegations regarding him being informed of his right to an attorney and that he was informed by Sgt. Holas that he knew he did not murder Mr. Gumbs, were denied by Sgt. Holas. There was also some kind of altercation between Sgt. Holas and Mr. Devin Hodge, who was Mr. Connor's attorney, which was raised as an issue in this case.

[82] It is worth noting that this court has had occasion to criticize the practices of the police when it comes to the interrogation of suspects who are unrepresented by counsel. It is somewhat lamentable that such interviews are not video recorded. What is even more troubling, however, is that the interviews are not witnessed by any independent person. This is a murder investigation, and the interview of a suspect is conducted in the presence of 2 police officers. It would be best practice, even without the intervention of legislation, to engage the services of a justice of the peace or a probation officer to witness such an interview; especially if it is not being recorded. It would also assist if the rights outlined on the interview form would actually outline more of the basic rights afforded to a suspect. Nowhere on the form does it say that the suspect has the right to an attorney. Addressing those practices would assist the process in 3 ways:

- (a) It would ensure that someone, other than a police officer, would interrogate the question of whether the suspect was not only informed of his rights, but that he also understood them. These are separate issues, and it is important for persons in police custody to not simply be pointed to a flyer or words outlined on a sheet of paper but have their rights properly and adequately explained to them. It is customary for police officers to simply say that the suspects rights were read in accordance with the Judge's Rules. However, this approach is no longer adequate;
- (b) It would go some way in shielding the police from the relatively consistent allegations of improper behaviour during such interviews; and
- (c) It would assist the court in assessing what actually transpired during the interview in order to make an informed decision if such an allegation arises.

[83] Having said so, I have come to the conclusion that Mr. Connor was telling the truth when he said that he was informed that he had a right to a person present but that he was not verbally informed of the right to an attorney. I believe him when he said that he first realized that he had such a right when he saw it on the flyer in the police station. It is doubtful that this took place prior to the interview. I accept his evidence when he said that he had never experienced such a situation before and that he was fearful during the course of this process. Be that as it may, save for Mr. Connor's contradiction during the first and second interview, he has largely accepted that the information he gave to the police is an accurate reflection of his own account of his interactions with Mr. Gumbs on that evening. This

therefore, does not lead me to the conclusion that there was a deliberate attempt to deny Mr. Connor his rights in custody. However, it does speak to the negligent manner in which this process was conducted.

[84] As to the altercation between Mr. Hodge and Sgt. Holas, the most which can be said is that counsel and the police would do well to be respectful to each other in the furtherance of their respective duties. Such reports of tensions in the police station do not assist the interest of justice. However, I can detect no harm which has emerged which makes this issue relevant to the facts I have to decide. I will address the remaining issue raised in paragraph 81 later on in this judgment.

Malicious Prosecution

[85] It is my view that Sgt. Holas did not have reasonable and probable cause to charge Mr. Connor for the offence of murder. In order to fully address this issue, it is important, firstly, to consider the relevance of the crime report and its inadvertent disclosure. I agree with the submission of counsel for Mr. Connor that the timelines of the disclosure of the report, the date on which Mr. Hodge informed Sgt. Wills of its disclosure and the withdrawal of the claim all undermine the arguments put forward by Sgt. Holas as to its relevance to the current proceedings.

[86] If one were to assume that the successful prosecution of Mr. Connor was contingent on these informants giving witness statements which were admissible in court, then something must be said about the commencement of criminal proceedings prior to actually securing even one of these witness statements. Mr. Connor was charged on 18th February, 2020. Although the crime report was disclosed in April, 2020, the police were unaware of this until 26th June, 2020. That was 4 months after charges had been brought and not one of those informants had agreed to provide admissible evidence to the police. It was also 6 months later were the charges actually withdrawn against Mr. Connor. For my part, whilst this is not a public law claim, I express the view that this may very well be close to an abuse of process for the criminal jurisdiction of the court to be engaged in this way whilst a defendant, who is remanded, simply has to wait until the police gather admissible evidence against him. This is not a situation of awaiting a forensic report or wrapping up some loose ends in an investigation. Witnesses had simply not agreed to give evidence in court at that point.

[87] In the absence of any statements from these witnesses and putting aside Mr. Connor's own interview for a moment, there is nothing in the witness statements disclosed which can point to Mr. Connor as the shooter, whether on the basis of circumstantial evidence, inferences or otherwise. In fact, many of the statements taken by the police on 19th February, 2020 all point to Mr. Connor's good character and how unlikely it was that he would commit such an offence. When coupled with Sgt. Holas' own information put to Mr. Connor in the police interview an inference can be drawn that he had more exculpatory than inculpatory information in his possession when deciding to commence criminal proceedings against Mr. Connor. The legal test here is not as low as the one required for suspicion warranting arrest. Here the police are charging an individual for murder and the law requires a more stringent test of whether there is sufficient evidence to ground a criminal prosecution.

[88] It is important for the court to make one finding here, and it is that Sgt. Holas had not satisfied this court that the informants had given any other information to him other than that which was already put to Mr. Connor in the police interview. Taken at its highest, the most the court can glean from Sgt. Holas' evidence is that the witnesses observed a scuffle between Mr. Connor and Mr. Gumbs. Mr. Connor was standing on the bench at one point and soon afterwards shots were fired. I find as a matter of fact that at least some of these informants expressed the view that Mr. Connor was being used as a shield. That being the case, it begs the question as to why the disclosure of the crime report so severely undermined the case when Mr. Connor in his own interview had already corroborated much of that information.

[89] When one examines the rationale given by Sgt. Holas for charging Mr. Connor, it appears to this court, if he is to be taken to be telling the truth, that he gave greater weight to the fact that Mr. Connor's story made little sense to him. The difficulty which the court expresses with Sgt. Holas' account of his investigation is he himself failed to give consideration to the code of practice for prosecutors. Firstly, he preferred charges at a very early stage in the investigation. The autopsy had not completed. Sgt. Holas never followed up on whether a full forensic processing of Mr. Connor had been conducted as he claimed to have instructed. He never ascertained whether testing for gunshot residue was done on Mr. Connor or the clothing items taken from his home. Even Mr. Connor's slipper, which was found at the scene, was never tested. Sgt. Holas didn't even speak to the question of whether he was able to ascertain a link between Mr. Connor's slipper and the shoe print he claimed to have seen on the blue bench.

[90] If the prosecution could not have been sustained on the basis of the information already disclosed in the criminal case file, then I accept the submission of counsel for Mr. Connor, that there was no reasonable or justifiable basis for the commencement of criminal proceedings against him. The evidence presented in the case file and Sgt. Holas' account of his investigation do not meet that required standard. The question then becomes whether there is evidence of malice. In that regard I am reminded of the decision of *Matadi Roopnarine* where the Privy Council noted that ***"[t]he proper motive for a prosecution is a desire to secure the ends of justice. Malice will be established if it is shown that this was not the motive of the defendant or that something else was. Malice may be inferred from lack of reasonable and probable cause but this will depend on the facts of the individual case."***

[91] I am satisfied that Sgt. Holas did not have the motive of securing the ends of justice when he decided to prosecute Mr. Connor. Although there would have been sufficient grounds for an arrest, the prosecution was a different issue altogether. Firstly, there simply was not sufficient evidence to make such a determination on 18th February, 2020. Sgt. Holas had not carried out a thorough investigation into this case. Secondly, it is clear that there was more exculpatory than inculpatory evidence of Mr. Connor's involvement in this incident. Sgt. Holas insisted that he considered Mr. Connor's account and found that it made no sense. However, save for the lack of a shell casing in the distance and direction of where Mr. Connor claimed to have first seen the shooter, there is nothing in the evidence which contradicts his account. The only other issue which can be raised is that Mr. Connor initially gave a different account to the police. But that is not enough to justify the preferring of charges against him. Having taken sight of the photos regarding the shell casings, I agree with counsel for Mr. Connor's submission in relation to them. In addition, there was no motive or any other reason to suggest that a man of Mr. Connor's character would have committed such an offence. The evidence presented simply could not have been sufficient to do justice in this case.

[92] It is important, therefore, for the court to make a determination on the issue of whether there was a direct motive of using the criminal justice system to pressure Mr. Connor into giving evidence. Mr. Connor insisted that at some point during his incarceration he was told by Sgt. Holas that he was aware that he did not commit the offence. Sgt. Holas denied this, but I accept that Mr. Connor was telling the truth. To my mind, Mr. Connor came across as being honest with the court. Sgt. Holas, on

the other hand, I did not believe. He had information in his possession which some of the very informants gave which indicated that they at least held the perception that Mr. Connor was simply trying to escape being used as a shield during gunfire. He knew, or ought to have known, that this was more than a plausible explanation, after arresting and interviewing Mr. Connor. In my view, taking all of the circumstances into account and the observation of the various witnesses, I accept that Sgt. Holas did make this comment to Mr. Connor.

[93] There was also a general dispute regarding the level of involvement of the former Commissioner of Police in this investigation. I accept Mr. Connor's evidence where he stated that the Commissioner of Police did state that his account of what transpired didn't make sense and that he should tell the police who the shooter was. However, despite my findings, I do not infer from these that there was a direct policy of the police to use the justice system to pressure witnesses to give evidence, including Mr. Connor. I have taken into account the cross examination of Insp. Wills where he accepted that some suspects had become witnesses in the past, but that is not enough to suggest such a clandestine policy of the RAPF. I would therefore decline to make such a finding.

[94] It is my view that this is an appropriate case for the court to infer from the lack of reasonable and probable cause and the statements made to Mr. Connor by Sgt. Holas and the Commissioner of Police, that Sgt. Holas was actuated by a motive other than securing the ends of justice. To prosecute a man of previous good character, with no motive to commit such an offence, on such tenuous evidence is something which simply cannot be taken lightly. I find that ultimately, Sgt. Holas held the view that Mr. Connor's account didn't make sense to him and therefore proceeded to charge him. I am satisfied that an inference can be drawn here that this prosecution was not done with a proper motive. I am satisfied therefore that this prosecution was malicious.

Misfeasance in Public Office

[95] Insofar as it relates to the claim for misfeasance in public office, I considered, for a moment, the overlap between a finding of malice in malicious prosecution and that of bad faith in a misfeasance claim. I have found that the prosecution of Mr. Connor was malicious by inferences drawn from the circumstances of the case. Authority for that approach is found in *Matadi Roopnarine*. However, in a claim for misfeasance, one has to positively prove bad faith. That is not to say that an inference can never be drawn from the actions of the public authority. But the actions, and the allegations arising

out of them, must meet the threshold. As was stated in the case of *Attorney General v. Kenny D Anthony*²⁰ “[t]here is no gainsaying the gravity of the allegation of bad faith, and the evidential burden on the respondent is commensurate with the seriousness of the allegation.”

[96] The substance of the allegation here against the Commissioner of Police and Sgt. Holas was that Mr. Connor was charged for the sole purpose of pressuring him into giving information about the shooter. I have determined that the evidential threshold necessary to sustain this allegation has not been met. I do not accept, on a balance of probabilities, that this motive has been established. Counsel has asked that the court considers holding the Commissioner of Police vicariously liable for Sgt. Holas’ misfeasance. However, I am not satisfied that the test of malice in malicious prosecution is the same as in misfeasance. As I have stated, I accept that bad faith can be inferred in malicious prosecution. In the circumstances, the claim for misfeasance in public office fails on the ground that bad faith has not been proven to the standard required in this specific tort.

Damages

[97] Having succeeded in his claim for malicious prosecution, it is left for the court to determine the damages to which Mr. Connor is entitled. Mr. Connor seeks special damages, which encompasses loss of earnings, late fees on his loans and legal fees incurred in the criminal and current civil proceedings. He also claims general, aggravated and exemplary damages.

Special Damages

[98] Mr. Connor claims that he lost his job as a result of the charges laid against him. He presents evidence from the properties manager, under whose supervision he worked, to substantiate this claim. The manager indicated that Mr. Connor earns approximately US\$3,000.00 monthly in base salary and service charge. This was slightly higher than what Mr. Connor had in his own witness statement. Although it would have been best practice to present a salary slip, I accept this evidence as proof of Mr. Connor’s employment and that his average monthly income was US\$2,272.00 as contained in his pleadings. This included US\$1,472.00 in base salary and a further average of US\$800.00 monthly in

²⁰ SLUHCVP2009/031

service charge. I accept this as being a reflection of his income at the time he was charged with the offence of murder.

[99] In his pleadings, Mr. Connor sought an award for loss of income for a period of 16 months. That was the period from which he was charged to the date of the filing of the claim. This was on the basis of the fact that he was unable to find employment by that time. This amounts to US\$36,352.00. I would award him this sum in damages.

[100] Mr. Connor also wished for an award continuing from that date to the date on which he obtains employment. He acknowledges, however, that he has since mitigated his losses and now earns approximately US\$350.00 monthly from fishing and working in his family's bakery. It is not quite clear from the evidence as to when Mr. Connor first started earning US\$350.00 monthly. However, if this is taken into account, he now claims loss of earnings at a rate of US\$1,922.00 monthly. Counsel has asked the court to grant this aspect of his loss of income from the date of the lodging of the claim to the date of judgment.

[101] However, in my view, although the claimant is entitled to loss of earnings, this does not continue as a special damage *ad infinitum*. The evidence does not suggest that he is incapable of finding employment which is commensurate with the nature of the employment he had before. All he states in his witness statement is that at the time of his release from custody the country was in the throes of the covid pandemic which left him unable to find employment for many months. He eventually started fishing as a source of income. A sum of US\$1,922.00 monthly amounts to \$23,064.00 annually. In my view, damages for a further period of 2 years would be fitting and reasonable in the circumstances. I would award the sum of US\$46,128.00 in additional damages for loss of earnings.

[102] Insofar as it relates to the late fees on his loans, I see no controversy in granting this award. It was not denied by the defendants, and I am satisfied of his entitlement to this sum amounting to US\$278.82.

[103] In considering Mr. Connor's claim for legal expenses, I make 2 observations. The first is that he has claimed specific sums of money paid to his attorneys in both the criminal and civil claims. However, whenever the court comes to consider issues such as legal fees, it never does so on an indemnity basis. Such awards are made by assessing the reasonableness of the amount charged by the attorneys. Secondly, Mr. Connor has succeeded, at least partially, in this civil claim. His entitlement

therefore is to an award of costs in accordance with the CPR and not an indemnification of the costs actually paid to counsel for these proceedings. However, I am prepared to award him damages for legal representation in the criminal matter, provided that what has been claimed is reasonable.

[104] Mr. Connor claims the sum of US\$8,800.00 in legal fees for the criminal case. This is the equivalent of EC\$23,782.44. I note that the preliminary inquiry never took place in the criminal matter. In those circumstances I am of the view that the sum claimed in legal fees for those proceedings is too high. I would award the sum of US\$4,000.00 and an additional US\$1,000.00 for the application for bail. US\$5,000.00 in legal fees is therefore awarded to Mr. Connor in this case.

General Damages

[105] In the case of *Danny Ambo v Michael Laudat et al*²¹ the following was noted as it relates to damages for malicious prosecution:

[22] *In regard to malicious prosecution, the Claimant is entitled to recover for injury to reputation as well as injury to feelings, indignity, humiliation and disgrace caused to him for maliciously putting the law in motion against him – by the fact of preferring charges against him.*

[23] *Murder and conspiracy to commit murder are very serious charges. There was no reasonable or probable cause as set out in the particulars in the pleadings. The charges were dropped. But the Claimant was faced with the fear and anxiety of a groundless prosecution and conviction against him. His reputation is likely to have suffered as a result of those charges. The Claimant was humiliated and distressed by the attendance of the crowd in and out of court seeking to get a glimpse of him.*

[106] I have highlighted Mr. Connor's account of his own humiliation and distress felt as a result of this charge in paragraphs 4 and 17 to 19 of this judgment. I am satisfied that he was telling the truth. There were persons present who witnessed him being taken to court in handcuffs. The distress of his family

²¹ CLAIM NO DOMHCV2010/0030

witnessing such an event and the impact it had on him; the embarrassment of being asked to strip naked for a search during his processing in the prison and the 28 days spent in distress whilst incarcerated, are all factors to take into account.

[107] It is customary in cases for wrongful arrest coupled with that of malicious prosecution for the court to consider firstly an award for the initial shock of the arrest and then consider compensation at a daily rate for the remaining period of incarceration. In Mr. Connor's case, this court has determined that the arrest was lawful. In those circumstances, I am unable to find any authority for the entitlement to an award for the initial shock. However, it is my view that it would be foreseeable that an individual charged with murder would likely spend time in prison. There is a high probability that a defendant in a murder case is likely to be denied bail, or to spend considerable time in custody before bail is considered or granted. I am of the view that compensation at a daily rate in such cases is in order.

[108] In reliance on the case of **Wakeem Guishard v. The Attorney General of the BVI**²², counsel for Mr. Connor requests that the court awards the sum of US\$300.00 per day in damages for the period of time Mr. Connor spent in custody. However, I note that Anguilla does not use the US dollar as its official currency as was the case in the British Virgin Islands. The sum of US\$300.00, amounts to EC\$810.00 per day. That is not in keeping with similar awards made by this court in cases of this nature. As was noted in **Wakeem Guishard**, the sum of EC\$500.00 has emerged in the region as a reasonable daily rate in such cases. This was the sum awarded in **Everette Davis**. This figure was adopted and followed in the case of **Michael Stevens v. The Attorney General of Saint Lucia**²³. In the case of **Caldre Chapman v. the Attorney General**²⁴, the court awarded the sum of EC\$600.00 after taking into account the effect of the incarceration on the defendant, as well as the condition of the prison in which he was housed. A similar approach was taken in the case of **Jermaine Browne v. the Attorney General of Saint Kitts and Nevis**²⁵, where the prison conditions were also taken into account.

[109] Although, Mr. Connor spoke about his own personal circumstances in having to spend this time incarcerated, he does not go as far to address the conditions under which he was housed at the prison

²² BVIHCVAP2018/0006

²³ SLUHCV2013/0425

²⁴ NEVHCV2018/0086

²⁵ SKBHCV2016/0074

in Anguilla. However, I am satisfied that he is entitled to an award in keeping with similar awards across the ECSC jurisdictions. I do not see a basis here for an increase in the nominal award on account of inflation as submitted by counsel. I would award Mr. Connor the sum of EC\$500.00 in damages per day for the period of time spent in prison whilst charged for the offence. Given that the period of imprisonment is a relatively short one, the sum awarded would remain the same throughout the period. The sum awarded therefore is EC\$14,000.00 in total.

[110] In addition to the award for compensation at a daily rate for time spent on remand, it is my view that Mr. Connor is entitled to an award in general damages for the humiliation and distress caused to him by the prosecution over all. A daily rate for the period of incarceration does not adequately address this issue. To my mind, even for the period spent on bail, Mr. Connor's liberty would have been curtailed. The anxiety and fear he would have experienced as a result of such a serious charge pending against him and the possibility of a conviction all add to this distress. He spoke in detail about this fear and anxiety, and I am satisfied that he is entitled to general damages to compensate him for this. In the case of **Danny Ambo v Michael Laudat et al** from Dominica, the court awarded EC\$50,000.00 in damages after considering similar awards across the region. I am mindful of the overlap between the factors taken into account in the fixing of the daily rate for Mr. Connor's time spent on remand. I am of the view that an award in the additional sum of EC\$40,000.00 is reasonable compensation for Mr. Connor's distress in facing this prosecution which the court has found to have been malicious.

Aggravated Damages

[111] It is important for the court to give consideration to the legal basis for an award of aggravated damages. In the case of **Phonographic Performance Ltd v Ellis (t/a Bla Bla Bar)**²⁶ Lewison LJ noted the following:

“Aggravated damages are damages awarded for a tort as compensation for the claimant’s mental distress, where the manner in which the defendant has committed the tort, or his motives in so doing, or his conduct subsequent to the tort, has upset

²⁶ [2018] EWCA Civ 2812

or outraged the claimant. Such conduct or motive aggravates the injury done to the claimant, and therefore warrants a greater or additional compensatory sum.”

[112] The first observation to be noted here is that aggravated damages are compensatory in nature and are not punitive. The second observation is that, to some extent, in cases such as malicious prosecution, the court has already taken into account the claimant's mental distress and humiliation caused as a result of the tort. The question is whether or not the defendant's conduct or motive so aggravated the claimant's injury that it warrants a greater or additional compensatory sum. It was determined in the case of ***Commissioner of Police of the Metropolis v Shaw***²⁷ that the factors to be considered in determining an award of aggravated damages include (a) the manner in which the tort was committed, (b) the motive for it; and (c) the defendant's conduct subsequent to the tort but in relation to it.

[113] I am satisfied that the circumstances of this case are such that Mr. Connor is entitled to an award of aggravated damages. I have highlighted what Mr. Connor had to say in relation to the mental and emotional distress he suffered as a result of the actions taken against him. I am also satisfied that, having observed his demeanor in the witness box and taken his views into account, he suffered a significant level of emotional distress as a result of the actions of Sgt. Holas and that he felt particularly aggravated by it. In addition to that, I have accepted as a matter of fact, that Sgt. Holas did say to Mr. Connor that he knew he did not commit the offence of murder. Whilst I stopped short of finding that there was a policy or an attempt to use the prosecution process to get Mr. Connor to give evidence of the shooter to the police, my findings are such that they are enough to consider that the manner in which this tort has been committed and the improper motive inferred are such that Mr. Connor's distress was aggravated. I have inferred from Sgt. Holas' conduct that his motive was something other than meeting the ends of justice. Subsequent to this there was an insistence that the disclosure of the crime report was a basis for withdrawing the case, when in fact there was never enough evidence to have commenced this prosecution in the first place.

²⁷ [2012] ICR 464

[114] I have considered the case of **Matthew McMillan v Alonzo Carty et al**²⁸ where the court awarded the sum of EC\$25,000.00 in aggravated damages to the claimant. Although I have found that there was no wrongful arrest initially, the circumstances of the embarrassment and distress suffered by Mr. Connor are not dissimilar to that of the claimant in **Matthew Mc. Millan**. It is my view that an award of EC\$25,000.00 is sufficient compensation for aggravated damages in the circumstances of the case before me.

Exemplary Damages

[115] An award for exemplary damages is said to be punitive in nature. It is not designed to compensate the claimant, but to express disapproval of the actions of the defendant. In the case of **Rookes v Barnard**²⁹ Lord Delvin noted that an award of exemplary damages “... **serves a valuable purpose in restraining the arbitrary and outrageous use of executive power.**” His lordship also went on to note the following:

The first category is oppressive, arbitrary or unconstitutional action by the servants of the government. I should not extend this category—I say this with particular reference to the facts of this case—to oppressive action by private corporations or individuals. Where one man is more powerful than another, it is inevitable that he will try to use his power to gain his ends; and if his power is much greater than the other's, he might, perhaps, be said to be using it oppressively. If he uses his power illegally, he must of course pay for his illegality in the ordinary way; but he is not to be punished simply because he is the more powerful. In the case of the government it is different, for the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. . .

[116] It is my view that, in cases such as the present, the court should be cautious in attempting to balance two issues. Firstly, the police have a duty to protect society, and that encompasses the need to arrest, detain and prosecute individuals who have committed crimes; especially those of a violent nature. At

²⁸ SKBHCV2017/0380

²⁹ [1964] AC 1129

times, the police may get it wrong. Mistakes may be made, and prosecutions fail. That is not always enough to say that the state should be punished for the performance of its duties. However, on the other hand, one must never lose sight of the significant impact the exercise of those powers may have on the innocent and upstanding members of our communities. The arbitrary abuse and use of those powers are not consistent with the fundamental rights and freedoms which we all ought to enjoy. It is in light of this that Lord Delvin also went on to note that where compensation for breaches committed by an agent of the state “**is inadequate to punish him for his outrageous conduct, to mark [the] disapproval of such conduct and to deter him from repeating it, then [the court] can award some larger sum.**”

[117] Whilst I am fortified in my view that the actions of Sgt. Holas in commencing criminal proceedings against Mr. Connor were not justified, I am not satisfied that this warrants an award of exemplary damages from this court in order to deter any such conduct of this nature from occurring in the future. Mr. Connor’s award of aggravated damages would suffice as compensation to him without the added need for punitive action against the defendants.

Conclusion

[118] In the circumstances the court declares and orders as follows:

- (a) The claims for wrongful arrest and misfeasance in public office are dismissed;
- (b) The claim for malicious prosecution is upheld and it is declared **that the prosecution set in motion by the 1st Defendant against the Claimant on Complaint No. AXAMCR2020/0032 for murder was malicious and without reasonable or probable cause;**
- (c) That the defendants will pay special damages as follows:
 - (i) the sum of US\$82,480.00 or EC\$221,722.74 in damages for loss of income;
 - (ii) The sum of US\$5,000.00 or EC\$ 13,441.00 in legal fees in the criminal proceedings;
 - (iii) The sum of US\$278.82 or EC\$ 749.52 in further special damages for interest and penalties incurred on loan facilities granted to the claimant
- (d) The defendants will pay general damages as follows:

- (i) EC\$54,000.00 in compensatory damages;
 - (ii) EC\$25,000.00 in aggravated damages;
- (e) The defendants will pay pre-judgment interest from 18th February 2020 to the date of judgment at a rate of 3% per annum and post-judgment interest at a rate of 5% per annum from the date of delivery of the judgment;
- (f) Given that the clamant was partially successful in his claim, the defendants will pay two-thirds of the costs prescribed in accordance with the CPR.

Ermin Moise
High Court Judge



BY THE COURT
Chanelle P. Barrett
REGISTRAR