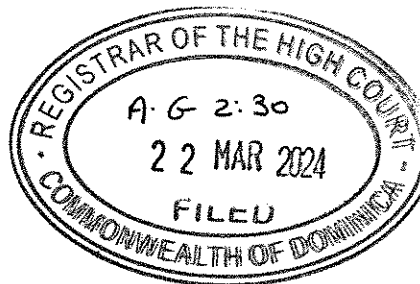


IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)



CLAIM NO: DOMHCV: 2021/0019

BETWEEN:

[1] STEVEN ASTAPHAN	-	First Claimant
[2] JARS (SALES AND SERVICES) LIMITED	-	Second Claimant
V		
[1] DELROY JULIEN	-	First Defendant
[2] ATTORNEY-GENERAL OF THE COMMONWEALTH OF DOMINICA	-	Second Defendant

APPEARANCES:

Ms Lisa deFreitas, of deFreitas, deFreitas and Johnson for the Claimants

Ms Pearlisa Morvan and Mr Kevin Julien, State Attorneys for the Defendants

2023: November 27th, 28th, 29th

2024: January 29th

March 6th

(Re-issued 21st March 2024)

JUDGMENT

Claimant

1. **COLIN WILLIAMS J:** The First Claimant, Mr Steven Astaphan, is a civil engineer. He is the Managing Director of the Second Claimant, JARS (Sales and Services) Limited, a company incorporated under the laws of the Commonwealth of Dominica. During the course of the

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judgment, the First Claimant may be referred to either as the First Claimant or as Mr Astaphan or included in the collective the Claimants.

2. There was an incident on the E.O. LeBlanc Highway in the early evening of the 15th of August 2020 which involved the First Claimant and the First Defendant, Mr Delroy Julien, a police constable who was attached to the Special Branch Unit of the Commonwealth of Dominica Police Force. In the course of this judgment, the First Defendant may also be referred to as Mr Julien, or Constable Julien, or Officer Julien.
3. The Second Defendant, the Attorney-General of the Commonwealth of Dominica, was joined in these proceedings pursuant to the **State Proceedings Act**, Chap 7:80 of the 1990 Revised Laws of the Commonwealth of Dominica.
4. On the 27th of January 2021, the Claimants initiated these proceeding against the Defendants, seeking damages for:
 - (i) Assault on the First Claimant;
 - (ii) Battery of the First Claimant;
 - (iii) False imprisonment of the First Claimant; and
 - (iv) Trespass to a Toyota Harrier motor vehicle, registration number TO-530 owned by the Second Claimant.
5. The Defendants denied all of the Claimant's assertions regarding liability. The Defendants contended that the Claimants were not entitled to any damages – whether general, exemplary or aggravated – or to any relief at all.

Background

6. The First Claimant resided at Morne Daniel. His neighbours were the Honourable Prime Minister, Mr Roosevelt Skeritt, and Dr Julian De Armas. When driving from the main road, one had to pass Mr Astaphan's property to get to his neighbour's residences.
7. At about 5.45 pm on the 15th of August 2020, Mr Astaphan went to his home at Morne Daniel. He was driving the Harrier, TO-530, that was owned by the Second Claimant. Two persons, Mr Clifton 'Keno' Soanes, and Ms Mindela 'Mindy' Elie, were with the First Claimant in the Harrier vehicle. The First Claimant and the passengers, shortly after getting to the First Claimant's home, left the First Claimant's property in the Harrier TO-530. The First Claimant did not return to the main road but drove in the direction of the homes of the Honourable Prime Minister and Dr De Armas. The First Claimant then brought the vehicle to a stop on the roadway leading to the properties of his neighbours.
8. Both Dr De Armas and then shortly thereafter the Honourable Prime Minister, Mr Roosevelt Skeritt, returned to Morne Daniel while the First Claimant was parked on the access road to Dr De Armas and Mr Skeritt's residences. There was some verbal interaction among the

neighbours. The police officers who provide security at the Prime Minister's residence intervened. Mr Astaphan proceeded to undress himself. The police personnel then ushered the Prime Minister into his house. One of the police security officers made a telephone call to the police headquarters, reporting the incident with Mr Astaphan. That call was received at the Special Branch Unit office at 6.05 pm.

9. Two vehicles with police officers from the Special Branch Unit were dispatched from Police Headquarters in Roseau to the Prime Minister's home. Some of the officers were in uniform and others were in civilian attire. The First Defendant, Mr Julien, was a passenger in the lead vehicle, GA-479. Constable Emran Joseph was also a passenger in that vehicle during the journey from Police Headquarters. Corporal Merlissa Esprit was the officer in charge of the team; she was in the second vehicle – a white pickup, TM-801.
10. The First Claimant, in the meantime, left Morne Daniel in the Harrier, TO-530 and headed towards Roseau, intending to drop off Mr Soanes and Ms Elie.
11. While Mr Astaphan was driving the Harrier TO-530 in a southerly direction along the E.O. LeBlanc Highway, at about 6.30 pm, in the area close to the S-Mart Supermarket, he was intercepted by the white police pickup vehicle, TM-801, in which Corporal Esprit was traveling. Mr Astaphan exited his vehicle, stripped off his clothes, save and except his boxer shorts. He instructed Ms Elie to video record the proceedings on her phone. There were verbal exchanges between Mr Astaphan and the police. The lead vehicle in which the First Defendant, Mr Julien, was traveling and which was ahead of the point of interception had, by the time of the video recording, looped back and returned to the scene.
12. Shortly after the First Defendant arrived at the scene, there was some physical contact between himself and the First Claimant as the police officer walked past Mr Astaphan. Ms Elie was able to capture almost half a minute of video footage at the scene on her cellular phone. The footage included the moment of contact between the First Defendant and the First Claimant.
13. Mr Astaphan was transported to the police headquarters in the white police vehicle, TM-801, along with Corporal Esprit. Constable Joseph also traveled in that vehicle on the journey back to the police headquarters. Mr Soanes and Ms Elie, who were passengers in the Harrier, TO-530, when it arrived at the scene, were also transported to police headquarters, but in the police vehicle, GA-479, in which Officer Julien was travelling.
14. Corporal Esprit instructed one of the Special Branch officers to drive the Harrier, TO-530, to the police headquarters.
15. While Mr Astaphan was at the Police Headquarters, his wife arrived there. The First Claimant was not charged with any offence. He was told that he could leave.

16. After Mr Astaphan left the Special Branch office, arrangements were made with Mr Soanes to leave Police Headquarters with the Harrier, TO-530, to drop Ms Elie home. The First Claimant and his wife remained at the Police Headquarters for a while after Mr Soanes left with the vehicle.
17. The First Claimant then sought to lodge a report against the police in relation to what transpired earlier at the E.O. LeBlanc Highway and he wanted to obtain copies of the police medical forms to take to a physician. The First Claimant's wife, who is a medical doctor, took Mr Astaphan to the Dominica-China Friendship Hospital where he was examined by Dr Mickey Elick.
18. Sometime on the following day, the 16th of August 2020, the First Claimant went to see a private physician, Dr Portia Meade-Thomas, at the Valens Medical Centre.
19. On the 29th of October 2020, the Claimants' counsel, Ms Lisa deFreitas, wrote a letter addressed to the Defendants as well as the acting Chief of Police, complaining of the events of the 15th of August 2020 and demanding, *inter alia*, an apology and compensation for false imprisonment of the First Claimant, trespass to property in relation to the Harrier vehicle, as well as for Mr Astaphan's pain and suffering.
20. There was no written response from the Defendants to Ms deFreitas's letter.
21. On the 27th of January 2021, this claim on behalf of the Claimants was filed against the Defendants.
22. At trial, the First Claimant and four witnesses – including two experts – testified for the Claimants. Six witnesses, including Mr Julien, testified for the Defendants.

Assault and Battery – the learning

23. Assault and battery are two separate and distinct torts. An assault has to do with the apprehension of fear, while battery is the actual application of force by one individual on another person. Often, an assault may precede battery. An assault is the threatening conduct. But there can be battery without any assault; and likewise, there can be an assault without any accompanying battery. (See **Jones v Sherwood [1942] 1 KB 127**).
24. Mr Gilbert Kodilinye in the first edition of his text, **The Law of Torts in the West Indies Cases and Commentary**, pointed out (at page 8) that:

“Although the distinction between assault and battery in the law of torts is clearly established, it has to be admitted that in West Indian and other jurisdictions the courts have tended to blur the distinction and describe as an ‘assault’ conduct which in strict law amounts to battery.”

25. Mr Kodilinye in an updated version of his text, titled **Commonwealth Caribbean Tort Law, Fourth Edition**, (at page 11) noted that:

"An assault is a direct threat made by the defendant to the plaintiff, the effect of which is to put the plaintiff in reasonable fear or apprehension of immediate physical contact with his person."

26. Similarly, the authors of **Clerk & Lindsell on Torts 19th edition**, at paragraph 15-12 cite **Collins v Wilcock [1984] 1 WLR 1172** at 1178 for the proposition that:

"An assault is an act which causes another person to apprehend the infliction of immediate, unlawful force on his person."

27. A battery is, going back to the ancient case of **Tuberville v Savage (1669) 1 Mod Rep 3**, "a direct act of the defendant which has the effect of causing contact with the body of the plaintiff without the latter's consent."
28. It is not every perceived battery that gives rise to an actionable tort. In **Donnelly v Jackman [1970] 1WLR 562** the alleged battery by a constable was classified as a mere trivial interference with a citizen's liberty, insufficient to take the constable outside of his duty.

Allegation of kicking

29. According to the Statement of Claim, at paragraph 6, after the First Claimant disembarked the Harrier, TO-530, "the First Defendant, a police officer who was dressed in plain clothes... arrived later on the scene, acting in the course of his duties or alternatively acting in his personal capacity, assaulted and beat the First Claimant whilst he was standing on the E.O. LeBlanc Highway and speaking with the police officers by deliberately, aggressively and unlawfully kicking him on his left shin."
30. Paragraph 12 of the Statement of Claim asserts Mr Astaphan "was unable to continue his usual daily routine and unable to continue his morning walks for six weeks thereafter."
31. Mr Astaphan in his witness statement at paragraphs 12 and 13, stated:

"Whilst I was standing on the median and speaking to Officer Joseph (surrounded by other officers), Constable Delroy Julien, the [F]irst named Defendant walked up to me aggressively. As he approached me he swung his foot and I feared that his foot was going to connect with my body.

"The First Defendant's foot then struck my left shin which caused me severe pain. I was embarrassed and humiliated that I had been confronted by the police in this manner and then kicked by a police officer on the Public Highway."

32. Then, at paragraph 34 of Mr Astaphan's witness statement, he explained:

"I continued to suffer with severe pain in my left shin for about six weeks after the incident. I was unable to stand for long periods. Prior to the incident, I walked and swam in the mornings for exercise but I was unable to resume my walks for about six weeks after the incident."

33. At trial, Mr Astaphan said during his amplification of evidence, that he viewed the video footage of the incident and that he saw the First Defendant "triggering his left leg towards my left shin and proceeding to walk away like he had done nothing."

34. Mr Astaphan was asked by his counsel for his response to what was stated by Officer Julien in the First Defendant's witness statement regarding what he [Officer Julien] did. Mr Astaphan explained that:

"When Mr Julien arrived on the scene, I was speaking to an officer in front of me... Mr Julien walked pass me in a manner not even looking forwards and sending his foot in a manner that will not draw attention."

35. The Claimant's witness, Ms Elie, said that on Mr Astaphan's instructions, she began recording on her Samsung Galaxy telephone after the First Claimant removed his clothes. Ms Elie said that: "A policeman came from the back and kick him [Mr Astaphan]." She continued: "I recorded where the police kick Steve [the First Claimant]."

36. In cross-examination Ms Elie said that the occasion on which Mr Astaphan was kicked can be seen in the video.

37. Mr Soanes, who was seated in the left front passenger seat of the Harrier vehicle stated during cross examination that he did not witness any contact between the First Claimant and the First Defendant.

A 'sweep'

38. The First Defendant denies kicking Mr Astaphan on his shin.

39. Mr Julien in his witness statement said that when he arrived on the scene, he saw the First Claimant partially naked and behaving in an aggressive manner. The First Defendant went on to state at paragraph 7 of his witness statement:

"I walked towards him and attempted to assist in subduing him by executing a leg sweep in an effort to assist the other officer to contain the situation."

40. Officer Julien was subjected to rigorous cross examination. The video recorded clip of the incident was played to him on several occasions and explanations sought from the First Defendant.
41. It was suggested to Mr Julien that when he made physical contact with Mr Astaphan that the First Defendant in fact kicked the First Claimant. Mr Julien, however, insisted that he did not kick Mr Astaphan.
42. It was put to Officer Julien that he intended to injure Mr Astaphan. The First Defendant said that it was not so. His intention was not to injure. According to Officer Julien his intention was to contain the situation at the time.
43. Counsel for the Claimants further put to the First Defendant that he did in fact injure the First Claimant's shin. Mr Julien indicated that:

"I did not make contact with Mr Astaphan's shin. I made contact with his foot, more precisely, the side of his foot."
44. Mr Julien said during cross examination that when he arrived on the scene, Mr Astaphan was advancing towards Officer Joseph. According to the First Defendant, Mr Astaphan's hands were in the air declaring that he was "a mad man. Look me. Look me." The First Defendant said he was of the view that Mr Astaphan "was a threat to the police officer with him advancing, hands swinging all over the place." He said it was less than 30 seconds after his arrival that he "went straight to Mr Astaphan to neutralize the situation."
45. Mr Julien said that there was sufficient time for him to assess the situation. The First Defendant said that his own actions were informed by and based on what he saw - Mr Astaphan approaching the officer.
46. The First Defendant was pressed on whether or not the leg sweep was a maneuver which is adopted to take an individual off their feet. Mr Julien responded by indicating that: "The reason why there was a leg sweep, I thought it was sufficient to subdue the individual, to contain the situation."
47. The First Defendant accepted that it was his intention to make contact with the First Claimant, repeating his earlier statement that he thought it was sufficient to subdue the individual and contain the situation at the time.
48. Constable Joseph arrived on the scene at the E.O. LeBlanc Highway in the same vehicle as the First Defendant. Constable Joseph was wearing "battle dress uniform", which he said was the camouflage clothes worn by police officers when performing various security duties. He acknowledged that he had a weapon in his possession.

49. Constable Joseph, when he was cross examined, said that when he arrived, he observed that "Mr Astaphan was naked; only wearing his boxers." Officer Joseph went on to say that Mr Astaphan "raised his hands in the air yelling and he walked up towards me with aggression saying 'look me; is me alyo want'." The officer stated that Mr Astaphan was speaking loudly long before approaching him (Mr Joseph). Constable Joseph said that at some point, Mr Astaphan stopped in front of him. They were facing each other.
50. Mr Joseph said that he noticed that Officer Julien walked past him and Mr Astaphan. At that time, the First Claimant was directly in front of the witness. Officer Joseph said that he "did not see anybody kick Mr Astaphan." Mr Joseph noted that: "Mr Astaphan was standing directly in front of me. I am looking in his face. How can I see something that may have happened on the ground?"
51. Officer Joseph recalled that Mr Astaphan "turned away from me shortly after Officer Julien walked past." Mr Joseph said he could not recall Mr Astaphan complaining at the time of being kicked by Officer Julien.
52. Counsel for the Claimants asked Constable Joseph to view the video clip. The witness agreed that it captured part of what transpired on the 15th of August 2020. Officer Joseph in responding to the Claimant's counsel said:

"I did not hear Mr Astaphan use profanity in the video. In it, I heard him say he was a mad man and that was my thought when I saw him walking up towards me. I heard him [on the video] say 'I am a mad man, but you all are more mad than me.' That thought did come to my mind. A man to my mind would not be naked on the E.O. LeBlanc Highway. So that thought did come to my mind."

53. Ms deFreitas asked officer Joseph whether he did not observe on the video that the First Defendant kicked the First Claimant. He stated that:

"No. I did not observe Officer Julien kick Mr Astaphan. From what I observed, Officer Julien's foot made contact with Mr Astaphan."

54. The Claimant's counsel in her written submissions (at 3.7), noted that Mr Astaphan was within "touching distance" of Officers Ferrol and Joseph at the time the First Defendant said he performed the leg sweep.

Punched in the face

55. The First Claimant alleged that there was a further incident before he, Mr Astaphan, was driven from the scene in the police vehicle, TM-801. The First Claimant said that while in the vehicle, he suffered injury to his face, the said injury having been inflicted by the First Defendant.

56. According to the Statement of Claim, after Mr Astaphan was seated in the back seat of the police vehicle, Mr Julien "proceeded to assault and beat the First Claimant by punching the First Claimant with his fists several times on his [the First Claimant's] face."
57. Mr Astaphan's testimony, at paragraph 14 of his witness statement, was that after he was seated in the police vehicle, next to Officer Louis, that Mr Julien "then entered his upper body through the open door of the back passenger seat where I was seated and moved aggressively toward me. I saw him lift his arm as if he was going to strike me and I was fearful that he would strike me."
58. The First Claimant then stated, at paragraph 15 of his witness statement:

"He [the First Defendant] followed through with several punches which connected with my face. The First Defendant administered at least five punches to my face. This caused me extreme pain. My face became bruised and swollen as a result of this beating by the First-named Defendant."
59. No one else testified to seeing the First Defendant close to Mr Astaphan when the First Claimant was in the police vehicle. No one else testified of seeing the First Defendant striking Mr Astaphan.
60. Ms Elie testified that besides what she captured on the video clip, she did not witness anything else between the First Claimant and the police. What she did see was that an officer came and slapped Mr Soanes twice.
61. Mr Soanes in cross examination said that while in the front seat of the Harrier, he saw the police speaking with Mr Astaphan. Mr Soanes testified that he did not see any police officer beat the First Claimant.
62. Mr Soanes stated that the First Defendant: "gave me two slaps. Put me in a van and take me to the station. Mr Astaphan left with the police in a van."
63. Mr Soanes said that Mr Astaphan was in the first police vehicle, while he and Ms Elie were in the second police vehicle along with Officer Julien.
64. The First Defendant in cross examination said he did not know where Mr Astaphan was seated in the white police vehicle. Other witnesses placed Mr Astaphan on the back seat of the police vehicle between Officers Joseph and Bernabe. The First Claimant, however, said he does not know who is Officer Bernabe but maintained that at the time he was struck in his face by the First Defendant, only one other officer was seated next to him.
65. Constable Joseph was crossed examined in relation to paragraph 10 of his witness statement in which he stated that Mr Astaphan "was then assisted into police vehicle TM-

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801." The witness said that his recollection was that it was "indicated to Mr Astaphan where he should sit." He agreed that Mr Astaphan complied.

66. Officer Joseph in his witness statement said that after Mr Astaphan "was seated on the back seat of the vehicle, I entered the said vehicle through the left rear door and sat beside the Claimant. I was accompanied by Officer Bernabe who entered the vehicle through the right rear door and sat on the right side of the Claimant." After Officer Joseph accompanied Mr Astaphan in the vehicle to police headquarters, he escorted Mr Astaphan to the Special Branch office.

67. The Claimant's counsel suggested to Constable Joseph that while Mr Astaphan was seated in TM-801 that Mr Julien punched the First Claimant in his face. Mr Joseph responded by saying that: "At no time was Officer Julien in police vehicle TM-801."

68. Later on, Constable Joseph said he "did not see anyone force, beat or threaten Mr Astaphan."

Medical Reports

69. Dr Elick was the first physician to examine the First Claimant. He did so at 8.49 pm on the night of the 15th of August 2020, shortly after Mr Astaphan left the Police Headquarters. Three CID officers were present at the hospital.

70. Dr Meade-Thomas examined the First Claimant on the 16th of August 2020. She could not remember what time of the day she saw Mr Astaphan.

71. Dr Meade-Thomas in her report, dated the 30th of September 2020, noted that:

"At the time of examination, Mr Astaphan was in conspicuous painful distress.

"Physical examination revealed tenderness and hyperemia to his left maxillary region, nose, left fronto-temporal region, anterior aspect of his left leg and right submandibular region where a 3 cm superficial laceration was evident."

72. When Dr Meade-Thomas saw the First Claimant, she required him to go for an x-ray. The doctor's report indicated that she later saw an x-ray dated the 19th of August 2020, which revealed: "Mild right-sided nasal septum deviation. Non-displaced fracture of the nasal bone."

73. Dr Meade-Thomas, gave expert testimony at trial in relation to her report.

74. The First Claimant's Patient Record from the Accident & Emergency Department of the Dominica-China Friendship Hospital was tendered by the First Claimant as part of the Trial Bundle. Neither the Claimants nor the Defendants presented the First Claimant's patient record from the Hospital to Dr Meade-Thomas so that she may provide any assistance with

explanations regarding any findings the hospital record contained, or to clarify any conflicts between the hospital record and her findings.

75. A number of things were apparent from the medical evidence:

- (i) While Dr Meade-Thomas' report spoke of Mr Astaphan's "painful distress," "tenderness," and "hyperemia," no medication whether for pain or swelling or anything at all was referred to either in her report or in testimony as being prescribed by her for the First Claimant.
- (ii) There was no suggestion that any injury seen on Mr Astaphan required suturing or bandaging. While there is reference to a superficial laceration to the right submandibular region, the fact that it was superficial indicates that it only affected the skin – the outer layer only.
- (iii) There was no recommendation for any sick leave based on the First Claimant's condition.
- (iv) Although Dr Meade-Thomas thought it necessary to order an x-ray to be done, there was no reference to any follow-up visit with the First Claimant after the initial consultation on the 16th of August 2020 or any need either to follow-up on the findings of the x-ray.
- (v) Both reports referred to injuries to the head. They, however, referred to different regions of the face.
- (vi) There was no clarification nor explanation for the differences between the two medical reports; for example, while the hospital's patient record refers to an injury to the First Claimant's posterior right hand, no mention is made of that injury in Dr Meade-Thomas's report; and while Dr Meade-Thomas's report states that "a 3 cm superficial laceration was evident" to the right submandibular region, there was no such observation made the previous day by the hospital's doctor who examined the First Claimant.
- (vii) On the night of the 15th of August 2020, part of the plan for the First Claimant outlined by Dr Elick was an x-ray of the left leg. The request made to Dr Meade-Thomas as an expert witness was to review all x-rays. The instructions given to Dr Meade-Thomas included a "review of the radiographic images of the facial bones and left tibia of the Claimant." However, no mention was made in her report about the x-ray of the left tibia, but only the facial x-ray of the 19th of August 2020 is referred to in her report.

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(viii) The medical examination done the day after the incident mentions injuries that were not described in the medical report that was done the same evening of the incident. The second report for example refers to "hyperemia to his left maxillary region... and right submandibular region where a 3 cm superficial laceration was evident."

76. The two separate medical reports of the doctors who saw the First Claimant on the 15th and 16th of August 2020 collectively indicate the First Claimant had some injury to his face, right hand and left leg. Collectively, the medical reports show that Mr Astaphan had some injury. The reports, however, cannot say who may have injured Mr Astaphan.

The video clip

77. The video said to have been recorded by Ms Elie and tendered in evidence was accepted by all witnesses to the events as showing part of what transpired on the afternoon of the 15th of August 2020.

78. No reliance was placed on the evidence of the Claimant's expert witness, Mr Sheldon Casimir, concerning the video as he distinctly lacked any qualifications, training, or experience in digital forensics. In any event, there was no question as to the origin or authenticity of the almost half a minute long video.

79. The video, despite its relative brevity, was of some assistance in providing insights into a number of things, including:

- a) The time of day that the incident occurred. The flash of the setting sun in the west would suggest that at that season of the year (mid-August), the time would be closer to 6.30 pm than to 6.00 pm.
- b) Insights into the conduct of the First Complainant whose testimony was that he was surrendering, while the First Defendant and police officers testified that Mr Astaphan was acting aggressively.
- c) Importantly, it captures:
 - the point when there was contact between Mr Julien and Mr Astaphan,
 - at which point the First Claimant and Ms Elie say that Mr Astaphan was kicked, while the First Defendant said that what he did was to execute a leg sweep.

80. What must be kept in mind is that the video contains only a brief part of a longer encounter, but nevertheless a very important part of the incident that goes to the First Claimant's assertion of being kicked on his shin and suffering an injury that impacted him for six weeks.

81. At the time of the incident, Mr Julien was dressed in civilian clothing. The First Defendant's response in cross examination that he was wearing a pair of sneakers at the relevant time was not disputed.
82. The video captures the image of the First Claimant standing directly in front of a police officer, (who was identified as Emran Joseph), who is dressed in military battle outfit but who does not appear to be holding any weapon. The First Defendant walks into the frame of the video from behind the right side of the police officer but facing Mr Astaphan. As the First Defendant was about to get alongside Mr Astaphan, one can see that he turns the instep of his left foot somewhat outwards so that the medial aspect of his foot (the area from his inner ankle to his great toe) goes towards the base of Mr Astaphan's foot. The motion formed part of the stride and movement of Mr Julien as he walked past the First Claimant.
83. One may loosely compare the movement of what was seen on the video to a tackle in football when one player tries to dispossess another of control of the ball. It was, however, an unsuccessful tackle.
84. The First Claimant remained standing after being contacted by the First Defendant. Shortly afterwards, the First Claimant turns around to look at the First Defendant who had already passed. The footage then ends. It was apparent that Mr Astaphan did say something when he turned to look in the direction of the First Defendant; however, what was said by Mr Astaphan was not captured on the video.

Surrender or aggression?

85. Mr Astaphan, in describing what transpired when he was stopped by the police stated that:

"In my state of shock, confusion, embarrassment and fear, I removed my shirt and shorts to show the officers that I was not armed. I also raised my hands in the air and asked Mindy to record the incident as I knew she was carrying her mobile phone."

86. The First Defendant and the witnesses for the Defendants, Constable Joseph and Constable Jefferson Ferrol, were of the view that the First Claimant was acting aggressively at the scene. Corporal Esprit also testified about the movement of the First Claimant's arms.
87. Counsel for the Claimants sought in her cross examination of the defendants' witnesses whom she asked to view the video clip, to elicit from them whether or not Mr Astaphan's raising of his arms was not in keeping with someone who was surrendering.
88. Ms deFreitas in her submissions posited that the video footage contradicted "the aggressive waving of arms...."

89. No one has said that at any time instructions were given to Mr Astaphan to surrender. That begs the question: Why then would the First Claimant need to raise his hands in the air, to use counsel's words at trial, as if surrendering? One may well ask not just why would the First Claimant be surrendering, but to whom – which officer was he surrendering to? Further, if indeed Mr Astaphan believed that he needed to surrender, or that he was demonstrating he was not a threat, why then would he not await instructions, indeed, why would he see the need to advance to the officer in military fatigues, coming within arm's length of the officer?
90. Based on what could be seen on the video clip, there clearly was sufficient basis for the officers to say that Mr Astaphan was acting aggressively and for their initial assessment he was perceived as a threat.

Public spectacle

91. The First Claimant contended that he "continued to feel embarrassed, humiliated and degraded as a result of the treatment meted out to me by the First named Defendant..."
92. In the Statement of Claim filed on the 27th of January 2021, the Claimants stated, at paragraph 17 (f), that Mr Astaphan was entitled to aggravated and exemplary damages: "The conduct took place in public, along a heavily trafficked highway in full public view."
93. Although the police, in the words of the First Claimant, "intercepted" Mr Astaphan on the E.O. LeBlanc Highway, no one demanded of Mr Astaphan that he must take off his clothes. A couple of the officers were wearing the police battle dress (camouflage) uniform; others were in civilian clothing. According to the Corporal Esprit, although she knew that some officers were armed, "they were carrying concealed weapons. No officer was carrying guns that were visible." In the video clip which showed two of the officers dressed in battle wear, no firearm could be seen on their person or in their hands.
94. It was apparent that the First Claimant, by stripping off his clothes on the public highway after the police "intercepted" him and by shouting out loudly, among other things, "I am a mad man! I am a mad man! But you all are more mad than me" was the one who authored and orchestrated the public spectacle. The (un)dress rehearsal he exhibited earlier that afternoon at Morne Daniel on the road outside of the Prime Minister's residence when he took off his clothes not only had a wider audience on the Highway but was accompanied by distinct instructions from the First Claimant to one of the occupants of the vehicle he drove to: "Record! Record!"
95. On the facts, it was the First Claimant who conducted himself in a manner that would no doubt attract attention as he paraded in his underwear, fully expecting and asking for the scene, including his actions, to be captured on camera.

96. On a related matter, the evidence concerning the video recording was that a police officer at the scene took possession of Ms Elie's cellular phone. Ms Elie testified that the phone was returned to her at the Police Headquarters later that evening. Ms Elie said she discovered that the video was deleted. Twelve days later, on the 27th of August 2020, someone named Evans Charles went to Ms Elie and asked for her phone so that he could retrieve the video. Ms Elie handed her phone to Mr Charles who retrieved the video and Mr Charles then used her phone to send the video to the First Claimant. From the evidence emerging during the cross examination of witnesses for the Defendants – evidence which was not disputed by the claimants - the video was distributed and published on social media. Ms Elie knows that when the video was retrieved by Mr Charles, he sent it to the First Claimant using her phone; she did not say that she distributed or circulated the video to anyone.
97. It is not necessary to consider who was responsible for publishing and distributing the video on social media. As far as the First Claimant's allegation of humiliation and embarrassment are concerned, the conduct of Mr Astaphan on the Highway and his instructions to record appeared to be an exhibition that he intended a record would be made of to be available for persons who were not present to be able to see.

False Imprisonment/Unlawful Detention

98. The First Claimant alleged that he was falsely imprisoned.
99. Ms deFreitas in her submissions quoted extensively from **Bastien v Kirpilani's Ltd, No: 861 of 1975**, a case out of Trinidad and Tobago, which was referred to in Mr Kodilinye's text. Mr Justice Deyalsingh in that case stated that:

“...to constitute false imprisonment there must be a restraint of liberty... a taking control over or possession of the plaintiff or control of his will. The restraint of liberty is the gist of the tort. Such restraint need not be by force or actual compulsion. It is enough if pressure of any sort is present which reasonably leads the plaintiff to believe that he is not free to leave, or if the circumstances are such that the reasonable inference is that the plaintiff was under restraint even if the plaintiff himself was unaware of such restraint.”

100. Counsel for the Defendants relied on the case of **Davidson v Chief Constable of North Wales [1994] 2 All ER 597**. That case involved the police arresting two customers of a store and detaining the claimant for two hours upon erroneous information about shop lifting. A store detective had given information to the police that the two persons took a cassette without paying for it. They were released later without charge when the shop assistant telephoned the police station and indicated that the plaintiff in fact paid for the cassette. The Court of Appeal upheld the trial judge's ruling that the police had no case to answer for false imprisonment.

101. The tort of false imprisonment and unlawful arrest are concepts that are quite familiar to the criminal law. In this matter their occurrence must be decided by applying the standard of proof in civil matters, that is, a balance of probabilities.

102. To effect an arrest, a police officer must touch or confine the body of the person to be arrested unless that person submits by words or action.

103. The authors of **Blackstone's Criminal Practice 2017** in looking at the legal characteristics of an arrest, at paragraph D1.15 note that:

"Arrest is an ordinary English word and whether or not a person has been arrested depends not on the legality of the arrest but on whether he has been deprived of his liberty to go where he pleases (**Lewis v Chief Constable of the South Wales Constabulary** [1991] 1 All ER 206). A second approach is that context and purpose are relevant. In **Austin v Commissioner of Police of the Metropolis** [2009] 1 AC 564 the House of Lords distinguished between a deprivation of liberty and restriction on movement. Whether a situation amounts to deprivation of liberty as opposed to a restriction of movement is a matter of degree and intensity and is highly fact-sensitive. A whole range of factors has to be considered including the individual's specific situation, the context in which the restriction occurs and the purpose of the confinement or restriction"

104. False imprisonment "is the unlawful and total restraint of the personal liberty of another, whether by constraining him or compelling him to go to a particular place or by confining him in a prison or police station or private place or by detaining him against his will in a public space." (**Archbold 36th Edition** paragraph 2801)

105. The Defendants, however, contend that the First Claimant was never unlawfully detained, neither was he falsely imprisoned.

106. Corporal Esprit noted that on the day in question she was traveling in a white vehicle police vehicle, TM-801, and she instructed the driver to intercept the Harrier, TO-530, so that she could speak with the occupants about the report she received earlier about what transpired at Morne Daniel outside the Prime Minister's residence. Corporal Etienne noted that, given the fact of Mr Astaphan's stripping off of his clothes, the scene "was becoming chaotic and noisy and in an attempt to contain the situation, I invited the Claimant to speak with me at Headquarters which was more private and he agreed."

107. The evidence from the witnesses for the Defendants was that Mr Astaphan voluntarily left the scene at the E.O. LeBlanc Highway with them. The term used was that the First Claimant was "invited" to go to the station and he went with them.

108. The First Claimant in his witness statement stated that:

"Officer Louis led me to the back passenger seat of a white double cab pickup. I was made to sit next to Officer Louis."

109. The First Claimant said that he did not hear any police officer ask him to accompany them to the police station. He noted as well that he could not just enter a police vehicle, "someone will have to hold me and guide me."
110. Constable Ferrol said that he heard one of the officers ask Mr Astaphan to accompany them to Police Headquarters. The First Claimant during amplification of his evidence regarding the statement by Constable Ferrol about the First Claimant having agreed to accompany the police to Headquarters, explained that when the police "became aware" of how things were unfolding at the scene they said "let's get out of here." The First Claimant went on to say that "the police officers became uncomfortable and said let's get out of here."
111. Mr Astaphan said that: "At no time was I subdued on the ground. No time officers subdue or restrain me. None of the officers had their hands on me."
112. In cross examination, Mr Astaphan stated that the officers "did not touch me except to guide me."
113. Could it be said that the First Defendant falsely imprisoned the First Claimant – if indeed Mr Astaphan was falsely imprisoned?
114. Mr Julien did not "intercept" the First Claimant. The uncontroverted evidence was that Mr Julien arrived on the scene after Mr Astaphan had already disembarked the Harrier.
115. The decision to have Mr Astaphan relocated from the scene of a public spectacle on the Highway to the privacy and calmness of the Police Headquarters was not made by the First Defendant and no liability could be attached to Mr Julien for the First Claimant going to the Police Headquarters.
116. Further, even if it was the First Defendant's decision that the First Claimant ought to be dealt with at the Police Headquarters rather than publicly on the Highway, considering all the circumstances at the time, it was a reasonable and justifiable decision and not one to attract liability.
117. Notably, the allegations of unlawful detention and false imprisonment in this case, however, were not directed towards the First Defendant. Rather, in the Statement of Claim, there was reference to unspecified "police officers." However, the only police officer named in the present claim was the First Defendant, Mr Julien.
118. The fact that no allegation of false imprisonment or unlawful arrest was being directed at the First Defendant was sufficient to conclude that that part of the Claim cannot succeed.

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119. If the actions of stopping the First Claimant and his subsequent journey to the police headquarters could have been attributed to the First Defendant and by extension the Second Defendant, it is clear that there was no unlawful detention and false imprisonment of Mr Astaphan. It is apparent that there was a good and lawful reason for wanting to speak with Mr Astaphan. The police, having stopped the First Claimant on the E.O. LeBlanc Highway and observing Mr Astaphan's conduct, made a reasoned and sensible decision to invite him to Police Headquarters. The First Claimant in complying with the request of him by the police to accompany them to the Police to Headquarters cannot ground an action for unlawful detention and false imprisonment.

Findings – false imprisonment/unlawful detention

120. Upon reviewing the evidence, there was nothing that emerged that tended to show that the First Defendant unlawfully detained or falsely imprisoned Mr Astaphan. Indeed, on the facts as presented, it would be a stretch to consider that the First Claimant was in fact either arrested or imprisoned on the 15th of August 2020.

121. Even though Mr Astaphan was transported to the Police Headquarters in a police vehicle, the evidence, as accepted, points to the First Claimant consenting to the request of Corporal Esprit to accompany the police to the station. When the police intercepted Mr Astaphan on the E.O. LeBlanc Highway, it was because they wished to speak with the First Claimant about what transpired about half an hour earlier, in the afternoon of the 15th of August 2020. The police had a legitimate reason for wanting to speak with the First Claimant.

122. Given the First Claimant's public display of stripping off his clothes and his general conduct, it was prudent for a police officer to ask Mr Astaphan if he would go to the police station with them. That was done. No one informed him that he was under arrest, no one touched and confined Mr Astaphan's body.

123. Notably, even after the police spoke with the First Claimant at the police headquarters and told him that he could leave, the First Claimant remained for some time afterwards at the station seeking to lodge a report against the police even though, by his own acknowledgement, the then Deputy Chief of Police, Mr Lincoln Corbette advised him to return on a specified date [Monday the 17th of August 2020] to lodge a complaint. The First Claimant opted to remain in the precincts of the same place he is now claiming to have been falsely imprisoned.

Trespass to the vehicle

124. The Claimants allege that there was trespass to the Harrier vehicle, TO-530. The allegation was outlined in the Statement of Claim at paragraphs 13 and 14:

"One of the police officers, acting in the course of his duties drove the vehicle of the First Claimant from the E.O. LeBlanc Highway where the Claimant was pulled over by the police officers, to the Police Headquarters in Roseau without the knowledge or consent of the Claimants or either of them.

"By reason of the aforesaid trespass to the property of the Second Claimant, the Claimants suffered loss and damage in that the Claimants were deprived of the use of the Harrier."

125. Mr Astaphan's evidence was that when he was leaving the Police Headquarters on the night of the 15th of August 2020 and he got to the ground floor, he was surprised to see the Harrier vehicle, TO-530, in the courtyard of the police compound. He said that he had "not given permission to any member of the police force or any person for that matter to drive the vehicle."

126. How did the Harrier vehicle come to be at Police Headquarters?

127. Of the two witnesses for the Claimants who were with the First Claimant at the E.O. LeBlanc Highway, one of them, Mr Soanes, in cross-examination said that on the journey from the Highway to Police Headquarters, Mr Astaphan was in the first police vehicle, Ms Elie and himself in the second police vehicle and that TO-530 (the Harrier) was behind, being driven by an unidentified police officer. Mr Soanes said that he was in the same vehicle as the First Defendant.

128. It is apparent that the First Defendant did not drive the Harrier TO-530 from the E.O. LeBlanc Highway to the Police Headquarters. There was no evidence to suggest that he did. Not only was there no evidence that the First Defendant did not drive the Harrier vehicle TO-530 to Police Headquarters, but there was actual evidence as to who did.

129. Additionally, there was absolutely no evidence to suggest that the First Defendant instructed or directed anyone to drive the vehicle or that he did anything to cause the vehicle to be moved.

130. Corporal Esprit, who headed the team of Special Branch officers who arrived at the E.O. LeBlanc Highway testified that she spoke with the First Claimant and informed him that his vehicle would be brought to Police Headquarters and he agreed to that. She then gave instructions to Corporal Earl Louis to drive the Harrier vehicle to the station.

131. The First Claimant however denies speaking to any female officer on the scene.

132. The testimony of Corporal Esprit that she spoke with the First Claimant prior to the moving of the Harrier vehicle was believed. The First Claimant's assertion that he did not speak to any female officer on the scene cannot be believed, bearing in mind as well, that the officer in charge of the team at the scene was Woman Police Corporal Esprit.

133. Further, alternatively, the decision to move the vehicle TO-530 to the Police Headquarters was a wise and prudent one in the circumstances. Mr Astaphan said that when he stopped the vehicle, he exited it, leaving the keys in the vehicle. The First Claimant and the two passengers were all taken in police vehicles to the Police Headquarters. The Harrier TO-530 was on the E.O. LeBlanc Highway, which was a busy motorway leading into the capital, Roseau, from northern areas.

134. The evidence was that where TO-530 was, it (understandably) interfered with the free flow of traffic along the highway and drivers of vehicles had to navigate off the main roadway onto the area in front of S-Mart to get pass. In cross-examination the First Claimant said:

"My vehicle was where I stopped. From my recollection vehicles had to go on the edge in front of S-Mart; but I can't say it was an obstruction."

135. It is difficult to conceive how the vehicle could not be an obstruction to traffic when vehicles had to navigate "on the edge in front of S-Mart" in order to pass.

136. In such a situation, any decision to first of all eliminate the traffic obstruction and the decision to also ensure that the Claimant's property was not interfered with if left unattended on the roadway, appear to be just and reasonable.

Findings – Trespass to vehicle

137. There was absolutely no trespass to the Harrier, TO-530, by the First Defendant. The First Defendant had nothing at all to do with the decision to move the vehicle to police headquarters nor with the physical movement of the vehicle.

138. In the circumstances where the First Defendant did not drive the vehicle, neither did he cause the vehicle to be driven to the Police Headquarters, the claim for trespass by the Defendants wholly fails. The First Defendant, Mr Julien, had nothing to do with the removal of the vehicle from the Highway to the police headquarters.

139. In any event, the evidence of Corporal Esprit is believed, that she spoke to the First Claimant at the scene informing him that the vehicle would be brought to the Police Headquarters and that the First Claimant agreed.

140. Even if the First Claimant was not consulted prior to removing the vehicle, the decisions to: (i) remove the obstruction from the highway, (ii) to secure the vehicle and (iii) to bring it to the location where the First Claimant was, were sensible, reasonable and prudent steps taken by the police.

Credibility Assessment

141. The credibility of witnesses plays a part in resolving matters in dispute at a trial, given the circumstances where the narrative of one party states one thing, while the narrative from another party states something different.
142. The assessment of a witness's credibility involves an assessment of whether that witness gave accurate, truthful and reliable evidence. Of necessity it involves an assessment of whether a witness was lying.
143. The assessment of a witness's reliability involves a number of things. It is not restricted to evaluating demeanour. Indeed, visible and audible signs, including voice tones, facial expressions, body language, the manner of testifying and a witness's attitude while testifying are important. But credibility assessment includes an examination of the testimony for internal consistency, plausibility and logic; whether the testimony was inconsistent with the witness's evidence on other occasions; as well as whether the testimony was consistent with other evidence and corroborated in any way or, alternatively, strongly contradicted, by other evidence which is accepted to be reliable.
144. In evaluating the First Claimant, Mr Astaphan, he did not impress as a witness of truth. This view of Mr Astaphan's unreliability was not grounded solely in the subjective assessment of his demeanour. There were multiple instances, some which at first view were seemingly trifling, but which ultimately conclusively demonstrated that the First Claimant did not observe his duty of candour and truthfulness. For example:
- a) Mr Astaphan, when describing what occurred at Morne Daniel on the afternoon of the 15th of August 2020, said: "We left my property and stopped on the Public Road at a point which was close to the house of Dr Julian De Armas." The testimony from the First Claimant's witness, Ms Elie, is that upon leaving Mr Astaphan's home, they intentionally and deliberately went to the premises of the Prime Minister. She testified: "I told Steve [the First Claimant] I'd like to see the house of the Prime Minister. I hear everyone speaking about [it]. We drove slowly to the Prime Minister's house, which is on the main road. I was told by Steve this is the house of the Prime Minister. We were in the vehicle...We stay in the vehicle 5 – 10 minutes. We had to move up... [we] came to the entrance of the Prime Minister. The vehicle we let pass was Dr Julien." The details provided by Ms Elie were conspicuously missing from the First Claimant's testimony and at variance as to the location of the Morne Daniel encounter.
 - b) Mr Astaphan's narrative as to what occurred outside the Prime Minister's residence prior to the incident, was diametrically different from all the other witnesses, including the two witnesses who testified on behalf of the Claimants. The narratives which only the First Claimant stated and which contrasted with every other witness at the scene included:

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- i. The fact that Dr Julien De Armas came to the area prior to the Prime Minister. Mr Astaphan in cross-examination stated that he did not see Dr De Armas "at that point in time" but that Dr De Armas arrived during the exchanges between the Prime Minister and himself. All the other witnesses (for both the Claimants and the Defendants) were pellucid that the order of arrival of the First Claimant's neighbours was the reverse order to what the First Claimant described. Ms Elie testified that: "The vehicle we let pass was Dr Julien... [he] was the driver. Steve [the First Claimant] came out from the driver side and went and spoke to Dr Julien. A next vehicle was coming up at the same time, which was driven by the Prime Minister. When he put down his dark glass I saw it was the Prime Minister."
 - ii. While Mr Astaphan sought to characterize as cordial his exchanges with Dr De Armas, in the words of the Claimant's witness, Ms Elie, there was "a little confrontation" between Mr Astaphan and Dr De Armas. In cross examination Ms Elie used the term "altercation" to describe the interaction at Morne Daniel. However, Mr Astaphan for his part said he told Dr De Armas that he "did not have any issue" with the doctor and portrayed the conversation as cordial, including references to the doctor's children visiting the Claimant's house.
 - iii. Mr Astaphan further claimed in cross-examination that at no point was he asked to leave the scene at Morne Daniel, while the witnesses for both sides were *ad idem* that not only was the First Claimant asked to leave, but Mr Soanes tried to pull the First Claimant away, and Mr Astaphan resisted. Ms Elie for example in cross examination said: "Keno [Mr Soanes] did pull him [the First Claimant] and we left... is his friend; he try to pull him. When he [Keno] pull him [Mr Astaphan] he [Keno] slide." Mr Soanes in cross examination said: "I asked Mr Astaphan to leave... When I pull him, he tell me leave him." Mr Soanes demonstrated the hand movements of the First Claimant in resisting being pulled. Mr Soanes continued: "As a result, I fell... I got off the ground, Mr Astaphan put back on his clothes, I told him let's go,"
- c) Two weeks after the incident on the E.O. Leblanc Highway, Mr Astaphan instructed his lawyers to write to the Defendants and the Acting Chief of Police, stating that he was only told he could leave the station at about 9.00 pm on the 15th of August 2020. That statement was repeated in his Statement of Claim. The allegation of being told "[a]t about 9 p.m" that he

could leave Police Headquarters was repeated once again by the First Claimant in his witness statement and adopted in his evidence in chief. However, the documents that the Claimants filed in this matter show that the First Claimant was first processed at the Hospital Accident & Emergency Department by the reception personnel at 8.34 pm before seeing the doctor. The First Claimant did a number of things after he was told he could leave Police Headquarters and then journeyed to the hospital enabling him to be preliminarily assessed at 8.34 pm. The First Claimant was then seen by the doctor fifteen minutes later, at 8.49 pm. Among the things the First Claimant did before going to the hospital were: making arrangements with Mr Soanes to take Ms Elie home in the Harrier vehicle, and conversing with various officers including seeking to make a report, as the First Claimant said, "to the charge office to get a paper so the doctor could fill out because I was reporting battery by police."

- d) In the First Claimant's witness statement, which he adopted as his evidence, the First Claimant, Mr Astaphan, described how while traveling on the E.O. LeBlanc Highway on the 15th of August 2020, the police vehicle approached from the opposite direction and he "veered to my right (westerly) and drove on to the median and stopped" in order to avoid a collision. He noted earlier in the witness statement that "the left lane is separated from the right lane by a concrete median." (This median not only separates traffic going in either direction, but is sufficiently wide to accommodate a vehicle without impeding the flow of traffic in either direction). Under oath in Court, the First Claimant expressly denied veering to the right. For completeness, however, it must be noted that Mr Astaphan's original narrative of veering to the right was supported in the witness statement of Mr Soanes, who said that the First Claimant "pulled to the right and stopped the vehicle on the concrete median dividing the left lane of the highway from the right lane of the highway."
- e) The First Claimant under oath denied that at the scene on the Highway he shouted out: "I'm a mad man! I'm a mad man!" and maintained his denial even when faced with the very recording that was tendered on the Claimants' behalf which captured clearly him saying those words. Mr Astaphan claimed that it was an officer who referred to him, the First Claimant, was a madman.
- f) The First Claimant, in response to a question from his counsel said: "If I am right, Melissa Esprit is a female. At no time was I in direct corresponding contact with a female officer." When the First Claimant was questioned in cross examination as to whether he had any recollection of speaking to a female officer, he said: "A female was there; but she was not speaking to me. She did not tell me about receiving any

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report." However, Corporal Esprit was the officer who headed the Special Branch team that left police headquarters; it was the vehicle she was traveling in that intercepted the First Claimant on the E.O. LeBlanc Highway, and she testified as to her exchanges with the First Claimant.

145. Having closely observed all the witnesses and carefully evaluated them, it was clear that Corporal Merlissa Esprit was a demonstrably truthful, honest and believable witness. Her testimony could not be impugned. Constable Emran Joseph appeared to be a witness whose testimony could be relied on.

146. The First Defendant also withstood extensive and searching cross-examination by counsel for the Claimants. Although the First Defendant preferred on occasions to repeat in specific words his recollection, he still impressed as an honest and truthful witness. He conducted himself appropriately while in the witness box and maintained his composure.

Findings re: assault and battery

147. The witness statements and oral evidence of the First Claimant and the Claimants' witness, Ms Elie, support the view that the First Defendant delivered a kick to the First Claimant's leg, which the First Claimant said caused injury.

148. Having had the benefit of viewing on multiple occasions the video recorded at the E.O. LeBlanc Highway on the 15th of August 2020, it is apparent that the First Defendant's testimony as to what transpired was an accurate account. The First Defendant arrived at the scene; he heard and saw Mr Astaphan's conduct; he saw Mr Astaphan advance towards a uniformed police officer; he made an effort to bring the situation under control as he walked past Mr Astaphan by executing a leg sweep.

149. The First Defendant was unsuccessful in his effort. There was some limited contact between the First Defendant's left foot and most probably the distal aspect of the First Claimant's left foot. The First Claimant remained standing and apparently turned to say something to the First Defendant. At that point the video clip ended.

150. At the time of the contact, the First Claimant was directly in front of Officer Joseph, facing the constable. It is improbable that the First Claimant could have seen the maneuver and perceive an assault, as at the time he was looking directly at Officer Joseph.

151. Mr Julien insisted that he did not kick the First Claimant on the Claimant's shin. Upon viewing the video, it does not appear that the First Defendant's foot made contact with the First Claimant's shin. Neither was there any appearance of a "triggering of the foot" by the First Defendant as the First Claimant said on oath.

152. In any event the contact was not only by and large minimal, but carried out in circumstances where Officer Julien considered it necessary to act reasonably.

153. The medical report of Dr Meade-Thomas, sandwiches a reference to an examination of the "anterior of his left leg" between references to examinations of the head, that is, between an examination of the "left fronto-temporal region" and the "right submandibular region."
154. The First Claimant's allegation that he was unable to continue his morning walks for six weeks following the incident presents like a grand exaggeration if not an invention.
155. There was no doubt that there was contact with the First Claimant by the First Defendant when Mr Julien arrived at the scene. It was minimal contact. Officer Julien went past the First Claimant and towards the Harrier, TO-350, where Ms Elie who was video recording was seated in the back seat, behind the driver's seat.
156. The video clip evidence recorded by Ms Elie proved to be most helpful with regard to the contact between the First Claimant and the First Defendant. It proved to be more persuasive than the manner in which some witnesses may have characterized and portrayed what occurred, or indeed what counsel may have suggested. There was no kick directed to the First Claimant's shin.
157. The First Claimant submitted medicals detailing injuries to his face. His allegation is that while he was seated in the police transport, he was punched in the face several times by the First Defendant.
158. The Claimant's witnesses do not support the First Claimant on the issue of being punched in the face by the First Defendant.
159. Mr Soanes, who was in the front seat of TO-530 said that the First Defendant came to him, ordered him out of the vehicle then opened the door. He said that the First Defendant held on to his (Mr Soanes') clothing, slapped him, and then started to question him. He was taken to the back seat of the police pickup. Ms Elie was also brought to the back of the pickup and they were taken to Police Headquarters.
160. The First Defendant was in the same vehicle as Mr Soanes and Ms Elie. Mr Soanes never saw any officer hit the First Claimant; but he stated that Mr Julien slapped him. His evidence was "Mr Delroy [Julien] gave me two slaps. Put me in a van and take me to the station. Mr Astaphan left with the police in a van." It is accepted that the First Defendant was with the Claimant's witnesses, Mr Soanes and Ms Elie, and not with the First Claimant.
161. Not only did the Claimants' witnesses locate the First Defendant away from the vehicle that the First Claimant was in, but the three witnesses for the Defendants who were at the Highway said the First Defendant did not assault nor beat the First Claimant while the First Claimant was in the police vehicle.
162. Ms deFreitas in her written submissions, at 3.19, noted in part that:

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"Mr Soanes recounted being slapped twice by the officer in an unprovoked manner. Mr Soanes' evidence, corroborated by that of Ms Mindela Eli[e] and uncontested by the Defendants, gives significant weight to a pattern of aggressive conduct exhibited by Officer Julien on August 15, 2020."

163. The hurdle that the submission on "pattern of aggressive conduct" faces in trying to extend it to the First Defendant doing anything to the First Claimant while the First Claimant was in the police vehicle, is that the First Defendant could not be both in the presence of Mr Soanes (and Ms Elie) at GA-479 and with the First Claimant in TM-801 at the same time. Mr Soanes was taken from the Harrier, TO-530, to GA-479, while the First Claimant was in TM-801.

164. The First Defendant was neither at nor in the vehicle that the First Claimant was in, when the First Claimant states he was punched at least five times in his face by the First Defendant.

165. The First Claimant's narrative that he was in the police vehicle seated in the middle of the back seat next to a police officer when the First Defendant "lunged his upper torso into the left passenger door and punched me with his fist multiple times, connecting with my left cheek" was unconvincing, improbable and not believed.

166. The issue is not whether or not the First Claimant's face bore marks of injury when he was medically examined, but whether it was the First Defendant who caused the injury. In order to make the First Defendant liable for assault and battery in relation to those injuries, it must be shown either that it was the First Defendant who inflicted or caused to be inflicted any injury, or more than likely the First Defendant did inflict or cause to be inflicted any injury. The First Claimant needed to only prove on a balance of probabilities that the First Defendant was the person who caused him injury. However, it is found to be a fact that the First Defendant did not do what the First Claimant alleges.

167. Only the First Claimant said that it was the First Defendant who entered the police vehicle and struck him. There is no requirement for corroboration of his evidence. In this case, given the overwhelming evidence placing the First Defendant elsewhere and given the First Claimant's credibility challenges, Mr Astaphan's evidence was not believed.

Conclusion and costs

168. Having heard all the evidence and having closely observed the witnesses and carefully evaluated their credibility, the First Defendant and his witnesses were more credible witnesses. Where there were issues of fact, the evidence of the First Defendant and the witnesses for the Defendant was preferred.

169. The First Claimant has failed to prove that he is entitled to damages for assault, or battery or false imprisonment by the First Defendant.

170. The claims for assault, battery and false imprisonment are dismissed in their entirety.

171. The Second Claimant could not prove that there was any trespass to the Toyota Harrier motor vehicle, TO-530, by the First Defendant. Indeed, not even in the pleadings was it alleged that the First Defendant had anything to do with the vehicle. In fact, the Defendants since the 30th of June 2022 indicated how the vehicle came to be moved to the police headquarters and who drove it.

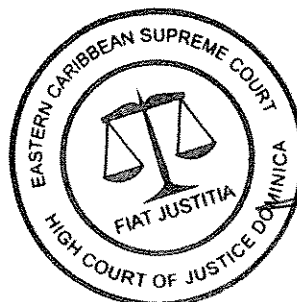
172. The claim for trespass is dismissed.

173. Prior to the commencement of the trial, the parties stated that prescribed costs applied to this unvalued claim. Before the delivery of the judgment, their consensus was sought on a figure for costs. The Claimants must pay costs of Five Thousand Dollars (\$5,000.00) to the Defendants within the next six weeks.

Colin Williams

High Court Judge

By The Court



[Handwritten signature]
Registrar (Ag)

