

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2020/0140

BETWEEN

KENSON KING

CLAIMANT

and

ATTORNEY GENERAL

1st DEFENDANT

BRION DUNCAN

2nd DEFENDANT

DWIGHT JAMES

3rd DEFENDANT

ALEX PRIMUS

4th DEFENDANT

Before: The Hon. Mde. Justice Esco L. Henry

High Court Judge

Appearances:

Ms. Shirlan Barnwell for the claimant.

Mrs. Joezelle Allen for the defendants

2023: Feb. 16
May 4

JUDGMENT

BACKGROUND

[1] **Henry, J.:** The claimant Mr. Kenson King alleged that he was wrongfully arrested and wrongfully



imprisoned at the hands of three police officers (Sgt. Brion Duncan, Cpl. Dwight James and Cpl. Alex Primus) on May 22nd 2020. He claimed further that he was wrongfully detained for about thirty-two hours and released without being charged with a criminal offence. He sued the Crown and the three police officers for general, aggravated and exemplary damages and costs.

- [2] Messieurs Brion Duncan, Dwight James and Alex Primus acknowledged that Sgt. Duncan arrested Mr. King. They averred that he was arrested for the offence of inciting violence and threats in relation to a Facebook post made by him. They accepted that he was detained for several hours pending the outcome of further investigations. They maintained that the arrest and detention were lawful and they denied liability. I have found the defendants liable.

ISSUES

- [3] The issues are three-fold: -
1. Whether Kenson King was arrested unlawfully?
 2. Whether Kenson King was unlawfully detained?
 3. To what remedy, if any, is Kenson King entitled?

ANALYSIS

Issue 1 – Was Kenson King unlawfully arrested?

- [4] Kenson King is employed as a prison officer at the prison in Kingstown, Saint Vincent. Around 8.45 a.m. on May 22nd he was there, when Officers Brion Duncan, Dwight James and Alex Primus. Sgt. Duncan met him and told him that they were there to arrest him in connection with a Facebook post made by him. Sgt. Duncan showed him a printed copy of the post and he read it.
- [5] The full text of the post is relevant. It states:
- ‘See when I speak about Ralph allyo does vex (sic). Now, i (sic) have an uncle named mohammed King. Some know him as Hanniffe. He has two licensed firearms. He keeps on terrorizing his brothers. I had to personally give him a warning in 2015. Numerous reports have been made against him by my father and now Archie his younger brother. He keeps on threatening my uncle to shoot him. They both live in the family house. Now, my uncle

went to the colonaire police station to make a report against Haniffe just in the week. The police came and confiscated the guns. Now this morning haniffe can have the guns, firing shots in the air and bragging THAT HE CALLED RALPH AMD (sic) RALPH CALLED THE COLONAIRE POLICE STATION AND THREATENED THEM, ASKING THEM IF THEY GAVE LICENSE FIR (sic) GUNS TO HANNIFFE. Now you remember what happened with the nurse that Mitch killed? I know this is not gonna be a repeat of that. When i (sic) decide to take matters into my hands, i wanna see who is gonna come tell me something.' (Underlining added)

- [6] Mr. King recalled that Sgt. Duncan told him that he was being placed under arrest 'for making a Facebook post that is liable to cause fear and alarm in the public'. He said he asked the officer which part of the post would cause fear and alarm to the public, to which he replied, 'the last part about Nurse Taylor'. He enquired how is that likely to cause fear and alarm to which the officer replied, 'I do not know'. He was placed under arrest and taken to the Major Crimes Unit at the central police station in Kingstown. After about 45 minutes he was escorted to the Criminal Investigations Department ('CID').
- [7] According to Mr. King, he spent the night on a chair at the CID. The next day his lawyer Mr. Jomo Thomas visited him having already done so the previous day. Mr. King spent that second day on a chair in the CID. At around 11.00 a.m., Sgt. Duncan asked him if he was willing to give a statement and cautioned him. He declined to do so whereupon Sgt. Duncan left him. His lawyer returned later that day and made certain inquiries of the police. At around 8.00 p.m., he was released without being charged with an offence.
- [8] Mr. King also recounted an incident which took place on May 18th 2020 at his home in Park Hill which he considered to be related to his arrest. He explained that while at home, he saw a pickup containing police officers stop at his gate. One of the officers introduced himself as Corporal Jack and told him that they had come to arrest him. He inquired what was the reason for the arrest. Cpl. Jack replied that he did not know. When Mr. King refused to accompany him unless he was told why he was being arrested, Cpl. Jack placed a telephone call. Mr. King claimed that he overheard

the conversation. He was able to hear the person on the other end of the line say to Cpl. Jack that he did not know the reason for the arrest. Cpl. Jack reportedly made another telephone call and then told Mr. King that he was being arrested for violating various sections of the **Cybercrime Act**. King asked which sections to which Cpl. Jack responded that he did not know.

[9] Mr. King then telephoned his attorney and permitted her to speak with Cpl. Jack. She notified the officer that if he was unable to state the reason for the arrest, Mr. King would not accompany him. The police officers left at that point. Mr. King admitted that he made the Facebook post but denied that it amounted to a threat on anyone's life or that he thereby threatened to murder or kill anyone. He expressed consternation that he was still detained for thirty-two hours to facilitate ongoing investigations despite his admission.

[10] Mr. King testified that on reading the Defence, he interpreted statements in it to mean that the defendants did not charge him following his May 22nd arrest, because they determined after further investigations that they did not have sufficient evidence to charge him. He stated that to be required to sit for about thirty-two hours, except when showering, was oppressive. He said that it is difficult to sleep in that position. According to him, the conditions were deplorable. He complained about the stench of urine emanating from the cell located about 3 feet from where he was required to sit and said that it was an assault on his dignity and integrity and was degrading. He was embarrassed and distressed.

[11] He testified that the police never inquired whether he had a gun and they conducted no search of his house for weapons. He denied being told by Sgt. Duncan, Cpl. James or Cpl. Primus that he was being arrested on suspicion of threatening to commit the offence to kill or murder anyone or other offence as asserted by them in their Defence. He stressed that his right to liberty must not be treated lightly or with scant regard. He claimed that the police did not protect his right to liberty and he stressed that the defendants must not be allowed to abuse their power and arbitrarily take away his liberty. In his opinion, he was punished for expressions that do not amount to a criminal offence.

- [12] Mr. King maintained this stance under cross-examination. He said also that the name 'Ralph' in his Facebook post refers to the Honourable Prime Minister of Saint Vincent. He denied that the words 'taking matters into my own hands' are a reference to him murdering someone.
- [13] Sgt. Duncan averred that he has been a police officer with the Royal Saint Vincent and the Grenadines Police Force ('RSVGPF') since October 8th 2004. He has been attached to the Major Crimes Unit from 2008 up to the present. He testified that on May 22nd 2020, Superintendent ('Supt.') Francis summoned him, Corporals Alex Primus and Dwight James to his office. He notified them of a report of inciting violence and threats made against Mr. King and dispatched them to the prison. They travelled in police transport P-1528 to go on their mission. They were dressed in plain clothes. On arrival, they identified themselves to Mr. King. Sgt. Duncan notified him of the report communicated by Supt. Francis and cautioned him. Sgt. Duncan said that he made no reply. He then arrested Mr. King on suspicion of 'those offences' mentioned in the report and took him to the CID where he outlined to Supt. Francis what had transpired.
- [14] Sgt. Duncan's witness statement was admitted as his evidence in chief. He was specific about the offences about which Superintendent Francis informed them, however when referring to what reports he notified Mr. King of, he said that he 'informed him of the said reports as stated and the circumstances surrounding those reports of which he was a suspect and [he] cautioned him'. Under cross-examination he acknowledged that the offences he spoke to King about were those mentioned by Supt. Francis, specifically 'inciting violence and threats'.
- [15] He accepted that it is reasonable to describe Mr. King's Facebook post as him venting about a family issue. He could not say however, whether any threat was made to Prime Minister Ralph Gonsalves in the post. He made no attempt to conduct an interview with Mr. King at the police station. He explained that he was not the officer responsible for further investigation of matters related to the Facebook post or for releasing Mr. King. He did not know if he was kept at the station for about thirty-two hours after the arrest.

- [16] Sgt. Duncan testified that during basic training and before May 22nd 2020 he was trained to make arrests and had made numerous arrests. He averred that Supt. Francis is a senior police officer. He agreed with the suggestion that if a superior officer issues an unlawful directive to him he should not comply. He insisted that he formed the opinion for himself that there was cause to arrest Mr. King with respect to the Facebook post.
- [17] Cpl. Dwight James has been a member of the RSVGPF since December 2000. His colleague Cpl. Alex Primus became a member five years later on December 19th 2005. Both corporals gave similar testimony to Sgt. Duncan's. Their evidence in chief contained few material differences from each other's or from Sgt. Duncan's. Although Cpl. Primus did not mention that Mr. King was arrested Cpl. James did. They both averred that the report in relation to which they were dispatched to the prison, involved inciting violence and threats. They corroborated Sgt. Duncan's testimony that Mr. King did not reply when cautioned and was that he was taken to the police station. Neither was involved in further investigations from that point.
- [18] At the time of King's arrest, both Cpl. James and Cpl. Primus had been attached to the Major Crimes Unit for about 8 years. Like Sgt. Duncan, Cpl. James formed the opinion that the Facebook post disclosed reasonable cause to arrest Mr. King. However, he did not conclude that the Facebook post contained a threat to kill the person named 'Ralph'. He was of the view that Mr. King was venting about a family matter that had happened in the post.
- [19] Cpl. Primus indicated that he has received specialized training in homicide, fraud investigations and other general investigative work. Like his colleagues, as part of his basic training he was trained in arresting people. He accepted that it was fair to say that Mr. King was venting in the Facebook post about an uncle named Haniffe and complaining or venting about family issues.
- [20] He noted that guns are mentioned in the Facebook post in relation to Hanniffe and also with respect to 'Ralph' re-issuing a firearm licence to Haniffe. He observed that the word 'threatening' is used in reference to Hanniffe threatening a family member. He accepted that it was fair to say that it appears from the post that Haniffe is the aggressor and the one allegedly threatening to shoot a

member of the family. He too formed the opinion that Mr. King had committed an offence by issuing the post and that there was reasonable cause to arrest him.

- [21] At first, Cpl. Primus accepted that of the three times that 'Ralph' is mentioned in the post, no threat is made against him or anyone else. Under further cross-examination, he capitulated and stated that it contained a threat to Ralph and was in fact amounted to a threat to kill Ralph or someone else. When asked by the Court to indicate the portions of the text which contained such threats, he re-considered and answered that there is no direct or indirect threat in the post to kill 'Ralph' or anyone else.
- [22] Supt. Clauston Francis is the officer in charge of the CID. He testified that during the week of May 18th 2020 (a Monday), he received a report relating to 'inciting violence and threats' by Facebook in relation to Mr. King. The post was alleged to have been made on the previous Friday, May 15th 2020,. On Friday, May 22nd 2020, Supt. Francis summoned the 2nd, 3rd and 4th defendants, informed them of the report and dispatched them to the prison, 'with instructions to arrest King on suspicion of committing' the offences of inciting violence and threats. They reported back to him with King in custody. He said that investigations were made regarding the commission of the offences to ascertain if Mr. King should be prosecuted. In the meantime, King was kept at the central police station until the following day and then released without charge.
- [23] Under cross-examination, Supt. Francis accepted that the post contained no threat to 'Ralph'. He stated that the post suggests that there were reasonable grounds to conclude that an offence may have been committed or may have been intended, namely a 'possible threat'. He added that a possible threat is not an offence in itself. He was asked if having looked at the post, whether he formed the opinion that Mr. King had committed the offence of inciting violence. He responded that King had not committed the offence of inciting violence. He insisted nonetheless that even in face of that conclusion, it was still reasonable and necessary to arrest him for inciting violence. He maintained that the post itself required an investigation and on that basis King was arrested.

- [24] Supt. Francis acknowledged that after Mr. King's arrest, further inquiries were made by the Information Technology Unit. An officer in that unit was asked to download and copy the referenced post for future reference and to make further checks on Mr. King's Facebook page for similar postings. In addition, a discussion was held with an officer in the office of the Director of Public Prosecutions ('DPP') for advice on the matter.
- [25] Supt. Francis said that he believes that a person's liberty is a fundamental right and that it must not be taken away unless absolutely necessary. He was of the view that it was reasonable and necessary to arrest Mr. King and to detain him during an investigation which lasted for 32 hours. He explained that it took that long to download the post in a manner that could be used in the criminal court for evidentiary purposes. He added that it was necessary to download further posts in case there was other information or evidence to support the post in question.
- [26] In response to questions from the court, Supt. Francis stated that a threat or possible threat may have been made by Mr. King to Haniffa King. He opined that the words which are capable of being construed as such a threat are 'When Now you remember what happen with the nurse that Mitch kill. I know this is not gonna be a repeat of that. When I decide to take matters into my own hands, I wanna see who is gonna come tell me something.' He accepted learned counsel's suggestion that those words could also be interpreted as meaning that 'there was going to be no repeat of the violence that happened in the case of Mitch's wife. He averred that the words 'when I decide to take matters into my own hands' could be interpreted to be an expression of Mr. King's intentions. He maintained that he saw it as something that needed to be investigated and it necessitated an arrest. No evidence was led as to what took place with respect to Mitch's wife.
- [27] Mr. King submitted that section 3(1) (e) of the Constitution prohibits the deprivation of a person's liberty except in certain circumstances including upon reasonable suspicion that the person has committed or is about to commit a criminal offence. In similar manner, section 30(1) of the **Criminal Procedure Code**¹ contains a prohibition against the arrest of anyone by a police officer,

¹ Cap. 172 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

without an order from the Magistrate or an arrest warrant, except on reasonable grounds that the person is suspected of having committed an indictable offence; or in other circumstances such as where the offence is committed in the presence of the arresting officer.

- [28] Mr. King contended that the mere posting of a comment on Facebook is not an offence. He argued that the arresting officers were armed with a copy of the Facebook post, and ought to have known before arresting him, whether the words in the post were capable of causing fear and alarm or constituted a threat to kill. He submitted that the defendants have failed to prove that reasonable cause existed to justify arresting him for any of the offences cited by them, be it inciting violence, threats to kill or any other offence, they have not justified the trespass to his person by way of the arrest. He contended that they could not rely on Supt. Francis' instructions to arrest him because they had to make the determination for themselves whether a reasonable basis existed for his arrest for the referenced offences.
- [29] Mr. King noted that 2nd, 3rd and 4th defendants did not tell him at the time which section of the **Criminal Code**² or other law he had violated or under which he was being arrested. He submitted further that they did not have the authority to arrest him without a warrant for causing fear and alarm since it is captured by section 64 of the **Criminal Code** and is not an indictable offence. Therefore the arrest was not valid.
- [30] Mr. King argued that none of the elements of the offence of inciting violence and making threats are satisfied by uttering the Facebook post. He contended that even if the offence undergirding his arrest was the indictable one of threatening violence contrary to section 83 of the **Criminal Code** or threatening to kill contrary to section 165 (another indictable offence) the facts on which the police officers rely to justify the arrest, do not provide a basis for an arrest for either offence.
- [31] He referred to the attempt made by Cpl. Jack to arrest him roughly 4 days before his arrest, purportedly for breach of sections of the **Cybercrime Act** and he argued that coming on the heels of that incident, no further investigation could reasonably have been necessary for a period of 32

² Cap. 171 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

hours. He characterized his arrest and detention as harassment and punitive treatment. He reasoned he was targeted because he is a political and social activist. I must interject that there is no evidence that Mr. King was targeted for his activism and I make no such finding.

- [32] The defendants cited section 30 (1) of the **Criminal Procedure Code** and submitted that Mr. King was lawfully arrested on reasonable suspicion of committing the offence of threatening to murder contrary to section 165 of the **Criminal Code**. They argued that their evidence supports such a finding. They contended that there was therefore reasonable and probable cause to arrest him.

Discussion

- [33] Regrettably for the defendants, although the foregoing submissions are in line with their pleaded case as set out in paragraph 5 of the Defence³, no evidence was led along those lines. Furthermore, Mr. King was not asked about any such assertions in the Defence and the defendants' case as pleaded in the Defence was not put to Mr. King.
- [34] Among other things, the defendants asserted in their Defence that 'the statement in the Facebook post was taken as a possible threat against the life of the uncle of the Claimant "Hanniffe" or Mohammed King, or possible other official persons including "RALPH" who was determined to be the Prime Minister Dr. Hon. Ralph E Gonsalves, in that the Claimant threatened to take matters into his own hands in circumstances similar to the murder of Nurse Arianna Taylor Isreal by her husband "Mitch" which happened in January 2020.' The problem that the defendants have is that they appear to have abandoned that defence before the filing of their witness statements because not one of those assertions featured in their 'backstory' to the arrest or in the factual matrix on which they relied.
- [35] Mr. King's testimony is that he was arrested for making a Facebook post that is liable to cause fear and alarm to the public. The 2nd and 4th defendants averred that he was arrested by Sgt Duncan for inciting violence and threats. Their testimony is identical in this regard. Neither Mr. King nor the police officers indicated in their narrative, under what provision of the law the arrest was

³ Filed on 3rd June 2021.

purportedly made. There is common ground among the parties that Mr. King was arrested without warrant and kept at the central police station over a period which spanned two days. The defendants confirmed⁴ that the detention lasted for approximately 32 hours.

[36] Neither Mr. King nor the 2nd, 3rd or 4th defendants claimed that Mr. King was arrested on reasonable suspicion of committing the offence of threatening to murder contrary to section 165 of the **Criminal Code**. No evidence has been adduced which could conceivably lead to such a conclusion. I therefore reject the defendants' assertions in their pleadings⁵ that there was reasonable suspicion of the commission of such offence; and their submissions⁶ to this effect. I find that Mr. King was not arrested on reasonable suspicion of committing the offence of threatening to murder contrary to section 165 of the **Criminal Code**. Depending on where the truth lies, he was arrested either for making a post on Facebook which is liable to cause fear and alarm as he claims or for inciting violence and threats as alleged by the police officers.

[37] In determining where the truth lies, I have had regard not only to the demeanour and bearing of the parties as they testified but also to other factors such as the content of their witness statements and the answers given to questions on cross-examination. I found it particularly interesting that the 2nd, 3rd and 4th defendants' written accounts were so similar and identical in parts as to raise an inquiry. This is scarcely coincidental and suggests not only collaboration in preparation of the witness statements but collusion. Compounding this is the curious happenstance that in relation to the arrest itself, Sgt. Duncan's and Cpl. James' statements do not indicate expressly what were the offences for which Mr. King was arrested. I consider this to be peculiar in light of the fact that this is really the heart of the case. Everything else rests on or arises from what transpired at the time of arrest.

[38] On the matter of the arrest, Sgt. Duncan averred:

⁴ Supra. at paragraph 3 of the Defence filed on 3rd June 2021.

⁵ At paragraph 5 (a) of the Defence filed on 3rd June 2021.

⁶ At paragraph 9 of the Defendants' submissions filed on 23rd February 2023.

'I informed King that I was arresting him on suspicion of committing those offences and I took him to the Criminal Investigations Department where I reported to S.O.P. Francis what transpired.'

Cpl. James wrote:

'SGT Duncan also introduced us, arrested King and cautioned him regarding the commission of the offences. He made no reply.'

[39] Ordinarily, such details or lack thereof would not raise an eyebrow. However, considering that the claim is for among other things 'wrongful arrest' one would reasonably expect that a party would provide more details about that central issue. Another remarkable aspect of this case is the mammoth gulf between the pleadings on the one hand and the witness statements and oral evidence on the other.

[40] The **Civil Procedure Rules 2000** ('CPR'), rule 29.5(1)(f) stipulates that the witness statement should so far as is reasonably practicable, be in the intended witness' own words. The 2nd, 3rd and 4th defendants signed their respective witness statements. This leads me to conclude that they authored their own statements. Their proclivity to express themselves in an identical manner did not carry over to their oral testimony in court; therefore in my view, the notable similarities in the three statements must be viewed with a healthy dose of skepticism. All things considered, I accept Mr. King's testimony that he was arrested for making a Facebook post that is liable to cause fear and alarm to the public. This more closely aligns with the sequence of events leading to his arrest.

[41] It is the law that a police officer may arrest a person without a warrant if the offence occasioning the arrest is not indictable. 'Indictable offence' is defined in the **Criminal Procedure Code** as:

(a) any offence punishable with death, or for which the punishment is fixed by law;

(b) any offence punishable with imprisonment for two years or more; and

(c) any offence which under any written law is stated to be triable on indictment;

and an offence may be an indictable offence notwithstanding that under this Code it may also be triable summarily.' (Emphasis added).

- [42] The offence created by section 64 of the **Criminal Code** includes the ingredients of causing fear and alarm. It is committed by 'Any person who publishes any false statement, rumour or report which is likely to cause fear or alarm or to disturb the public peace'. Such a person is said to be 'guilty of an offence and liable to imprisonment of one year.' Having regard to the definition of indictable offence, this section does not create an indictable offence. As such, it is not an offence which is arrestable without a warrant. I find therefore that Sgt. Duncan's arrest of Mr. Kenson King was in the circumstances unlawful because he was arrested for this offence, without a warrant.
- [43] Mr. King referred to section 83 of the **Criminal Code** as a possible reason for his arrest, in light of the defence. That section creates the offence of threatening to break or damage a dwelling house or discharging a firearm. It is therefore not applicable to the underlying facts of this case. Similarly, Mr. King referenced section 165 of the **Criminal Code** which creates the offence of threatening to murder by the malicious sending, delivering, uttering or directly or indirectly causing someone to receive any letter, writing or other document threatening to kill or murder any person, knowing the contents of such missive. The evidence does not support a finding that Mr. King was arrested for this offence. It is therefore not considered.
- [44] It is settled law that an unlawful arrest constitutes a trespass to the person of the arrestee and is a tortious act. In the words of Lord Diplock LJ in **Dallison v Caffery**:
- 'arrest involves trespass to the person and any trespass to the person is prima facie tortious, the onus lies on the arrestor to justify the trespass by establishing reasonable and probable cause for the arrest.'⁷
- [45] The learned authors of **Halsbury's Laws of England** state: -
- 'If the power of arrest is conditional on the officer having reasonable grounds for suspicion of a certain matter, this depends on the information actually in the possession of the arresting officer, and it does not avail him to say that his superiors probably had other information justifying arrest of which he was unaware; the mere fact that an arresting officer has been

⁷ [1964] EWCA Civ.

instructed by a superior to effect the arrest is not capable of amounting to reasonable grounds for the necessary suspicion.⁸

- [46] The power of arrest carries with it an expectation that it will be exercised by police officers only when necessary and with an intrinsic recognition of and respect for the subject's right to liberty except where the law sanctions reasonable restraints. In **Irish v Barry**, the learned judge opined: -

'The right or power to arrest without a warrant ought never to be lightly used. Those who possess it ought, before exercising it, to be observant, receptive and open-minded, not hasty in jumping to conclusions on inadequate grounds. Caution should be observed before depriving any person of his liberty, and more especially so when no prejudice will result from any consequent delay. ... In all cases, therefore the facts, known personally and/or obtained on information ought to be carefully examined.'⁹

- [47] I adopt the foregoing sentiments and apply them to the instant case. I must add however that I appreciate that there will be cases which necessitate an arrest without warrant where the arresting officer forms the opinion that even though further investigation is necessary before a charge may be levied, the circumstances warrants an immediate arrest by reason of the severity of the threat to life or limb or for other justifiable cause.

- [48] In the case at bar, it is evident that the arrest did not take place on the same day that information about the post was received by Supt. Francis. I am left with the distinct impression from Supt. Francis' testimony that at least two days had elapsed from when the complaint was made and the arrest made. I draw that inference from his description of the timeline between when he first received the report and when he gave the order to arrest Mr. King. Coupled with this is Mr. King's uncontroverted evidence about the earlier attempted arrest at his home a few days before, led by Cpl. Jack.

⁸ Vol. 97 (2010) 5th Edn. At para. 545.

⁹ TT 1965 CA 3.

- [49] I am satisfied on a balance of probabilities, that the incident on Monday May 18th 2020 arose from the complaint to Supt. Francis about the post. Being the head of the CID, Supt. Francis would undoubtedly have been aware of the earlier arrest attempt and the existence of the Facebook post. Between May 18th 2020 and May 22nd 2020, he would have been in a position to conduct any preliminary investigations deemed necessary, to undergird any subsequent arrest of Mr. King. He could have requested from and engaged the Information Technology Unit for any downloads or other information leading up to Mr. King's arrest, instead of utilizing 32 hours post arrest for this purpose.
- [50] I entertain real doubt that downloading of the Facebook post necessitated 32 hours as stated by Supt. Francis. I take judicial notice that a regular download can be accomplished within seconds or minutes depending on the internet speed and device being used. These are now facts notoriously known to members of the public who access and download materials from the internet. Furthermore, in the absence of any credible technical evidence as to why this extended period was necessary for a special download by a technician for the stated purposes, I reject that averment. It is just not credible.
- [51] Additionally, the claim that it took 32 hours to conduct further checks on Mr. King's Facebook page is incredulous. I do not believe Supt. Francis on those points. In any case, I fail to understand why Mr. King had to be arrested if the reason for the further checks on his Facebook page were to download similar posts and for the subject post to be saved for future reference. That defies all reason.
- [52] More fundamentally, the fact that these were the reasons advanced by Supt. Francis for Mr. King's continued detention, suggests that he had no genuine concern that Mr. King posed a threat to anyone or to any law enforcement investigative efforts which justified his arrest and detention for 32 hours. Furthermore, Supt. Francis advanced no good reason why Mr. King had to be arrested and detained to facilitate consultation with an officer from the DPP's office, in relation to an offence which is not indictable. In all the circumstances, I am led to the ineluctable conclusion that the arrest was made without due regard being paid to Mr. King's right to liberty.

- [53] Applying the law to the facts as found, I am satisfied on a balance of probabilities that Sgt. Duncan did not have a warrant to arrest Mr. King. I am also satisfied that the offence for which Mr. King was arrested is not indictable, and therefore Sgt. Duncan needed to have a warrant for his arrest. The arrest is therefore unlawful. Sgt. Duncan is accordingly liable to Mr. King for his unlawful arrest. I so hold.

Issue 2 – Was Kenson King unlawfully detained?

- [54] On the issue of unlawful detention, Mr. King submitted he was detained for an unjustifiable and unreasonable period in detention. He argued that the defendants had no basis to detain him at all much less for 32 hours. He submitted that his detention was not necessary to download and copy a post which was already in the defendants' possession.

- [55] The defendants rejoined that Mr. King's detention lasted only long enough for sufficient inquiries and investigations to be made and he was released well within reasonable time following those inquiries and investigations. They contended that his detention was lawful and in compliance with section 35(4) of the **Criminal Code** which provides: -

'When any person taken into custody is retained in custody, he shall be brought before a magistrate's court at the earliest time practicable, whether or not the police inquiries are complete, and in any event within forty-eight hours.'

They cited **Clorine Clara v The Attorney General of Grenada** in which the Court opined:

'The burden shifts on the defendant to establish that the arrest was reasonable and the continued detention of the claimant was justifiable.'¹⁰

Discussion

- [56] The learned authors of **Halsbury's Laws of England** had this to say about unlawful detention: -
- 'A constable is liable in false imprisonment if he unlawfully arrests or detains another in circumstances which do not amount to a valid arrest. He is also liable if he makes a lawful arrest but does not comply with the conditions for continued detention, or if he detains the person for an unreasonable time without taking him before a magistrate.'⁸

¹⁰ GDAHCV2013/0514, at para. 25.

[57] The **Criminal Procedure Code** provides guidance on how a person who has been arrested without a warrant is to be treated. Firstly, the police officer in charge of the station to which the person is brought, must inquire into the case and once the inquiry is completed, must release the person forthwith if there is insufficient evidence to believe that the person has committed an offence. Secondly, section 3(2) makes provision for station bail to be granted. It states:-

‘If upon such inquiry there is reason to believe that the person has committed an offence but

the offence does not appear to be of a serious nature such police officer may, and shall if it does not appear practicable to bring such person before a court within twenty-four hours after he was taken into custody, release the person on him executing a bond, with or without sureties, to appear before a magistrate’s court at a time and place named in the bond.’

[58] Section 3(3) empowers the police officer to release the person on execution of such a bond if the officer is satisfied that the inquiry cannot be completed forthwith. By this bond, the arrestee undertakes to present himself to a police station specified in the bond, at such times as may stipulated in the bond, unless notified in writing that his attendance is not required. These provisions afford a raft of options for the senior police officer to employ for the dual purposes of conducting investigations into minor offences while giving effect to the sacred principle enshrined in the right of each person not to be deprived of his liberty except for good and justifiable cause

[59] The circumstances of this case demonstrate that Mr. King was arrested by Sgt. Duncan and on the strength of that arrest, detained by him and Cpl. James and Cpl. Primus. In the meantime, the police officer in charge of the CID awaited a report from the Information Technology Unit as to whether Mr. King had published similar posts on Facebook; the completion of a seemingly highly technical download of the post and other related posts; and to consult with the DPP or her subordinate. I find it hard to believe that (with the possible exception of the consultation) these procedures took as long as 8 hours, much less 32 hours.

[60] However, even if they did take that long, the offence for which Mr. King was arrested was not a major one, attracting as it does a maximum sanction of one year imprisonment. Nothing in the post

reasonably suggests that that Mr. King intended to physically harm anyone. He certainly was not arrested for threatening to hurt anyone. I perceive no good reason why, assuming that the arrest was lawful, that section 3(2) of (3) was not deployed by the officer in charge of the station. Far be it from me to second guess the officer or to direct him or her as to how to conduct their duties in relation to arrested persons. However, that option was available and seems to me to have presented a reasonable alternative to continued detention in all the circumstances of this case.

- [61] Be that as it may, having found that Mr. King was unlawfully arrested, it follows that his detention by Sgt. Duncan, Cpl. James and Cpl. Primus at the central police station was unlawful and unjustifiable. I find that Mr. King having been unlawfully arrested was detained without lawful justification by Sgt. Duncan, Cpl. James and Cpl. Primus and the detention persisted on the strength of the invalid arrest for a period of 32 hours between May 22nd 2020 to May 23rd 2020. I have no difficulty in finding on a balance of probabilities that the detention was unlawful and the defendants are therefore liable to him. I so find.

Issue 2 – To what remedy is Kenson King entitled?

- [62] It is established in law that a litigant who proves that he has been the subject of unlawful arrest and false imprisonment is entitled to recover general damages and in appropriate cases, exemplary and aggravated damages. Exemplary damages are awarded to 'vindicate the strength of the law for oppressive or arbitrary action by servants of the government'.¹¹ Aggravated damages are available to a claimant who proves that his reputation in particular has been negatively impacted by the damage or injury occasioned by the arrest.
- [63] The trial was bifurcated. This aspect was concerned solely with the determination of liability. No evidence was adduced which would assist the court in assessing damages. Notwithstanding, I am satisfied on the evidence that there are aggravating features of this case which would attract an award for aggravated as well as exemplary damages. In this regard, I note in particular that Mr. King was detained at the police station for over 24 hours without appropriate sleeping facilities in what he described and the Court accepts to have been unsanitary conditions.

¹¹ *Rookes v Barnard* [1964] AC 1129 at p. 1225.

[64] Mr. King was arrested at, taken off his job and detained at the central police station for an extended period. A natural incident to both occurrences is a level of embarrassment and negative effects to his reputation. This is exacerbated by what I consider to be the unreasonableness of his detention ostensibly for the purpose of downloading the Facebook post, when the fact of the publication was brought to Supt. Francis' attention at least 2 to 3 days before the detention. This conduct must be frowned upon by the court. The arrest and subsequent detention were not justified in the circumstances surrounding this case. They were unnecessary, irregular, oppressive and invalid. Mr. King's right to liberty was disregarded and his treatment during the detention was unpleasant and humiliating. He is accordingly entitled to recover general, aggravated and exemplary damages. I so hold. He is to file and serve his application on or before July 6th 2023, for damages to be assessed.

Costs

[65] Mr. King has emerged as the successful party. The defendants shall pay his costs on the prescribed costs scale. Costs are to be determined at the assessment stage of these proceedings pursuant to CPR 65.5(2)(a).

DISPOSITION

[66] It is ordered:

1. Judgment is entered for Kenson King.
2. Brion Duncan, Dwight James, Alex Primus and the Honourable Attorney General shall pay to Kenson King general, aggravated and exemplary damages with interest at the statutory rate, to be assessed on application to be filed and served on or before July 6th, 2023.
3. Brion Duncan, Dwight James, Alex Primus and the Honourable Attorney General shall pay Kenson King prescribed costs pursuant to CPR 65.5(2)(a), based on the sum stipulated by the court at the assessment stage as the value of the claim.

[67] I am grateful to counsel for their assistance.

Esco L. Henry
HIGH COURT JUDGE

By the Court
REGISTRAR
ST. VINCENT & THE GRENADINES
Registrar

