

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
(NEVIS CIRCUIT)**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: NEVHCV2019/0086

BETWEEN:

Dustin Lapsey

Claimants

- and -

The Attorney General of Saint Christopher and Nevis

Defendant

Appearances:

Mr. Eustace Nisbett of counsel for the claimant

Ms. Sasha Lloyd of counsel for the defendant

2020: December, 3rd
December, 11th (Written Submissions)
2021: March, 29th

Judgment

- [1] **Moise, J.:** This is an originating motion in which the claimant, Mr. Dustin Lapsey, seeks relief from this court for what he claims to be breaches of his fundamental rights as provided for in sections 5, 7, and 10 of the Constitution of Saint Christopher and Nevis. Having considered the evidence and the submissions of counsel in the matter for both sides, I have determined that the claimant's rights under sections 5 and 10 have been breached; and for that, he is entitled to compensation and declarations as prayed for. However, there has been no breach of section 7 and I have declined to grant orders prayed for in relation to this aspect of the claim as well as special damages which I have determined has not been proven. My reasons are as outlined in this judgment.

Preliminary Issue

- [2] Before assessing the evidence in this case, I wish to address an issue raised by counsel for the defendant at the start of the trial of this matter. On the morning of the trial, counsel sought to

address a number of preliminary matters; one of which was to submit that there was no general right to cross examination in a constitutional motion unless there are reasons for doing so. During the course of these submissions it was also apparent that counsel sought, to some extent, to return to an issue which had been raised from the onset of the lodging of the claim in the first place. That is the question of whether there are alternative remedies available to the claimant, making the originating motion an inappropriate forum within which to challenge the defendant's actions. The court having already ruled on this issue, it was not appropriate to return to it at this stage, but it is important however to make a few brief observations.

- [3] There is no doubt as to the clarity of the law as it relates to the appropriateness of the use of the originating motion as a means of challenging the actions of state authorities. It is well settled that where the claimant has an alternative remedy in private law or some other appropriate forum which is better suited for ventilating his grievances, then that forum ought to be used unless there is some feature which makes the case more appropriate to be dealt with under the provisions of section 18 of the constitution. One of the reasons for this position as outlined by the Privy Council and our own court of appeal, is that the originating motion procedure is a rather summary process and ill-suited for the resolution of cases where there are significant factual disputes. It is also important to ensure that the invocation of section 18 of the constitution is not abused by those who are adequately served by alternative forms of redress.
- [4] However, the court has on a number of occasions accepted the jurisdiction to hear constitutional cases in circumstances similar to this case. As I pointed out to counsel, the case of ***Everett Davis v. The Attorney General***¹ was one such similar case. Another example is that of ***Jermaine Browne v. The Attorney General***², where a similar submission had been made by the defendant. There Ward J determined that the case ought to proceed as an originating motion. His Lordship highlighted that the case touched and concerned the claimant's right to a fair hearing within reasonable time. He also noted that there was no substantial factual dispute on the discreet issues placed before the court.

¹ SKBHCV 2013/0220

² SKBHCV2016/0074

- [5] In the present case, as in the case of *Everett Davis v. The Attorney General*³, the claimant not only challenges his arrest and detention, but very substantively, the trial process and the delay in proceeding with the preliminary inquiry, as well as his treatment during detention. The court has therefore already determined at an early stage, that there are features in this case which made it appropriate to proceed by way of originating motion. I also find that the facts in this case are not generally in dispute, save for a few issues which emerged in the affidavit evidence. Insofar as cross examination is concerned, the summary nature of the process does not mean that parties are not entitled to cross examination. Indeed in many constitutional challenges the facts may be so settled that there would be no basis for cross examination. However, that would not take away a party's right to challenge certain aspects of the evidence, merely because the process is summary. In fact, one would have thought that it was in the interest of the defendant to address certain issues raised by the claimant in his affidavit evidence. The court therefore was of the view that it would not be inappropriate to allow for cross examination by the parties at trial. In any event the cross examination was not rather extensive as the salient facts were, for the most part, not in dispute.

The Facts/Evidence

- [6] The claimant is a citizen of the Federation of Saint Christopher and Nevis and resident in Bath Village in Saint John's Parish, Nevis. He claims that on 2nd July, 2013, members of the Federation's police force conducted a search of his home for firearms, ammunition and other items; none of which were found. Instead, the police confiscated 5 white T-shirts, a pair of white shoes and a pair of black shoes from the residence. These items, he claims, were confiscated without his permission.
- [7] On the same day, that is 2nd July, 2013, Mr. Lapsey was also arrested by then Sergeant, now Inspector, Alanzo Carty. This arrest was apparently made on suspicion that the claimant had committed the offence of murder of one Tonio Hutton. Upon his arrest, the claimant was taken to the police Station in Gingerland, Nevis. He was there questioned by Sergeant Carty about

³ SKBHCV 2013/0220

his alleged involvement in the murder. The claimant denied any such involvement and continues to maintain his innocence to date.

- [8] After 3 days in police custody, the claimant was released without charge on 5th July, 2013. However, he complains that no sooner was he released, immediately upon attempting to leave the compound, he was re-arrested by an Officer Charles. This arrest was yet again on account of his suspected involvement in the murder of Tonio Hutton. Mr. Lapsey claims to have remained in custody for 7 days before charges were formally read to him. It appears however that he was formally charged on 8th July, 2013. On 10th July, 2013 Mr. Lapsey was brought before a magistrate where he was further remanded into custody. Counsel for the defendant readily concedes that these 2 days before being brought to a magistrate were a violation of Mr. Lapsey's rights for which he is entitled to compensation.
- [9] It is the claimant's case that, upon being charged with the offence of murder, he consulted with attorneys who demanded disclosure of the evidence against him at the earliest. He states that this information was not forthcoming until some two years later on 16th July, 2015. During this delay, the claimant wrote to the Chief Registrar of the Eastern Caribbean Supreme Court, who informed him that she would seek an update on his case. The matter was then listed for a preliminary inquiry on 20th July, 2015. Not much was done on that day and the period which immediately followed. The inquiry was postponed on many occasions.
- [10] Mr. Lapsey states that the preliminary inquiry was eventually listed for September, 2015. He claims that the police were fully aware of this but no arrangements were made to take him to court; despite him being on remand. In October, 2015 he was brought to court for his inquiry without prior knowledge. His attorneys were also not aware and were not present. The matter was again adjourned. On that occasion however, according to Mr. Lapsey, a precise date for the preliminary inquiry was not set, as the magistrate made the observation that the prosecution did not seem ready to commence.
- [11] The preliminary inquiry was then delayed for a further 4 months; despite attempts by the claimant's attorney to have the matter listed. On 18th February, 2016 the case against Mr. Lapsey was dismissed by the magistrate. The claimant also alleged that video footage of the police interview with a material witness in the matter, which the prosecution was ordered by the

magistrate to disclose, was never served on him or his counsel. He contends therefore that his arrest and detention were without reasonable cause, there was an unreasonable delay in the preliminary inquiry and, as such, his constitutional rights were breached.

[12] The claimant goes on in his pleadings to complain about the conditions he endured whilst in prison during the period he was held on remand. He states that the cell in which he was detained was 10'x9' in diameter. Despite this, there was an average of 16-26 inmates, cramped into that small space. The cell was very poorly lit and the lighting in the night was not too much different from the day. There was only one small window. He states that all the inmates fought to get their clothes hung near the window to dry. This resulted in a compromise of the ventilation in the cell.

[13] Notwithstanding this level of confinement with so many other inmates, there was an open toilet in the cell to be used when needed. This toilet could have only been flushed manually and only when there was water available to do so. This often left an "intoxicating scent" at nights especially. The claimant claims to have vomited on a few occasions because of this issue. He states that the floors were often lined with urine. Despite this, the limited bedding resulted in him having to sleep on that very floor at times. It was his view that he was "treated worse than a dog." On occasion when he tried to make bookings to see a doctor, his name was taken off the patients list. He claims to have been sick for extended periods of time. During his evidence he describes one of his illnesses as resulting from him having contracted lice and a rash sometime in November, 2015. He states that one year prior, he had suffered from low hemoglobin and that he was eventually allowed to be taken to the hospital after he had communicated with a police officer.

[14] Mr. Lapsey goes on in his affidavit to state that he had to provide his own toiletries, which he received from his family. During his time of incarceration he was only permitted outside of his cell for 1 hour every day. On a few occasions, however, even that hour of recreation was denied. He claims that he felt at times that he was "going crazy" and "mentally distraught". Mr. Lapsey also contends that his relationships with his daughter and girlfriend were affected by his incarceration. His relationship with his mother and siblings were also affected. He did not however provide much detail as to the impact which his incarceration had on these relationships.

[15] Mr. Lapsey states that prior to his incarceration, he was an entrepreneur who was engaged in the business of harvesting and selling conch which earned him approximately \$16.50EC per pound. It was his evidence that at the time of his arrest he had 850lbs of conch which he was then unable to sell. It is also his evidence that since 2009 he also held a number of plumbing contracts with the Nevis Housing and Land Development Corporation (NHLDC). However, in cross examination he accepted that the NHLDC had in fact terminated this contract. The defence provided written correspondence to that effect. Mr. Lapsey however states that he had subsequently spoken with officials from the NHLDC, who had agreed to recommence this contractual relationship. He however, provided no documentary evidence of this.

[16] In what he describes as an act of desperation, Mr. Lapsey alleges that he sold his Honda Civic which was valued at \$14,000.00EC for the sum of \$3,500.00EC in order to pay his legal fees; which amounted to \$7,000.00EC. He claims that his name was irreparably tarnished and his picture “plastered” on the internet, on social media and in the local news as a murderer. He also claims that members of his family were exposed to much public ridicule and humiliation until he was exonerated.

[17] Mr. Lapsey also led evidence from his mother Ms. Gillian Lapsey. She states that she visited her son “almost weekly” while he was in prison. It was her evidence that she would provide the sum of \$200.00 per month to assist him in purchasing any essentials that he needed. She also states that she spent approximately \$500.00 per year in providing clothing for him and an additional \$100.00 for toiletries.

[18] It was also her evidence that she assisted in caring for Mr. Lapsey’s daughter, who was 5 or 6 years old when he was taken into custody. She states that Mr. Lapsey’s partner and mother to his daughter abandoned the relationship with him due to embarrassment caused by his arrest and prosecution. She also claims that after Mr. Lapsey’s arrest, her own health deteriorated and she went into depression. She consulted a doctor and eventually invited someone to live with her in order to assist with her condition.

[19] The court heard evidence from Police Inspector Alanzo Carty on behalf of the defence. He was the officer in charge of the investigation into the death of Tonio Hutton and at the time a Sergeant

of Police. He confirms that Mr. Lapsey was arrested on suspicion of his involvement in the murder. Inspector Carty also confirmed that Mr. Lapsey's home was searched on 2nd July, 2013 and that two pairs of sneakers which appeared to have blood on them were confiscated during that search. He however accepts that DNA test results revealed no link between Mr. Lapsey and the murder which was under investigation.

[20] As it relates to Mr. Lapsey's arrest and detention, Inspector Carty admits that he was released on 5th July, 2013 and re-arrested on the same day. He however denies that Mr. Lapsey was charged after 7 days of detention. It was Inspector Carty's evidence that Mr. Lapsey was in fact charged on 8th July, 2013 and "sent" to the police station in Basseterre on 10th July, 2013. He recalls that Mr. Lapsey was remanded by a magistrate but could not recall the exact date on which the order for remand was made.

[21] Inspector Carty was adamant that Mr. Lapsey was lawfully arrested in that there was reasonable cause to suspect that he had murdered Tonio Hutton. He stated in his evidence that there was an eye witness, who indicated that he was in a house and "saw someone run inside behind [Mr. Hutton] with their hand extended straight in front with a gun in his hand." It was Inspector Carty's evidence that this witness also stated that he recognized the attacker to be Mr. Lapsey. The witness, according to Inspector Carty, was able to describe the clothing the assailant was wearing as a blue jeans and white t-shirt with a "tam" over his face. The Inspector's evidence was that the very witness claimed to have seen the claimant after the shooting, while hiding behind an old car dressed in the same clothing as he had observed during the shooting, but without the "tam" on his head.

[22] Inspector Carty went on in his evidence to accept that the charge against the claimant was dismissed by the magistrate. He states however, that this was due to his inability to locate the witness, who failed to appear at the preliminary inquiry. He was unable to corroborate this by presenting the notes of the Magistrate, as his efforts to obtain them were "not successful". There was also nothing by way of evidence from the individual who had in fact prosecuted the matter before the magistrate. No notes whatsoever, as to the reasons for the dismissal of the case against Mr. Lapsey was presented to this court. All the court is left with is Mr. Lapsey's own assertion that the case was dismissed for lack of evidence against him.

[23] The witness to whom Inspector Carty referred is Omar Hendrickson. This witness appeared in the current proceedings on behalf of the claimant. Mr. Hendrickson swore to an affidavit on 19th March, 2020 in which he confirms that he did in fact give a statement to the police. He also acknowledged that he initially failed to appear at the preliminary inquiry, but eventually did so after an order from the magistrate. It was asserted in evidence from Mr. Lapsey that this witness appeared on 11th February, 2016. Inspector Carty, in cross examination states that he was unaware of this.

[24] It was Mr. Hendrickson's evidence that he did not wish to appear at the preliminary inquiry because he had sight of the witness statement ascribed to him and had concerns that the statement was not an accurate reflection of what he had conveyed to the police. He was also concerned that the signature on the statement did not appear to be his. According to his affidavit, when he finally appeared before the magistrate, he conveyed his sentiments to that court. He states further that he could not have said that Mr. Lapsey was the assailant that he saw, as the person was tall and wore a mask. He doesn't know Mr. Lapsey personally but would say that the assailant was much taller than him. He also stated that on the night in question he was asleep and awoke during the incident which happened rather quickly. He swore in his affidavit that he did not see Mr. Lapsey around that night but the police wanted him to say that he was the individual that was seen.

[25] Inspector Carty categorically denied the evidence of Mr. Hendrickson. He states in a further affidavit filed in this case, that he was unaware as to what Mr. Hendrickson's signature looked like prior to the signing of the witness statement. He was however adamant that Mr. Hendrickson signed it voluntarily. Inspector Carty also stated that he was unaware of any order for the disclosure of the video recording of the witness statement of Mr. Hendrickson, but referenced the number of witness statements which he claims were disclosed on Mr. Lapsey's attorney at the preliminary inquiry stage of the proceedings. I note at this stage that there appears to be no denial that this witness' statement was video recorded. In fact, though not entirely clear from his response, it appears that in cross examination Inspector Carty insisted that the video recording would have been placed in the original police file submitted to the Director of Public Prosecutions' office. Yet there is nothing presented in the evidence to address its non-disclosure

in the criminal proceedings as well as in this court. A video or audio recorded statement, if available, would have certainly assisted in reconciling this dispute in the evidence; both at the preliminary inquiry and these current proceedings.

[26] Inspector Carty stated that Mercia Phillip also claimed to have seen Mr. Lapsey that night wearing a white shirt. The person she saw was bending down after she heard shots fired. In her witness statement, Brenda Phillip claims that she was downstairs the house on that night. She was sleeping when Mr. Lapsey came to her. She states that he was wearing a white t-shirt, three-quarter pants and dark sandals. That description of what Mr. Lapsey was wearing is somewhat different from what was in Omar Hendrickson's statement. About 20 minutes later, Ms. Phillip heard popping sounds like a firecracker. There was also the statement of Shana Phillip who states that after hearing gunshots he came out and saw a man wearing a white t-shirt, a black long pants and a mask. It was Inspector Carty's evidence that not long after that, one Officer Jean Joseph saw Mr. Lapsey driving a car. He tried to "flag" Mr. Lapsey who instead sped off and disobeyed the officer's instructions. Inspector Carty accepted in cross examination that one witness did identify someone else, and not Mr. Lapsey as the one who shot Mr. Hutton on that night.

[27] This is generally the evidence upon which the claimant was charged for the offence of murder; except to say that samples of what appeared to be blood found on Mr. Lapsey's shoe were analyzed by a DNA expert and presented no link to the deceased or the crime in general. Inspector Carty readily conceded at trial that the statement of Mr. Hendrickson was that upon which the case against Mr. Lapsey ultimately hinged.

The Issues

[28] The main issue for consideration in this case is whether there was a justifiable legal basis for the claimant's arrest, detention and charge for the offence of murder and whether he was afforded a fair hearing within reasonable time. The court is also called upon to consider the conditions which Mr. Lapsey endured during his period of incarceration. If the court finds no such justification for his arrest and detention and that the treatment meted out to him during his incarceration was inhumane and/or degrading, then it must consider whether the claimant is

entitled to declarations and compensation for the various breaches of his constitutional rights as he has claimed.

The Law

[29] Section 5(1) of the Constitution of Saint Christopher and Nevis dictates that ***“a person shall not be deprived of his or her personal liberty save as may be authorized by law in any of the following cases, that is to say ... upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under any law...”*** Even after the arrest and detention of an individual in such circumstances, section 5(3) of the constitution makes it mandatory that judicial supervision is engaged within a period of no more than 72 hours from the time of arrest. The section states as follows:

Any person who is arrested or detained

(a) for the purpose of bringing him or her before a court in execution of the order of a court; or

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

and who is not released, shall be brought before a court without undue delay and in any case not later than seventy two hours after his or her arrest or detention.

[30] It must be observed that the 72 hour period referred to in this section is not a carte blanche right of the police to detain anyone for that period. What is important is that a person who has been arrested must be brought before a court without undue delay. If it is practicable for an arrested person to be brought before a court at any time before the expiration of the 72 hour period, then there is an obligation on the police to ensure that this is done. To put it differently, a person detained in the Federation of Saint Christopher and Nevis is entitled to the judicial supervision of that detention without undue delay. He is also entitled to submit to a judge or a magistrate that there is no basis for his further detention. He is not at the mercies of the executive branch of the state insofar as his personal liberty is concerned.

[31] Section 5(5) of the constitution goes further and makes provision for what is to obtain if a person is arrested, charged and detained without being afforded a hearing within reasonable time. The section states:

If any person arrested or detained as mentioned in subsection (3)(b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him or her, he or she shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial, and such conditions may include bail so long as it is not excessive.

[32] There are therefore 2 fundamental rights provided for in section 5 of the constitution which are relevant to the current proceedings. These are firstly, the right of an individual not be deprived of his personal liberty unless there is reasonable suspicion that he or she has or is about to commit a criminal offence; and secondly his or her right to judicial supervision of his detention without delay. Though there is in subsection (5) a recognition of the right to a trial within reasonable time, that right is further entrenched in section 10 of the constitution where it states that ***“if any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.”***

[33] Insofar as the individual's detention is concerned, whether by way of punishment or otherwise, section 7 of the constitution seeks to protect him or her from being ***“subjected to torture or to inhuman degrading punishment or other like treatment.”*** There must no doubt be a distinction between remand and punishment. The constitution provides that an individual is innocent until the charges against him have been proven. As such, whilst awaiting trial, a prisoner on remand is not being punished. Though his liberty is curtailed by order of the court, a speedy trial would assist in ensuring that if he has in fact been found to be innocent, his period

of incarceration would not be seen as unnecessarily arduous and unconscionable so as to have effectively amounted to punishment for a crime for which he has been exonerated.

Arrest and Detention

[34] Though provided for in the constitution, the common law has long recognized one's right to personal liberty. In fact, the tort of wrongful arrest and detention pre-dates the constitution. Judges have long sought to ensure that the coercive arm of the state is not abused in such a way so as to deny a citizen the right to his liberty unless there is a justifiable basis for doing so. In the 1965 case of *Irish v. Barry*⁴ Wooding CJ states that ***"[w]hat is important is that in such a case as this, no person should exercise the power of arrest unless he had proper and sufficient grounds of suspicion. If he does, then he is acting hastily and/or ill advisedly. In all cases, therefore the fact, known personally and/or obtained on information ought to be carefully examined."***

[35] In examining the facts in order to determine whether there has been a wrongful arrest, the court employs the test of ***"... whether a reasonable man, assumed to know the law and possessed the information which in fact was possessed by the defendant, would believe that there was reasonable and probable cause."***⁵ This test is said to carry both subjective and objective elements. It is subjective in that the court must assess the information possessed by, and the belief of, the arresting officer. It is objective in the sense that this information and belief must be balanced against the views of the "reasonable man" to determine whether this fictitious character would conclude that there was reasonable and probable cause for the claimant's arrest and detention.

[36] In this jurisdiction of Saint Christopher and Nevis, the case of *Everette Davis v. The Attorney General of Saint Kitts and Nevis*⁶ has emerged as a lead authority on how these principles are interpreted within the context of the society. In that case Ramdhani J noted that:

⁴ [1965] 8 WIR 177

⁵ *Dallison v. Caffrey* [1963] 2 All ER 610

⁶ SKBHCV 2013/0220

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

[37] In the present case, Mr. Lapsey argues that there was no reasonable or probable cause for his arrest and detention. It is submitted that the primary basis on which Mr. Lapsey was arrested was the statement of Mr. Omar Hendrickson. Indeed, Inspector Carty acknowledges that this statement was critical to his investigation and was a basis on which the claimant was initially arrested. Counsel for the claimant argues that the statement disclosed in evidence was dated 3rd July, 2013 when the claimant was in fact arrested on 2nd July, 2013. Counsel argues therefore that the statement could not have been the basis of the claimant’s initial arrest.

[38] For my part, the dates of the witness statements, in isolation, do not necessarily support the claimant’s case. It may very well be that the statements were merely recorded on a date subsequent to the witness’ initial conversation with the police; although I do accept that Inspector made no such assertion. What is concerning however, is the inability on the part of the defence to properly account for a number of critical issues in this police investigation which led to the claimant’s arrest and detention. Whilst the court did not find Inspector Carty to be an unreliable witness insofar as his demeanour was concerned, there are a number of important gaps in the evidence which simply cannot be ignored and weighs in favour of the claimant.

[39] Before addressing those evidential gaps it is important to note that it is not unusual for witnesses to resile from their witness statements in criminal trials. The criminal law has

developed to address such circumstances and creates an avenue for the prosecution to challenge this recantation; despite the witness being a prosecution witness. That in and of itself does not mean that there has been a breach of a defendant's constitutional rights. The subsequent recanting of a statement does not mean that it was unreasonable for the police to have relied on it in determining whether to arrest or charge an individual.

[40] On the other hand, if a witness is deemed to be truthful, on a balance of probabilities, in his assertion that the witness statement has been manipulated or fabricated by the police or does not accurately reflect his own evidence, then this certainly calls into question the fairness of the process by which the claimant was arrested and charged. This may also amount to a significant breach of his rights in that it would prove that there was no basis for his arrest if this statement was the one on which the charge was hinged and that the process itself was unfair. However, it is unclear to me as to what transpired when Mr. Hendrickson appeared before the magistrate; save to say that even after considering his evidence, the case against Mr. Lapsey was dismissed. This is against the backdrop that there was no disclosure of the video recording of that very witness statement, despite the order of the magistrate.

[41] Insofar as it relates to the evidential challenges presented in this case I note firstly that Inspector Carty offered no explanation as to why he had taken a decision to release the claimant from custody on 5th July, 2013, despite the fact that the witness statements which were disclosed in these proceedings had already been recorded. If, as the Inspector suggests, the statement of Mr. Hendrickson was critical to the decision to arrest and charge the claimant, then the court finds it more than curious that he would have then taken a decision to release the claimant without charge after being in possession of that very statement. To add to that, immediately upon being released, Mr. Lapsey was again arrested; this time by another police officer who did not present any explanation to this court as to his reasons for doing so. In all the circumstances of the case, except for a very brief moment, Mr. Lapsey remained in a police station from 2nd July, 2013 to 10th July, 2013 when he was formally remanded by a magistrate. All that time there was no judicial supervision of his detention.

[42] Secondly, based on the evidence presented by the claimant, there is reason to believe that Mr. Hendrickson's witness statement was video recorded. The defence did not deny this and

Inspector Carty, in a witness statement produced at the preliminary inquiry, acknowledged having video recorded a number of interviews. However, despite being the investigating officer, Inspector Carty at times could not recall whether Mr. Hendrickson's statement was in fact video recorded by him. He also states that he was not in court when the magistrate ordered that the video recording be disclosed on the claimant. There is no denial that such an order was made and no explanation as to why it was not complied with, as alleged by Mr. Lapsey. Given the discrepancy between what Mr. Hendrickson has to say about the statement which he gave to Inspector Carty and the Inspector's response to it, the video recording of this interview would have been more than helpful in reconciling this dispute. The defence does not deny its existence but does not disclose it; even in these proceedings in which the state is called upon to account for the alleged breach of the constitutional rights of a citizen of the Federation. This is not good enough. Inspector Carty was simply adamant that this was not his responsibility but no one else was presented who could have accounted for any of these discrepancies in the evidence; including the location of this video footage.

[43] It must be observed that whilst in litigation the court normally insists that a claimant proves that which he has asserted, there is an extent to which originating motions of this nature are designed to call upon the State to account for the actions of its agents; especially since much of the documentary evidence is more likely to be in the possession of the state rather than the claimant. This is in keeping with the court's constitutional mandate to ensure that the fundamental rights of the citizens are not violated. As Ramdhani J has noted ***"[t]he law enforcement arm of the state wields considerable coercive power that must not be exercised except for good cause. Thus, when the time comes for accountability, more must be given to the court to show such good cause."***

[44] It is not that the court should embark on an overly pedantic exercise of examining, in hindsight, what may have been the best intentions of a police officer at the time of investigation and arrest. The reasonable man, upon whom the test is based, is not himself overly pedantic. He recognizes that the police work in exceptionally challenging circumstances and is left in no doubt of the yeoman's service provided in these times of increased rates of serious violent crime. Decision making in such circumstances can certainly be challenging and the role of the court is not to create an unnecessary impediment or apprehension in the way of the police in

carrying out this important public function. Nor is the constitutional motion to be used as a means of effectively re-litigating criminal proceedings, once the evidence was sufficient to have formed a proper basis upon which charges were brought in the first place.

[45] However, the time has come, and long past, for proper recording of important events in police investigations so that, if called upon to account, an adequate record can be presented to assist the court in coming to its conclusions. After all, this was a murder investigation. Mr. Lapsey was accused of the most heinous crime one can commit in this Federation and the state of the evidence upon which major decisions were made has left much to be desired. There is nothing by way of a station diary or the police's own records as to what transpired when this claimant was arrested and detained in the police station. Though Inspector Carty was the investigating officer he claimed to have no recollection or knowledge of significant events. The rationale for Mr. Lapsey's arrest calls upon the court to consider the credibility of the sole witness upon whom the arrest and detention was ultimately hinged. The witness makes some very damning allegations, which were allegedly repeated before a magistrate, who eventually dismissed the charges altogether at the preliminary inquiry stage. Yet no record of the proceedings before the magistrate was disclosed; neither from the magistrate's court itself nor from the persons who prosecuted the inquiry. No explanation as to the whereabouts of the video recording of the interview was presented; yet, without that very statement there can be no proper rationale for Mr. Lapsey's arrest. This is simply not good enough.

[46] Having examined the witnesses at trial I accept the evidence of Mr. Hendrickson where he said that he had concerns about the accuracy of the statement which he made. He appeared before the magistrate and made those very assertions. Inspector Carty seemed completely unaware of this, despite him being the investigating officer. I add further that had the video recordings of that statement been disclosed it would have certainly shed light on the accuracy of the statement. I would therefore not rely on that statement as an accurate reflection of the basis upon which Mr. Lapsey was arrested and detained. In the circumstances I accept the evidence as presented by the claimant. I find, on the balance of probabilities, that Mr. Lapsey's arrest and detention was unlawful in that there was no reasonable or probable cause to do so and insofar as that is the case, his rights under section 5 of the constitution were breached.

Right to a Fair Trial within Reasonable Time

[47] As I have noted above, having been arrested and charged for the offence of murder, Mr. Lapsey had a constitutional right to a fair hearing, within reasonable time by an independent and impartial court. His complaint is not that there was unfairness in the court process, neither is it that the judicial process was not impartial. His main quarrel is that he was not afforded a hearing within reasonable time.

[48] In the case of ***Rashid A. Pigott v The Queen***⁷ Thom JA stated as follows:

“In determining whether there was inordinate delay such as would constitute an infringement of section 15(1), the legal authorities such as Boolell v The State and Joseph Stewart Celine v The State of Mauritius, have identified the following as factors to be considered being, (i) the complexity of the case, (ii) the conduct of the appellant and (iii) the conduct of the administrative and judicial authorities”.

[49] This is consistent with the tests established in a number of cases in and outside of our own jurisdiction. In the United States case of ***Barker v. Wingo***⁸ the court there identified the factors to be considered when determining whether there had been unreasonable delay as being the length of the delay, the reasons for the delay, the defendants assertion of his rights and prejudice to the defendant. This case was cited with approval by the Caribbean Court of Justice in the case of ***Gibson v Attorney General of Barbados***⁹ where the following was noted:

Before making ... a finding [that there has been unreasonable delay in bringing the accused to trial] the court must consider, in addition to the length of the delay, such factors as the complexity of the case, the reasons for the delay and specifically the conduct both of the accused and of the State.

⁷ ANUHCRA2009/0009

⁸ [1972]407US514

⁹ [2010] CCJ 3

[50] However, before addressing these issues the court must consider whether the time which elapsed before the termination of the preliminary inquiry was, on its face, inordinate. The evidence is that Mr. Lapsey was charged with the offence of murder on 8th July, 2013. The matter finally came up for a preliminary inquiry on 20th July, 2015. The inquiry was adjourned on a number of occasions until the charges against Mr. Lapsey were eventually dismissed in February, 2016. Whilst a period of two years and seven months may not have been considerably inordinate had the matter proceeded to trial, I am of the view that this is an inordinate period within which to conduct and complete a preliminary inquiry. The longer it takes for such an inquiry to be conducted, the longer the delay in ensuring that a trial of the charges against a defendant in an indictable case takes place. I echo the following sentiment of Ventose J in the case of ***Jermaine Browne v. The Attorney General***¹⁰:

“... the court must be minded to approach this issue in the context of the local justice system. However, local conditions cannot trump the fundamental rights or freedoms enshrined in the Constitution. Unreasonable delay before trial cannot become so commonplace that it is accepted as orthodoxy contrary to the provisions in the Constitution. The constitutional rights guaranteed by section 5(5) (or even section 10(1)) will become a thing writ in water if those conditions become the norm and constitutional infringements go unchecked.”

[51] Insofar as it relates to the complexity of the case, the court can find nothing in the facts presented which makes this a rather complicated matter; whether substantively or procedurally. The mere fact that it is a murder case does not make it complex. No doubt it is serious and must be afforded sufficient time to ensure that the investigation and inquiry is thorough; but one must bear in mind that all this time the defendant in such a criminal process is on remand with his liberty curtailed. The evidence is that all of the witness statements on which the state relied were taken in July, 2013. The blood samples which were presented for DNA analysis were returned along with a DNA Analyst report in September, 2013. From the

¹⁰ SKBHCV2016/0074

evidence it seems clear that even the autopsy on the body of the deceased was completed within short order. Yet, for reasons which have not been adequately explained in the evidence, it took more than two years for this matter to merely be listed for the preliminary inquiry before a magistrate. The disclosure of the evidence on counsel for Mr. Lapsey also did not take place until 16th July, 2015.

[52] In defence of this constitutional motion the only explanation presented for delay in the process was that the witness Omar Hendrickson did not appear. This is an inadequate response, as it is clear that Mr. Lapsey remained incarcerated on remand for over two years before this inquiry was even listed for hearing. Mr. Hendrickson would have had no obligation to appear before the magistrate before then. Inspector Carty was also not even fully aware of the fact that Mr. Hendrickson eventually did turn up before the inquiry. It is unclear as to the precise reasons for the magistrate's dismissal of the charges against Mr. Lapsey as there appears, on balance, to have been some general frustration with the fact that the video footage of the recording of Mr. Hendrickson's witness statement was never disclosed, almost 3 years later. There is no proper explanation for this delay as there was nothing complex about the circumstances of this matter which warranted such an extended delay before the inquiry even commenced in the first place. The fact that this is a murder case does not make this any less prejudicial to the claimant.

[53] In addition to this, I can find nothing about the actions of Mr. Lapsey which would have caused any delay on his part. The uncontroverted evidence is that his attorneys requested disclosure of the evidence against him at the earliest. Letters were written, even to the magistrate to have his matter listed for the inquiry. He was frustrated enough with the delay in conducting the inquiry that he wrote to the Chief Registrar of the Eastern Caribbean Supreme Court to enquire about the status of his case. He was brought to court with no notice provided to his attorneys, which necessitated not only the adjournment of the matter but the removal of the matter from the magistrate's list until such time as the prosecution was ready to proceed.

[54] There is also not much to be said here regarding the conduct of the administrative and judicial authorities. No proper explanation has been provided to justify the over two and a half year delay in conducting the preliminary inquiry. I would again endorse the sentiments expressed

by Ventose J when he states that “[t]he courts as guardians of the constitution must give effect to the meaning of those words that promote respect for and obedience by the State of the commands of the Constitution.”¹¹ I am satisfied that Mr. Lapsey was not afforded a hearing within reasonable time, resulting in the breach of his rights as provided for in section 10 of the Constitution of Saint Christopher and Nevis.

Torture or Inhuman Degrading Punishment or Treatment

[55] There are two aspects to Mr. Lapsey’s claim that he was subjected to torture or inhuman degrading punishment or treatment. Firstly, there is an examination of the general conditions of the prison where he was incarcerated. These conditions are not peculiar to Mr. Lapsey and are part of the experience of anyone who has had to endure prison life in the Federation over the years. Secondly, there are those allegations which are peculiar to Mr. Lapsey and what he has endured individually. These relate to his health issues and what he claims to be a denial of access to health care during his incarceration, among other things. He speaks about having to supply his own toiletries and the impact such an experience has had on him. He also alleges that he has had to sleep on the floor in a poorly ventilated cell.

[56] Counsel for Mr. Lapsey referred the court to the case of ***EVERSLEY THOMPSON V SUPERINTENDENT OF PRISON ET AL***¹², where the court in fact rejected the submission that the prison conditions in Saint Vincent and the Grenadines were such that they amounted to inhuman and degrading treatment. In that case Adams J referred to the ECHR case of ***Tyrer v. The UK***¹³ where the following was noted:

- (1) In order to amount to inhuman treatment the suffering occasioned must attain a certain level before it can be so determined.***
- (2) In considering whether the complaining citizen has suffered degrading treatment it has to be remembered that humiliation may arise from the mere fact of being criminally convicted. However, what it was relevant to show was that he was humiliated not by his conviction but by the execution of the punishment which was imposed upon him.***

¹¹ see ***Jermaine Browne v. The Attorney General***

¹² SVGHCV1999/0447

¹³ 1978 2 EHRR 1

- (3) *The assessment as to whether punishment was degrading or inhuman is in the nature of things relative; it depends on the circumstances of the case and in particular the nature and context of the punishment itself and the manner and method of execution.*
- (4) *A punishment does not lose its degrading character just because it is believed to be or actually is an effective deterrent or aid to crime control.*
- (5) *It must be remembered that the conventions which deal with protection of human rights are living instruments and that the courts must be influenced by the developments and commonly accepted standards of the countries in which these issues arise ...*

[57] There is no doubt that the condition of the prison in which Mr. Lapsey was incarcerated is lamentable. No one would seek to argue otherwise. However, in the case of ***Jermaine Browne v. The Attorney General***¹⁴, after considering facts similar to the present in this very jurisdiction and having visited the prison himself, Ventose J found that these conditions did not rise to the level of torture, inhuman or degrading treatment. Counsel for Mr. Lapsey submits that this decision is not binding on this court and that it ought not to be followed. However, the question is really one of fact to be decided in this case. While the conditions of the prison are lamentable, it must be observed that prison life is not one of luxury, but rather one more suited for the discomfort associated with punishment. The higher levels of crime experienced in more recent decades have also resulted in the overcrowding of our prison; a factor which further complicates life in an institution which itself is rather outdated. What is more lamentable however is the fact that persons like Mr. Lapsey spend a relatively significant amount of time in that institution on remand, only to have the charge against him dismissed. It is all the more reason for one's right to a hearing within reasonable time to be more readily observed. That however does not make the prison conditions torturous, inhuman or degrading. I would follow the decision of Ventose J and come to a similar conclusion, despite the submission of counsel for the claimant, as I too am of the view that the evidence does not rise to that level.

[58] Secondly, I consider Mr. Lapsey's complaints which are peculiar to him. He complains that he was not allowed to visit a doctor which caused some discomfort to his health. He also

¹⁴ SKBHCV2016/0074

complains that he got lice, a rash and suffered from low hemoglobin. Again, there is not much by way of a response to these allegations by the defence. However, I do not find these issues to be torturous, degrading or inhuman. They are issues which the court will take into account in the assessment of damages for breach of his rights under sections 5 and 10 of the constitution, but I would reject the assertion that they amount to torturous or inhuman and degrading treatment.

Damages

[59] Having found that the claimant's rights under sections 5 and 10 of the Constitution have been infringed, I now turn to consider his entitlement to damages. Section 18 of the Constitution empowers the court to make such declarations and orders as it may consider appropriate for the purpose of enforcing the rights contained in sections 3 to 17. It has been well established that such declarations and orders may include orders for the payment of damages where the constitutional rights of a citizen are found to have been violated. As the Privy Council¹⁵ has noted:

When exercising the constitutional jurisdiction, the court is concerned to uphold, or vindicate the constitutional right which has been contravened. A declaration by the court will articulate the fact of violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation.

[60] The Privy Council also went on to note that mere compensation may not be adequate. It may go some distance in vindicating the violation of the right, but may very well not suffice. An additional award may be necessary in order to adequately reflect the public outrage whilst placing an emphasis on the importance of rights which are enshrined in the constitution.

¹⁵ The Attorney General v. Ramanooop [2005] UKPC 15

Vindictory damages may very well be in order where there is a violation of the fundamental rights of the citizen.

[61] In my view, the violation of Mr. Lapsey's right to personal liberty carries the greater emphasis in this case. The primary effect of the violation of his right to a fair trial within reasonable time is that he has spent more time in custody than was necessary; given the fact that the matter against him was dismissed. Though the violation of his right to a trial within reasonable time adds this extra dimension to the case, the common law on the assessment of damages in wrongful arrest and detention cases covers much of what would be awarded to him in damages for the unreasonable delay in the prosecution of his case. In considering the award of vindictory damages, however, the court will consider the impact of this added dimension.

[62] The common law approach to an assessment of damages in such cases was highlighted by de la Bastide CJ (as he then was) in the Trinidadian case of **Millette v. McNicolls**¹⁶ where he states as follows:

“there is an element of initial shock when a person is first arrested and imprisoned which must first be taken into account and compensated in the assessment of damages for wrongful arrest and false imprisonment, regardless of whether the term of imprisonment is long or short. The extent of the compensation for the initial shock will depend on the facts of the case (and not the length of the imprisonment) and factors which may be relevant include: the way in which the arrest and initial imprisonment are effected, any publicity attendant thereon, and any affront to dignity of the person. While any normal person will adjust to some extent to the circumstances of imprisonment is to be taken, the longer the imprisonment lasts the more burdensome it becomes: and the length of the imprisonment is to be taken into account in this context. Damages in such cases should not however be assessed by dividing the award strictly into separate compartments (initial shock, length imprisonment, etc) but by taking all such factors into account

¹⁶ Civil Appeal No. 14 of 2001

and then approaching the appropriate figure in the round” compartments, one for initial shock, the other for length of imprisonment and so on. All the factors are to be taken into account and an appropriate figure awarded.”

[63] In this very jurisdiction Ramdhani J (a.g.) in the case of **Everette Davis v The Attorney General of St. Christopher and Nevis**¹⁷ stated as follows:

“In fixing the compensation the court should consider a number of factors including, the loss of liberty, the loss of reputation, humiliation and disgrace, pain and suffering, loss of enjoyment of life, loss of potential normal experiences, such as starting a family, other foregone development experiences, loss of freedom and other civil rights, loss of social intercourse with friends, neighbours and family, whether the claimant suffered assault in prison, the fact that he had to be subjected to prison discipline, and accepting and adjusting to prison life, and what effects the unlawful detention might have had on his life. In any given case some of these may not be relevant whilst some may have a greater effect on the eventual sum”.

[64] The approach taken in both of these cases has recently been endorsed by our own court of appeal in the case of **Wakeem Guishard v. The Attorney General of the BVI**¹⁸. In that case Ferrara JA endorsed the approach of the master in the court below where it was stated that *“the approach is not one in which the court is to set an exorbitant hourly rate for the first period of detention. The courts have adopted a more general approach in fixing a reasonable sum for this period and then to go on to set a daily rate for the remainder of the time which the claimant had spent in custody.”*

[65] The starting point therefore is to consider an appropriate general award for the initial shock of Mr. Lapsey’s arrest. Mr. Lapsey’s evidence does not go into much detail about the moment of his arrest. Although he speaks to his premises having been searched, there is not much spoken of the manner

¹⁷ SKBHCV 2013/0220

¹⁸ BVIHCV2018/0006

in which he was treated at the time of his arrest. One important issue to note however, is that Mr. Lapsey was arrested, released and re-arrested within minutes of his release. This certainly adds to the shock in the loss of one's liberty in this way. It is an issue which the court of appeal specifically commented upon in the case of **Attorney General of Saint Lucia v. Lorne Theophilus**¹⁹. The constitution is not designed to allow a circumstance where the police simply re-arrest an individual within a short period of time of him being released in order to circumvent the limitations place on them by the 72 hour maximum contained in section 5. This is no less a violation of the constitutional right not to be deprived of one's personal liberty.

[66] In the case of **Wakeem Guishard**, the claimant complained of police officers appearing at his premises with guns pointed. He outlines the ordeal of his arrest and his initial period of detention and being paraded before members of the public. This is in contrast to the circumstances of the present case, which are more akin to that which was presented in the case of **Everette Davis**. In that case, the claimant was arrested twice. His home was searched on a warrant. DNA samples were taken from him and he was questioned about his possible involvement in a murder; which initially commenced as a missing person investigation. In that case, Ramdhani J awarded the sum of \$20,000.00 for the initial act of detention. I would consider a similar award except to point out that the case of **Everette Davis** was decided in 2014. I also consider the fact that the claimant in the present case was arrested for a second time mere minutes after being released from custody and even before he was able to leave the police station compound. The two periods of detention can therefore be viewed as one and the fact is in total he would have spent 8 days in police custody before even being brought before a magistrate. This warrants an amount higher than that which was awarded to Mr. Davis. I would award the sum of \$30,000.00 for the initial shock of the claimant's arrest and detention. This would cover the initial period of 8 days, prior to him being remanded by a magistrate.

[67] It is now left for the court to consider a reasonable daily figure for the remaining period of the claimant's incarceration. He speaks about the condition of the prison in similar terms to the case of **Everett Davis**. In that case the court awarded compensation in the sum of \$500.00 per day for the period in which the claimant remained on remand. This figure was also adopted by the court in

¹⁹ SLUCVAP2005/0013

Jermaine Browne v. The Attorney General, which was decided in 2018. In the more recent case of ***Caldre Chapman v. The Attorney General***²⁰, the court also considered the conditions of this very prison and awarded the sum of \$600.00 as a daily rate of compensation for the time spent on remand. A daily rate of \$500.00 was also awarded in the case of ***Michael Stephens v. The Attorney General***²¹ emanating from Saint Lucia.)

[68] Counsel for the claimant asks the court to consider an uptick of this daily figure to \$600.00. I appreciate that the cases operate as a guide and are not necessarily binding. However, notwithstanding the submissions, I see no reason to depart from the rates so recently awarded in these cases, as I do believe that some consistency is necessary so as to continue to bring clarity to his area of law. Although the sum of \$600.00 was awarded in ***Caldre Chapman***, that was for a shorter period of time. Essentially, the court must give consideration to the totality of the award and whether it is reasonable in general. I would therefore make an award to the claimant in the initial sum of \$500.00 per day for the remaining period of his detention after the initial shock. However, in coming to this conclusion I wish to make one observation as it relates to the jurisprudence which is emerging in this area of law. Counsel for the defendant submits that the court should apply a discounted rate for different time periods during which Mr. Lapsey was incarcerated. I note that in the case of ***Thompson v. Commissioner of Police of the Metropolis***²², Lord Wolf stated that “***a plaintiff who has been wrongly kept in custody for – hours should for this alone normally be regarded as entitled to an award of about £3,000. For subsequent days the daily rate will be on a progressively reducing scale.***” Though Lord Wolfe was addressing circumstances of brief periods of detention, he advocates for a reducing scale of compensation as the period of detention increases. This principle was further highlighted by the Privy Council in the case of ***Takitota v. The Attorney General***²³.

[69] In the cases of ***Everette Davis***, ***Jermaine Browne***, ***Wakeem Guishard*** and ***Caldre Chapman***, the court had simply set a daily rate and applied it to the total period of incarceration in terms of the number of days. However, Everette Davis, Jermain Browne and Caldre Chapman were all incarcerated for relatively shorter periods of time. Wakeem Guishard’s period of detention was in

²⁰ NEVHCV2018/0086

²¹ SLUHCV2013/0425

²² [1998] QB 498

²³ [2009] UKPC 11

excess of 700 days. In **Michael Stephens v. The AG of Saint Lucia**, the judge determined that the period covering the constitutional breach commenced on 23rd January, 2003 and ended on 9th July, 2015 when he was released from custody. The daily rate of \$500.00EC was applied to the entirety of that period despite a rather extended period of 12 and a half years.

[70] It is important however to caution, that the longer the period of incarceration the more likely the court may be called upon to reduce on the daily rate, or to perhaps discount the total award. Lord Wolf noted that this daily figure should be on a reducing scale, as the award of damages is not necessarily designed to be a windfall, but to be sufficient to compensate the claimant for the breach of his rights. The award must at all times be reasonable and this must be the overriding factor. This is in keeping with the admonition of Patterson JA in the case of **Fuller (Doris) v. The Attorney General**²⁴ where he stated as follows:

“Where an award of monetary compensation is appropriate, the crucial question must be what is a reasonable amount in the circumstances of the particular case. The infringement should be viewed in its true perspective, an infringement of the sacrosanct fundamental rights and freedoms of the individual and a breach of the supreme law of the land by the State itself. But that does not mean that the infringement should be blown out of all proportion to reality, nor does it mean that it should be trivialized. In like manner, the award should not be so large as to be a windfall, nor should it be so small as to be nugatory”

[71] However, in the circumstances of this case, the daily period of incarceration is not so far outside of the period of detention in **Wakeem Guishard**. In that case, the court of appeal gave due consideration to the award of the master. Although it does not appear that the issue of a reduced daily rate was raised, Ferrara JA did consider the case of **Takitota** in much detail. As it relates to the rather more extended period in the case of **Michael Stephens v. The AG of Saint Lucia**, I would say that it is certainly an issue which the court may wish to consider as the jurisprudence develops over time. There is no need to address it in any more detail in this case, except to say that it does appear to be in conflict with the case of **Takitota v. The Attorney General**. Where the period of detention spans such a significant number of years, there ought to be a gradual reduction in the daily

²⁴ (1997) 56 WIR 337

rate. What is important however, is that the award must be reasonable in all the circumstances of the case.

[72] In the circumstances of the present case, where the period of detention is two years and seven month (or more precisely 10th July, 2013 to 18th February, 2016), I would retain the daily rate of \$500 for the first two years of detention and reduce it to \$400.00 for remaining 7 months. No doubt, over time the courts will continue to provide clarity on the way forward in cases of significant periods of incarceration. I would therefore award the sum of \$454,200.00 in compensation to the claimant.

Vindictory Damages

[73] As I have outlined earlier, the Privy Council notes that in some cases, compensatory damages may not be adequate as vindication for the rights of the citizen which have been violated. In the case of ***Innis v. the Attorney General of Saint Christopher and Nevis***²⁵, Lord Hope highlighted the purpose of such an award as follows:

An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasize the importance of the constitutional right and the gravity of the breach and to deter further breaches. All these elements have a place in this additional award. "Redress" in s. 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. "

²⁵ [2008] UKPC 42

[74] The court may therefore make an additional award for vindictory damages. The question is whether the circumstances of this case warrant such an award. In **Everette Davis**, Ramdhani J considered the fact that this was a case in which the claimant was placed on remand for a rather serious charge; that of murder. His reputation was affected by this. It was found in that case that there was no basis for the charges to have been brought in the first place. Taking all of the circumstances of that case into account, Ramdhani J determined that vindictory damages should be awarded and that the sum of \$30,000.00 was reasonable.

[75] In **Michael Stephens**, Wilkinson J similarly awarded vindictory damages. In that case the circumstances were however far more aggravating. The claimant had been detained at her majesty's pleasure for over 36 years without a review of his sentence. No doubt the circumstances of that case are far different from what the court is called upon to consider here. However, in fixing the amount of damages the court there considered the award of \$30,000.00 granted in the **Everette Davis** case and determined that this amounted to \$100.00 per day. In reliance on that, as well as the case of **Mark Smith & Anr. V. The Attorney General of Antigua and Barbuda**²⁶ a rate of \$100 per day was adopted and multiplied by the total period of incarceration to determine the vindictory damages to be awarded to Mr. Stephens. However, in an assessment of Ramdhani J's decision, it does not appear that the \$30,000.00 award was determined by adopting a daily rate. It seems to me that the court is entitled to consider a global award, taking into account all of the circumstances of the case.

[76] Having examined the facts of this case, I am of the view that Mr. Lapsey is entitled to vindictory damages. He was arrested twice within the space of 3 days. He was charged for an offence after an additional 3 days in custody and kept for a further two days before even being brought to a magistrate. After in excess of 2 years and numerous adjournments, his matter finally came up for a preliminary inquiry. He suffered health challenges and the embarrassment of being labeled a murderer while the charges remained pending. He lost his girlfriend in the process and was unable to care for his daughter. Evidence which was ordered to be disclosed on his counsel was never disclosed with no proper explanation as to why this was not done. I would therefore award the claimant the sum of \$50,000.00 in vindictory damages as this appears to me to be reasonable when considering the time he has spent on remand as compared to the case of **Everette Davis**.

²⁶ ANUHCv2010/0521

[77] I add at this point that the claimant has also claimed aggravated damages. However, in keeping with the decision of the Privy Council in the case of *Takitota v. The Attorney General*, such an award ought not to be made where vindictory damages have also been awarded. There is an effective overlap between the factors which give rise to both of these and it would be wrong to make such an award.

Special Damages

[78] Although the claimant has pleaded special damages, insufficient documentary or other evidence has been presented to assist the court in carrying out such an assessment. Although the court is empowered to grant nominal awards where documentary proof may be difficult, I am of the view that the court ought not to set the bar too low on the claimant's duty to prove his case; including that of special damages. He claims to have sold his car at an undervalue, but presented no evidence of such. He claims that there was 850 lbs. of conch in storage at the time of his arrest, but goes into little detail about this assertion. During cross examination he asserted that he had a business license for this trade but did not disclose it to the court and went on to state that he could not recall whether he had taken a license out "officially" at that time. Insofar as it relates to the losses claimed regarding the conch and the motor vehicle I do not find the claimant's evidence to be credible and would not grant him what he has pleaded.

[79] Mr. Lapsey also wishes to be reimbursed his legal fees for the criminal case, but has presented no evidence of paying such fees. In addition, he seeks reimbursement for the money given to him by his mother during his period of incarceration. I am not of the view that such benevolent gifts by his mother are recoverable. Though he states that he had to purchase his own toiletries, I doubt very much that this is accurate and, in any event, this would have been an expense he would have undertaken had his rights not been breached. He has been, to my mind, sufficiently compensated for the effect of this breach by the orders which the court is about to make. I would therefore decline to make such an award.

[80] In the circumstances I make the following orders and declarations:

- (a) That the claimant's arrest and detention was a breach of his constitutional rights pursuant to section 5 of the Constitution of Saint Christopher and Nevis;
- (b) That the claimant was not afforded a fair hearing within a reasonable time by an independent and impartial court established by law, in that there was undue delay in conducting the preliminary inquiry into the offence for which Mr. Lapsey was charged;
- (c) That the claimant's right not to be subject to torture, inhuman or degrading treatment or punishment was not breached and the claim for such a declaration is denied;

That the defendant will pay the sum of \$484,200.00, inclusive of \$30,000.00 for the initial shock, in compensatory damages to the claimant for the breach of his rights under sections 5 and 10 of the Constitution of Saint Christopher and Nevis;

- (d) That the defendant will pay vindictory damages in the sum of \$50,000.00;
- (e) That the claim for special damages is denied;
- (f) That the defendant will pay interest on such damages at the statutory rate from the date of judgment until the debt is paid in full;
- (g) That the defendant will pay prescribed costs in this claim pursuant to the provisions of the CPR.

Ermin Moise
High Court Judge

By the Court

Registrar