

THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2014/0162

BETWEEN:

**GREGORY DECAUL**

(of Campden Park)

**CLAIMANT**

and

**ATTORNEY GENERAL OF ST. VINCENT AND THE GRENADINES**

**FIRST DEFENDANT**

**THE COMMISSIONER OF POLICE**

**SECOND DEFENDANT**

**THADIUS MC ALLISTER, POLICE CONSTABLE 566**

**THIRD DEFENDANT**

**COPORAL KENROY CAMPBELL 154**

**FOURTH DEFENDANT**

**ARIAN SMITH, POLICE CONSTABLE 815**

**FIFTH DEFENDANT**

**Appearances:**

Mr. Jomo Thomas for the Claimant

Mr. Kezron Walters with Ms. Shernel Haddaway for the Defendants

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2017: October 25

2018: January 11  
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[1] **BYER, J.:** By claim form filed on the 13<sup>th</sup> January 2015, the Claimant made a claim against the Defendants seeking damages for assault, battery, false imprisonment and malicious prosecution.

## **BACKGROUND:**

- [2] The Claimant pleaded that on the 14<sup>th</sup> January 2014, while walking in the area of Buccament, the Third and Fourth named Defendants, both police officers along with other non-party officers, approached him in a police vehicle. The Claimant further averred that the officers, in particular the Fourth named Defendant, requested that he accompany them. It appears from the witness statement that the Claimant refused to do so. From this point, the facts given by the Claimant and the Defendants diverge. It was the evidence of the Claimant that without warning and for no cause the Third named Defendant shot him point blank. In complete contradistinction, the evidence and the pleaded facts of the Defendants who were present on the scene that day, including the Third named Defendant, was that the Claimant ran from the police and in giving chase and in response to an aggression from the Claimant, and therefore in self defence, he was shot three times. The case as against the Fifth named Defendant, related to the period when the Claimant was hospitalized for treatment for his gunshot wounds. During that period, the Claimant pleaded that he returned to his home although having not been discharged and the Fifth named Defendant was part of a contingent of police that attended at his home to return him to the hospital. It was during that exercise that the Claimant averred that the Fifth named Defendant assaulted him by beating him repeatedly.
- [3] All of the allegations by the Claimant were vehemently denied by the Defendants, save and except the admission that the Claimant had indeed been shot by the Third named Defendant.
- [4] Upon the completion of the case, it became unclear to the Court the cause of action as against the Fourth named Defendant. There was no complaint made against him either in the statement of claim or the evidence as given save to indicate his presence at the scene on the 14<sup>th</sup> January 2014 as the head of the party of police officers on that day. In those circumstances, it was not clear why the application had not been made by the Defendants to have the Fourth named Defendant struck out from the claim. Be that as it may, I find that there is no claim as it stands against him and dismiss the action against the Fourth named Defendant. Additionally, by submissions filed on behalf of the Claimant, on the 23<sup>rd</sup> November 2017, it was conceded that they would not be pursuing the claim for malicious prosecution. This Court will therefore make no order in relation to that prayer.

## **ISSUES**

- [5] At the close of trial, the issues having not been settled previously, this Court determined that the issues were as follows:
- (1) Whether the Defendants did in fact assault and batter the Claimant.
  - (2) Whether the Third named Defendant was acting in self defence.
  - (3) Whether the Claimant was falsely imprisoned or maliciously prosecuted.

(4) Whether the Claimant was unlawfully imprisoned by the Defendants.

- [6] As already indicated, the Claimant having withdrawn the claim with regard to the issue of malicious prosecution, this Court will address its mind to issues listed as number one, number two and state that number four is linked with the issue of false imprisonment in number three.

**Whether the Defendants did in fact assault and batter the Claimant.**

- [7] In the text, **Commonwealth Caribbean Tort Law**<sup>1</sup>, the learned author gave the definition of assault as being “a direct threat made by the defendant to the plaintiff the effect of which is to put the plaintiff in reasonable fear or apprehension of immediate physical contact with his person”. He further opined that this was in fact an objective test to be asked – whether in the particular circumstances a reasonable man might fear violence was about to be applied to him. Therefore, it was accepted that pointing a loaded gun at a plaintiff could be accepted as an assault.<sup>2</sup>
- [8] Battery on the other hand, is defined as the “intentional or reckless application of unlawful force to the body of another person”<sup>3</sup>. In fact, it has long been recognized that there does not have to be any **bodily** contact between the Defendant and the plaintiff. It is sufficient if the Defendant brings some material object into contact with the plaintiff’s person.<sup>4</sup>
- [9] Therefore, applying these definitions to the case at bar, there are two separate instances when the Claimant makes allegations of assault and battery – firstly as against the Third named Defendant for shooting him and secondly as against the Fifth named Defendant on the 5<sup>th</sup> March 2014 for physically beating him.
- [10] I will deal with the evidence regarding the first complained instance as against the Third named Defendant first.

**(i) Assault by Third Named Defendant**

- [11] The evidence of the Claimant on this point in his witness statement was as follows:<sup>5</sup>

“3. As the police transportation pulled up next to me, one of the Officers asked me if I had a disagreement with anyone in the Buccament area and I said “Yes, so what?” The officer then said “I want to speak with you” and I asked him “for what, you officers never give me satisfaction no time at all.”

4. From the vehicle Corporal Campbell demanded that I get into the police transportation. I told him “for what? I am not coming” He then said “well we will force you in if we have to!” And I told him

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<sup>1</sup> Gilbert Kodiliyne(3<sup>rd</sup>ed).page 12

<sup>2</sup> Mensah v. R [1945] 11 WACA 2 PC

<sup>3</sup> Halsbury’s Laws of England Vol 25 (2016) para 134

<sup>4</sup> Commonwealth Caribbean Tort Law Op Cit page 13

<sup>5</sup> Witness statement of the Claimant filed on the 18 September 2015

*"well all yo will have to kill me!" and I walked away. The Officers drove off. None of the police officers identified themselves to me. They were not in uniform. I was not told that I was under arrest.*

*5. Less than five (5) minutes or so after the vehicle drove off, I felt a sting in my buttock and I fell. I did not realize that I was shot. A man, who I later know to be Officer McAllister, came over me and said "get up!" I said, "I can't, ah feeling weak." The officer said "get to fuck up" and pushed me over off my stomach. By this time the police transport has returned and stopped where I laid on the ground. Officer Campbell came over to me and asked "you knew this is an officer?" and I replied "No".*

[12] At trial, on cross examination, he said *"the officers got out of the vehicle and shot me"* and again that *"police exit the vehicle, one shoot me in the bottom and other one shoot me in my foot"* and finally *"when I was lying down I was turned me over by McAllister and he shot me in my foot. Shot me in my foot once standing over me"*<sup>6</sup>.

[13] In response, the Third named Defendant in his witness statement said *"I fired a warning shot"* and on cross examination *"I fired several shots at DeCaul. I believe I shot three times"*. *"I did fire a warning shot at him"*<sup>7</sup>.

[14] From this evidence alone and on the admission of the Third named Defendant himself, I am satisfied that there is a prima facie case made out that the Claimant was assaulted and battered by the Third named Defendant. I accept on a balance of probabilities, that the Third named Defendant had his gun in his hand when he confronted the Claimant and before shooting him issued a warning shot (the assault) and then shot him three times (the battery).

[15] However, the Defendants having pleaded self defence, which would be an absolute defence to an assault, the resultant question must now be whether in fact the Third named Defendant is liable in damages to the Claimant for the said assault and battery.

## **(ii) Self Defence**

[16] An assault or battery is justified if committed *"in reasonable defence of oneself or another"*.<sup>8</sup>

[17] This must also by necessity include how an officer responds to the actions of a suspect when they are being apprehended. Indeed, under the Criminal Procedure Code of St. Vincent and the Grenadines CAP 172, subsection 2 states that *"if such person [the person to be arrested] forcibly resists the endeavour to arrest him or endeavours to evade arrest such police officer or other person may use all means necessary to effect the arrest"*. However, at subsection (3) it goes on to state that *"nothing in subsection (2) shall be deemed to justify the use of greater force than was*

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<sup>6</sup> Excerpt from the evidence given at trial.

<sup>7</sup> Witness statement of the Third named Defendant filed on the 31 July 2015.

<sup>8</sup> Commonwealth Caribbean Tort Law page 14

*reasonable in the particular circumstances in which it was employed or was necessary for the apprehension of the person to be arrested.”*

- [18] Thus, even though the police are clothed with a statutory ability to effect an arrest, this is clearly restricted by the need to temper any such actions to only what is necessary in all the circumstances.
- [19] The nub of the defence of the Third named Defendant was that the Claimant ran at the approach of the police, he was chased and when he was eventually cornered pulled a knife and advanced on the Third named Defendant who then had to shoot the Claimant to protect his life. It is for this reason that Counsel for the Defendants submit that the Third named Defendant in these circumstances could not be liable he having acted in self defence.
- [20] It is not doubted that *“every person is justified in using reasonable force to defend himself ... but the force justifiable is such only as is reasonably necessary”* (my emphasis).<sup>9</sup>
- [21] There are, therefore, two limbs to enable an individual to rely on this defence: (1) the response must have been undertaken during the actual attack and (2) any such response must be *“reasonably commensurate”* with the attack.
- [22] The Claimant’s evidence is that he had no knife and that the Third named Defendant deliberately shot him without provocation or excuse. The Third named Defendant recognizing the Claimant as a *“violent individual”* who had threatened him previously<sup>10</sup> saw the Claimant advancing at him armed and despite warnings found himself having to shoot him. In that regard, I do not accept on the balance of probabilities the evidence of the Claimant as to his version of the events leading to the shooting by the Third named Defendant but neither do I accept that shooting the Claimant three times was *“reasonably commensurate”* with any perceived attack. Further, it would take a series of mental gymnastics for this Court to accept that while the Claimant was advancing upon the officer that he was shot in his buttocks!
- [23] I, therefore, accept that the Claimant ran when he was hailed by the police. I accept that chase was given. I accept that the Third named Defendant (and which was admitted at trial) shot the Claimant. I do not, however, accept that the shooting was committed in self defence but rather in pursuance of an arrest. In such pursuit, I do find this action utilized greater force than was necessary in all the circumstances. Therefore, I find that neither the defence of self defence nor the protection of Section 22(2) of the Criminal Procedure Code affords the Third named Defendant any protection on this claim.

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<sup>9</sup> Halsbury Laws of England Vol 97 (2015) para 462

<sup>10</sup> Evidence elicited on cross examination of the Third named Defendant at trial.

**(iii) Battery by Fifth Named Defendant**

[24] The allegations against the Fifth named Defendant are in connection to the period when the Claimant, while at the Milton Cato Memorial Hospital receiving treatment for the gun shot injuries, absented himself from the institution without medical discharge in March 2014. The Claimant alleges that when the Fifth named Defendant and other police officers attended at his home that he was beaten by the Fifth named Defendant.

[25] On hearing the evidence, I accept on the balance of probabilities the evidence of the Fifth named Defendant, that when the party of police attended at the home of the Claimant that he again tried to evade the police when he saw them as he stated in his own words that he had “...a lot of grievances and I don’t like the police from what happened before”<sup>11</sup>. I accept that the Claimant ran again and I accept that having run, the Claimant fell. I, therefore, find that there was no battery by the Fifth named Defendant as against the Claimant and I, therefore, dismiss the claim against the Fifth named Defendant.

[26] The only other live issue is with regard to false imprisonment.

**False Imprisonment**

[27] In Halsbury’s Laws of England<sup>12</sup>, the definition of false imprisonment made it clear that it can only be effected where there is “...total restraint of the liberty of the person for however short a time by the use or threat of force or by confinement” (my emphasis).

[28] Additionally, it is recognised that “nothing short of actual detention and complete loss of freedom can support an action for false imprisonment”<sup>13</sup> and further “the restriction upon the plaintiff’s liberty must be unlawful”.

[ 29] In this case at Bar, I am satisfied that this issue of whether or not the Claimant has proven his claim for false imprisonment must be considered in two separate blocks of time. The first time period would be from the initial admission into hospital on the 14<sup>th</sup> January 2014 to the day when the Claimant discharged himself on the 5<sup>th</sup> March 2014 and the second from the 5<sup>th</sup> March 2014 to his discharge on the 6<sup>th</sup> April 2014.

[30] In evidence, the Claimant by his witness statement in reference to his hospitalization stated that when he was brought to the hospital for medical attention, he was never charged with an offence. He further stated that despite that not having occurred, he was aware that he was placed under police guard and that as a consequence he was not free to leave. However, when the Claimant came to court, under vigorous cross examination he admitted that he was “never

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<sup>11</sup> Excerpt from evidence of the Claimant at trial.

<sup>12</sup> Vol 97 (2015) para 543

<sup>13</sup> Commonwealth Caribbean Tort Law page 18

*guarded by officers” and that “when at the hospital I used the wheelchair and was free to move around the hospital”<sup>14</sup>.*

- [31] From this evidence, I am satisfied that by the Claimant’s own words, the main ingredient to make a claim for false imprisonment appears to be clearly missing. Despite his evidence in chief that he was under police guard, I accept on a balance of probabilities that there was no total restraint on his movements by the actions of the Defendants, indeed a fundamental requirement of this tort.
- [32] However, the authorities have recognized that there are a myriad of circumstances that can give rise to a successful claim of false imprisonment even when there is not a total restraint or freedom of the claimant.<sup>15</sup> Therefore, once the Claimant is not free to leave whether by physical compulsion or force of will, the tort has been committed.
- [33] In the case at bar, therefore, what is clear is that in the first time period even though the Claimant admitted that he was free to move about the hospital grounds, two matters impact on this block of time. Firstly, the Claimant acknowledged that there was someone who had control over him when he in fact requested permission from the Fifth named Defendant to go outside to inquire as to the state of health of his daughter. Secondly, the very fact that the Fifth named Defendant said that he was deployed to “guard” the Claimant and that when the Claimant did leave the environs of the hospital he and other officers went to find the Claimant and return him to the hospital. Both of these factors in this Court’s mind indicate that the Claimant was in fact **not** free to leave as he desired, his freedom being restricted.
- [34] Thus, as was stated in the case of Bostien v Kirpalani’s Ltd<sup>16</sup> by Deyalsingh J *“it is clear from the authorities that to constitute false imprisonment there must be a restraint of liberty ...a taking control over or possession of the plaintiff or control his will. The restraint of liberty is the gist of the tort. Such restraint need not be by force or actual physical compulsion. It is enough if pressure of any sort is present which reasonably leads the plaintiff to believe that he is not free to leave or if the circumstances are such that the reasonable inference is that the plaintiff was under restraint even if the plaintiff was himself unaware of such restraint.”*
- [35] Additionally, the Claimant had to prove that the arrest that led to the restriction was unlawful. In the instant case, the Claimant’s evidence was that he was never told he was under arrest while the evidence of the Fourth named Defendant was that he informed the Claimant on the 14<sup>th</sup> January 2014 that he was under arrest for assault on a police officer and criminal trespass. It was unfortunate that these statements were left largely untested at trial when they go to the fundamental nub of the claim for false imprisonment. It is for the Claimant to prove his case and

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<sup>14</sup> Excerpt from evidence given at trial by the Claimant.

<sup>15</sup> See discourse on the evolution of the authorities on this point in Commonwealth Caribbean Tort Law Op Cit pages 18 -23

<sup>16</sup> 1979 High Court Trinidad and Tobago No 861 of 1975 (unreported)

I am not satisfied on a balance of probabilities that the version of events of not having been told that he was arrested and what for did in fact occur. I therefore find, that although the circumstances of the confinement of the Claimant at the hospital could amount to false imprisonment, there was a lawful arrest and therefore, the claim must fail.

[36] In relation to the second time block being after the 5<sup>th</sup> March 2014 to his discharge on the 6<sup>th</sup> April 2014, there was no disagreement that the Claimant was handcuffed to his bed upon his return to the hospital. We got no indication as to the period of time that this was done and I accept that this was done for an un-quantified period of time. However, having already accepted that the initial arrest had been effected in January, this additional period I find was also covered by that initial arrest and, therefore, did not amount to false imprisonment on the part of the Defendants.

[37] For the sake of completeness, I must address the submission made on behalf of the Claimant which seemed to run that even if the arrest had been lawful, the failure of the Defendants to afford the Claimant his constitutional right to due process, having not been brought before the Court as required, resulted in the arrest being ultimately illegal. Indeed, it can be argued that under normal circumstances when an accused is arrested, he is entitled to his constitutional rights and the adherence to the tenets of due process. However, I must agree with the submissions by Counsel for the Defendants that the admission of the Claimant to the hospital to obtain medical attention which from the medical reports submitted was urgently required, and which resulted in him remaining there for an extended period, cannot be used to vitiate a lawful initial arrest or to lay a claim for false imprisonment.

[38] I therefore find, on a balance of probabilities that the claim for false imprisonment has not been made out and I dismiss the same.

## **CONCLUSION**

[39] As I indicated earlier, the Claimants having conceded the claim of malicious prosecution, there is no need for the Court to make a determination on the same.

[40] Further, having received no assistance from Counsel for the Claimant with regard to the claim for general damages and additionally aggravated and exemplary damages, I decline to make any monetary finding for these claims.

[41] In that regard, the Claimant is to file an application for damages to be assessed on the one finding against the Defendants of assault and battery within twenty-one days of this Court's Order supported by affidavit evidence with submissions and authorities, to be heard by the Master of the High Court. Upon such filing, the Defendants will have fourteen days to respond thereto.

IT IS HEREBY ORDERED AS FOLLOWS:

**ORDER**

- [1] The claim for assault and battery against the Fourth and Fifth named Defendants is dismissed.
- [2] The claim for assault and battery against the Third named Defendant is granted.
- [3] The claim for false imprisonment is dismissed.
- [4] Costs of the trial to be assessed at the time of the assessment of damages.

**Nicola Byer  
HIGH COURT JUDGE**

By the Court

Registrar