THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT
(CIVIL)
A.D. 2014

CLAIM NO. SKBHCV 2013/0220

BETWEEN:

EVERETTE DAVIS

Claimant

And

THE ATTORNEY GENERAL OF ST. CHRISTOPHER AND NEVIS

Defendant

Appearances

Mr. Glenford Hamilton with Ms. Deidre Williams and Ms. Karene Paul for the Claimant
Mrs. Simone Bullen-Thompson and Ms. Nisharma Rattan-Mack for Defendant

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2014: 28 February
(Written Closing Submissions filed 17 March)
June 30

Originating Motion – Infringement of Constitutional Right to Liberty – No Reasonable Cause for Suspicion – Whether Reasonable and Probable Cause to Ground Detention and Arrest – Willful Conduct Grounding Constitutional Claim - Compensation for Breach of Constitutional Right – Additional Award – Quantification of Compensation.

The claimant, a 37 year-old man was detained twice by the police who were investigating first a missing person's report which later became a murder investigation. On the first occasion the police detained him for nearly 48 hours doing no more than questioning him about the missing person, and the fact that he had had a previous altercation with the then missing man. He answered all their questions, and near to the end of the 48 hours period he was released. Several days later, after the dead body of the missing man was found, the investigating officer again detained the claimant. At this stage there was no more evidence except a tee shirt with the initials 'KOD' which had been found near the crime scene. It was apparently believed by the police that this tee shirt belonged to an acquaintance of the claimant. Again he was questioned, and being asked for DNA samples volunteered hair and blood samples. Two days later the police charged him and two other persons jointly for the murder of the deceased. The preliminary inquiry began on the 22 June 2012, at which time the claimant was remanded to Her Majesty's prison. There he was held for the next eight months and some days being brought on numerous occasions to the magistrate where the prosecuting officer continuously requested and was granted adjournments on the basis that he did not have the investigating file. Eventually when the matter was called up on the 4 February 2013, the prosecuting officer informed the court that he had finally gotten the file and that he was withdrawing the matter against the claimant. The claimant who had by then spent 230 days in the custody of the State was released. The claimant then filed this matter against the Attorney General in his capacity as representative of the State, seeking declarations that his constitutional right to liberty had been infringed and for orders for compensation and exemplary or vindicatory damages be made. The Attorney General defended the matter arguing that there had been reasonable grounds to arrest and charge the applicant and as such there was no breach of any constitutional right, and alternatively, that if the court were inclined to grant compensation it should be not exceed the sum of EC$18,000.00 and further that this was not a case for exemplary and vindicatory damages.

Held:

1. The law gives the police the right to detain and or arrest anyone upon reasonable and probable cause that that person has or is about to commit an offence. The test as to whether there is reasonable and probable cause is both subjective and objective. 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 officer 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 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.

   Considered: Allen v Wright (1838) 8 C & P 522; King v Gardner [1980] 71 Cr. App. Rep. 13; Todd v DPP [1996] Crim. LR 344

2. There is no need for the officer to have admissible evidence amounting to a prima facie case to found reasonable suspicion when it comes to mere detention without charge. A lower standard is permissible and can be founded on inadmissible evidence. No criminal charge can be laid against anyone unless the police ground their suspicion that the person has committed that offence on admissible evidence.

   Considered: Hussain v Chook Fook Kam [1970] A.C. 942

3. When a police officer detains or arrests (the two being the same in law) on the basis of such reasonable suspicion, he or she is not entitled to law to simply keep the person in

custody for the full statutory period without charge unless it is necessary for the purposes of the investigations to do so. The **Constitution** by prescribing a 48 hour period in the first instance and a maximum of 72 without being taken to court did not intend to allow the police to simply detain and keep persons in custody for either 48 or 72 hours without charge, and then release them. At least by the end of the 48-hour period the police officer should pursuant to section 5(2) of the **Constitution** inform the detainee of 'the reason for his arrest of detention and be afforded reasonable facilities for private communication and consultation with a legal practitioner of his own choice and in the case of a person under the age of eighteen years with his parents or guardian'. Section 5(2) should be construed purposefully with a view of giving effect to the right to liberty. Accordingly, the constitutional allowance of 48 hours is to be employed to facilitate law enforcement to be able to investigate crimes. So that if the full 48 hours is to be employed, there must be a reason for it. In the usual case, the police will detain someone for enquiries, that is, to question and interrogate them with regard to the allegations or information received by the police officer. It might also be reasonable to detain the person for the period of there is reasonable grounds to believe that he might, for example, if released, warn other suspects or tamper with evidence or interfere with the investigation in some other way. So too, it might be reasonable to detain the person for the period where there is a constant flow of information and it is important to continue questioning over the duration of the 48 hours. It might also be reasonable to hold the person for the full period if there are reasonable grounds to believe that it is necessary to do so for the person's protection; in these latter situations it would be crucial that the person is informed of the dangers and their consent sought for the continued detention. In a case of this nature one would have expected the some evidence to be presented as to why the full 72 hours had to be employed.

4. In this case there was no reasonable and probable cause to detain or arrest much less to charge this claimant for the offence of murder. Evidence that the claimant has had an altercation several months old, with another person does not rise to the threshold to make any reasonable police officer believe that if that other person is later discovered dead, that the claimant was responsible for his death. It surely made him a '*person of interest'* justifying the police inviting him to assist in their inquiries, but that if he were to refuse to assist, they would not be entitled to detain or arrest him.

5. Under section 18 of the **St. Kitts and Nevis Constitution** the court is clothed with the discretion to grant such redress as is appropriate for the enforcement of the fundamental rights provisions. Such relief ought not to be granted in the normal case when ordinary common law remedies are more suitable; in these types of cases a claimant should be sent away from the Constitutional court. In this case the police officer investigating this matter had absolutely no reason to detain this claimant on the several occasions on the information and or evidence he had. In this case, the police officer pressed charges of murder against the claimant, which led to him being remanded for eight months and five days, during which period the police file could not find itself in the hands of the prosecuting officer until a few days before the last court date in February 2013. Whilst this may not be the extreme case where there has been a 'shameful misuse of coercive powers with which the state had endowed' on the police, this case nonetheless passes the bar of arbitrary and oppressive conduct. This was a serious charge of murder, and should have engaged the attention of the legal advisors to the force, especially when, in a matter of days after

the arrest and charge, the claimant's attorney wrote to then Director of Public Prosecutions requesting discovery of any and all statements and other evidence relevant to his arrest. There was never any response forthcoming. The Crown surely lost the opportunity at this stage to put this matter right. If at this stage, he were released, perhaps this would have been the kind of case for an ordinary action in tort. In this case, however, this claimant, was charged for no good reason, and then remanded and seemingly forgotten for a period of eight months and five days, amounting to 230 days. Constitutional redress is appropriate. A declaration is accordingly granted to the claimant that his arrest and charge for murder and his detention for a period of 230 days violated his constitutional right to personal liberty and was in contravention of the provisions of section 5(5) of the Constitution of St. Christopher and Nevis.

Per Lord Diplock in Harrikissoon v Attorney General of Trinidad and Tobago [1980] AC 265; The Attorney General of Trinidad and Tobago v Ramanoop

6. When section 18 of the Constitution speaks to 'redress' it clothes the court with a discretion to make any such order as would provide effective relief for the breach. Where it is appropriate to grant constitutional relief, the combined effect of section 5(6) and section 18, is that in cases of the unlawful deprivation of liberty, the person shall at a minimum, be entitled to compensation. A court may also go on to consider whether the redress given shall include an additional award or other orders for vindication of the constitutional breach.

   Considered and distinguishing: Harrikissoon v Attorney General of Trinidad and Tobago [1980] AC 265; The Attorney General of Trinidad and Tobago v Ramanoop Inniss v Attorney General of St Christopher and Nevis [2008] UKPC 42

7. Any sum awarded by way of compensation must be measured and reasonable and assessed with reference to ordinary principles having regard to the circumstances of the case and the particular victim. The approach must be practical and neither seek to exaggerate the infringement nor to trivialize the breach. The court should consider whether there were any aggravating factors. The general factors which the court should consider in such case will include 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.

8. In matters such as this where the detention period is not a short one as in a few hours or days, an initial sum should be given for the initial period of detention, and then a fixed sum should be given for each day that the claimant was detained. Such an approach is in recognition of the shock and humiliation, which would have been felt by the claimant

initially on being arrested by the police. Thereafter, it is proper that a sum be fixed for every day of detention.

9. Having regard to all the relevant factors in this case, this claimant is entitled to at least EC$20,000.00 for the initial act of detention, and a sum of EC$500.00 per day for each day of detention beyond the initial act of detention resulting in a total sum of EC$135,000.00.

   Considered: Takitota v The Attorney General 2009 WL 635043; Raymond Warrington and Karl Peters v Cleville Mills and the Attorney General of Dominica High Claim No 38 of 2006; Elihu Rymer v The Commissioner of Police et al BVI Civil Appeal No 13 of 1997 Danny Ambo v Michael Laudatt and Another High Claim No. 30 of 2010; Nicole Fullerton v The Attorney General High Claim No. 2010 HCV 1556; Malcolm Payne v The Chief Magistrate et al High Claim No. 261 of 2001; Emmanuel Chijioke v Commissioner of Police of Saint Vincent and The Grenadines et al High Court Civil Claim No. 232 of 2010

10. *'Having identified an appropriate sum (if any) to be awarded as compensation, the court must then ask itself whether an award of that sum affords the victim adequate redress or whether an additional award should be made to vindicate the victim's constitutional right.'*

    Considered: Fuller (Doris) v Attorney General (1997) 56 WIR 337 Subiah v The Attorney General of Trinidad and Tobago [2008] UKPC 47

11. In this case the investigating officers fell way short of the mark. There was no due consideration given to this matter, and there seemed to have been a deliberate lack of care as to whether rights were respected. The right to liberty is a valuable one. It is one of the true characteristics of a democratically free society. Breaches of this nature have no place in modern law enforcement. Accordingly this is a suitable case to award an additional sum to vindicate the claimant's constitutional right. Having regard to the circumstances of the case and appropriate sum is EC$30,000.00.

12. There being no agreement, costs are to be assessed.

JUDGMENT

[1] RAMDHANI J. (Ag.) This claim was brought by way of an originating motion pursuant to section 18 (1) and (2) of the Constitution of St. Kitts and Nevis seeking declarations and compensatory orders under sections 5 and 6 of the Constitution for unlawful arrest and detention.

[2] The claimant is a 37 year old man and resident of Willet's Housing Project, St. Paul's in St. Kitts who, it is undisputed, was arrested by the police and detained for eight months and five days (230 days) on a charge of murder. He brings this claim against the Attorney General in his capacity as the representative of the Crown.

[3] In his originating motion the claimant has sought the following relief:

1. *A declaration that his arrest and/or detention for a period of eight (8) months and five (5) days without trial was unreasonable.*
2. *A declaration that his arrest and/or detention for a period of eight (8) months and five (5) days without trial violated his constitutional right to personal liberty and was in contravention of the provisions of Section 5(5) of the* ***Constitution*** *of St. Christopher and Nevis.*
3. *An Order that the claimant is entitled to compensation for the unconstitutional deprivation of the liberty and damages.*
4. *Exemplary damages.*
5. *Such further or other relief as may be just and*
6. *Costs.*

[4] This matter was defended on the basis that the police had reasonable grounds to charge the claimant for the offence of murder. All of the persons who swore affidavits appeared at the trial and were cross-examined.

The Legal Issues

[5] The primary question for the court is whether there was any legal basis for the detention arrest, charge and incarceration of this claimant for the period of eight months and five days? If it is found that there was no lawful basis to do so, the secondary and consequential question is whether this violated the claimant's constitutional right to personal liberty as guaranteed by sections 5(3) (b), 5(5) and 5(6) of the **Constitution of St. Kitts and Nevis?**

[6] If the two questions are answered in the affirmative, the issue then is whether the claimant is entitled to compensatory relief and damages for the breaches of his constitutionally protected rights? Whether an award which might be made, include an award of vindicatory or exemplary damages?

Analysis and findings

[7] This is a case about whether the police had any lawful right to detain and or arrest the claimant and then to charge him for the offence of murder, and thereafter to have him placed on remand for over eight months? I have already posed the questions above. Were they entitled to do this? Was there any lawful reason upon which they were so entitled to act?

[8] The answer to these questions must be first found with reference to the **Constitution of St. Kitts and Nevis**, which makes express provisions for the protection against the unlawful deprivation of liberty. Section 5 provides in full:

> *"(1) A person shall not be deprived on his or her personal liberty save as may be authorized by law in any of the following cases, that is to say:*
>
> *(3) Any person who is arrested or detained –*
>
> *(a),,,*
>
> *(b) Upon reasonable suspicion of his 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 arrest or detention.*
>
> *(4)…*
>
> *(5) If any person arrested or detained as mentioned in subsection (3) is not tried within a reasonable time, then without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions as are reasonably necessary to ensure that he 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.*
>
> *(6) Any person who is unlawfully detained or detained by any other person shall be entitled to compensation therefor from that other person or from*

any other person or authority on whose behalf that other person was acting: Provided that a judge, magistrate or justice of peace or any other officer of a court or a police officer acting in pursuance of the order of a judge, a magistrate or a justice of the peace shall not be under any personal liability to pay compensation under this subsection in consequence of any act performed by him in good faith in the discharge of the functions of his office any liability to pay any such compensation in consequence of any such act shall be a liability of the Crown."

[9] I consider that section 6(1) of the Police Act No. 6 of 2003 is also relevant to this discussion. This section, being quite consistent with the provisions of section 5 of the Constitution, provides that a police officer may, without a warrant, arrest a person whom he *'reasonably suspects of having committed an offence'.*

[10] So too is section 7 of the same Police Act which clothes the police with such powers as a constable would possess at common law, this obviously giving the police the power to arrest someone on the basis of reasonable suspicion and to similarly be empowered to charge them only on reasonable grounds.

[11] So these are general constitutional, statutory and common law guidelines within which the police may act to arrest, detain and charge someone. How do they operate on a practical basis? What does reasonable suspicion mean for the purposes of a simple arrest and detention? What is required before that detention can be converted into a proper charge in law that can peacefully co-exist with the constitutional right to liberty?

The Power to Detain, Arrest and Charge on Reasonable Suspicion

[12] The law gives the police the right to detain and or arrest anyone upon reasonable and probable cause that that person has or is about to commit an offence. The test as to whether there is reasonable and probable cause is both subjective and objective.[1] 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

[1] Allen v Wright (1838) 8 C & P 522

crime.[2] 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.[3]

[13] It is significant to note that there is no need for the officer to have <u>admissible evidence</u> amounting to a prima facie case to ground reasonable suspicion when it comes to mere detention without charge. A lower standard is permissible and can be founded on inadmissible evidence.[4] Of course reasonable suspicion can also be founded on admissible evidence. Such reliance on either admissible or inadmissible evidence must be shown to have actually existed and was reasonable in the circumstances.[5]

[14] Reasonable suspicion may arise from the overt acts of the person who becomes the suspect. It may also arise from statements made by that person. Statements from known third persons may also provide such grounds. Thus information from an informer or a tip off from a member of the public may provide such reasonable grounds.[6] It is debatable whether information from an anonymous telephone caller can provide grounds for reasonable suspicion. Much would ultimately depend on the type of information being conveyed.[7] A statement by one officer to a second officer that X is a suspect is not sufficient to ground suspicion in that second officer.[8] However, a police briefing outlining

[2] King v Gardner [1980] 71 Cr. App. Rep. 13
[3] Todd v DPP [1996] Crim LR 344
[4] Hussain v Chook Fook Kam [1970] A.C. 942
[5] Clarke v Chief Constable of North Wales Police (2000) Independent, 22 May, 2000 – involving reliance on hearsay.
[6] Gibbs and Others v Rea 52 W.I.R. 102
[7] King v Gardner (1980) 8 C & P 522 cf. Abed (Taan) v Attorney General and Others 57 W.I.R. [High Court of Barbados]
[8] O'Hara v Chief Constable of the Royal Ulster Constabulary [1997] A.C. 286

the reasons for the suspicion, might provide reasonable grounds for suspicion, and so too might a police bulletin providing sufficient information.[9]

[15] When it comes to the basis for the preferment of a criminal charge, it must be made clear that no criminal charge can be laid against anyone unless the police ground their suspicion that the person has committed that offence on <u>admissible evidence</u>.

[16] When the police detain or arrest (the two being the same in law) on the basis of such reasonable suspicion, they are not entitled to law to simply keep the person in custody for the full statutory period without charge unless it is reasonable to do so. The Constitution by prescribing a 48 hour period in the first instance and a maximum of 72 without being taken to court did not intend to allow the police to simply detain and keep persons in custody for either 48 or 72 hours without charge, and then release. At least by the end of the 48-hour period, the police should pursuant to section 5(2) of the Constitution inform the detainee of 'the reason for his arrest of detention and be afforded reasonable facilities for private communication and consultation with a legal practitioner of his own choice and in the case of a person under the age of eighteen years with his parents or guardian'. Section 5(2) should be construed purposefully with a view of giving effect to the right to liberty. Accordingly, the constitutional allowance of 48 hours is to be utilised to facilitate law enforcement to be able to investigate crimes. So that if the full 48 hours is to be employed, there must be a reason for it. In the usual case, the police will detain someone for enquiries, that is, to question and interrogate them with regard to the allegations or information received by the police. It might also be proper to detain the person for the period of there is reasonable grounds to believe that he might, for example, if released, warn other suspects or tamper with evidence or interfere with the investigation in some other way. So too, it might be reasonable to detain the person for the period where there is a constant flow of information and it is important to continue questioning over the duration of the 48 hours. It might also be reasonable to hold the person for the full period if there are reasonable grounds to believe that it is necessary to do so for the person's protection; in these latter situations it would be necessary that the person is informed of the dangers

[9] Hough v Chief Constable of Staffordshire Police (2001) The Times, 14 February, 2001

and their consent sought for the continued detention. In a case of this nature one would have expected the some evidence to be presented as to why the full 72 hours had to be employed; there was no such evidence.

[17] I now turn to the evidence in this case.

[18] In June of 2012, the Officer Wyatt and other members of the Royal St. Kitts and Nevis Police Force commenced investigations into a missing person's report relating to one Jakeel Alford (now deceased). These initial enquiries led these police officers to discover that the claimant in this matter had been involved in an altercation with the missing man several months prior to the report. They sought and obtained and executed a warrant for guns, drugs and ammunition at the claimant's home on the 8 June 2012. At the completion of the search, Corporal of Police Wyatt (Sergeant at the date of the trial), personally informed the claimant that investigations were being made into the whereabouts of Jakeel Alford who had been reported missing. The claimant was detained at about 8:00 a.m. by the police and taken to the Sandy Point Police Station for questioning.

[19] At the Sandy Point Police station, the claimant was questioned by the police as to the whereabouts of the missing man, and he was also questioned about the previous altercation he had with the deceased. There is nothing to suggest that he refused to answer any of the questions the police asked of him.

[20] On 9 June 2012, while the claimant was still in police custody on the first detention, he was taken back to his home when in his presence his home was again searched this time with the aid of a police dog that sniffed the house, the claimant's car and his yard. Again nothing was found. He was taken back to the Sandy Point Police Station.

[21] Curiously, with regard to the first period of detention, at trial officer Wyatt insisted that he was not questioning the claimant about the death of Alford, as at this time, they had not discovered his dead body. He did admit, however that the offence of murder was one of

the possible theories the police were pursuing at this time with regard to the missing person's report.

[22] They released him without charge at about 10:00 p.m. on the 10 June 2012. On these timelines I prefer the evidence of the claimant. While the burden is on the claimant to prove the detention, and for the defendant to prove the reasonable cause for it, I was faced by evidence from Officer Wyatt which is less than forthcoming. I would have thought that the defendant could have easily put some doubt on these timelines by presenting the custody records in relation to the detention periods for the claimant. None was presented.

[23] On the 20 June 2012, the claimant was again detained by the police and taken to the Dieppe Bay Police Station and taken to the conference room at the station. He was questioned, this time about the death of Jakeel Alford, as the investigating officers, having discovered the dead body of Alford, were in the throes of a murder investigation. During the police interrogation, he was asked by Officer Wyatt to volunteer, and he agreed to provide, the police with blood and hair samples to compare with specimens found at the crime scene.

[24] On that same day he was taken to see a senior officer in the presence of whom he confirmed that he was willing to provide blood and hair samples for testing and comparison. He signed a consent form for the samples of blood, hair and saliva to be taken. These samples were in fact taken. Nothing came of any of the testing. Later that day he was returned to the Dieppe Bay Police Station where he was charged along with two others, Kelvin Dickenson and Yul Abdul for the murder of Jakeel Alford. The information evidencing the charge against the claimant and the two others and sworn to by Officer Wyatt stated that: *"…Kelvin Dickenson, Everette Davis and Yul Abdul Chacon of St. Pauls between the 07th and 14th day of June, 2012 at St. Pauls in the Parish of St. Pauls in the Magistrate District 'B' in the Federation of St. Christopher and Nevis being together did murder Jakeel Alford contrary to Common Law."*

[25] A preliminary inquiry into the charge of murder began on the 22 June 2012, when the claimant was remanded to her Majesty's Prison, and he remained there until the 4 February 2013, when he was released.

[26] And on each occasion, several times every month, when the matter came up for a hearing, it was adjourned at the request of the prosecution, Officer Bergan, who told the court that he had not received the police file and was unable to proceed with the matter. On the last adjourned date, Officer Bergan, who had by then, received the file, very properly in my view, advised the court that he was withdrawing the matter

[27] During the trial, it was made clear that the police had detained, arrested and charged the claimant, primarily on the basis that he had had a previous altercation with the deceased some four months before his death, and that a tee shirt with the initials 'KOD" were found at the crime scene, and the police suspected that this tee shirt belonged to a close friend of the claimant.

[28] When the investigating officers first arrested the claimant, all they had was information that he had had a previous altercation with the deceased. When the claimant admitted this to them, it became admissible evidence against him. But it was evidence which was woefully short of any threshold in grounding any reasonable or probable cause that the claimant had committed murder. Having a previous altercation with a person who is months later murdered is no basis to ground any lawful inference that the person committed murder. There must have been something more, perhaps even hearsay information (for the detention) or evidence (for the charge) that this claimant might have threatened the deceased with future harm, or that he was seen in the location and time of the crime. There was nothing more.

[29] In fact, I agree with Mr. Hamilton for the claimant, that it goes to the reasonableness of the investigating officers conduct when they were unable to explain, being presented with seemingly un-contradicted information that the claimant had been at the magistrate's court on the 7 June 2012 for most of the day and knowing for themselves that he was further in

police custody between the 8 June to the 10 June 2012, why allegations were still being made that he had murdered Alford between the 7 to the 14 June 2012. Surely the investigating officers should have narrowed the commission of this crime to those days when the claimant would have been ‘at large’ to commit the crime, or at the very least present this court with some evidence that they were pursuing a theory that even though he may not have been directly involved in the killing, he was an accomplice of some sorts. How can the police charge a man for committing a crime between certain days when they have that man in custody during some of those days? It was important that they assisted this court with that answer. This was not forthcoming.

[30] The four-month old altercation was surely a basis upon which he would have become a person of interest; they could have invited him to the station for questioning, if he refused to accept this invitation, they would not have been entitled to detain him unless they had any additional evidence that he had committed the offence. Even if they had had the other bit of information relating to the tee shirt from the first detention, this would still have fallen short of grounding suspicion that he had committed the offence. All this was only information that could have made him a person of interest and nothing more.

[31] There was not even inadmissible material which was available to the investigating officers that supported their initial decision to detain the claimant for questioning or as a suspect. I have not been given any evidence why they felt it necessary to hold this claimant for two days and some hours before they released him. The right to detain someone for 48 hours must not be used in this manner. On a claim of this nature the Crown has to show how it was reasonable and lawful to have detained this claimant for the length of time they kept him on both occasions. I find that they have failed to do so.

[32] The subsequent arrest and charge for murder then to me is completely inexplicable. I cannot see why the investigating officers could have formed any sensible view that there was a reasonable or lawful basis to prefer a charge. The remand and the eight months and five days incarceration which flowed from all of this were equally without any reasonable and lawful basis. This effectively answers the first issue - there was no reasonable basis

for suspecting or believing that the claimant had committed or was involved in the commission of the crime of murder?

[33] With regard to the second issue I also find that the two periods of detention and or arrest from the 8 June to the 10 June, and 20 to the 22 June 2012 were unlawful and violated his constitutional right. (Of course I will not be granting any relief in relation to the first period as none was asked for).

[34] This being the case, with regard to the third issue, I now conclude that there was no legal basis for the incarceration for the period of eight months and five days, that is 230 days, after charge, and in the circumstances of this case this was a violation of the claimant's constitutional right to personal liberty as guaranteed by sections 5(3) (b), 5(5) and 5(6) of the Constitution of St. Kitts and Nevis?

[35] I now turn to the question of compensation for the breaches of claimant's constitutionally protected rights, and to consider whether the claimant is also entitled to an award of vindicatory or exemplary damages?

The Proper Relief for the Constitutional Breaches

[36] Under section 18 of the St. Kitts and Nevis Constitution the court is clothed with the discretion to grant such redress as is appropriate for the enforcement of the fundamental rights provisions. I have no doubt this is not the kind of frivolous case referred to by Lord Diplock in Harrikissoon v Attorney General of Trinidad and Tobago [1980] AC 265[10] which does not really involve a breach of a fundamental right, and where the claimant should be sent away from the Constitutional court.

[10] Where he stated: "…the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom."

[37] In this case the police officer investigating this matter had absolutely no reason to detain this claimant on the several occasions on the information he had. In this case, the police pressed charges of murder against the claimant, which led to him being remanded for eight months and five days, while the police file could not find itself in the hands of the prosecuting officer. This is not the kind of appalling' conduct and a 'shameful misuse of coercive powers with which the state had endowed' on the police as was the case in **The Attorney General of Trinidad and Tobago v Ramanoop.**[11] Nonetheless, this case passes the bar of arbitrary and oppressive conduct. This was a serious charge or murder, and should have engaged the attention of the legal advisors to the force. I note that in this matter, in a matter of days after the arrest and charge, the claimant's attorney wrote to the Director of Public Prosecutions requesting discovery of any and all statements relevant to his arrest. There was never any response forthcoming. Where was the police file at this time? The Crown surely lost the opportunity at this stage to put this matter right. If at this stage, he was released, perhaps this would have been the kind of case for an ordinary action in tort. In this case, however, this claimant, was charged for no good reason, and then remanded and seemingly forgotten for a period of eight months and five days. This is appalling.

[38] I have no doubt that as the primary law enforcement arm of the Crown, the Royal St. Kitts and Nevis Police Force performs commendably. The officers of the Force have the often thankless and difficult task to police the Federation and prevent crimes in an environment where criminals continue to find new and innovative ways to commit crimes, and the more traditional forms of crimes continue. I am aware that the police force has had many successful investigations and prosecutions. It is to the credit of these officers that many serious crimes are solved, and seasoned and hardened criminals are taken off the streets. Police officers hardly ever get the praise they deserve. Society remembers them more for the few aberrations of a few bad officers or investigations when, either deliberately or through a lack of due diligence or competence, a less than professional result is achieved; on these occasions justice is not served.

[11] The Attorney General of Trinidad and Tobago v Ramanoop [2005] UKPC 15; see also Webster v Attorney General of Trinidad & Tobago [2011] UKPC 11

[39] This was one of those occasions when the investigating officers responsible for this case lost sight of the true role of the law enforcement arm of the Crown, which is to enforce the law and protect the citizens, and not to take them off the street for no good reason and lock them up without a backward glance. It is understandable that in serious matters, the police department is hard-pressed to produce results, but justice is not served and in fact it is truly harmed when certain police officers act like the ones did in this case. Perhaps it is this recognition of the inexplicable delay in getting the file to the prosecutor, which may have unconsciously caused the Crown, not take any objection that the claimant is not entitled to constitutional relief.[12]

[40] This therefore, is an appropriate case for Constitutional redress under section 18.

[41] In deciding what would be appropriate redress in this case I have noted section 5(6) of the Constitution which states:

> *"A person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person or from any other person or authority on whose behalf that other person was acting.*
>
> *Provided that a judge, magistrate, or a justice of the peace of an officer of the court or a police officer acting in pursuance of the order of a judge, a magistrate or a justice of the peace shall not be under any personal liability to pay compensation under this subsection in consequence of any act performed by him in good faith in the discharge of the functions of his office and any liability to pay any such compensation in consequence of any such act shall be a liability of the Crown."*

[42] There is no doubt that when section 18 of the Constitution speaks to 'redress' it clothes the court with a discretion to make any such order as would provide effective relief for the breach. When section 5(6) is read together with section 18, it would seem to me, that once the court has decided that Constitutional relief is appropriate, that in these cases of the unlawful deprivation of liberty, the person shall at a minimum, be entitled to compensation, but a court may go on to consider whether the redress given shall include an additional award or other orders for vindication of the constitutional breach.

[12] Reflective of the view expressed by the Privy Council at paragraph 14 of Subiah v The Attorney General [2008] UKPC 47

[43] In this regard the St. Kitts and Nevis Constitution is different from many of the other Constitutions in the region with regard to which the Courts have made it clear that there is no automatic right to compensation.[13] Those Constitutions do not contain an equivalent provision to our section 5(6) which specifically provides for this compensation.[14]

[44] With regard to the claimant's entitlement first to a compensatory award, the question for me is what would be the appropriate sum, as this must be a measured and reasonable sum. In **Fuller (Doris) v Attorney General**[15] Patterson JA stated:

> *"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"*

[45] I have also noted **Subiah v The Attorney General of Trinidad and Tobago**[16] where Lord Bingham of Cornhill treating with the issue of compensation for breach of a constitutional right stated that:

> *"Such compensation will be assessed on ordinary principles as settled in the local jurisdiction, taking account of all the relevant facts and circumstances of the particular case and the particular victim. Thus the sum assessed as compensation will take account of whatever aggravating features there may be in the case, although it is not necessary and not usually desirable … for the allowance for*

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[13] The view expressed by Lord Hope of Craighead in Seepersad that compensation is not automatic for breach of the constitutional right to liberty is not applicable to St. Kitts and Nevis. In that case, His Lordship in considering the Trinidad and Tobago Constitution stated: "There is no constitutional right to damages. In some cases a declaration that there has been a violation of the constitutional right may be sufficient satisfaction for what has happened: Inniss v Attorney General of St Christopher and Nevis [2008] UKPC 42 at [21]; James v Attorney General of Trinidad and Tobago [2010] UKPC 23 at [37]. In others it will be enough for the court to make a mandatory order of the kind that was made in this case, when Dean-Armorer J ordered that the terms of the appellants' detention should be determined by the High Court. As Lord Kerr of Tonaghmore said in James, para 36, to treat entitlement to monetary compensation as automatic where violation of a constitutional right has occurred would undermine the discretion that is invested in the court by section 14 . It will all depend on the circumstances." There is no equivalent provision in the T&T Constitution to section 5(6) of the St. Kitts and Nevis Constitution.

[14] In fact, whilst St. Kitts and Nevis is not a signatory to the International Covenant on Civil and Political Rights, it conforms to Article 9(5) which states that: "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

[15] (1997) 56 WIR 337

[16] [2008] UKPC 47

> *aggravated damages to be separately identified. Having identified an appropriate sum (if any) to be awarded as compensation, the court must then ask itself whether an award of that sum affords the victim adequate redress or whether an additional award should be made to vindicate the victim's constitutional right.*

[46] 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.

[47] Thus, what the court has to decide is what should be that reasonable compensation given to him for the second period of detention (he did not seek compensation for the first period of detention) and then the period spent on remand.

[48] In this case, this claimant was detained twice. On the first occasion, I find as a fact that he was detained for more than 48 hours when there was first no reasonable cause to detain him and second no reason to keep him for that length of time. There was nothing in this case to show that the police did anything during this period which made it necessary for the claimant to be kept locked up at the police station. What were they doing? Were they speaking to anyone? Were they following up any lead which made it necessary that the claimant remain in custody?

[49] He was also detained on the second occasion, as I have said before, for no good cause. He was again locked up at the police station. What were they doing for this 48 hour period, when they had him in custody? What were they following up? If he was going to be kept for this period without charge, even if the police had this really mistaken view that they had cause to detain him, they should at least tell this court what they were doing in this time. The police have to know that they cannot lock persons up and wait, for no good reason, for

the 48-hour or the 72-hours period to expire even in a case where they are going to charge the person. If there have no reasons to wait, then this would amount to arbitrary and oppressive conduct. I have not been presented with any evidence in this case which tells me what the police were doing during this time. In these types of matters, it is not sufficient for the court to be told that they were 'investigating' the matter. This is not good enough. The 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.

[50] During both of these periods of detention, he was kept at the Sandy Point Police Station, where he was held in the police lock ups. He has not complained about the state of these 'lock ups' but he has complained about the state of Her Majesty's Prisons where he was on remand for eight months and five days. At the prisons he shared a 200 feet square feet cell with twenty-four other inmates. That cell only had seven bunk beds capable of accommodating fourteen persons, and he slept on a piece of sponge on the floor of the cell for the entire period of his incarceration. He was given a blanket. This cell had a toilet facility in an enclosed area and the inmates had to flush with a bucket of water.

[51] I have considered the evidence of Mr. Franklin Dorset, the Superintendent of Her Majesty Prison. I have had due regard to the administrative challenges faced by Prisons. Whilst I accept that certain things are the way they are for financial and security reasons, I have considerable difficulties with that number of persons being placed in that size of cell and inmates having to sleep on the ground, albeit on a 'pieces of sponge'. This is not good enough. For this claimant, all of this must have added to his distress. He did complain about some medical conditions, but he had never complained in the Prisons about this apart from an old knee injury. I am not satisfied that he has suffered any lasting physical illness because of this incarceration.

[52] In seeking to find the appropriate sum to be given as compensation, I have also examined a number of cases, some of which related to damages for the common law tort of wrongful imprisonment.

[53] I have noted **Raymond Warrington and Karl Peters v Cleville Mills and the Attorney General of Dominica**,[17] where in 2008, the OECS High Court awarded Raymond Warrington $20,000.00 for false imprisonment for six hours and $25,000.000 to Cleville Mills for false imprisonment for 9 hours; and the sum of $10,000.00 to each defendant for aggravated and exemplary damages.

[54] I have also noted **Elihu Rymer v The Commissioner of Police et al**,[18] where in 1999, the OECS Court of Appeal, awarded the claimant $20,000.00 for three hours of unlawful detention in a situation where none of the charges against the claimant were pursued before the Magistrate. They were either struck out or dismissed for want of prosecution. These were small charges of disorderly conduct, unlawfully obstructing the passage of a police vehicle, threatening language and resisting a police officer.

[55] In **Danny Ambo v Michael Laudatt and Another**,[19] the claimant was charged for conspiracy to commit murder and had been incarcerated for the period of 93 days and 5 hours from April 2007 to July 2007. The charge was then withdrawn as the prosecution failed to offer any evidence against the claimant. The Master awarded the claimant EC$100,000.00 for false imprisonment.

[56] In **Nicole Fullerton v The Attorney General**[20] the claimant had been detained for 28 hours, the Jamaican High Court awarded the sum of $800,000.00 (approximate equivalent of EC$20,000.00)

[57] In **Takitota v The Attorney General**[21] the claimant had been unlawfully deprived of his liberty for a period of eight years. The Court of Appeal of the Bahamas had awarded him $750,000.00 as compensation and $100,000.00 by way of constitutional and vindicatory damages. The Privy Council, pointing to an arithmetical error, demonstrated that the

[17] Claim No DOMHCV2006/0038
[18] BVI Civil Appeal No 13 of 1997
[19] Claim No. 30 of 2010
[20] Claim No. 2010 HCV 1556
[21] 2009 WL 635043

calculations left it at just under $500,000.00. In this case, the Bahamas Court of Appeal actually approached the matter by fixing the sum of $250.00 for every day that the claimant had been detained.[22] The Privy Council demonstrated that the calculation actually fixed the rate at $166.66 per day.

[58] In **Malcolm Payne v The Chief Magistrate et al**[23], the Learned Master was prepared to give the claimant the sum of $3,333.33 for every hour that he had been detained.

[59] I have been asked by the defendant to consider the case of **Emmanuel Chijioke v Commissioner of Police of Saint Vincent and The Grenadines et al**[24] where a sum of $18,000.00 was awarded to the claimant for a period extending several years. This case is an unusual case as this claimant had been originally detained lawfully as being a prohibited immigrant, but had been detained for an extended period pending proper steps to deport him; it was only on this basis that his extended detention was considered unlawful. I do not find this case to be very helpful.

[60] I do not propose to do as the Learned Master did in Payne's case, neither do I consider that I should approach it as the Bahamas Court did. I will draw upon both these approaches, having regard to all the other cases cited in formulating an approach. In matters such as this where the detention period is not a short one as in a few hours or days, I am of the view that an initial sum should be given for the initial period of detention, and then a fixed sum should be given for each day that the claimant was detained. I have chosen to take this approach in recognition of the shock and humiliation, which would have been felt by the claimant initially on being arrested by the police. The aggravation is more

[22] The Privy Council pointed to an arithmetical error in the calculation. As Lord Carswell stated at parag 8 of the judgment, "In considering these calculations, their Lordships are unable to find any reliable conclusion on the starting point taken by the Court of Appeal. The calculation in para 92 of their judgment of $250 per day as the basis of the judge's award assumed that the appellant was arrested on 14 August 1992, whereas if he was arrested on 12 August, as appears to have been the case, the initial period up to the date of the deportation order was six days. This would give, using the same arithmetical approach as the Court of Appeal, $166.66 and not $250 per day. If one accepted the approach which they adopted in para 93, 2922 days at a daily figure of $166.66 would amount to $486,980, not $730,500. In itself, the figure of 2922 days is inaccurate, for the appellant was detained for more than eight full years up to 10 October 2000, but even the extra 59 days would leave the total at only $496,813."

[23] CLAIM NO. ANUHCV2001/0261

[24] High Court Civil Claim No. 232 of 2010

at this stage. A fixed sum is appropriate for this initial act of detention. Thereafter, I consider that it is only proper that a sum be fixed for every day of detention having regard to those relevant factors that are set out above.

[61] Even so, there is hardly any definitive guidance even in the cases as to how the courts arrive at the final figures, and I have not been able to locate any literature to guide me in this process. The two cases in which I saw a formula of sorts was the Bahamian case of Takitoka in which the sum of $250.00 was fixed for every day of unlawful detention and the Malcolm Payne case in which the Learned Master awarded the sum of $3,333.33 for each hour of detention for a total of $10,000.00 for three hours.

[62] I did, find some assistance in the practice in certain States of the United States of America, which have statutorily fixed daily rates for 'wrongful incarceration' for convicted persons in a range from US$50.00 to US$150.00. In some States, this figure can be more depending on a number of factors, which includes 'claims for loss of liberty and enjoyment of life; loss of earnings; loss of earning capacity; loss of familial relationships; loss of reputation; physical pain and suffering; mental pain and suffering; and attorney's fees and other expenses arising from or related to such person's arrest, prosecution, conviction and incarceration.'[25]

[63] I have also seen this kind of scheme in operation in the United Kingdom where figures are capped at 500,000.00 pounds sterling (one million where the detention exceeds a decade).

[64] I am of the view, having regard to all the factors set out above[26], that for the initial period of detention, this claimant is entitled to at least EC$20,000.00 for the initial act of detention, and a sum of EC$500.00 per day for each day of detention beyond the initial act of detention resulting in a total sum of EC$135,000.00. I have arrived at EC$500.00 without any reference to his earnings or loss of earnings. I have considered his loss of liberty. I have also considered the humiliation he would have suffered on being charged for the

[25] Including Alabama Florida and Connecticut.
[26] I disregarded those that were not relevant or for which there was no evidence. For example in this case there was no allegation that he had been assaulted in prison.

offence of murder and thrown in prison. He was detained for 230 days. He had to sleep in a prison cell and on the ground during all this time. He was subjected to prison discipline and this was a man without any previous convictions. He lost the society of his family and friends, and loss the opportunity to enjoy normal life experiences and to pursue any development goals. To my mind, having regard to the circumstances of this case and this particular claimant, giving due consideration to the cases cited above, the sum of EC$500.00 per day is an appropriate sum.

[65] I have set the compensation. I will now *ask myself whether an award of that sum affords the victim adequate* **redress** *or whether an additional award should be made to vindicate the victim's* ***constitutional right****.* I am of the view, for the kind of conduct that was evident in this case, the mere award of compensation in this case is not enough, and that this is an appropriate case in which an additional award is to be made. I have noted the guidance offered by the Privy Council in **Ramanoop** where it was stated:

> *"[19] 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. "*

[66] I am reminded by Lord Hope of Craighead, giving the judgment of the Board in **Inniss v Attorney General of Saint Christopher and Nevis**,[27] when he cited the guidance given by the Supreme Court of New Zealand in **Taunoa v Attorney General**,[28] a case brought for **damages** for breach of the New Zealand Bill of Rights. He related the purpose of

[27] [2008] UKPC 42
[28] [2007] 5 LRC 680

vindication of the claimant's rights to the effect of an award in deterrence of executive wrongdoing in a passage at paragraph 27:

> *"The purpose of the award, whether it is made to redress the contravention or as relief, is to vindicate the right. It is not to punish the Executive. But vindication involves an assertion that the right is a valuable one, as to whose enforcement the complainant herself has an interest. Any award of damages for its contravention is bound, to some extent at least, to act as a deterrent against further breaches. The fact that it may be expected to do so is something to which it is proper to have regard."*

[67] A citizen of this Federation was charged for murder and remanded for eight days and five months on absolutely no evidence. I would always expect that proper due diligence should be the benchmark for any law enforcement agency, but in this case, there seemed to have been no due diligence. The law enforcement arm of the State fell way short of the mark in this case. There was no due consideration given to this matter, and there seemed to have been a deliberate lack of care as to whether rights were respected. The right to liberty is a valuable one. It is one of the true characteristics of a democratically free society. Breaches of this nature have no place in modern law enforcement.

[18] In Subiah, the claimant was unlawfully arrested on spurious charges of abusive language and dragged through the street in the presence of onlookers, taken to a police station which unknown to the arresting officer had been closed. The claimant was then dragged for about ten minutes to the relocated station and there he was told to sign documents, handcuffed and treated in a deplorable manner. He was later that day charged and taken to the court and granted bail. The charge was later dismissed when the officer failed to appear. The Privy Council while commenting there might be a need to revise the levels of awards in Trinidad and Tobago, reinstated an award of compensation in the sum of TT$80,000.00.

[19] In this case I consider that an additional award of the sum of EC$30,000.00 is appropriate to vindicate the constitutional breach.

[20] I have been asked to make an award of special damages to the claimant for the loss of earnings. I have however, examined the pleadings in this matter and I note that special damages were not pleaded and as such they are not recoverable.

[21] In all of the circumstances of this case, I will grant the declaration that the claimant's arrest and charge for murder and detention for a period of eight (8) months and five (5) days violated his constitutional right to personal liberty and was in contravention of the provisions of Section 5(5) of the Constitution of St. Christopher and Nevis.

[22] I will also order the respondent will pay to the claimant the sum of EC$165,000.00 as compensatory and vindicatory damages for the breach of the claimant's Constitutional right to liberty as guaranteed by the Constitution of St. Kitts and Nevis. The parties being unable to agree, costs will be assessed.

[23] Finally, I wish to thank the parties for their written submissions in this matter.

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Darshan Ramdhani
Resident Judge (Ag.)