

**EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA**

IN THE HIGH COURT OF JUSTICE

DOMHCV2013 OF 310

BETWEEN

KEVIN CASIMIR

Claimant

AND

MICHEL ETTIENE

Defendant

Appearances: Mrs. Gina Dyer-Munro of Dyer & Dyer, Counsel for the Claimant
Mrs. Heather Felix-Evans and Mr. Douglas Murdoch of Heather Felix-
Evans Chambers for the Defendant

2013: September 26th,

October 1st

2014: January 23rd

JUDGMENT

- [1] **THOMAS, J: (Ag)** In a Claim Form filed on 21st June 2012, Kevin Casimir claims damage against the defendant for assault and battery on or about 31st July 2010 at Salisbury, in the parish of St. Joseph in the Commonwealth of Dominica.

- [2] The essence of the claim is that on or about 31st July 2010, the defendant violently assaulted and beat the claimant by punching the claimant and throwing the claimant over a porch in Salisbury and that as a result the claimant suffered pain, injury, loss and damage.
- [3] The particulars of injury pleaded are: injury to the claimant's mouth causing the claimant to lose teeth, injury to the claimant's forehead (2 cm deep) causing the claimant to get stitches; injury to the claimants' hand; injury to the claimants' body.
- [4] The particulars of special damages pleaded are: cost of extension of travel ticket (the claimant was in Dominica on vacation when the assault and battery was inflicted on him by the defendant and was forced to extend his stay in Dominica due to his injuries from the assault and battery – EC \$81.00; loss of earnings for four (4) weeks as the claimant could not work for four(4) weeks as a result of the injuries received –EC \$6520.00; x-ray – EC\$100.00; dental visit- EC\$80.00; transportation – EC \$150.00, replacement of teeth and dental fees – EC\$4000.00.
- [5] The Claimant therefore claims special damages of EC\$10, 931.56, damages, costs, interest and further or other relief.

Defence

- [6] In his defence the defendant denies the claimant's pleadings at paragraph 4 of the statement of claim and avers that it was the claimant who assaulted and beat him on the 1st day of August 2010.
- [7] With respect to the injuries pleaded by the claimant, the defendant contends that if the claimant suffered any pain, loss, injury or damage as a result of the events of 1st August 2010, the same was brought about by his own conduct and/or in the

course of the defendant defending himself, Laurel Bruno and their unborn child against the claimants acts of assault and battery.

- [8] In the circumstances the defendant avers that the claimant is not entitled to any of the reliefs claimed.

Counter-claim

- [9] In his counterclaim the defendant gives his account of the events of 1st August 2010 at around 3:00am, including the entry of the claimant into Laurel Bruno's residence without the consent of Laurel Bruno and assaulted and beat the defendant.
- [10] The defendant claims: General damages for assault and battery; costs and such other and further relief as the court deems fit.

Amended Reply

- [11] In his amended reply, the claimant denies paragraph 3 of the defence and the claimant avers that he was in an amorous relationship with Laurel Bruno for years and at the time when he went to the house of Laurel Bruno, he was accustomed of doing as was there on 1st August 2010.
- [12] It is the claimants' further averment that he was involved in a relationship with Laurel Bruno and the said Laurel Bruno never informed the defendant that the claimant was her boyfriend at the time of the incident.
- [13] At paragraph 4 of his amended reply, the claimant states that Laurel Bruno informed him that the baby she was carrying at the time was the claimant's baby.

[14] In further answer to paragraph 5 of the defence, the claimant denies that he was drunk, that he verbally abused and physically attacked Laurel Bruno, that the defendant bear-hugged and succeeded in pushing him out.

[15] At paragraph 6 of his amended reply the following is pleaded:

“That the defendant fought with the claimant knocking the claimant causing him to lose 4 teeth and bruising his forehead and threw him over the porch of the house, which porch is about 5 meters high. That after the claimant was thrown over the porch by the defendant, Laurel Bruno told the defendant that he had killed the claimant and then called the police.”

Amended defence to counter-claim

[16] In his amended defence to counterclaim, the claimant avers that he did not knock nor use insulting language as pleaded, nor did he enter as pleaded or beat the defendant.

Reply to amended defence to counterclaim

[17] At paragraphs 2 and 3 of the Reply to Amended Defence to Counterclaim, the following is pleaded:

“2. In reply to paragraph 1 of the Amended Defence to Counterclaim, the defendant says that he is without knowledge of anything which happened between the claimant and Laurel Bruno outside his presence. The defendant denies that Laurel Bruno said to him that he has killed the claimant and that Laurel Bruno called the police while he (the defendant) was at Laurel Bruno’s house on the day and time in question. The defendant repeats the version of the facts as stated in his Defence and counterclaim filed on the 26th day of September 2012.

3. In reply to paragraphs 2 to 5 of the Amended Defence to Counterclaim, the Defendant repeats the version of the facts as stated in his Defence and Counterclaim filed on the 26th day of September 2012.”

Evidence

- [18] In his witness statement Kevin Casimir says that he lives in the United Kingdom. The witness also details his relationship with Laurel Bruno from 2006 and he describes her as his girlfriend. The witness further details his travel to St. Lucia in April 2010 with Laurel Bruno, money, barrels, phones, cameras and a laptop computer sent to the said Laurel Bruno, and his going to Laurel's home on or about 21st July 2010.
- [19] As regards the witness going to Laurel Bruno's home, the witness says that he knocked on the door and Laurel Bruno opened the door. What followed was a physical exchange between the witness, Laurel Bruno and Michel Etienne. According to the witness, Etienne hit him in his face and caused him to lose 4 teeth and then he was thrown over the porch which is high and burst his forehead.
- [20] At paragraph 18 of his witness statement, he witness says that he was bleeding from his mouth and his face was bruised, he was missing front teeth when he was beaten by the defendant.
- [21] In amplification of paragraphs 6 and 24 of his witness statement, Kevin Casimir testified that he went to St. Lucia on the 10th of April 200 and that he fixed his teeth.
- [22] In commenting on the evidence of Mitchel Etienne, Casimir testified that he never banged on the window but he knocked on the door and Laurel came and opened the door; and never said he did not give a f***, he never called Laurel salop, he never beat Laurel seeing that she was pregnant; he never fell and it was Etienne who beat him; that he was not drunk as he does not drink; that the defendant pushed him on the verandah while beating him and he cuffed him in the mouth and that is when he lost his teeth; that the defendant pushed him over the verandah and he landed on his hands; that he never hit Laurel with a Baygon can;

that after the defendant hit him, the defendant ran to the police himself and Laurel went to her aunty screaming; Laurel was assisting the defendant in beating him; that he arrived at Laurel's house at 11 o' clock on 3rd July 2010; that he spoke to Laurel earlier that day and gave her money; the defendant threw him on the cabinet when he was beating him; that he never rushed on the defendant or swing punches; that the defendant was the aggressor and he was throwing punches. In making comments on the witness statement of Hayden Morgan, Kevin Casimir testified that he was not fighting the defendant and Laurel; he asked Laurel for the laptop and when the Police Officer came he gave it to him and told him to hold it; he had taken the fruits to Laurel at the hospital earlier that day.

[23] Upon cross-examination by Mrs. Heather Felix-Evans, Counsel for the defendant, Kevin Casimir said that he gave his Counsel a witness statement and did give the time of the incident but he did not see any time mentioned in the witness statement. The witness went on to say that the time of the incident is 11:00pm.

[24] In further cross examination, Casimir testified that on the night of the incident the house was in darkness when he went there and he knocked for about 30 seconds and Laurel opened the door. He went on to say that at the time he was not aware that the defendant and Laurel had a relationship and that inspite of that he was not jealous and he never called her salop. Casimir also testified that Laurel never told him that she was carrying the defendant's child. The witness also denied that Laurel told him that the defendant was inside the house and when she told him he used a certain expression.

[25] With respect to the matter of the witness being drunk, the witness said that the three people who said he smelt of alcohol are telling lies on him as he does not drink. Casimir went on to give evidence as to the manner in which he was beaten after he was asked into the house by Laurel. It was conceded however, that Laurel's admitting him into the house was not in his witness statement.

[26] At the end of his cross examination, Casimir again repeated that he had a strong smell of alcohol. He also testified that he did not admit that he was wrong and sorry for what he did. Further that he did not hear Laurel say she was not going to press charges. Casimir also admitted that he was not happy about the fact that Laurel and the Defendant were sleeping.

[27] In re-examination, the witness said that when he fell from the porch he landed on his hands.

Aldith Foye

[28] Aldith Foye says in her witness statement that she is the mother of Kevin Casimir. She gave evidence that she knew Laurel Bruno and of her relationship with her son for years. Also in her testimony is her visit to the Salisbury Police Station and the result. In cross examination, Aldith Foye said that she knew the case is about something at Laurel Bruno's house but that she was not there.

Pelham Jno. baptiste

[29] In his witness statement Pelham Jno. Baptiste identified himself as an acting Sergeant of the Commonwealth of Dominica Police Force. He said he knew the claimant who came to the Mahaut Police Station to report what transpired between himself and the defendant, being that he was beaten up and thrown off a porch by the defendant. According to the witness, Casimir was bleeding from his mouth and his face and he was missing front teeth.

[30] In cross examination, Pelham Jno. Baptiste said that the claimant is his friend but Laurel is not. He went on to say he saw them together. In re-examination the witness gave further evidence of seeing the claimant and Laurel Bruno together.

Carl Munro

- [31] Carl Munro says in his witness statement that he is a Medical Doctor attached to the Accident and Emergency (A&E) Department at the Princess Margaret Hospital. He said that a medical report is attached to his witness statement.
- [32] In further evidence, Dr. Munro said he examined the patient but he could not recall how many teeth he was missing, but that he suffered injury to his mouth. The witness went on to express the opinion that the injury to the mouth was caused by a direct blow using moderate to severe force.
- [33] In cross-examination the witness said that the patient came with blood in his mouth and missing four teeth, but conceded that the four teeth are not included in the report. The witness also explained that the Medical Examination is a summary of the findings made at the Casualty.
- [34] In further evidence on the issue of missing teeth, Dr. Munro testified that the final time he mentioned missing teeth was on the 3rd day of May 2013 and that he had indicated in his witness summary that he would say that four teeth were missing.
- [35] Finally Dr. Munro said that the loss of teeth could have been caused by hitting on a hard object and that hitting the floor was a possibility.
- [36] In re-examination the witness said that the notes taken are at the Casualty Department and they were not produced because his attempts to do so were unsuccessful.
- [37] In answer to a question from the Court concerning the loss of teeth by the Claimant, Dr. Munro said that it could have been caused by the edge of a table but not the floor.

Mitchel Etienne

- [38] Mitchel Etienne in his witness statement says he lives in Salisbury with his girlfriend, Laurel Bruno and his son, who was born on the 9th day of February 2010.
- [39] It is the evidence of Mitchel Etienne that on 1st August 2010 at about 3:00am, he heard a loud voice and a loud banging on the aluminum louvers of the bedroom window of the girlfriend's house in Salisbury where he sleeps sometimes. He said that he later realised that the voice was that of Kevin Casimir who is not his friend.
- [40] At paragraph 6 to 13 the witness details the circumstances in which Laurel Bruno, against his advice opened the front door of the house which leads to the verandah and the events followed including the following: he heard Laurel screaming, ran to the front door and saw the claimant punching and beating on Laurel, after he said something to the claimant; the claimant rushed on him and pushed him backwards through the front door, the claimant tried to grab him and having failed to do so fell on the floor, the claimant swung several punches and slaps; the claimant fell again on a glass topped center table and broke the glass; the claimant was shuffled outside into the verandah and the front door closed by a tower bolt; the claimant burst open and forced his way inside, the claimant continued to throw punches at Laurel and the defendant, the claimant used a baygon can to hit Laurel on the head; the claimant was put in a head lock and Laurel Bruno grabbed the claimant by the waist from behind; the defendant released the claimant and went to make a report at the Salisbury Police Station; two police officers returned with the defendant; the claimant was arrested.
- [41] In commenting on the claimants' evidence, the defendant testified that what is said at paragraph 3 is not correct. He said that the noise he heard woke him up. He went on to say that something gave him the indication that it was the claimant making the noise and that when he looked at his phone the time was 3:00am.

[42] In commenting further, the defendant testified that it was untrue that he punched the claimant in the mouth or pushed him over the balcony. According to the witness, we never left the house at that point. The defendant also denied that Laurel was saying beat him he deserved it.

[43] Under cross examination, he gave evidence that when he went to the Police Station, one of the officers who returned to Laurel's house with him was Elton George who is related to Laurel. The witness also denied that he was aware of the relationship prior.

[44] With respect to the exchange between the claimant and himself, the defendant denied that he was the aggressor and said that he received blows but was blocking them. And in related evidence the defendant testified that after the incident which lasted about half an hour, he could not recall that the claimant was bleeding. The defendant went on to say that when he returned with the Police he did not recall what the claimant was wearing.

There was no re-examination of this witness.

Laurel Bruno

[45] Laurel Bruno in her witness statement gives details of events around 3:00am on the 1st day of August 2010. Her evidence is that she was awakened by loud banging on the aluminium louvers of her bedroom window by a person who was talking loudly and cursing and using insulting language. And that she recognised the person to be the claimant, Kevin Casimir.

[46] According to Laurel Bruno, she went outside in an attempt to calm down the claimant but instead he started beating her and that's when the defendant came at the claimant, lunged at him swinging punches and fell in the process and later fell

again on the glass topped table. It is her further evidence that the claimant continued to throw punches at the defendant and hit her in the head with a baygon can.

[47] At paragraph 13 of her witness statement, Laurel Bruno details the manner in which she held the claimant in order that the defendant was able to go to get the police.

[48] With respect to the issue of the claimant being thrown over the porch by the defendant, this is denied by the witness. And she went on to say he never fell over the porch.

[49] Under cross examination, Laurel Bruno testified that on the night of the incident she did ask the claimant to leave her house. The witness went on to explain that this is so despite that fact that it is not mentioned in the witness statement. In further cross examination Laurel Bruno gave evidence that when the police came to her house the claimant was bleeding and that she and Kevin were holding on the laptop; and the witness also denied that she asked Kevin to let go the laptop.

[50] In further cross examination on the claimants' condition, Laurel Bruno said that he was bleeding, but did not remember he had on a vest soaked in blood. She continued: "*All I know is that he was bleeding and I offered to look at it and he said I must leave him alone.*"

[51] Concerning the defendant and the claimant, Laurel denied that the defendant never put his fist in the claimants' face. The witness further denied that the fight between the claimant and the defendant started inside the house and then went outside.

[52] In answer to a question put to Laurel Bruno in relation to the claimant and the defendant, the witness said this: "*The claimant fell three times; first when he lunged*

at Mitchel, second on the glass table and third on a wall unit which was tall.” She continued: “It was towards the end of it; I saw him bleeding when he hit the wall unit. I saw him bleeding from his forehead. There is a lamp post and there was some reflection. I had a clear view when we went to the Police Station. I did not see anything further. I was a step away. He was talking to the police. I did not see any other injury. I did not notice anything different about the claimant. I did not see anything else.”

Hayden Morgan

[53] Hayden Morgan says he is a Corporal of the Commonwealth of Dominica Police Force. It is his evidence that on the 1st day of August 2010 at around 3:00 o’ clock in the morning, the defendant came by the Salisbury Police Station and made a report and as a result accompanied by another police officer went to the house as directed by the defendant. The witness gave the details as to what he saw and heard at the house.

[54] In commenting on the evidence of the claimant, the witness said that he did not recall the claimant being hand cuffed.

[55] Under cross-examination Hayden Morgan said that he noted blood coming from the claimant’s mouth and he recalled further that what appeared to be blood on his clothes in the chest area.

Issues

[56] The following are the issues for determination:

1. Whether the defendant is liable for assault and battery of the claimant; and if so whether any defences are open to the defendant.

2. Whether the claimant is entitled to the damages claimed.
3. Whether the claimant is liable for assault and battery of the defendant, and if so whether any defences are open to the claimant.
4. Whether the defendant is entitled to the damages claimed.
5. Whether any party is liable to pay costs.

ISSUE No. 1

Whether the defendant is liable for assault and battery of the claimant; and if so whether any defences are open to the defendant.

[57] Before embarking on the issue in its factual and legal context, the Court finds it necessary in view of the intensity of the events and evidence to record certain findings of fact as derived from the evidence. To a large extent some such undisputed fact and findings of facts are contained in the submissions on behalf of the defendant and which the Court adopts and in some cases add other findings of fact. They are as follows:

1. On the occasion of the incident Laurel Bruno was pregnant.
2. On the occasion of the incident, the claimant knew that Laurel Bruno was pregnant.
3. The claimant went to the house of Laurel Bruno at around 3:00 am on the 1st day of August 2010 which accords with other witnesses.*

4. At the time the claimant went to the house of Laurel Bruno, the house was in darkness.
5. At the time the claimant went to the house of Laurel Bruno, the defendant and Laurel Bruno were inside the house and asleep.*
6. The upper porch of Laurel Bruno's house is about 15 feet from the ground.
7. The claimant made known his presence at Laurel Bruno's house by banging on the window and not the front door.*
8. Laurel Bruno met the claimant on the porch.
9. Some physical interaction went on between the claimant and Laurel Bruno.
10. When the claimant went to Laurel Bruno's house, he was angry or became angry or was very disappointed having regards to when he called her "salop" and detailing what he did for her over the years.*
11. There is no evidence of any weapon in the possession or used by any of the parties.*¹
12. The claimant fell inside the house of Laurel Bruno three times, once on the floor, once on a glass table and once on the wall unit, which Laurel Bruno said is used to house the television.

¹ It is to be noted that any undisputed fact is modified

13. The defendant put the claimant out of Laurel Bruno's living room at some point.
14. The claimant re-entered Laurel Bruno's house after the defendant had locked it.
15. The defendant left Laurel Bruno's house to get the police.
16. Laurel Bruno left her house to call her aunt.
17. The defendant brought the police back to Laurel Bruno's house.
18. Two police officers arrived at the scene.
19. The claimant was inside Laurel Bruno's house when the police arrived.
20. The police took the claimant away from Laurel Bruno's house to the Salisbury Police Station where he spoke with them.
21. The Claimant was never taken inside the Salisbury Police Station.
22. Laurel Bruno and the claimant were at the Salisbury Police Station (outside) at the same time with the police and an exchange took place between them.
23. The police did not charge the claimant with any offence in relation to what happened at Laurel Bruno's house.
24. After the claimant and Laurel Bruno had spoken with the police, the police dropped off the claimant in an area close to his mothers' house.

25. The police did not speak with or charge the defendant with any offence in relation to what happened at Laurel Bruno's house.

26. Several witnesses gave evidence that the claimant was under the influence of alcohol and had a smell of alcohol but there is no evidence of test being carried out to give credence to such evidence. In the circumstances having regards to the evidence as a whole, the finding is that the claimant was unstable on his feet at the material time.

Claimants' objective reality

[58] The Issues in this case to the necessity for the claimants' objective reality to be noted as derived from the evidence. It is as follows: the claimant and Laurel Bruno were involved in an 'amorous relationship' for some five years and although the claimant lived in England, the relationship flourished. In this connection the claimant sent gifts to Laurel Bruno including money and lately a laptop computer.

[59] The Claimant and Laurel Bruno went to St. Lucia "an involved couple"² and stayed together. The claimant provided the funds for Laurel Bruno airfare. Indeed, in his pleadings the claimant says that Laurel Bruno told him that she baby she was carrying belonged to him.

[60] Earlier in the day on 31st July 2010, the claimant went to Laurel Bruno's work place at the Princess Margaret Hospital and took fruits for her and gave her \$200.00 cash.

It is against this background that the events took place at the home of Laurel Bruno at 3:00am on the 1st day of August 2010.

² See: Supplemental Trial Bundle #2 (..Documents not agreed upon) at page 11

[61] It is also in this context that the claimant contends that he did not verbally abuse Laurel Bruno by using offensive language including a reference to Laurel Bruno as “salop”. To this must be added the finding by the Court that the claimant was unstable on his feet having regards to the events in the house.

[62] **The law**

An assault is an intentional or reckless act that causes someone to be put in fear of immediate physical harm. On the other hand battery is the intentional and reckless application of force to someone without his consent.³

[63] **Submissions**

Learned Counsel for the claimant examined the Law relating to contributory negligence, self defence, and then tendered submissions from which the following is extracted:

“174. *It is clear that when the defendant went to the Police he never mentioned about being beaten. Thisthe claimant is asking the Court to find establishing that the defendant was not acting in self defence. It is inconceivable that (someone) is being beating and goes to the Police Station and never reports that he was beaten by an assailant.*

176. *Further the allegation that Laurel Bruno was being beaten must equally be disregarded. If the defendant has lied about his being beaten, the Court is asked to disbelieve his evidence of Laurel Bruno being beaten.*

179. *The Court is being invited to find that the injury to the Claimant was out of all proportion to the occasion and that the defendant was not acting in self-defence or defence of Laurel Bruno. The claimant was punched in*

³ See: Clear and Lindsell on Torts at para 17-03, street on Torts (16th ed.) by Margaret Brazied and John Murphy et al. page 30; Bullen and Leake and Jacobs, Precedents and Pleadings, (17th ed.), Vol 1, para 2-01 at pp. 38-39

the mouth even although the defendant has denied punching the claimant."

[64] In the case of the defendant, the following are extracted from the submissions:

"59. *The quality of the claimant's evidence is poor, inconsistent, not credible and unreliable. On the other hand, the defendant evidence was consistent, truthful and credible. The defendant was very clear and upfront with things which were relevant to the issues in this case. The defendant's account of what happened made sense. It was the defendant who volunteered the approximate time of the incident. This was confirmed by Corporal Hayden Morgan. It was the defendant who first gave evidence that the claimant fell on three occasions in Laurel Bruno's house, on one occasion these occasions falling on a glass top center table causing it to break and on a third occasion falling head first into a wall unit. This was confirmed by the defendant only under cross examination. It was the defendant who volunteered that information about holding the claimant in a bear hug on one occasion to push him off the porch and he holding the claimant in a head-lock on another occasion to restrain him. The claimant said that he does not remember where the defendant held him. It is the defendant who first gives evidence about the claimant re-entering Laurel Bruno's house during the incident after he had been pushed on the porch and the door was locked to keep him out. The claimant only admitted this evidence of re-entry under cross-examination but said that this happened after he had been beaten to death by the defendant and Laurel Bruno in her house, thrown over the porch from a height of 15 feet and had landed on his two hands. The claimant says that he re-entered to request his laptop."*

[65] The conclusion is in these words:

"67. *Based on all the evidence before the Court, we argue that on a balance of probability, the claimant has not proven that the defendant assaulted and committed acts of battery against him by putting his hand in his face, punching him in the mouth and throwing him over the porch of Laurel Bruno's house. The evidence is that when the defendant did touch the claimant it was in defence of himself, Laurel Bruno and their unborn child. For example, putting up his hand to block the claimant's punches, bear hugging the claimant to push him of the porch, head-locking the claimant to restrain him. None of the acts of the defendant towards the claimant*

were excessive or disproportionate to the circumstances created by the claimant."

Analysis and Conclusion

[66] Essentially, this case falls to be determined on the evidence of the claimant, the defendant, Laurel Bruno and especially that of Dr. Carl Munro as it unfolds outside of Laurel Bruno's bedroom window and the living room of the said house where the physical exchanges took place.

Even further, the case takes its colour from the conduct of the claimant when he was outside Laurel Bruno's bedroom window. As already determined as a fact, the claimant was either angry or very disappointed given what he said he did for Laurel Bruno and the use of the expression 'salop'⁴, despite the fact that his evidence is that he did not feel jealous.

It is a further finding of fact by the court that there is no evidence to suggest that the claimant was invited to Laurel Bruno's house on the 31st day of July 2010 or on the 1st day of August 2010, notwithstanding that they made a trip to St. Lucia in April 2010 with the claimant providing money for the air fare.

[67] The claimant's evidence that he went to Laurel Bruno's home at 11pm on the 31st day of July 2010 is also not accepted by the court. The evidence of the claimant and the defendant is that the entire exchange lasted between thirty to sixty minutes. Therefore, this time completely contradicts the evidence of the defendant that when he heard the noise outside Laurel Bruno's bedroom it was 3:00am on his phone, and also Cpl Hayden Morgans' evidence that he saw and spoke to the defendant *"around 3:00 o'clock in the morning"* at the Salisbury Police Station.

⁴ The expression of this expression is fully explained by Learned Counsel for the defendant in her submissions

[68] The fact that both witnesses gave the same time is not fatal as the court can accept such evidence having regard to the evidence and the circumstances. And the fact that time in such circumstances is not precise, the truth can be determined by the court against the totality of the evidence.

[69] The next stage in the evidence which the Court accepts is that after Laurel Bruno came to the porch to speak to the claimant and she was attacked by the claimant at which point the defendant came to her rescue. Under cross-examination Laurel Bruno testified in this context as follows: *"When I went outside he first started beating me, I never had a chance to say anything."* And it is at that point that the claimant started to attack the defendant. The court finds that the claimant was the aggressor despite the following evidence to the contrary under cross examination:

"I never attacked the defendant, he was the aggressor. I did not fall. I fell over a glass table when the defendant was beating me. He pushed me against a wall. I did not remember that when I gave the witness statement. The defendant was beating me. He did not put me on the porch. The only time I was there is when he pushed me over the porch. The front door was never locked. The front door is the entrance. That is where the events took place."

[70] The events to which the claimant refers must necessarily be those which involved him, the defendant and Laurel Bruno.

Assault of the Claimant?

[71] Contextually, the question must be whether there was any intentional or reckless act by the defendant that caused the claimant to be put in fear of immediate physical harm?

[72] The evidence which the Court accepts in this regard is that given the claimants' statements displaying his dissatisfaction with Laurel Bruno's conduct with the defendant, he attacked the said Laurel Bruno when she came out of the bedroom

to speak to him. Therefore, when the defendant came out, his efforts were aimed at getting the claimant to cease what he was doing to Laurel Bruno. It is the defendant's evidence which the Court accepts is that the claimant was firing lots of punches which he blocked. The defendant did also testify that he did manage to get the claimant into a head lock. This in turn caused the lead Counsel for the claimant to question whether the inability to make a fist permitted the holding of a person in a headlock which in turn goes to credibility.

But it must be common ground that making a fist and holding a person in a head lock involves two distinct and different parts of the arm.

- [73] The court therefore agrees with the submission on behalf of the defendant, that when the defendant did touch the claimant it was in defence of himself, Laurel Bruno and their unborn child which the defendant is entitled to do.⁵ And further that the evidence does not show that any of the acts towards the claimant were excessive or disproportionate to the circumstances created by the claimant.

Conclusion

- [74] Given the legal context, it is the determination of the Court that the defendant has discharged the burden placed on him, in the context of self defence,* and as such assault cannot stand.

Battery of Claimant?

- [75] It is the claimant's contention that he suffered injuries as a result of blows inflicted on him by the defendant as well as other acts of the defendant. Reliance is placed on his evidence as well as that of Dr. Carl Munro. The injuries alleged as: 4 missing teeth, laceration to the frontal region, right wrist hand 3rd digit.

⁵ See: Ashley v Chief Constable of Sussex Police [200] EWCA Civ 1085; Patsy Shallow v Thaddeus Frank, High Court Civil Claim No. 242/2005 consolidated with Christina Thomas v Thaddeus Frank High Court Civil Claim No. 241 of 2005 (SVG)

Four (4) missing teeth

[76] The claimant in his evidence told the court that his missing teeth were brought about when the defendant hit him in his face.⁶

[77] Dr. Carl Munro in his medical report on the claimant did not mention the loss of teeth. However, in court the learned Doctor testified that it is possible that the injury of the mouth could have been caused by a direct blow using moderate force.

[78] In cross examination this witness testified that the claimant came to the hospital with blood in his mouth and missing 4 teeth and he stated that the missing teeth are not mentioned in the report. The witness went on to say that the blow could have been caused by hitting a hard object and that it is possible that it could be caused by hitting the floor. And upon being questioned further by learned Counsel, Dr. Carl Munro said that the loss could have been caused by a fist or the edge of a table but not the floor.

[79] The court has already pointed to the central place of Dr. Carl Munro's evidence in this matter. The submissions by Counsel on both sides are therefore no surprise. In the case of learned Counsel for the claimant these are the submissions:

“50. Doctor Munro attended to the claimant at the Casualty Department of the Princess Margaret Hospital. Although the claimant could not recall clearly when he saw the Doctor it is undisputed that the Doctor attended to the claimant on the 1st of August 2010. The claimant was not being untruthful as the evidence shows he saw the Doctor on the 1st of August 2010. This is not a dispute. The Doctors' medical evidence is exhibited to the witness statement of the claimant. The defence sought to suggest under cross examination that the Doctor did not see the claimant's missing teeth as he never noted this in the medical examination.

51. It must be noted however that the injury to the claimants' mouth and the fact that he was bleeding from the mouth as stated by the Doctor was an observation made by the defendants' witness Hayden Morgan and Officer Pelham Jno. Baptiste.

⁶ See paragraph 13 of the Claimants witness statement

52.As such the claimant submits that the Doctors' evidence that he saw the claimant with teeth extractions and he was bleeding from his mouth is credible. The Court is asked to believe the Doctors' explanation that he did not note the injury to the claimants' mouth as he noted the injuries which he treated and he did not see himself as a dentist.

53.It must be further noted that the Doctor in his report shows that the claimant suffered from laceration to the frontal region, laceration to his right wrist and laceration to the base of his right third digit.

54.The Doctor also deposed that his casualty notes in respect of the claimant could not be located. The Doctor told the Court that the loss of teeth could have been sustained by a direct blow to the mouth. He said further it could be a fist; it could be the edge of a table. But as to a flat surface as a floor, he did not believe so."

[80] In the case of the defendant, the relevant submissions are as follows:

"50. Dr. Carl Munro who gave evidence for the claimant states in his witness summary/statement filed on 1st May 2003 that he saw the claimant at the Casualty and Emergency Department of the Princess Margaret Hospital on 1st August 2010 and made certain observations about the claimant then. In the summary/statement the doctor refers to that his medical report of 1st August 2010 and indicates that he wishes to rely on the contents of that report as his evidence in the matter. That report is contained in a document headed 'Commonwealth of Dominica Police Force.'" The first part of the document appears to be signed "P. Jno. Baptiste", for the Commissioner of Police. It is reasonable to assume that the "P Jno Baptiste" is Pelham Jno Baptiste, acting Sergeant to whom the claimant went at the Mahaut Police Station and who gave the claimant the medical form on which Dr. Munro's report is written. This evidence is not in dispute. According to what is written by Pelham Jno Baptiste on the document the claimant had complained of "*wounds to his forehead, right wrist and palm and mouth*". Dr. Munro upon examining the claimant noted his findings in his report as "*laceration to frontal region, right wrist hand 3rd digit*." Dr. Munro states in his report that the injuries were probably inflicted by a blunt object. Nowhere in Dr. Munro's report dated 1/8/2010 is damage to teeth mentioned or is reference made to teeth or missing teeth. There is no mention by Dr. Munro of having observed missing teeth or damages teeth. In the absence of any such mention it is reasonable to assume Dr. Munro made no such observation.

51. On the 18th day of July 2013 Dr. Munro causes to be prepared a Supplemental Witness Summary in which he states that when he examined the Claimant at the casualty department he was missing four teeth. In that summary Dr. Munro does not indicate on what he relies to make this statement of his observation 3 years after the fact. Independent memory, hospital records, the claimant, the claimant's counsel? The court cannot be expected to just accept this kind of evidence s true without

more. Under cross examination Dr. Munro sought to explain the absence of any reference to missing teeth by saying he did not mention them in his observations because he is not a dentist. One could not look for and find a more lame explanation. Dr. Munro then suggested that the observation of missing teeth were contained in Casualty Notes which were not before him and which interestingly could not be located in the Records Department of the Princess Margaret Hospital. It is reasonable to assume that in preparing both his witness summaries (1st May and 18th July 2013) Dr. Munro did not have these notes because none of them make reference to casualty notes. Further, the casualty notes are not evidence before the Court.

52. The defendant argues that the evidence of Dr. Munro as to his three years later observation that the claimant had four missing teeth when he presented at the Casualty Department on 1st August 2010 is the liquid for the Court to regard with any degree of seriousness even while answering questions put to him by the claimants' counsel, Dr. Munro demonstrated how unreliable his new evidence is. He said *"I cannot recall how many teeth he lost but he did sustain injury to his mouth."* Then under cross examination he asserted that when he examined the claimant on 1st August 2010 he was missing 4 teeth.

53. The defendant submits that there is no reliable evidence before the Court that the claimant lost four teeth as a result of the incident."

[81] It is common ground that in the context of an allegation of assault and battery the burden of proof rests on the claimant to satisfy the Court that the defendant committed the acts on the balance of probabilities. Even so, it is not a matter to be taken lightly with glowing praises cast upon individual witnesses.

[82] Despite the bold submissions on behalf of the claimant that Dr. Munro's evidence is credible; the Court agrees that Dr. Munro's evidence leaves much to be desired in terms of justice to all.

[83] It cannot reasonably be said that if a person is facing another and then there is bleeding that even though that other person is not a dentist will not notice such bleeding. Indeed it may be said that regardless of the profession of dentist or medical Doctor, bleeding is bleeding and that blood is life itself.

[84] In the end, the learned Doctor gives two possibilities with regards to the loss of teeth – either a blow to the mouth or hitting the edge of a table. Immediately there is evidence of the claimant falling three times, which the court accepts as a fact. On one occasion the claimant fell on a glass table which broke. This cannot be in doubt as the claimant admitted this under cross examination. This must be coupled with the courts findings of fact that the claimant was unstable on his feet.

[85] But while the learned Doctor is of the opinion that the teeth could have been lost due to a blow to the mouth, or striking the edge of a table, the matter of the claimant striking the edge of a table is not in the evidence; but despite that there is evidence that the claimant did fall on this piece of furniture on one of the three falls. And did the defendant cause it?

[86] Learned Counsel for the claimant seeks support from the fact that two witnesses spoke of bleeding from the mouth and contends that this renders the learned Dr. Munro's evidence credible. But the matter of the three years burst of evidence of missing teeth is not addressed by learned counsel for the claimant. Instead, it is addressed by learned counsel from the defendant who characterizes the three years later observation as being "too liquid."

Laceration to the frontal region

[87] There can be no doubt that this injury existed when the claimant presented at the Casualty Department. It of course arose in the context of the physical exchanges involving the claimant, the defendant and Laurel Bruno.

[88] There is evidence which the court accepts that the claimant fell on to a glass table which was destroyed in the process. Also accepted is the evidence that the claimant fell on to a piece of furniture which houses the television. The court does not accept that there is no material change by Laurel Bruno using the words "*head first into*" in her witness statement and then "*fell head first into the wall unit.*"

- [89] Again, the claimant is saying that the defendant caused this. And again it is the determination that the evidence adduced by the claimant has not met the onus of proof.

Right wrist hand 3rd digit

- [90] The same considerations outlined above are also applicable to this injury. Of immediate relevance is the glass table which was destroyed when the claimant fell on it.
- [91] There is no medical evidence as to what caused this injury, nor is there any other direct evidence in this regard.
- [92] Common to both injuries to the right hand is the fact that there is no evidence of any weapon- sharp or otherwise. By inference there is broken glass but there is no evidence that either the defendant or Laurel Bruno had possession of any portion thereof or used any portion against the claimant.

Conclusion

It is therefore the conclusion of the court that the claimant has not met the evidential standard to satisfy the court that the defendant is liable for assault and battery of the claimant.

Issue No 2.

Whether the claimant is entitled to the damages claimed

- [93] This issue has fallen away since the determination of the Court is that the defendant is not liable for assault and battery.

Issue No. 3

Whether the claimant is liable for assault and battery of the defendant; and if so whether any defence are open to the claimant.

- [94] In his counterclaim, the defendant pleads that the claimant entered the residence of Laurel Bruno on 1st August 2010 at 3:00am without her consent and assaulted and beat the defendant.
- [95] The particulars pleaded are: the claimant standing on the porch of Laurel Bruno's residence, rushed at the defendant and pushed him inside the residence; the claimant swung his right hand at the defendant's face and the blow landed on the defendant's right shoulder; the claimant rushed or lunged at the defendant and threw several blows at him: the claimant hit the defendant on his shoulder. In the circumstances the defendant avers that he suffered pain, injury and loss. These allegations are all denied by the claimant and he pleads that the defendant did not fear for his physical safety or suffer humiliation.
- [96] The reality of the evidence in all its dimensions forms the objective reality of the claimant, paints a far different picture. In the circumstances the court repeats its findings of fact that the claimant went to the home of Laurel Bruno at 3:00am on 1st August 2010 proceeded to knock on the windows at which time there was an initial response by Laurel Bruno who told the claimant that the defendant was in the house and to which the claimant responded defiantly. When Laurel Bruno went to the porch to speak to the claimant he immediately attacked her physically causing Laurel Bruno to indicate that she was being attacked by screaming. This caused the defendant to come to her rescue and the claimant then attacked him. The remainder of the altercation was then mainly between the claimant and the defendant with the claimant falling three times, which the claimant admitted on part.

[97] The court again accepts the evidence of the defendant that he was blocking the blows thrown by the claimant and at some point managed to get the claimant in a head lock and then managed to leave in order to get the police.

[98] The claimant's pleading that the defendant did not suffer any injuries has its own legal context.

Assault of the defendant

[99] The defendant pleads that he was attacked by the claimant as he emerged from the bedroom some time after 3:00am. This is denied by the claimant.

[100] Learned Counsel for the defendant contends that the claimant has not put forward any defence in law that would provide a lawful answer to the counterclaim. The court agrees. Therefore, given the pleadings and the evidence adduced in this regard the court agrees that the actions of the claimant constituted an assault.

[101] In terms of battery, the blows by hand aimed at the defendant which were blocked, plus the blow which landed on the defendants' shoulder were intentional for which there was no consent from the defendant constitute battery.⁷ however it is common ground that the defendant suffered no physical injury.

[102] In the case of **Wilson v Pringle**⁸ it is said that an element of hostility is necessary for battery and that hostility is not to be equated with ill will, but evidence is required of an act contrary to the claimant's right of freedom from unwarranted physical contact.

⁷ See R v Brosch [1988] Crim. L .R. 743; Streets on Torts

⁸ [1987] Q.B. 237

[103] The foregoing must be juxtaposed, the objective reality of the claimant and especially the recital of what he did for Laurel Bruno and the use of the expression 'salop' in relation to her would suffice in this regard.

[104] The claimant having denied this and offered no defence, the defendant is entitled to damages for assault and battery.

Issue No. 4

The quantum of damages to which the defendant is entitled, if any.

[105] The defendant claimed general damages for assault and battery. This is not in doubt, so that the real issue is quantum.

[106] In the case of **Myster Peter Matthew v The Attorney General** of Dominica, the damages awarded for assault and battery was \$10 000.00. Here the claimant was seized by a Police Officer by his trousers, forcefully taken to the Police Station and shackled by handcuffs in the presence of his wife. Also in **Shayne Richardson v The Attorney General**⁹, the claimant was awarded \$6000.00 for assault and battery as a consequence of an assault and battery by a Police Officer.¹⁰

[107] Finally, in *Yohanna George v Vernon O'Brien and The Attorney General of the Commonwealth of Dominica*, the claimant who was arrested and detailed for some 19 hours after she was unable to move on a crowded bridge. The damages awarded for assault and battery was \$6000.00.

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[108] In this case, the facts are not complex; the aggravating factor is the fact that the events took place sometime after 3:00am. Having regard the awards identified above the award for assault and battery is \$5000.00.

Issue No. 5

Whether any party is liable to pay costs

[109] The claimant did not succeed on his claim for damages and the defendant succeeded in his claim for damages for assault and battery and cost.

[110] The Defendant is entitled to prescribed costs based on the value of the claim and the award on the counterclaim.

ORDER

[111] IT IS HEREBY ORDERED AND DECLARED AS FOLLOWS:

1. The claimant has not met the evidential standard to satisfy the court that the defendant is liable for assault and battery of the claimant.
2. Having regard for the determination of the court on assault and battery of the claimant, the claimant is not entitled to damages.
3. The defendant is entitled to damages for assault and battery by the claimant.
4. The defendant is entitled to damages for assault and battery in the amount of \$5000.00.
5. The defendant is entitled to prescribed costs based on the value of the claim and the award on the counterclaim.

Errol L. Thomas
High Court Judge (Ag.)