



[2017] JMSC Civ. 53

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2006HCV02870

BETWEEN	JERRY FOSTER	CLAIMANT
AND	THE ATTORNEY GENERAL OF JAMAICA	1st DEFENDANT
AND	DEPUTY SUPERINTENDENT HARRIS BECKFORD	2nd DEFENDANT

IN OPEN COURT

Ronald Paris instructed by Messrs. Paris & Co. for the Claimant

Celia Middleton instructed by the Director of State Proceedings for the Defendants

Heard: 20th March and 21st April, 2017

Trespass to the Person - Assault - Alleged Shooting by the Police - Negligence - False Imprisonment - General Damages - Exemplary Damages - Special Damages.

CORAM: JACKSON-HAISLEY, J. (AG.)

FACTS

[1] In the early morning of the 15th day of October 2003 residents of Upper King Street, colloquially called Canterbury, in the parish of St James woke up to the sound of gunshots. The cause of this early morning gunfire was a shoot-out between armed civilian men and members of the Jamaica Constabulary Force. At the end of this shootout three civilian men were found dead. The Claimant, Jerry Foster, was injured. Officers who were a part of this operation included the 2nd Defendant Harris Beckford who was then a Deputy Superintendent of Police who had led a team of police officers into Canterbury on that morning.

[2] In a Claim Form filed on August 9, 2006 the Claimant seeks Damages for “Wrongful Assault” and False Imprisonment as well as Exemplary Damages, Interest and Costs. In addition, he seeks Special Damages in the sum of \$122,500.00 which sum represents a claim of \$120,000.00 for Loss of Earnings and \$2500.00 for the cost of medical reports.

[3] As is the norm the Claim Form was accompanied by Particulars of Claim in which he claimed inter alia that this “Wrongful Assault” was caused by the 2nd Defendant who deliberately shot him and that the 2nd Defendant at all material times acted unlawfully, carelessly, negligently, maliciously, wrongfully, intentionally and without reasonable cause in deliberately shooting and wounding him, whilst detaining him and continuing to have him detained by the police at the Cornwall Regional Hospital and at the Montego Bay Police Station. As a consequence he sustained the following gunshot injuries:

- Face/jaw with fracture left and right maxilla;
- Fracture of left mandible;
- 3cm laceration of the tongue;
- Left shoulder and right hand soft tissue injuries; and
- Malocclusion of the right lower jaw.

[4] As a consequence of these injuries, he indicated that he was unable to work for a period of about six months. In support of these injuries he relies on the medical reports of Dr. B. Salmon-Grandison, ENT Consultant at the Cornwall Regional Hospital and Dr. D. Stephens, Consultant Faxio-maxillary Department at the Kingston Public Hospital.

[5] At trial the Claimant’s witness statement dated April 23, 2014 was allowed to stand as his evidence-in-chief. It conformed in the main with his pleadings. The evidence in summary was that he was at home at 12½ Upper King Street, better known as Canterbury, sleeping when he was awakened by the sound of gunshots. On looking through his window he saw some armed men in police

uniform on the bridge going towards King Street. It appeared to him that the police were being shot at. As a result he spoke to his father who advised him to go and stay with someone and so at 6am, he left his home and went to the home of his then girlfriend "Redhead" which was about 1 to 2 chains away from his house. At that time there was a halt in the gunfire.

[6] On arrival at "Redhead's" door a police officer called him and asked where he was going and he explained, at which point another police officer who had a gun in hand, joined in and accused him of lying and proceeded to hit him in the face. The police officer threw him down on the ground, stood on his face while wearing his police shoes and then moved to his back. The police officer, he alleged, then engaged him in conversation asking where he lived and if he knew a brown youth in the community. A few minutes later the Claimant said the police shot him and he felt blood coming out of his teeth and mouth. This, he says was while he was pleading his innocence, at which point the police said "bwoy me nuh tell yuh say fe stop di noise". With the police two feet away from him, he says he heard the sound of the gun and felt a shot going through his left shoulder. He gave further evidence that when he received both the first and second shot he was lying down face down. The officer then went on his phone, asked for assistance and then returned and fired another shot at him which went through his right ear. He said he remained on the spot for a while before he was assisted to the Cornwall Regional Hospital.

[7] On arrival at the hospital, he says his hands were swabbed and the next day his left foot was "cuffed" to the bed. He was taken to the Kingston Public Hospital where he stayed for a day and had his mouth wired up so as to set the jaw bone. He spent another two days at the Cornwall Regional Hospital. He was taken to jail in Montego Bay on October 24, 2003 but was not released until October 29, 2003 after being placed on an identification parade in which he was not pointed out.

[8] He says he saw the police officer who shot him at the Court House in Montego Bay on April 20, 2004. This police officer he heard being called Becky. When cross-examined he insisted that it was in fact the 2nd Defendant who shot him and said that it was not true that when the police found him he was already injured. In cross-examination when asked if he is aware of the swab results he said no and further when asked whether or not he would be surprised to learn that the swabs disclosed elevated levels of gunshot residue he indicated that he would be. He was shown a document and still insisted that he is surprised. Nothing further was said on that point.

[9] The Claimant tendered into evidence a certified copy of the transcript of evidence of DSP Beckford which he gave on May 10, 2004 at the trial of men charged with offences arising out of the shooting on October 15, 2003. DSP Beckford gave detailed evidence as to what transpired from 5am to sometime after 3pm. He gave evidence that he was a member of a police party led by SSP Donald Pusey and that they carried out a raid in the Canterbury community. Further, that he took a team of about 15 men into the area, nine of whom accompanied him while three were left behind to guard the service vehicles and the remaining officers were sent along a range to provide cover for his party. Further, that he arrived at the entrance to the area between 5:00 and 5:30am and he started out by searching houses along the lane. Further, that as they were about to enter a yard, they were greeted by gunshots being fired from inside the yard. They took cover and returned the fire following which they entered the yard. A group of men firing at them made their way up to the hillsides. Whilst on the hillsides, the men continued to fire at them sporadically. DSP Beckford says he then made a thorough search of the yard and it was then that he said he found one injured man. That man was not any of the men being tried. He also found occupants in the house. He deployed his men to ensure they were out of harm's way. He then communicated their situation to SSP Pusey. He said by this time it would have been sometime after 6am.

- [10]** The Claimant also tendered into evidence four photographs taken by Counsel Mr. Chumu Paris whose witness statement was agreed by both Counsel and therefore allowed to stand as his evidence in chief and without cross-examination. The photographs showed the area where the shooting took place. Essentially, they fit the description provided by DSP Beckford in the transcript of evidence. The medical reports were also tendered into evidence as exhibits in the case.
- [11]** In an Amended Defence filed June 26, 2015 the Defendants indicate that on October 15, 2003 at about 5:30am the 2nd Defendant led a team of policemen into the Seaview Avenue area of Canterbury when they were fired upon by gunmen with high powered weapons. The team of policemen took cover and returned the fire. During a lull in the shoot-out the Claimant was found suffering from gunshot wounds. The team of policemen again came under fire during which time the Claimant was protected. It is denied that the 2nd Defendant hit, kicked, threw down or stepped on or shot the Claimant. Further, it was pleaded that if the Claimant was shot by servants and/or agents of the Crown it was not due to any recklessness or negligence on their part but rather in the lawful execution of their duties and in defence of themselves. Further, that forensic tests conducted on the hands of the Claimant on the said night confirmed the presence of elevated levels of gunpowder residue on both hands of the Claimant.
- [12]** It was further alleged that numerous calls were made for reinforcement and assistance to take the Claimant to the hospital but the police officers were pinned down for hours. It was denied that the Claimant was taken into custody during the shoot-out but rather that it was only when the forensic results confirmed elevated levels of gunpowder residue on the Claimant's hands that the Claimant was taken into custody. It was further indicated that the servants and/or agents of the Crown had reasonable and probable cause to detain the Claimant as it was genuinely believed that he had been firing a gun during the shoot-out. Further, that the Claimant was further detained pending the conduct of an identification parade.

- [13]** At the trial of this matter much of what was in the Defence was not presented as evidence. The 2nd Defendant did not give evidence. By then he had resigned from the JCF as reflected in Exhibit 5 which indicated that his resignation took effect on July 13, 2004. In addition, although the Claimant was cross-examined about whether he would be surprised to learn that gun powder residue was found on his hands, no evidence was led to support that assertion. There was also no evidence led as to what transpired subsequent to the Claimant being taken to the hospital. There was no evidence led as to the reasonable and probable cause that the Defendants alleged that the servants and/or agents of the Defendants had for detaining Claimant.
- [14]** Four officers gave evidence in support of the case for the Defendants. They were Inspector Beresford Cato, Sergeant Mervyn Hodges, Sergeant Wilbert Jones and Constable Noel Stone. Inspector Cato gave evidence of being a part of this operation led by DSP Beckford and of DSP Beckford dividing the party, with some officers going to the eastern section of the top of Canterbury, two officers remaining with the vehicles and others including Inspector Cato proceeding unto a track leading into Canterbury. On reaching a certain section of the track DSP Beckford, he says further divided his team into two groups with DSP Beckford and other officers going to the right and other officers going to the left.
- [15]** He speaks about being injured and being called by DSP Beckford to where he was. It was then that he says he saw a civilian lying on his side behind a concrete pillar with blood coming from his face. However, he expressed that he does not know how this man was injured. Based on his narrative, in particular his indication that he was called by DSP Beckford to where he was, it is clear that he was not always in the company of the DSP. He would therefore not be able to affirmatively say that the DSP did not shoot the Claimant. He was cross-examined extensively but did not veer much from his evidence-in-chief. However, he made it clear that he did not know who the injured man was or how he sustained his injury.

- [16] Sergeant Wilbert Jones in his evidence also spoke about the team being divided and that he was one of the two officers left with the vehicle whilst the others proceeded into Canterbury. He heard heavy gunfire coming from the direction where the police officers were, following which he received a call from Inspector Cato requesting assistance and so he crawled along a track where he saw DSP Beckford and then Inspector Cato taking cover. He observed armed men firing which resulted in him being shot and injured. He along with DSP Beckford had to retreat. He says he did not see him hit, kick, throw down or step on anyone however he believes that DSP Beckford did discharge his firearm at a man who was firing in their direction. It is also clear that he was not always with the DSP. He was also subject to lengthy cross-examination but was not discredited.
- [17] Sergeant Mervin Hodges was also in the group with Inspector Cato. He said he heard several gunshots and heard DSP Beckford telling them to hold their ground following which he and Inspector Cato took cover and crawled out of the yard. He saw when Corporal Jones arrived and when he and DSP Beckford crawled to the side of a house where they were fired upon. Soon after he observed Corporal Jones bleeding from a wound and DSP Beckford called for assistance. He then asked them to hold off certain sections outside the gate where they were for about ten minutes following which DSP Beckford called him back to where he was. He remained in his position throughout the day while periodic gunfire continued. It was not until about midday that reinforcement came and he withdrew from the scene at about 3:30pm. At no material time did he see DSP Beckford assault, shoot, kick or throw down the Claimant. The Claimant was already shot, he says when the police found him. In cross-examination he pointed out that he did not see the Claimant that day. It is also clear from his evidence that he was not always in the company of DSP Beckford.
- [18] Constable Noel Stone also gave evidence of being present that day as a part of the police party led by DSP Beckford. When the team divided he was a member of DSP Beckford's group. He speaks about hearing a barrage of gunshots being fired at the group he was in and about DSP Beckford telling them to hold their

ground. He was forced to take cover behind a toilet at one point. He also mentions that about half an hour later DSP Beckford made his way to where he was. It is therefore clear that DSP Beckford was away from him for at least half an hour. He indicates that he observed the bodies of three men on the ground, one of whom he recognised to be the man with the high powered weapon firing at them. Apart from these men he is not aware of any other civilian being killed or injured. He was not subject to any cross-examination.

[19] I have had a chance to examine the written submissions presented by both counsel as well as the authorities that they referred me to. Each party has made submissions with respect to the law and to the facts that they urge that I should find proven. I have taken into account all those submissions. I am grateful to both Counsel for their submissions. I will not repeat the submissions but I will take all that has been urged on me into account.

ISSUES

[20] Taking into account the submissions advanced and the relevant areas of law the issues that arise for my consideration are as follows:

1. Whether the injury sustained by the Claimant resulted from an unlawful action of the 2nd Defendant.
2. Whether the Claimant was falsely imprisoned by servants and/or agents of the 1st Defendant.

DISCUSSION

Whether the injury sustained by the Claimant resulted from an unlawful action of the 2nd Defendant.

[21] The Claimant's case is that he was wrongfully assaulted by the 2nd Defendant. In order to establish that there was an assault by the 2nd Defendant, the Claimant has to prove firstly that the 2nd Defendant shot and injured him and that he did so

deliberately and without lawful justification. The Claimant in seeking to establish his case has sought to rely on the transcript of evidence given by DSP Beckford. It therefore forms a part of his case. This seemed to have been important to the Claimant in terms of identifying that DSP Beckford was in fact present at Canterbury on that morning. I bear in mind that DSP Beckford was not present at the trial to give evidence as to what transpired and so I have not had an opportunity to assess him, neither has there been any opportunity for him to be cross-examined. I therefore have to assess his evidence as provided in the transcript carefully so as to determine what weight to place on it. The accounts of both the Claimant and DSP Beckford place the 2nd Defendant on the scene that morning. I accept that he was in fact present that morning. The similarities with respect to what they are saying end there.

[22] According to the Claimant, DSP Beckford first hit him in the face, threw him down to the ground, stood on the right side of his face whilst wearing his normal police shoes, stood on his back, shot him in the face, shot him in the shoulder from a distance of two feet away, and then shot him on the right ear. DSP Beckford in his narrative mentions nothing of the sort. DSP Beckford speaks about firing shots but only in response to shots being fired at the police. On the DSP's account after the first bout of shooting and at about 6am he found an injured man. It was after this that he says he found occupants of the house that was in the yard and he escorted them to a lower section of the house. The Claimant in his evidence mentioned a pregnant girl coming out of the yard as well as a youth. Based on the time period and the description of the area and how the narrative unfolded, I accept that this injured man, mentioned by the 2nd Defendant in the transcript, was in fact the Claimant.

[23] It is the Claimant who has sought to rely on the evidence of DSP Beckford contained in the transcript from the criminal trial yet his account is inconsistent with that account. This results in discrepancies on his case. I therefore have to assess all the evidence presented on his case and make a determination as to what facts I find to be proven.

- [24]** The Claimant's account seems farfetched. It defies logic that he would leave his house after having heard numerous gunshots being fired. It seems incredible that the police would shoot him from two feet away and in the way he outlined. Further, that although he mentioned a shot going through his right ear, there is no mention of any injury to the ear in the medical report.
- [25]** The evidence of the witnesses called by the Defendants consisted of officers who were present on the morning of the incident. Two of them indicate that they did not see DSP Beckford do any such thing to the Claimant. However, it is clear from the narrative of these officers that none of them was in the company of DSP Beckford throughout the entire incident. Whereas I found their evidence to be credible I did not find they assisted greatly in terms of their ability to say affirmatively what DSP Beckford was doing throughout the entire time he was in that area. I accept though that from what they were able to observe they never observed him shoot or otherwise assault the Claimant.
- [26]** Counsel for the Defendant has pointed out in her submissions that it is Claimant who must prove his case and whereas I am in agreement with that submission, I cannot agree that his failure to provide forensic evidence would be detrimental to his case. This is a case which turns on the credibility of the witnesses. It is open to me to accept one witness as opposed to another, or to even accept parts of what a witness has said and reject other parts. Having assessed the account given by DSP Beckford in the transcript, I find it rings true when compared with that of the Claimant, despite the fact that the latter gave evidence on oath and was cross-examined. I did not find the Claimant's evidence and his demeanour in cross-examination to be sufficiently convincing for me to find that on a balance of probabilities that he was deliberately shot by the 2nd Defendant or any other officer present that morning. I reject the account given by the Claimant that DSP Beckford shot him three times deliberately and in the manner that he outlined.
- [27]** I accept the narrative outlined by DSP Beckford in the transcript as being true and his outline of what occurred from 5am to 3pm as accurate. I accept that on

entering the yard gunshots were fired at the police by armed civilian men and that the police took cover and returned the fire. The men then ran to the hillsides while still firing at the police. The police conducted a search of the yard and an injured man was found in the yard. I accept that this injured man was the Claimant. I therefore accept that when DSP Beckford first encountered the Claimant he was already suffering from gunshot injuries and therefore there is no evidence on which to find the Defendants responsible for the Claimant's injuries.

[28] Negligence was not pleaded by the Claimant as a cause of action however in the Particulars of Claim it is alleged inter alia that the 2nd Defendant acted negligently. I therefore have to consider the consequence of this. I find guidance in the dicta of Lord Denning MR in the case **Letang v Cooper** [1965] 1QB 232, a case cited by the Defendants in which Lord Denning distinguished between the tort of Assault and the tort of Negligence at page 239 of the judgment:

"...If one man intentionally applies force directly to another, the plaintiff has a cause of action in assault and battery, or, if you so please to describe it, in trespass to the person." "The least touching of another in anger is a battery," per Holt C.J. in Cole v. Turner.⁶ If he does not inflict injury intentionally, but only unintentionally, the plaintiff has no cause of action today in trespass. His only cause of action is in negligence, and then only on proof of want of reasonable care. If the plaintiff cannot prove want of reasonable care, he may have no cause of action at all. Thus, it is not enough nowadays for the plaintiff to plead that "the defendant shot the plaintiff." He must also allege that he did it intentionally or negligently. If intentional, it is the tort of assault and battery. If negligent and causing damage, it is the tort of negligence."

[29] In the case of **Xienna Morgan v Corporal Delroy Brown et al.** [2013] JMSC Civ. 135 Batts J considered the question of whether or not Negligence has to be specifically pleaded. In that case he found that there was in fact a deliberate shooting by the police. He stated in agreement with the submissions advanced by Counsel for the Defendants that actions for trespass on the case are now to be brought as Negligence and so the pleader needs to clearly allege want of reasonable care. He went on to consider whether the Defendants were liable to the Claimant for Trespass to the person or for Negligence and at paragraph 21 of the judgment said the following:

“As there is no claim for negligence (or to trespass on the case) the Claimant cannot rely on a failure to take reasonable care when acting in self defence. On the authorities cited it does appear that self defence whilst an absolute defence to an action for trespass to the person is not an absolute defence to the action in negligence. In the latter situation the relevant duty of care and whether it has been breached will involve the exploration of the question whether in defending themselves the Defendants ought reasonably to have had the Claimant in their contemplation”.

- [30] Similarly in this case I find that the failure to plead Negligence as a cause of action would mean that the Court would not be obliged to consider it. The Claimant pleaded that the 2nd Defendant acted “unlawfully, carelessly, negligently, maliciously, wrongfully, intentionally and without reasonable cause in deliberately shooting and wounding him...”. I find that the manner in which this was pleaded reflected a sort of “catch all pleadings”, which resulted in it being contradictory. However, since there was mention of some negligence by the Claimant, I will nonetheless consider the question of whether there is any evidence on which to find that there was negligence and/or negligent shooting.
- [31] In addressing the question of negligence I find guidance in the case **Alexander Byfield v The Attorney General of Jamaica** (1996) 17JLR 243, which was cited by the Defendants. In that case the plaintiff sought Damages for both Assault and Negligence where he was accidentally shot by a constable whilst the constable was being shot at by a gunman. The main issue that detained the court was whether or not the constable was negligent having regard to all the circumstances. It was found that the constable was justified in discharging his firearm as he was acting in self defence. The Claimant’s case failed in respect of both Assault and Negligence.
- [32] In the instant case there is no evidence of any negligence on the part of the police. There was uncontroverted evidence of an exchange of gunshots between policemen and gunmen. Having rejected the Claimant’s evidence that he was deliberately shot by the 2nd Defendant, I was left with no evidence that links the injury sustained by the Claimant to the 2nd Defendant or to any other agent or

servant of the 1st Defendant. No ballistic evidence was presented either way. I had no difficulty in finding that armed civilian men were raining shots at the police and the police in turn rained shots at them. Taking into account the evidence of DSP Beckford contained in the transcript and also the evidence given by the witnesses called by the Defendants, it seems highly probable that the Claimant received his injuries during the shoot-out between the police and the armed civilian men. If the Claimant's injuries were caused by bullets from the weapons of the police officers, then on the evidence presented there would be a defence available to the police, that they fired in self-defence.

[33] I accept based on the evidence of DSP Beckford contained in the transcript that if it was the police that caused the injury, it was done in a bid to defend themselves from armed men who were firing at them and endangering their lives and in those circumstances the police would be justified in discharging their firearms. The shooting commenced whilst it was still dark, and so no doubt there was no contemplation that there would be anyone walking around, especially in the circumstances where shots were being fired. In any event there is no evidence to even suggest that the Claimant was a bystander. The Claimant has therefore provided no material on which to establish Negligence.

[34] In the circumstances as indicated above I find that the Defendants are not liable for Assault.

Whether the Claimant was falsely imprisoned by servants and/or agents of the 1st Defendant

[35] The Claimant alleges that he was falsely imprisoned while on the scene. Having rejected the Claimant's account as to how he was injured and having accepted that he was found injured, there would have been no reason for the police to take him into custody at this point. I therefore reject his assertion that he was taken into custody at this point. The fact that the Claimant remained on the scene for some time before being taken to get medical attention, whilst he no doubt was

enduring immeasurable pain is a cause for concern. However, in the circumstances it appears to have been unavoidable as at the time he was discovered, there was still the threat of gunfire and in fact gunshots were fired at the police afterwards and so it would no doubt have been difficult if not impossible to take him to the hospital at an earlier time without some risk to life and limb.

[36] On all accounts the Claimant was present on that morning. It has not been contested that it was during that shoot-out that he sustained the injuries and that as a result he was taken to the Cornwall Regional Hospital. In fact, not only have the Defendants failed to present any evidence to counter the evidence of the Claimant with respect to this aspect of the case, but they seem to agree that the Claimant having been found injured was in fact taken to the Cornwall Regional Hospital by the police.

[37] There is no evidence from the Claimant that he was handcuffed or otherwise secured to the bed when first taken to the Hospital and so I do not find any evidence of false imprisonment on that day. His evidence is that it was the following day that his foot was “cuffed” to the bed. Although there is no evidence as to which officer did this, I am satisfied on a balance of probabilities that this was done by an agent or servant of the 1st Defendant. I therefore accept that the Claimant was placed in handcuffs on October 16, 2003 and was therefore in the custody of the police from that point. No evidence of this purported elevated levels of gunshot residue on the Claimant’s hands was presented, neither was there any evidence as to when this first came to light. Although the Claimant’s account is that he was placed on an identification parade, this without more does not indicate that there existed reasonable grounds for detaining him.

[38] I accept that he was released from the Kingston Public Hospital on October 24, 2003 and was taken directly to a lock up in Montego Bay. I accept that it was not until October 29, 2003 that he was released following a failure to identify him on an Identification Parade.

[39] Both Counsel have relied on the venerated definition of False Imprisonment as enunciated by Carey P (Ag.) in the case **Peter Flemming v Detective Corporal Myers and the Attorney General of Jamaica** 26 JLR 525 which is set out below:

“The action for false imprisonment arises where a person is detained against his will without legal jurisdiction (justification). The legal justification may be pursuant to a valid warrant of arrest or where by statutory powers a police officer is given a power of arrest in circumstances where he honestly and on reasonable grounds believes a crime has been committed.”

[40] This passage has been cited in many subsequent cases and in particular in the Court of Appeal decision of **The Attorney General v Glenville Murphy** [2010] JMCA Civ. 50, where Harris JA in expounding on the powers contained in section 33 of the Constabulary Force Act pointed out the following at paragraph 8:

“The fact that the police are empowered to arrest and detain in custody any person on suspicion of his having committed an offence does not mean that they are at liberty to do so without lawful justification. This suspicion must be reasonable. The police must show that the arrest was justified. An action for false imprisonment offers a safeguard against police excess and abuse of their powers. As a general rule, no injury is suffered by a claimant where he is arrested but subsequently shown to be innocent before taken to court. However, in circumstances where he is detained for an unreasonable period, then the detention constitutes the wrong, making the detention illegal ab initio.”

[41] There is no indication that the Claimant was taken into custody on reasonable grounds of having committed a crime or that there was any lawful justification for taking him into custody, nor was he told why he was being taken into custody. I find that the Claimant’s detention was unreasonable in all the circumstances. I therefore find the Defendant’s liable for False Imprisonment.

ASSESSMENT OF DAMAGES

[42] The purpose of this Assessment of Damages is to arrive at a figure that will provide adequate compensation to the Claimant for being falsely imprisoned. It is necessary to determine the time period for which to award Damages for False

Imprisonment. Counsel for the Claimant has contended that he should only be given an award for five days which would represent the period he was incarcerated at the police station. On the evidence the Claimant would have spent fourteen days in the custody of the police, from October 16 to October 29, 2003 so I am of the view that he should be compensated for the entire fourteen days.

- [43] In assessing Damages for False Imprisonment, I am entitled to take into account any injury to feelings, that is any indignity, mental suffering, disgrace and humiliation that may be caused. (See McGregor on Damages, 16th edition at page 1850). The Claimant has not pleaded that he suffered from any of this, however I accept that having his foot secured to a hospital bed would have led to him suffering some indignity.
- [44] Counsel for the Defendants has placed reliance on the case **John Crossfield v Attorney General of Jamaica**. John Crossfeld was a security officer who was handcuffed and placed in lock up whilst wearing his uniform. Mr. Crossfield indicated that he was placed in a crowded cell with a number of persons including murderers and gunmen. He was threatened whilst in custody. All these circumstances make his case distinguishable from the case of the Claimant herein.
- [45] The unreported case **Maxwell Russell v the Attorney General of Jamaica and Corporal McDonald** Claim no. 2006 HCV 4024 relied on by the Claimant commends itself to me for the reason that similar to the Claimant herein he was in the hospital, handcuffed to his bed. Similar to the instant case the Claimant therein had not given any evidence to suggest any damage to his reputation or of his employment, standing or reputation in the community. I find though that I can take into account the obvious indignity with his foot being secured to a hospital bed in a public hospital. Similar to the **Maxwell Russell** case in which the formula suggested by Lord Wolfe M.R. in **Thompson v Commissioner of Police of Metropolis** [1997] 2 All ER 762 was utilized I will do so in this case

and award an elevated figure for the first day. A reasonable award in the circumstances would be an elevated award of \$150,000.00 for the first day and \$80,000.00 for each of the next thirteen days. This would amount to a sum total of \$1,190,000.00.

EXEMPLARY DAMAGES

[46] The Claimant claims Damages on the “footing” of Exemplary Damages. In **Rookes v Barnard** [1964] A. C. 1129, Lord Devlin sets out the circumstances under which an award for Exemplary Damages should be made where he opined at page 1226 that: -

“...where one man is more powerful than another, it is inevitable that he will try to use his power to gain his ends; and if his power is much greater than the others, he might, perhaps, be said to be using it oppressively. If he uses his power illegally, he must of course pay for his illegality in the ordinary way; but he is not to be punished simply because he is the more powerful. In the case of the government it is different, for the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service”.

[47] In the Jamaican decision of **The Attorney General v Maurice Francis** SCCA 13/95 delivered March 1999 at page 17, Rattray, P. in discussing the basis for an award for Exemplary Damages indicated that the conduct of the defendant must merit punishment and that the conduct should go beyond mere want of jurisdiction and should be accompanied by arrogance, insolence, humiliation and brutality. The purpose of Exemplary Damages is to punish and deter conduct which could be classified as being “oppressive, arbitrary or unconstitutional”.

[48] In the instant case, with respect to the False Imprisonment there is no evidence of any oppressive, arbitrary or unconstitutional conduct on the part of the 1st Defendant herein which would warrant punishment and as such an award of Exemplary Damages is not appropriate.

SPECIAL DAMAGES

[49] The Claimant claims the sum of \$120,000.00 for Loss of Earnings for six months. In light of my finding that the Defendants are not liable for Assault, they would not be responsible for his Loss of Earning for six months but only for the period of his incarceration being fourteen days. In light of the Claimant's failure to present any evidence to support his earnings, I am prepared to make an award of \$4000.00 taking into account the then Minimum Wage requirements. I find the total sum claimed for the medical reports of \$2500.00 to be proven.

[50] I therefore make the following awards:

1. Special Damages in the sum of six thousand five hundred dollars (\$6500.00) with interest at a rate of 3% per annum from October 16, 2003 to April 21, 2017;
2. General Damages in the sum of one million, one hundred and ninety thousand dollars (\$1,190,000.00) with interest at a rate of 3% per annum from August 9, 2006 to April 21, 2017.
3. No award is made for Exemplary Damages;
4. Cost to the Claimant to be agreed or taxed.