[2018] JMSC Civ. 127

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2012 HCV 06179

BETWEEN	**JEROME FRECKLETON**	**CLAIMANT**
AND	**THE ATTORNEY-GENERAL OF JAMAICA**	**1ST DEFENDANT**
AND	**DET. SGT. MAURICE PUDDIE**	**2ND DEFENDANT**

Mr. Franklin Grenyion and Mr. Orane Nelson instructed by Franklin Grenynion & Co for the claimant

Mr. Dale Austin and Mr. Carson Hamilton instructed by the Director of State Proceedings for the defendants

Heard: 9th, 10th and 31st July 2018

Tort – Malicious prosecution - Whether claimant proved damage - Claimant identified while in holding area - Whether reasonable and probable cause to prosecute. False imprisonment - Whether initial arrest lawful - Claimant taken before court several days after being charged - Whether detention unduly long and unexplained. Assault - Claimant not cross-examined - Effect of failure to cross-examine.

Evan Brown, J

[1] On the 8th July, 2009 at about 3:30 pm, there was a firefight between rival gangs in the Jacques Road and Crescent Road area in the vicinity of Mountain View Avenue in St. Andrew in which at least one person was killed. That resulted in the intervention of the police. That group of police were pinned down by the gunfire. Det. Sgt. Puddie and other police personnel went to the assistance of

their colleagues. Shortly after the gunfire ceased, a joint police military operation was carried out in the area. During this operation, several men were detained. The detainees were taken to the Mountain View Police Station, pending further investigation into the events of the day. The claimant was among the persons detained.

[2] The claimant, who resided at 83 1/2 Mountain View Avenue with his parents, was at work between 3:00 and 4:00 pm when he received information that his cousin had been shot. He left work and headed to Mountain View Avenue. From Mountain View Avenue, he walked to Jacques Crescent. There he "realised" that his mother, sister and friend, Richard, had been shot. He assisted Richard into a police car for him to be taken to the Kingston Public Hospital (KPH). After he assisted Richard, the claimant walked towards the bus stop to await a bus to visit his mother and sister at the KPH.

[3] Before he reached the bus stop a police officer held the claimant and took him to the Mountain View Police Station. He was placed in the holding area along with other men. The following week he was told that he was being charged for illegal possession of firearm and ammunition and shooting with intent. He spent twenty months in custody at the Gun Court Remand Centre. The claimant averred in his particulars of claim that the case against him collapsed when a submission of no case to answer was upheld in the Gun Court on the 18th June, 2012.

[4] At paragraph 20 of his particulars of claim the claimant contended that he was *"wrongfully assaulted, maliciously prosecuted, falsely imprisoned, and falsely deprived of his liberty resulting in injury to his person, character and reputation and suffered considerable mental pain, anguish, and was put to considerable trouble, inconvenience, anxiety and expense and thereby suffered loss and damage". I will discuss first the claim for malicious prosecution.*

Malicious prosecution

[5] The claimant, in his particulars of claim, alleged that he was taken into custody on the premise that he was one of the gunmen firing shots at the police. He protested and denied the allegation but notwithstanding his protest, was placed in the holding area. He was draped in the back of his pants waist and taken to a room by the 2nd defendant. In that room he was questioned by the 2nd defendant and one Cons Dwight Roberts, who pointed a gun at him and said, "unu bwoy fi dead wid gun shot". Thereafter, his hands were swabbed on the instructions of the 2nd defendant.

[6] On the 15th July 2009 he was "oppressively interviewed" by the 2nd defendant. During the interview he was again accused of being one of the shooters on the 8th July who fired on the police armoured rescue unit in the Jacques Road Jacques Crescent area. He averred that the 2nd defendant gave the following description of the gunman: attired in red t-shirt, plaited hair, light complexion, slim built and about 5' 6" tall. He "strenuously objected to the description" and drew the attention of the 2nd defendant to the fact that he was not wearing a red t-shirt but a red shirt with black stripes, was dark complexioned and 5' 1" tall.

[7] Paragraph 16 of the particulars of claim is quoted in full:

> *"The Claimant further demonstrated that at the alleged time (sometime after 4:00 p.m.) he could not have been the alleged person seen firing at the Police Armour (sic) Rescue Unit as he was at another location assisting police personnel to remove his mother, sister and friend to the Kingston Public Hospital (KPH), but these concerns raised by the claimant was (sic) ignored by the Second Defendant".*

[8] In the succeeding paragraph the claimant contended that "the Second Defendant maliciously and without any reasonable or probable cause" charged him with the offences on the 15th July 2009. The claimant was discharged when the court upheld a no case submission on the 18th June 2012. In his particulars of special damages, he claimed legal costs of $80,000.00 to defend the criminal charges and file civil proceedings. Additionally, he claimed travelling expenses of

$15,200.00 to travel to and from court. The only evidence the claimant gave (in his witness statement) was that the week following his detention he was told of being charged with the offences.

[9] In answer to the contentions of the claimant, the defendants denied that the claimant was apprehended in the middle of the Jacques Road and Jacques Crescent area. They further averred that while Cons Dwight Roberts was driving an armoured police vehicle along Jacques Crescent, he saw the claimant walking with an AK 47 rifle in his hand. The claimant fired several shots at the armoured vehicle while walking backwards, near to a group of women and children.

[10] The defendants alleged that the claimant was pointed out to the 2nd defendant by Cons Roberts, from among a group of men, as the man who fired several shots from an AK 47 rifle at the armoured unit. The 2nd defendant cautioned the claimant and asked what he had to say concerning the allegations and the claimant kept his silence. While the defendants admitted swabbing the hands of the claimant, they denied that he was questioned by both Cons Roberts and the 2nd defendant. The defendants admitted also that the claimant was questioned by the 2nd defendant in the presence of his attorney-at-law but denied the manner in which it was allegedly done.

[11] Cons Roberts, Cpl Roberts at the time of the trial, testified to the averments of being fired upon by the individual armed with an AK 47 rifle and afterwards pointing out the claimant to the 2nd defendant, at about 6.10 pm the same day. In his witness statement, Cons Roberts said this, "I returned to the Mountain View Police Station where I saw the man in the red T shirt with the plaited hair that was firing at the rescue unit".

[12] When he was cross-examined, Cons Roberts denied that when he pointed out the claimant he was wearing a black striped tee shirt with red background. He insisted the claimant was still wearing a full red tee shirt. He admitted to cross-examining counsel that he made no mention of seeing the face of the shooter in

his statement. In answer to the court, he said he used the red shirt, knapsack, plaited hair and facial features to identify the shooter. He, however, agreed with the claimant's counsel that the resort to facial features was not mentioned in his witness statement.

[13] Det. Sgt. Puddie, in his witness statement, also said that when Cons Roberts pointed out the claimant he was wearing a red tee shirt, sported a plaited hair style and carried a black knapsack on his back. Under cross-examination, Det. Sgt. Puddie said the claimant was wearing a red tee shirt with blue horizontal stripes. According to Det. Sgt. Puddie, the claimant was then standing among a group of twenty men. After he was pointed out, he was separated from the group and taken to an office where Det. Sgt. Puddie questioned him. Det. Sgt. Puddie told him of the allegations, cautioned him and asked if he had anything to say in relation to the allegations. The claimant, he said, did not answer. Det. Sgt. Puddie went on to say this, "he made no objections to the description given to him by me as he remained silent". He told the claimant he was going to have his hands swabbed as part of his investigations. He further advised the claimant that he needed to get a lawyer, as he would be questioned.

[14] The question and answer session took place in the presence of the claimant's attorney-at-law on the 15th July, 2009. Following that exercise, Det. Sgt. Puddie said he charged the claimant "as a result of my investigations, Constable Roberts' statement and the question and answer interview". Amplifying his witness statement, Det. Sgt. Puddie testified that he honestly believed that the claimant was the person seen firing the AK 47 rifle. Apart from Cons Roberts' identification of the claimant, other things operated on Det. Sgt. Puddie's mind in placing the claimant in custody and commencing the prosecution. Those things were, the forensic examination relating to the swabbing and the fact that the claimant was among a group of about twenty other men when he was pointed out.

[15] When he was cross-examined, Det. Sgt. Puddie at first disagreed that Cons Roberts did not refer to the claimant's facial features when he pointed him out. In the next breath, he said Cons Roberts did not refer to facial features. Cons Roberts just pointed at the claimant and said that man shot at him.

[16] Also revealed during cross-examination was the fact of Det. Sgt. Puddie's visit to the *locus in quo* (the scene of the alleged shooting), although he did not record the visit in his statement. On the other hand, he neither visited the claimant's address or place of work nor "checked" his antecedents before charging him. Notwithstanding that answer, Det. Sgt. Puddie went on to say he made enquires in the claimant's community if the claimant was a member of a gang, the violence in the area having been the result of a gang feud. Det. Sgt. Puddie also made enquiries of the police in his division. His enquiries received an affirmative response.

[17] Det. Sgt. Puddie admitted, however, that this aspect of his investigation was not contained in his statement. This was the first time he was making mention of this part of his investigation. He added, without prompting, that this was the first time he was asked the question. Importantly, he said he did not consider this a vital piece of information in relation to his investigation. He went on, however, to deny making up his evidence about the claimant's gang membership. Later in cross-examination, Det. Sgt. Puddie said he could not recall whether any of the questions asked during the question and answer session, mentioned that the claimant either was in a gang or was the leader of a gang.

[18] Det. Sgt. Puddie agreed with cross-examining counsel that the identification of the claimant amounted to a confrontation, and to knowing the rules relevant to confrontation. He asserted that he charged the claimant on the ground that Cons Roberts pointed him out and that he was among a group of about twenty men.

Submissions

[19] In their written submissions, counsel for the claimant made reference to the four ingredients of the tort of malicious prosecution. ***Glinski v McIver*** [1962] AC 726, it was submitted, is germane to the question of whether there was reasonable and probable cause for prosecuting the claimant. The claimant's counsel further submitted that it is accepted that to arrest a person of unblemished character for an offence committed with the use of an illegal firearm, necessarily results in damage to fame and reputation, because it implies that the person is a criminal.

[20] In oral submissions, Mr. Nelson urged that the evidence Det. Sgt. Puddie relied on was flimsy, even if he accepted Cons Roberts as an honest complainant, he required more to proceed to charge the claimant. Firstly, nothing of evidential value was elicited from the question and answer session. Secondly, the statement of Cons Roberts was inadequate for want of any reference to the facial features of the claimant. Lastly, the absence of the results of the swabbing of the claimant's hands (gunshot residue) indicates the absence of reasonable and probable cause. ***Arthur Baugh v Courts (Jamaica) Limited and Attorney General of Jamaica*** Cl. B. 099/1997 delivered October 6, 2006, a decision of Sykes J (as he then was relied on), was cited to anchor this submission.

[21] Mr. Dale Austin submitted on behalf of the defendants. He argued that the claimant failed to marshal evidence to support all the evidence of the tort. In particular, the claimant gave no evidence that he suffered damage.

[22] Mr. Austin contended that there was reasonable and probable cause to charge the claimant. He highlighted six pieces of evidence to support his contention. Firstly, the shooting was between rival gangs and a number of men were picked up on reasonable suspicion of being involved in the shooting. Secondly, the claimant, along with other men, was picked up in the middle of Jacques Road and Jacques Crescent. Thirdly, when Cons Roberts pointed out the claimant as the man in possession of the AK 47 rifle and shooting at the police, he was in a

group of about twenty men. Fourthly, Cons Roberts described the shooter, albeit not specific facial features, but with sufficient particularity namely, dressed in a red tee shirt, knapsack on his back, plaited hair, light complexion and slim built. Fifthly, the claimant fitted the description that was given by Cons Roberts who said he had a clear view of the shooter. Sixthly, the claimant was advised of the allegations and he remained silent.

Analysis

[23] Malicious prosecution is committed where the defendant commenced a criminal prosecution against the claimant, maliciously and without reasonable and probable cause and the prosecution is determined in the claimant's favour, resulting in damage to the claimant. According to ***Winfield & Jolowicz on Tort*** 18th ed, at paragraph 19-2, "the action of malicious prosecution being an action on the case it is essential for the claimant to prove damage".

[24] The question of damage was discussed in ***Berry v British Transport Commission*** [1962] 1 QB 306 (***Berry v BTC***). According to Dankwerts LJ, at page 335:

> *"The conditions necessary for the maintenance of the action are given by Holt C.J. [in* **Savile v Roberts** *(1698) 1 Ld. Raym. 374, at page 378] as follows: "1. The damage to a man's fame, as if the matter whereof he is accused be scandalous ... 2. The second sort of damages, which would support such an action, are such as are done to the person; as where a man is put in danger to lose his life, or limb, or liberty ... 3. The third sort of damages, which will support such an action, is damage to a man's property, as when he is forced to expend his money in necessary charges, to acquit himself of the crime of which he is accused".*

So then, to ground his claim for malicious prosecution, the claimant must establish damage to his fame (that is, his character), person or property.

[25] Danckwerts LJ went on to observe that:

> *" by "scandalous" Holt CJ meant slanderous, and it has been suggested that a slander is actionable per se without proof of special damage is the standard to apply".*

In his view, at pages 335-336:

> *"reason demands that the standard should be whether a reasonable man, hearing of the proceedings brought against the plaintiff, would form the view that they were a damaging reflection on the "fair fame" of the plaintiff".*

[26] The manifest opprobrium inherent in the character of most criminal offences is synonymous with being slanderous in the meaning intended by Holt CJ. In the opinion of Gilbert Kodilinye, learned author of ***Commonwealth Caribbean Tort Law***, 3rd edition at page 60, a claimant satisfies the class of damage if he proves "that the charge brought against him was 'necessarily and naturally' defamatory". The court in ***Wiffen v Bailey and Romford Urban District Council*** [1915] 1 KB 600 (***Wiffen v Bailey***) had declared that to be the law. Therefore, a claimant would have proved that he suffered damage if, for example, he established that the essence of the charge was an imputation that he is a dishonest person. Incidentally, Devlin LJ ***in Berry v BTC***, *supra*, agreed that if the test is "necessarily and naturally defamatory", the plaintiff in that case would have failed to prove damage in this category (the allegation was that the plaintiff pulled the train's communication cord without sufficient cause).

[27] The preliminary issue for the court at first instance in ***Berry v BTC*** was whether the statement of claim was demurrable or whether it disclosed a cause of action. The resolution of that issue turned on the answers to two questions. The first question was whether the plaintiff had suffered any damage in the injury to her reputation and fair name. The second question was whether she had been put to any expense, having regard to the fact that she had been awarded costs by the recorder. The judge gave a negative answer to both questions.

[28] The plaintiff was charged before justices with a breach of section 22 of the ***Regulation of Railways Act***, 1868, convicted and fined. She successfully appealed to the recorder, who awarded her costs. Subsequently, she brought an action for malicious prosecution. In her statement of claim, she alleged, among other things, that in consequence of the charge she had been injured in her

reputation and had been held up to ridicule and suffered pain of mind, and had been put to expense in defending herself. The particulars of special damage listed the costs of her defence before the magistrates and the recorder gave credit for the costs awarded.

[29] The Court of Appeal decided the case on the basis of the second question (whether she had been put to any expense) reversing the judge at first instance. Their Lordships arrived at that conclusion by the route of a discussion of the relevance of the award of costs in a criminal case. The court held that the expenses incurred by the plaintiff to defend the action and appeal the adverse decision were sufficient to support her action for malicious prosecution.

[30] So then, as was demonstrated in ***Berry v BTC,*** *supra*, the claimant need only establish that he suffered damage in one of the three areas adumbrated by Holt CJ in ***Savile v Roberts***. The ground on which the plaintiff succeeded in ***Berry v BTC***, (damage to property or costs incurred in defending the charge) appears to be the one most easily established: ***Commonwealth Caribbean Tort Law***, at page 61.

[31] In the instant case, at paragraph 20 of his Particulars of Claim, the claimant pleaded that because of the malicious prosecution, as well as the other two torts, injury resulted to his "character and reputation and [he] suffered considerable mental pain, anguish, and was put to considerable trouble, inconvenience, anxiety and expense and thereby suffered loss and damage". Paragraph 20 was specifically traversed and the claimant put to strict proof of the matters alleged therein.

[32] It was not contended that the claimant's statement of case does not disclose the claim of malicious prosecution (see ***Berry v BTC***, *supra*). The contention of the defence is that the claimant must go further; he must prove the allegation in his pleadings. The claimant did not lead any evidence in proof of the expenses allegedly incurred. He would, therefore, have failed to show that he suffered

damage under Holt CJ's third head of damage namely, damage to property. That, however, is not the end of the matter.

[33] The claimant gave no evidence of the injury to his fame, although he alleged it in his Particulars of Claim. The question is, is that fatal to the success of his claim, as defence counsel suggested? That question receives an unqualified negative answer. It has long been settled law that if the charges brought against the claimant are "necessarily and naturally defamatory", the claimant would have satisfied one of Holt CJ's categories of damage: ***Wiffen v Bailey***, *supra*.

[34] Consequently, I agree with counsel for the claimant that to allege that the claimant was in illegal possession of firearm and engaged in shooting with intent at the police is necessarily and naturally defamatory. Therefore, defamation being actionable per se, the claimant had no need to go any further. I therefore find that the claimant has proved that he suffered damage and, as was demonstrated by ***Berry v BTC***, *supra*, he only has to prove that he suffered damage in one of Holt CJ's three categories of damage in order to sustain the claim.

[35] Having proved that he suffered damage, the claimant must then go to establish the ingredients of the tort. The ingredients of the tort of malicious prosecution have been distilled and settled by numerous judicious pronouncements. They are encapsulated in the judgment of Wooding CJ in ***Wills v Voisin*** (1963) 6 WIR 50, at page 57. First, the claimant must prove that the law was set in motion against him on a charge of a criminal offence. Second, he must prove that he was acquitted of the charge or that it was otherwise determined in his favour. Third, he must establish that in setting the law in motion, the prosecutor (2nd defendant) did so without reasonable and probable cause or, fourth, that he was actuated by malice (see ***Flemming v Myers and the Attorney General*** (1989) 26 JLR 525 at page 535).

[36] No issue was taken with the claimant's contention that it was the 2nd defendant who set the law in motion against him. In respect of the second ingredient, counsel for the defendants submitted that the claimant had failed to lead evidence in support of the averment. He, however, withdrew the submission when the court brought it to his attention that no issue was joined on the pleadings.

[37] The claimant averred at paragraph 19 of his particulars of claim that "[a]t the trial on the 18th June 2012, a No Case submission was upheld in the Gun Court division of the Supreme Court, Court #7 before Mrs. Justice Viviene Harris". The defendants responded to that averment at paragraph 16 of their defence as follows. The relevant portion reads, "[s]ave and except that a No Case Submission was upheld in the Claimant's favour in the Gun Court Division of the Supreme Court, Court #7 before Mrs. Justice Viviene Harris (Actg.), paragraph 19 of the particulars of claim is denied". That was a clear admission that the case was determined in the claimant's favour.

[38] The case was fought on the third ingredient of the tort. The claimant contended that the 2nd defendant did not have any reasonable or probable cause to prosecute him. Here the claimant must discharge the onerous burden, though on a balance of probability, of proving a negative. It is the claimant who must establish that the 2nd defendant had no reasonable and probable cause to commence the prosecution, not for the 2nd defendant to prove that he had. What does the law say is reasonable and probable cause?

[39] The definition that has stood the test of time was pronounced by Hawkins J in his oft quoted judgment in ***Hicks v Faulkner*** (1878) 8Q BD 167, at page 171 and approved by the House of Lords in ***Herniman v Smith*** [1938] AC 305. Reasonable and probable cause was defined to be:

> *"an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the*

> *accuser, to the conclusion that the person charged was probably guilty of the crime imputed".*

[40] For there to be reasonable and probable cause, the accuser must first be aware of the existence of a state of circumstances, which causes him to honestly believe that the accused is probably guilty of the crime he imputes. His awareness of the circumstances may be the result of either his own perception or information received: ***Hicks v Faulkner***, *supra*, at page 173. The litmus test of the reasonableness of the accuser's purported honestly held belief is the coincidence of that belief with that of the ordinarily prudent and cautious man.

[41] The 2nd defendant did not observe the claimant committing any offence. The circumstances upon which he relied were those conveyed to him by Cons Roberts, beginning with the identification of the claimant. Cons Roberts said in his statement that the shooter was dressed in a red tee shirt, had a black knapsack on his back, had plaited hair, light complexioned, slim built and about 5' 6'' tall. While the claimant set out in his Particulars of Claim that he objected to this description and pointed out its incongruities with readily available material, he gave no evidence in this respect. These were matters which had been traversed by the defence and so required some evidence from the claimant.

[42] The material available to the 2nd defendant at the time he commenced the prosecution of the claimant was substantially the identification and description by Cons Roberts. Although the claimant's hands had been swabbed and the results obtained, it was not disclosed what the results were and when they were obtained. In any event, the clear impression was given that the claimant was charged for the offences and placed before the court in advance of the forensic results becoming available. Additionally, nothing turned on the question and answer session. Therefore, what guided the 2nd defendant in changing the claimant was the identification of the claimant, the circumstances in which the identification took place and the lack of objection to the given description.

[43] The question is, what did the 2nd defendant make of this material? His evidence was that he honestly believed the claimant to be the person who was seen firing the AK 47 rifle. The reasonableness of the grounds of the 2nd defendant's assertion of honest belief must be tested. Although the identification was described as confrontation, in my opinion it was more in the nature of an informal parade. There was no evidence that the men were lineally arranged in the holding area. Common sense would dictate that they were not. Neither was evidence elicited about any similarity in their general appearance nor that the others were specially selected to be in that area by their custodians. From all the evidence, they were just thrown in together. It is appreciated, therefore, that there was no deliberate attempt at staging an informal identification parade. The claimant was therefore deprived of all the usual safeguards.

[44] The identification of the claimant was sheer happenstance. Accordingly, it would be rather unrealistic to expect that the 2nd defendant could have insisted upon the usual safeguards attendant upon an identification parade. His assurance that Cons Roberts had made a correct identification of the claimant could only have come from the fact that he was identified from among a group of about twenty men and the unchallenged description.

[45] It is true that the claimant alleged in his statement of case that he challenged the description that was given of him. That averment was denied in the defence. The claimant was therefore required to prove that fact by giving some evidence. The claimant, however, gave no evidence of this, neither in his witness statement nor from the witness box. It is perhaps pertinent to note at this point that the claimant also did not give any evidence that he demonstrated to Det. Sgt. Puddie that at the time of the alleged shooting he was assisting police personnel with the removal of injured persons from the scene.

[46] It is apparent that the claimant was here seeking to bring his case within the parameters of Lord Denning's first category in ***Glinski v McIver*** [1962] AC 726, at page 760 (where the facts and information known to the prosecutor are not in

doubt). It that type of case, "the [claimant] has himself to put [the facts] before the court because the burden is on him to show there was no reasonable and probable cause", ***Glinski v McIver***. The claimant, however, as I said in the preceding paragraph, gave no such evidence.

[47] If, for example, the claimant had led evidence capable of showing both that he challenged the description and had a sustainable alibi, and that that information was ignored by Det. Sgt. Puddie, that would be compelling evidence of a want of reasonable and probable cause. Although the claimant averred that he "demonstrated" that at the material time he was engaged in lawful, and some might say humanitarian, activity, he gave no evidence regarding how he "demonstrated" that. If he was indeed assisting the police as he claimed, and disclosed that to Det. Sgt. Puddie, that was information that was readily verifiable. Consequently, if Det. Sgt. Puddie rushed to charge the claimant without first seeking to verify that information, that would be strong evidence that he was driven by a motive other than one to bring a criminal to justice.

[48] That, however, is not the case before me. As was said earlier, Det. Sgt. Puddie acted upon information received. In these circumstances, "if the information was believed by him to be trustworthy, there was good cause for the prosecution", per Lord Denning in ***Glinski v McIver***, supra, at page 761. On the other hand, "if it was known by him to be untrustworthy and not fit to be believed, there was no cause for it", per Lord Denning in ***Glinski v McIver***.

[49] The question becomes, was this evidence of mere suspicion or a prima facie case of illegal possession of firearm and shooting with intent? If was mere suspicion, ***Meering v Graham White Aviation Co*** (1919) 122 LT 44, at page 56, as considered in ***Tims v John Lewis & Co Ltd*** [1951] 2 KB. 459, at page 474, says this would be strong evidence of a lack of reasonable and probable cause. If the 2nd defendant commenced the prosecution, fully knowing that the evidence was incapable of persuading a tribunal of fact that the offences preferred had

been committed, the suggestion that there was no reasonable and probable cause would be irresistible.

[50] If, however, it was evidence approximating a prima facie case, that would be strong evidence that there was reasonable and probable cause. If it is accepted that the circumstances disclose a *prima facie* case, then the 2nd defendant would have fulfilled his duty. In the view of the learned authors of ***Clerk & Lindsell***, *op.cit*. para. 16-26, a person is not bound to ensure before instituting a prosecution that there is evidence to secure a conviction. Evidence amounting to a ***prima facie*** case might well be sufficient to establish reasonable and probable cause. Indeed, the requirement is the establishment of facts upon which the claimant was probably, not actually, guilty of an offence.

[51] From the evidence of both sides, the claimant was initially taken into custody on suspicion that he was involved in the general mayhem of the day. The evidence of the claimant is that he was walking to the bus stop when he was held. The defendants, on the other hand, contended that the claimant was held in the area where the shooting took place.

[52] The set of circumstances which faced the 2nd defendant were that the claimant was in detention on suspicion of illegal possession of firearm and shooting with intent; Cons Roberts arrived at the station and identified him as the person who shot at the armoured rescue unit with an AK 47 rifle. In the circumstances, it was the best evidence available in respect of the offences Cons Roberts alleged were committed against him personally. What should he have made of the information available to him?

[53] In the submission of Mr. Nelson for the claimant, Det. Sgt. Puddie should not have acted on this information but await the forensic results of the swabbing of the claimant's hands. Those results, whatever they were, were not a part of this trial. Although Det. Sgt. Puddie included the forensic examination as a part of

what operated on his mind when he initiated the prosecution that cannot be regarded as credible in the absence of the results.

[54] In any event, while a positive forensic result might have confirmed that the claimant recently fired a firearm, it could not strengthen Cons Roberts evidence that the claimant was in fact the man who shot at the police armoured rescue vehicle. In the same vein, a negative forensic result, without more, could not have falsified the evidence of identification. Respectfully, therefore, in my opinion the submission that the absence of the results of the test for the presence of gunshot residue (swabbing results) is indicative of no reasonable or probable cause to arrest and charge the claimant, is without merit.

[55] Det. Sgt. Puddie was faced with the situation of a colleague pointing out the claimant from amongst a group of about twenty men. Not to accord policemen infallibility in matters of observation but, it would not have been lost on a reasonably prudent investigator in Det. Sgt. Puddie's shoes that Cons Roberts was specially trained in observation. Whether or not Cons Roberts referred to the claimant's facial features, what would have resonated with the ordinarily prudent and cautious investigator was that, a trained police officer pointed out the claimant a few hours after the shooting. Equally resonant would have been the recognition that the probability that Cons Roberts was mistaken after the passage of only a few hours was low. In my view, that is information that Det. Sgt. Puddie was bound to regard as trustworthy.

[56] In my opinion, the information available to the 2nd defendant was sufficient to reasonably lead any ordinarily prudent and cautious investigator, to conclude that the claimant was probably guilty of the offences with which he was charged. Probability of guilt is just another way of saying there was a prima facie case. If that is accepted, then he had reasonable and probable cause to prosecute the claimant. The fact that a subsequent judicial enquiry concluded that the claimant should not be called upon to answer the charges does not dilute the contention

that on an objective assessment of the material available to the 2nd defendant, the probability of guilt was concluded.

False Imprisonment

[57] The claimant alleged in his Particulars of Claim that he was detained on the 8th July 2009. He further contended that he was charged by the 2nd defendant on the 15th July 2009. He was held at the Remand Centre on South Camp Road while waiting to appear in the Gun Court. He remained in custody for twenty months until bail was successfully applied for on his behalf. The claimant did not expand on those averments in his witness statement, which were not challenged. He spoke to the circumstances of his detention; namely, that he was on his way to the bus stop when one of the officers held him and took him to the Mountain View Police Station.

[58] Ricardo Richards testified on behalf of the claimant. Mr. Richards swore that he was the person the claimant assisted into a police car to be transported to the hospital for treatment of a gunshot wound. Before the vehicle left the scene he observed the claimant walking towards the bus stop on Mountain View Avenue and being apprehended by a police officer. Like the claimant, Mr. Richards was not cross-examined.

[59] The defendants denied that the claimant was detained in the circumstances alleged in the Particulars of Claim. They counter-averred that all the men who were apprehended and taken to the station, including the claimant, were removed from the middle of Jacques Road and Jacques Crescent area. Under cross-examination, however, Det. Sgt. Puddie said he did not know who took the claimant into custody.

Submissions

[60] Mr. Nelson, on behalf of the claimant, submitted that on the face of the evidence the claimant would be falsely imprisoned. In his submission there was no

explanation for the length of time it took to place the claimant before the court. He placed reliance on ***Arthur Baugh v Courts (Jamaica) Limited and The Attorney General of Jamaica*** Claim No. CL.B. 099/1997 dated October 6, 2006 (***Arthur Baugh***). In his opinion the period of time is unreasonable and gives rise to a prima facie case of false imprisonment. He suggested that from the initial arrest or detention, to when the claimant was first taken before the court some sixteen days elapsed and it was therefore unlawful.

[61] Mr. Austin submitted, correctly, that there are two bases for this tort. Firstly, arrest without legal justification, that is, without reasonable and probable cause. Secondly, even if initially lawful, the arrestee is held for an unreasonably long period. For that statement of the law he relied on ***Peter Flemming v Det. Cpl. Myers and the Attorney General of Jamaica*** (1989) 26 JLR 525 (***Flemming v Det. Cpl. Myers***). Mr. Austin went on to submit that the claim was pursued based on a lack of reasonable and probable cause. There was, therefore, neither allegation nor particulars that the claimant was detained for an unjustifiably long time. In this regard, learned counsel referred to r. 8.9 and r. 8.9 (a) of the ***Civil Procedure Rules 2002*** which require the claimant to expressly set out in full all the facts and allegations being relied on. Consequently, he continued, the claimant is bound by his pleadings.

[62] Unsurprisingly, perhaps, Mr. Austin concentrated his submissions on the point where Det. Sgt. Puddie 'arrested' the claimant for the offences. Counsel argued that the authorities have established that the burden of establishing reasonable suspicion involves a very low threshold. The authorities instruct that reasonable suspicion is not to be equated with prima facie proof; all that is required for arrest is suspicion based on reasonable grounds, counsel urged. In considering the reasonableness of the suspicion, once there is sufficient material to support such suspicion, there is no duty on an arresting officer to carry out any further inquiries at that stage. ***Castorina v Chief Constable of Surrey*** Times 15 June 1988, ***Mulvaney v Chief Constable of Cheshire*** [1990] Lexis Citation 1420 and

O'Hara v Chief Constable of the Royal Ulster Constabulary [1996] NI 8 were cited in support of these submissions.

[63] Mr. Austin posited that if the court were to accept that the claimant was about his lawful business, the court would have to go to the claimant's evidence and his claim for damages would rise or fall on his evidence. Specifically, he contended, if the court determined the claimant was on his lawful business and the arresting officer, Det. Sgt. Puddie, may have had a suspicion but his suspicion was not based on reasonable grounds, the court would still have to go back to the evidence to determine what, if any, damages ought to be awarded. In the end, Mr. Austin conceded that there was fertile ground for making a finding on behalf of the claimant.

Analysis

[64] False imprisonment "is the infliction of bodily restraint which is not expressly or impliedly authorised by law" according to the learned authors of ***Winfield & Jolowicz on Tort*** 18th Ed at para 4-15. Simply put, false imprisonment is the detention of someone against his will, without legal justification. The tort therefore contemplates, as was submitted by counsel for the defendants, the complete loss of physical liberty without legal justification (see head note of ***Flemming v Det. Cpl. Myers***).

[65] Liberty is one of the rights and freedoms guaranteed to every Jamaican citizen, under the ***Charter of Fundamental Rights and Freedoms*** (the ***Charter***) in the Jamaican Constitution. Liberty is part of that recognised bundle of: "*fundamental rights and freedoms to which they are entitled by virtue of their inherent dignity as persons and citizens of a free and democratic society*" (see section 13 under the **Charter**). To this end, section 14. (1) says, so far as is relevant:

> *"No person shall be deprived of his liberty except on reasonable grounds and in accordance with fair procedures established by law in the following circumstances -*

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) the arrest or detention of a person –

(g).....

(h).....

(i) for the purpose of bringing him before the competent legal authority on reasonable suspicion of his having committed an offence".

[66] The right to liberty which is enshrined in the ***Charter*** is, of course, a recognition of the values to which this country subscribes under the United Nations ***Universal Declaration of Human Rights***. Under Article 3, "[e]veryone has the right to ... liberty", and under Article 9 "[n]o one shall be subjected to arbitrary arrest, detention". Arrest and detention must therefore be according to law.

[67] Under section 13 of the ***Constabulary Force Act***, the members of the Jamaica Constabulary Force (JCF) have the statutory duties to, amongst other things:

> *"keep watch by day and by night, to preserve the peace, to detect crime, apprehend or summon before a Justice, persons found committing any offence or whom they may reasonably suspect of having committed any offence, or who may be charged with having committed any offence".*

[68] To this end, the members of the JCF are endowed with both general and specific powers of arrest without being in the possession of a warrant. In respect of the former, it is lawful for any Constable to arrest without a warrant any person found committing any offence punishable upon indictment or summary conviction (see section 15 of the ***Constabulary Force Act***). The specific power of arrest is bestowed under section 18 of the ***Constabulary Force Act***. Under that section members of the Constabulary may arrest without a warrant any person known or

suspected to be in unlawful possession of named dangerous drugs and paper etcetera of Peaka Peow or Drop Pan or similar game.

[69] It may be observed that both under the ***Charter*** and the ***Constabulary Force Act***, where the person was not found committing an offence, his arrest or detention must be based upon reasonable suspicion of his having committed the offence alleged. The law of the land recognises that liberty, though sacred, is not absolute and may only be abridged on reasonable grounds. Fundamental to the understanding of this abridgement of the right to liberty, is an awareness of the tension between the need to uphold the sacredness of a constitutional guarantee and the obligation of the State to guarantee security to its inhabitants through the prosecution of crimes.

[70] This tension was more eloquently expressed by Lord Diplock in ***Holgate-Mohammed v Duke*** [1984] AC 437 at page 445:

> *"My Lords, there is inevitably the potentiality of conflict between the public interest in preserving the liberty of the individual and the public interest in the detection of crime and the bringing to justice of those who commit it. The members of the organised police forces of the country ... have been charged with the duty of taking the first steps to promote the latter public interest by inquiring into suspected offences with a view to identifying the perpetrators ... and obtaining sufficient evidence admissible in a court of law against the persons they suspect of being the perpetrators as would justify charging them with the relevant offence.*
>
> *The compromise which English common and statutory law has evolved for the accommodation of the two rival public interests while these first steps are being taken by the police is two-fold: (1) no person may be arrested without a warrant (i.e. without the intervention of a judicial process) unless the constable arresting him has reasonable cause to suspect him to be guilty of an arrestable offence ... (2) a suspect so arrested and detained in custody must be brought before a magistrates' court as soon as practicable".*

[71] The pivotal point for the interference with a citizen's constitutional guarantee of liberty is reasonable suspicion. Suspicion, by which I mean bare suspicion, is not the standard. The ***Concise Oxford English Dictionary*** (11th revised edition) gives among its meanings of the word 'suspicion', "a feeling or belief that

someone is guilty of an illegal or dishonest action". That "feeling" or "belief", to be of judicial value, cannot be based on whim or a hunch. As Lord Devlin is reported to have observed in ***Hussien v Chong Fook Kam*** [1970] AC 942 at page 948, "suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: 'I suspect but I cannot prove'. Suspicion by itself, therefore, cannot justify any curtailment of the fundamental right to liberty. To quote Sir Frederick Lawton in ***Castorina v Chief Constable of Surrey***, *supra*, "suspicion by itself, however, will not justify an arrest. There must be some factual basis for it, of a kind which a court would adjudge to be reasonable".

[72] Without the modifier "reasonable", there would be no protection against arbitrary arrest. The protection would dissipate like vapour in the proclivities, whims and fancies of the individual police officer. "The "reasonableness" of the suspicion on which an arrest must be based, forms an essential part of the safeguard against arbitrary arrest and detention" which is guaranteed under section 14 (1) (f) (i) of the ***Charter***, adopting the language of ***O'Hara v Chief Constable of the Royal Ulster Constabulary***, *supra*, at page 22.

[73] When considering whether there was reasonable suspicion, I regard the following four propositions of general application although the House of Lords was considering an English statute in ***O'Hara v Chief Constable of the Royal Ulster Constabulary***, at page 13. First, "in order to have a reasonable suspicion the constable need not have evidence amounting to a prima facie case". As was opined there, since this is a preliminary stage, "information from an informant or a tip-off from a member of the public may be enough". Secondly, "hearsay information may therefore afford a constable reasonable grounds to arrest". Thirdly, "the information which causes the constable to be suspicious of the individual must be in existence to the knowledge of the police officer at the time he makes the arrest". Fourthly, "the executive discretion to arrest or not ... vests in the constable, who is engaged on the decision to arrest or not, and not in his superior officers".

[74] The question becomes, was there reasonable suspicion to detain the claimant on the 8th July 2009? In accordance with the general propositions gleaned from ***O'Hara v Chief Constable of the Royal Ulster Constabulary***, the starting point of the inquiry is an assessment of the information that led to the exercise of the executive decision to detain or arrest the claimant. The defendants have said that the claimant was taken into custody in what I might term a security dragnet following the cessation of the firefight between the warring gangs. According to Det. Sgt. Puddie, upon the restoration of calm in the area, the joint police military operation took several men into custody pending further investigation in relation to murder and shootings.

[75] From that response of the security forces, it may fairly be said that in detaining the claimant they had a suspicion that he may have been involved in the gang violence. That suspicion, it appears, rested on no more than the fact of his gender and, on their evidence, his presence in the geographical area of the gang violence. The defence did not place any material before me to say they had any information from either a confidential informant or concerned citizen that the claimant was involved in the shootings. Against that background, the conclusion that the claimant was detained or arrested based on conjecture and surmise is irresistible. As has been said above, suspicion by itself will not justify an arrest or detention.

[76] To underline the emptiness of the grounds upon which the claimant was taken into custody, the defendants were not even able to say who detained or arrested him. Without that information, the court cannot embark upon an inquiry concerning what was in the arresting officer's mind at the time of arrest. Moreover, if no enquiry can be made there, in like manner, there can be no evaluation of the reasonableness of whatever suspicion may have existed at the point of arrest. Without being able to engage in any of that analysis, the court cannot examine the executive decision to arrest or detain the claimant.

[77] It has long been established that it is the defendants who must show that there was reasonable and probable cause to arrest the claimant. As Diplock LJ said in ***Dallison v Caffery*** [1965] 1 QBD 348 at page 370:

> *"Since arrest involves trespass to the person and any trespass to the person is prima facie tortious, the onus lies on the arrestor to justify the trespass by establishing reasonable and probable cause for the arrest".*

Before arresting the claimant, it was incumbent upon the defendants to satisfy themselves that reasonable grounds in fact existed for the suspicion that he was involved in the murder and/or shootings of the day. Without the existence of those reasonable grounds for the suspicion, which led to his arrest, there cannot have been any reasonable or probable cause to detain or arrest him.

[78] If I am incorrect in so holding, I go on to look at what transpired after Det. Sgt. Puddie charged the claimant. Under section 14 (3) (a) (i) of the ***Charter***, a person who is arrested or detained is entitled to be "brought forthwith or as soon as practicable before an officer authorized by law, or a court". The purpose of that exercise is to facilitate either the arrestee or detainee's unconditional release or release upon reasonable conditions to secure his attendance at his trial (see section 14 (3) (a) (ii).

[79] It appears to me that the same considerations would become pertinent in setting the parameters of "as soon as practicable" as "without delay". In this regard, I find the dictum of Carey P (Ag) in ***Flemming v Det. Cpl. Myers*** instructive. At page 527, the learned President said, "no hard and fast rule of inflexible application can be laid down: the matter can only be resolved on a consideration of all the facts of the case". In my opinion, however, the constitutional injunction is to take the arrested or detained person before the court or authorized officer, in the first place, forthwith. If he cannot be taken forthwith, then the alternative is to do so "as soon as is reasonably practicable". In practice "as soon as is reasonably practicable" is treated as the default position although the framers of the ***Charter*** have specified it as an alternative.

[80] If that is a correct understanding of the provision, then in order for the defendants to justify the claimant's continued detention before he was eventually taken before the court, they must offer some explanation why he was not brought forthwith before an authorized officer or a court. The defendants have not offered any explanation for their failure to take the claimant forthwith before either an authorized officer or a court.

[81] Having failed to proffer any explanation for their failure to act forthwith, did they attempt to demonstrate that he was taken before the court as soon as was reasonably practicable? On the very day the claimant was taken into custody he was identified by Cons. Roberts and his hands swabbed. The arrangements to conduct the question and answer session in the presence of his attorney-at-law appear to have been finalised on the 14th July 2009. That took place the following day. It may be assumed in the defendants' favour, that it was more practical to conduct the question and answer session while the claimant remained in custody. Based on that assumption, it may be possible to hold that it was not reasonably practical to take him before the court before the 15th July 2009.

[82] Even if that was the case, different rules applied once the claimant was charged with the offences. Under the ***Bail Act***, section 3 (1), every person charged with an offence is entitled to the grant of bail. To that end, under section 3 (2) of the ***Bail Act***, which is quoted below:

> *"A person who is charged with an offence shall not be held in custody for longer than twenty-four hours without the question of bail being considered".*

In the case at bar, bail could only have been considered by the court since the offences for which he was charged fell under the Second Schedule of the ***Bail Act***. Consequently, the defendants had a legal obligation to put the claimant before the court within twenty-four hours after he was charged. It was accepted on both sides that the claimant was not taken before the court until the 24th July

2009. Yet again, the defendants offered no explanation for their failure to obey the law.

[83] The failure to take the claimant before the court amounts to an abuse of authority. There was no reason to detain the claimant for an additional nine days after he was charged. The further detention of the claimant was therefore unreasonable. The period of the claimant's detention was, therefore, both unduly lengthy and unexplained. That is enough to find that the defendants had no reasonable or probable cause to detain or arrest the claimant. Applying the doctrine of relation back, the initial detention of the claimant thereby became unlawful: ***Flemming v Det. Cpl. Myers***, *supra*.

Assault

[84] The claimant alleged in his particulars of claim that Cons Dwight Roberts pointed a handgun at him and expressed himself as follows, "unu bwoy fi dead wid gun shot". That action, he averred, made him fear for his life. Both the pointing of the firearm and the alleged utterance were denied in the defence that was filed. Issue was therefore joined on the question of the assault.

[85] At the trial, after the claimant was sworn, his witness statement was allowed to stand as his evidence in chief. In that statement he repeated his allegation that Cons Roberts pointed a firearm at him. There was a slight difference in the rendering of the words allegedly used. In the witness statement Cons Roberts was supposed to have said, "bwoy yuh fi dead" at the time he pointed the firearm. The claimant was not cross-examined.

[86] Cons Roberts, in his witness statement, denied pointing his firearm at the claimant. He, however, did not address his mind to the words allegedly used by him to the claimant. When he was cross-examined, he was not asked about that omission but denied pointing his firearm at the claimant and threatening him. Cons Roberts was supported by Det. Sgt. Puddie in both respects.

[87] Mr. Austin submitted that the wholesale acceptance of the claimant's case will not take him across the finish line. Elaborating, he said the claimant's pleadings and evidence are misaligned. Whereas the claimant pleaded that a specific individual assaulted him, his evidence speaks to being assaulted in a different area by unnamed officers.

Analysis

[88] It is convenient to commence the analysis with a consideration of the impact and import of the wholesale acceptance of the case for the claimant on this aspect of his claim. It appears to me that learned counsel pitched his submission in the manner he did, in recognition of the fact that the claimant was not cross-examined. Since the defence joined issue on the question of the assault, they had a duty to cross-examine the claimant if they wished the court to prefer the evidence they elicited. The point is well-made by the learned editors of ***Blackstone's Civil Practice The Commentary 2012*** at paragraph 47.65:

> *" A party who fails to cross-examine a witness on an issue in respect of which it is proposed to contradict his evidence-in-chief or impeach his credit by calling other witnesses, should not be permitted to invite the tribunal of fact to disbelieve the witness' evidence on the issue. The cross-examining party must lay a proper foundation by putting the matter to the witness so that he has an opportunity to give an explanation open to him".*

[89] To defence counsel's credit, he is not asking the court to disbelieve the claimant and prefer the evidence of the defence. Counsel's position is simply this; I should disbelieve the claimant because of a self-inflicted conflict on the claimant's case. Respectfully, the submission is ill conceived. Firstly, both the Particulars of Claim and the evidence alleged Cons. Roberts to be the person who assaulted him. Secondly, there is no conflict in the circumstances in which the claimant is saying he was assaulted. To contend that the claimant's evidence indicates unnamed officers in a different area assaulted him is simply to misquote the evidence. The claimant was not in any way discredited and I accept his evidence.

[90] Blackstone defined an assault as "an attempt to offer or beat another, without touching him: as if one lifts up his cane, or fist, in a threatening manner; or strikes at him, but misses him" (see Lunney and Oliphant ***Tort Law Text and Materials*** 3rd edition at page 54). In short, "an assault is an attempt to commit a forcible crime against the person of another" (see ***Archbold Pleading, Evidence & Practice in Criminal Cases*** 36th edition at paragraph 2631). Accordingly, it has long been established that presenting a loaded firearm at another person without legal justification is an assault. In the language of Lord Goddard in ***Kwaku Mensah*** [1945] AC 83, at page 91, "[p]ointing a gun at a person is an assault unless done in protection of person or property".

[91] To succeed, the claimant must establish that the conduct of Cons Roberts caused him to reasonably apprehend an imminent battery. The evidence of the claimant was that when Cons Roberts pointed his firearm at him he was in fear for his life. The pointing of the firearm at the claimant was intentionally putting him in fear that he was about to suffer a gunshot wound. It is a matter of common sense that a person of ordinary courage, placed in the position of the claimant, would have apprehended the looming infliction of a forcible crime upon his person. In sum, any reasonable man, in the position of the claimant, would fear the immediate, unlawful infliction of violence upon his person. I therefore find this aspect of the claim proved.

Assessment of Damages

False Imprisonment

[92] Both sides filed written submissions on damages on the 13th July 2018. Mr. Nelson, on behalf of the claimant, advanced that a reasonable award for false imprisonment should be $3,464,929.46. He cited three cases in support: ***Arthur Baugh***, *supra;* ***Ihasu Ellis v The Attorney General and Ransford Fraser*** SCCA No. 37/01 delivered on the 20th December 2004 (***Inasu Ellis***); and ***Hugh***

Perkins v The Attorney General C.L.P. 123/86 delivered on 20th January 1994 (***Hugh Perkins***).

[93] In ***Arthur Baugh*** the award was $200,000.00 for being falsely imprisoned for two days. Updated with the Consumer Price Index (CPI) for May 2018, that is 247, that award in today's dollar is $494,989.97. Counsel divided the award by two, to submit that in the instant case damages should be assessed at $247,494.00 per day. In ***Inasu Ellis*** the period of false imprisonment was seven hours and attracted an award of $100,000.00, updated to $293, 697.97. Lastly, in ***Hugh Perkins*** the court awarded him $30,000.00 for four hours unjustified imprisonment. That award updated to $318,613.75.

[94] On the other side of the litigation divide, Mr. Carson Hamilton argued that $260,000.00 would be a reasonable and comparable award for false imprisonment. Reliance was placed on ***Peter Flemming***, *supra* and ***The Attorney General v Glenville Murphy*** [2010] JMCA Civ 50 (***A-G v Murphy***). In ***Peter Flemming***, the award was $3,000.00 for fourteen days false imprisonment. When expressed in today's dollar, it amounts to $139,128.80. In ***A-G v Murphy***, the claimant was falsely imprisoned for twenty-four hours. His award was $180,000.00, which updates to $260,000.00.

[95] The defendants accepted that the claimant was detained for sixteen days before he was placed before the court. They also accepted that if the court were to find that the sixteen days was unreasonable, the court must also find that the detention was illegal *ab initio*. They, however, argued that ***Peter Flemming*** is comparable because both claimants were kept in custody for a similar period and remanded when first taken before the court. To that end, it was submitted that the Court of Appeal said in determining the amount of damages, consideration must be given to the fact that when the appellant was taken before the court he was remanded, indicating that he would not have been offered bail if taken before the court earlier.

[96] The proposition appears to be this, taking a reasonable time to be within twenty-four hours, if the claimant had been taken to court within that time he would have been remanded, therefore he is entitled to damages for only one day's false imprisonment. That is the premise upon which the damages awarded in ***A-G v Murphy***, *supra*, was submitted to be the appropriate award in the case at bar. While it is correct to say that the court in ***Peter Flemming*** said the remand on first appearance ought to be taken into consideration, the proposition for which the defendants contend cannot be gleaned from the judgments.

[97] If that proposition were to be accepted then no claimant could ever be justly compensated for the period of false imprisonment, whatever its length, so long as he was remanded on his first appearance in court. The compensable breach of his entitlement to liberty in a free and democratic society would be reduced to one day. That, in my opinion, would be a monstrous affront to justice, however elastic one's conception of it might be.

[98] In addition to the authorities cited by the litigants, the court considered the following three cases. Firstly, ***Rayon Wilson v The Attorney General of Jamaica and Detective Meeks*** 2006 HCV 3368 consolidated with ***Howard Hassock v The Attorney General of Jamaica and Detective Meeks*** 2006 HCV 4368 delivered on 18th May 2011(***Wilson and Hassock v The A-G***). The award made in **Wilson and Hassock v The A-G** was $350,000.00 where the period of detention was seven days. That award, reflected in current dollar value, is $505,555.54. Secondly, ***Conrad Gregory Thompson v The Attorney General for Jamaica*** 2008 HCV 02530 delivered on May 31, 2011(***Conrad Thompson v The A-G***). The claimant in ***Conrad Thompson v The A-G*** was found to have been falsely imprisoned for sixteen days and three hours. He was awarded the sum of $850,000.00. When updated, that award is $1,227,777.70. Lastly, ***Maxwell Russell v The Attorney General for Jamaica and Corporal McDonald*** 2006 HCV 4024 delivered on 18th January 2008 was considered. The court found that Maxwell Russell was falsely imprisoned for twelve days and

awarded him $515,000.00. In today's dollar, Maxwell Russell's award is worth $1,065,368.50.

[99] After careful consideration of the submissions and the decided cases, I have come to the view that an award of $1.5m would meet the justice of the claimant's case.

Assault

[100] The claimant's counsel did not make any submission on damages for the tort of assault. The defendants, relying on ***Roger McCarthy v Peter Calloo*** [2018] JMCA Civ 7, submitted the sum of $50,000.00 as appropriate compensation .The court accepts that submission.

Conclusion

[101] In conclusion, therefore, I find that the claimant failed to prove that Det. Sgt. Puddie did not have reasonable or probable cause to prosecute him. In consequence of that finding, the claim for malicious prosecution fails. Following on that, the claim for special damages is bound up with the claim for malicious prosecution. The primary claim having failed and, no attempt having been made to prove the items pleaded, I make no award under the head of special damages. Further, in my opinion the circumstances of the commission of the proved torts do not warrant awards under the heads of aggravated and exemplary damages.

[102] The detention of the claimant was either unlawful from the beginning or, applying the doctrine of relation back, was rendered unlawful by the failure to take the claimant before the court promptly, within a reasonably practical time before he was charged or within twenty-four hours after he was charged. The claimant must, therefore, be compensated for false imprisonment.

[103] The claimant was not cross-examined about his allegation of being assaulted. Notwithstanding the contrary testimony from the defendants, that was insufficient to discredit the claimant. Consequently, I find this aspect of the claim proved.

Orders

[104] Based on the foregoing, I make the following four orders. First, I enter judgment for the defendants in respect of the claim for malicious prosecution. Secondly, I enter judgment for the claimant for false imprisonment with damages assessed in the sum of $1.5m, with interest at the rate of 3% per annum from the 14th November 2012 to the 31st July 2018. Thirdly, I give judgment for the claimant for assault, with damages assessed in the sum of $50,000.00 with interest at the rate of 3% per annum from the 14th November 2012 to the 31st July 2018. Fourthly, I award the claimant 70% of his costs, to be taxed if not agreed.