

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

2019/CLE/gen/00394

BETWEEN

OMAR ARCHER SR.

Claimant

AND

THE COMMISSIONER OF POLICE

First Defendant

AND

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS

Second Defendant

Before: Her Ladyship The Honourable Madam Senior Justice
Deborah Fraser

Appearances: Ms. Raven Rolle for the Claimant
Mr. Kirkland Mackey and Mr. Randolph Dames for the
Defendants

Judgment Date: 09 February 2024

Law of Torts – Assault and Battery – Malicious Prosecution – False Imprisonment
– Personal Injury – Unlawful Arrest – Fundamental Constitutional Rights –
Articles 15, 17, 19, 20 and 28 of the Constitution - Special Damages – General
Damages – Exemplary/Punitive Damages – Vindictory Damages – Aggravated
Damages – Compensatory Damages - Evidence – Standard and Burden of Proof –
Cross-Examination – Uncontroverted Evidence

JUDGMENT

1. This is the trial of an action brought by the Claimant, Mr. Omar Archer Sr. (“**Mr. Archer**”) alleging unlawful arrest, false imprisonment, assault and battery, malicious prosecution, breaches of constitutional rights, and personal injury, against the Commissioner of Police (“**COP**”) and the Attorney General of the Commonwealth of The Bahamas (“**AG**” and collectively the “**Defendants**”). He requests various forms of damages for acts allegedly done by officers of the Royal Bahamas Police Force (“**RBPF**”).

Background

2. Mr. Archer is a citizen of The Commonwealth of The Bahamas.
3. The First Defendant is the Commissioner of Police, an office responsible for the oversight and management of all protocols, policies and mandates regarding the conduct and discharge of duties/functions of members of the RBPF.
4. The Second Defendant is the Attorney General of the Commonwealth of The Bahamas, whose function is to oversee, review and provide advice, as well as bring and defend any actions in all matters regarding the law and legal policies for the Government of The Bahamas. The office is sued as representing the Government of The Bahamas and its executive branches.
5. On 07 April 2018, it is alleged that officers of the RBPF wrongfully arrested Mr. Archer at an event at Smuggler's Square ("**Event**"). Mr. Archer further alleges that on that same day during the Event, he was verbally threatened, intimidated and physically assaulted by police officers during the course of their employ. He claims that Officer 2989 Corporal Barr ("**Corporal Barr**") was one of the officers who physically assaulted him and who was intoxicated at the time of the incident. He further claims that Corporal Barr hurled a stream of expletives towards him before forcibly and violently grabbing him by his jacket and punching him in the head, stomach and face.
6. Mr. Archer also alleges that Constable Thurston physically assaulted and used expletives towards him.
7. He further alleges that on 07 April 2018, after the alleged assault and battery, he was wrongfully detained for several hours by members of the RBPF.
8. During his incarceration, Mr. Archer claims that he requested an ambulance in order for his leg to be examined. Medics arrived on the scene and transported him to Princess Margaret Hospital. According to Mr. Archer's pleadings, he allegedly sustained a fractured fibula and tibia to his right leg due to the assault and battery of the police officers.
9. Mr. Archer also claims he was tortured, treated inhumanely and subjected to degrading treatment and punishment by members of the RBPF.
10. Mr. Archer further claims that on 12 April 2018, he was maliciously and without probable cause charged and formerly arraigned before a Magistrate with disorderly behavior, resisting arrest, use of obscene language and assaulting a police officer. The trial is alleged to have occurred on 09 May 2018 and was subsequently dismissed for want of prosecution on 07 March 2019.
11. Due to the alleged foregoing events, Mr. Archer brought an action by Generally indorsed Writ of Summons filed on 27 March 2019 and by Statement of Claim filed on 26 February 2020 against the Defendants for *inter alia*, battery and assault, unlawful arrest, malicious prosecution, false imprisonment, personal injury and breach of his constitutional rights. He claims the following reliefs:

"1. General, exemplary, punitive and aggravated damages;

2. *Special damages;*
3. *Compensatory and vindicatory damages under the Constitution by action under the inherent jurisdiction of the Court, by Article 15 and Article 28 of the Constitution;*
4. *Such other remedies or relief under the Common Law and/or Chapter 3 of the Constitution as the Plaintiff may be entitled to;*
5. *Interest;*
6. *Costs; and*
7. *Such further or other relief as the Court may deem just.”*

12. The Defendants filed their Defence on 14 September 2020 denying all allegations made by Mr. Archer and put him to strict proof. They also raise a preliminary objection regarding Mr. Archer’s constitutional relief claims. I will address this further in my judgment.

Issues

13. None of the Parties filed a Statement of Facts and Issues. Based on my review of the pleadings, the issues can be distilled as follows:

- A) Whether the conduct of Corporal Barr and/or Constable Thurston amounts to Assault and Battery?
- B) Whether Mr. Archer’s arrest and/or detention on 07 April 2018 were/was unlawful?
- C) Whether the Defendants are liable for malicious prosecution?
- D) Whether Mr. Archer suffered any personal injury?
- E) Whether Mr. Archer’s constitutional rights have been infringed due to the conduct of the RBPF?
- F) Whether Mr. Archer is entitled to any damages?

Evidence

Mr. Archer

14. On 30 March 2023, Mr. Archer filed his Witness Statement (“**Archer WS**”) which stood as his evidence-in-chief at trial. It provides that: (i) on 06 April 2018, he arrived at the Event where he remained, with family members accompanying him, until his unlawful arrest by a police officer at 2am on 07 April 2018; (ii) while on the stage on the Event, Mr. Archer asked one of the disc jockeys for a microphone, but was told that he could not have it and would not allow Mr.

Archer to us it; (iii) Mr. Archer asked the disc jockey why and was told that he simply did not want Mr. Archer on the microphone. He and the disc jockey had an exchange of words, but eventually Mr. Archer came off stage and returned to his family; (iv) Mr. Archer noticed three officers drinking liquor and grew concerned because he believed that they were performing their duties as members of the Police Staff Association and should not be openly drinking at the Event while on duty; (v) he spoke with "Terrible T" (an event promoter) and asked him if he knew the disc jockey who refused to give Mr. Archer the microphone, which he responded in the affirmative and said his name was Sanchez; (vi) he noticed that Sanchez was speaking with a police officer who Mr. Archer later learned was Corporal Barr; (vii) he noticed that Sanchez pointed towards him while speaking to Corporal Barr and was shouting expletives; and (viii) Corporal Barr then came up to Mr. Archer and, hurled expletives towards him, snatched Mr. Archer by his jacket and punched him in the mouth.

15. The Archer WS also provides that: (i) Corporal Barr unstrapped his gun (which was on his person) and hurled more expletives at Mr. Archer while holding the handle of the gun; (ii) Mr. Archer then attempted to grab Corporal Barr's hand to stop him from drawing the weapon and discharging it in Mr. Archer's direction as he knew the officer was already drinking earlier that night; (iii) Constable Thurston then charged at Mr. Archer and pulled Mr. Archer to the ground; (iv) Mr. Archer was still holding Corporal Barr's wrist, so they both fell when Constable Thurston charged at Mr. Archer; (v) Mr. Archer stood up, was verbally attacked by Officer Thurston (who used expletives) and was violently removed from the venue by a group of officers; (vi) Mr. Archer told them he had a "bad leg" due to an injury suffered 3 years ago; (vii) Mr. Archer's leg recently healed after it started swelling in December 2017 (though no reason for the swelling was stated in the witness statement); and (viii) Corporal Barr then used more expletives towards Mr. Archer and kicked him twice in his bad leg which caused immediate pain throughout Mr. Archer's entire body.
16. The Archer WS further stated that: (i) officers (no specific names were mentioned) repeatedly punched Mr. Archer in the head, stomach and face; (ii) Corporal Barr struck him extremely hard in his "bad leg", despite already being attacked by other officers; (iii) His sister, Chinyere, then came to Mr. Archer and informed him that she was punched by Corporal Barr; (iv) Mr. Archer stated there was video footage of the officers' behavior moments ago (though the video footage is not in evidence before this Court); and (v) Mr. Archer was eventually placed in a holding cell and asked for his foot to be examined as he was experiencing pain.
17. The Archer WS also provides that: (i) he was transported to the Princess Margaret Hospital; (ii) an X-ray (which is not in evidence before this Court) revealed that Mr. Archer had a fractured fibula and tibia; (iii) Mr. Archer's leg was placed into a cast (though no photos of his leg in a cast was placed into evidence); and after a few hours, Mr. Archer left the hospital and was placed back into a cell; and (iv) Mr. Archer was eventually released from custody and states that he still experiences pain in his right leg.

Corporal Decorry Barr (“Corporal Barr”)

18. On 05 April 2023, Corporal Barr filed a Witness Statement (“**Barr WS**”), which stood as his evidence-in-chief. The Barr WS provides that: (i) on 06 April 2018, he reported for duty at a Police Staff Association Private Engagement at Smugglers Square in the area of Pirates of Nassau, George Street; (ii) he was stationed there with Constable Thurston and detailed to make and keep secure a restricted area, located in and around the entertainment stage of the Event; (iii) at the Event, a guest artist performed and after their performance, was escorted off the stage by Constable Thurston and Corporal Barr from the restricted area to a back stage exit; (iv) Corporal Barr noticed Mr. Archer having a verbal altercation with a disc jockey while on the entertainment stage; (v) he approached Mr. Archer and identified himself as a police officer, but was ignored by Mr. Archer; (vi) Mr. Archer continued the verbal altercation with the disc jockey then turned to Corporal Barr and verbally lashed out at him; and (vii) Corporal Barr ignored Mr. Archer’s verbal attack and told him to enjoy the event, cease the verbal altercation and leave the restricted area (which was near the rare of the stage).
19. The Barr WS further stated that: (i) Mr. Archer refused to go and aggressively pushed Corporal Barr in the chest causing him to stumble and fall to the ground; (ii) Corporal Barr then got up and attempted to detain Mr. Archer and informed him that he was under arrest; (iii) Mr. Archer was very strong and resisted the arrest which caused Constable Thurston to assist in trying to restrain Mr. Archer; (iv) Mr. Archer hit Constable Thurston in the face but Corporal Barr and Constable Thurston were eventually able to subdue him and escorted him from the restricted area; (v) Mr. Archer continued using obscene language then, while escorting Mr. Archer from the scene, a female approached them and attempted to aide Mr. Archer in escaping police custody; (vi) Mr. Archer was taken to the Central Police Station by police car; and (vii) at the station, he was booked in and was later charged with disorderly behavior, resisting arrest, use of obscene language and assaulting a police officer.

Findings of Fact

20. I have considered the testimony of the witnesses and wish to highlight certain testimony from each witness. I will, thereafter, make my findings of fact. The only two witnesses called had diametrically different accounts of what transpired during the Event. It is curious why other persons (who were named by both witnesses in their testimony and witness statements) were not called. For example, Constable Thurston could have provided material evidence in this case as well as Mr. Archer’s sister, Chinyere. I note there are several written statements by several other officers, including Constable Thurston, in the Defendants’ Bundle of Documents, but none of them were called to testify.
21. I also note that there is a claim for personal injury, yet no viva voce evidence was provided by a medical professional. I shall address this later in my judgment.

22. In any event, I will analyze the viva voce evidence of the witnesses who were called.

Omar Archer ("Mr. Archer")

23. In relation to Mr. Archer, I found his evidence inconsistent and somewhat difficult to follow. I did not find him to be a reliable witness. At certain junctures, he appeared to contradict his own evidence. This is evident at the 13 June 2023 Court Transcript ("**Court Transcript**") on page 17 at lines 25 to 30, which provide:

Q. Okay. So you were on the stage. A disc jockey, whose event it is, by you telling him that, according to your statement, he told you - you could not have the mic and you immediately answered - responded by saying why you acting like a [expletive]? That's correct?

A. No. I did not say that to him.

Q. But I'm reading your statement...

24. At paragraphs 11 and 12 of the Archer WS, Mr. Archer expressly indicates that he was speaking to the disc jockey on the stage when he used the expletive, yet he denies this during cross-examination. Paragraphs 11 and 12 of his witness statement read:

"I was in disbelief at his [the disc jockey's] response as I could not understand why he would not want me on the microphone nor at the event. I was so shocked I inadvertently blurted out that he was acting as if I did him something. I went on to say that his actions were those of a [expletive]. It appears however, that he thought I actually called him a [expletive]."

25. He testified that he was referring to Terrible T, but Terrible T being on the stage at the Event is not indicated anywhere in his witness statement.

26. Yet another instance of inconsistency was in the Court Transcript at page 39, lines 6 to 12:

"Q. I said to you -- the DJ did not endanger your life; correct?"

A. Correct.

Q. But you used obscenity towards him anyhow?

A. I used profanity towards the DJ?

Q. Yes, you did. That's what I'm saying to you.

A. No. I did not."

27. I also found Mr. Archer to be quite combative during cross-examination. He avoided answering questions and even sought to be cantankerous at certain points. One instance of this was in the Court Transcript at page 37 lines 7 to 17:

Q. Okay. I put it to you that you -- what you're saying as stating -- what you're stating is false and it's incorrect. What you're stating.

A. Prove it.

Q. Huh?

A. Prove it.

Q. I'm sorry?

A. Prove it, Counsel.

Q. You're asking me to prove it?

A. Yes. You make -- you said I'm wrong. Prove that I'm telling a lie.

28. His behavior during cross-examination and testimony make it difficult to place much weight on the viva voce evidence provided. Furthermore, the fact that he contradicts his own witness statement and was unable to confirm/account for timelines when certain events allegedly took place that night is concerning. The inability to provide a coherent timeline of the events that transpired was highlighted page 26 lines 11 to 32:

"Q. Okay. This incident happened between 1:00 a.m. and 2:00 p.m.. There's numerous statements on that fact. And as we have here and I think you have pleaded that fact and that is pleaded in your Statement of Claim -- the incident -- on the time the incident happened, it happened between 1:00 and 2:00 a.m.. So you jumped from less than 8:00 p.m. and accounted for less than an hour and leapfrogged into six hours later without nothing -- no -- nothing account for it?"

A. I see your point. I see your point.

Q. All right?

A. And it is just --

Q. So I'm -- so I put it to you that you -- that what is stated here is not entirely correct. It does not makes sense with the time, is what I'm saying. It does not -- it's not logical with the time.

A. Okay. If you would permit me to --

Q. Yes. I will.

A. I could understand the timeline discrepancy, but none -- one cannot take away the fact that the incident had occurred."

29. The gaps in the timelines suggest that the full chronology of events have not been accounted for. This, again, makes me believe his evidence is unreliable.

30. Much of Mr. Archer's testimony was bare denials of any wrongdoing during the Event. He testified that he did not use abusive language, yet he contradicts himself several times during his testimony by admitting he did use abusive language. He denies pushing Corporal Barr, yet he admits that he caused Corporal Barr to fall down due to his weight and holding on to Corporal Barr's wrist (at page 36 at lines 19 to 28 of the Court Transcript).

31. I do not find his evidence to be very reliable.

Corporal Barr

32. Conversely, the evidence of Corporal Barr was consistent and believable. Throughout his testimony he remained consistent and unwavering, despite cross-examination by Mr. Archer's Counsel. I find his evidence trustworthy.

33. I believe him when he testified that he tried to de-escalate the verbal altercation between Mr. Archer and the disc jockey at the Event. I also believe that Mr. Archer became verbally abusive and initiated the ensuing physical altercation between himself and police officers. I accept the testimony of Corporal Barr at page 54 of the Court Transcript at lines 26 to 32 and at page 55 lines 1 to 4, which provides:

"Q. So in performing, the disc jockey was able to carry out his performance, as well as, engage with the Plaintiff?"

A. Yes.

Q. Is what you're saying?

And what happened after you told both parties to stop and enjoy the event?

A. The Claimant turned -- well, not turned physically but he became hostile towards myself and the other officers and [used] obscenities, flaring his hands and, subsequently, he pushed me to the ground."

34. I also believe Corporal Barr when he testified that he and Constable Thurston only used necessary force to subdue Mr. Archer in order to arrest him because Mr. Archer became physically combative (page 58 of Court Transcript at lines 9 through 19). They were merely defending themselves and only used necessary force to subdue Mr. Archer.

35. Furthermore, I believe Corporal Barr when he testified that he informed Mr. Archer he was under arrest the moment Corporal Barr was pushed to the ground (page 62 of the Transcript at lines 3 to 6).

36. Corporal Barr also testified that he was not drinking during the event, but this directly conflicts with both Mr. Archer's testimony and witness statement. I, however, place more weight on Corporal Barr's evidence as I found him to be a more consistent and trustworthy witness. Conversely, as I have already stated, Mr. Archer contradicted his own evidence several times, which makes it difficult to accept his evidence in certain respects.

37. I also note that Mr. Archer provided the following evidence at paragraph 40 of his witness statement:

"I never struck Corporal Barr and I never caused any bodily harm to Officer Thurston. I continued, "If you guys are coming to press charges on me, it's gonna work in my favor because there are video recordings of your behavior out there moments ago."

38. Though he references video recordings of the behavior of the police officers, no such recordings were admitted into evidence before this Court. It is odd why such evidence was not included in this case – particularly as it potentially corroborated Mr. Archer’s allegations. Sadly, as I have not had sight of such recordings, I give no weight to them.
39. Based on the foregoing, I make the following findings of fact: (a) I believe that Mr. Archer’s actions, including use of abusive language towards the disc jockey and police officers along with him grabbing Corporal Barr’s wrist causing them both to fall to the ground, precipitated the physical altercation between himself and the police officers – his actions initiated the brawl; (b) I also find that his actions necessitated his arrest and ultimate removal from the Event; (c) I am satisfied that police officers only used necessary force to subdue Mr. Archer in order to restrain and arrest him; (d) Mr. Archer was told he was under arrest after he pushed Corporal Barr to the ground; and (e) I accept that Corporal Barr was not drinking during the Event.

Discussion and Analysis

40. I have read the submissions of counsel and considered them along with the relevant law and evidence in this action. I will now address each issue in turn.

Whether the conduct of Corporal Barr and/or Constable Thurston amounts to Assault and Battery?

41. According to the learned author, Gilbert Kodilinye in the text, **Commonwealth Caribbean Tort Law, Fourth Ed. (2009) at page 11:**

“An assault is a direct threat made by the defendant to the plaintiff, the effect of which is to put the plaintiff in reasonable fear or apprehension of immediate physical contact with his person...In assault, the act of the defendant must have been such that a reasonable man might fear that violence was about to be applied to him. The test is objective, not subjective. Thus, if a person of ordinary courage would not have been afraid, the fact that the particular plaintiff was afraid will not make the defendant liable.

42. Both parties rely on **section 21 of the Penal Code, 1927** for the definition of assault. The section provides:

“21(1) A person makes an assault without actual battery on another person if, by any act apparently done in commencement of an assault and battery, he intentionally puts the other person in fear of an instant assault and battery.

(2) This definition is subject to the following provisions –

(a) it is not necessary that an actual assault and battery should be intended, or that the instrument or means by which the assault and battery is apparently intended to be made should be, or should be the person using them be believed to be, of such a kind or in such a condition as that an assault and battery could be made by means of them;

(b) a person can make an assault, within the meaning of this section, by moving, or causing any person, animal, or matter to move, towards another person, although he, or the person, animal, or matter is not yet within such a distance from the other person as that an assault and battery can be made; and

(c) an assault can be made on a person, within the meaning of this section, although he can avoid actual assault and battery by retreating or by consenting to do or to abstain from doing any act..."

43. In relation to the definition of battery, Gilbert Kodlinye in **Commonwealth Caribbean Tort Law, Fourth Ed. (2009) at page 12** states:

"A battery has been defined as "a direct act of the defendant which has the effect of causing contact with the body of the plaintiff without the latter's consent.

Battery connotes an intentional act on the defendant's part..."

44. Based on my findings of fact, I am not satisfied that any officer committed any assault or battery against Mr. Archer. Corporal Barr sought to de-escalate the altercation between Mr. Archer and the disc jockey on stage. Mr. Archer then became belligerent after being approached by Corporal Barr. Once Mr. Archer became belligerent, grabbed Corporal Barr's wrist (which caused them both to fall) and used obscene language against the police, the officers had no choice but to defend themselves in order to subdue Mr. Archer. I do not see how there could be any reasonable fear of harm when one initiated a physical brawl.

45. It is clear that any injury inflicted on Mr. Archer was a direct consequence of his own actions. It was his own actions that precipitated and necessitated Corporal Barr's and Constable Thurston's tactics to contain the violence and maintain peace during the Event. The police officers were merely defending themselves and trying to prevent any further violence that night.

46. I believe Corporal Barr when he testified that Mr. Archer was stronger than he was and this necessitated Constable Thurston's involvement in subduing Mr. Archer. Only necessary and reasonable force was used to effect an arrest and maintain order.

47. I find that no assault or battery was suffered by Mr. Archer at the hands of Corporal Barr nor Constable Thurston. Thus, this aspect of the claim is dismissed.

Whether Mr. Archer's arrest and/or detention on 07 April 2018 were/was unlawful?

48. I will address the issue of the alleged unlawful arrest first, then turn to the lawfulness of Mr. Archer's detention.

Unlawful Arrest

49. The law of unlawful arrest was succinctly summarized by Charles Snr J. (as she then was) in the case of **Lashawn Cooper v The Commissioner of Police et al – 2018/CLE/gen/01309 ("Cooper")**. There, the learned judge opined:

[51] In the landmark case of *Christie v Leachinsky* [1947] A.C. 573, H.L., (affirming the judgment of the Court of Appeal) it was held that “it is a condition of lawful arrest that the party arrested should know on what charge or on suspicion of what crime he is arrested, and, therefore, just as a private person arresting on suspicion must acquaint the party with the cause of his arrest, so must a policeman arresting without warrant on suspicion state at the time...**(unless the party is already acquainted with it)**, on what charge the arrest is being made or at least inform him of the facts which are said to constitute a crime on his part. Even if circumstances exist which may excuse this, **it is still his duty to give the information at the first reasonable opportunity after the arrest.** The exigency of the situation which justifies or demands arrest without a warrant cannot justify or demand either a refusal to state the reason of arrest or a misstatement of the reason...

[53] In a classif[c] passage in *Christie v Leachinsky* at page 587, after referring to a panoply of cases, Viscount Simon summarized the position in a series of propositions as follows:

“(1) If a police man arrests without warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words, a citizen is entitled to know on what charge or on suspicion of what crime he is seized. (2) If the citizen is not so informed but is nevertheless seized, the policeman, apart from certain exceptions, is liable for false imprisonment. (3) **The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained.** (4) The requirement that he should be so informed does not mean that technical or precise language need be used. The matter is a matter of substance, and turns on the elementary proposition that in this country a person is, *prima facie*, entitled to his freedom and is only required to submit to restraints on his freedom if he knows in substance the reason why it is claimed that this restraint should be imposed. (5) **The person arrested cannot complain the he has not been supplied with the above information as and when he should be, if he himself produces the situation which makes it practically impossible to inform him,** e.g. by immediate counter-attack or by running away. There may well be other exceptions to the general rule in addition to those I have indicated and the above propositions are not intended to constitute a formal or complete code, but to indicate the general principles of our law on a very important matter...If a policeman who entertained a reasonable suspicion that X has committed a felony were at liberty to arrest him and march him off to a police station without giving him any explanation of why he was doing this, the *prima facie* right of personal liberty would be greatly infringed. No one, I think, would approve a situation in which when the person arrested asked for a reason, the policeman replied “that has nothing to do with you, come along with me.””

50. I also wish to draw the parties’ attention to further pronouncements by the House of Lords in *Christie v Leachinsky* [1947] A.C. 573 at paragraph 46:

“46. [...] an arrest is unlawful if:-

46.1 *The arresting officer has not sufficiently satisfied himself that a suspect is responsible for the commission of an offence and therefore arrests a suspect without reasonable suspicion; and/or*

46.2 **The arresting officer does not inform the suspect of the reason for his arrest as soon as practicable** (emphasis added).”

51. I must also highlight **section 31(2) of the Police Force Act, 2010** which provides:

“(2) Without prejudice to the generality of the foregoing or any other provision of this Act, a police officer may, without a warrant, arrest a person –

(a) he reasonably suspects of having committed an offence...

*(b) **who commits a breach of the peace in his presence;***

*(d) **who obstructs a police officer while executing his duty** (emphasis added).”*

52. Based on my findings of fact, Corporal Barr and Constable Thurston were merely executing their lawful duties while at the Event by maintaining peace and order. In the course of such duties, they arrested Mr. Archer based on his own actions – being the attack on the police officers and use of obscene language towards them and the disc jockey.

53. His subsequent transfer to the Central Police Station for processing and booking were necessary based on his own actions.

54. I note that the Claimant’s counsel sought to rely on the fact that Mr. Archer was not formally informed of the reason for his arrest for some 9 hours as the reason why the arrest ought to be deemed unlawful. I, however, do not agree. As was mentioned in **Cooper** (where the learned judge relied on the case of **Christie v Leachinsky**): **“The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained.”**

55. Mr. Archer must have known that him grabbing the police officer and causing him to fall down coupled with him resisting arrest would warrant a lawful arrest – even if he was not informed there and then the reason for his arrest. In my view, the general nature of the alleged offence is clear – assault and battery of a police officer and resisting arrest.

56. At the very least, he must have realized that he could be arrested for such offences based on his actions at that time. Most importantly, he was eventually formally informed for the reason of the arrest once in custody. I believe he was informed within a reasonable time/as soon as practicable after the arrest as separate interviews by each party involved in the physical attack were conducted and documented (as evidenced in both parties’ bundles by virtue of written

records of interviews by each party). The officers did what was necessary to maintain peace and order by arresting and removing Mr. Archer from the Event.

57. Based on the foregoing, I deem the arrest by Corporal Barr and Constable Thurston as lawful. I thus dismiss this aspect of Mr. Archer's claim.

Mr. Archer's Detention – alleged False Imprisonment

58. The **Cooper** decision also addressed the law of false imprisonment. There, Charles Snr. J (as she then was) made the following pronouncements:

*"[61] False imprisonment is defined by Clerk and Lindsell on Torts, 17th ed. (1995) pp 592-593, para 12-17 as **"complete deprivation of liberty for any time, however short, without lawful cause."** The work then quotes the "termse de la Ley" "Imprisonment is no other thing but the restraint of a man's liberty, whether it be in the open field, or in the stocks, or in the cage in the streets or in a man's own house, as well as in the common goals; and in all the places the party so restrained is said to be a prisoner so long as he has not his liberty freely to go at all times to all places whether he will without bail or mainprise or otherwise."*

[62] The principle was explained by Edyalsingh J in Bostien v Kirpalani's Ltd (1979) High Court of Trinidad and Tobago No. 861 [unreported], per Deyalsingh J (see page 13) in this way:

"It is clear from the authorities that to constitute a false imprisonment there must be restraint of liberty...a taking control over or possession of the plaintiff or control of his will. The restraint of liberty is the gist of the tort. Such restraint need not be by force or actual physical compulsion. It is enough if pressure of any sort is present which reasonably leads the plaintiff to believe that he is not free to leave or if the circumstances are such that the reasonable inference is that the plaintiff was under restraint even if the plaintiff was himself unaware of such restraint. There must in all cases be an intention by the defendant to exercise control over the plaintiff's movements over his will, and it matters not what means are utilized to give effect to this intention...(emphasis added)"

59. Gilbert Kodilinye in **Commonwealth Caribbean Tort Law Fourth Ed. (2009) at pages 17 and 18** had this to say:

*"'False imprisonment' is a misleading term. 'False' normally means 'fallacious' or 'untrue', but in this tort it means merely 'wrongful' or 'unlawful'. 'Imprisonment' usually involves locking a person in jail, but in this tort it has a much wider meaning and includes not only incarceration in prison, but any physical restraint...It is a fundamental requirement of the tort that the plaintiff's freedom of movement in every direction must have been restricted...**In order to be an actionable false imprisonment, the restriction upon the plaintiff's liberty must be unlawful** (emphasis added)."*

60. As I have already ruled that Mr. Archer's arrest was lawful, in the circumstances of this case, it is only corollary that his detention was also lawful. He was not unnecessarily deprived of his liberty and in fact was permitted to seek medical

treatment when requested (he was transported to Princess Margaret Hospital to be assessed – this is evidenced from the medical records contained in Mr. Archer’s Bundle of Documents as well as his own witness statement).

61. He was in custody for a period that was necessary to process him and complete necessary investigations in the matter.

62. Consequently, the claim for false imprisonment is dismissed.

Whether the Defendants are liable for malicious prosecution?

63. The necessary elements for the tort of malicious prosecution were enunciated in the case of **Abrath v North Eastern Railway Co. (1883) 11 Q.B.D. 440** at page 451. According to that decision, in order to be successful in a claim for malicious prosecution, the following must be satisfied:

“78.1.1 that the Plaintiff was criminally prosecuted

78.1.2. that the prosecution was determined in his favour

78.1.3 that the prosecution was instituted against him by the defendants without any reasonable or probable cause; and

78.1.4 that it was instituted with a malicious intention in the mind of the defendants, that is, not with the mere intention of carrying the law into effect, but with an intention which was wrongful in point of fact.
(emphasis added).”

64. On malicious prosecution, Gilbert Kodlinye at pages 46 and 48 of his text **Commonwealth Caribbean Tort Law Fourth Ed. (2009)** said:

“The tort of malicious prosecution is committed where the defendant maliciously and without reasonable and probable cause initiates against the plaintiff a criminal prosecution which terminates in the plaintiff’s favor, and which results in damage to the plaintiff’s reputation, person or property...”

In Wills v Voisin (1963) 6 WIR 50 p 57, Wooding CJ listed the essentials which must be proved by the plaintiff in order to establish a case of malicious prosecution:

(a) That the law was set in motion against him on a charge of a criminal offence;

(b) That he was acquitted of the charge or that otherwise it was determined in his favour;

(c) That the prosecutor set the law in motion without reasonable and probable cause;

(d) That, in so setting the law in motion, the prosecutor was actuated by malice.

Failure to establish any one or more of these requirements will result in the plaintiff losing his action for malicious prosecution *(emphasis added).”*

65. Time and time again, the Courts have stated that, in civil matters, he who asserts must prove. It is incumbent on a claimant to prove his claim on a balance of probabilities. This is trite law and the firmly established standard and burden of proof in the realm of civil law in The Bahamas.
66. I will now go through the evidence and apply the requisite elements for the tort of malicious prosecution.
67. In relation to this action, the only evidence of any purported malicious prosecution is what is contained in the Charge Sheet from the Magistrates Court charge sheet for the criminal proceedings ("**Charge Sheet**"). According to the Charge Sheet, Mr. Archer was charged with 6 counts: (1) disorderly behavior contrary to section 206(1) of the Penal Code, 1927 ("**Penal Code**"); (2) resisting arrest contrary to section 247 of the Penal Code; (3) obscene language contrary to section 208(2) of the Penal Code; and (4) assaulting a police officer contrary to section 247 of the Penal Code. The first limb is satisfied – there is evidence of criminal charges made against him.
68. In relation to the second limb, it is unclear if the matter was determined in his favor. Whereas I acknowledge the efforts of Mr. Archer's counsel to obtain information regarding these criminal charges (evidenced by several letters to the Magistrate's office who had conduct of this criminal matter), no evidence definitively confirms the outcome of the criminal proceedings.
69. Nothing is in evidence confirming that the matter was determined in Mr. Archer's favour. I must, therefore, conclude that limb two has not been satisfied.
70. Limb three requires there to be a lack of reasonable/probable cause to initiate proceedings. Based on my findings of fact, there was a plethora of evidence which established probable cause (i.e. the actions of Mr. Archer, which was confirmed by Corporal Barr's testimony and witness statement, along with the several statements in the parties' bundles from several other officers from the night of the incident which spoke to the alleged assault and battery, use of obscene language, resisting arrest and disorderly behavior). Thus, this limb has not been satisfied.
71. Lastly, and possibly most importantly, Mr. Archer must prove that the prosecution of the matter was driven by malice. There is not even an iota of evidence that suggested that the prosecution was initiated by malice. The arrest and detention of Mr. Archer were lawful and based on his own actions against officers of the law. He contravened the law which initiated the criminal proceedings against him. In a Democratic society, officers of the law are obliged to protect and serve and uphold the law. This includes assisting in and/or initiating criminal proceedings – when appropriate. I see no wrongdoing on the part of the prosecution in choosing to initiate proceedings when evidence establishes grounds upon which the matter should be pursued.
72. Having failed to establish three of the four limbs for malicious prosecution, I dismiss this aspect of the claim as well.

Whether Mr. Archer suffered any personal injury?

73. Neither counsel addressed this aspect of the claim. Again, he who asserts must prove. Counsel ought to guide the Court on the relevant law and its applicability to proceedings before it.
74. In a personal injury claim, the claimant must establish that a tort was committed by the defendant that resulted in some injury to him, which then entitles the claimant to some form of damages.
75. I acknowledge the multiple allegations of the purported injuries Mr. Archer suffered, but they are just that – mere allegations. Cogent and compelling evidence must be presented to establish the alleged injuries and, once proven, an appropriate award of damages would follow.
76. Based on the evidence before me, I see some medical records evidencing that Mr. Archer was assessed by medical professionals. I note in a referral letter from Dr. Brennen dated 07 April 2018 that he assessed Mr. Archer and noted that he had complaints about swelling of his right leg and the existence of a pre-existing injury to that leg. He recommended some Voltaren and a “Simpson boot”. It is unclear what the extent of the injury is. Surprisingly, no invoices or receipts were placed into evidence proving that funds were expended based on the injuries allegedly suffered by Mr. Archer – I shall address this later in my judgment.
77. From other medical evidence contained in Mr. Archer’s Bundle of Documents, I also note that a CT scan was ordered and tendinitis was noted. Sadly, no medical expert was called to expound upon any of this evidence to explain such findings, the extent/severity of the injury or to establish whether or not Mr. Archer had indeed fractured his tibia or fibula, as alleged in his Statement of Claim.
78. In addition, no X-ray or CT scan was admitted into evidence nor was there any pictures of the alleged fractured tibia or fibula placed before me. Mr. Archer mentioned the existence of an X-ray of his right leg in his witness statement, but, as I have stated, this was not placed before me. Two photographs are before me, but it is unclear what the images depict (whether an arm or leg) nor does it confirm the date the photographs were taken. Furthermore, the photographs appear to be healed and minor lacerations on unidentified parts of the body. No fractured tibia/broken leg is depicted in any photograph before me.
79. I also note that, according to the Archer WS, an EMT placed a cast on Mr. Archer’s leg. This, however, does not necessarily mean he suffered a broken leg. A physician would need to establish this. However, no such expert was called to provide such evidence, nor was any medical report in evidence confirming a fractured tibia or fibula.
80. Mr. Archer has not provided any evidence to corroborate what is contained in his witness statement regarding the alleged injuries suffered. It is important to note that his evidence was not directly controverted by the Defendants during cross-examination.

81. This point was comprehensively examined in the recent United Kingdom Supreme Court decision of **TUI UK Ltd v Griffiths [2023] UKSC 48 (“Griffiths”)**. In that decision, the court had to determine if the judge at first instance was correct in rejecting the uncontroverted evidence of an expert witness. After examining an array of authorities, the court summarized the following principles in relation to the significance of cross-examination and how a judge should treat uncontroverted evidence (whether it be evidence of an expert witness or witness of fact):

“70 In conclusion, the status and application of the rule in Browne v Dunn and the other cases which I have discussed can be summarised in the following propositions:

(i) The general rule in civil cases, as stated in Phipson, 20th ed, para 12–12, is that a party is required to challenge by cross-examination the evidence of any witness of the opposing party on a material point which he or she wishes to submit to the court should not be accepted. That rule extends to both witnesses as to fact and expert witnesses.

(ii) In an adversarial system of justice, the purpose of the rule is to make sure that the trial is fair.

(iii) The rationale of the rule, ie preserving the fairness of the trial, includes fairness to the party who has adduced the evidence of the impugned witness.

(iv) Maintaining the fairness of the trial includes fairness to the witness whose evidence is being impugned, whether on the basis of dishonesty, inaccuracy or other inadequacy. An expert witness, in particular, may have a strong professional interest in maintaining his or her reputation from a challenge of inaccuracy or inadequacy as well as from a challenge to the expert's honesty.

(v) Maintaining such fairness also includes enabling the judge to make a proper assessment of all the evidence to achieve justice in the cause. The rule is directed to the integrity of the court process itself.

(vi) Cross-examination gives the witness the opportunity to explain or clarify his or her evidence. That opportunity is particularly important when the opposing party intends to accuse the witness of dishonesty, but there is no principled basis for confining the rule to cases of dishonesty.

*(vii) The rule should not be applied rigidly. It is not an inflexible rule and there is bound to be some relaxation of the rule, as the current edition of Phipson recognises in para 12.12 in sub-paragraphs which follow those which I have quoted in para 42 above. Its application depends upon the circumstances of the case as the criterion is the overall fairness of the trial. Thus, where it would be disproportionate to cross-examine at length or where, as in *Chen v Ng*, the trial judge has set a limit on the time for cross-examination, those circumstances would be relevant considerations in the court's decision on the application of the rule.*

(viii) *There are also circumstances in which the rule may not apply: see paras 61–68 above for examples of such circumstances (emphasis added).*

82. One of the circumstances to which the rule may not apply (as stated in paragraph 62 of the **Griffiths** case) is where: *“the evidence of fact may be manifestly incredible, and an opportunity to explain on cross-examination would make no difference”*.
83. As I have already stated, based on Mr. Archer constantly contradicting his own evidence during cross-examination, it is difficult to accept the contents of his witness statement without more. I am of the view that (based on his cross examination and how he answered questions from counsel) his evidence must be treated as suspect and unreliable on its own. Mr. Archer is not a medical expert nor has he provided any medical evidence to corroborate or substantiate his claim that he suffered a fractured tibia/fibula.
84. Furthermore, no medical expert was called, no medical reports were furnished and the evidence which he relies on is in a separate bundle titled “Plaintiff’s Bundle of Documents” which means the evidence he seeks to rely on is not agreed and not properly before the Court. At no point was the Court taken through this evidence by counsel to confirm authenticity, nor was any application made to admit same into evidence. On that basis, I find it difficult to accept the evidence contained in Mr. Archer’s witness statement.
85. In my view, the evidence is insufficient to prove any injury resulting from any alleged tort. Mr. Archer may have attempted to focus on the allegations of the assault and battery to prove his personal injury claim. I have already ruled that that aspect of the claim is dismissed. Accordingly, even if Mr. Archer had proven any injuries, they were suffered as a result of his own resisting arrest. Clearly, there was a struggle between him and officers to subdue him and transfer him to the police station. Injuries would most likely have been suffered by all parties involved. To now come and complain of injuries he suffered as a result of his own wrongdoing will not be allowed or entertained by this Court.
86. In the premises and based on the lack of cogent and corroborating evidence, I hereby dismiss Mr. Archer’s personal injury claim.

Whether Mr. Archer’s constitutional rights have been infringed due to the conduct of the RBPF?

87. The Defendants made a preliminary objection in their Defence on this aspect of the claim. Essentially, they plead that constitutional redress is only available when no common law remedies are sufficient and that such claims by Mr. Archer ought to be dismissed as an abuse of the process of the Court.
88. Based on the pleadings before me, **Articles 15 17(1), 19(1)(c) and (4) and 28(1) and (2) of the Constitution of the Commonwealth of The Bahamas, 1973 (“Constitution”)** are relevant to this action. They read:

“Article 15 Whereas every person in The Bahamas is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following namely –

(a) Life, liberty, security of the person and the protection of the law;

...the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Article 17(1) No person shall be subject to torture or to inhuman or degrading treatment or punishment.

Article 19(1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases –

...(c) for the purpose of bringing him before a court in execution of the order of a court

Article 19(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

Article 28(1) If any person alleges that any of the provisions of Articles 16 to 27 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction –

(a) to hear and determine any application made by any person in pursuance of paragraph (1) of this Article; and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of paragraph (3) of this Article,

And may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of the said Articles 16 to 27 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law (emphasis added).

89. Mr. Archer’s counsel accepts that where there are adequate alternative means of redress, no constitutional redress is available. In the case of **Merson v Cartwright (2005) 67 WIR** the Privy Council opined:

“...the function of constitutional damages has been reviewed recently by the Privy Council in Attorney-General of Trinidad and Tobago v Ramanoop [2005] UK PC 15; [2005] 2 WLR 1324. The case involved claims for damages for "quite appalling misbehaviour by a police officer" (para 2 of the judgment). A police officer had, quite unjustifiably, roughed up, arrested, taken to the police station and locked up for some few hours the unfortunate Mr Ramanoop. Mr Ramanoop instituted proceedings against the Attorney-General for constitutional redress, including exemplary damages. He did not claim damages for the nominate torts that had certainly been committed. Counsel for the Attorney General submitted that constitutional redress, in so far as it took the form of an award of damages, should be confined to compensatory damages. The Privy Council dealt with this submission in paragraphs 17 to 20 inclusive of the judgment delivered by Lord Nicholls of Birkenhead.

"17. Their Lordships view the matter as follows. Section 14 recognises and affirms the court's power to award remedies for contravention of chapter I rights and freedoms. This jurisdiction is an integral part of the protection chapter I of the Constitution confers on the citizens of Trinidad and Tobago. It is an essential element in the protection intended to be afforded by the Constitution against misuse of state power. Section 14 presupposes that, by exercise of this jurisdiction, the court will be able to afford the wronged citizen effective relief in respect of the state's violation of a constitutional right. This jurisdiction is separate from and additional to ("without prejudice to") all other remedial jurisdiction of the court.

18. When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and moreover, the violation of the constitutional right will not always be coterminous with the cause of action at law.

19. An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. "Redress" in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions "punitive damages" or "exemplary damages" are better avoided as descriptions of this type of additional award.

20. For these reasons their Lordships are unable to accept the Attorney General's basic submission that a monetary award under section 14 is confined to an award of compensatory damages in the traditional sense. Bereaux J stated his jurisdiction too narrowly. The matter should be remitted to him, or another judge, to consider whether an additional award of damages of the

character described above is appropriate in this case. Their Lordships dismiss this appeal with costs."

18 These principles apply, in their Lordships' opinion, to claims for constitutional redress under the comparable provisions of the Bahamian constitution. If the case is one for an award of damages by way of constitutional redress – and their Lordships would repeat that "constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course" (para 25 in Ramanoop) – the nature of the damages awarded may be compensatory but should always be vindicatory and, accordingly, the damages may, in an appropriate case, exceed a purely compensatory amount. The purpose of a vindicatory award is not a punitive purpose. It is not to teach the executive not to misbehave. The purpose is to vindicate the right of the complainant, whether a citizen or a visitor, to carry on his or her life in the Bahamas free from unjustified executive interference, mistreatment or oppression. The sum appropriate to be awarded to achieve this purpose will depend upon the nature of the particular infringement and the circumstances relating to that infringement. It will be a sum at the discretion of the trial judge. In some cases a suitable declaration may suffice to vindicate the right; in other cases an award of damages, including substantial damages, may seem to be necessary."

90. I am not satisfied that Mr. Archer's constitutional rights have been infringed in any shape or form. I ruled that his arrest and detention were lawful. I also ruled that there was no malicious prosecution. He has not provided any evidence suggesting that he was subjected to any inhumane or degrading treatment. Nothing rises to the level that warrants any award of vindicatory damages.
91. I agree with the Defendant's counsel and see this constitutional claim as an abuse of the Court's process. Nothing that the police have done in this case rises to any infringement of Mr. Archer's fundamental constitutional rights. Had there been any infringement, the Court would be obliged to ensure his protection and humanity.
92. Based on the foregoing, I dismiss Mr. Archer's constitutional claim and rule that no such infringement of his constitutional rights have occurred.

Whether Mr. Archer is entitled to any award of damages?

93. As I have ruled that Mr. Archer has not proven any of the allegations in his pleadings, I make no award as to damages.
94. Most surprisingly, he has not particularized any special damages (as required in our legal system) nor has he provided any invoices or receipts evidencing such damages. Special damages must be strictly pleaded and proven in order for the Court to consider such an award (***Bahamas Power & Light Company Ltd v Ervin Dean BS 2022 CA 070***). I will not go through the exercise of detailing the requirements for the various forms of damages he seeks as I have dismissed all claims advanced.
95. I therefore rule that Mr. Archer is not entitled to any award of damages.

CONCLUSION

96. Based on the facts, evidence before me and the present state of the law, I wholly dismiss the Claimant's action.

97. Accordingly, I refuse to grant any relief sought.

98. The Claimant shall pay the Defendants' costs for this action, to be assessed by this Court, if not agreed.

Senior Justice Deborah Fraser

Dated this 09 day of February 2024