

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW & EQUITY DIVISION

2017/CLE/gen/00322

BETWEEN

P/C908 DION MILLER

Plaintiff

AND

CHIEF SUPERINTENDENT ASHTON GREENSLADE

First Defendant

AND

ASSISTANT SUPT. LULA DEAN

Second Defendant

AND

D/INSPECTOR STEVEN MAYCOCK

Third Defendant

AND

D/INSPECTOR DARREN NIXON

Fourth Defendant

AND

ASSISTANT SUPERINTENDENT DAVID LOCKHART

Fifth Defendant

AND

THE COMMISSIONER OF POLICE

Sixth Defendant

AND

MINISTER OF NATIONAL SECURITY

Seventh Defendant

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: Dion Miller, pro se

Kirkland Mackey with Randolph Dames for the Defendants

29 January 2020, 7 December 2022, 23 February 2023, 27 March 2023 and 27 July 2023

JUDGMENT

WINDER, CJ

This is a claim by the Plaintiff (Miller), a police constable, for damages for unlawful arrest, assault, false imprisonment, malicious prosecution and defamation.

[1.] The Claim was commenced by specially indorsed Writ of Summons. The prayers for relief in the Statement of Claim, indorsed thereon, seek the following:

- 1) A Declaration that the Unlawful Arrest and Detention of the Plaintiff was unconstitutional, and unlawful;
- 2) A Declaration that the institution of disciplinary charges was unlawful, unconstitutional and void;
- 3) A Declaration that the Defendants decision to interdict and proffer complaint charges against the Plaintiff without due process is unlawful;
- 4) A Declaration that the Defendants decision to institute proceedings against the Plaintiff constitutes malicious prosecution and unconstitutional;
- 5) A Declaration that the Prosecutor being involved in the investigation process is unconstitutional, illegal, unreasonable and unlawful;
- 6) A Declaration that all the Defendants be jointly and severally responsible for loss and damages for this claim;
- 7) Victimization;
- 8) Breach of Constitutional Rights;
- 9) Exemplary Damages;
- 10) Aggravated Damages;
- 11) Damages for Defamation;
- 12) Interest pursuant to the Civil Procedure (Award of Interest) Act 1992;
- 13) Costs; and
- 14) Such further or other relief as this Honourable Court deems just and fit.

[2.] The Defendants deny the claim.

[3.] At trial Miller gave evidence and called Sergeant Harry Dolce as a witness in his case. The defendant called First Defendant, Chief Superintendent Greenslade (Greenslade), the Third Defendant Inspector Steven Maycock (Maycock), the Fourth Defendant Inspector Darren Nixon (Nixon), the Fifth Defendant Assistant Superintendent David Lockhart (Lockhart) and Sergeant 2195 Miller (Sergeant Miller). I accepted the evidence of Dolce but generally preferred the evidence of the Defendants where they differed from that of Miller.

[4.] The following is an outline of facts in this case which I accept.

[5.] Around 10:40 a.m. on Tuesday 24 May 2016 Miller, Constable 3988 Moss (Moss), Corporal 2335 Clarke (Clarke) and Constable 3445 Strachan (Strachan) responded to a housebreaking complaint at a residence at Palm Breeze Road off Carmichael Road. The officers

were all attached to the Carmichael Road Police Station at the time. Miller and Moss drove in Police Vehicle #88, a white Crown Victoria, equipped with a cage. Clarke and Strachan drove Police Vehicle #35, a white Toyota Versa vehicle. As no suspects were noted at the scene, Clarke, the Supervising Officer, directed that a check of the immediate area be made. The checks did not yield any results.

[6.] As the officers left the area they observed a rental vehicle that was occupied by 4 men who were exiting the vehicle. The officers approached the vehicle and informed the men, seemingly without any basis, that they were suspected of being in possession of firearms and dangerous drugs and that they were going to conduct a search of their person. The men were discovered to be Haitian nationals.

[7.] The men were in possession of large sums of cash in their pockets and waistbands. According to Miller, during the search at Palm Breeze Road no monies were removed from the men. Clarke instructed the officers to continue their search at the Carmichael Road Police Station. Miller drove two of the men to the station in the vehicle which had the cage, while the two remaining men were placed in the vehicle driven by Clarke and Strachan. Moss drove the suspects' vehicle to the Carmichael Road Police Station. They all arrived at the Station at 11:00 a.m. and proceeded into the office of Inspector Sands without updating the Station Supervisor Sergeant Miller as was the standard procedure. Clarke, Moss and Miller entered the office along with the 4 men at the request of Inspector Sands and closed the office door. Strachan did not enter the office and remained outside.

[8.] Superintendent Edgecombe came onto the floor of the station and pushed the door to Inspector Sands' office open. Edgecombe, on looking into Inspector Sands' office, stated "*what are these people doing in my Station, are they locked up, you'll please get these people out of my Station now, now please not my Station.*" Each of the suspects left the office with passports in their hands and left the station.

[9.] According to Sergeant Miller, he received a call around 11:55am from a male, identifying himself as Nicholas Jules Bernard, who complained that he sent his workers to Nassau from Abaco enroute to Haiti when they were stopped by the Police and the sum of \$2,100 taken from them at the Carmichael Road Police Station. Mr. Bernard indicated that he was coming to Nassau along with his business partner to the Station. He was advised by Sergeant 2195 Miller to go to the Complaints and Corruption Branch located at Police Headquarters, East Street Hill. Superintendent Edgecombe was advised of the complaint.

[10.] Around 2:30 p.m. Greenslade and a team of officers from the Complaints and Corruption Branch including the Second Defendant, Nixon and Maycock arrived at the Station. Shortly thereafter, Moss and Miller were both taken into custody with respect to a complaint of taking monies from the Haitian nationals who had been in their custody. They were searched and the

vehicles assigned to them searched. The sum of \$652 in cash was retrieved from Moss' pants pocket. When questioned about the money Moss said that it was derived from his business, a bar that he owns. Nothing was found on Miller. Both men were taken to their residences where further searches were conducted.

[11.] On 24th May 2016, Mr. St. Luc Defranc, a Haitian national made a complaint to the Complaints and Corruption Division with respect to \$1,500 being stolen from him. Defranc claims that he was in a vehicle driven by a man known to him, along with four other passengers. While near the area of Gladstone Road, the driver stopped and let one of the passengers off. A patrol car came, and an officer stopped their vehicle and began to search and question everyone, including him. They were then handcuffed, placed in the patrol car, and transported to Carmichael Road Police Station.

[12.] According to Defranc, whilst at the Station, they were immediately taken to a room downstairs and told to put all their money on the table. Defranc stated that he had US\$8,000, which was for funeral arrangements for his grandmother and graduation expenses for his child. According to Defranc a male police officer who he knew very well from harassing and robbing his fellow Haitian friends in the chicken fights in the Carmichael Road area, began to count the monies. The officer began to threaten all of them and encouraged them to make a deal before the boss came in. Defranc says that \$1,500 was taken from him.

[13.] Miller and Moss were taken to Quarter Guard at Police Headquarters where they were held.

[14.] Sergeant Dolce (Dolce), a creole interpreter, was contacted to attend at the Complaints and Corruption Unit to assist in recording the written statement from Defranc. He recorded the statement from Defranc after which he participated in an informal identification parade involving Miller. Defranc identified both Constables Miller and Moss as the officers who stopped and escorted him to the police station, however, he stated clearly that Miller was not the officer that took the money from him.

[15.] Miller was returned to the Quarter Guard where he was held overnight.

[16.] Miller was interviewed on Wednesday 25 May 2016 and a Record of Interview taken. He denied the allegations.

[17.] At 7:00 p.m. on Thursday, 26 May, 2016, Moss and Miller were placed before the Police Tribunal and charged with the following offences:

Charge: 1: "Act of a Major Nature" Contrary to Section 3(1) of the Police Disciplinary Regulations 1965 and punishable under Section 62(2) of the Police Force Act, 2009.

Particulars are:

That they on Tuesday, 24 May, 2016 while at Carmichael Road Police Station, Carmichael Road, New Providence, Bahamas being concerned together with others and Without Lawful Authority or Reasonable Excuse, solicited fifteen hundred (\$1,500.00) dollars in cash from St. Luc Defrance, as an inducement to obtain from performing your duties as a Police Officer.

...

Charge 2: "Conduct of a Major Nature which is Prejudicial to Discipline of the Force" Contrary to Section 3(36) of the Police Disciplinary Regulations 1965 and punishable under Section 62(2) of the Police Force Act, 2009.

Particulars are: That they on Tuesday, 24 May, 2016 while at Carmichael Road Police Station, Carmichael Road, New Providence, Bahamas being concerned together with others by use of duress solicited and accepted fifteen hundred (\$1,500.00) dollars in cash from St. Luc Defrance, which is Likely to Bring Discredit on the Reputation of the Police Force.

[18.] Miller and Moss, who were represented by counsel, pleaded not guilty. Miller was given interdiction papers to sign and the matter before the Police Tribunal was adjourned to 18th, 19th and 20th July, 2016. By the time Miller had been released he had been held in custody for approximately 53 hours.

[19.] Following the instituting of proceedings, the Defendants were unable to re-establish contact with the complainant Defranc and Constable Moss had voluntarily resigned from the Royal Bahamas Police Force. Lockhart says that the decision was thereafter made not to proceed against Miller. On 7 July, 2016, Miller was contacted by Lockhart and instructed to appear before the Police Tribunal, where ASP Lockhart withdrew all charges against him pursuant to section 230(2)(b)(i) of the Criminal Procedure Code.

[20.] On 8 July, 2016, Lockhart re-instated Miller and returned him to his Division.

Issues

[21.] The legal issues for consideration in this action are as follows:

- (a) Whether Miller was lawfully arrested.
- (b) Whether Miller was assaulted.
- (c) Whether Miller was falsely imprisoned.
- (d) Whether the charges were unlawful or maliciously laid.
- (e) Whether Miller was defamed by the Defendants.
- (f) Whether Miller is entitled to damages.

Submissions

[22.] Miller claims that he was falsely arrested and falsely imprisoned by the Defendants and that he was subjected to malicious prosecution resulting in:

- (a) Loss of liberty

- (b) Injury to feelings
- (c) Physical injury, illness or discomfort resulting from the detention
- (d) Injury to reputation

Miller says that in order to have him arrested, the Defendants must demonstrate that they have reasonable grounds that he had violated the law according to the Penal Code or the Police Disciplinary Regulation. He says that the Defendants must satisfy the court that they had the authority to act in the manner which they did. Miller further states that the Defendants had no reasonable grounds to have the charges brought against him nor to have him interdicted as a result of the lack of evidence and the admission by the virtual complaint, that Miller was not the person who had taken the money from him.

[23.] Miller also says that the Defendants knew that there were no grounds to charge him with the offences of misconduct of a major nature contrary to the provisions of the Police Disciplinary Regulations. He says that they nonetheless continued to prosecute him even though they should be aware that their actions might be considered malicious and without reasonable and probable cause.

[24.] In their defence, the Defendants claim that they conducted a thorough and proper investigation. Further, the Officer laying the charges had a reasonable and probable cause for charging Miller based on the information received by the virtual complainant, the witnesses' statements and the Record of the interview. A reasonable belief was formed by the officers laying the charges that Miller's misconduct was of a major nature, which is contrary to discipline, good order, and guidance of the Police Force, which was soliciting and accepting monetary funds as an inducement to abstain from performing police duties.

Analysis and Disposition

[25.] Having identified the facts which I accepted, I turn to the discussion and analysis of the dispositive issues which have also been identified.

Whether Miller was unlawfully arrested and detained

[26.] I refer to this Court's discussion in the case of **Daran Neely v the AG** 2016/CLE/gen/00623 (unreported) at paragraph 95, where it was stated:

[95.] *Section 31(2)(a) of the Police Force Act, 2009* permits a police officer to arrest without a warrant any person he reasonably suspects of having committed an offence. The legislation 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.

[Emphasis added]

[96.] In *Kevin Renaldo Collie v The Attorney General [2020] 1 BHS J. No. 59*, at paragraph 46, *Stewart J* identified the basic circumstances in which an arrest made by a police officer without a warrant pursuant to *section 31(2)(a)* of the *Police Force Act, 2009* will be unlawful:

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.

[97.] With respect to the first requirement identified in *Kevin Renaldo Collie*, the linchpin of *section 31(2)(a)* of the *Police Force Act, 2009* is the concept of “reasonable suspicion”. “Reasonable suspicion” is a low threshold falling short of a *prima facie* case. It does not require evidence amounting to *prima facie* proof. In *Parker v The Chief Constable of Essex [2019] 3 All ER 399*, *Sir Brian Leveson P* summarized the leading English authorities on the concept at paragraph 115 thusly:

[115] I can summarise the relevant (and agreed) legal principles. The bar for reasonable cause to suspect set out in s 24(2) of the 1984 Act is a low one. It is lower than a prima facie case and far less than the evidence required to convict: *Dumbell v Roberts [1944] 1 All ER 326 at 329* and *Shaaban Bin Hussien v Chong Fook Kam [1969] 3 All ER 1626 at 1630–1631, [1970] AC 942 at 948–949*; see also *Castorina (supra)* (at 21) and *O’Hara [1997] 1 All ER 129 at 134, [1997] AC 286 at 293*. Further, *prima facie* proof consists of admissible evidence, while suspicion may take account of matters that could not be put in evidence (*Hussien [1969] 3 All ER 1626 at 1631, [1970] AC 942 at 949* and *O’Hara [1997] 1 All ER 129 at 134, [1997] AC 286 at 293*). Suspicion may be based on assertions that turn out to be wrong (*O’Hara [1997] 1 All ER 129 at 139, [1997] AC 286 at 298*). The factors in the mind of the arresting officer fall to be considered cumulatively (*Armstrong (supra)* at [19] and *Buckley (supra)* at [16]).

[Emphasis added]

[98.] While an arresting officer must have more than a suspicion of general unlawful conduct, the arresting officer need not know or be able to specify the specific details of the particular offence for which the arrest is made. It is enough that the arresting officer reasonably suspects the existence of facts amounting to an arrestable offence of a kind which he has in mind (e.g., suspicion of “involvement in kidnapping” is sufficient): *Betaudier v Attorney General for Trinidad and Tobago [2021] 5 LRC 155* per *Lord Lloyd-Jones* at paragraph 15.

[99.] The test for “reasonable suspicion” is both subjective and objective. The officer must genuinely suspect that the person he intends to arrest committed an offence and the officer must have reasonable grounds for that belief based on the facts known to or information given to them at the time of the arrest. In *Jerone Thompson Sr. and others v Lynden Saunders SCCiv App No. 2 of 2023, Evans JA*, delivering the judgment of the Court of Appeal, said at paragraphs 41 and 42:

41. As stated by this Court, differently constituted, in *Antoine Russell v The Attorney General et al. SCCivApp. No. 186 of 2017*, reasonable suspicion and reasonable belief

are two distinct tests. The test under 31(2)(a) of the Police Force Act is reasonable suspicion.

42. In **Kevin Renaldo Collie Stewart, J.** relying on the English case of **O’Hara v Chief Constable of the Royal Ulster Constabulary (1996) UKHL 6** opined that:

“44 As stated in O’Hara the test for reasonable suspicion is a simple but practical one and relates entirely to what is in the mind of the arresting officer at the time of the arrest. It is partly subjective, because the arresting officer must have formed a genuine suspicion in his own mind that the Plaintiff has been concerned with the act he is accused of. It is also partly objective, because there must also be reasonable grounds for the suspicion formed which goes no further than what was in the mind of the arresting officer at the time of the arrest.”

[Emphasis added]

[27.] On the facts of this case, the Defendants have satisfied me that they had a reasonable suspicion that Miller had committed an offence, in common with others. Two separate complaints had been received relative to the removal of monies from the four Haitian men who had been detained on 24 May 2016. Miller had been in the arresting party and in the closed room where the men were taken upon arrival at the Carmichael Road Police Station. The evidence was that the monies were taken whilst the men were in that room. It could have been reasonably inferred from the circumstances that the officers were concerned together, there being no positive withdrawal from a common design or renunciation, by either of them, in the very short timeframe. (See **Simmons v R; Greene v R** [2004] BHS J. No. 367). This was the information available at the time of the arrest and in my view could form the basis of a reasonable suspicion to ground the arrest and subsequent detention of Miller.

Whether the Plaintiff was assaulted

[28.] On the evidence which I found, the arrest being lawful, I was not satisfied that Miller was assaulted by the Defendants or anyone acting on their behalf.

Whether the Plaintiff was falsely imprisoned

[29.] I have found that Miller’s arrest was lawful and that the Defendants could properly detain him. Miller claims that he was falsely imprisoned by the Defendant up until his being charged before the Police Tribunal. Miller also alleges the violation of his rights under the Constitution of The Commonwealth of The Bahamas.

[30.] Section 18 of the **Criminal Procedure Code Act (CPC)** provides:

18. A peace officer making an arrest without a warrant, in exercise of any powers conferred upon him by the Penal Code, the Police Act or any other law for the time being in force, shall, without unnecessary delay and not later than forty-eight hours after such arrest, take or send the person arrested before a magistrate appointed to preside in a magistrate’s court having jurisdiction in the

case, unless the person arrested be earlier released on bail by a police officer having power in that behalf under the provisions of section 32 of the Police Act.

[31.] The evidence was that Miller was arrested at 2:30 p.m. on 24 May 2024 and not charged until 7pm on 26 May 2024, some 53 hours later. The only question was whether it was appropriate and lawful to detain him for the period of 53 hours. In the case of **Jamal Cleare v Attorney General and others** [2013] 1 BHS No. 64, the Court of Appeal considered the appropriate quantum in a case where a suspect, whose arrest was lawful, had been held beyond the prescribed 48 hours. Cleare had been held for 3 days beyond the prescribed 48 hour period, as the police officers failed to obtain the appropriate extension to continue his detention. The Court stated:

[47] The measure of and quantum of damages for unlawful detention would, of course, depend on the nature and circumstances of each case. There can hardly be one size fits all formula for the breach of such an important constitutional right as the right to personal freedom

[48] Needless to say, in our view, it would be most invidious to put a price tag or tariff on the deprivation of personal liberty. But it is undoubted that the right to personal liberty is, next to the right to life, an elemental right on which the enjoyment of most, if not all, of the other rights guaranteed in the Constitution is dependent. Personal liberty truly is priceless.

[49] It is for these reasons that we are unable to support the quantum of damages of seven hundred and fifty dollars (\$750.00) awarded by the learned judge; nor for that matter do we think the measure of damages of two hundred and fifty dollars (\$250) per day, used to arrive at that quantum, is justified or appropriate. As we have stated, we are convinced and satisfied that Takitota did not intend to lay down a general tariff for the unlawful detention of an individual.

[50] We also take the opportunity to say here that there is a demonstrable link between section 18 of the Criminal Procedure Code which prescribes how persons arrested without warrant by police officers are to be dealt with and the provisions of Article 19 (1) and (3) of the Constitution. The non-observance of section 18 may well found a claim under the latter: see the judgment of the Privy Council in *Merson v. Cartwright and Another* [2005] UKPC 38; (2005) 67 WIR,17, where the Board, per Lord Scott of Foscote, at paragraph [9] of the judgment, spoke of the "potential measure of overlap between the tort of assault and battery on the one hand and art.17 (1) guarantee against torture or inhuman and degrading treatment on the other, or between the tort of false imprisonment on the one hand and the art.19(1) guarantee of personal liberty and/or the art.19(3) guarantee of an appearance without undue delay before a court on the other hand. In some cases the overlap may be complete; two concentric circles of equal radius... In other cases the circles may simply intersect, with each having a segment common to both." (Emphasis added).

[51] Therefore, the non-observance of section 18 could have serious impact and consequences for the right guaranteed in Article 19 (1) and legitimately engage Article 19 (4) which provides:

"(4). Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person." (Emphasis added).

[52] In the instant case, albeit, the learned judge found in the appellant's favour on his claim for wrongful detention, pursuant to s.18 of the Criminal Procedure Act; this section does not contain any sanctions nor does it create any offences. Moreover, it does not, in itself, provide any remedy or redress for a victim of its non-observance.

...

[64] In the circumstances, we award the sum of \$25,000.00. This sum we adjudge to be both compensatory and vindicatory of his right to personal freedom and his right not to be denied this by unlawful detention which, in this case was a breach of his Article 19 (3) right.

[32.] Section 18 of the CPC permitted Miller to be detained for up to 48 hours. He was indeed held for 5 hours beyond the lawful period. No reason, justifiable or otherwise, was proffered by the Defendants to justify the continued detention of Miller. In the circumstances, the breach of Section 18 of the CPC by the Defendants has triggered a breach of Millers' constitutional rights under Article 19(1) and (3). I so declare.

[33.] The period of detention is relatively short, but no unlawful detention however short ought to be countenanced. In keeping with the assessment made by the Court of Appeal in **Jamal Cleare v Attorney General and others** I award Miller nominal damages in the sum of \$2,500. The sum, in addition to the declaration made, are both compensatory and vindicatory of Miller's right to personal freedom and his right not to be denied this by unlawful detention which, in this case was a breach of his Article 19 (3) right.

Was the charges unlawful or maliciously laid?

[34.] Miller was taken before the Court of Inquiry and charged with offences under the Police Disciplinary Regulations as outlined above.

[35.] The evidence was that Miller was in the room in the Carmichael Road Police Station when the funds were alleged to have been taken and his evidence was that he saw nothing untoward taking place. According to him no monies were taken during the roadside arrest on Palm Breeze Road. I readily accept that Defranc's confrontation was evidence that Miller himself he did not physically take any moneys from Defranc. The evidence, which I also accepted however, was that Miller was not the only person in the room when the offence is alleged to have occurred. There was evidence that Miller was in the room for the entire time Defranc was detained. Miller was charged with being concerned with others and therefore, as a police officer his presence in the room, where other officers are alleged to be committing offences, was sufficient in my view to warrant the misconduct charges laid before the Police Tribunal. Further, I did not find, from my assessment of the witnesses and the evidence, that there was any malice in the proffering of the charges against him.

[36.] In the circumstances, I am not satisfied that the charges were unlawfully or maliciously laid. I accepted the evidence of the Defendants and find that there was a good faith belief in the charges laid.

[37.] The remaining complaints of Miller are without merit and are dismissed.

Conclusion

[38.] In the circumstances, I award Miller nominal damages in the sum of \$2,500 for his wrongful detention in breach of section 18 of the CPC and Article 19(3) of the Constitution of The Bahamas, beyond the lawfully allowed period. All other claims are dismissed.

[39.] I make no order as to costs.

Dated the 27th day of March 2024

A handwritten signature in black ink, appearing to read 'I. W.', with a stylized flourish extending from the end.

Sir Ian R. Winder
Chief Justice