

**IN THE COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Common Law and Equity Division  
Claim No. 2021/CLE/gen/01358**

**BETWEEN:**

**EMERSON BETHEL**

**Claimant**

**AND**

**COMMISSIONER OF POLICE**

**First Defendant**

**AND**

**ATTORNEY GENERAL**

**Second Defendant**

**Consolidated with:**

**IN THE COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Common Law and Equity Division  
Claim No. 2021/CLE/gen/01359**

**BETWEEN:**

**GERALD BETHEL**

**Claimant**

**AND**

**COMMISSIONER OF POLICE**

**First Defendant**

**AND**

**ATTORNEY GENERAL**

**Second Defendant**

**Before:** The Honourable Mr. Justice Leif Farquharson

**Appearances:** K. Melvin Munroe for the Claimants  
Randolph Dames and LaPaige Gardiner for the Defendants

**Trial date:** 9 October 2025 (with written Closing Submissions received from the Claimants on 3 November 2025 and the Defendants on 6 November 2025)

## JUDGMENT

### Introduction

1. The Claimants are brothers and at the relevant time operated a convenience store located on Augusta Street in New Providence. On 14 April 2021, they were both arrested at their place of business and taken into police custody in connection with an ongoing murder investigation. They were each released the following day without being charged. Later that year, they both filed actions challenging the legality of their arrest and subsequent detention, seeking damages for unlawful arrest, false imprisonment and violation of their fundamental rights under Article 19 of the Constitution.
2. The First Defendant is joined on the basis of her vicarious responsibility for the acts of the police officers who arrested and detained the Claimants. The Second Defendant is joined pursuant to the provisions of the *Crown Proceedings Act*. By Order dated 22 September 2025 and made with the consent of the parties, it was directed that the two actions be consolidated.
3. The lawfulness of both arrests is central to the determination of the claims. Depending on the resolution of this issue, there is also a question as to what (if any) damages should be awarded to the respective Claimants.

### The Pleadings

#### ***The pleaded case of Emerson Bethel***

4. By specially indorsed Writ filed on 12 November 2021, the Claimant (hereinafter referred to as the "**1<sup>st</sup> Claimant**" for convenience) alleges that he was at all material times the owner of a convenience store located on Augusta Street. He asserts that on or about Wednesday 14 April 2021, while at his convenience store, he was approached by a team of police officers who entered the store. One of the officers, who was known to the 1<sup>st</sup> Claimant, directed that he be placed under arrest. He was thereafter handcuffed and informed that he was under arrest for murder, with no further details being provided. All of this allegedly occurred in the presence of the 1<sup>st</sup> Claimant's employees and family members.
5. The 1<sup>st</sup> Claimant states that he was then taken out of the store, placed in the back of a police vehicle and transported to South Street Police Station (also referred to interchangeably as "**Nassau Street Police Station**"). While there, he was allegedly searched and placed in a cell, where he was also photographed. According to him, he was never questioned or interviewed regarding any offence. At approximately 4:30 p.m. the following day (i.e. 15 April 2021), he was released from custody without charge. He alleges that he was in custody for more than 24 hours. He further alleges that he suffered loss of wages due to his detention.
6. As indicated, the 1<sup>st</sup> Claimant sues the Defendants in tort for unlawful arrest and false imprisonment. He also sues for breach of his rights under Article 19 of the Constitution due to the deprivation of his liberty. He seeks damages under each of these heads,



including aggravated and/or exemplary damages. He also seeks special damages for lost wages incurred during the period of his detention.

***The pleaded case of Gerald Bethel***

7. By specially indorsed Writ also filed on 12 November 2021, the Claimant (hereinafter referred to as the "**2<sup>nd</sup> Claimant**") similarly alleges that he was at all relevant times the owner of a convenience store located on Augusta Street. He asserts that on or about Wednesday 14 April 2021, while at his convenience store, he was approached by a team of police officers, some of whom he recognised by face. One of the officers, who was known to him, asked him to come outside to have a conversation. He alleges that when he went outside, he was placed under arrest, handcuffed and placed in the back of a police vehicle. He likewise states that this occurred in the presence of employees and family members.
8. He alleges that after his arrest he was transported to South Street Police Station, where he was informed that he was in custody for murder without any additional details. While there, he was similarly searched and placed in a cell, where he was also photographed. He alleges that he was never questioned or interviewed in reference to any offence, and that at approximately 4:30 p.m. on 15 April 2021 he was released from custody without charge. He maintains that he spent more than 24 hours in custody and that he suffered lost wages as a result of his detention.
9. The 2<sup>nd</sup> Claimant likewise sues the Defendants for unlawful arrest, false imprisonment and breach of his rights under Article 19 of the Constitution. His heads of loss and damage and prayer for relief are for all intents identical to those claimed by the 1<sup>st</sup> Claimant.

***The Defendants' pleaded case***

10. The Defendants responded to both claims by Amended Defences filed on 11 July 2025. The two Defences are virtually identical in their terms.
11. By way of preliminary objection, citing the proviso in Article 28(2) of the Constitution, the Defendants assert that the Claimants' respective claims for constitutional relief are an abuse of process as they have available to them other adequate means of redress at common law. They also put the Claimants to strict proof regarding their ownership of the material convenience store. The Defendants admit that both Claimants were arrested on 14 April 2021 as alleged, asserting this was done in a lawful and reasonable manner and not so as to cause humiliation to either Claimant. They admit that both Claimants were handcuffed and transported to South Street Police Station as alleged, where they were searched and placed in a cell, which they assert is standard procedure for persons in custody. The allegation that the Claimants were photographed is not admitted. The Defendants deny that the Claimants were not questioned whilst in custody, asserting that they were each interviewed as part of a murder investigation. They also deny that both Claimants were in custody for more than 24 hours, claiming that they were arrested at approximately 6:40 p.m. on 14 April 2021 and released at approximately 5:20 p.m. on 15 April 2021, which does not constitute a full 24 hours.



12. The Defendants in each instance deny that the Claimants were unlawfully arrested and detained, asserting instead that they were “*lawfully arrested upon reasonable suspicion of having committed as [sic] offence and...subsequently detained to further investigations.*” Given that this averment goes to the heart of the case, I set out in full the particulars relied upon by the Defendants in support of this allegation:

- a) On 4<sup>th</sup> April 2021, a male individual was shot in the vicinity of the Shoal Restaurant on Nassau Street.
- b) Upon arrival at the scene, police officers encountered a male who provided his name and informed them that the person who shot him associates with an individual known as “Fat Boy” from Bain Town. Based on this information, police conducted an extensive search in the area and received additional intelligence, the shooter may have been known as “Fat Boy” from members of the community.
- c) During daily police briefings held by a unit known as Rapid Fire Response (Rapid Fire), information continued to emerge identifying a person of interest in the shooting as someone who went by the name “Fat Boy” as well as having a stocky build. [sic]
- d) While conducting operations and patrols in the Bain Town area, officers attached to the Rapid Response Unit received information from residents that the Claimant, who resides in the Augusta Street area of Bain Town, was known by that nickname.
- e) On 14<sup>th</sup> April 2021, acting on this intelligence and the ongoing police briefings, the Rapid Response Unit located and detained the Claimant. Several individuals known by the nickname “Fat Boy” were detained and the Claimant was one of those individuals, he was never singled out.
- f) The Claimant was initially taken to the South Street Police Station and, on 15<sup>th</sup> April 2021, transferred to the Criminal Investigation Department on Thompson Boulevard. He was interviewed and questioned in relation to the offence of murder and subsequently released.”<sup>1</sup>

[Emphasis supplied]

13. Both Defences further allege the following in relation to each of the Claimants:

- v. In this case, there was reasonable suspicion on the part of the arresting officer that the Claimant might have been the individual referred to as “Fat Boy” and that he could have been of assistance to the ongoing murder investigation.
- vi. The Claimant was not the only person known by the nickname “Fat Boy”, nor was he the only individual with a stocky build.”<sup>2</sup>

[Emphasis supplied]

14. As a result, the Defendants deny all liability for loss and damage to both Claimants.

<sup>1</sup> See Para.14 of Amended Defence to 1<sup>st</sup> Claimant’s Statement of Claim and para. 13 of Amended Defence to 2<sup>nd</sup> Claimant’s Statement of Claim

<sup>2</sup> Para.15 of Amended Defence to 1<sup>st</sup> Claimant’s Statement of Claim and para. 14 of Amended Defence to 2<sup>nd</sup> Claimant’s Statement of Claim



### ***The Claimants' Replies***

15. Both Claimants filed Replies to the Defences earlier. In doing so, they denied that the claim for constitutional relief was an abuse of the Court's process, reaffirmed the allegations made in their respective Statements of Claim and contested the Defendants' assertion that they were lawfully arrested upon reasonable suspicion of having committed an offence.

### **The Evidence of the Parties**

#### ***Emerson Bethel***

16. The 1<sup>st</sup> Claimant was the only witness called to testify on his behalf at trial. His evidence-in-chief was embodied in a witness statement filed on 18 September 2025. This statement primarily aimed to confirm the facts outlined in his Statement of Claim and was expressed in similar terms.
17. The 1<sup>st</sup> Claimant confirmed that he resided at Martin's Close, Cowpen Road in New Providence. He also provided details of his arrest on 14 April 2021, confirming that while at his convenience store on the date in question he was approached by a team of police officers, some of whom he recognised by face. He indicated that one of the officers he knew as "Cardo" asked him to come outside for a conversation. He testified that when he went outside, he was placed under arrest in the presence of staff and family members. He said that he was then handcuffed, placed in the back of a police vehicle and transported to the police station on South Street.
18. He stated that while at South Street Police Station, he was told he was in custody for murder, with no further details being provided. He testified to denying knowledge of any murder to the police. He indicated that he was searched and placed in a cell at South Street station, where he was also photographed. He indicated that he did not recall being questioned in reference to a murder or any other offence while in custody and that around 4:30 p.m. on 15 April 2021, he was released without charge. He added that by then he had been in custody for over 24 hours.
19. The 1<sup>st</sup> Claimant concluded his statement by confirming that he has never been called "Fat Boy" as a nickname or otherwise. He also testified to suffering loss of wages during his arrest and detention, although he provided no detail as to the amount of any such losses.
20. Under cross-examination the 1<sup>st</sup> Claimant was challenged as to his address, with it being suggested that he lived on Augusta Street, including in 2021. He maintained that he lived at Martin's Close on Cowpen Road, where he had resided for the past approximately ten years, including in 2021. He nonetheless confirmed that his convenience store was located on Augusta Street and that neighbours in the area would know him by name and face.
21. He was also cross-examined as to his ownership of the convenience store and admitted that he had not provided any documentary proof of ownership. He further accepted that business was slow at his convenience store in April of 2021, which was during the



COVID pandemic and associated lockdowns. He also accepted that he had not provided any documentary evidence of lost wages.

22. During cross-examination, the 1<sup>st</sup> Claimant accepted that when he was placed under arrest he was informed that it was in reference to murder. He also agreed that he was informed why he had been placed under arrest on at least three occasions: first, when he was taken into custody and placed in handcuffs; second, shortly afterward at the South Street Police Station; and third, by the investigating officer, who also explained the reason for his arrest. He indicated that the South Street Police Station was approximately two minutes away from his convenience store by car, possibly less if sirens were used, as was the case on the material date. After originally maintaining that he was in police custody for two days, he accepted that he was in custody for less than 24 hours.
23. The 1<sup>st</sup> Claimant indicated that there was not much tension during his arrest. He recalled being taken to the Criminal Investigation Department (CID) on Thompson Boulevard while in custody and being informed of the reason for his arrest. He also admitted to being interviewed whilst at the CID's offices. He agreed that he had, as he describes it, a *"li'l bit of weight"* on him in 2021 and that he was still a bit stocky. He was not questioned about any nickname or alias he was known by in 2021 or otherwise.
24. On re-examination, the 1<sup>st</sup> Claimant reiterated that he had a *"li'l bit of weight"* on him in 2021. He also testified that he was only told that he was under arrest for murder and nothing more.
25. Overall, I found the 1<sup>st</sup> Claimant to be generally credible. However, his recollection of certain details surrounding his arrest and detention seemed affected by the passage of time between April of 2021 and the trial date.

### ***Gerald Bethel***

26. The 2<sup>nd</sup> Claimant was the only witness called to testify on his behalf at trial. His evidence-in-chief was also embodied in a witness statement filed on 18 September 2025. This was in virtually identical terms to the witness statement of the 1<sup>st</sup> Claimant, save that in addition to denying ever being known by the nickname or alias *"Fat Boy,"* he confirmed that he has never been overweight or had a stocky build and has always had an athletic physique.
27. Under cross-examination, the 2<sup>nd</sup> Claimant was also questioned about his address. He maintained that he lived at Martin's Close on Cowpen Road, where he had resided for four years at the time of his arrest in 2021. He denied residing on Augusta Street in 2021, explaining that this was the location of his business. He also confirmed that he would be known by name and face in the Augusta Street area, as he had lived there for many years previously.
28. He was also cross-examined as to his ownership of the convenience store, which he confirmed is now closed. He accepted that he had not provided any documentary proof of ownership. He did not agree that business was slow in April of 2021, stating that



COVID was essentially over at that time. He similarly accepted that he had not provided any documentary evidence of lost wages.

29. Under cross-examination, he testified that he was reluctant to go outside with officers when they approached him on 14 April 2021 to speak, and that the officer known to him as "Cardo" dragged him outside. He said that at this time, he had still not been told what the police wanted to discuss with him or why he was being arrested; in fact, they told him nothing. According to the 2<sup>nd</sup> Claimant, his arrest occurred in the presence of his staff and his children.
30. The 2<sup>nd</sup> Claimant testified that the South Street Police Station was approximately five minutes away from his convenience store by car, less if the police used sirens, which they did not do on the material date. He stated that he was only informed of the reason for his arrest at the South Street station, where he was told that he was in custody for murder.
31. Unlike the 1<sup>st</sup> Claimant, he indicated that there was significant tension during his arrest. He firmly insisted that he was not told the reason for his arrest when taken into custody. He also remained steadfast in denying that he was ever questioned while in police custody, including at the CID's offices on Thompson Boulevard. Additionally, he pointed out that the address and date of birth attributed to him on the Police Record of Interview form were incorrect. He mentioned that the police did, however, tell him that he was being held for murder. He further testified that he was only in CID custody for about two hours and did not recall being placed in a cell while there.
32. After initially maintaining that he was in police custody for two days, he later accepted that he was arrested on 14 April 2021 and released the following day on 15 April 2021, acknowledging that more than four years had passed since the date of the incident
33. On re-examination, the 1<sup>st</sup> Claimant indicated that the Detention Record accurately listed his address as Cowpen Road. He also confirmed that the names he is known by in the Augusta Street area are "Gerald, 'Reds', 'Yellow', 'Lefty'...that's it" and that he has never been called "Fat Boy" in his life.
34. I also found the 2<sup>nd</sup> Claimant to generally be credible. However, as with the 1<sup>st</sup> Claimant, his recollection of certain details seemed to have been impacted by the time that elapsed between the date of his arrest in 2021 and the trial date.

#### ***The Defendants' witnesses***

35. The Defendants called two witnesses: Inspector Marc Taylor and Sergeant 3468 Andrew Deveau. Inspector Taylor was one of the officers who arrested the 1<sup>st</sup> and 2<sup>nd</sup> Claimants on 14 April 2025. Sergeant Deveau allegedly interviewed both Claimants at the CID's offices on 15 April 2025. Both officers submitted witness statements in each of the two actions, which stood as their evidence-in-chief.



**(i) Inspector Marc Taylor**

36. Given the significance of Inspector Taylor's evidence, I set out his witness statement in relation to the 1<sup>st</sup> Claimant's claim in full below:

- "1. My name is Marc Taylor, and I am employed as an Inspector of Police in the Royal Bahamas Police Force. I am presently attached to the Mobile Division.
2. In April 2021, I held the rank of Corporal, Police No. 3544, and was attached to the Rapid Response Unit, Operation Command of the Royal Bahamas Police Force.
3. On Wednesday, 14th April 2021, I reported for duty at Rapid Response for regular assignments. At the start of my shift, I was briefed by my supervisor on daily and current matters relating to police operations.
4. During the briefing, I was reminded of a murder that occurred about 2 weeks ago on Nassau Street, opposite the Shoal Restaurant. In this matter, before succumbing to his injuries, the deceased gave a statement to police officers that the shooter associated with an individual known as "Fat Boy."
5. This information are [sic] in the police statements of Cpl 3551 Pratt and PC 3815 Cifort.
6. My duties for the shift included patrolling the urban area of Bain Town, which is in close proximity to the Nassau Street location. At that time, COVID-19 restrictions were still in effect, and it was mandatory for officers to wear protective masks and gloves as part of our duties.
7. At about 6:00 p.m., while on patrol with other officers, I was approached by an individual known to me as a reliable source of information in criminal matters.
8. This individual had provided credible intelligence on past occasions, and I trusted the information he shared.
9. He informed me that persons of interest in the Nassau Street shooting were in the Augusta Street area. Augusta Street is approximately four to five corners away from Nassau Street, with direct access between the two areas via shortcuts.
10. Acting on this intelligence, I proceeded with other officers to Augusta Street and at approximately 6:30 p.m., we approached a male individual at a convenience store in relation to the Nassau Street shooting. Based on the information provided by the informant, this individual was questioned.
11. At that time, another male later identified as the Claimant was sitting on the trunk of a vehicle. He identified himself as Emerson Bethel, date of birth 17<sup>th</sup> December 1982, of #175 Augusta Street. He was informed that he was wanted for murder, cautioned, and arrested for the offence.
12. His arrest was for the further interview and questioning of the suspect based on the information received.
13. The Claimant was then transported to the Nassau Street Police Station and handed over to officers on duty at the station.
14. This concluded my involvement in the matter."

[Emphasis supplied]

37. Inspector Taylor's witness statement regarding the claim advanced by the 2<sup>nd</sup> Claimant was in identical terms, except that in paragraph 9 he added the words "at a convenience store" after the reference to the Augusta Street area, and in paragraph 11 instead stated:



*"11. The male gave his name as Gerald Bethel date of birth 3<sup>rd</sup> November, 1983 of Cow-pen Road and was informed that he was wanted for murder, cautioned, and arrested for the offence."*

38. The statements of Officers Pratt and Cifort, the responding officers who were allegedly told by the deceased victim that the person who shot him associated with an individual known as "Fat Boy," were entered into evidence by agreement. These also featured extensively in the cross-examination of the Defendants' witnesses, especially Inspector Taylor. Due to their importance, they are also partially reproduced below.

39. Officer 3551 Pratt's statement was dated 4 April 2021 and materially provided:

*"I am Police Corporal 3551 Pratt presently attached to the Operation Command Section. On Sunday 4th April, 2021 at about 12:16 pm Police Control dispatched the crew of Echo 3-2 Cpl. 3551 and PC 3815 Cifort to investigate reports of a male being shot in the area of The Shoal restaurant Nassau Street. At about 12:20 pm unit arrived in the area and observed a male clad in a blue t-shirt and grey Dickies pants, who was lying on the floor of a wooden cabana located on the western side of Nassau Street opposite The Shoal that sustained a gunshot wound to the right abdomen. The victim gave his name Anthony Tyrone Rolle D.O.B. 07/06/69 of Pitt Road. He also stated that the male that shot him hangs with a male by the name of "Fat Boy" from Bain Town and that he was dressed in florescent construction vest and hard hat. ...."*

[Emphasis supplied]

40. Officer 3815 Cifort's statement was dated 13 March 2021, which was clearly a typo as the shooting of the deceased occurred after this date. This provided in material part:

*"I am Police Constable 3815 Cifort presently attached to the Operation Command Section. On Sunday 4th April, 2021 at about 12:16 pm Police Control dispatched the crew of Echo 3-2 Cpl. 3551 and PC 3815 Cifort to investigate reports of a male being shot in the area of The Shoal restaurant Nassau Street. At about 12:20 pm unit arrived in the area and observed a male clad in a blue t-shirt and grey Dickies pants, who was lying on the floor of a wooden cabana located on the western side of Nassau Street opposite The Shoal. He sustained a gunshot wound to the right abdomen. The victim gave his name Anthony Tyrone Rolle D.O.B. 07/06/69 of Pitt Road. He stated that the male that shot him hangs with a male by the name of "Fat Boy" from Bain Town and that he was dressed in florescent construction vest and hard hat. ...."*

[Emphasis supplied]

41. Under cross-examination, Inspector Taylor confirmed that he had been on the Police Force for 14 years as of the date of trial and that on 14 April 2021 he was attached to the Rapid Response Unit. Referring to paragraph 11 of his statement regarding the 2<sup>nd</sup> Claimant's claim, he confirmed that he informed the 2<sup>nd</sup> Claimant he was wanted for murder and nothing more.
42. When questioned as to why he arrested the 2<sup>nd</sup> Claimant, he indicated that information he received led him to the 2<sup>nd</sup> Claimant's location, for him. He stated that he was unable to provide details of the information received. He further indicated that he did not rely



solely on the information contained in the statements of Officers Pratt and Cifort to arrest the 2<sup>nd</sup> Claimant, but on *"information from an informant about the information in those reports."*

43. Inspector Taylor agreed that Officer 3551 Pratt's statement reporting the utterances of the deceased did not identify who the shooter was and only provided a description. He acknowledged that the statement did not indicate anyone else was present besides the shooter. He also agreed that the statement did not identify someone called or known as *"Fat Boy"* as the shooter or as being implicated in the shooting. Despite this, he initially insisted that the person described as *"Fat Boy"* in the statement could be a suspect, later clarifying that such a person could *"lead to a suspect"*.
44. Inspector Taylor also confirmed that there was nothing in Officer 3815 Cifort's statement to suggest that a person known as *"Fat Boy"* either shot the deceased, was present at the time of the shooting or was implicated in any way in the crime. He nonetheless maintained that the information in the two reports was relied on to effect the arrest of the 2<sup>nd</sup> Claimant. When requested to elaborate, he indicated that this would disclose information about his informant.
45. Inspector Taylor stated that information from the confidential informant was also relied on to arrest the 1<sup>st</sup> Claimant. Again, he did not provide any details about the information supposedly provided by the informant. He also maintained that the two statements from Officers Pratt and Cifort were relied upon to arrest the 1<sup>st</sup> Claimant.
46. During re-examination, Inspector Taylor reiterated that the statements of Officers Pratt and Cifort were relied upon in effecting the arrest of both Claimants. He also stated that on the relevant date, additional information regarding the shooting was provided during a briefing. Further, information was provided by a confidential informant. No additional details of the information provided either during the briefing or from the confidential informant were disclosed at trial.
47. I found Inspector Taylor to be generally credible. However, his evidence was conspicuously vague and lacked detail in some areas, and at times was somewhat confusing. This seemed partly due to his reluctance to disclose any specifics about the information allegedly received from the confidential informant.

**(ii) Sergeant 3468 Andrew Deveau**

48. Sergeant Deveau's witness statements in response to both claims were also expressed in similar terms. In this regard, he confirmed that he is currently assigned to the CID. He testified that on 4 April 2021, he was tasked with investigating a murder that took place on Nassau Street, opposite The Shoal Restaurant. He stated that on 15 April 2021, he reported for duty at around midday and was informed that several persons of interest in reference to the murder investigation were in custody. He was further briefed by his supervisor that a male was being held at Nassau Street Police Station and was to be transported to CID.
49. He confirmed that around 4:20 p.m. on 15 April 2021, he interviewed the 2<sup>nd</sup> Claimant and asked him a series of questions based on leads he had received. He also interviewed the 1<sup>st</sup> Claimant at approximately 4:48 p.m. on the same day. In both



witness statements, he testified in identical terms that *"I recall that at the time of his interview, the Claimant was of a stocky build."* He confirmed that both Claimants were released without charge and that neither spent 48 hours in police custody. Relying on the Detention Records, he verified that both men were in custody for less than 24 hours.

50. In the case of the 1<sup>st</sup> Claimant, he confirmed that he was *"one of many"* arrested during the relevant investigation and that he was *"never singled out as a suspect"*. As for the 2<sup>nd</sup> Claimant, he confirmed that *"several individuals"* were arrested during the same investigation and that he likewise *"was never singled out as a suspect"*.
51. Under cross-examination, Sergeant Deveau initially could not recall whether he was provided with the statements of Officers Pratt and Cifort during his investigations in 2021, indicating that he had received a number of reports. He later confirmed that he had received a report from a first responding officer. He could not recall the details of the information included in any such report, save that it contained information initially gathered from the crime scene. He confirmed that the report(s) from the first responding officer(s) assisted him with his investigations.
52. Sergeant Deveau stated that probably nine or ten persons were taken into custody concerning the specific murder investigation, and that as the investigating officer, he interviewed all of them. He further testified that the arresting officers provided him with additional information related to the suspect. He confirmed that the alias *"Fat Boy"* was a significant item of information that led to the 1<sup>st</sup> Claimant being taken into custody. He admitted that during his interviews with the 1<sup>st</sup> Claimant and the 2<sup>nd</sup> Claimant, he never directly asked either if they went by the alias *"Fat Boy."* He also confirmed that based on his interviews with both Claimants, he concluded that neither of them was a person of interest in the murder investigation.
53. Sergeant Deveau acknowledged that the statements from Officers Pratt and Cifort did not indicate that someone called or known as *"Fat Boy"* either shot the deceased, was present when he was shot or was implicated in the shooting. He stated that on the day of trial, the 1<sup>st</sup> Claimant was heavier than the 2<sup>nd</sup> Claimant and the 2<sup>nd</sup> Claimant appeared to be slim and to walk with a partial limp. He was unable to comment on their respective sizes at the time of his interviews. He further mentioned that surveillance footage was obtained during his investigations, which appeared to show the shooter as a slim male wearing a construction vest and a hard hat, and that this individual appeared to have a partial limp. However, he acknowledged that this information was not included in his witness statement. It is also worth noting that Sergeant Deveau did not specify when the surveillance footage was obtained and whether this was before or after the two arrests. Moreover, no such footage was specifically identified during disclosure, nor was there any reference to footage in the Defendants' Amended Defences as part of the information relied upon to justify either arrest. In addition, this issue was not addressed in the witness statements or the oral testimony of Inspector Taylor, the arresting officer.
54. I nonetheless found Sergeant Deveau to be a generally truthful witness. However, his recollection of specific details was clearly affected by the passage of time between the date of his investigations and interviews in 2021 and the trial date.



### ***Documentary evidence***

55. In addition to the statements from Officers Pratt and Cifort, the parties agreed to admit the following documents into evidence:
- (i) A statement by Corporal Marc Taylor (as he then was) dated 14 April 2021;
  - (ii) A record of the interview of the 1<sup>st</sup> Claimant at the CID's offices prepared by Detective Corporal Deveau (as he then was) dated 15 April 2021;
  - (iii) A record of the interview of the 2<sup>nd</sup> Claimant at the CID's offices prepared by Detective Corporal Deveau dated 15 April 2021;
  - (iv) A detention record documenting the 1<sup>st</sup> Claimant's period in custody from the stated time of his arrest at 6:40 p.m. on 14 April 2021 to the stated time of his release at 5:20 p.m. on 15 April 2021; and
  - (v) A detention record documenting the 2<sup>nd</sup> Claimant's period in custody from the stated time of his arrest at 6:40 p.m. on 14 April 2021 to the stated time of his release at 5:20 p.m. on 15 April 2021.
56. These documents validated certain aspects of different witnesses' testimony. Where conflicts arose between witnesses' accounts and documents, especially regarding the Claimants' time in custody, I generally favoured relying on the documents, being contemporary records of the facts recorded therein.

### **The Rival Submissions**

#### ***The Claimants' respective cases in summary***

57. Mr. Munroe argued that the arrest and detention of both Claimants were unlawful. He pointed out that both men provided undisputed evidence denying ever being known as "Fat Boy." This was despite the fact that there was no evidence of anyone using that nickname or alias being implicated in any crime. Insofar as their movement following arrest was restricted, he claimed that both men were also falsely imprisoned. In this regard, he relied on the decision of Charles J. (as she then was) in *Lloyd v. Chief Superintendent Cunningham and Ors.*<sup>3</sup>
58. Mr. Munroe also took issue with the procedures followed by the arresting officers. He indicated that Inspector Taylor confirmed at trial that he merely informed the Claimants they were "*wanted for murder*" and then arrested them, without providing any details about the victim or when or where the incident took place. He also argued that Inspector Taylor's testimony that he received information that "*persons of interest*" in the shooting were in the Augusta Street area conflicted with the statements of Officers Pratt and Cifort, who confirmed the deceased told them there was only one shooter. On this basis, he argued that the information referred to could not be considered credible. He also suggested that the statements from Officers Pratt and Cifort did not justify the arrests of the Claimants, as they did not link either man to any crime.
59. Mr. Munroe seized upon the averment in the Defendants' Amended Defences to the effect that the Claimants were never singled out and that "*Several individuals known by the nickname 'Fat Boy' were detained.*" He argued this further demonstrated the Defendants lacked reasonable suspicion to arrest the Claimants specifically for any

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<sup>3</sup> 2016/CLE/gen/00062



crime. He pointed out that Sergeant Deveau's evidence that they arrested nine or ten persons for the same crime only served to underscore the tenuous basis for the two arrests. He also argued that Sergeant Deveau's testimony that the Claimants were released immediately after being interviewed, despite simply providing no comment during their interviews, supported the conclusion that there was no proper basis for the arrests.

60. Mr. Munroe further submitted that the arrest and detention of the Claimants violated their rights under Article 19 (protection from arbitrary arrest and detention), Article 21 (protection against unlawful searches of the person and property) and Article 25 (freedom of movement) of the Constitution. He also contended that the use of handcuffs during the arrests of both men was excessive and unwarranted.
61. Besides claiming an entitlement to compensation, Mr. Munroe made no submissions on quantum.

### ***The Defendants' case in summary***

62. Mr. Dames discussed the law relating to unlawful arrest and false imprisonment in commendable detail. In this regard, he relied on the authorities of *O'Hara v. Chief Constable of the Royal Ulster Constabulary*,<sup>4</sup> *Hussein and Ors. v. Chong Fook Kam and Anor.*,<sup>5</sup> *Freckleton v. Attorney General of Jamaica*,<sup>6</sup> *R. v. National Crime Agency and Anor., ex parte Chatwani*<sup>7</sup> and *Neely v. Attorney General*.<sup>8</sup>
63. In seeking to justify the arrest of both Claimants, Mr. Dames understandably placed great reliance on the evidence of Inspector Taylor. He argued that this revealed the following:
  - (i) Prior to the commencement of his shift on 14 April 2021, Inspector Taylor was briefed by his supervising officer in reference to a murder that occurred approximately two weeks earlier. During the briefing, he was told that persons of interest in the case were two individuals; namely, a man known as "Fat Boy" and another described as "a man who associates with Fat Boy."
  - (ii) Later that day (i.e. on 14 April 2021), while conducting patrols in the Bain Town area (which is in the general vicinity of the site of the shooting incident), Inspector Taylor was approached by an informant who directed him to a convenience store on Augusta Street. The information provided by the informant led to the 1<sup>st</sup> Claimant and 2<sup>nd</sup> Claimant. Based on this information, Inspector Taylor placed both Claimants under arrest.
  - (iii) The information received from the informant was never disputed, nor was any concern raised about the informant's credibility or reliability.
  - (iv) Although the identity of the informant and the details of the information he provided were not disclosed, the information was sufficient for Inspector Taylor to proceed.

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<sup>4</sup> [1997] 1 All ER 129

<sup>5</sup> [1969] 3 All ER 1626

<sup>6</sup> [2018] JMSC Civ 127

<sup>7</sup> [2015] EWHC 1283 (Admin)

<sup>8</sup> 2016/CLE/gen/00623



- (v) The information relied on by Inspector Taylor in effecting both arrests was within his personal knowledge at the time of the arrests.
64. Mr. Dames further argued that both Claimants admitted to having resided on Augusta Street previously and to being known by persons in the area by name and face. He also said that based on the evidence, it can be inferred that they "*hung out together*." He noted that the 1<sup>st</sup> Claimant admitted to having a larger physical stature at the date of his arrest in 2021 than at the trial date and, although he did not confirm whether he went by the alias of "*Fat Boy*," his physical appearance was consistent with such a description. Additionally, he contended that the proximity of the Claimants' convenience store to the scene of the shooting contributed to the suspicion formed by Inspector Taylor.
65. Mr. Dames also relied on Sergeant Deveaux's statement during cross-examination to the effect that a person of interest walked with a limp and observed that the 2<sup>nd</sup> Claimant appeared to walk with a limp. As indicated, this specific point was not raised in the Defendants' pleadings or in the arresting officer's evidence.
66. In the result, he argued that Inspector Taylor had the necessary reasonable suspicion and therefore acted lawfully in making both arrests during an ongoing murder investigation.
67. Mr. Dames also dismissed any suggestion of unlawfulness in the procedures followed in effecting the arrest of the Claimants. He stated that the 1<sup>st</sup> Claimant admitted he was informed of the reason for his arrest, both at the Nassau Street Police Station (which was less than two minutes away from his convenience store) and by the investigating officer at the CID's offices. In the case of the 2<sup>nd</sup> Claimant, he said that Inspector Taylor confirmed in his witness statement that he advised him of the reason for his arrest when placing him in handcuffs. He further noted that the 2<sup>nd</sup> Claimant admitted there was a measure of tension between himself and police officers at the time of arrest. He also pointed out that the 2<sup>nd</sup> Claimant admitted he did not comply with police officers' request to come outside the convenience store when initially approached. Therefore, he argued that any brief delay in informing him immediately of the reason for his arrest was due to his own actions.
68. Mr. Dames further rejected any claim of false imprisonment. He argued that the initial arrest and detention were lawful and that Section 18 of the *Criminal Procedure Code* allows a police officer, without a warrant, to detain a person for up to 48 hours before formally charging them or presenting them before a magistrate. He maintained that the evidence in the current case showed that both Claimants were in police custody for less than 24 hours before being released.
69. In the final analysis, Mr. Dames argued that the evidence established that the Claimants were arrested based on reasonable suspicion of committing an offence. He stated that the constitutional and statutory requirements governing lawful arrest procedures were adhered to. He also contended that the Claimants were seeking to impose a higher evidentiary burden on the Defendants than the law requires. Relying on the proviso in Article 28(2) of the Constitution, he further argued that it was in any event unnecessary to have recourse to the provisions of the Constitution to afford redress, the remedies at common law being adequate for this purpose.



70. Like Mr. Munroe, Mr. Dames made no submissions on quantum.

### **Discussion and Analysis**

#### ***Unlawful arrest and false imprisonment***

##### ***(i) Applicable principles of law***

71. The law relating to unlawful arrest and false imprisonment has arisen for discussion before the courts of this jurisdiction on numerous occasions. Three recent examples in which this occurred include the cases of *Lloyd v. Chief Superintendent Cunningham and Ors.*, *Collie v. Attorney General*<sup>9</sup> and *Neely v. Attorney General*.
72. As noted by Winder CJ in the case of *Neely*, the law attaches “*superlative importance to the elemental and priceless right of an individual not to be deprived of their personal liberty*”.<sup>10</sup> In the Bahamian context, protection from arbitrary arrest and detention has also been placed on a constitutional footing.
73. There is an inevitable tension between the personal liberty of the subject on the one hand and the interest of the State in investigating and prosecuting criminal activity on the other. One of the ways in which the law seeks to strike a balance between these two potentially conflicting interests is by imposing a requirement that when effecting an arrest without a warrant, a police officer must ‘*reasonably suspect*’ the person being arrested of having committed an offence. This requirement is explicitly recognised in Article 19(1)(d) of the Constitution. It is also incorporated into Section 31(2) of the *Police Force Act, 2009*, which provides in material part:

“(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 supplied]

74. The test of ‘*reasonable suspicion*’ referred to in Section 31(2) of the *Police Force Act*, and similarly worded statutory provisions, is widely acknowledged to be in part subjective and in part objective. The interplay between the subjective and objective considerations was explained in the judgment of Lord Hope in *O’Hara v. Chief Constable of the Royal Ulster Constabulary*, where he said (at pages 138-139):

“My Lords, the test which s 12(1) of the 1984 Act has laid down is a simple but practical one. It relates entirely to what is in the mind of the arresting officer when the power is exercised. In part it is a subjective test, because he must have formed a genuine suspicion in his own mind that the person has been concerned in acts of terrorism. In part also it is an objective one, because there must also be reasonable grounds for the suspicion which he has formed. But the application of the objective test does not require the court to look beyond what was in the mind of the arresting officer. It is the grounds which were in his

<sup>9</sup> [2017] CLE/gen/00916

<sup>10</sup> *Supra*, at para.93, citing Charles J. in *Lloyd v. Cunningham* and Allen P. in *Cleare v. Attorney General* [2013] 1 BHS J No.64



mind at the time which must be found to be reasonable grounds for the suspicion which he has formed. All that the objective test requires is that these grounds be examined objectively and that they be judged at the time when the power was exercised.

This means that the point does not depend on whether the arresting officer himself thought at that time that they were reasonable. The question is whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the arresting officer. It is the arresting officer's own account of the information which he had which matters, not what was observed by or known to anyone else. ....

[Emphasis supplied]

75. In *O'Hara*, Lord Steyn also identified a non-exhaustive set of propositions relating to the exercise of powers of arrest by constables pursuant to statutory provisions in the mold Section 31(2) of the *Police Force Act*. In this regard, he stated (at page 134):

*"(1) In order to have a reasonable suspicion the constable need not have evidence amounting to a prima facie case. Ex hypothesi one is considering a preliminary stage of the investigation and information from an informer or a tip-off from a member of the public may be enough .... (2) Hearsay information may therefore afford a constable reasonable grounds to arrest. Such information may come from other officers .... (3) 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. (4) The executive discretion to arrest or not as Lord Diplock described it in *Holgate-Mohammed v Duke* [1984] 1 All ER 1054 at 1059, [1984] AC 437 at 446, vests in the constable, who is engaged on the decision to arrest or not, and not in his superior officers."*

76. In explaining the individual officer's personal responsibility to satisfy himself of the sufficiency of the grounds for arrest, Lord Steyn added:

*"Given the independent responsibility and accountability of a constable under a provision such as s 12(1) of the 1984 Act, it seems to follow that the mere fact that an arresting officer has been instructed by a superior officer to effect the arrest is not capable of amounting to reasonable grounds for the necessary suspicion within the meaning of s 12(1). It is accepted, and rightly accepted, that a mere request to arrest without any further information by an equal ranking officer, or a junior officer, is incapable of amounting to reasonable grounds for the necessary suspicion. How can the badge of the superior officer, and the fact that he gave an order, make a difference? In respect of a statute vesting an independent discretion in the particular constable, and requiring him personally to have reasonable grounds for suspicion, it would be surprising if seniority made a difference. It would be contrary to the principle underlying s 12(1) which makes a constable individually responsible for the arrest and accountable in law. ....*



*Such an order to arrest cannot without some further information being given to the constable be sufficient to afford the constable reasonable grounds for the necessary suspicion. ...."*

77. In light of the foregoing, the courts have emphasised on numerous occasions that it is plainly unlawful to detain a person solely for questioning in the hope that something incriminating will emerge, with no anterior facts or information to justify the arrest being in existence.<sup>11</sup> Conversely, it has also been noted that in applying the test of reasonable suspicion the court is to view the facts or information relied on by the arresting officer cumulatively, or in the round.<sup>12</sup>
78. The law concerning false imprisonment does not require significant elaboration. A useful overview of the general nature of the tort, which I gratefully adopt, was provided by Charles J. in *Lloyd v. Cunningham*, where she explained (at paras.37-40):

*"37 False imprisonment is defined by Clerk and Lindsell on Torts, 17<sup>th</sup> 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 "Termes 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 gaols; and in all the places the party so restrained is said to be a prisoner so long as he hath not his liberty freely to go at all times to all places whither he will without bail or mainprise or otherwise".*

*38 The principle was explained by Deyalsingh 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 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 plaintiffs movements or over his will, and it matters not what means are utilised to give effect to this intention...."*

*39 False imprisonment as a form of trespass to the person is actionable per se. In Murray v Ministry of Defence [1988] 1 W.L.R. 692 at 703-704, H.L. overruling Herring v Boyle[1834]1 C.M. & R. 377, Lord Griffiths stated that "the law attaches supreme importance to the liberty of the individual and if he suffers a wrongful interference with that liberty it should remain actionable even without proof of special damage."*

*40 No doubt, an unlawful arrest is a false imprisonment, and if the requirements of the law as to making it clear to the arrested person that he is*

<sup>11</sup> See e.g. *Clarke v. Chief Constable of North Wales Police* [2000] All ER (D) 477, per Sedley LJ at para.43

<sup>12</sup> *Parker v. Chief Constable of Essex Police* [2019] 3 All ER 399, CA, at para.116



*under lawful restraint, or informing him promptly of the grounds of his arrest, or taking him before the appropriate authorities within a reasonable time are not complied with, an arrest which might otherwise have been justified will be unlawful and ground an action for false imprisonment.”*

79. The requirement to inform an arrested person of the reasons for their arrest is well-established at common law and was seminally discussed in *Christie v. Leachinsky*.<sup>13</sup> In that case, after a thorough review of various authorities, Viscount Simon famously identified certain prerequisites to be followed in effecting an arrest. It is unnecessary to delve into these in detail in this judgment. For immediate purposes, it is sufficient to note that the requirement to inform a person of the reasons for their arrest does not require the use of technical or precise language. Instead, it is very much a matter of the substance of the reasons being conveyed. Relatedly, an arrested person cannot complain that he has not been supplied with the reasons for his arrest if he himself creates a situation which makes it practically impossible to do so, such as by immediate counter-attack or by running away.
80. The right to be informed of the reasons for arrest has also been explicitly recognised in Article 19 of our Constitution, which relevantly provides:

*“(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention....”*

**(ii) Factual findings**

81. The factual basis and the reasons for the two arrests depend almost entirely on the evidence of Inspector Taylor. For it is to this information that the mind of the independent observer must be applied in determining if the test of ‘reasonable suspicion’ has been satisfied.
82. With respect to the sequence of events surrounding the Claimants’ initial encounter with police officers at their convenience store and culminating in them being taken into custody, I generally preferred the evidence of the Claimants. They both appeared to vividly recall their initial interaction with police on the material date. This is no doubt due to the fact that it affected their personal freedom.
83. As indicated, when there were conflicts between witnesses’ accounts and documentary evidence, I generally preferred to rely on the documents. This was especially so in relation to events transpiring during the course of the Claimants’ time in custody. On this basis, I specifically relied on the documentary evidence for the purposes of determining the period of both Claimants’ detention, their movements while in custody and their interactions with officers during that time.
84. With these preliminaries aside, I accept Inspector Taylor’s evidence that at the start of his shift on 14 April 2021 he received a briefing from his supervisor on daily and current matters relating to police operations. I also accept that as part of this briefing, he was reminded of a murder that took place approximately two weeks earlier on Nassau Street, opposite The Shoal Restaurant. I further accept that before making the two

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<sup>13</sup> [1947] AC 573, per Viscount Simon at pp.587-88



arrests, Inspector Taylor was informed that the deceased gave a statement to police officers that *"the shooter associated with an individual known as "Fat Boy".*"<sup>14</sup> Relatedly, I accept Inspector Taylor's testimony to the effect that he read the reports of Officers Pratt and Cifort before effecting the arrests, which was not challenged.

85. Looking at the matter in the round, I nonetheless have difficulty accepting that the Defendants have met their burden in justifying the arrest of either Claimant. I say so for the following reasons. First, beginning with the briefing from Inspector Taylor's supervisor, on his own evidence this simply resulted in him being informed of (or, as he put it, *"reminded of"*) a murder committed approximately two weeks earlier opposite The Shoal Restaurant and that the deceased identified the shooter as a person who *"associated with an individual known as "Fat Boy".*" Based on this information alone, it appears there was only one suspect and that the person *"associated with"* an individual known as *"Fat Boy"*. Necessarily, this does not suggest that the person known as *"Fat Boy"* was the assailant or was in any way implicated in the shooting. It is also worth noting that in a country acknowledged to have high levels of obesity,<sup>15</sup> the nickname or alias of *"Fat Boy"* is hardly unheard of. I therefore regard this information as wholly insufficient in providing a basis for arresting either Claimant. Indeed, I did not understand Mr. Dames to suggest otherwise.
86. The reports from Officers Pratt and Cifort do not advance the position much further. As mentioned, both reports (which are in nearly identical terms) materially indicate that the deceased informed these officers that *"...the male that shot him hangs with a male by the name of "Fat Boy" from Bain Town and that he was dressed in a fluorescent construction vest and hard hat."* These reports, therefore, provide a general reference to the area where the person known as *"Fat Boy"* (who, as indicated, was not stated to be the shooter) was believed to reside or come from. They also give the added detail that on the material date the shooter wore a fluorescent construction vest and a hard hat. Again, it is worth noting that the Bain Town area is generally regarded as a large, inner-city community with thousands of residents. No evidence was presented at trial showing that either Claimant wore or possessed a construction vest of any sort or a hard hat, or ever did so. I also consider this information, whether by itself or in conjunction with the information imparted during the briefing, as insufficient to justify the arrest of either Claimant.
87. This brings me to the information provided to Inspector Taylor by the confidential informant. At the outset, I accept that in principle an arresting officer may rely on information provided by a confidential informant to effect an arrest. However, it is still necessary for this information, whether by itself or in conjunction with other information, to give rise to a *'reasonable suspicion'* in the sense described earlier. Given its importance, I once again set out the operative part of Inspector Taylor's two witness statements speaking to the information obtained from the confidential informant. As it relates to the 1<sup>st</sup> Claimant, he testified as follows:

*"7. At about 6:00 p.m., while on patrol with other officers, I was approached by an individual known to me as a reliable source of information in criminal matters.*

<sup>14</sup> See Inspector Taylor's two Witness Statements, at paras.3-5

<sup>15</sup> See e.g. [Bahamas | World Obesity Federation Global Obesity Observatory](#)



8. *This individual had provided credible intelligence on past occasions, and I trusted the information he shared.*
9. *He informed me that persons of interest in the Nassau Street shooting were in the Augusta Street area. Augusta Street is approximately four to five corners away from Nassau Street, with direct access between the two areas via shortcuts.*
10. *Acting on this intelligence, I proceeded with other officers to Augusta Street and at approximately 6:30 p.m., we approached a male individual at a convenience store in relation to the Nassau Street shooting. Based on the information provided by the informant, this individual was questioned.*
11. *At that time, another male later identified as the Claimant was sitting on the trunk of a vehicle. He identified himself as Emerson Bethel, date of birth 17<sup>th</sup> December 1982, of #175 Augusta Street. He was informed that he was wanted for murder, cautioned, and arrested for the offence.*
12. *His arrest was for the further interview and questioning of the suspect based on the information received."*

88. I accept that Augusta Street (or part of it in any event) is in the Bain Town area and is in fairly close proximity to Nassau Street. However, the above-quoted sections of the witness statement, in my view, are still exceedingly vague in explaining what specific facts were relied upon to effect the arrest of the 1<sup>st</sup> Claimant. More particularly, paragraph 9 simply states that "persons of interest in the Nassau Street shooting were in the Augusta Street area." By itself, this would seemingly justify the arrest of any person who happened to be traversing Augusta Street at the time in question. Inspector Taylor then goes on to say that "Acting on this intelligence, [he] proceeded with other officers to Augusta Street and at approximately 6:30 p.m., we approached a male individual at a convenience store in relation to the Nassau Street shooting." At this stage, the only intelligence received was that "persons of interest in the Nassau Street shooting were in the Augusta Street area". This broad and vague statement is hardly sufficient to establish, objectively, that the 1<sup>st</sup> Claimant specifically was properly suspected of having committed the offence in question.
89. Paragraph 11 of Inspector Taylor's witness statement does not assist the Defendants either. This seemingly suggests that the 1<sup>st</sup> Claimant was not even the individual the police harboured a suspicion (reasonable or otherwise) of having committed an offence, but was almost arrested as an afterthought or simply because he was nearby sitting on the trunk of a vehicle. Unfortunately, Inspector Taylor did not elaborate on the information provided by the informant at trial. Frankly, it appears more likely that the 1<sup>st</sup> Claimant was arrested purely for the purpose of questioning as opposed to based on 'reasonable suspicion' of having committed the relevant offence.
90. Inspector Taylor's evidence also raised several unanswered questions and apparent inconsistencies. Notably, after being referred to the reports of Officers Pratt and Cifort and acknowledging that they did not implicate the person known as "Fat Boy" from Bain Town in the shooting, he nonetheless maintained that this individual could be considered a suspect in the murder based on the information contained in those very reports. The leap from the person identified as "Fat Boy" being an associate of the shooter to himself being suspected of the shooting was never fully explained. It should also be noted that despite the fact that he could fairly be characterised as being slightly overweight at the date of trial, and admitted to being a bit heavier at the date of his arrest, it was never established that the 1<sup>st</sup> Claimant was known by the nickname or



alias "*Fat Boy*." In his witness statement, he outright denied ever being known by that name.

91. Some of the observations regarding the evidence led to justify the arrest of the 1<sup>st</sup> Claimant apply equally to the evidence justifying the arrest of the 2<sup>nd</sup> Claimant. As indicated, the witness statement of Inspector Taylor speaking to the arrest of the 2<sup>nd</sup> Claimant was in almost identical terms to that provided in reference to the 1<sup>st</sup> Claimant, except that he stated in paragraph 9 that the informant told him that persons of interest in the Nassau Street shooting were in the Augusta Street area "*at a convenience store*". Paragraph 11 of his witness statement was also cast in different terms, stating:

*"11. The male gave his name as Gerald Bethel date of birth 3<sup>rd</sup> November, 1983 of Cow-pen Road and was informed that he was wanted for murder, cautioned, and arrested for the offence."*

92. Whilst the added detail that "*persons of interest*" in the shooting were in the Augusta Street area "*at a convenience store*" helped to narrow down the location of the suspect(s), I still do not regard this as sufficient to establish, objectively, that the 2<sup>nd</sup> Claimant in particular was properly suspected of having committed the offence. In fact, this added detail by itself would seemingly justify the arrest of any individual who happened to be present at "*a convenience store*" on Augusta Street at the material time – whether there as a patron, employee, visitor, loiterer or owner. As mentioned, Inspector Taylor unfortunately did not elaborate further on the information given by the informant at trial.
93. The reference in the briefing and the reports of Officers Pratt and Cifort to the shooter associating with or hanging with an individual known as "*Fat Boy*" from Bain Town would appear to augur against the 2<sup>nd</sup> Claimant, who I accept could fairly be said to associate with his brother. However, I reiterate that it was never established at trial that the 1<sup>st</sup> Claimant was known by the nickname or alias "*Fat Boy*" or that the arresting officer even enquired as to his nickname – and, as noted, the 1<sup>st</sup> Claimant's unchallenged evidence was that he has never been known by this nickname or alias.<sup>16</sup> It was also never established which convenience store on Augusta Street the informant was speaking in reference to or if the Claimants' store was the only such business on the street. Moreover, mere association with the 1<sup>st</sup> Claimant (who happened to be slightly overweight) would seemingly justify the arrest of any number of other persons, including possibly any of his "*staff and family members*" who were reportedly present at the time of his arrest.<sup>17</sup> I therefore regard this as an insufficient basis to conclude that the 2<sup>nd</sup> Claimant in particular was '*reasonably suspected*' of having committed the shooting. As indicated, Inspector Taylor unfortunately did not elaborate on any of these matters at trial.
94. Another curious feature of the Defendants' case is that by sub-paragraphs 13(c)-(e) and 14(v)-(vi) of their Amended Defence filed in response to the 2<sup>nd</sup> Claimant's Statement of Claim, they effectively alleged that the shooter was identified as a person who went by the nickname or alias "*Fat Boy*" and who was described as having a stocky build. They further pleaded that the 2<sup>nd</sup> Claimant was known by this nickname and also had a stocky build. Nevertheless, at trial the main justification for the 2<sup>nd</sup> Claimant's

<sup>16</sup> Witness Statement of Emerson Bethel, para.11

<sup>17</sup> Witness Statement of Emerson Bethel, para.6



arrest appeared to turn on his association with the 1<sup>st</sup> Claimant rather than his body build or any belief that he was the individual referred to as “Fat Boy” (which, at least at the date of trial, would have been a clear misnomer). This inconsistency between the Defendants’ pleaded case and their evidence was never fully explained. They also never sought to re-amend.

95. I am reminded that the test of reasonable suspicion is generally regarded as a low threshold. However, the reasonableness of the suspicion upon which the arrest is based still presupposes the existence of specific, articulable facts or information which would satisfy an objective observer that the person concerned may have committed the offence.<sup>18</sup> Looking at the information received by the arresting officer cumulatively, I regard both arrests as unlawful. It necessarily follows that the subsequent detention of both Claimants was similarly unlawful.
96. I would add that if reasonable suspicion for the arrests had been established, I would not have been minded to declare either arrest unlawful due to the Defendants’ alleged failure to inform the Claimants of the reason for their arrest. Although the particulars of the offence were not provided, both in his pleaded case and in his testimony under cross-examination, the 1<sup>st</sup> Claimant admitted that he was informed of the substance of the reasons for arrest when taken into custody.<sup>19</sup> In the case of the 2<sup>nd</sup> Claimant, the evidence at trial suggested that there was as he put it “a lot of tension” and that he forcibly resisted being taken into custody; however, he was informed of the reason for his arrest (namely, murder) at the Nassau Street Police Station, which was a short distance from his store. In these circumstances, I would not have been prepared to find his arrest to be unlawful on this ground.

**(iii) Events following arrest and damages**

97. It is not disputed that once placed under arrest both Claimants were taken directly to Nassau Street Police Station. Relying on the Detention Records, I find that both Claimants were searched and placed in a cell at the Nassau Street station, where they remained until the following day (i.e. 15 April 2021), when they were taken to the CID’s offices on Thompson Boulevard. This also aligns with the Claimants’ testimony at trial.
98. I accept Sergeant Deveaux’s evidence that he interviewed both Claimants on 15 April 2021 at the CID’s offices and that they were both released from custody shortly afterward, without charge. Relying mainly on the Detention Records, I find that both Claimants were released from custody at approximately 5:20 p.m. on 15 April 2021. Their total time in custody was therefore just under 23 hours, from approximately 6:40 p.m. on 14 April 2021 to approximately 5:20 p.m. on 15 April 2021.
99. Although both Claimants pleaded loss of wages, they did not quantify the same. They also led no evidence at trial to substantiate any such losses. Equally, in my view, there were no “special features”<sup>20</sup> to justify an award of damages by way of constitutional redress. In this regard, I would also observe that the only fundamental right alleged to have been violated in their pleaded cases was the Claimants’ right not to be deprived

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<sup>18</sup> O’Hara, p.143

<sup>19</sup> See 1<sup>st</sup> Claimant’s Statement of Claim, para.4 and Transcript, Page 9[2]-[14]

<sup>20</sup> See *Russell v. Attorney General and Anor.* SCCivApp No.186 of 2017, at paras.25 and 79



of their personal liberty under Article 19(1) of the Constitution,<sup>21</sup> which may potentially be remedied by an award of damages in tort.

100. In the case of *Cleare v. Attorney General*, the Court of Appeal made the following comments with respect to the assessment of compensation for unlawful detention:

*“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.”*

[Emphasis supplied]

101. As mentioned earlier, neither side made any submissions on quantum. The general approach to the assessment of compensation in this area was helpfully elucidated in the judgments of Stewart J. in *Collie v. Attorney General* and Winder CJ in *Neely v. Attorney General*. In summary, these authorities confirm (among other things): insofar as an unlawful arrest is a form of false imprisonment, there is no need to make a separate award for both torts; the principal heads of damage for which general damages are awarded are injury to liberty and injury to feelings; in assessing such damages, the Court must take into consideration all the facts and circumstances of the case, including the length of the detainment, the circumstances of the detainment and treatment of the arrestee whilst in official custody. It is also well established that the personal background of the arrestee may be a relevant circumstance in assessing compensation, the upshot being that a law-abiding citizen with no previous exposure to the criminal justice system may be entitled to greater damages than a career criminal or an individual who has been taken into police custody numerous times before.<sup>22</sup>
102. No evidence was led as to either Claimant’s criminal history or exposure to the criminal justice system. Similarly, there was no suggestion that being placed under arrest and taken into custody had any lasting mental or psychological effect on either Claimant.
103. Considering the evidence as a whole, the various factors referred to in *Collie* and *Neely*, and taking into account awards made in comparable cases, I award the 1<sup>st</sup> Claimant the sum of \$12,000 as basic compensatory damages and \$3,000 by way of exemplary

<sup>21</sup> See 1<sup>st</sup> Claimant’s Statement of Claim, paras.12-15 and 2<sup>nd</sup> Claimant’s Statement of Claim, paras.11-14

<sup>22</sup> See *Mohammed v. Home Office* [2017] EWHC 2809, per Pepperall J. at para.31



damages. I similarly award the 2<sup>nd</sup> Claimant \$12,000 as basic compensatory damages and \$3,000 as exemplary damages. Interest is to run on both judgments at the statutory rate pursuant to the *Civil Procedure (Award of Interest) Act*.

104. As the successful parties in the action, both Claimants are entitled to their legal costs, which I will summarily assess unless otherwise agreed.

