

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division

2016/CLE/gen/00062

BETWEEN

GILFORD LLOYD

Plaintiff

AND

(1) CHIEF SUPERINTENDENT CUNNINGHAM

First Defendant

**(2) THE COMMISSIONER OF POLICE OF THE COMMONWEALTH OF
THE BAHAMAS**

Second Defendant

**(3) THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE
BAHAMAS**

Third Defendant

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Ms. Christina Galanos with her Mr. Bjorn Ferguson for the Plaintiff
Ms. Kenrah Newry of the Attorney General's Chambers for the Defendants

Hearing Dates: 17, 18 July 2017

Civil - Unlawful entry – Unlawful arrest – Wrongful assault – False imprisonment – Damage to property – Divergence in evidence – Although discrepancies in evidence of Plaintiff and his witness, it was largely corroborative - Plaintiff's evidence preferred to that of Defendants.

Wrongful arrest – Importance of liberty of an individual – *Christie v Leachinsky* [1947] A.C. 573 referred to – Law on False Imprisonment – *Bostien v Kirpalani's Ltd* (1979) H.C. (Trinidad & Tobago) No. 861 mentioned.

On the night of 9 January 2015, the Plaintiff was home alone and sleeping when he heard a loud banging. Uncertain of where the banging was coming from, he did not respond right away. As he was coming out of his bedroom, a man placed a shotgun to his forehead. He later

realized that the man was a police officer and there were two of them in his house. He was asked to get down on the floor which he did. Subsequently, he was arrested, placed in handcuffs and escorted outside of his residence and into the presence of the First Defendant. He was ordered to stand in handcuffs for approximately 30 minutes in the presence of onlookers. The First Defendant eventually ordered the removal of the handcuffs and the Plaintiff was released. Upon returning to his residence, the Plaintiff noticed that his front door was damaged. He was never informed of the reason behind the unlawful entry of his residence, the assault, his subsequent arrest, false imprisonment or the damage to his property. The Plaintiff called one witness whose evidence corroborated his in large measure.

The First Defendant testified that he was not at the Plaintiff's residence; therefore he could not and did not authorize any police officers to arrest, assault, imprison or damage the Plaintiff's property. Further, that there is no information or reports to indicate that any uniform operations had been conducted in the area of Yellow Elder on the night in question and that no employee of the Second Defendant was at the Plaintiff's property on that night or at all.

HELD:

- 1. It is always a difficult task for a Judge to determine who is telling the truth when the evidence is very divergent. However, having had the advantage of seeing, hearing and observing the demeanour of the witnesses, the Court found the Plaintiff to be a man of impeccable candour. He was sincere, calm, composed and unwavering in his evidence. In addition, his evidence is largely corroborated by the evidence of his witness.**
- 2. On a balance of probabilities, the Plaintiff had discharged the burden of proving that he was wrongfully assaulted, unlawfully arrested and falsely imprisoned by two officers acting on the instructions of the First Defendant.**

Cases referred to:

- [1] Bernard Kenneth Bonamy II and Dwight Miller v Police Constable 3002 Williams Hunt et al [2007/CLE/gen/00088] (unreported) distinguished;
- [2] Christie v Leachinsky [1947] A.C. 573 mentioned;
- [3] Bostien v Kirpalani's Ltd (1979) High Court of Trinidad and Tobago, No. 861 (unreported) mentioned;
- [4] Murray v Ministry of Defence [1988] 1. W.L.R. 692 mentioned.

JUDGMENT

Charles J

Introduction

- [1] "Without liberty - a man is not a man. He has no dignity". This was exactly how Mr. Gilford Lloyd ("the Plaintiff"), a Senior Fisheries Enforcement Officer in the Department of Marine Resources, felt when, as he alleged, he was wrongfully

assaulted, unlawfully arrested and falsely imprisoned by two members of the Royal Bahamas Police Force acting under the supervision of Chief Superintendent Cunningham (“the First Defendant”). As a result, he instituted the present action on 7 January 2016 which was subsequently amended seeking various heads of damages including special damage for the front door to his residence.

- [2] It is alleged that the First Defendant was present and gave certain orders to two police officers; one of whom was armed with a shotgun. The Commissioner of Police (“the Second Defendant”) is sued since the First Defendant and indeed all police officers are under his direction, command and control. The Attorney General (“the Third Defendant”) is sued by virtue of section 12 of the Crown Proceedings Act.

The Plaintiff’s pleaded case

- [3] In his amended Writ of Summons and Statement of Claim filed on 13 July 2017, the Plaintiff alleged that on or about 9 January 2015 at approximately 10.00 p.m. while at his residence at Yellow Elder Gardens, he was assaulted by two members of the Royal Bahamas Police Force who unlawfully entered his residence, held a gun to his forehead, demanded that he get down, handcuffed him and escorted him outside of his residence and into the presence of the First Defendant. He alleged that he was ordered to stand at the side of a police car while most of his neighbours stood outside of their residences looking on. After about thirty minutes, the First Defendant ordered the removal of his handcuffs and he was released. Upon returning to his residence, he realized that his brand new front door was damaged.

- [4] On or about 9 March 2015, learned Counsel for the Plaintiff Ms. Galanos wrote to the Second Defendant about the alleged incident. On or about 17 March 2015, the Second Defendant acknowledged receipt of her letter. He indicated that a status report was being prepared on the investigation of the matter and that he would revert to Counsel after the final report had been received. However, to

date, Ms. Galanos has not received any further communication from the Second Defendant.

- [5] The Plaintiff alleged that he suffered severe shock and mental anguish. He claims, among other things, special damages, general damages, exemplary damages, aggravated damages and punitive damages.

The Defendants' pleaded case

- [6] In their Defence filed on 20 May 2016, the Defendants pleaded three points in limine: see paragraphs 1 to 3. Good sense prevailed and these three objections were not raised at the hearing.

- [7] At paragraphs 4, 5, 6, 7 and 8 of the Defence, the Defendants pleaded the following "What is contained in the Statement of Claim is neither admitted nor denied, insofar as the same is not within the knowledge of the Defendants." From paragraphs 9 to 16, the Defence is worded as follows: "The 1- 3 Defendants make no admission to the allegations contained at paragraphs 6, 7, 8, 9, 10, 11, 12(a) and (b), 13 (a), (b), (c), (d), (e) and (f), as the same is not within the knowledge of the Defendants.

The evidence

- [8] At this very short hearing, the Plaintiff testified and called his neighbour, Nelson Robert Sweeting as his witness. The Defendants called one witness namely Chief Superintendent Cunningham.
- [9] The Plaintiff testified that on the night of 9 January 2015, he was home alone. He went to bed early. The television was on and his house was in complete darkness. At about 10.00 p.m. he heard a banging on what sounded to be his front door. He did not respond immediately as he was startled. He lowered the volume on the television. He thought that the banging was coming from his neighbour's house as he was not expecting anyone.

- [10] Subsequently, he got up to go to his front door. As he was approaching his bedroom door, someone placed a shotgun to his forehead and instructed him to get down. He said that the person identified himself as a police officer but, as it was dark, he could not see the person. The Plaintiff said that he got down and rested himself on his stomach. At that stage, he realized that there were two men in the house. He knew they were men from their voices.
- [11] Whilst on the ground, one of the men asked him for his name and date of birth which he gave. In a menacing voice, one of them said "get up." He got up. He was so petrified that he urinated on himself. He sought permission to go to the toilet and they laughed at him. When he was finished, one of them said "wash your hands". He washed his hands. Then one of them said "cuff him." The Plaintiff said that he placed his hands behind his back and they handcuffed him. He realized that they were police officers when he turned on the light to go to the bathroom. He began to wonder what the police wanted of him since he was almost 60 years old and never committed an offence in his entire life.
- [12] The two men took him outside. There he saw about seven to eight police vehicles and police officers blocking the road. He said that the officers took him to the First Defendant who instructed him to stand at the side of one of the police vehicles. The First Defendant was standing about eight to ten feet away from him.
- [13] The Plaintiff said that while standing at the side of the police vehicle, he saw an officer escorting his neighbour Nelson Sweeting in his direction. Mr. Sweeting was also in handcuffs. They brought him next to where he was standing. The First Defendant asked Mr. Sweeting for Dominic and he responded that Dominic lives through the next corner and that they came through the wrong corner.
- [14] The Plaintiff said that the First Defendant appeared annoyed. A few seconds later, the First Defendant instructed an officer to remove Mr. Sweeting's handcuffs and about thirty minutes later, he instructed that his handcuffs be

removed. He said that he felt quite humiliated, embarrassed and ridiculed as quite a few onlookers saw him in handcuffs.

- [15] The Plaintiff testified that prior to this incident, he did not know the First Defendant but he heard officers referring to him as Chief Superintendent Cunningham. About a week later, he typed the name Chief Superintendent Cunningham in a Google search engine to see if any images of the man who was being referred to as Chief Superintendent Cunningham would pop up. Immediately, a photograph of the same man appeared. A copy of the photograph is exhibited by the Plaintiff to which the Defendants object. The Court admitted it and gave it such weight it deemed fit.
- [16] The evidence of the Plaintiff was supported by the evidence of Mr. Sweeting. Mr. Sweeting is presently housed at the Bahamas Department of Corrections. He said that on the night in question he was standing at the front of his yard eating Pringles when about four to five police marked cars pulled up. The police searched him and asked him for his name which he gave. Then they asked for Dominic and he told them that Dominic does not live through here and that he lives on the front road.
- [17] Mr. Sweeting said that he was placed in a police bus and while sitting there, he saw when about four police officers searched the Plaintiff's yard. He saw when they kicked the door down. Shortly after, he saw two police officers escorting the Plaintiff out of his house in handcuffs.
- [18] As I stated earlier, the First Defendant was the only witness called to testify for the Defendants. He deposed that he was not present at the Plaintiff's residence therefore he could not and did not authorize any police officers to arrest, assault, imprison or damage the Plaintiff's property. He also testified that from October 2014 to 31 March 2015, he was one of the officers in charge of uniform operations responsible for the eastern area of the Island of New Providence

(every area east of East Street which did not include the area of the Plaintiff's residence at Yellow Elder).

[19] The First Defendant asserted that there is no information or reports to indicate that any uniform operations had been conducted in the area of Yellow Elder on the night in question and that no employee of the Second Defendant was at the Plaintiff's property on that night or at all.

[20] The First Defendant maintained that he does not know the Plaintiff and contended that the Plaintiff is mistaken that he was present on the night in question. He next testified that he had never conducted uniform operations in his khaki uniform nor would he wear a bullet proof vest as he always wore his camouflage overalls.

[21] It is always a difficult task for a Judge to determine who is telling the truth when the evidence is very divergent. However, having had the advantage of seeing, hearing and observing the demeanour of the witnesses, I found the Plaintiff to be a man of impeccable candour. He was sincere, calm, composed and unwavering in his evidence. Despite a few discrepancies in his evidence and that of Mr. Sweeting, their evidence corroborated in large measure.

[22] I therefore find that, on a balance of probabilities, the Plaintiff had discharged the burden of proving that he was wrongfully assaulted, unlawfully arrested and falsely imprisoned by two officers acting on the instructions of the First Defendant.

[23] Learned Counsel Ms. Newry submitted that since the evidence of the Plaintiff was not on all fours with that of his witness, the Court should not believe him. I am reminded that it is very rare that two witnesses who saw the same event will recall it in identical terms as each one of us have different powers of recollection and observation depending on our age, our intellect, our background and our calling in life. For example, you might find that a detective who is trained to make observations might have a better recollection than a simple onlooker. And so,

there are discrepancies or inconsistencies in the evidence. That being said, it does not mean that the witness or witnesses are not telling the truth.

[24] Ms. Newry also relied on the case of **Bernard Kenneth Bonamy II and Dwight Miller v Police Constable 3002 William Hunt et al** [2007/CLE/gen/00088] (unreported) – Judgment of Sir Michael Barnett. Sir Michael opined that the case is a troubling one. He was satisfied that an incident occurred on the morning in question involving the Plaintiffs and the police making no finding that it took place in the manner alleged, he was not satisfied that the Plaintiffs have proven that it was the First Defendant who assaulted them. At paragraph 13 of the judgment, Sir Michael said:

“On the one hand, the only persons who give evidence on behalf of the Plaintiffs as to the incident were the Plaintiffs themselves. Although there were other independent persons who should have been available to give evidence (Fowler and the security officer) they were not called. Their evidence could have assisted the court....”

[25] Sir Michael opined that no independent witnesses were called to testify although they were available, so he was not satisfied that the Plaintiffs had discharged the burden which rested on them that the First Defendant assaulted them that morning.

[26] In the present case, I am satisfied that the Plaintiff has discharged such burden. As I reiterated, the evidence of the Plaintiff is supported by the evidence of Mr. Sweeting. In addition, the Defence put forward by the Defendants is extremely tenuous. From the evidence adduced, I am satisfied that (i) police officers in police vehicles with flashing lights were present on the night in question at the Plaintiff’s home and (ii) the Plaintiff is not mistaken as to the identity of the First Defendant.

[27] On a balance of probabilities, I prefer the evidence adduced by the Plaintiff to that of the Defendants. That being said, I have to further satisfy myself that the

Plaintiff was wrongfully assaulted, unlawfully arrested and falsely imprisoned by two police officers acting on the instructions of the First Defendant.

Assault

[28] It cannot be disputed that placing a shotgun to one's forehead is an assault. In my opinion, this issue needs no further elucidation.

Wrongful arrest

[29] I turn to the next issue namely whether the Plaintiff was informed of the reason for his arrest either at the time of his arrest or as soon as practicable afterwards.

[30] The Defendants neither admit nor deny any knowledge of the incident.

[31] According to the Plaintiff, he was not told anything. Police officers kicked his door down, stormed into his residence and demanded that he lay down on the floor. He was too petrified to do otherwise. Later he was placed in handcuffs and escorted out of his house.

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

[33] Unquestionably, the law attaches superlative importance to the liberty of an individual. Indeed, that liberty is mirrored in the Constitution of this Commonwealth. It is the constitutional right of every citizen to know why he is being detained so that he will be in a position to know whether he is entitled to resist the arrest.

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

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

[35] It is axiomatic that the Plaintiff was wrongly arrested and he was never informed of the reason(s) for his arrest.

False imprisonment

[36] Another issue which confronts the Court is whether the Plaintiff was falsely imprisoned when he was handcuffed and deprived of his liberty as he alleged. Again, the Defendants did not admit or deny the allegation.

[37] False imprisonment is defined by *Clerk and Lindsell on Torts*, 17th ed. (1995) pp. 592-593, para 12-17 as “complete deprivation of liberty for any time, however short, without lawful cause.” The work then quotes the “*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 plaintiff’s 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 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.
- [41] All things considered, I am satisfied that that the Plaintiff was wrongfully assaulted, unlawfully arrested and falsely imprisoned by two police officers acting on the instructions of the First Defendant.
- [42] Having arrived at this conclusion, I will hear Counsel on quantum of damages on 1 November 2017 at 11.00 in the forenoon. In the interim, the parties are urged to settle this matter amicably.

Dated this 4th day of August, A.D. 2017

Indra H. Charles
Justice