

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION**

2008/CLE/gen/00379

BETWEEN

JERMAINE RAHMING

Plaintiff

AND

THE COMMISSIONER OF POLICE

First Defendant

THE ATTORNEY GENERAL

Second Defendant

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mr. Howard W. Thompson, Jr. with him Mr. Keevon Maynard for the Plaintiff
Mr. Keith Cargill and Mrs. Audley Bonamy of the Attorney General's Chambers for the Defendants

Hearing Dates: 4 July 2018, 5 July 2018, 12 December 2018, 4 June 2020

Personal Injuries – Was citizen's arrest lawful – Whether Plaintiff was lawfully cautioned and arrested - Whether use of force lawful and justified – Whether use of force excessive – Section 103 to be read in conjunction with other sections of Penal Code, Chapter 84 – Damages for personal injury – Exemplary damages – Costs

The Plaintiff alleges that the Defendants are liable in damages (including exemplary damages) for the personal injuries which he sustained on Sunday 29 April 2007 as result of being shot twice by a police officer in the purported performance of her duties as an officer of the Royal Bahamas Police Force and as a servant and/or agent of the First Defendant.

The Defendants allege that they are not liable and defended the action on the grounds that the Plaintiff was lawfully arrested and cautioned and that the force used was justified pursuant to section 103(1) of the Penal Code. They say that the Plaintiff was a fleeing felon and the law authorizes a police officer to even kill him.

HELD: finding that the Defendants are liable for the injuries sustained by the Plaintiff, the Court orders that damages be assessed. Compensation for exemplary damages is awarded in the sum of \$7,500. Costs to the Plaintiff in the amount of \$15,000.

1. On a balance of probabilities, the evidence adduced by the Plaintiff was more plausible than that of the police officer whose evidence, for the most part, was contradictory and equivocated. Notwithstanding, the Court accepted the evidence of the two other witnesses for the Defendants.
2. The purported citizen's arrest of the Plaintiff was lawful. The civilian, in his opinion, having observed a woman on the ground struggling with her pants partially down, and the Plaintiff either on top of her or in close proximity (since the witness gave conflicting accounts), reasonably suspected that a felony had been committed upon the woman.
3. When the Plaintiff was taken by the two civilians to the police station, he should have been re-arrested if the police officer was satisfied that there were reasonable grounds to suppose that the Plaintiff committed an offence: section 20(4) of the Criminal Procedure Code. The police officer did not caution or re-arrest the Plaintiff. She did not handcuff him as she was not equipped with a pair of handcuffs. In addition, she did not put him in a cell as, in those days, there was no cell at that police station. She left him at the front of the police station with the complainant but, in my opinion, the Plaintiff knew that he was being detained for the alleged commission of a sexual offence upon the woman.
4. While in police custody, the Plaintiff fled and, in the process, he was shot in his back and buttocks by the police officer. While the first shot may have been justified in the circumstances, there was no need to shoot a second time. The Plaintiff had fallen to the ground upon receiving the first shot. Even though the police officer stated that the Plaintiff was attempting to get off the ground and attempting to escape again, she was only a foot away from him. She could have restrained him by a less lethal means. She was not afraid of him. The second shot fired by the police officer was not justified and amounted to the use of excessive force.
5. While section 103(1) of the Penal Code provides that the use of force extending to death may be used in the arrest, detention and recapture of a fleeing felon, that section is archaic and appears to conflict with one of the fundamental principles of the Constitution namely the right to life. In my judgment, section 103(1) is diluted or mitigated by other provisions of the Code which specify for the use of reasonable force: sections 98 and 99 of the Penal Code applied. Therefore, a police officer or any person may not use excessive force in the arrest and detention of a person who has committed or suspected of committed a felony.

JUDGMENT

Charles J:

Introduction

[1] This is a claim for personal injuries. The Plaintiff (Mr. Rahming) alleges that he was unlawfully shot twice by Woman Police Constable 2024 Remona Burrows-Forde ("Officer Forde") on Sunday 29 April 2007. Mr. Rahming seeks damages for personal injuries, exemplary damages and costs.

[2] The nub of the Defendants' case is that Mr. Rahming was a "*fleeing felon*" and Officer Forde used justifiable force to prevent his escape. They rely on the provisions of section 103(1) of the Penal Code, Chapter 84. It is also the Defendants' position that Mr. Rahming was lawfully arrested by two citizens for attempted rape and was subsequently shot while attempting to flee from police custody.

[3] The Court is therefore tasked to determine liability and, if the Defendants are found to be liable, to order an assessment of damages.

The issues

[4] The following issues arise for consideration namely:

(i) Was the purported citizen's arrest of Mr. Rahming lawful?

(ii) Whether Mr. Rahming was lawfully arrested and detained at the police station by Officer Forde before he fled?

(iii) Whether the force used was excessive and;

(iv) Should damages as well as exemplary damages be awarded to Mr. Rahming in the circumstances?

Background facts

[5] Some of the background facts are not in dispute. To the extent that some may be, then what is stated must be taken as positive finding of facts which I made based on the evidence before me.

[6] Mr. Rahming is 44 years old. He is a resident of Bain Town, New Providence. On Sunday, 29 April 2007 sometime around 5:15 p.m., he had left his place of employment at the British Colonial Hilton Hotel located in Downtown Nassau with the intention of attending a FMN political rally at Arawak Cay later that evening. Mr. Rahming is a staunch supporter of that party and enjoys debating politics.

Around 9:45 p.m., while in the area of Western Esplanade and Junkanoo Beach, Mr. Rahming was approached by two civilians, Basil Sands and Alpheus Rolle, who accused him of the attempted rape of a deaf and mute woman, Mary Moxey. Mr. Rahming was physically abused by the two civilians, neither of whom actually witnessed Mr. Rahming in the act. They forcibly dragged him to the nearby Fort Charlotte Police Station. Ms. Moxey followed them to the police station. While at the police station, the civilians informed Officer Forde that Ms. Moxey communicated to them that Mr. Rahming attempted to rape her. The men then left.

[7] Mr. Rahming was livid that he was being alleged of attempting to rape Ms. Moxey. After all, he considered himself a law-abiding citizen. He has never had any brush with the law. So, he protested. He may have used expletives. He may have even given Officer Forde a fictitious name as she was writing down information pertaining to his identity. Officer Forde was the only officer on duty at the police station that evening.

[8] Mr. Rahming and Ms. Moxey were in the waiting area at the front of the police station. Mr. Rahming was not cautioned. He was not under arrest. He was not handcuffed or placed in a cell. In fact, Officer Forde was not equipped with a pair of handcuffs and, in those days, that police station did not have a cell. At some point in the investigation, Officer Forde asked Ms. Moxey for an explanation of what occurred. She uttered sounds and performed sign language to Officer Forde. She pointed to Mr. Rahming. He became fearful of going to Fox Hill Prison and as soon as Officer Forde turned around to answer the phone, he attempted to flee. In his attempt, Officer Forde shot him twice in the lower back and buttocks. He fell to the ground. Ambulance services arrived and transported him to Princess Margaret Hospital ("PMH") where he received medical treatment for the gunshot wounds. He was eventually released from the hospital on 14 May 2007.

[9] Mr. Rahming was subsequently arraigned before a Magistrate to answer two charges of (i) assaulting a police officer contrary to section 247 of the Penal Code, Chapter 84 and (ii) escape contrary to section 444(1) of the Penal Code, Chapter

84. He pleaded not guilty. After several adjournments, the charges were subsequently withdrawn by the prosecutor. Mr. Rahming was never charged with rape, attempted rape or any kindred offences.

The evidence

[10] Mr. Rahming testified on his own behalf. He did not call any witness (es). In his Witness Statement filed on 18 April 2018, he stated that he was employed as a fulltime space cleaner at the British Colonial Hilton Hotel and, on Sunday 29 April 2007, after completing his shift at about 5:15 p.m. he decided to stay in the downtown area because he wanted to attend the FNM political rally which was being held that evening at Arawak Cay. After having something to eat in Imperials restaurant (directly opposite the Hilton), he stopped to debate some political issues with a group of taxi drivers. He loves politics. He is a strong supporter of the FNM Party. He left and was walking along Long Wharf beach towards the direction of the rally at Arawak Cay when he was approached by two men in casual attire who shouted out “police” and ordered him to come to them. He stated that, after some hesitation, he walked over to the men who began accusing him of assaulting a woman. The men violently dragged him along the beach towards Ms. Moxey who pointed at him and began uttering sounds that he could not comprehend. Mr. Rahming said that the men slapped and punched him while dragging him across the street to the police station.

[11] While at the police station, the two men told Officer Forde that he assaulted Ms. Moxey. Ms. Moxey entered the station shortly thereafter pointing at him and uttering sounds. He said that it was at this point he realized that she was deaf and dumb. Mr. Rahming further stated that he told Officer Forde that they were falsely accusing him and, since the two men attacked and assaulted him, he would like to press charges against them. He also told her that he would like to see a doctor for the injuries which he suffered at the hands of the two civilians. He stated that Officer Forde started shouting at him and was using expletives. Mr. Rahming said that during the time at the police station he was not arrested, cautioned,

handcuffed or placed in a cell. The entire conversation with Officer Forde occurred in the waiting area at the front of the police station.

[12] Mr. Rahming stated that Officer Forde gave Ms. Moxey a piece of paper and a pen and told her to write down what happened. Officer Forde read it and asked Ms. Moxey if this is the man who raped her and she nodded her head affirmatively. He said that he immediately became fearful of going to prison for something he did not do and when Officer Forde turned around to answer the telephone he ran out of the police station toward the traffic light at the intersection of Nassau Street and West Bay Street. The last thing he remembered hearing was the sound of gun shots. He woke up several days later at the hospital. He was then informed that he was shot multiple times and needed surgery.

[13] Under cross-examination, Mr. Rahming struck me as a credible and honest witness although, at times, he became overwhelmed with emotions. He confirmed that the two men said they were police officers. He said that he willingly went to them. Mr. Rahming stated that he suffered with hernia problems since the age of thirteen. That explains for the permanent appearance of a bulge or an erection in his pants. He also confirmed that no one cautioned or told him that he was under arrest, and if he were cautioned, he would have complied. Under cross-examination, he stated that he was panicking for his life as he was taken advantage of. He was badly beaten. He had a bloody mouth.

[14] On behalf of the Defendants, three witnesses testified namely Basil Anthony Sands ("Mr. Sands"), Detective Sergeant 2324 Leon Rodgers ("Sgt. Rodgers") and Officer Forde.

[15] Mr. Sands was the first witness to take the witness stand. In his Witness Statement filed on 22 May 2018, he stated that he was a former police officer. He is now a taxi driver.

[16] He testified that on 30 (sic) April 2007, he was standing on the southern side of West Bay Street near the Old Mayfair Hotel waiting on someone when he saw Ms.

Moxey on the Northside walking in a westerly direction by the beach. He stated that *“suddenly he heard a muffling sound like someone was struggling”*. Being concerned, he went towards the direction of the sound. When he got to the area, he observed that a man had Ms. Moxey down on the sand. He was trying to undress her. She appeared to be struggling with the man. He further stated that he quickly approached the man and grabbed him in a headlock. He observed Ms. Moxey was on the ground with her pants partially down and the man appeared to have an erection. He shouted across the street for his friend, Alpheus Rolle, to come and assist him as the man was putting up a fight. They both took the man over to the police station across from the beach. Ms. Moxey accompanied them to the police station. She appeared to be very upset and agitated.

[17] Mr. Sands further stated that when they got to the station, they took the man inside and a female officer attended to the situation. They began explaining to the officer that they caught the man attempting to rape Ms. Moxey on the beach. He said that the officer then sat the man on a nearby bench in the reception area and she then went to use the telephone. It was at that point that he and Alpheus Rolle left the station. Mr. Sands said that a few minutes later he heard gunshots and ran back to see what happened. He noticed that the same man who they apprehended was lying in the street on his back motionless. Afterwards, the police and ambulance came and he left.

[18] Under cross-examination, Mr. Sands asserted that he was with the police force for two to three years. He confirmed that at the time of the incident neither him nor Alpheus Rolle were police officers. He admitted that he grabbed the man in a headlock. He also stated that he caught the man in the act. However, he gave a different account to the police a few days after the incident. In a statement, Mr. Sands stated as follows

“...the lady pointed towards two huts on the wharf. I looked in that direction and saw the figure of a human behind the hut close to the water. I called out to the man saying police. The man hesitated a while then he came out to me. I told the man that I suspected that he assaulted the woman and that I was making a citizen’s arrest. When I

grabbed the man, I saw that his shirt was unbutton (sic). I looked at his trousers and realised that the man had an erection as his groin was bulging.”

- [19] It took some time for Mr. Sands to agree that the statement which he gave to the police a few days after the alleged incident would have been fresher in his mind than what is contained in his witness statement which was made many years later. He agreed that there was no lighting on the beach but only a glare from the street light. When it was suggested to him that, at age 66, his eyesight may have been failing, he did not agree to that.
- [20] I found Mr. Sands to be an honest witness. I do not believe that Mr. Sands, an aged man, would go to the police station and fabricate a story against a man he did not even know. Years later, he attended court to tell his account. Although he was not consistent, one thing is clear: he was of the firm view that Ms. Moxey was sexually assaulted by Mr. Rahming.
- [21] The second witness to testify on behalf of the Defendants was Sgt. Rodgers. In his Witness Statement filed on 22 May 2018, he stated that he is a commercial pilot presently attached to the air support service care of the Royal Bahamas Police Force. He testified that he was formerly attached to the Central Detective Unit. On 11 May 2007 at about 1:30 p.m., Sgt. Rodgers received instructions to visit Mr. Rahming at the Male Orthopaedic Ward, PMH. He and ASP Neely proceeded to the hospital. He said that sometime around 2:15 p.m. while at the Male Orthopaedic Ward, he saw and spoke with Dr. McPhee who gave him permission to interview Mr. Rahming. He identified himself to Mr. Rahming and took a statement under caution from him. He asked Mr. Rahming a series of questions regarding the matter. Under caution, Mr. Rahming stated that he was at Arawak Cay by himself when two men approached him and told him that they were police officers but they did not show him any identification. They grabbed him by the throat and dragged him to the police station. Mr. Rahming further stated that, prior to the citizen's arrest, he was standing in the area of Long Wharf when a dumb-looking girl ran across the road and identified him as the man who attempted to

rape her. At the police station, he was asked by the female officer if he did anything to the deaf girl and he said that he was being falsely accused. The female officer then asked the girl if he did anything to her and she responded in the affirmative. Sgt. Rodgers said that Mr. Rahming told him that he was afraid so he ran out the station. He was shot in his back.

[22] Sgt. Rodgers struck me as a professional. He was calm and collected. He indicated that based on the information he received, Mr. Rahming was in custody for escape and robbery. He admitted that his record of interview was deficient in that it neglected to state the date and it indicated that Mr. Rahming was suspected of the offence of robbery and escape from Arawak Cay and not the police station itself. I accepted his evidence.

[23] The final witness to testify on behalf of the Defendants was Officer Forde. She confirmed that the contents of her Witness Statement filed on 22 May 2018 are true and correct. She is a police constable attached to the Paradise Island Police Station. On the night in question, she was the only officer on duty at the Fort Charlotte Police Station. She received a call from someone stating that he observed a man attempting to rape a woman. She asked the caller if he could see the man. The caller said yes and that two other men went to the scene to take the man away. The call abruptly ended.

[24] Officer Forde testified that shortly after the call she observed, through the police station window, three men and a female approaching the station. When they entered the station she asked if this was the male and female that the caller referred to. The two men replied affirmatively. Officer Forde asked the female to have a seat. She then went to retrieve some statement forms to record statements from the two witnesses who had arrested the suspect. She further stated that she questioned one of the men about what had happened. He told her that he came outside a nearby club to get a cigarette. He saw the lady who sells cakes coming down the beach. Then a man approached her. He heard a loud sound of distress. As a result, he and the other man who was also present at the station, went across

the street to see where the noise was coming from. When they got there, they saw the lady on the ground with her shirt up and bra exposed. The male suspect was on top of her and he was trying to undo the button of her pants. Officer Forde stated that one of the men went on to say that he and the other man took the suspect off the lady. They made a citizen's arrest and shouted to another man across the street to call the police.

[25] Officer Forde further stated that when they came to the station, she observed that the pants of the female were unbuttoned, the zipper was half-way down and her t-shirt had a tear on the sleeves. She observed sand on the clothes and bodies of the female and the suspect. She further stated that the two men gave their names and contact information then left. She then cautioned and arrested the suspect. She started to prepare a detention record in the suspect's name. She stated that the suspect gave her the name "Julian Ferguson". As she was writing, he proceeded into the recreation room. She told him that he could not be in that area. Officer Forde stated that Mr. Rahming looked at her and began running towards the door. He tripped and fell on top of Ms. Moxey who was seated in a chair. She came around the desk and approached them and tried to get him off her. Mr. Rahming pushed her (Officer Forde) in the chest. She stumbled against the wall. She hit her head and right shoulder. She then reached into her pants pocket to get the station key to lock the door. In doing so, Mr. Rahming struck her on her mouth and nose. She pushed him away and backwards into the desk. He then ran straight into her. It was at this point that he realized her firearm was in her right pocket. Officer Forde said that this is when he repeatedly tried to take the firearm out of her pocket. She stomped his foot and pushed his hand away as he went towards the door. She said that while taking her firearm out, she cautioned him to stop. He did not. She then fired a shot at him. He fell in the doorway. She approached him. He got up and tried to run again. She fired a second shot. He fell on the ground again and was not moving. She went back into the station and asked the female why she did not assist her. It was at that point she realised that the female was deaf and dumb. She then called Police Control and Arawak Cay Police

Station. Both phone lines were busy. Eventually, she received police and medical assistance.

[26] Under cross-examination, Officer Forde was inconsistent and equivocated quite a bit. When asked about the detention record that she started to fill out for Mr. Rahming, she simply stated that CDU took over. She confirmed that she cannot interpret sign language and Ms. Moxey only wrote her name on the piece of paper. She admitted that she shot Mr. Rahming because he assaulted her and she was protecting herself and Ms. Moxey. She also admitted that she was unaware that Mr. Rahming was charged in the Magistrate Court with assaulting a police officer and escape but not rape or attempted rape. She stated that she received significant injuries but did not see a doctor until the following Monday. She did not produce any documentary evidence to that effect.

[27] Under cross-examination, Officer Forde stated that she was about a foot away from Mr. Rahming when she shot him. She expressed remorse for shooting Mr. Rahming.

[28] It is always a difficult task for a judge to determine who is telling the truth when the evidence is diametrically opposite. However, I had the advantage of seeing, hearing and observing the demeanour of the witnesses and, on a balance of probabilities, I preferred Mr. Rahming's evidence to that of Officer Forde. I found certain aspects of her evidence to be inconsistent and incapable of belief, for example, the purported struggle between her and Mr. Rahming and the injuries she sustained at the hands of Mr. Rahming. One would have expected her to produce a medical report to substantiate her assertion. Then, she said that she was in the process of preparing a detention record for Julian Ferguson, the name that Mr. Rahming allegedly gave her. That too might have assisted the Court. In my opinion, Officer Forde appeared nonchalant.

[29] That said, I do believe that even though she did not formally caution and arrest Mr. Rahming, he knew that he was being detained for allegedly committing a felony

upon Ms. Moxey. He did not want to go to prison so as soon as Officer Forde diverted her attention, he decided that was an opportune time to flee. Mr. Rahming should never have done so.

Discussion

Issue 1: Was the purported citizen's arrest of the Plaintiff lawful?

[30] Part III of the Criminal Procedure Code, Ch. 91 deals with the general provisions relating to arrest. Section 20 deals with a citizen's arrest. It provides as follows:

"20. (1) Any person may arrest without a warrant a person who in his view commits a felony, or whom he reasonably suspects of having committed a felony provided that a felony has been committed. Any peace officer and any other person whom he may call to his assistance may also arrest without a warrant any person in the circumstances provided for in paragraphs (a) to (e) of subsection (1) of section 104 of the Penal Code.

(2)

(3) Any person arresting a person under the powers conferred by subsection (1) and (2) of this section, or under any powers under any law conferring powers of arrest upon persons other than a peace officer, shall without unnecessary delay make over the person so arrested to a peace officer or bring him before a magistrate."

[31] Section 11 of the said Code states:

"(1) In making an arrest the peace officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If the person be arrested forcibly resists the endeavour to arrest him or attempts to evade the arrest, the peace officer or other person concerned may use all means necessary to effect the arrest:

Provided that nothing in this section contained shall be deemed to justify the use of greater force than was reasonable in the particular circumstances in which it was employed or was necessary for the apprehension of the offender".

[32] As stated earlier, I found Mr. Sands to be a credible witness despite the inconsistencies in his evidence. I believed him when he said that he heard a muffling sound, headed in the direction of that sound and saw Ms. Moxey on the ground struggling, her pants were partially down. Mr. Rahming appeared to have been the only person in the vicinity. Mr. Sands sought immediate assistance from his friend Alpheus Rolle and they both took Mr. Rahming to the police station.

[33] Mr. Sands gave conflicting evidence as to whether Mr. Rahming was caught *in flagrante delicto* but, in my opinion, nothing much turned on that. He was absolutely certain that a sexual act was committed or about to be committed on Ms. Moxey. Therefore, he was justified to effect a citizen's arrest because, in his view, he reasonably suspected Mr. Rahming of having committed a felony i.e. rape or attempted rape.

Issues 2 and 3: Whether the Plaintiff was lawfully arrested and detained by the police officer before he attempted to flee and whether the force used was excessive?

[34] Issues 2 and 3 are subsumed under this sub-heading. To reiterate some facts, Mr. Rahming was taken to the nearby police station by two civilians. Ms. Moxey ambled in shortly thereafter. The two men gave brief statements and left. Mr. Rahming and Ms. Moxey were in the waiting room at the front of the police station. Mr. Rahming was not formally arrested, cautioned, handcuffed or placed in a cell. However, Officer Forde was in the process of establishing his identity and preparing a detention record for him. Mr. Rahming suspected that Officer Forde was the only officer on duty that evening. She turned around to use the telephone and he decided to flee.

[35] Section 20(4) states:

“If any arrested person referred to in this section is brought before a peace officer and the peace officer is satisfied that there are grounds to suppose that he has committed an offence for which he may be arrested without a warrant, he shall re-arrest him, or if there is reason to believe that he has committed another offence, he shall be dealt

with as if he had committed such other offence in the view of the peace officer concerned.” [Emphasis added]

[36] Then, section 22 provides:

“If a person in lawful custody escapes or is rescued, the person from whose custody he escapes or is rescued may immediately pursue and arrest him in any place in The Bahamas and may require any peace officer to assist him in so doing, and the provisions of sections 12 and 13 of this Code shall apply to action taken under the provisions of this section although such action is not taken under the authority of a warrant.”

[37] In my judgment, Officer Forde did not re-arrest Mr. Rahming. Indeed, she did not have time to do so. I also do not believe that Officer Forde contemplated that Mr. Rahming was going to attempt to flee.

[38] Learned Counsel for the Defendants, Mr. Cargill argued that Officer Forde used force that was reasonable and necessary for the re-capture of Mr. Rahming who was a suspect in police custody.

[39] Mr. Cargill relied on section 103 of the Penal Code, Chapter 84 which provides for the use of force in the arrest, detention or recapture of a felon. Section 103(1) states:

“Any person may, with or without warrant or other legal process, arrest and detain another person who has committed a felony, and may, if the other person, having notice or believing that he is accused of felony, avoids arrest by resistance or flight or escapes or endeavours to escape from custody, use any force which is necessary for his arrest, detention or recapture, and may kill him, if he cannot by any means otherwise be arrested, detained or re-taken.”[Emphasis added]

[40] Mr. Cargill also relied on sections 11 and 22 of the Criminal Procedure Code (supra) to justify the actions of Officer Forde. He submitted that Officer Forde’s actions were lawful and not unconstitutional.

[41] Learned Counsel Mr. Thompson argued that even if Mr. Rahming was properly cautioned and arrested (which he did not admit), Officer Forde used more force

than was necessary in the circumstances. He quoted from various provisions of the Code of Criminal Procedure as well as the following extract of **Halsbury's Laws of England 3rd Ed. Vol. 38** page 764:

“1264. Use of force. An assault committed in defence of person or property, or in the lawful punishment or arrest of another is not justified if more force is used that is reasonably necessary. If more force is used than is reasonably necessary, the person who uses excessive force is liable for an assault.” [Emphasis added]

- [42] Mr. Thompson contended that Mr. Rahming cannot be classified as a fleeing felon because he was not cautioned, arrested and charged for any offence. Under section 103(1), it appears that if you are suspected of committing a crime and you attempt to escape, you are deemed a “fleeing felon.”
- [43] Further, on the basis of section 103, Officer Forde could have used any force which was necessary for Mr. Rahming’s arrest, detention or recapture and may even kill him. Undoubtedly, section 103 has its genesis in the old common law rule which allows for the use of deadly force in apprehending felons. However, the old common law rule has been denounced and reformed in some jurisdictions including England.
- [44] While it is desirable that all suspected offenders surrender or be apprehended so that they may face justice, section 103(1) appears to be in conflict with one of the fundamental principles of our Constitution, namely the right to life. A question that could be asked is how could one justify the use of deadly force to apprehend an unarmed non-violent felon?
- [45] While this archaic law still exists in our statute books, I believe that it is diluted or mitigated by other provisions of the Code. For instance, section 98 of the Penal Code prescribes some grounds on which force or harm may be justified within prescribed limits. One such ground is the authority to arrest and detain for felony.
- [46] Next, section 99 reads:

“Notwithstanding the existence of any matter of justification for force, force cannot be justified as having been used in pursuance of this matter –

(1) which is in excess of the limits hereinafter prescribed in the section of this Title relating to that matter;

(2) which in any case extends beyond the amount and kind of force reasonably necessary for the purpose for which force is permitted to be used.”

[47] In my judgment, section 103(1) ought to be read conjunctively with the other provisions of the Penal Code (supra). My interpretation of section 103(1) is that while an officer may use force to apprehend a fleeing felon, he or she must use reasonable force in the circumstances.

[48] Notwithstanding, section 103(1) goes on to state “if he cannot by any means otherwise be arrested, detained or re-captured.”

[49] In shooting Mr. Rahming in his back and buttocks, this is what Officer Forde stated at paragraph 9 of her witness statement:

“I fired a shot at him, and he fell in the doorway. As I approached him, he got up and tried to run again. I fired a second shot and he fell to the ground again. I noticed that he was not moving, so I turned and went back into the station.”

[50] Under cross-examination, she stated that she was about a foot away from him when she fired the shots. It seems to me that while Officer Forde might have been justified in firing the first shot at Mr. Rahming to prevent him from fleeing, there appears to be no justification for firing a second shot. He had already fallen to the ground. Even in trying to get up and attempting to flee again, as a trained police officer, she should have been able to recapture him. She was only a hand-reach away from him. She also said that she was not afraid of him.

[51] In my considered opinion, Officer Forde used more force than was necessary when she fired that second shot. Unless I am wrong, my understanding is that police officers are trained to shoot at the feet if a suspect is fleeing.

[52] Mr. Rahming has suffered grave injuries at the hands of Officer Forde and, as such, he should be compensated in damages.

Issue 4: Should exemplary damages be awarded to the Plaintiff in the circumstances?

[53] Another issue arises with respect to whether the Court should award exemplary damages to Mr. Rahming. Learned Counsel Mr. Thompson argued that after his release from hospital, the police persisted in their wrong doing by failing or refusing to deliver a suitable apology to Mr. Rahming so as to restore any public credibility and personal integrity that such wrong-doing compromised.

[54] Mr. Rahming was never arrested and charged with rape, attempted rape, indecent assault or any similar offences. He was charged with assaulting a police and escape. Mr. Rahming had to attend court on all of these occasions. After several adjournments, the charges were subsequently withdrawn and dismissed. I will make an award of \$7,500.00

Conclusion

[55] In the premises, I find that the Defendants are liable in damages for the injuries suffered by Mr. Rahming. I will assess damages on Thursday, 17 September 2020 at 11.00 a.m. Mr. Rahming will file and serve any evidence upon which he intends to rely by 30 June 2020. The Defendants will file and serve any evidence that they wish to rely upon by 30 July 2020. Written submissions are to be emailed to the Court and exchange between Counsel by 10 September 2020.

[56] Mr. Rahming is the successful party in the action. He is entitled to costs. Mr. Thompson was prepared to accept costs of \$15,000 which I consider to be reasonable. I will make that award.

Postscript

[57] Coincidentally, this Judgment is being delivered at a time of worldwide protests, riots and looting sparked by the unfortunate death of an unarmed American man called George Floyd. The world condemns police brutality especially of unarmed

persons. Our police force must guard itself against similar criticisms by the public. To pull a trigger especially on an unarmed individual ought to be a measure of last resort. A cardinal principle of our Constitution is that a man is presumed to be innocent until and unless a jury finds him otherwise. The fact that a citizen's arrest was made does not automatically prove guilt. Noteworthy, to date, Mr. Rahming has not been prosecuted for rape, attempted rape and any kindred offences.

Dated this 8th day of June, A.D., 2020

**Indra H. Charles
Justice**