

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT**

**COMMON LAW AND EQUITY DIVISION
2018/CLE/gen/00212**

BETWEEN

D'ESTHER FOX

Plaintiff

AND

MINISTRY OF LABOUR

First Defendant

AND

PARLIAMENTARY REGISTRATION DEPARTMENT

Second Defendant

AND

THE ATTORNEY GENERAL

Third Defendant

Before: The Hon. Madam Justice G. Diane Stewart

**Appearances: Mr. Nathan Smith for the Plaintiff
Mr. Rashied Edgecome and Kirkland Mackey for the Defendants**

Judgment Date: 13th May, 2022

JUDGMENT

1. By a Specially Endorsed Writ of Summons filed the 28th February 2018, the Plaintiff, Ms. D'Esther Fox (**the "Plaintiff"**) seeks general and special damages from the Defendants for their alleged negligence and breach of statutory duty as a result of their failure to ensure that her work environment was sufficiently safe and secure, with the presence of security for the duration of her scheduled work hours.
2. Her action was commenced as a result of being robbed while she was seconded to the Parliamentary Registration Department (**the "Department"**), where she assisted with voter registration during the 2017 election cycle. The Plaintiff, who is employed as a Price Inspector with the Consumer Affairs Division in the Ministry of Labor was stationed at St. Barnabus Church (**the "Church"**) on the 21st March 2017, when at 8:00 p.m., she heard a car horn blowing outside. Assuming it was her ride that had come to collect her, she opened the door, only to be met with a gun pointed in her face by a man who had demanded that she give him all of her money.

3. The Plaintiff claimed that the gunman entered the Church, demanded that she lay face down and robbed other individuals who were present. There were no police officers present as she claimed that the police officer who was posted at the Church had left prematurely between 2:30 p.m. and 3:00 p.m., for the second day in a row.
4. As a result of the incident, she was diagnosed with Post Traumatic Stress Disorder and suffered from extreme physical reactions to memories of the event, difficulty sleeping, irritability and lack of concentration, depression, feelings of hopelessness and suicidal thoughts, emotional detachment, loss of interest in formerly engaging activities, headaches, stomach problems and chest pain. She claimed that she would more than likely be required to undergo treatment for a year to eighteen months.
5. The Defendants admitted that the Plaintiff was working for the Department on the 21st March 2017 and that the scheduled time for work was between the hours of 9:00 a.m. to 8:00 p.m. They claim that the time the Plaintiff allegedly heard the horn blowing was well after 8:00 p.m., after the shift had ended and the scheduled bus had collected the box of voters' cards.
6. As a result, they claim that the Plaintiff was not carrying out work as instructed by her job description when the incident occurred, further that the police and defence force officers were detailed to work while voter's cards were being distributed. They denied that the Plaintiff was entitled to the relief claimed.

ISSUES

7. Whether the Defendants breached their statutory duty of care pursuant to s. 4 of the Health and Safety at Work Act?
8. Whether the Defendants negligence resulted in the armed robbery of the Plaintiff?

EVIDENCE

PLAINTIFF'S EVIDENCE

9. The Plaintiff averred that on the night of the Incident, she locked the screen door of the Church and left the solid door open. She then went by a table to use the phone to contact her ride. Minutes later she heard a horn blow and when she went outside she was immediately greeted with a handgun pointed directly in her face. She described the gunman as wearing a blue cap with the letter "A" on it, a coral shirt and blue ripped jeans with an aqua towel over his mouth and nose.
10. The gunman shouted to her and the other staff members, "This is a holdup! Give me all your money!" This caused the Plaintiff, her coworker Typhany Clarke ("**Ms. Clarke**") and other staff to retreat to the rear of the room. The gunman then instructed everyone to lie on the floor and put their heads down. A few of the staff told the gunman that they did not have any money and she noticed that Ms. Clarke had huddled under a table beside her and had called 911.
11. This led to the gunman asking who was on the phone. He then told them "sorry I had to do this but I really need this money" as he left the Church. Once he left they locked both of the Church doors behind him. The Parliamentary Registrar was called and informed of

what had occurred however, when persons for that department arrived they did not open the Church doors for them until the police arrived.

12. When the police officers arrived, they asked them if they were alright and asked where the officer was who should have been stationed there. She told them that both the police officer and the defence force officer had left for the day around 2:30 p.m. without any relief to continue the shift. The Plaintiff explained that shortly after the incident she discovered that she was pregnant however, a month later she suffered a miscarriage.
13. The Plaintiff exclaimed that since the Incident, she experienced a lot of mental stress, suffered from insomnia and on the rare occasion that she fell asleep, she was often awakened by recurring nightmares. She consequently sought professional help from Dr. Timothy Barrett ("**Dr. Barrett**") and Dr. Kathryn Higgs. The Plaintiff added that she struggled to enjoy going out with her family as she had feared that she would be robbed again.
14. During cross-examination, the Plaintiff averred that when the incident occurred they had finished work and that the bus which collected the voters cards had already left the Church. There was no scheduled time for the bus to collect them. She was unsure of whether she provided any document in relation to her pregnancy and subsequent miscarriage to her Counsel.
15. She was able to return to work at the Ministry of Labour in May 2017. While she was unable to properly function, she was a single mother with three children and had to put her feelings aside in order to work but she also went to therapy. She was depressed because she had miscarried. As far as she was aware, provision had been made for security. At times there were defence force officers present. The Plaintiff had never been a victim of crime before.
16. During re-examination, the Plaintiff stated that she had missed a lot of days from work because she was physically sick. During further cross examination, the Plaintiff testified that she found out she was pregnant about two months after the Incident, around the same time that she miscarried.
17. Dr. Barrett, a Consultant Psychiatrist ("**Dr. Barrett**"), averred that on the 31st May 2017, he clinically interviewed the Plaintiff for a psychiatric evaluation. During her visit he was informed of the incident and had concluded that the Plaintiff met the criteria for Post-Traumatic Stress Disorder ("**PTSD**"). He explained that her symptoms manifested and worsened as a result of emotional trauma experienced.
18. Dr. Barrett, testified that he appreciated that his letter would likely be used for the purpose of litigation and that he gave details which he thought were pertinent and clear. When a patient visited him, there were several steps that would be taken in order to arrive at a conclusion. He would consider the reason for the referral, who gave the referral and why the person was being referred. He would refer to a specific manual to ensure that a recognized diagnosis was given.
19. A diagnosis of post-traumatic stress was purely subjective however, while the person could have suffered trauma it did not have to be as a result of traumatic incident. He agreed that women who suffered miscarriages could suffer from PTSD. He did not have to know all of the possible causes because he only had to be aware of the symptoms which are related to the timing of what is being complained of. He would have to be

aware of all the symptoms being experienced in order to conclude that there was more than one cause but he could not go outside the boundaries of what he knew.

20. Dr. Barrett could not recall if the Plaintiff had informed him that she had just suffered a miscarriage prior to her visit with him. However, a miscarriage would have exacerbated the symptoms described by the Plaintiff and would not have been a cause of them. He was not aware that she was suffering from depression as a result of the miscarriage. He saw the Plaintiff a total of eight times in 2017, five times in 2018 and twice in 2019.
21. Dr. Barrett explained pharmacal therapy as the giving of an antidepressant when treating PTSD and added that the Plaintiff received this same. Depending on how the PTSD symptoms manifested, the quality of life and daily routine could be impacted. He explained that there were common symptoms of PTSD and that the groupings were avoidance, hyperarousal, hypervigilance, nightmares and flashbacks. The symptoms varied from person to person.
22. To assess the Plaintiff, Dr. Barrett used a description of the traumatic event and what was going through her mind at the time of the traumatic event because that was key as the psychological trauma would take place when she felt like her life was threatened and she was helpless to do anything about it. Dr. Barrett explained that the Plaintiff saying that her life flashed before her when she was accosted with the gun, correlated to the trauma. In her case, the PTSD symptoms led to flashbacks, hypervigilance, avoidance and helplessness.
23. Dr. Barrett explained that an anti-depressant would be prescribed for a six month period. At the end of that period, there would be an assessment to see how effective it was. This was the course of treatment for the Plaintiff who only needed one pharmacological agent as there was gradual improvement overtime. She was advised to take one of the prescribed medications for a year and the other prescribed medication was given for her continued use as a result of her hypervigilance and anxiety.
24. Ms. Isadelle Howells, a retired Deputy Permanent Secretary ("**Ms. Howells**"), averred that she was seconded to the Department to assist with the voters card process for the 2017 general election and that she was in charge of staffing all stations, including the Church. She stated that when the registration process first began, there were no officers present at the Church. After expressing her concern about the staff's safety, police officers were provided and stationed at all locations.
25. The police officers' duties outside of normal police work, were to safeguard the staff as well as the voters cards and relevant equipment. It was the practice of the police officers to remain with the staff from the opening to the closing of the stations. During her visits, she discovered that all of the officers would sit inside with the staff instead of outside to secure the area. Their duty was to secure the premises until the voters cards and all employees had left the stations.
26. During cross-examination, Ms. Howells testified that if registrants came at the end of the day they would allow them to register as the time to register was coming to an end. She said that there had been no armed robberies during the previous five election cycles. The only activity that occurred at the stations was the registration of voters. The purpose of the police officers was to control the crowd and to ensure the safety and

integrity of the voters' cards. Ms. Howells could not speak to what occurred at the Church as she would only visit periodically to ensure that everything was in order.

27. The stations were scheduled to be opened for 9:00 a.m. to 5:00 p.m. initially but later to election time the hours were extended to 8:00 p.m. Once the voters' cards left the stations, the duties of the workers ended.
28. Ms. Typhany Clarke averred that on the 21st March 2017, she was seconded to assist the Parliamentary Registrar with the registration and distribution of voters cards ("**Ms. Clarke**"). Ms. Emily Jolly was the Revising Officer ("**Ms. Jolly**") and she was assigned to her team. Between 2:30 p.m. and 3:00 p.m., the female officer left for the day. The officers would consistently leave early which meant that they would not have security after 6:00 p.m.
29. Ms. Clarke added that they would remain at the Church after 9:00 p.m. on a nightly basis, to assist with the increased demand for voters cards as the deadline for registration and issuance was fast approaching. At approximately 8:10 p.m., a masked man entered the Church while holding the Plaintiff with a gun to her head. He shouted "This is a holdup! Give me all your money!" In response, she and her other co-workers retreated to the rear of the room.
30. The gunman then instructed everyone to lie down on the floor and put their heads down. He then approached two of the staff and again demanded money. Ms. Clarke called 911 which prompted the gunman to question who was on the phone.
31. During cross-examination, Ms. Clarke averred that after the voters' cards were collected they would have to ensure that the registration stamp was secured. The registration stamp was heavy which meant that they would have to assist Ms. Jolly with securing it. There was no other work to do thereafter.
32. The work hours were from 9:00 a.m. to 9:00 p.m. Ms. Clarke agreed that before the incident there were police officers present and that to her knowledge provision had been made for them to be there.
33. During re-examination, Ms. Clarke averred that if registrants came to the Church after 9:00 p.m., they could not turn them away as they had to be registered. The police officer and defence force officer who were both present that day had left at 3:00 p.m.

DEFENDANT'S EVIDENCE

34. Superintendent Roderick McKenzie of the Royal Bahamas Police Force ("**Spt. McKenzie**") averred that he along with Assistant Superintendent Bradley Pratt ("**Spt. Pratt**"), were instructed by then Assistant Commissioner of Police, Mr. Stephen Dean ("**ACP Dean**"), to provide an officer to work at the Church in two shifts; 8:00 a.m. to 4:00 p.m. and 4:00 p.m. until the close of registration and the collection of the voters cards.
35. On the 21st March 2017, he received a phone call from ACP Dean, who informed him that there had been an armed robbery at the Church around 9:00 p.m. He further stated that when the armed robbery occurred, there was no police officer present.

36. During cross examination Spt. McKenzie averred that he attended at the Church after the robbery. The officers assigned were responsible for the security of both the voters cards and the staff. This duty would exist until the operation closed and the patrons and staff left safely. If he were the officer assigned he would ensure that the same occurred and would also expect the same of any other officer.
37. He was responsible for overseeing the 8:00 to 4:00 p.m. shift. He added that he could not give an account of what happened thereafter although it was his understanding that there was no officer present.
38. During re-examination, Spt. McKenzie testified that it would be mandatory for the officer to stay until everyone left the premises as he would have been required to remain there until everything was secured. An officer was not supposed to leave his post until he was properly relieved. If his duty ended and everything was secured then he would be able to leave. He explained that 4:00 p.m. until meant that the officer was assigned to work from 4:00 p.m. until everything was completed.
39. Both he and Spt. Pratt were responsible for the shifts and ensuring that they were covered. He was called because ACP Dean was unsure of who was responsible for which shift. He was able to clarify that his shift had been covered but both of them visited to scene. The duty of the police officers was to be present as security and to prevent anything from happening as their presence alone was preventative.
40. Closing meant any time after 8:00 or 9:00 p.m., depending on how registration was going on that particular day. He told his staff to remain at the Church until everything closed, the cards were collected and the building was closed and all staff had left.
41. There was a distinction between the close of the Church itself and the staff leaving the location. If the government work was complete, namely if all of the voters cards and everything else had been collected, then the police officers' duty was complete. The police officer would not necessarily have to wait until every staff member left the building as that was not his responsibility.
42. Geoffrey McPhee, was seconded to the Department as the Assistant to the Parliamentary Commissioner ("**Mr. McPhee**"). On the 21st March 2017, he was in election operations at the time of the Incident. He stated that 8:00 p.m. was the latest that a voter could arrive at the Church and expect to be issued with their card. After the distribution of voters cards stopped for the night, a bus would collect them shortly after 8:00 p.m. and transport them to the Department.
43. After their collection, the staff had no duties requiring that they remain there and it was usual for staff to pack up or to leave around 8:00 p.m. At most of the distribution centers, the care taker or security person associated with the building would start the closing up process. The police force had a designated officer assigned to each distribution center to protect the voters cards and staff.
44. During cross examination, Mr. McPhee testified that he did not receive any training when seconded to the Department but there was a detailed list of his duties which had been given to him. He was responsible for the preparation of facilities for the advanced poll and general elections from January 2017 to May 2017. On the date of the incident, he was performing those duties as he was at the Department looking through the files to

ascertain whether there were any individuals who may have inadvertently been registered more than once.

45. The normal hours for the distribution of voters' cards were 9:00 a.m. to 8:00 p.m. and that the police force was designated to be responsible for the protection of the voters cards and the staff of the Department. There were about three to four people stationed at the church but he was not responsible for choosing those people.
46. Mr. McPhee drove the bus which collected the voters cards and he would usually get there by 8:30 p.m. When he arrived at that time, the staff would usually be packed up and ready to leave. On the night of the Incident, he did not collect the voters cards from the Church.
47. During re-examination, Mr. McPhee averred that voters cards were very important documents which was the reason for having police officers on duty to protect them. The police officers were to protect the staff by ensuring that no one entered who was not there to pick up a voters card. It was an indication that they were finished with work when the staff would have the boxes stacked on top of each other in order for them to be placed in the bus.
48. In addition to ensuring that no voter registered twice, he would be asked to perform other tasks things. On the day of the Incident, he was instructed to go to the Church after being informed that the staff had been robbed. He was also generally responsible for giving the staff their instructions on what they should do.

SUBMISSIONS

PLAINTIFF'S SUBMISSIONS

49. The Plaintiff considered the the Defendant's statutory duty and their common law duty of care together. She submitted that to establish negligence, it must first be shown that there is a duty of care owed by a defendant to a plaintiff and that there was a breach of that duty which resulted in the Plaintiff suffering damage. It must also be shown that the injury sustained was reasonably foreseeable.
50. In order for a duty of care to exist, there must be a relationship of proximity between the plaintiff and the defendant. She submitted that there was proximity between herself and the Defendants as she was their employee. In the circumstances, she submits that a duty of care is owed to her, grounded in both the common law and statute.
51. The statutory duty was established in s. 4 of the **Health and Safety of Work Act** which provides:-

"4. (1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.

(2) Without prejudice to the generality of an employer's duty under subsection (1) the matters to which that duty extends include in particular —

(a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;

(b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;

(c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees;

(d) so far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;

(e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work."

52. At common law, the Defendants' duty was to use reasonable care to ensure her safety during the course of her employment which involved an assessment of what risks were foreseeable. Such assessment would involve a consideration of the Defendants' conduct, in order to form a view as to whether there was something which reasonably ought to have been done and which was not done; the absence of which resulted in injury to the Plaintiff.

53. The Plaintiff relied on **Patrice McKenzie v Kerzner International Bahamas Limited SCCivApp & CAIS No. 271 of 2013** where the Court of Appeal examined and detailed what constitutes an employer's negligence in failing to maintain both a safe system of work and a safe place of work. Allen P delivered the judgement of the Court and held:-

24. An employer's duty to maintain a safe system of work was also explained by the House of Lords in the case of **General Cleaning Contractor's Ltd. v Christmas [1953] AC 180**. In that case the respondent plaintiff, an employee of the appellant defendant was injured in the course of his employment. The issue to be decided by the House was whether the appellant had breached its duty to maintain a safe system of work. Lord Reid, at page 193, said the following:

"The question then is whether it is the duty of the appellants to instruct their servants what precautions they ought to take and to take reasonable steps to see that those instructions are carried out...the danger in this case is one which is constantly found, and it calls for a system to meet it. Where a practice of ignoring an obvious danger has grown up I do not think that it is reasonable to expect an individual workman to take the initiative in devising and using precautions. It is the duty of the employer to consider the situation, to devise a suitable system, to instruct his men what they must do and to supply any implements that may be required...No doubt he cannot be certain that his men will do as they are told when they are working alone. But if he does all that is reasonable to ensure that his safety system is operated he will have done what he is bound to do.

25. Lord Tucker, in the aforementioned case, at page 195, further explained the duty of an employer by stating the following:

"Their only duty is to take reasonable steps to provide a system which will be reasonably safe, having regard to the dangers necessarily inherent in the operation. In deciding what is reasonable, long established practice in the trade, although not necessarily conclusive, is generally regarded as strong evidence in support of reasonableness."

26. Notwithstanding that the case of **Sutherland v Hatton [2002] EWCA Civ 76** was a case involving the issue of employer's liability in relation to psychiatric illness, Hale LJ said the following in relation to an employer's liability:

"Liability in negligence depends upon three inter-related requirements: the existence of a duty to take care; a failure to take the care which can reasonably be expected in the circumstances; and damage suffered as a

result of that failure. These elements do not exist in separate compartments: the existence of the duty, for example, depends upon the type of harm suffered. Foreseeability of what might happen if care is not taken is relevant at each stage of the enquiry...All employers have a duty to take reasonable care for the safety of their employees: to see that reasonable care is taken to provide them with a safe place of work, safe tools and 9 equipment, and a safe system of working: see *Wilson & Clyde Coal Co Ltd v English* [1938] AC 57. ”

- 54. The Plaintiff contended that it was the Defendants' evidence which established that the employees work duties were dynamic in nature and the employees consistently remained at the station past 9:00 p.m., yet no police officer was present during the time of the armed robbery when it was an officer's duty to protect both the voters' cards as well as the employees.
- 55. It was also the Defendants' evidence that the voters' cards were very valuable which meant foreseeable risk to the employees and without a police officer present, there was a viable risk that an armed robbery would likely take place.
- 56. As a result, a reasonable prudent police officer should have remained present until every employee and patron safely left the premises as they were instructed to do. The Plaintiff also highlighted the Defendants' evidence that police officers would remain at their respective stations past 9:00 p.m. Accordingly, it was only reasonable to conclude that security would be present during the date and time of the robbery.
- 57. The Plaintiff cited **Bradford v Robinson Rentals Ltd [1963] 1 ALL ER** where Lord Jenkins stated:

**“It is true that the duty of care expected in cases of this sort is confined to reasonably foreseeable dangers, but it does not necessarily follow that liability is escaped because the danger actually materializing is not identical with the danger reasonably foreseen and guarded against. Each case much depends on its own particular facts.....
In order to establish a coherent chain of causation it is not necessary that the precise details leading up to the accident should have been reasonably foreseeable: it is sufficient if the accident which occurred is of a type which should have been foreseeable by a reasonably careful person.”**

- 58. The Plaintiff contended that the Defendants ought to have foreseen the incident and was obliged to take certain steps to minimize or avoid it as a reasonable and prudent employer would have. She also submitted that the Defendants failed to provide a safe work environment and or system of work as was their duty. Their failure to do so, was a failure to discharge their duty of care which led to the armed robbery occurring and the injury sustained as a result.

DEFENDANTS SUBMISSIONS

- 59. The Defendants' submitted that there was no general duty by the employer to provide security in the work place by statute or at common law. Specifically, there was no duty of care owed by the Defendants to prevent the injuries to the Plaintiff by providing security. They alternatively submitted that on the grounds of public policy, the Defendants could not be held liable for the injuries to the Plaintiff. Additionally the pleaded facts were

insufficient to establish causation on the part of the Defendants for the injuries to the Plaintiff.

60. The Defendants considered s. 4 of the Health and Safety at Work and contended that the provision of security in the work place was not listed as a particular duty. They relied on **Sturup v Resorts International (Bahamas) 1984 Ltd. [1991] BHS J No 103** where Hall J stated:

“The mere fact than an injury – even a serious injury – is sustained by a person on the premises of another does not, without more, establish negligence. Even in the work place, in my judgment, an employer would have to be in breach of his common law or statutory duty or there would have to be some unusual dangers (as in Jennings v Cole [1949] 2 ALL ER 191) to ground liability for injuries so received.”

61. They contended that the spirit of the Act espoused the idea that the health, safety and welfare of employees are matters defined having regard to the nature of the employment. They relied on the definition of system of work as defined by Lord Greene MR in **Speed v Thomas Swift and Co Ltd [1943] KB 557**:

“the physical layout of the job; the setting of the stage so to speak; the sequence in which the work is to be carried out; the provision in proper cases of warnings and notices, and the issue for special instructions. A system may be adequate for the whole course of the job, or it may have to be modified or improved to meet the circumstances which arise.”

62. The Defendants contended that the Plaintiff's job was simply to issue voters cards. As there was no handling of cash, there could be no anticipation of contentious behavior. In the circumstances, the police officers were asked to assist with a view to ensuring the integrity of the process. Additionally, no person could collect a voter's card after 8:00 p.m. Thereafter, there was no further contact by the Plaintiff with the public. As a result, the injuries were not sustained by the Plaintiff during the course of her employment.

63. There was no general duty to prevent a third party from causing harm to another. Further, the peculiar position / duties of the police must be considered when examining their potential liability in tort generally. They cited several authorities in support of this.

64. In **Dorset Yacht Co. Ltd v. Home Office [1970] AC 1004, 1070** Lord Diplock held:

“The risk of sustaining damage from the tortious acts of criminals is shared by the public at large. It has never been recognized at common law as giving rise to any cause of action against anyone but the criminal himself.”

65. In **Hill v Chief Constable of West Yorkshire [1989] AC 53**, Lord Keith of Kinkel noted that police officers owed the general public a duty to enforce the criminal law; however, he recognized that the Chief Constable retained a very wide discretion as to the manner in which this duty was discharged. Further, that foreseeability of harm is not in itself a sufficient test of liability in negligence. He distinguished the case of Dorset and concluded that no duty of care was owed by the Chief Constable.

“It is plain that vital characteristics which were present in the *Dorset Yacht* case and which led to the imposition of liability are here lacking. Sutcliffe was never in

the custody of the police force. Miss Hill was one of a vast number of the female general public who might be at risk from his activities but was at no special distinctive risk in relation to them, unlike the owners of yachts moored off Brownsea Island in relation to the foreseeable conduct of the borstal boys. It appears from the passage quoted from the speech of Lord Diplock in the *Dorset Yacht* case that in his view no liability would rest on a prison authority, which carelessly allowed the escape of an habitual criminal, for damage which he subsequently caused, not in the course of attempting to make good his getaway to persons at special risk, but in further pursuance of his general criminal career to the person or property of members of the general public. The same rule must apply as regards failure to recapture the criminal before he had time to resume his career. In the case of an escaped criminal his identity and description are known. In the instant case the identity of the wanted criminal was at the material time unknown and it is not averred that any full or clear description of him was ever available. The alleged negligence of the police consists in a failure to discover his identity. But, if there is no general duty of care owed to individual members of the public by the responsible authorities to prevent the escape of a known criminal or to recapture him, there cannot reasonably be imposed on any police force a duty of care similarly owed to identify and apprehend an unknown one. Miss Hill cannot for this purpose be regarded as a person at special risk simply because she was young and female. Where the class of potential victims of a particular habitual criminal is a large one the precise size of it cannot in principle affect the issue. All householders are potential victims of a habitual burglar, and all females those of an habitual rapist. The conclusion must be that although there existed reasonable foreseeability of likely harm to such as Miss Hill if Sutcliffe were not identified and apprehended, there is absent from the case any such ingredient or characteristic as led to the liability of the Home Office in the *Dorset Yacht* case. Nor is there present any additional characteristic such as might make up the deficiency. The circumstances of the case are therefore not capable of establishing a duty of care owed towards Miss Hill by the West Yorkshire police."

66. In **Brooks v Commissioner of Police of the Metropolis and others** [2005] 1 WLR 1495, the House of Lords held that duties of care impinged on the police's function of investigating and not preventing crime. In *Brooks*, the plaintiff, an eighteen year old black male and his friend were violently attacked and stabbed by a group of white men. The plaintiff's friend later died and the way the matter was investigated was the subject of an inquiry. Numerous failures were exposed by the police. The Plaintiff sued the police for negligence as he alleged that he had suffered from severe post-traumatic stress disorder as a result of the attack.
67. The Plaintiff in **Brooks** submitted that the police breached five duties of care owed to him, including a duty to take reasonable steps to afford him the protection, assistance and support commonly afforded to key eye-witnesses to a serious crime of violence and to take reasonable steps to investigate the crime with all reasonable diligence. At first instance, the claim was struck out however, on appeal, the appeal was allowed in part, effectively allowing his claim in negligence to proceed.
68. The matter was then heard by the House of Lords where Lord Steyn stated,

"[30] the core principle of *Hill* has remained unchallenged in our domestic jurisprudence and in European jurisprudence for many years. If a case such as the Yorkshire Ripper case, which was before the House in *Hill*, arose for decision today I have no doubt that it would be decided in the same way. It is, of course, desirable that

police officers should treat victims and witnesses properly and with respect: But to convert that ethical value into general legal duties of care on the police towards victims and witnesses would be going too far. The prime function of the police is the preservation of the Queen's peace. The police must concentrate on preventing the commission of crime; protecting life and property; and apprehending criminals and preserving evidence: A retreat from the principle in *Hill* would have detrimental effects for law enforcement. Whilst focusing on investigating crime, and the arrest of suspects, police officers would in practice be required to ensure that in every contact with a potential witness or a potential victim time and resources were deployed to avoid the risk of causing harm or offence. Such legal duties would tend to inhibit a robust approach in assessing a person as a possible suspect, witness or victim. By placing general duties of care on the police to victims and witnesses the police's ability to perform their public functions in the interests of the community, fearlessly and with despatch, would be impeded. It would, as was recognised in *Hill*, be bound to lead to an unduly defensive approach in combating crime."

69. In *Renee Symonette v The Government of The Bahamas et al 2000/CV/0111*, Adderley J (as he then was) acknowledged that the findings in *Brooks* was the appropriate law with respect to a police officer's duty of care. He stated,

"10. Having reviewed the pleadings as I have summarized them above and the numerous authorities, I am satisfied that the state of the law is as set forth in the headnote of the case of *Brooks v. Commissioner of Police of the Metropolis and others [2005] UKHL applying Hill's case*"

"that as a matter of public policy the police generally owed no duty or care to victims or witnesses in respect of their activities when investigating suspected crimes, and that, since the duties of care alleged by the claimant had been inextricably bound up with the investigation of a crime, his claims based on those duties should be struck out."

11. In my opinion the principal is applicable to this case even though parties other than the police are joined as defendants. It means that even if the degree of proximity existed so as to prima facie found a duty of care, as a matter of public policy the law denies the Plaintiff a remedy. Furthermore, on the pleadings Mr. Symonette agreed to assume the risk associated with the activity and thereby estopped from claiming any damages for injuries caused. Alternatively the persons who shot him are unknown and there is no basis set out in the pleadings upon which a nexus can be established between Mr. Symonette's investigation activities and the shooting."

70. The Defendants contended that those authorities established that it was plain that liability would not ordinarily attach to a police officer in respect of matters which fall without the ambit of the general duties of investigating and suppressing crime. They also contended that the actions or lack thereof of the police officers, which could be considered third party harm, was immune from suit as a matter of public policy.

71. The Defendants speculated whether this was the reason the Royal Bahamas Police Force ("RBPF") was not joined as a party to the action. But in any event argued that as employers of the Plaintiff, they had no duty to provide security or to protect them against the actions of a third party. Alternatively, if the court was minded to find that there was a duty to them as employers, they contended that they did discharge their duty by arranging with the RBPF to be present at the station. The fact that they did not remain at the location for the entirety of the shift was out of their control.

72. The Defendants further contended that public policy considerations were applied in two ways. First, they were held to militate against the imposition of a duty of care at common law as decided in Brooks. Secondly, they were held, in and of themselves, to confer immunity from suit upon the police in respect of matters falling within the sphere of their general function of crime prevention as decided in Hill.
73. The Plaintiff failed to establish causation by failing to show that their conduct resulted in the damage complained of and that the damages were not too remote a consequence of their wrongdoing. The Defendants accept that the particulars of negligence pleaded were that they failed to prove all or adequate security to the station and that they failed to discharge the duty of care owed to the Plaintiff by neglecting to make the work place reasonably safe for their employees. However, the allegations in the Statement of Claim were that that the Plaintiff was held at gunpoint by a unknown male.
74. Therefore, based on the Plaintiff's pleading, there is no causal link between the alleged acts of negligence and the injuries received by the Plaintiff and that she failed to meet the three requirements required to establish a claim in negligence.

DECISION

75. The 1st and 2nd Defendants are not juridical entities and are struck for this action. The Third Defendant is the appropriate Defendant to represent these departments.
76. I recently delivered a judgment in three other cases which arose from the same incident and had considered the same issues.
77. The Plaintiff's claim is based on the common law tort of negligence and the statutory duty of care imposed upon an employer by the Health and Safety at Work Act. Where such duty of care is imposed, any act by the employer which could cause harm to the employee in breach of that duty constitutes an act of negligence. Negligence is a legal wrong which results in damage suffered by one person at the hand of another person in breach of their duty of care, the latter is presumed to have failed to take proper care to avoid what a reasonable person would regard as a foreseeable risk.
78. The situation can exist whether there is a contractual relationship or not. The locus classicus, which established the common law principle, is **Donoghue v Stevenson (1932) AC 562**. Since **Donoghue**, the issue has been repeatedly considered and the principle has been expanded to provide formulae for the numerous instances in which the tort may arise.
79. I consider the following sections of the Act to be applicable to this case:-
- “4. (1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.
(2) Without prejudice to the generality of an employer's duty under subsection (1) the matters to which that duty extends include in particular —
(e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.”**

80. The remaining provisions relate to an employer ensuring that there is a safe place and system of work in relation to the structure and the equipment provided for the employees. Whereas ensuring there are arrangements for an employee's welfare is ensuring that the place of work is as safe as can reasonably be for the employee's health, happiness and fortunes.
81. In **Russell v. Commonwealth Bank - [2019] 1 BHS J. No. 49, Winder J** considered a claim for breach of an employer's duty pursuant to section 4 of the Act and negligence against an employer and determined what the burden of proof is for claims of negligence which I concur with. He stated;-

"28 It is accepted that in a claim for negligence it is essential for the plaintiff to prove, on a balance of probabilities, that the defendant's act caused, or materially contributed to, the injuries complained of. She must adduce evidence to show a sufficient causal link between the injuries and the defendant's act, or omission. In the House of Lords case of *Bonnington Castings Ltd v Wardlaw* [1956] AC 613 an employee of a dressing shops foundry was exposed to a noxious dust from the grinders which he alleged caused him to contract pneumoconiosis. The employer had failed to ensure that the grinders were compliant with the statutory requirements. In determining that the employee and not the employer bore the onus of proving causation the court nonetheless was satisfied that the employee had met the burden. According to Lord Reid:

"In my judgment, the employee must in all cases prove his case by the ordinary standard of proof in civil actions: he must make it appear *at least that on a balance of probabilities the breach of duty caused or materially contributed to his injury.*" (emphasis added)"

82. To establish negligence and in this instance, specifically whether there was a breach of the statutory and common law duty of care, there are several components of the principle that exist and which must be established by the Plaintiff on a balance of probabilities. These are the duty of care, the breach of that duty, causation of damage and the damage itself.

Was there a duty of care towards the Plaintiff by the Defendant?

83. The Plaintiff is employed by the Ministry of Labour as a Price Inspector She was seconded for a time to the Department to assist with the voters card process ahead of the 2017 general elections. While she was still being paid by the Ministry of Labour and returned after the process had ended, during her time at the Department she was under its care and control as she carried out duties subject to the Department. In the circumstances, there was a sufficient connection between the Plaintiff and Defendant to establish that the Defendant held a duty of care to the Plaintiff.

Was there a breach of that duty?

84. By the evidence adduced, the handling of voters cards was by itself of a delicate nature. As a result, the Defendant made contact with the police department to ensure that officers were present for the protection and safety of the voters' cards, the persons employed to handle them and the public who would venture in and out of the station for registration purposes.

85. The Department ensured that they provided a safe place of work for the employees, protection of the voters cards and protection for those members of the public who would be attending by providing the security of the police and defence officers. A sub issue is whether the Defendant could be held responsible for the acts of the police officers, specifically their failure to remain at the station for the duration of the shift.
86. In **Fegan v Assistant Chief Constable and the Chief Constable of the Police Service of Northern Ireland [2011] NIJB 45**, the Court of Appeal of Northern Ireland had to consider whether the Police Service of Northern Ireland owed a duty of care to a social worker in a children's home run by a religious order, when informing his employers that following an investigation into allegations of sexual abuse, he was not a fit person to continue to be employed as a social worker. Although the facts are not identical to the facts of this case, the duty of care owed by a police officer was considered.
87. Girvan LJ in delivering the judgment of the Court considered the cases of **Brooks** and **Hill** and followed the findings in **Hill** where it was concluded that there is no general duty of care owed by the police officers to identify or apprehend an unknown criminal nor did they owe a duty of care to individual members of the public who might suffer injury through the criminals activities save where there is a failure to apprehend him in circumstances which have created an exceptionally added risk different in incidence to the general risk to the public at large from criminal activities so as to establish sufficient proximity of relationship between the police and victims of crime.
88. [21] Lord Keith pointed out in **Hill v Chief Constable of West Yorkshire [1988] 2 All ER 238, [1989] AC 53** that by common law police officers owe to the general public a duty to enforce the criminal law. Common law, while laying on chief officers of the police an obligation to enforce the law, makes no specific requirement as to the manner in which that obligation is to be discharged. That is not, as Lord Keith said, a situation where there can be readily inferred an intention of the common law to create a duty towards individual members of the public. In **Hill** the House of Lords concluded that there is no general duty of care owed by the police officers to identify or apprehend an unknown criminal nor did they owe a duty of care to individual members of the public who might suffer injury through the criminals activities save where there is a failure to apprehend him in circumstances which have created an exceptionally added risk different in incidence to the general risk to the public at large from criminal activities so as to establish sufficient proximity of relationship between the police and victims of crime. However, the House of Lords also rejected the plaintiff's claim on a wider basis. As a matter of public policy the police were immune from action for negligence in respect of their activities in the investigation and suppression of crime."
89. I am satisfied that there is no general duty owed by the police to individual members of the public who might suffer injury through criminal activities of others unless it can be shown that there was a failure to apprehend a criminal in circumstances which resulted in an exceptional risk greater than the normal risk.
90. Was it foreseeable therefore that in the absence of the police's presence, there would be an armed robbery for money and not the voters cards? When considering foreseeability, the occurrence of the event must not be a mere possibility. There is no doubt that various crimes are perpetrated throughout the country however, there was no evidence led by the Plaintiff which would suggest to the court that other voters card stations were being robbed at gunpoint nor that there were robberies in the area of the Church around

the time of the Incident which would necessitate the presence of police at all times. Therefore I am not satisfied that it was foreseeable that there would be an obvious risk of an armed robbery for money at the voters card distribution center in the absence of the police.

91. While the RBPF has not been named as a party in these proceedings, it has been decided in numerous cases, that it would be too high of a duty to expect them to prevent crime or to be held liable for not preventing one. I adopt the finding of Girvan LJ in **Fegan v Assistant Chief Constable** which upheld the House of Lords decision in **Hill** and held that the police officers owed no duty of care to injured members of the public who suffered injury as a result of criminal activity except where there is a failure to apprehend him in circumstances which have created an exceptionally added risk different in incidence to the general risk to the public at large from criminal activities so as to establish sufficient proximity of relationship between the police and victims of crime.
92. Accordingly, while I sympathize with what the Plaintiff experienced, I find that the Defendant did not breach its duty to provide or maintain a safe working environment for the welfare of the Plaintiff pursuant to the Act or at common law. The Defendant cannot be held responsible for the absence of the RBPF or RBDF officers as they were unaware of their absence nor can they be held responsible for the unforeseeable event which occurred.

Causation and Damages

93. There was no breach of duty by the Defendant therefore the actions of the armed robber cannot be attributed to it. The experience of the Plaintiff was unfortunate especially the trauma which ensued as a result. However, as there was no causal link between the actions of the armed robber and the Defendant, the damages sustained were not as a result of any breach of the Defendant's duty, whether statutorily or at common law.
94. The Plaintiff's action is hereby dismissed. The Defendant is awarded its costs to be taxed if not agreed.

Dated this 13th day of May, 2022


Hon. G. Diane Stewart