

May Pen Hospital from two weeks to two days. He said he is a construction worker. He said on February 13, 2010 between 10am and 11am he was walking alone on Windsor Avenue going towards May Pen. He had to walk on the road because a truck was parked on the side walk. A Toyota Probox passed him and he saw that the person in the front passenger seat had a long gun and was wearing a bullet proof vest with police marked on it. The car passed him and then turned back. He was on the right side of the road on the side walk at this time. The car stopped and a police officer whom he knew as "Chuckie Brown" pointed a long gun at him and told him to go on his knees four times. When he was going down on his knees on the fifth occasion, the police officer shot him in his chest with the long gun.

- [3] Mr. Hayles continued that when he was shot he fell on his face and as a result lost two of his teeth. The police officer called Control, and about two minutes later a bus came and he was placed in the passage of the bus and a man who appeared to be dead was placed on top of him. He was taken to the May Pen Hospital where he was admitted for two days then transferred to the National Chest Hospital where he was admitted for about one month. He was handcuffed while at the hospital. After he was discharged from the hospital he was taken to the Half Way Tree Police Station where he was placed in custody for a week after which he was taken to the May Pen Police Station where he remained for two weeks before he was taken to court.
- [4] Mr. Hayles said he was charged with Illegal Possession of Firearm and Shooting with Intent. He said he did not have a gun on the day he was shot and he was walking alone.
- [5] He indicated further, that he was remanded when he first went to the May Pen Resident Magistrates' Court (as it then was) His matter was transferred to the Clarendon Circuit Court and he was remanded. On the next occasion when he went to court, he was further remanded for two weeks for the police to get the ballistic report. The case he said was further postponed for three days and for

another three days after the police failed to bring the ballistic report. All this time he was remanded in custody. He said when the police brought the report it indicated that he did not fire a gun on the day he was shot. He also indicated that he was offered bail and took up the offer three weeks after. He went back to court on four more occasions and on the fourth occasion, the case was dismissed.

- [6] He deposed that he employed an attorney-at-law whom he had to pay to represent him. He also had to pay doctors for reports and treatment. Receipts evidencing those payments were admitted into evidence. He said at the time of the incident he earned \$10,000.00 per week as a construction worker. He was hospitalised and in custody for a total of 18 weeks and as a result lost income.
- [7] In cross-examination, the claimant agreed that he had given a statement to the police shortly after the incident when he was in the hospital. He said that he would be able to identify the statement because his signature is on it. He was shown a document and identified his signature. He said he recalled giving the statement. The statement was admitted into evidence as Exhibit 6. There was no challenge to the statement being admitted.
- [8] Mr. Hayles agreed that in the statement he gave to the police shortly after the incident he had said he would walk around and look for iron to sell. He however said that at the time he was shot, that is not what he doing, but that when he did not have work doing that is what he did. He also agreed that he said he washed cars in the statement and agreed that nowhere in the statement did he say he was a construction worker, but he said that tiling work relates to construction work.
- [9] Further in cross-examination, the claimant denied telling the police officers at the time the police took the statement from him, that he had a friend named Fabian. He said it was the police officers who told him he was walking with a friend named Fabian. He said they took the statement from him while he was

handcuffed to the bed. He said he did not recall the statement being read over to him, but he recalled signing it. He said on the day of the incident he had approximately \$30,000 on him. It was suggested to him that he had said at the time nothing was going on for him. He did not explain where he had gotten that money from, not in the statement he gave to the police, nor in his witness statement. He did however say although he was not working he was not “des” as he was seeing a little light. Again, no explanation was given as to how he came to be seeing that little light.

- [10] In cross-examination, Mr. Hayles further disagreed that he was in the area on the morning in question extorting persons at gunpoint. He denied running from the area when he was shot. He said he was standing when the shooting took place. He said when the policeman shot him the police officer's feet were outside the motor vehicle but his body was inside. He knew the police officer but they were not friends. He said he was shot with a long gun at close range. He denied that he was with a group of friends who shot at the police. He was of the view that the policeman was motivated by malice when he shot him and then later charged him.

Defendant's Evidence

- [11] The defendant is a party to these proceedings by virtue of the Crown Proceedings Act. The defendant's evidence is contained in the witness statement of Corporal Roan Morrison, filed on September 22, 2020. Corporal Morrison said he was on the operation that led to the shooting of the claimant. Among his team members was Constable Collis Brown. No evidence was elicited from Constable Brown and there is no explanation for this. From all indications, this is the same police officer referred to by the claimant as “Chuckie Brown” whom the claimant said shot him.
- [12] Corporal Morrison said that he was driving a Toyota Probox, unmarked police vehicle, while on patrol in May Pen. He and Constable Brown were armed with

M-16 rifles. Constable Brown was seated to his left in the front passenger seat. They received information that there was a group of four men who were armed with guns on Windsor Avenue, robbing and extorting people. They were given a description of the men, their attire and hairstyles. As they were close to the area in which the alleged extortion and robbery were taking place, they responded to the call. When they got to the area they saw four men, the claimant included, who fit the description they were given, walking towards the motor car he was driving. He drove towards the group of men and stopped about 25 metres from them. They exited the motor vehicle and approached the men who then seemed to be communicating with each other. Two of the men pulled firearms and discharged them in the police's direction. The police took evasive action and he heard explosions coming from the environs of his team. Two men fell to the ground, one on the left and the other on the right of the road and the other two fled the scene.

[13] He said neither Constable Brown, nor any other member of the team ordered any of the men to go on their knees, neither did any of them discharge their weapons from in the vehicle. He said he did not turn the vehicle around when he saw the claimant. He did not see Constable Brown step into the claimant's face or shoot him in his chest. Corporal Morrison said the police team acted on credible information and then in self-defence and so there was reasonable and probable cause to detain the claimant. He went to court to give evidence on the matter at the then May Pen Resident Magistrates' Court, but all the charges were dropped because, according to him, the prosecution could not prove that the claimant knew that the other men would have fired at the police.

[14] Cross-examination of Corporal Morrison revealed that the claimant, on the morning in question, was standing on Windsor Avenue with three other men when Corporal Morrison first saw him. He said he and Constable Brown commanded the men to stop and not to move. When asked why he would have to make that command if the men were just standing, he explained that was necessary as the men were moving closer together and making hand

movements. He said the men ran after they engaged the police officers in gun fire. Corporal Morrison said he did not see anybody shoot the claimant that morning, but he saw him on the ground after he was shot and that he was lying face down on the left side of the road. He was placed in a Toyota Hiace bus thereafter. He was not sure if the claimant was charged with extortion. He did not know if the claimant's hands were swabbed for gun powder residue. He said he did not know if the men when standing in a group would have been an easier target for him and Constable Brown who had M16 rifles. He was not able to say if at the time of the incident Constable Brown was an experienced shooter or for how long Constable Brown had been in the police force. He did not agree that the men would not have stood any chance against he and Constable Brown, if the incident went as he described. He said the dead man and the claimant were on opposite sides of the road when the gun fire seized, because they had run when the police fired at them. He denied hearing Constable Brown tell the claimant to go on his knees, or seeing him point his long gun at him. He did not see Constable Brown shoot the claimant in his chest or step in his face.

Submissions on the Witness Statement of the Claimant

[15] I will not rehash the submissions made in the matter, but will only focus on the submissions made in respect of the witness statement of the claimant, which I believe is deserving of special attention. Mr. Maddan in his submissions, raised an issue concerning the witness statement which was signed by the claimant, who revealed in cross-examination that he is illiterate, in that he could not read the statement shown to him. He submitted that the statement should be struck out as it does not comply with rule 29.4(2) of the Civil Procedure Rules. It is noted however, that Mr. Maddan did not take any issue with the statement during the trial and raised no objection to it. In fact, he fully utilized the statement during cross-examination. As far as I am concerned, the defendant having fully participated in the trial without having raised any objection to the statement, has waived the right to object to it. For the court to countenance this objection at this

junction, would result in unfairness and injustice to the claimant who would not have had an opportunity to respond to it.

Analysis

[16] What would have been helpful in this case would have been the ballistics/forensic reports in relation to whether there were spent shells from hand guns found at the scene of the incident and whether the claimant's hands were swabbed for gunpowder residue. This is documentary evidence which the claimant could have put forward to assist his case. Although civil trials are proved on a balance of probabilities, where there is documentary evidence which may assist in proving the case, this should be placed before the court.

[17] The claimant's evidence suffered from contradictions, some of which I consider material. These arise from his statement given to the police (Exhibit 6), his witness statement and the evidence he gave in court. The police statement was tendered without objection, and is evidence which the court is entitled to consider for the purpose of assessing the credibility of the claimant. Mr Cochrane in his closing submissions had asked the court not to place any weight on the police statement as the police officer who recorded it did not give evidence and was therefore not cross-examined and that the claimant was vulnerable at the time. However, there was no challenge to the statement and this was never raised during the trial so as to give the other side an opportunity to respond. Therefore, for the court to consider this submission at this stage, would be unfair to the defendant.

[18] The date the police statement was signed, February 14, 2010, indicates that it was given by the claimant within close proximity to the incident, about a day later. The witness statement on the other hand, was given some nine years after the incident. This says to me that the incident would have been fresher in the claimant's mind when he gave the police statement. Whereas I appreciate that memories do fade overtime, there were some glaring inconsistencies and

omissions between the police statement, the witness statement, and the claimant's viva voce evidence, which the court cannot ignore.

[19] The statement Mr. Hayles gave to the police, gives the distinct impression that the shots were fired by the police under different circumstances from that outlined in his witness statement. He said in the police statement that upon hearing someone say, "Look out see di police dem a come ina di Probox", he turned around and saw the Probox. He said further, that when the Probox reached some four feet from him, someone behind the driver pointed his M16 on him and started to fire. I find this to be materially different from what he said in his witness statement. In his witness statement he said he saw the Probox passing him and it turned and came back in the direction in which he was walking, stopped beside him and the right back door quickly opened and a police he knew as "Chuckie Brown" pointed a long gun and told him to go down on his knees four times. On the fifth occasion when he was going down on his knees he fired the long gun and he was hit in the chest. As far as I am concerned, he is saying two different things about how he was shot.

[20] Of concern to me as well, is the fact that Mr. Hayles' witness statement said he was in the process of kneeling at the time when he was shot in the chest by Constable Brown. Under cross-examination, he said he was standing. He also said in cross-examination that the policeman used a long gun to shoot him in the chest at close range. It is agreed by both sides that the guns the police officers were carrying at the time were M-16 rifles. The medical report (Exhibit 1) does not seem to support the allegation that he was shot at close range by a weapon such as an M16 rifle, which was agreed by Constable Morrison to be a very powerful and accurate weapon, as the injuries noted, though serious, were not likely to be permanent.

[21] The medical report also does not give support to the allegations made by the claimant in his witness statement that Constable Brown stepped on the left side of his face with his shoe and it was "rubbed off" as a result. The medical report

(Exhibit 1) does not speak to any injury to the claimant's face. I think it unlikely that an injury of that nature would be ignored by any examining medical practitioner. I note as well that this injury was never mentioned in the statement he gave to the police very soon after the incident.

[22] I have considered as well that the claimant in the statement he gave to the police said that he had \$30,000.00 on him to buy baby clothes because his baby mother was due to have twins. This was not mentioned in his witness statement. He did not remember his baby mother's name and only knew her as "Chin." He said he was not working at the time but did not offer any explanation as to how he came to have \$30,000.00 on him if he was not working. In 2010, \$30,000.00 was a considerable amount of money. The fact that he had that amount of money on him and he failed to explain how he came to have it in the face of the defendant's allegations that he was involved in robbery and extortion, is concerning.

[23] Mr. Hayles also said he did not recall if the statement that he gave to the police was read over to him, but he recalled having signed it. He indicated in that statement that on the day in question when he was shot, he was walking with a friend named Fabian. In his witness statement he said he was walking alone. In cross-examination, he indicated that he did not have a friend by the name of Fabian at the time and that it was the police who told him he was walking with a friend named Fabian. This I find to be a material inconsistency in his evidence given the of allegations by the police that he was with a group of men when he was shot.

[24] In re-examination, he indicated that the police statement having been read to him, the only part he did not agree with was that he knew Fabian and that he was walking with Fabian. He seemed to have accepted everything else contained in the statement. I find it quite curious that he should seek to distance himself from this portion of the statement. I note however the details given about Fabian in the statement. I do not find what was said in the statement about Fabian to be a

fabrication on the part of the police. I do not believe the claimant when he said he was walking alone at the time of the incident. It is not clear to me on his account, how he and Fabian were shot in the incident, if they were not together. I am more inclined to believe the version of the claimant's police statement which he made shortly after the incident (as set out in Exhibit 6) where this is concerned, than the version he is asking the court to believe today. I believe he was walking with Fabian, his friend, and that both of them got shot when the police came upon them.

[25] Given all these contradictions on the claimant's evidence, his credibility is seriously affected. I find that his evidence was not reliable and was less than forthright and overall lacking in credibility. He has the onus of proving his case on a balance of probabilities, and he has failed to do so.

[26] On the other hand, I find that the evidence of Corporal Morrison was far more consistent and reliable and he stood up well to cross-examination. He is the sole witness for the defendant. The court did not have the opportunity of hearing from Constable Brown, who features heavily in this case, but I accept that Corporal Morrison was present at the scene at all material times and that he heard and saw what happened. I have to decide the case based on the evidence before me. I think that the case for the defendant is more credible and reliable and I accept it over the claimant's case. I will now turn to look at the individual heads of damages which the claimant seeks.

Malicious Prosecution

[27] Malicious Prosecution arises in a situation where the defendant maliciously and without reasonable and probable cause initiates against the claimant a criminal prosecution which terminates in the claimant's favour and which results in damage to the claimant's reputation, person or property (per Edwards J in **Kenrick Taffe v The Attorney General of Jamaica and ors** 2006 HCV 01302 judgment delivered on April 9, 2010, page 31). If the claimant fails to establish

any of the requirements for the tort set out in the case of **Wills v Voisin** (1963) 6 WIR 50, then his action for malicious prosecution will fail. The requirements are as follows:

- I. The law was set in motion against him on a charge for a criminal offence.
- II. He was acquitted of the charge or it was otherwise determined in his favour.
- III. The prosecutor set the law in motion without reasonable and probable cause or was actuated by malice.
- IV. That he suffered damage as a result

[28] The requirements set out in i and ii above have been satisfied. The claimant has proved that the law was set in motion against him when he was charged with the offences of Illegal Possession of Firearm and Shooting with Intent. Also, he has proved that the case against him was determined in his favour when the no case submission made on his behalf was upheld. However, the next question that must be answered is whether the policemen had reasonable and probable cause to set the law in motion against him or whether they were actuated by malice in so doing. Hawkins J in **Hicks v Faulkner** (1878) 8 QBD 167 defined reasonable and probable cause:

“...to be an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of the state of circumstances, which assuming them to be true would reasonably lead any ordinarily prudent and cautious man placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed.”

[29] The viva voce evidence of Corporal Morrison who was at the scene is consistent with what was said in his witness statement and in the pleadings. There was no material inconsistency in his account. I have indicated that I find him to be a

credible witness. I believe that the police team was alerted to criminal activity taking place, responded to the call, came upon the group of men of which the claimant was a part, were fired at by them, and in those circumstances would have reasonable and probable cause to set the law in motion against the claimant, whom they were able to apprehend. Also, there is no indication that the police were actuated by malice. The claimant himself in his evidence said although he knew Constable Brown, they were not friends and had not interacted. There is no evidence of any prior history between the claimant and any of the police officers who were said to be at the scene. This being the case, I can see no reason for Constable Brown to have any malicious intent when he and the team of police officers who were with him apprehended and charged the claimant. I find that the evidence elicited by the defendant shows that the police held the honest belief based on reasonable grounds, that the claimant and others he was with, had committed a crime. I do not find that the tort of malicious prosecution was made out by the claimant. He has neither established malice, nor the absence of reasonable and probable cause.

False Imprisonment

[30] In **Peter Flemming v Det Cpl Myers and the Attorney General** (1989) 26 JLR 525 the Court of Appeal held that:

“False imprisonment arises where a person is detained against his will without legal justification ... However he [the police officer] is compelled to take the person arrested before a Justice of the Peace within a reasonable time.”

It is the lawful arrest which provides the legal justification which takes it out of the realm of false imprisonment. I am of the view that the police officers acted lawfully when they arrested the claimant, therefore, I cannot find that the arrest of the claimant was without legal justification.

[31] However, Carey P (Ag) in the **Flemming case** said that if the suspect is held for an unreasonable length of time after arrest before being taken before a Justice of

the Peace or Resident Magistrate, then this can amount to false imprisonment. He went on to say that once it is shown that the period of detention was unduly lengthy, an evidential burden is cast on or shifted to the defendant to show that the period was reasonable. On the claimant's evidence, after he was released from hospital he was taken to the Half Way Tree Police Station where he was held for a week. He was then taken to the May Pen Police Station and placed in custody where he remained for two weeks before being taken to court. Although there is no specific mention of dates, the defendant has not brought any evidence to refute this assertion.

[32] Section 15 of The Constabulary Force Act states that it shall be lawful for any Constable, without warrant to apprehend any person found committing any offence punishable upon indictment and summary conviction and such person is to be taken forthwith before a Justice who shall enquire into the circumstances of the alleged offence. Further, section 3(2) of the Bail Act states that a person who is charged with an offence shall not be held in custody longer than twenty-four hours without the question of bail being considered. The period for which the claimant was held in custody without being taken to court is unreasonable and unduly lengthy and is in contravention of the provisions of The Constabulary Force Act and The Bail Act. The defendant has not provided an explanation for this lengthy period of detention without the claimant being taken to court and has failed to discharge the evidential burden of showing that the period of detention was reasonable. It stands to reason therefore, that when the claimant was detained for a period of three weeks without being taken to court, such detention was unlawful and amounts to False Imprisonment and the claimant is entitled to damages for False Imprisonment.

[33] I will now turn to the assessment of damages for False Imprisonment. The period of unlawful detention, as I find it, is three weeks/ twenty one days. The claimant has relied on the case of The **Attorney General v Peter Badoo** JMCA Civ.10, judgment delivered on April 3, 2020. In that case, Mr. Badoo was falsely imprisoned for twenty three days and was awarded the sum of \$4,210,000.00.

The Consumer Price Index (CPI) for April 2020 was 103.7. This upgrades using the current CPI of 116.06 (December 2021) to \$4,711,189.18. I have noted however, that **Bandoo's** case has a number of aggravating features. The respondent in that case endured suffering and harsh conditions whilst detained. He also developed a skin condition and suffered from depression. The circumstances of that case are far more severe and egregious than in this case. In fact, the claimant in this case does not speak to going through suffering and hardship during his three weeks' detention. I will therefore discount the sum awarded in **Bandoo's** case by thirty percent to reflect the disparity between the two cases.

[34] I have also considered the cases of **The Attorney General v Glenville Murphy** (2010) JMCA Civ.50 and **Stephen Bell v The Attorney General** (2016) JMSC Civ.59, which I have found to be helpful.

[35] I am of the view that in all the circumstances of this case, an appropriate award for False Imprisonment is \$2,940,000.00.

Assault and Battery

[36] There is no dispute that the claimant was shot and injured. There is however, dispute that Constable Brown stepped on the claimant's face. In fact, the claimant's evidence is that when Constable Brown stepped on his face with his shoe, the left side of his face rubbed off. He also complained of losing two of his teeth as a result of his falling face down when he was shot. I have considered the medical report prepared by Dr Joseph Blidgen of the National Chest Hospital (Exhibit 1) which speaks to his examination of the claimant on February 15, 2010. He does not mention any injury to the claimant's face nor any injury relating to his teeth in the report. His report speaks only to the gunshot wound to the claimant's chest. Dr Azzard Comrie's report was prepared in February 2017, seven years after the incident. Dr Comrie reports that he first saw the claimant on February 22, 2017 and the history of the lost teeth was given by the claimant

himself. I cannot, without having a medical report which is nearer in time to the date of the incident, which speaks to the loss or injury to the claimant's teeth and injury to his face, give much weight to Dr Comrie's medical report and would only consider it with respect to what he said about the gunshot wound to the chest.

[37] There however can be no assault if the police officers, when they shot the claimant, were acting in defence of their lives. Having accepted the evidence of Corporal Morrison as credible, I have concluded that at the time the claimant was shot by the police, the police had returned the fire in lawful self-defence. It therefore follows that there was no assault on the claimant. His claim for assault and battery therefore fails.

Exemplary and Aggravated Damages

[38] Since the claim for Malicious Prosecution has failed, no award will be made for Exemplary and Aggravated Damages under this head. In addition, with respect to the False Imprisonment, no circumstances have been shown which warrant any additional award under these heads. Also, no award will be made for Special Damages in all the circumstances.

Conclusion

[39] I am of the view that on the morning of February 13, 2010, the police team was lawfully executing their duties and was acting on a report they had received, when they were fired upon by a group of men including the claimant. They returned the fire in lawful self-defence and it was then that the claimant was shot and injured. There was therefore no assault on the claimant. There was legal justification for the arresting, charging and prosecuting of the claimant. The police officers acted with reasonable and probable cause and without malice in carrying out their duties. However, the police having lawfully arrested and charged the claimant, they failed to bring him before a court within the time stipulated by law, resulting in his detention being unlawful, thereby amounting to

False Imprisonment. The claimant is therefore entitled to damages for False Imprisonment.

[40] In light of the foregoing, I make the following orders:

- (a) The claim for Malicious Prosecution is dismissed.
- (b) Damages awarded to the claimant for False Imprisonment in the sum of Two Million Nine Hundred and Forty Thousand Dollars (\$2,940,000.00) with interest at 3% from the date of the service of the claim form to the date of judgment.
- (c) The claim for Assault and Battery is dismissed.
- (d) The claim for Exemplary Damages, Aggravated Damages and Special damages is dismissed.
- (e) Each party is to bear their own costs.

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G. Henry-McKenzie
Puisne Judge