

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2017-04017

BETWEEN

AKILI CHARLES

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice R. Rahim

Date of Delivery: 26th November, 2019

Appearances:

Claimant: Mr. J. Sookoo instructed by Ms. S. Edwards.

Defendant: Ms. D. Boxhill and Ms. S. Singh instructed Ms. L. Thomas.

JUDGMENT

1. This is an action for damages inclusive of aggravated and exemplary damages for assault and battery allegedly suffered by the claimant.

THE CLAIM

2. The claimant claims that on April 3, 2013 he was detained in the holding cells at the Port of Spain Magistrate's Court awaiting his transport to prison. At that time, the claimant along with other prisoners started complaining about the conditions of the cells and that they had been detained since that morning. The claimant avers that those complaints continued until several prisoners were eventually taken into the prison vehicle between 5:00 and 6:00 p.m. The claimant and two other prisoners were left in the cells for last. At that point, a police officer demanded that the claimant apologize for his earlier behaviour to which the claimant refused.
3. The claimant claims that Corporal Lopez subsequently entered the holding cell, handcuffed him and put him to sit in a corner on a concrete ledge. Thereafter, Corporal Lopez was handed a wooden baton by another officer and repeatedly beat him on his nose, face, neck, legs and left arm. As a result of the assault and battery by Corporal Lopez, the claimant suffered pain, injury, loss and damage.

THE DEFENCE

4. By Defence filed on March 16, 2018 the defendant denies assaulting the claimant and claims that it was a situation where self-defence became necessary. According to the defendant, an altercation ensued between

Corporal Lopez, Corporal Regis, the claimant and two other prisoners. During the altercation, the claimant and the two other prisoners who were still in the cell, kicked and cuffed Corporal Lopez and Corporal Regis and as such, both Corporals used extendable batons to reasonably defend themselves. The defendant maintains that Corporal Lopez did not use any more force than was necessary to subdue the claimant and the other two prisoners during the altercation. The altercation lasted approximately two minutes. Corporal Lopez sustained injuries to his hand and leg.

5. Charges were laid against the claimant and the other two prisoners for assaulting police officers. The claimant and the other two prisoners were found guilty at the trial in those matters and were reprimanded and discharged.

ISSUES

6. This case comes down to the court's evaluation of the evidence. In the circumstances the court has to determine which version of events was more probable in light of the evidence. The defendant admits that the claimant suffered injuries but denies that it was at the hands of Corporal Lopez. As such, the issues to be determined by the court are as follows;
 - i. Did Corporal Lopez attack the claimant or did the claimant resist Corporal Lopez while he was attempting to restrain him and sustain injuries thereby.
 - ii. If it is found that the claimant resisted Corporal Lopez while Lopez was attempting to restrain him, did Lopez use such force that was reasonable in the circumstances to repel the actions of the claimant.
 - iii. If it is found that Corporal Lopez assaulted the claimant, what is the appropriate measure of damages.

THE CASE FOR THE CLAIMANT

7. The claimant gave evidence for himself.

8. On April 3, 2013 the claimant attended the Port of Spain Magistrate's 8th Court. Upon completion of his matter, he was taken downstairs to the holding cells. At approximately 4:00 p.m., the claimant along with other prisoners started complaining about the conditions of the cells and how long they were being kept there.

9. Other prisoners started throwing boxes and rubbish out of the cells. About four to five officers went to the cells enquired into the problem. The claimant and the others voiced their concern over the length of time they were being held in the cells with inadequate seating for the number of prisoners. The claimant was vocal and used obscene language. He was informed by the officers that the warrants were being processed and that the prison van was on its way.

10. At approximately 5:00 p.m. to 6:00 p.m., other prisoners were loaded into prison vehicles. Everyone except the claimant, Israel Lara ("Lara") and Levi Joseph ("Joseph") were placed into a prison vehicle. A police officer then demanded that the claimant apologize for his earlier behaviour and threatened to charge him for the offence of using obscene language. The claimant refused to apologize. Shortly thereafter, three officers, one being Corporal Lopez went to the cells. They were dressed in white jerseys and their uniform pants.

11. Corporal Lopez entered the holding cell, handcuffed the claimant and placed him to sit in a corner on a concrete ledge facing away from the wall with his arms pinned behind his back. Corporal Lopez left for a couple

minutes and returned with an extendable night stick which he extended in front of the claimant. One of the other officers handed Corporal Lopez a wooden baton. During that time, several more officers went into and/or around the holding cell.

12. Corporal Lopez held the baton with his two hands and swung it hitting the claimant on his nose and he fell off the ledge. The claimant testified that he felt pain and saw stars. Corporal Lopez then began to beat the claimant on his face, neck, legs, arms, elbows and all over his body. Joseph tried to intervene by coming between the claimant and Corporal Lopez. The claimant could not say how long the incident lasted but he believes it was between five to fifteen minutes.

13. The claimant testified that he did not fight back. He however, tried to protect himself from injury as far as possible despite being handcuffed throughout the entire ordeal. He tried to avoid the blows raining on him by trying to curl into a ball but he could only do so much. He testified that it felt like the beating would never stop, that he was bawling out in pain and begging for the beating to stop. The beating lasted until a female officer (whose name and/or identity the claimant did not know) came and told Corporal Lopez to stop.

14. The claimant was in extreme pain. He could barely move and was having problems breathing through his nose as same was full of blood which was dripping onto his clothes. He sustained a cut to his chin and his entire face, knees and arms were swollen. He was grabbed by both arms by two officers and dragged to the prisoner transport vehicle. He was thrown in the back along with Lara and Joseph and taken to the Accident and Emergency Department of the Port of Spain General Hospital where he

was administered painkillers and he refused a tetanus injection. X-rays were done. He was diagnosed with facial swelling, a fractured nose, a cut to the chin and swelling to his left arm and knee. He was admitted to Ward 15 and later discharged that same night with instructions to return to the hospital on April 8, 2013 to fix his broken nose. The claimant later obtained a medical report dated July 14, 2017 documenting his diagnosis and treatment at the hospital.¹ This medical report provided as follows;

“The above named patient presented to the Accident and Emergency Department Port of Spain General Hospital on the 03rd April 2013 and was seen by the Medical Officer on duty.

The patient complained of pain behind his left ear, pain in the left arm and pain in the upper right cheek.

On examination he was alert, in no cardiorespiratory distress. There was swelling in the right zygomatic area, a deformed nose bridge with epistaxis, swelling of the left Mastoid area and a 1 cm laceration to the chin.

There was also swelling of the left arm and mild tenderness of the left knee. An assessment of (1) multiple soft tissue injuries and (2) fracture of the nasal bone was made.

X-rays were done and showed a fractured nasal bone. The patient refused a tetanus booster. His wound was cleaned and dressed. The patient was admitted to Ward 15”.

15. Upon his release from the hospital, the claimant was taken to the Central Police Station where he remained overnight and was charged with assaulting Corporal Lopez in the execution of his duty. The following morning, he was taken before the Magistrate at the Port of Spain Magistrate’s court where he was remanded in custody.

¹ A copy of the medical report was annexed to the claimant’s witness statement as “A.K.1”.

16. On April 5, 2013 the claimant experienced extreme nose bleeding and visited the Prison infirmary. He was informed by the doctor (whose name and/or identity the claimant did not know), to return to the Port of Spain General Hospital on April 8, 2013 to have x-rays redone and undergo a procedure for his fractured nose. The claimant was not however taken to the hospital on April 8, 2013.
17. On April 11, 2013, the claimant's then lawyer wrote to the Commissioner of Prisons demanding that the claimant receive urgent medical attention. However, the following day, the nose bleed cleared up and so the claimant was not taken back to the hospital for any procedure. By letter dated April 17, 2013, the Commissioner of Prisons responded to the claimant's letter stating that the medical treatment for the claimant had been addressed.²
18. The claimant testified that he continued to suffer from his injuries. He was in severe pain even at his next court appearance which was twenty-eight days later. He encountered problems using his jaw to eat and talk resulting in great discomfort. Consequently, he was unable to eat or sleep properly for two weeks and having to sleep on the cold floor of the prison cell made his body pain worse.
19. By October 2014, being a year and a half later, his pain worsened, and he asked for treatment from the Prisons. His requests were ignored so by letter November 13, 2014 his Attorney wrote to the Commissioner of Prisons demanding medical treatment. On December 12, 2014, the claimant was treated for his jaw and taken to the Mount Hope Hospital

² Copies of both letters were annexed to the claimant's witness statement as "A.K.2".

where he was administered painkillers and antibiotics which fixed his problem.³

20. The claimant testified that it came to his attention that he was found guilty of the charge made against him by Corporal Lopez after he was convicted on November 2, 2017 in absentia, he not having been brought to court.

Cross-examination

21. The claimant testified that he jointly charged with Joseph and Lara for murder. When his matter was completed between 10:00 and 11:00 a.m., he was taken to the holding cells downstairs in handcuffs. He sat uncomfortably in the holding cell with fifteen other prisoners and around 12:00 p.m. he was given food and permitted to use the washroom. He was not handcuffed when he was taken to use the washroom and given food.

22. According to the claimant, around 4:00 p.m., the prisoners in the holding cell made a commotion and became frustrated after the officers informed them they did not get all the warrants. He denied throwing rubbish from the holding cell into the corridor but agreed with Counsel for the defendant that he was agitated and frustrated about the remand warrants not being ready.

23. He complained to the officers. He testified that he was downstairs in the holding cell since his matter completed earlier that morning and said to the officers, *"like we here from 10:00 to 6:00 in the afternoon"*. He also testified that he was loud, used obscene language and told the officers that someone was not doing their job. He however, made no threats to any

³ Copies of both letters were annexed to the claimant's witness statement as "A.K.3".

officer. The officers explained to the claimant and the other prisoners that they had to wait a little while longer as the warrants were still being processed.

24. The claimant could not recall whether Corporal Lopez was the one calling out the names when the officers started loading prisoners from the cells. Counsel for the defendant asked the claimant twice if his name was called and he replied that his name was not called. The claimant testified that it made no sense that he did not answer his name as he was waiting the entire day to go back to the prisons.

25. When asked by Counsel if the officer came to the cell and tried to physically remove him, the claimant testified not at that time and could not recall the officer trying to escort him out of the cell. When it was suggested to the claimant that he spat on Corporal Lopez, the claimant laughed and said same never happened and that he did not push Corporal Lopez.

26. According to the claimant, when the officers handcuffed him behind his back, he thought he was going upstairs to answer an obscene language charge.

27. In his testimony, the claimant demonstrated how Corporal Lopez allegedly held the wooden baton and hit him. He testified that after he was dealt the first blow, the wooden baton broke. Thereafter, Corporal Lopez was given another wooden baton.

28. The claimant agreed with Counsel for the defendant that a wooden baton is a strong material. When asked about the first broken baton, the claimant replied that he believed he testified about same in his witness statement

and that apparently it was not documented. This was however not the case as his testimony in his witness statement was as follows;

“He left for a couple minutes and then returned with an extendable night stick which he extended in front of me. One of the other officers handed Corporal Lopez a wooden baton and Lopez took it instead”.

29. He testified that the second blow hit him by his chin and all he remembered was when he turned he was dealt a blow behind his neck, nose, behind his chest, elbows, legs and everywhere that could have been hit. He however did not receive any hits to the chest.
30. He testified that Corporal Lopez was the only officer hitting him at the time and that he could not recall how many blows he received on his legs but that it was a lot. He believed that the incident lasted between five to fifteen minutes until the female officer came and told Corporal Lopez to stop.
31. The claimant testified that Joseph and Lara did not try to assist him while he was being beaten by Corporal Lopez and he denied that the three of them pushed, cuffed and kicked Corporal Lopez. He denied pushing, cuffing and kicking Corporal Lopez and testified that *“well I believe if he was cuffed and kicked his medical supposed to show this”.*
32. The claimant was shown his medical report and when asked by Counsel for the defendant what is the right zygomatic, and what a deformed nose bridge is, he was unable to say what same were. Further, he testified that he understood there is nothing in his medical report about the injuries to his right knee and right arm.

33. He disagreed with Counsel for the defendant that Corporal Lopez used his baton to defend himself, that the officers were trying to protect themselves and that they were trying to get him and the other prisoners out of the cells.

34. When shown a copy of the Magistrate court extract,⁴ the claimant testified that he saw how the matter was disposed of but he was incarcerated. He also testified that he did not refuse to attend court and that, once a prisoner refused to attend court, the Prisons take a statement from the prisoner and he believed that there was such a statement from him. He was aware that he had to appear in court on the dates in the assault matter and was later informed by his Attorney he was found guilty.

THE CASE OF THE DEFENDANT

35. The defendant called two witnesses; Corporal Ian Lopez and Corporal Frank Regis.

Corporal Lopez

36. Corporal Lopez has been in the Trinidad and Tobago Police Service for approximately twenty-two years. His duties include supervision of junior officers, dealing with general occurrences such as fires, accidents, patrols and other related enquiries.

37. At the time of the accident he was attached to the Court and Process Branch, Port of Spain. On the afternoon of April 3, 2013, he was on duty at the Port of Spain Magistrate's court with Corporal Prime and Corporal

⁴ A copy of Magistrate's court extract was annexed to the witness statement of Corporal Lopez as "I.L.4".

Regis. Around 4:30 p.m. the prisoners threw food and water out of the cells into the corridor, complaining that there were no remand warrants.⁵

38. There were approximately fifteen prisoners and Corporal Lopez explained to them that the remand warrants were not ready to carry them back to prison. The prisoners became agitated.

39. Corporal Lopez recalled the transport vehicle arrived around 6:00 p.m. to collect the prisoners which meant that the prisoners were waiting for approximately two and a half hours. He testified that the usual procedure for loading the prisoners was to call their names using the remand warrants and then send them to the transport vehicle. He and the other officers began loading the prisoners into the vans. When he called the claimant's name followed by Joseph and Lara, all three failed to answer their names.

40. Corporal Lopez testified that he enquired from the claimant and the two other prisoners why they did not exit the cell, the claimant's response was *"whole day we waiting to go upon the jail, fock alyuh, we not coming out the cell"*.

41. Consequently, Corporal Lopez went into the cell to escort the claimant to the transport vehicle by physically grabbing him and holding on to his lower and upper left arm. The claimant then pulled away and spat in his face, which would have been the second time on that day. Corporal Lopez testified that earlier around 6:25 p.m., the claimant spat on him when he

⁵ In his witness statement, Corporal Lopez states the remand warrant is the document used to keep the inmate in custody and they will not be accepted at the prison without that document. This is accepted by the court as being a true reflection of the process of remand.

asked to use the toilet facilities, and said, *“we want to go up in the fucking road in jail”*, stating that police were wicked.

42. Thereafter, Corporal Regis came to his assistance, and Joseph said, *“look you want to see what happen, take this too”* and spat on Corporal Regis. An altercation then ensued between Corporal Lopez, Corporal Regis, the claimant, Joseph and Lara. It was the testimony of Corporal Lopez that the claimant and the other two prisoners kicked and cuffed him and he was struck about his body receiving blows to his neck, arms, torso and legs. He testified that he struck the claimant and the two other prisoners on the lower part of their bodies and that the prisoners were facing him and Corporal Regis. He could not specifically say where the claimant was struck.

43. According to Corporal Lopez, it was a situation that required action to preserve their safety and maintain order. Corporal Lopez and Corporal Regis used their extendable batons to defend themselves until other officers arrived to restrain the prisoners. The altercation lasted for approximately two minutes.

44. Corporal Lopez sustained injuries to his hand and leg. He obtained a medical report dated April 3, 2013 from the hospital. The medical report provided as follows;

*“This is to certify that on 03/04/2013 I examined Lopez Ian at the A&E POSGH 7:30 pm and found him to be suffering from the following injuries:
Very mild swelling of right index finger and thumb
Bruise on the right aspect of the neck (2 to 3 cm)
The injuries were probably inflicted with a blunt object, fist/feet”.*

45. The claimant, Joseph and Lara appeared to be normal after the altercation. As such, Corporal Lopez continued to load the prisoners into the transport vehicles with the help of other officers.
46. A short while later, Corporal Lopez, Corporal Regis, Corporal Prime and other officers accompanied the claimant, Joseph and Lara to the hospital where they were medically examined.
47. Later, Corporal Lopez returned to the Court and Process Branch, Port of Spain and made certain entries in the Station Diary on what transpired earlier in the afternoon. Despite Corporal Lopez's efforts he was unable to obtain a copy of the Station Diary. He was however able to obtain a copy of the Magistrate's Court station diary.⁶
48. A short while after, Corporal Prime charged the claimant, Joseph and Lara for the assault of the police officers. All three prisoners were found guilty after the trial by His Worship Mr. C. Quamina and were reprimanded and discharged.

Cross-examination

49. Corporal Lopez denied suffering from injuries sustained in an incident earlier that day.
50. He agreed with Counsel for the claimant that the contents in the contemporaneous documents, namely the station diary extract and the station diary from the Magistrate's court would be based on the information he would have provided.

⁶ A copy of the Magistrate's court station diary was annexed to Corporal Lopez witness statement as "I.L.3".

51. He was referred to the station diary extract dated April 3, 2013 and the entry at 4:50 p.m. that dealt with an incident between him and the prisoners where he received slight injuries. He agreed with Counsel for the claimant that there was no reason why those persons (other prisoners) were not charged and testified that it was separate incident.
52. He testified that the injuries he described to the doctor in his attached medical report were the injuries from the 6:30 p.m. incident. He testified that the prisoners in cell 4S, the same cell the claimant was in had been causing a commotion since around 4:30 p.m.
53. Counsel for the claimant read the entry of 6:15 p.m. from the station diary extract⁷. Corporal Lopez agreed that the police officers were being threatened. He testified that he was accustomed to the procedure for bringing prisoners in and out of the Magistrate's court and if there was a risk of violence against prisoners or anyone else, provided there are officers, additional officers would be assigned to the situation.
54. He accompanied Corporal Regis to escort the claimant, Joseph and Lara to the transport vehicles. Counsel for the claimant, suggested to him that he took no preventative measures to protect himself from the threats made by the prisoners. Corporal Lopez replied that he did not see it that way and there was no written procedure in his mind.

⁷ Entry number 48, "No. 14878 Ag Cpl Regis noted that there was noises and shouts emanating from the corridor of the cell where prisoners are been (sic) secured on investigating, the noises was coming from the number four south cell which had fifteen prisoners including Levi Joseph, Akili Charles, Israel Lara, who was shouting and saying in a loud tone of voice "all yuh focking police focking up, our charge partner Anton Cambridge went up on the first trip and we cannot go up yet, they said prisoners were informed that the remand warrants has not been received from the bonds desk, as such they will have to wait, Levi Joseph, Akili Charles and Israel Lara stated that "allyuh police will get real trouble later "we eh going a focking place when all yuh ready for us." They were admonish to behave themselves and the prisoners aforementioned continue making threats to the police".

55. He testified that from among the fifteen prisoners in the cell, twelve ended up in the van but the claimant, Joseph and Lara did not exit the cell. The station diary extract dated April 3, 2013 and the entry at 6:45 p.m. provided as follows;

“Entry number 43, line 14, “Cpl Lopez attempted to remove Akili Charles by holding on to his hand, Akili Charles pulled away his hand and cuff Cpl Lopez in his face, a struggle then ensued between the prisoner and Cpl Lopez which resulted in both men falling to the ground and they struggled for a while, Cpl Regis intervened to assist Cpl Lopez to restrain Akili Charles, then prisoners Levi Joseph and Israel Lara held on to Cpl Regis and struck him in his right leg and right hand a struggle followed and they fell on the concrete bench in the cell, other officers.....prisoners, the prisoners became more aggressive towards the police officers, and they continue to struggle and resisted been (sic) taken to the prison truck, shortly after the situation was brought under control and the prisoners was eventually subdued and secured by hand cuffing them behind their back. The three prisoners Akili Charles, Levi Joseph and Israel Lara together with Corporal Lopez and Corporal Regis received injuries”.

56. While giving evidence, Corporal Lopez demonstrated to the court how he grabbed the claimant with his both arms, and how the claimant pulled away his hand and cuffed him. Counsel for the claimant suggested to Corporal Lopez that he made no reference to same in his witness statement and he replied that there may have been an oversight. There appears to be no such evidence in the witness statement. The statement speaks to spitting and not cuffing at paragraph 7.

57. Corporal Lopez testified that when the claimant pulled away from him, the claimant spat in his face. Counsel for the claimant referred Corporal Lopez

to the station diary extract dated April 3, 2013 and the entry at 6:25 p.m.⁸, wherein Joseph spat on Corporal Regis and Corporal Lopez agreed with the said reference.

58. Counsel for the claimant also referred Corporal Lopez to the entry at 6:45 p.m. in which it is stated that the claimant pulled away from him and also in which there is no record of Corporal Lopez being spat on. Corporal Lopez agreed with Counsel for the claimant that the contemporaneous records do not make reference to him being spat on twice on April 3, 2013 and testified that the incident was recorded earlier in another station diary and that the entries at 6:25 p.m. and 6:45 p.m. may have been inaccurate.

59. When the altercation arose, he struck the claimant and the two other prisoners on the lower part of their bodies. The prisoners were facing him and Corporal Regis. He testified that he used his baton to defend himself and did not strike the prisoners to their face or vulnerable parts of their bodies. He could not say how the claimant ended up with a broken nose or injuries to his arms and testified maybe in striking him on his lower part, his arms may have been injured.

60. He testified that there was a struggle which resulted in both he and the claimant falling to the ground but admitted that that this did not form part of his witness statement.

⁸ Entry number 42, line 6, *"The cell was opened to allow this exercise prisoners Akili Charles, Levi Joseph and Israel Lara was asked if they wanted to use the toilet facility, the aforementioned prisoners came out of the cell and said in a loud tone of voice we want to go up the fucking road in the jail, they were advised to behave themselves, Levi Joseph then said "allyuh police to (sic) fucking wicked and spate (sic) in the face of Cpl Regis, the three prisoners Akili Charles, Levi Joseph and Israel Lara were eventually placed back into the cell and secured with the assistance of other police officers"*.

61. When suggested by Counsel for the claimant that he gave no evidence as to what particular blow he would have suffered, Corporal Lopez replied that things were happening so fast that he was able to ignore the pain to his right index finger and the bruise on his neck save and except, the kicks and cuffs which would have hit him on his hand whilst holding the baton.
62. He admitted that his medical report made no mention of the injuries to his legs and the doctor wrote what he observed and it was the doctor's notes.
63. Counsel for the Claimant suggested to Corporal Lopez that he was able to identify the claimant, Joseph and Lara as the ringleaders behind the rubbish throwing incident and he (Corporal Lopez) was determined to leave those three behind. Corporal Lopez failed to answer the aforementioned.
64. Corporal Lopez denied that he took the opportunity to punish the claimant, Joseph and Lara for the earlier incident and that he entered the cell, handcuffed the claimant and put him to sit on a concrete ledge with his arms around his back. He also denied beating the claimant with a wooden baton that led to his broken nose.

Corporal Regis

65. Corporal Regis has been in the Trinidad and Tobago Police Service for the past twenty years. His duties include supervision of junior officers, dealing with general occurrences, conducting patrols and other related enquiries.
66. He testified a similar account of the incident that occurred on April 3, 2013 at 4:30 p.m. and 6:00 p.m. with respect to the prisoners complaining, causing a commotion and the altercation that followed.

67. His evidence was that when the names of the claimant, Joseph and Lara were called; they failed to answer. He heard Corporal Lopez repeat the names approximately two or three times and none of the prisoners responded to him.

68. Further, when asked by Corporal Lopez why they refusing to exit the cell, the claimant used obscenities. He observed that Corporal Lopez went into the cell to physically remove the claimant and from where he stood, he further observed Corporal Lopez held unto the claimant with his hands as to bodily remove him. The claimant resisted by pulling away and appeared to spit on Corporal Lopez. When he entered the cell to assist Corporal Lopez, Corporal Regis was also spat on by Joseph.

69. As he attempted to restrain Joseph and Lara, the three prisoners started pushing and scuffling with Corporal Regis and Corporal Lopez resulting in an altercation. Corporal Regis was struck about his body. He testified that the situation was one which required him to use force and defend himself. Therefore, he and Corporal Lopez used their police extendable batons. He struck Joseph and Lara about the body particularly their torso and legs and it took approximately two minutes to subdue the prisoners. At that point, other officers entered the cell to assist in restraining the prisoners.

70. He recalled sustaining injuries to his elbows and leg. He received medical attention from the hospital later that day. The medical report provided as follows;

“This is to certify that on Wednesday 3rd April 2013, I examined Franklyn Regis at POSGH, A&E POSGH and found him to be suffering from the following injuries:

Soft tissue injury to the right elbow and right knee

The injuries were probably inflicted with a human hand or human foot”.

71. The claimant, Joseph and Lara appeared to be normal after the altercation and so Corporal Regis continued to load the prisoners into the transport vehicles with other officers.

72. A short while later, Corporal Regis, Corporal Lopez, Corporal Prime and other officers accompanied the claimant, Joseph and Lara to the hospital. Whilst there, Corporal Regis noticed that the claimant wiped something off of his face whilst at the hospital.

Cross-examination

73. Counsel for the claimant referred to paragraph 14 of Corporal Regis's witness statement where he testified that some of entries in the Station Diary Extract were made in his presence and not all. Corporal Regis testified that he remembered the contents because he was present when the incidents occurred. He further testified that the station diaries record various incidents and he was present for the majority of those incidents (4:50, 6:15, 6:25 and 6:45 p.m.) but he did not know if those incidents were recorded.

74. He testified that Joseph spat on him and there would have been two spitting incidents; the first instance with the claimant around 6:25 p.m. and the second instance when Levi Joseph spat on him (Corporal Regis). He also testified that there was another occasion, before the altercation when the claimant would have spat on Corporal Lopez. He did not recall the claimant throwing a punch when he was pulled away from Corporal Lopez however recalled that it appeared that Corporal Lopez was spat on. However, when

referred to the station diary extract, the incident was not listed at the 6:45 p.m. entry.

75. He testified that it was a melee, a struggle followed between the claimant and Corporal Lopez, where there was pushing, punching, kicking and they both fell to the ground. During the tussling, he kept an eye on the situation but did not see the claimant being struck to the face. He attempted to assist Corporal Lopez, while he and the claimant were on the ground but was confronted by the other two prisoners. As such, Corporal Regis needed to restrain the other two prisoners by use of his extendable baton but testified that he would not say that he and Corporal Lopez were fighting off all three prisoners together.

76. He did not see the claimant being struck in the face or anything that would have led to a broken nose. He testified that from his assessment, the injuries could have happened when the claimant and Corporal Lopez were struggling and fell to the ground. He denied that the claimant's broken nose could have been from a punch or being pushed to the ground.

77. Having been attached to Court and Process for over ten years, Corporal Regis testified that part of his duties was to assess the risk and take precautions from prisoners successfully making an attempt to escape. In his experience, it was customary for prisoners to utter verbal threats. Nonetheless, threats were taken seriously depending on the prisoners' ability or connection but they may just be venting.

78. He also testified that the threats being made by the claimant and the other two prisoners were initially venting and the tone changed which led to the threats being taken seriously.

THE COURT'S APPROACH

79. Where there is an acute conflict of facts, the trial judge must check the impression that the evidence of the witnesses makes upon him against the following;

- i. Contemporary documents, where they exist;
- ii. The pleaded case; and
- iii. The inherent probability or improbability of the rival contentions. **See Horace Reid v Dowling Charles & Percival Bain Privy Council App. No. 36 of 1987 page 6, per Lord Ackner.**

80. The defendant submits that the evidence of the claimant is inconsistent with his pleadings and he failed to bring witnesses to support his case. They submitted the following cases;

- i. **Naresh Ramlogan v Orangefield Estates Ltd et al HCA 2572 of 2000 at para76**, where it was explained that the claimant is bound by his pleadings. These pleadings are required to mark out the parameters of the case that is being advanced by each party. They are critical in identifying the issues and the extent of the dispute between the parties **(Lord Woolf MR in McPhilemy v Times Newspapers Ltd [1999] 3 All ER 775 at 793)**.
- ii. In the case of **Govindra Ram v R.K. Import Trading Ltd and Rajendra Kanick CV 2006-01086**, the learned Madame Justice Gobin considered the issue of whether the court should allow evidence of an issue that was only being introduced for the first time via the witness statements. At **para. 11** of the judgment, the Honourable Judge opined that;

“The consequences of the failure to include particulars are succinctly stated in Blackstone’s Civil Practice 2005 Ch 24:21:

“A judge should not make a finding of fact on an issue which depends on evidence that has not been raised in the Statement of Case so that all parties did not have a proper opportunity to address it.”

81. The claimant of course has the burden firstly of proving that his version of the assault and battery is correct and if so it is for the defendant to justify the use of force. It is worth noting that the claimant failed to comply with the court’s order to file written submissions by July 25, 2019. Having failed to apply for an extension, an extension was given by the court to file same by September 27, 2019 and despite this the claimant’s attorney failed to file until the day before delivery of this decision.

The Law and Submissions on the issues

ISSUE 1- Did Corporal Lopez attack the claimant or did the claimant resist Corporal Lopez while he was attempting to restrain him and sustain injuries thereby

Law- Assault and Battery

82. The defendant submitted that the injuries suffered by the claimant on April 3, 2013 was a situation where the police officers were called upon to defend themselves.

83. The case of **Sedley Skinner v The Attorney General of Trinidad and Tobago**⁹ defined the torts of assault and battery as follows;

“An assault is “the threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact.” An

⁹ CV2006-03721 per Pemberton J paragraphs 25,26

assault is established once the Claimant can prove that a reasonable man, if placed in his position at the relevant time, might have feared that unlawful physical force was about to be applied to him.

A battery is defined as “the application of force to another, resulting in harmful or offensive contact”. Based on the authorities, it can be said that elements necessary to constitute a battery as follows:

- a. The application of physical force; and,*
- b. The absence of a lawful basis for applying same.”*

84. The Claimant in his testimony provides his version of the actual assault and battery¹⁰. According to the claimant, he and the other two prisoners were singled out and the need for self-defence did not arise.

85. While the burden of proving the physical force rests on the claimant, where the defendant admits the physical force but proffers a defence, the burden shifts to the defendant to justify the act. In this case, that justification would be on the ground that it was committed in the defence of his own person and that he used no more force than was reasonably necessary or at least avoided force that was grossly disproportionate: **see Halsbury's Laws of England VOLUME 97 (2010) 5TH EDITION para 532.**

86. The defendants submitted there were no inconsistencies with respect to the material facts pleaded which is supported by their contemporaneous documents. They further submitted that it would have been inherently improbable that an officer who is accustomed to loading prisoners would demand a random apology from the claimant when the claimant was part

¹⁰ See paragraphs 7, 8 of claimant's witness statement and 12, 13 herein

of a group of other prisoners admittedly misbehaving and being disorderly all day and he admitted in cross-examination that he was angry.

87. The defendant contends that in effort to avoid what they thought would have been an altercation with the claimant, Corporal Lopez held onto him and tried to bodily remove him from the holding cell. The claimant's broken nose was explained by Corporal Regis as most likely having occurred when the claimant and Corporal Lopez were struggling and when they fell to the ground and accordingly used reasonable force in subduing the claimant

88. The defendant proffered the case of **John Phillips, David Noel and Joel Mc Hutchinson v The Attorney General CV 2015-03953, paragraph 4** where the learned Judge said;

“Ultimately, this case rested upon the resolution of facts as presented by the Claimants with a determination as to whether or not they established, to the satisfaction of the Court, on a balance of probabilities that they were beaten and sustained the injuries claimed. Having regard to the contradictions between the nature of the injuries claimed and the documentary evidence in the form of medical certificates and having noted that although they claimed they were beaten for three minutes, the Court felt that the injuries that one would reasonably expect after a sustained three minute attack. The Court found that it was inherently implausible and improbable that each of the Claimants were attacked as claimed or that they suffered the injuries as outlined in the statement of case as the medical evidence simply did not support the positions they advanced.”

89. The defendant further submitted that it presented all its contemporaneous documents namely, copies of the Station Diary extracts, the medicals for the two corporals as well as for the Claimant and a copy of the Magistrates' Court book extract to support its claim that Corporal Lopez and Corporal Regis acted in self-defence, there was a real risk of an attack or imminent attack and that in the circumstances it was reasonable to take the action that they did.

ISSUE 2- If it is found that the claimant resisted Corporal Lopez while Lopez was attempting to restrain him, did Lopez use such force that was reasonable in the circumstances to repel the actions of the claimant

Law- Self Defence

90. Section 4(1) of the Criminal Law Act provides;

“A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.”

91. It is lawful for one person to use force towards another in the defence of his own person, but this force must not transgress the reasonable limits of the occasion, what is reasonable force being a question of fact in each case. But the law does not require that a person when laboring under a natural feeling of resentment consequent on gross provocation should very nicely measure the weight of his blows See Clerk & Lindsell on Torts, 20th Edition, Paragraphs 30 – 02 to 30 - 03, pages 2017- 2018.

92. According to the defendant, the action taken by Corporal Lopez to subdue the claimant as the aggressor was reasonable in that no more force was

used than was necessary¹¹. In Clerk V Lindsell on Torts 20th edn. paragraph 30-02, the following was stated;

“It is lawful for one person to use force towards another in defence of his own person, but this force must not transgress the reasonable limits of the occasion, what is reasonable force being a question of fact in each case”.

93. In the unreported case of Neil Budhoo v Allan Campbell¹², at paragraphs 3 and 4, Jamadar J. (as he then was) elaborated on the onus of proving self-defence. He opined;

“The onus of proof therefore shifted onto the Defendant (i) to established self-defence, and to demonstrate (ii) that his belief that he had to act (that it was necessary to do so) in self-defence was both honest and reasonable (even if mistaken), and (iii) that the action taken by him in self-defence was reasonable (including that the force used was reasonable), having regard to all the circumstances of the case including the fact that the action was taken ‘in the heat of the moment’ ... Clearly, the reasonableness of the belief that a person needed to act in self-defence would depend on whether that person reasonably thought (even mistakenly so) that it was necessary to defend him/herself against attack or the risk of imminent attack.”

94. The defendant relied on the case of Ashley and the Chief Constable of Sussex Police¹³, in submitting that that it was reasonable for the defendant’s servants; Corporal Lopez and Corporal Regis to have taken the action that they did as the claimant did not exit the cell when his name was called, resisted being physically removed from the cell; and there was an

¹¹ See Neil Budhoo v Allan Campbell HCA No. S-2355 of 2004, CV-2006-00054; Anino Garcia v AG CV No. 2009-03273

¹² CV2006-00054

¹³ 2008 UKHL 25

imminent and real risk of attack as the claimant expressed his dissatisfaction in loud tones throughout the day, was still mad when the vans arrived to load the prisoners and being physically removed led to a struggle between the Corporals and the claimant.

95. The defendant further submitted as the claimant was the original attacker, reasonable force was used by Corporal Lopez to subdue him and with the assistance of Corporal Regis they were able to remove the claimant from the holding cell. Also, to protect themselves, maintain order in the cells and being outnumbered by the claimant, Lara and Joseph, the officers used their extendable batons.

Findings

Adverse Inference

96. The defendant also submitted that the onus lies on the claimant to establish on a balance of probabilities that he was assaulted and battered as set out in his case and a negative inference can be drawn by the claimant's failure to bring witnesses. They relied on the case of **Leo Duncan v Acting Assistant Commissioner of Police and The Attorney General CV 2006-01077** Justice Pemberton (as she then was) a claim for, amongst other things, malicious prosecution and false imprisonment where the learned Judge agreed with the submissions of the defendant with respect to the claimant's failure to bring witnesses.

97. The court noted that although Israel Lara and Levi Joseph gave witness statements on behalf of the claimant, they were not called as witnesses for the claimant in the proceedings and no reason was offered for their absence.

98. It has been established that where a party does not call a witness who has given a witness statement touching on a relevant matter who is not known to be unavailable and/or who has no good reason for not attending, and the other side has adduced some evidence on the relevant matter, the trial judge is entitled to draw an inference adverse to that party and to find that matter proved. **See Wisniewski v Central Manchester Health Authority [1998] P.I.Q.R. p 324¹⁴; Ramroop v Ganeias and others CV 2006-00075 HC of T&T.** The party seeking to rely on such an inference must however establish a prima facie case on the matter in question.

99. Justice Jones (as she then was) in **Sobers and Ors v AG¹⁵**, referring to the decision of Justice Rajnauth-Lee (as she then was) in **Ian Sieunarine v Doc's Engineering Works (1992) Limited¹⁶** observed;

“In answer therefore to the question why would the party not present such a witness to give evidence it is open to a court, sitting without a jury, to infer that it was not done because the evidence would not have helped that party’s case. Such an inference must not however be made in a vacuum but rather only in support of already existing evidence”.

100. In the court’s judgment, the claimant has failed to establish a prima facie case of assault and battery in the manner set out above and the court will draw adverse inference against him on the issue of the manner in which he alleges that the incident occurred. It follows that the findings will be that Lopez did not enter the cell, handcuff the claimant, place him to sit

¹⁴ At 323, the Court of Appeal held that in certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.

¹⁵ CV2010-04093

¹⁶ HCA No. 2387 of 2000

on a bench and beat him with a wooden baton. But the matter does not end there.

Findings on both issues

101. Firstly, the court accepts that the claimant and the other two prisoners were frustrated and agitated. In light of this admitted behaviour, it is more likely than not that the claimant and the two other prisoners refused to answer when their names were called. The court further accepts that the claimant and the two other prisoners responded to Corporal Lopez by saying, *“whole day we waiting to go upon the jail, fock alyuh, we not coming out the cell”*.

102. Secondly the court finds that such behaviour caused Corporal Lopez to enter the holding cell to remove the claimant and the other two prisoners. Consequently, the court does not accept that Corporal Lopez attacked the claimant. Based on the evaluation of the evidence, it is more plausible than not that the claimant sustained injuries whilst attempting to resist Corporal Lopez’s attempt to restrain him. Be that as it may, the court finds that based on the medical report of the claimant, it is pellucid that Corporal Lopez did not use such force that was reasonable in the circumstances to repel the actions of the claimant.

103. Before examining the medical reports, the court must also make it clear that it does not accept that there were two spitting incidents. The matters set out in the station diary extracts are materially inconsistent with the evidence of Corporal Lopez in that regard. As such, the court finds that the officers are not reliable on that issue and appear to be attempting to weave their answers into what is recorded in the extract. However, the court does find that there was one spitting incident that is material to this

claim which was not recorded in the diary as same has been testified to by both officers.

104. In relation to the use of a wooden baton, for the first time in cross-examination the claimant testified that there were two wooden batons. He testified that, the first baton broke after the first blow by Corporal Lopez and that a second baton was given to Corporal Lopez by another officer. At paragraph 6 of the claimant's witness statement, he testified that Corporal Lopez left and returned with an extendable night stick but accepted a wooden baton instead from another officer. The latter evidence was omitted from the witness statement of the claimant but it is important and material. It is something that the claimant would have no doubt remembered if it was true and he therefore would have included it in his witness statement. His failure so to do makes it more likely than not that in the court's view that the evidence is a fabrication and the court so finds. The court therefore accepts the evidence of the police officers that they were armed with night sticks and not wooden batons.

The impact of the medical evidence

105. Material evidence as to how the injuries both to the claimant and Lopez were sustained given by Corporal Lopez and Corporal Regis under cross-examination were not included in their witness statements. However, the medicals speak volumes in the court's view. The court does accept that Corporal Lopez sustained a blow to his neck most likely from a cuff and Corporal Regis was kicked by the claimant and the other two prisoners. The Lopez medical report sets out his injuries to be that of "very mild swelling of right index finger and thumb" and a "bruise on the right

aspect of the neck (2 to 3 cm)". The Regis medical shows that he sustained "soft tissue injury to the right elbow and right knee".

106. The injuries set out in the medical report of the claimant is inconsistent with the version of events he gave in evidence. The claimant was taken to the hospital immediately thereafter. It means that the injury to the face was inflicted by the officers. It cannot be that the claimant was struck on his lower body and he sustained a broken nose. In any event the court has drawn an adverse inference on that issue as stated above.

107. The court finds however, that while the incident may not have occurred in the manner that the claimant said it did, claimant's nose was in fact broken by a lash from Corporal Lopez from the night stick. The reasonable conclusion to be drawn from the medical is that the lash he sustained was from a somewhat long object. There was swelling in the right zygomatic area, a deformed nose bridge with epistaxis, swelling of the left Mastoid area and a 1 cm laceration to the chin. In non-medical terms, the swelling was to the cheekbone and the mastoid are being the temporal bone of the skull behind the ear. This, when considered with the laceration to the chin, demonstrates quite clearly that the claimant sustained a very hard full blow to his face with an object long enough to reach from one side of his face across to the other side causing swelling to the back of his left ear. The court finds that that object was a nightstick and that the claimant was struck across his face with it most likely from right to left with very severe force. It is equally clear to the court that those injuries could not in the circumstances have been sustained by a fall.

108. It is the finding of the court therefore that upon entry to the cell, the prisoners spat on Lopez and upon both officers attempting to subdue

them they were cuffed and kicked. Lopez responded but with very severe force exacted with the nightstick on the claimants face, a full frontal blow. The court does not accept the evidence of Lopez and Regis that the claimant was struck on his lower body. That is perhaps what they should have done but did not.

109. It follows that the force used to repel the attack was excessive and unreasonable in the circumstances. The court accepts that in the heat of the moment it may be difficult to weigh with any degree of precision the reasonable force required, however what is abundantly clear is that a full frontal blow to the face with a nightstick does not qualify. The claimant will therefore be awarded damages for assault and battery.

ISSUE 3- The appropriate measure of damages

General Damages

110. In assessing an award of damages for assault and battery, the court ought to be guided by the factors set out by Wooding C.J. in ***Cornilliac v St Louis (1965) 7 WIR 491***. The factors of relevance to this case are as follows;

- i. the nature and extent of the injuries suffered;
- ii. the nature and gravity of the resulting physical disability; and
- iii. the pain and suffering endured.

111. In ***Thaddeus Bernard v Quashie***¹⁷, de la Bastide C.J. stated the following in relation to aggravated damages:-

¹⁷ Civil Appeal No 159 of 1992

“The normal practice is that one figure is awarded as general damages. These damages are intended to be compensatory and include what is referred to as aggravated damages, that is, damages which are meant to provide compensation for the mental suffering inflicted on the plaintiff as opposed to the physical injuries he may have received.

Under this head of what I have called ‘mental suffering’ are included such matters as the affront to the person’s dignity, the humiliation he has suffered, the damage to his reputation and standing in the eyes of others and matters of that sort. If the practice has developed of making a separate award of aggravated damages, I think that practice should be discontinued.”

112. The defendant submitted that in the event the claim is not dismissed, an appropriate award of general damages to the claimant is \$20,000.00. In so submitting, the defendant relied on the following cases:

-

- i. The case of **Caroline Mallaieu v Mayor Alderman Councillors and Citizens of the City of Port of Spain & Water and Sewage Authority**,¹⁸ wherein the claimant sustained injuries which included a displaced fracture of the tenth rib, bruises to the right side of her back, discolouration of the skin on the right side, chest and abdominal pain and tenderness of the wrist muscle. The claimant was awarded \$40,000.00 in general damages.
- ii. The case **Ryan Puncham v The AG**¹⁹, wherein the Honourable Justice Kokaram in considering an award of damages in an assault

¹⁸ CV2006-00386

¹⁹ CV 2016-04003

and battery case, where the injuries to be considered included laceration across the eye, minor soft tissue injury to the shoulder, back and neck, blow to forehead and abrasions to chest and ribs awarded \$10,000.00 in general damages.

- iii. In **Terrell Toney v the Attorney General**²⁰, there were soft tissue injuries to both forearms and the left thigh and a shallow laceration. An award of general damages was made for \$25,000.00 inclusive of an uplift for aggravated damages and exemplary damages of \$20,000.00.
 - iv. In **Randy St Rose v the Attorney General**²¹, there were inter alia a swollen knee and forearms and \$25,000.00 was awarded as general damages inclusive of an uplift for aggravated damages and exemplary damages of \$20,000.00.
 - v. In **Leon King v the Attorney General**²², there was a laceration to the forehead and bruises about the body where \$35,000.00 was awarded as general damages inclusive of an uplift for aggravated damages and exemplary damages of \$20,000.00.
113. In order to determine an appropriate award, the court also had regard to the following cases;

- i. In **Frankie Bartholomew, Terrell Toney, Randy St. Rose, Leon King v The AG**²³, Justice Jones (as she then was) made the following awards in favour of the Claimants;

²⁰ CV2010-00513

²¹ CV2009-004756

²² CV2009-04757

²³ CV2009- 04755, CV2010-00513, CV2009 -04756, CV2009-04757

- a. Bartholomew: general damages in the sum of \$60,000 which included an uplift representing aggravated damages and \$20,000 in exemplary damages.
- b. King: general damages in the sum of \$35,000 which included an uplift representing aggravated damages and \$20,000 in exemplary damages.
- c. St Rose: general damages in the sum of \$25,000 which included an uplift representing aggravated damages and \$20,000 in exemplary damages.
- d. Toney: general damages in the sum of \$25,000 which included an uplift representing aggravated damages and \$20,000 in exemplary damages.

Those awards were made to compensate the claimants for injuries they sustained at the hands of police officers who beat them repeatedly in a holding cell at the Port of Spain Magistrate's Court. As a result of their injuries, they were hospitalised, treated and discharged. While admitting causing injury to the claimants, the defendant alleged that the injuries were incurred while the police officers were defending themselves and that the officers used reasonable force.

- ii. **Jason Raymond v The Attorney General**²⁴; Justice Kokaram awarded the claimant general damages in the sum of \$65,000.00. The medical evidence showed that the claimant suffered soft tissue injuries and bruising after he was beaten by prison officers which he was incarcerated.
- iii. **Mahadeo Sookhai v The Attorney General**²⁵; Justice Moosai, (as he then was), awarded general damages for assault and battery

²⁴ CV2016-00029

²⁵CV2006-009886

awarded in the sum of \$25,000.00 plus aggravated damages of \$10,000.00. The claimant suffered from a tender and swollen nose bridge, bilateral per orbital haematoma (“black eyes”), tenderness and swelling of both temples, tenderness and swelling of left anterior chest wall, abrasions of the anterior aspect of both knees.

- iv. **Lincoln Marshall v The Attorney General**²⁶ delivered by the Honourable Justice Rajnauth-Lee, (as she then was); On or about April 22, 2007 a prison officer used obscene language towards the claimant. The claimant responded to the officer similarly. The claimant was then assaulted and beaten by three officers. The injuries that were (i) the claimant lost two teeth and had four of his other teeth broken, (ii) Welt marks about his body, (iii) tender swelling about his entire body, (iv) tender haematomas about the claimants body, (v) intense swelling of the face and jaw area, (vi) inability to eat food and difficulty in talking, (vii) bleeding from the jaw area, and (viii) soft tissue injury about the body. The claimant was awarded the sum of \$100,000.00 in general damages, including aggravated damages, and \$50,000.00 in exemplary damages for his injuries.

114. It is the submission of the claimant in this case that an award on the higher end in the sum of \$100,000.00 should be awarded for general damages inclusive of an uplift for aggravation.

²⁶ CV 2009- 03274

Findings

115. The claimant was diagnosed with multiple soft tissue injuries and a fractured nasal bone. On examination, the doctor observed he was alert, in no cardio respiratory distress, he was complaining of pain behind his left ear, pain in his left arm and pain in his right upper cheek. The claimant continued to experience pain from the beating of April 3, 2013.

116. The claimant also testified that he was in severe pain up to his next court appearance twenty-eight days later. He further testified that he encountered problems using his jaw to eat and talk without feeling great pain and discomfort. Moreover, he testified that he could not eat or sleep properly for two weeks after the beating and having to sleep on the cold floor of the prison cell made his body pain worse. Additionally, by October, 2014 his jaw and did not improve.

117. It was the testimony of the claimant that the beating lasted between five to fifteen minutes. The claimant testified as follows;

“The first blow was to my nose, to my face, he had the baton like this, my hands was behind my back, they handcuff me and put me to sit on the concrete in the holding cells”.

The second one was my chin, all I can remember I was turned and that is where I get the one behind my neck, my nose, chin, behind my chest, elbows, legs, everywhere that can possibly hit, no chest blows”.

118. Having regard to the evidence before the court, the awards in similar cases for soft tissue injuries, the court finds that a just reward for general damages which includes an uplift for aggravation is the sum of \$60,000.00.

Exemplary Damages

119. Exemplary damages are awarded in cases of serious abuse of authority. The function of exemplary damages is not to compensate but to punish and deter. The case of ***Rookes v Barnard***²⁷ established that exemplary damages can be awarded in the following three types of cases;

- i. Cases of oppressive, arbitrary or unconstitutional action by servants of the Government;
- ii. Cases where the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff; and
- iii. Cases in which exemplary damages are expressly authorized.

120. The defendant submitted that the claimant should be awarded \$20,000.00 if the court is inclined to believe that the claimant is entitled to an award of exemplary damages. In submitting, the defendant noted the words of Lord Carswell in the Privy Council case of ***Takitota v The Attorney General of Bahamas P.C.A No. 71 of 2007*** as follows;

"[T]he awards of exemplary damages are a common law head of damages, the object of which is to punish the defendant for outrageous behaviour and deter him and others from repeating it ..."

121. In that regard the claimant submits that the sum of \$40,000.00 should be awarded for exemplary damages.

122. The court accepts the argument of the claimant that this is a suitable case for the award of exemplary damages. On the evidence, the defendant admitted that force was applied in an attempt to physically

²⁷ [1964] A.C. 1129, (UKHL) 1229

remove the claimant from the holding cell. The decision to bodily remove the claimant was a sound one and cannot be faulted. The court accepts that there was an altercation and at that point Corporal Lopez used his extendable night stick. However, whatever the cause of the altercation, the court finds that the disproportionate force used by Corporal Lopez to restrain and/or repel the claimant was arbitrary, oppressive and unconstitutional. As such, the claimant will be awarded the sum of \$20,000.00 as exemplary damages.

Closing comment

123. Despite extensions granted for attorney for the claimant to file and serve submissions no submissions were filed until the day before this judgment was delivered. This type of unsavoury practice by attorneys is to be deprecated. This judgment has been delayed for sometime as a consequence of the inaction of attorney for the claimant and the failure of the attorney to comply with the directions of the court. There was no compliance with the court's first order and the time was extended to July 2019. Again there was no compliance and the time was once again extended by the court of its own motion to September 2019. Again there was no compliance. Not only was there no compliance but no notice of application for a further extension of time was made by the said attorney. It appears, by way of inference, that upon realisation that the matter was listed for decision, at the very last minute he filed submissions on the day before delivery of this decision completely oblivious to the court's timetable, the knock on effect of his delay and wanton disregard of the access of his client to timely justice. The court will not countenance such behaviour.

124. Despite the tardiness of attorney for the claimant however, the court has been able to set aside its other matters to consider the submissions on behalf of the claimant in arriving at its decision herein in the interests of the administration of justice.

DISPOSITION

125. The court will therefore make the following order;

- i. The defendant shall pay to the claimant general damages for assault and battery inclusive of an uplift for aggravation in the sum of \$60,000.00 together with interest thereon at the rate of 2.5% from the date of filing of the claim to the date hereof.
- ii. The defendant shall pay to the claimant exemplary damages for assault and battery in the sum of \$20,000.00.
- iii. The defendant shall pay to the claimant the prescribed costs of the claim.

Ricky Rahim

Judge