

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION
2011/CLE/GEN/FP/00372

BETWEEN

DWIGHT LASHON ALLEN SR

Plaintiff

AND

COMMISSIONER OF POLICE

1st Defendant

AND

THE ATTORNEY GENERAL

2nd Defendant

BEFORE The Hon. Mrs. Justice Estelle Gray-Evans

APPEARANCES: Mr Dwight Lashon Allen, pro se
Ms Hyacinth Smith and Mr Marvin Hanna for the defendants

HEARING DATES: 2014: 12 and 13 May; 28 September

JUDGMENT

Gray Evans J.

1. The plaintiff, Dwight Lashon Allen, a former police officer, commenced this action by a specially indorsed writ of summons on 19 December 2011. He alleges that as a result of the actions of the police officers involved with his arrest and detention on 8 and 9 November 2011, he has suffered humiliation, loss and damages. In his statement of claim as amended with leave and filed on 2 October 2014, the plaintiff claimed damages in respect of the following:

- (1) Inhuman and degrading treatment
- (2) Unlawful detention and Arbitrary Arrest
- (3) Loss of good reputation
- (4) Illegal search of person
- (5) Assault
- (6) Deprivation of property
- (7) Entrapment; and
- (8) Failure to comply with due process

2. In their defence filed 21 May 2012 as amended on 4 March 2015, the defendants deny the plaintiff's claim and aver, inter alia, that the plaintiff was, on or about 8 November 2011, lawfully arrested for bribery and extortion following a complaint made by one Chenardo Hepburn and that he was released the following day, pending further internal investigations.

3. At the trial, evidence on behalf of the plaintiff was given by the plaintiff, Officers Paul Burrows, Anthony Cooper and Prescott Pinder, the latter two of whom were subpoenaed by the plaintiff. Evidence on behalf of the defendants was given by Officers W/Sgt 1744 Crystal Johnson, Assistant Superintendent Michael Braithwaite, Assistant Superintendent Robert Lloyd, Sgt 1679 Samuel Johnson, Inspector Advardo Dames and Sgt 2467 Darcy Williams.

4. All witnesses, except for those who were subpoenaed, provided witness statements and were subjected to cross-examination.

5. The plaintiff's evidence is that on 8 November 2011, he received a call from Mr Chanardo Hepburn asking him to go to Mr Hepburn's residence at No. 57 Young Husband Avenue, Freeport, Grand Bahama. The plaintiff said he did not know why Mr Hepburn had called him, but he went to his residence anyway. That while there Mr Hepburn held out what appeared to be money in his hand and said to him: "Man hold this so I could be sure you ain't going to send that thing through." The plaintiff said he told Mr Hepburn that "everything cool man" and turned around to leave. In his witness statement the plaintiff said, inter alia:

"While my back was turned, I was wrestled onto a chair and was physically assaulted by three men unknown to me at the time. Initially, I was confused and did not know what was going on. I was then handcuffed by an officer who I later discovered was Inspector Braithwaite. As I turned, I discovered along with him were Inspector Lloyd and Sgt 1679 Johnson, all men familiar to me. After he handcuffed me, he quickly placed his hand in my right front pocket and pulled out \$246.00, which I already had in my pocket when I entered the house....

At the same time, Inspector Lloyd was tightly holding my face shouting at me "spit the money out of your f**cking mouth" which confused me and suggested to me that Inspector Braithwaite and Inspector Lloyd lines of communication were confused as to how the money would be planted on me. I then requested that Inspector Lloyd remove his hand out of my face and he only did so when Inspector Braithwaite said to him "Lloyd let's go we need to hurry up get something in writing from him".

Inspector Braithwaite then dragged me out of the house in the presence of residents in the neighborhood I once lived in, took me to the police vehicle that I arrived in, in

handcuffs. As I sat in the police car, Inspector Braithwaite said to me "you locked up for extortion, you know the procedure".

6. Under cross examination the plaintiff said that he had known Mr Hepburn for more than 20 years. However, they were not friends nor did they "hang out" socially. He said he had never been to Mr Hepburn's house for a social occasion, and although he had had occasion to conduct a search of Mr Hepburn's premises, looking for stolen goods, Mr Hepburn was not arrested in relation thereto. The plaintiff admitted having, a few days prior to his arrest, stopped Mr Hepburn in relation to a traffic violation but says that the stop did not result in Mr Hepburn being ticketed. Nevertheless, the plaintiff said that when he received the call from Mr Hepburn to go to his residence, and even though he was "sceptical as to what was happening", he still went. Further, that even though he was "a bit afraid", and that "his suspicion had been raised" after Mr Hepburn was "reluctant to come to the door", he nevertheless went inside the house. Further, when he was wrestled from behind by "many persons" as he was about to leave Mr Hepburn's residence he did not call out for help, even though he did not know at the time that "those persons" were police officers and even though Officer Sawyer was outside in the police car waiting for him.

7. R/664 Anthony Cooper gave evidence that on 4 November 2011 while on mobile patrol, around 10 o'clock in the evening, in the area of Pioneer's Way travelling west, he and the plaintiff pulled over a vehicle: a white Ford 3000. He could smell marijuana scent coming from the vehicle. They asked the driver and passenger to exit the vehicle and proceed to the rear thereof. He said that the plaintiff took personal information from the driver, while he, Officer Cooper, searched the vehicle. He found nothing illegal, and a "6-4 check" by the police control came back negative, meaning there were no outstanding warrants on the persons in the vehicle. No ticket was issued to the driver. Officer Cooper said that he was not aware of any request by the plaintiff of moneys from the driver of that vehicle nor was he aware of any exchange of telephone numbers between them. To his knowledge, no citation was issued.

8. Under cross examination Mr Cooper said the vehicle was stopped because the driver ran the red light. He said he was not able to hear everything that was being said between the plaintiff and the driver (Mr Hepburn). He searched the vehicle for about 15 minutes, during which time the plaintiff and the driver were talking, although he did not hear what they were saying, so he could not say if there was an exchange of numbers or the issuance of a citation by the plaintiff to the driver. However, he and the plaintiff did not report that a citation had been issued.

9. Police Corporal 422 Paul Burrows recalled that on 4 November 2011, around midnight he was the duty officer at the Police Control Room when a call came into the Control Room. The call was answered by his assistant, WPC 3228 Jennifer Bain. She did not tell him anything about the call.

10. Police Sergeant 2169 Prescott Pinder, attached to West End Police Station, testified that on 9 November 2011, he was a Corporal and Executive Secretary of the Police Staff Association and was attached to the Mobile Division as Assistant Duty Officer. He recalled speaking to the plaintiff on that date via telephone and that he took some food to him.

11. Under cross examination Mr Pinder said he spoke with the plaintiff twice. The first time he placed the call and the second time the plaintiff called him and asked for food.

12. The evidence of the defendant's witnesses is that on 8 November 2011, Mr Chenardo Hepburn made a complaint to the police that he was being harassed by the plaintiff to pay him \$200.00 to "make a ticket for running a red light go away." The complaint was taken by W/Sgt 1744 Chrystal Johnson.

13. In her witness statement filed 8 May 2014, W/Sgt 1744 Chrystal Johnson states:

- (1) That I am a member of the Royal Bahamas Police Force and have been on the Police Force for more than twenty-five (25) years.
- (2) That I am currently assigned to the Complaints and Corruption Branch and have been at that Unit for more than four (4) years.
- (3) That this witness statement is made from information derived from me upon reviewing the Royal Bahamas Police Force files relative to the action herein and from information received from me in my aforesaid employment capacity from sources which I verily believe to be credible and reliable.
- (4) That on 8 November 2011 Mr Chenardo Hepburn (DOB 16/9/80) of #57 Young Husband Avenue came into the Complaints and Corruption Branch to lodge a complaint. As a result I recorded his statement and prepared a file.
- (5) Mr Hepburn reported that PC 1853 Allen between 4 – 7 November 2011 constantly harassed him to pay the sum of two hundred dollars (\$200.00) to make a ticket for running a red light go away. Mr Hepburn requested Police action in this matter.
- (6) After the statement was taken it was read over to Mr Hepburn, after which he signed the same. Then I signed just below him.
- (7) I informed the Officer-in-Charge at the time then Inspector Braithwaite of the complaint. Further that Mr Hepburn requested police action.
- (8) That I was later informed that an investigation ensued that evening which lead to PC Allen being arrested for Bribery and Extortion.
- (9) I then took a further statement from Mr Hepburn giving details of what happened while assisting Police with the investigations into his complaint. He stated that he was given Two Hundred dollars (\$200) marked and issued by the Police. That he called PC Allen to collect the said funds. That PC Allen came to his address in a marked police car and came inside his house where he gave him the marked hundred dollar bills. That after that PC Allen was arrested.
- (10) That was my involvement in this matter.

14. Included amongst the documentary evidence is a typewritten copy of a statement taken by Officer 1744 Johnson from one Chenardo Hepburn. Officer 1744 Johnson produced the original hand-written report(s) in evidence.

15. Officer Braithwaite's evidence is that as a result of that complaint, he, too, spoke with Mr Hepburn and as a result of the information he received from Mr Hepburn, he proceeded to arrange a "sting operation". He obtained two one hundred dollar notes from W/Inspector Armally at the Police's Financial Service Office, which notes were marked by him, Officer Armally, Mr Hepburn and Inspector Lloyd. Then, he and other officers went along with Mr Hepburn to his residence at #57 Young Husband Avenue, Freeport, Grand Bahama. Mr Hepburn made several telephone calls. He heard Mr Hepburn speaking to someone on the phone. He eventually gave the two notes to Mr Hepburn and then went into one of the bedrooms. Officers Lloyd and Johnson went into other areas of the house. He later saw the plaintiff, whom he knew and recognized, enter the living room of Mr Hepburn's residence.

16. In his witness statement filed 2 October 2013, Officer Braithwaite gave the following account of what transpired next:

- 1) "...PC Allen [the plaintiff] addressed Mr Hepburn by stating "What's up". I observed Mr Hepburn give Mr Allen the two marked Bahamian One Hundred Dollar notes. Mr Hepburn then asked Mr Allen if "everything ga be cool, I ain't have to worry 'bout no more ticket?" PC Allen then responded by saying "Everything ga be cool, but I need

an extra ten dollars (\$10.00) to get some lunch." I observed PC Allen place the bills given to him by Mr Hepburn into the front right pocket of his pants. Further that Mr Hepburn responded to PC Allen's request for an extra ten dollars by stating "I don't have any more money".

- 2) Shortly thereafter I exited the western bedroom, cornered PC Allen in the south eastern corner of the room. I informed him that he was under arrest for bribery and extortion and I cautioned him. Inspector Lloyd came to assist me at this time. I was able to disarm PC Allen and gave the gun to Inspector Lloyd.
- 3) I asked PC Allen for the money, to which he responded "what money?" I conducted a search of his person. I put my hand into his front right pocket and removed the two Bahamian One Hundred Dollar bills and an assortment of other notes and a small red flashlight in the presence of Inspector Lloyd, Sgt Johnson and Mr Hepburn. The money found totalled Four Hundred and Forty-six Dollars (\$446.00) inclusive of the two marked Bahamian Hundred Dollar bills.
- 4) PC Allen stated at this time "Man I just been to the bank and withdrew Eight Hundred Dollars (\$800.00)."
- 5) I then presented the two marked Bahamian One Hundred Dollar bills that I got from his pocket and asked if he was referring to these said bills as what he had withdrawn from the bank. PC Allen then responded by stating "I have nothing to say to y'all, I hope y'all know what y'all doing."
- 6) PC Allen was then handcuffed and transported to Central Police Station in a marked police vehicle driven by Sgt 1183 Sawyer.

17. Officer Lloyd's account of the incident is as follows:

- 1) I was in the front southern bedroom [of Mr Hepburn's residence]. At approximately 4:53 p.m., I observed a marked police vehicle pull up to the front gate of Mr Hepburn's residence. I recognized Police constable 1853 Allen, who I worked along with in the District of Grand Bahama, exit the front passenger seat of the vehicle in Police uniform. I was unable to see the driver of the said marked police vehicle.
- 2) Shortly thereafter I heard Mr Hepburn shout "come inside". I then heard Police Constable 1853 say "what's up?". Mr Hepburn then asked "everything is going to be cool and I don't have to worry about the ticket?". PC Allen then said "man everything going to be cool I have a lady waiting by the court right now to deal with this but I need an extra ten dollars to buy some lunch". Mr Hepburn then responded that he had no more money. I observed the virtual complainant hand PC Allen the marked bills.
- 3) I then exited the room and proceeded to the south eastern side of the front room and met Inspector Braithwaite who at the time was holding PC Allen's right hand. Inspector Braithwaite informed PC Allen that he was under arrest for Bribery and Extortion and cautioned him. PC Allen then replied "I hope y'all know what y'all doing."
- 4) Inspector Braithwaite then conducted a search of PC Allen person and found Four Hundred and Forty Six Dollars (\$446.00) which included the two marked Bahamian one Hundred bills, serial numbers L059377 and L067153 along with a small red flashlight.
- 5) PC Allen then stated that he and his wife had just withdrawn \$800.00 from the Bank. Inspector Braithwaite showed PC Allen the two marked Bahamian Hundred Dollar Bills serial numbers L059377 and L067153, and pointed out the initials.
- 6) PC Allen then stated "I don't have anything to say. I hope y'all know what y'all doing".

- 7) At no time during the arrest of PC Allen did I or any other Police Officer present hold PC Allen's face and shout anything at him.
- 8) PC Allen was then handcuffed and escorted to the Police vehicle which he arrived in, to be transported to the station. PC Allen walked out of the home to the vehicle and was at no time dragged by myself or any other officer present. PC Allen was then taken to Central Police Station.

18. According to Sergeant 1679 Samuel Johnson, during the operation and prior to the plaintiff entering the home, he was in the kitchen of Mr Hepburn's residence and although he could hear what was going on, he could not see what was happening when the plaintiff entered the home. Officer 1679 Johnson gave the following account:

- 1) I heard a knock on the door, I heard a voice which I recognized to be that of PC Allen. I am familiar with PC Allen from working with him in the capacity of a Police Officer in the District of Grand Bahama.
- 2) I heard PC Allen say "but I need an extra ten dollars". Mr Hepburn stated that he didn't have any more money and then he asked PC Allen "everything is ok now."
- 3) Shortly thereafter I heard doors opening and what I believe to be the take down. I then exited the kitchen, moved towards Inspector Braithwaite and Inspector Lloyd, who both stood in front of PC Allen. Inspector Braithwaite was holding PC Allen's arm and was attempting to take his firearm, which he did and handed to Inspector Lloyd. I joined in on diffusing the situation and tried to calm PC Allen down.
- 4) Inspector Braithwaite asked PC Allen where the money was. PC Allen responded "what money:" Inspector Braithwaite then search PC Allen person. He pulled out from his right front pocket folded bills and what appeared to be a red cigarette lighter. I clearly saw two marked Bahamian hundred dollar bills taken out of PC Allen's pocket.
- 5) PC Allen then said he had just come from the bank and withdrawn \$800.00. Inspector Braithwaite then unfolded the two Bahamian hundred dollar notes and showed them to PC Allen and said "if this money come from the bank I have these marked". PC Allen then indicated he wished to exercise his right not to say anything.
- 6) During this time I never saw Inspector Lloyd and or any other officer present hold PC Allen's face.
- 7) PC Allen was then handcuffed and escorted to the Police vehicle to be transported to the station. PC Allen walked out of the home to the vehicle and was at no time dragged by myself or any other officer present. PC Allen was then taken to Police Headquarters to be interviewed.

19. In response to the plaintiff's question as to whether he remembered "How you rush up to me, how you grab me and start screwing me up?" Officer Lloyd responded: "Never happened, sir." In response to the plaintiff's question: "Did you not, Mr Lloyd, grab me by my face and say, 'spit the money out?'" Officer Lloyd responded: No sir. Never happened, sir."

20. At the Central Police Station, the plaintiff was met by Officer Advardo Dames. In his witness statement filed...Officer Dames states:

- 1) That I am an Inspector of the Royal Bahama Police Force and have been on the Police Force for approximately twenty four (24) years.
- 2) That I am currently assigned to the Central Detective Unit and have been at that Unit for approximately two (2) years.
- 3) That this witness statement is made from information derived by me upon reviewing the Royal Bahamas Police Force files relative to the action herein and from information received by me in my aforesaid employment capacity from sources which I verily believe to be credible and reliable.

- 4) At the time of the incident I was a Sergeant of the Police Force stationed at the Central Police Station as the Crime Manager. That I am the author of the detention record in this matter and my signature is found on the first page acknowledging same.
- 5) That on Tuesday, 8 November A.D. 2011 at 5:08 p.m., Inspector Braithwaite, Inspector Lloyd and Detective Sergeant 1679 Johnson brought PC 1853 Dwight Allen to Central Police Station. They gave me information that he was arrested for extortion and bribery at 4:55 p.m. on Young Husband Avenue by Inspector Braithwaite.
- 6) PC Allen was brought directly to my office in Central Police Station out of courtesy to a fellow officer, I took custody of PC Allen I advised him again that he was under arrest. I read to him his constitutional rights according to Article 19 (2). I then completed a Detention record form with his information. PC Allen then endorsed the first page of the detention Record to acknowledge he was advised of the above.
- 7) He appeared to be in good health. At about 5:22 pm he was then turn back over to Inspector Braithwaite and Inspector Lloyd to be taken to Central Detective Unit.
- 8) That the above was my involvement in the matter.

21. Under cross examination, Officer Dames evidence is that on the day in question, he saw the plaintiff when he was brought into the Central Police Station by Officer Braithwaite and other officers; that he was dressed in uniform; that nothing looked out of place; that he did not look "mash up" and "scruff up" at the time. In response to the plaintiff's question as to whether he knew the two times when a police officer should be handcuffed, Officer Dames said: "Anyone who is under arrest is placed in handcuff. I know the information was that you were under arrest for extortion and bribery. As far as I knew, you were under arrest for extortion and bribery."

22. In his witness statement filed... Darcy Williams states:

- 1) That I am a Corporal of the Royal Bahamas Police Force and have been on the Police Force for approximately nineteen (19) years.
- 2) That I am currently assigned to the Central Detective Unit and have been at that Unit for approximately twelve (12) years.
- 3) That this witness statement is made from information derived from me upon reviewing the Royal Bahamas Police Force files relative to the action herein and from information received from me in my aforesaid employment capacity from sources which I verily believe to be credible and reliable.
- 4) At the time of the incident I was attached to Central Detective Unit.
- 5) That I reported to work at about 11:45 pm on Tuesday, 8 November 2011. That I was Supervisor at the time. My job required me to take over the station which meant taking over firearms vehicles prisoners and all other government property. The normal procedure is to call the custody suite to verify the prisoners in custody to cross check with a list turned over by the previous shift supervisor.
- 6) After doing the cross check, I was made aware that PC Allen was in lawful custody. However, he was not held in the custody suite.
- 7) When I arrived PC Allen was at a desk in the Central Detective unit laying across three or four chairs. He appeared to be well and not suffering from any injury.
- 8) In the past the decision has been made not to place a fellow Police Officer who was under arrest in the custody suite. It seems this courtesy was extended to PC Allen.
- 9) A healthy prisoner is checked approximately every two hours by an officer working on the shift and the same is logged into the Detention record of each individual prisoner in custody.

- 10) According to my entry on the Detention Record I first checked on the prisoner at 2:00 a.m. on Wednesday, 9 November 2011 and my check showed he was sleeping and resting well.
- 11) My notes reflect I conducted a second check at 4:10 a.m. when PC Allen was allowed to use the rest room. He appeared to be well.
- 12) I conducted a third check at 6:00 a.m. PC Allen appeared to be well.
- 13) My entries showed that my last and final check was at 7:53 a.m. where I offered PC Allen breakfast, which he refused. But he appeared to be well.
- 14) That during my entire shift PC Allen was treated well. At no time did he make any complaints to me. During my shift he slept, was allowed to use the restroom, and was offered food.
- 15) That the above was my involvement in the matter.

23. Under cross examination, the plaintiff put the following statement to Officer Williams: "At 7:55a.m. or 7:35 a.m. there was no breakfast at CDU office and that you and I were there and in comes 728 Feaster and 3187 Rolle who were then instructed by you to take the keys for the bus to collect the meals and then collect Inspector Lloyd." In response, Officer Williams said: "I can't recall."

24. As indicated, the plaintiff claimed damages for a myriad of claims, including:

- (1) Loss of good reputation;
- (2) Illegal search of person;
- (3) Deprivation of property;
- (4) Entrapment; and
- (5) Failure to comply with due process;

25. However, nowhere in his statement of claim (as originally pleaded or amended) did the plaintiff plead, or provide particulars of, how:

- (1) He had lost his good reputation;
- (2) He was illegally searched;
- (3) He was illegally deprived of his property;
- (4) He was entrapped.

nor did he state the due process with which he alleges the defendants had failed to comply or how the defendants had failed to comply therewith. Moreover, the plaintiff led no evidence in support of any of those claims.

26. The plaintiff's claims for damages for those alleged wrongs are, therefore, dismissed.

27. The plaintiff also claims damages for: (i) unlawful detention and arbitrary arrest; (ii) assault; and (iii) inhuman and degrading treatment.

28. Although nowhere in his statement of claim, as originally pleaded or as amended, did the plaintiff allege that he was unlawfully or arbitrarily arrested, it is clear from his evidence that that was the basis of his claim against the defendants.

29. Article 19 (1)(d) of the Constitution provides that no person shall be deprived of his personal liberty save as may be authorised by law in the following cases:-

- (d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence."

30. The defendants contend that the plaintiff was arrested on suspicion of having committed the offences of bribery and extortion.

31. Section 30 of the Police Act (Ch. 205) gives all members of the police force, such powers, authorities, privileges and advantages and makes them liable, to such duties and responsibilities, as constables and peace officers have or may be invested with, either by common law, or by virtue of any Act, or by Statute of the Parliament of the United Kingdom in force within The Bahamas, or as may be directed and imposed by any regulations made under the Police Act.

32. By section 31 of the Police Act and section 104 of the Penal Code police officers are empowered to lawfully arrest a person without a warrant on reasonable suspicion of that person having committed an offence.

33. In *Christie v Leachinsky* [1947] AC 575 at page 596 Lord du Parc quoting a passage from *Bullen & Leake's Precedents of Pleading* (3rd Edition), p. 795, said:

"There is, I think, equally no doubt that, at common law, a constable is justified in arresting a person without a warrant upon a reasonable suspicion of a felony having been committed, and of the person being guilty of it, although no felony has in fact been committed."

34. His Lordship continued:

"It confers on the police one of the few privileges which they enjoy at common law, and it is relevant to the serious question which your Lordships have to decide to observe how gradually, and one may almost say grudgingly, the courts came to grant to the peace officer a right denied to the private citizen, who cannot justify an arrest on reasonable suspicion of felony if the suspected felony has not in fact been committed."

35. In determining the lawfulness of an arrest on reasonable suspicion, the Court must consider:-

- (1) Whether the arresting officer suspects that the person who was arrested was guilty of the offence? and
- (2) Assuming the officer had the necessary suspicion, was there reasonable cause for suspicion?

36. The evidence, which I accept, is that Mr Chenardo Hepburn had made a complaint against the plaintiff which led to the Police setting up a "sting operation", resulting in the plaintiff's arrest and subsequent detention on suspicion of having committed the offences of soliciting a bribe and extortion. I also accept the defendants' evidence that at the time of his arrest, the plaintiff was informed of the reason there for and that having been arrested, the plaintiff was cautioned, placed in handcuffs, and taken to the Police station, where he was again told the reason for his arrest and informed of his constitutional rights.

37. It is common ground that the plaintiff was released the following day, after having been in custody for approximately 24 hours and without having been charged. The plaintiff contends that the defendants' failure to charge him is evidence that his arrest and detention were unlawful.

38. Counsel for the defendants submits and I accept that the fact that the plaintiff was released without having been charged does not make his arrest unlawful or arbitrary. See the judgment of Osadebay, J (as he then was), in the case of *Francis v Nixon* [2001] BHS J. No. 46

where the Learned Judge opined that “a lawful arrest is not thereafter rendered unlawful for the reason that the person arrested is released without being charged before a court with an offence.”

39. In my judgment, the defendants’ officers, having acted on Mr Hepburn’s complaint as aforesaid and, in light of the events which transpired subsequent thereto at Mr Hepburn’s residence, had reasonable and probable cause to arrest the plaintiff on suspicion of having committed the offences of extortion and bribery. Reasonable and probable cause was defined by Hawkins J in the case of *Hicks v Faulkner* (1878) 8 QBD 167 as follows:

“...an honest belief in the guilt of the accused, based upon a full conviction, founded upon reasonable grounds, of the existence of a 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. There must be first, an honest belief of the accuser in the guilt of the accused; secondly, such belief must be based on an honest conviction of the existence of the circumstances which led the accuser to that conclusion; thirdly, such secondly mentioned belief must be based upon reasonable grounds – by this I mean such grounds as would lead any fairly cautious man in the defendant’s situation so to believe; fourthly, the circumstances so believed and relied on by the accuser must be such as amount to reasonable ground for belief in the guilt of the accused.”

40. I, therefore, find the defendants had reasonable cause for suspecting that the plaintiff had committed the aforesaid offences and were justified in arresting and detaining him.

41. Moreover, section 18 of the Criminal Procedure Code Act provides that: “A peace officer making an arrest without a warrant in exercise of any power conferred upon him by the Penal Code, the Police Act or any other law for the time being in force, shall without necessary delay and not later than 48 hours after such arrest, take or send the person arrested before a magistrate appointed to preside in a magistrate’s court having jurisdiction in the case, unless the person arrested be earlier released on bail by a police officer having power in that behalf under the provisions of section 32 of the Police Act.”

42. As indicated, the plaintiff was released approximately 24 hours after his arrest. I, therefore, find that his detention was not unlawful as there was no unnecessary delay in releasing him.

43. At paragraph 12 of his amended statement of claim, under the heading “Assault and Battery”, the plaintiff makes the following allegations:

“12. The plaintiff was assaulted and battered by Inspectors Lloyd and Braithwaite. During the arrest; the plaintiff was forcedly pulled dragged, handcuffed. Further, Inspector Lloyd physically grabbed the face of the plaintiff and shouted “spit the money out of your mouth”.

44. By that allegation, the plaintiff admits that he was being arrested.

45. By section 11 of the Criminal Procedure Code, unless a person being arrested willingly submits to such arrest by word or action, an officer must, when making an arrest actually touch or confine the body of the person to be arrested, and if that person forcibly resists the endeavour to arrest him or attempts to evade the arrest, the peace officer or other person concerned may use all means necessary to effect the arrest, provided, of course, that no greater force than is reasonable to effect such arrest may be used,.

46. The plaintiff’s evidence in relation to his allegation of assault and battery is that having gone to Mr Hepburn’s home and refused to take the funds offered to him by Mr Hepburn, he proceeded to leave the house. However, that while his back was turned, he was wrestled onto a

chair and was physically assaulted by three men unknown to him at the time. He said he discovered that the men were all police officers, familiar to him, one of whom, Officer Braithwaite, handcuffed him. According to the plaintiff, after Officer Braithwaite handcuffed him, Officer Lloyd was "tightly holding" his face shouting at him to spit the money out of his mouth. The plaintiff said that Inspector Braithwaite then dragged him out of the house in the presence of residents in the neighbourhood in which he once lived and took him, in handcuffs, to the police vehicle in which he had arrived at Mr Hepburn's house.

47. Under cross examination, the plaintiff said that although he did not know that the men who had "wrestled him from behind" were police officers, and although he feared for his life, he did not call out for help, even though he also knew that Officer Sawyer was outside in the police car awaiting his return. In that regard, the plaintiff said that the reason he did not call out for help was because the vehicle's air condition and engine were running, so Officer Sawyer would not have been able to hear him, even if he had called out.

48. I do not accept that had the plaintiff been "attacked" in the manner he described, he would not have screamed or called out for help because of the reason he gave. It seems to me that under the circumstances in which the plaintiff said he went to Mr Hepburn's home, had the plaintiff not known his alleged "attackers", I have no doubt that he would have cried out, whether or not he believed Officer Sawyer would have heard him.

49. Furthermore, although the plaintiff's evidence under cross examination is that he did not try to run because he was being held, the plaintiff admitted that he tried to get away from those holding him; that they "wrestled"; and that he "resisted Mr Braithwaite going into his pocket." The plaintiff also admitted that he suffered no "major injuries", although he said that he had "like regular pains" from "the scuffle", he did not seek medical attention, but merely took some aspirin at home. In regard to that latter bit of evidence, I got the distinct impression that the plaintiff was "making it up" as he went along.

50. Moreover, although he admitted that he had an opportunity to speak to an attorney shortly after he was arrested and to speak to his union representative on two occasions while in custody, at no time during his detention did the plaintiff make a complaint to either of them about the alleged assault and battery.

51. The defendants deny that the plaintiff was assaulted.

52. Officer Lloyd's evidence is that at no time during the plaintiff's arrest did he or any other Police Officer present hold PC Allen's face and shout anything at him. Both Officers Lloyd and 1679 Johnson said that the plaintiff was handcuffed and escorted to the Police vehicle; that he walked out of Mr Hepburn's home to the vehicle; that at no time was he dragged by any other officer present.

53. I accept the evidence of the defendants' witnesses in that regard and I find, in the circumstances, that the officers used no more force than was necessary to effect the plaintiff's arrest and that the plaintiff has failed to prove his claim that he was assaulted and battered by the defendants.

54. Therefore, the plaintiff's claim for damages for assault and battery is also dismissed.

55. The plaintiff also seeks damages for inhuman and degrading treatment. In that regard, the plaintiff alleges at paragraph 13 of his amended statement of claim that he was subjected to inhuman and degrading treating and punishment in breach of Article 17(1) of the Constitution of The Bahamas and he provided the following particulars:

- (1) The plaintiff was deliberately and maliciously taunted by his fellow police officers during and following his arrest and detention at the Central Police Station in Freeport;
- (2) The plaintiff was made to sleep in a chair;
- (3) The plaintiff was not offered any food for more than 16 hours;
- (4) The plaintiff was arrested and carried out in handcuffs before other police officers and civilians.

56. Article 17(1) of the Constitution provides that “no person shall be subjected to torture or to inhuman or degrading treatment or punishment.”

57. The plaintiff has provided no evidence of the alleged taunting by his fellow officers during and following his arrest and detention, nor has he, in my judgment, demonstrated how being arrested and carried out in handcuffs before other police officers and civilians amounted to inhuman and degrading treatment.

58. Furthermore, the evidence is that when civilians are arrested they are placed in a cell or in the “Custody Suite” at the Police Station. However, it is common ground that the plaintiff was not placed in a cell but rather was kept in an office at the Central Detective Unit, apparently in keeping with a “Force policy” that police officers who have been arrested not be placed in cells with civilians in similar circumstances. The plaintiff acknowledged under cross examination that the procedures for police officers who are detained after arrest is “completely different”, recognizing, in my judgment that he had been arrested and that he was being treated differently from civilians who had been arrested. Nevertheless, the plaintiff complains that he was made to sit at a desk and to sleep in a chair, which he said breached his constitutional right against being treated inhumanly or degradingly.

59. No evidence was led by either side as to what other accommodation arrangements were in place for police officers who were arrested and detained, when they were not placed in cells along with civilian prisoners.

60. “Inhuman treatment” has been defined as “severe physical or mental pain or suffering” and “degrading treatment” has been defined by the European Commission of Human Rights as treatment or punishment that “grossly humiliates the victim before others or drives the detainee to act against his/her will or conscience”.

61. To my mind, being made to sleep in a chair at a desk, or across a number of chairs, according to Officer Williams’ evidence, rather than in a cell with civilian prisoners, while, no doubt, uncomfortable, in my judgment, falls short of the standard of treatment that would amount to inhuman and or degrading treatment contemplated by Article 17 aforesaid.

62. As for his allegation that he was not offered food for more than 16 hours, the evidence, according to the detention record is that the plaintiff was taken into custody shortly after 5:00 p.m. on 8 November 2011. During the night he slept at a desk in the Central Detective Unit. He was offered breakfast on two occasions, at 7:35 a.m. and again at 9:15 a.m. on the morning after his arrest and he refused the same.

63. In the circumstances, I find that the plaintiff has not proven the allegation that he was not offered food for more than sixteen hours.

64. However, even if the plaintiff was not offered food for more than 16 hours as he alleges, in my judgment, while such actions would not be considered proper treatment for a person in custody, it does not, in the circumstances, amount to inhuman and or degrading treatment contemplated by Article 17 aforesaid.

65. In the circumstances, I find that the plaintiff has failed to prove his claim of breach of his constitutional rights and or that he has been subjected to inhuman and degrading treatment.

66. In the result, the plaintiff's claim is dismissed in its entirety with costs to the defendants, to be taxed if not agreed.

DELIVERED this 22nd day of January A.D. 2016

Estelle G. Gray Evans
Justice