

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW & EQUITY DIVISION
2017/CLE/gen/00770**

BETWEEN:

BRITNEY NEYMOUR

First Plaintiff

LILLYETHA MILLER

Second Plaintiff

AND

THE ATTORNEY GENERAL OF THE BAHAMAS

First Defendant

AND

THE COMMISSIONER OF POLICE

Second Defendant

Before Hon. Mr. Justice Ian R. Winder

Appearances: Mr. Avrom Thompson for the Plaintiffs

Ms. Lenette King with Kingsley Smith for the Defendants

21 January 2020

JUDGMENT

WINDER J

This is the plaintiffs' claim for damages for the assault and battery arising from the arrest of the First Plaintiff (Britney) on 26 July 2016 at her residence in Pinewood Gardens in the presence of the Second Plaintiff (Miller).

- [1.] The action was commenced by specially indorsed Writ of Summons on 21 June 2017. The Defence filed on 26 October 2017 was struck out following the breach of an *unless order* imposed following the failure of the defendants to comply with the second Case Management Order given by this Court on 9 December 2019. This second Order was made to allow the defendants to file an amended defence, list of documents and witness statements before the imminent trial date.
- [2.] The defence was never amended, no list of documents filed and no witness statements were filed on behalf of the defendants. No application was made seeking relief from any of the sanctions which came into effect by virtue of the *unless order*. This matter was attended to with no care or urgency by the defence and the successive breach of Courts' order could not be ignored. Orders of Court must be complied with.
- [3.] The background to the action was a celebration on 15 June 2016 when Britney went out celebrating her high school graduation and her birthday with a group of classmates including a female friend (Q). At the end of the outing Britney asked a male friend she knew (P) to drive her and Q home. P agreed and the young women got into a car with him and four other young men. The men were not a part of the original group that Britney and Q had gone out with earlier that evening. On their way home Q needed to use the restroom and was taken to a house to allow her to use the restroom there. Whilst at the house Q allegedly became the victim of a sexual assault perpetrated by one of the young men.

- [4.] On the 26 July 2016 Britney was arrested at her Pinewood Gardens home for questioning in relation to the sexual assault of Q. Britney was arrested in the presence of her mother, Miller. Britney was detained for approximately 17 hours from the time she was arrested before she was released without charge.
- [5.] The Plaintiffs claim the following relief:
- (i.) Arbitrary Arrest and false imprisonment
 - (ii.) Inhuman and/or Degrading Treatment
 - (iii.) Assault and Battery
 - (iv.) Mental Distress
 - (v.) Loss and Damage
 - (vi.) Aggravated Damages
- [6.] The plaintiffs each gave evidence and called Dr Kirk Christie as a witness in the action.
- [7.] In relation to the arrest and detention, Britney's evidence was that:
- (i.) Around 10pm on the 26 July 2016 while at her Pinewood Gardens home with her mother Britney says that she heard male voices shouting her name on the outside of the home. It was mere moments after she heard her name being shouted that she heard a loud bang. She then heard Miller shouting her name from the area of the living room. She says that she threw on her night gown and ran into the living room bare feet.
 - (ii.) In the living room Britney says that she met the men whom she learnt were members of the Royal Bahamas Police Force (RBPF). She maintains that the men never identified themselves as police (officers).
 - (iii.) Britney says that she was told to "shut up" when she asked about the nature of the police intrusion and what they wanted with her. Miller was told by one of the officers to "shut up before I punch you in your mouth". At no point was she shown a warrant for her arrest, cautioned by the police or informed of the reason(s) why she was taken into custody. Britney says that she was taken away, in her nightgown and bare feet by six (6) male officers and a

female officer and driven to South Beach Police Station. She says that at the station she was informed that she was suspected of being the “mastermind” behind the sexual assault of Q on the night of 15 June 2016 and placed in a cell.

- (iv.) At approximately 7 am the following morning she was transferred from the police station to the Central Detective Unit (CDU) and was released from custody at approximately 3pm.
- (v.) When asked in cross-examination, Britney denied having any knowledge that the police were looking for her relative to the alleged sexual assault on Q and said that she was never directly contacted by the police with regard to the incident.

[8.] Miller’s evidence supports that of Britney. She says that she heard male voices on the outside of her home on the night of 26 July 2016, shouting ‘Britney’. Miller says that she asked the men who they were and was told not to worry about it. Seconds later her front door was broken down and the men, who she could now identify as police officers because of their attire, entered. Miller stated that when she went to the station to take slippers for Britney she was not given any information. She went to CDU the following day, prior to Britney’s release.

[9.] In relation to the claim for *Inhuman and/or Degrading Treatment* Britney’s evidence was that:

- (i.) The actions of the police officers, who acted as agents of the state, attracted an audience of onlookers and she was both frightened and embarrassed as a result.
- (ii.) She was handcuffed and placed into the awaiting police van as though she was a convicted criminal. She was transported barefoot and in her nightgown to the station despite asking permission to put on ‘more appropriate clothing’ and shoes before leaving the house. Britney’s evidence was that the conditions of the cell in which she was placed were unsanitary.

- (iii.) According to her, while she was held there officers shouted “you and your mother are criminals”, “shut up before I strike you down”, and “you should have been raped”. She said that they threatened to arrest her mother too.
- (iv.) Britney says during the detention at the police station she soiled herself after she experienced her menstrual cycle, however she was not allowed to manage her menstrual hygiene with dignity because she was not allowed to clean herself up.
- (v.) The experience, she says, was so harrowing that she broke down and cried and prayed while in custody. When she was moved to CDU the unsanitary conditions were also present as there was faeces on the wall in the cell where she was detained. These unsanitary conditions, Britney says, caused her to contract a rash to one of her arms that persisted for three months.

[10.] In relation to the claim for assault and battery, Britney’s evidence was that the police officers’ actions placed her in immediate fear for her personal safety during the entire course of events. Britney and Miller both claim that she suffered mental distress as a result of the incident. Miller’s evidence was that the actions of the Officers on the night of the arrest particularly the threat by one of the officers to ‘punch’ her caused her to be startled, frightened and put her in fear for her life and that of Britney. She says that she was disturbed and concerned over Britney’s arrest. Britney’s evidence was that:

- (i.) Following her arrival at the police station she was crying due to the harsh treatment that was meted out to her at the hands of the officers. While there she also claimed to have been subjected to taunts from officers. She deposed that she was afraid and unable to sleep because she feared being sexually assaulted while in custody.
- (ii.) She says the rash that she contracted added to her mental distress and caused her embarrassment. Prior to her arrest she never had any mental conditions however, post-incident she started smoking. The feeling of sadness and humiliation aroused by the incident caused her to begin

counselling sessions initially with her Pastor and later with Dr. Kirk Christie a psychiatrist who diagnosed her with Major Depressive Disorder (Mild).

[11.] Dr. Kirk Christie gave evidence in support of the case for Britney and was declared by the Court to be an expert in Psychiatry. His evidence was that:

- (i.) His first consultation with Britney was on 15 December 2018. This initial consultation was used to take what Dr. Christie described as her “psychiatric, past medical, social, forensic, family and personal history and to conduct a mental status examination.” He stated that he also interviewed Miller to ascertain the family history on the same day.
- (ii.) He assessed Britney for any underlying mood disorder and post-traumatic stress disorder (PTSD); drug use disorder; psychotic disorder and personality disorder. His diagnoses following his assessment were Major Depressive Disorder (Mild) and Nicotine Use Disorder (Mild).
- (iii.) He stated that Britney’s Major Depressive Disorder (Mild) was contributed to by psychosocial stressors which included the trauma from her arrest in July 2016. Dr. Christie stated that Britney had also experienced the loss of her father, but he did not know the date of his passing. She was also subsequently incarcerated for an unrevealed period of time at the Bahamas Department of Corrections. At the time of the consultation she was unemployed which he also deemed a stressor.
- (iv.) When questioned as to whether the possible effect of the sexual assault of Q on Britney and her subsequent arrest could be the cause of her diagnosed depression, Dr. Christie told the court that he considered these incidents to be contributing stressors. The past incidents, he stated, could lead to fear, dread and anxiety. He testified that stressors are not looked at in a narrow window of time but are considered in the following three categories: distant past; recent past and maintaining stressors.
- (v.) He stated that Britney did speak of both the sexual assault and her arrest on 26 July 2016, but not in any great detail. However, he described her arrest as being “very upsetting to her and her family”.

(vi.) When pressed by counsel for the defence that the 2 year lapse of time was excessive between the arrest and Britney's initial consultation with him, Dr. Christie answered that he did not consider the time period to be excessive. The disorder with which he diagnosed Britney could in fact appear in the future after a person witnesses or experiences a highly stressful event.

[12.] Miller claims to have suffered damage as a result of the broken door to her home caused by the forced entry of officers on the night that Britney was arrested. Her case was that she hired Black Wood Construction to repair the damage to the entry way and to install a new mahogany front door. This was done, she says, after the police officers did not respond to her requests to repair the door. Her invoiced costs were \$2,155.43.

Analysis and Discussion

[13.] The plaintiffs' claims for damages can be distilled under the following (1) Arbitrary Arrest, (2) Assault and Battery, (3) Inhuman and/or Degrading Treatment as Constitutional Breaches.

[14.] It is accepted that the legal burden is on the defendants to prove the existence and/or probable cause for Britney's arrest. (See: ***O'Hara v Chief Constable of the Royal Ulster Constabulary [1996] UKHL***). As a result of the absence of a Defence, there was a void in the defendants' evidence which they attempted to fill during the cross examination of Britney and Miller. Britney was questioned as whether she was aware that the police officers were looking for her to question her concerning the incident with Q. It was also suggested that Britney had attempted to evade police officers by staying with another relative so that she would not have to provide any information on the alleged sexual assault. Britney denied that she was avoiding the police and testified that she was unaware that she was being sought by them. Miller was also questioned about Britney's whereabouts after the alleged assault, suggesting that Britney was staying at her (Miller's) sister's house to avoid the police. Miller stated that she was travelling and that was the reason

Britney was staying with her sister instead of at the Pinewood Gardens home. Her evidence was that after she returned home from abroad, so did Britney.

[15.] Having had the opportunity to listen to and observe the demeanour of the witnesses, I accepted the plaintiffs' evidence as truthful. I accepted their evidence that no warrant of arrest was produced. I find that in all the circumstances there was no basis to reasonably suspect, on balance, that Britney had committed a criminal offence. There was no evidence that anyone, who may have arrested her, did in fact reasonably suspect that she had committed an offence.

[16.] With respect to the claim of assault and battery, the plaintiffs rely on an extract from the learned authors of *Halsbury's Law of England/ Tort (Volume 97 (2015)) – Assault & Battery*, which states as follows:

“Assault is an intentional and overt act causing another to apprehend the infliction of immediate and unlawful force. The threat of violence exhibiting and intention to assault will give rise to liability only if there is also a present ability (or perhaps a perceived ability to carry the threat into execution.”

“A battery is an act of the defendant which directly and intentionally or recklessly causes some physical contact with the person of the claimant without his consent.”

[17.] The plaintiffs submit that they have suffered both physically and mentally as a result of the actions of the police officers surrounding the incident in question. The night-time entry of the six police officers, dressed in dark clothing, shouting the name of the teenage female occupant and then forcibly entering the residence, without warning, leaves me with little doubt that the occupants of the home would have been frightened or apprehended the infliction of physical harm. I accepted the plaintiffs' claim that they were not shown a warrant by police officers when they came to the Pinewood Gardens home. I also accepted the plaintiffs' complaint that they were verbally assaulted by police officers when they dared to ask why Britney was being arrested. Finally, I accepted that Britney was “shoved” into the back of

the police van at the time of her arrest as she alleged. This, in my view amounts to assault and battery as claimed.

- [18.] Regarding the claims of inhuman and/or degrading treatment, contrary to the constitutional protections, the plaintiffs have spoken of the fear and embarrassment that they felt by the way officers entered their home and the manner in which Britney was taken from the home. The evidence was that she was handcuffed, with neighbours looking on while barefoot and in her nightgown. She was then transported to and paraded through the police station in her nightgown and barefoot. While there she claims to have been taunted by the officers, who she claims made statements like “you and your mother are criminals” and “you should have been raped”. Britney says, and I accept, that during the detention at the police station she soiled herself after she experienced her period; however she was not allowed to manage her menstrual hygiene with dignity because she was not allowed to clean herself up.
- [19.] Having seen and heard the evidence I accepted Britney’s account of her experience while at the police station and find that the behaviour displayed by the officers and the treatment she described was wholly unacceptable for law enforcement officers, who are agents of the state. I also accepted Britney’s evidence regarding the unsanitary conditions of the cells in which she was detained. No medical evidence was presented, however, in relation to her claim that the rash that she contracted following the incident, was a direct result of the conditions she endured during her time in custody.
- [20.] With respect to the claim relative to the mental impact of the incident on the plaintiffs, I accepted the evidence of Dr Christie that psychiatric evaluations are not limited to a specific period in time. I did not find that the arrest and detention of Britney, in all of the circumstances, was solely responsible for the diagnoses made by Dr Christie. However, I do believe that the manner in which the arrest was effected did cause a measure of mental distress to both plaintiffs and that the defendants should be held accountable for the impact of their actions.

[21.] The entry into the private home of a citizen and the arrest and detention of any of its occupants by members of the security forces, should be carried out appropriately with respect for the human dignity of the individual and in accordance with their Constitutional rights. The manner in which the officers entered the Pinewood Gardens home, depriving Britney of her liberty, had a debasing element which in my view exacerbated the personal and social humiliation that came along with the arrest. The same can be said of Britney's detention.

[22.] The plaintiffs' claim for aggravated damages was set out in their statement of claim as follows:

That the Plaintiffs plead Aggravated Damages on the following grounds:

i. That the Plaintiffs' feelings and dignity were damaged when the Police Officers kicked down the front door to their home as though they were in pursuit of one of the most notorious criminals.

ii. That the First Plaintiff's feelings and dignity were damaged when the Police Officers subsequently dragged her out of her home after 10:00 at night and forcibly placed her in a Police marked van. That the First Plaintiff was barefooted and dressed in her nightgown at the time of her arrest.

iii. That the Plaintiffs' neighbors came outside and witnessed the First Plaintiff being arrested. That as such, the incident caused the Plaintiffs to lose their dignity and character.

iv. That the First Plaintiff's feelings and dignity were damaged in that the First Plaintiff was treated as though she was guilty of a crime. That the First Plaintiff was not afforded the presumption of innocence notwithstanding the fact that the First Plaintiff does not have a criminal history.

v. That the First Plaintiff had and has no criminal history and this incident has caused her to lose dignity as her character was wrongfully and publicly tarnished. That the First Plaintiff was a recent high school graduate, and was enrolled at the College of the Bahamas to commence a degree program in Law and Criminal Justice in September of 2016.

vi. That the First Plaintiff's feelings and dignity were damaged when the Police Officers shouted jeers and taunted her, causing the Plaintiff to cry. That the First Plaintiff was humiliated by the cruel and degrading manner in which the Police Officers treated her.

vii. That the Plaintiffs' feelings and dignity were damaged when the Police Officers aroused feelings of fear, inferiority, mental anguish, and emotional distress in the Plaintiffs.

[23.] The plaintiffs rely on the Privy Council case of ***Merson v Cartwright and Attorney General* [2005] UKPC 38** to support a claim for a monetary award where it is found that there has been a constitutional breach. This Privy Council case arose from the appeal of the award of damages allotted by ***Sawyer J*** (as she then was) in her written judgment of 22 June 1994 to the appellant, which had been overturned by the Court of Appeal. The Privy Council allowed the appeal and re-instated the damages award of \$100,000 for the Constitutional breaches perpetrated on the appellant by police officers, stating the following:

“an additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches.”

[24.] The plaintiffs acknowledge that there is overlap between their claims for assault and battery under Article 17(1) and false imprisonment under Article 19(1) of the Constitution. They contend however, that this overlap is not complete, hence their reliance on ***Merson*** for an additional award for these torts.

[25.] In the circumstances I find that the claim for the arbitrary arrest, assault and battery, and false imprisonment of Britney has been made out against the defendants. I will make a global award, having regard to the overlap of these heads of damage, and taking into account all of my findings as detailed above, in the amount of \$40,000.

[26.] I will make an award of \$2,000 for assault and battery relative to Miller.

[27.] I also find, on the evidence, that the damage that Miller claimed, to the front door of her home, was unlawfully caused by police officers on the night in question and

that she had to (albeit seven months later) pay, from her own resources, to have the damage repaired. I award the sum claimed in full of \$2,155.43.

[28.] The Plaintiffs have suffered breaches to their Constitutional rights as per Articles 17(1), 19(1) and 25(1) of the Bahamas Constitution. I further find that the manner in which the officers executed the arrest of Britney resulted in aggravated damage to the plaintiff and as such they should be awarded for their loss under this heading. I find that the actions of the officers in this matter were not lawful or necessary in the circumstances. Indeed employment with the police force does not bestow on officers carte blanche to violate the Constitutional rights of individuals. Their use of the authority reposed in them was wholly contrary to the purpose for which they were engaged. Police officers are sworn to protect civilians, not to terrorize them. Even if there was the honest belief that they may committed offences, civilians have a right to be treated civilly, respecting their fundamental rights and freedoms as far as possible in a given circumstance. I therefore make an award of aggravated damages in the sum of \$15,000 to Brittney and \$5,000 to Miller. The sums reflect the sense of public outrage for the actions of the police officers, and emphasise the importance of the plaintiffs' constitutional rights and the gravity of the breach, and hopefully deter further breaches.

Conclusion

[29.] For the avoidance of doubt the sums awarded to the plaintiffs are as follows:

(i.) Britney:

(1) Arbitrary/wrongful arrest, false Imprisonment

and assault and battery: \$40,000

(2) Aggravated damages: \$15,000

\$55,000

(ii.) Miller

(1) Damage to the door \$2,155.43

(2) Assault and battery \$2,000.00

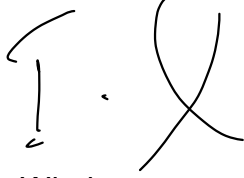
(3) Aggravated damages for constitutional breaches: \$5,000.00

\$9,155.43

[30.] Interest is awarded at 3% from the dated of the filing of the Writ of Summons to the date of judgment and to accrue thereafter pursuant to the Civil Procedure (Award of Interest) Act.

[31.] The defendants shall pay the plaintiffs' reasonable costs, such costs to be taxed in default of agreement.

Dated this 1st day of December 2020

A handwritten signature in black ink, appearing to be 'I. Winder', with a large loop at the end.

Ian R. Winder

Justice