

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
2020/CLE/gen/00717**

BETWEEN:

PEDRO MORLEY

Plaintiff

AND

THE COMMISSIONER OF POLICE

1st Defendant

POLICE CONSTABLE COURTNEY HALL

2nd Defendant

THE ATTORNEY GENERAL

3rd Defendant

Before: Assistant Registrar Mr. Renaldo Toote

Appearances: Bjorn Ferguson for the Plaintiff
Luana Ingraham for the Defendant.

Hearing Date: 15th and 22nd July, 2021.

Assessment of damages – police- unlawful conduct – loss of teeth – pain and suffering – assault and battery – constitutional damages – exemplary damages.

On the morning of 5th October, 2019 around 2:00 am, the Plaintiff (Pedro Morley) and a female were conversing outside of Club Enve, Down Town, Nassau. At this time, Courtney Hall, the Second Defendant in this matter approached the couple and enquired whether or not Morley knew the female and if they were conversing about him [Hall]. Unprovoked, Hall removed a firearm from his waist and pointed it in the direction of Morley placing him in fear for his life. Hall then identified himself as a police officer, however, it must be noted that he was not on duty at this time and the evidence suggests that he was not carrying out any official police functions.

The Plaintiff being fearful, immediately left the Club. While traveling south on East Street near Big One Shoe store, he was stopped by a marked police vehicle driven by uniformed officers of the Royal Bahamas Police Force who ordered him and his passenger to exit the vehicle. While exiting his vehicle, Hall arrived on the scene in a private vehicle and immediately approached the Plaintiff and punched him twice in his mouth which resulted in two (2) of his teeth immediately becoming loose. In totality, the Plaintiff received damage to eight (8) of his teeth.

The Defendants disclosed that Hall was eventually prosecuted by the Police Tribunal where he admitted to the aforementioned facts.

Held: Damages awarded to the Plaintiff in the global sum of \$82,856.00 as compensation for assault and battery, exemplary and aggravated damages and legal costs.

When the Royal Bahamas Police Force's motto: "Creating safer communities" actually does right by the oppressed, only then will it truly exist. In a just and civil society, there is a legitimate expectation that the Police would act fair at all times.

The abiding respect for human dignity and the denigration of one's fundamental rights cannot coexist in harmony. It is fundamentally important that the justice system sustain the moral fibre of a just and equitable society. The subtle escalation of divisive bigotry when exhibited by the arm forces, weakens and destabilizes our democracy. A police officer must represent security, temperance, gallantry and respect; not fear, brutality and oppression.

As mentioned before, "the stability of justice is eroded whenever a person's liberties are violated by those who are sworn to protect and preserve human rights in a civil society" (see *Latario Rolle v Corporal 2054 Moultrie & Ors.* (Unreported) 2016/CLE/gen/00025).

Authorities Cited

Considered: *Merson v Cartwright* [2005] UKPC 38; *Alseran and others v Ministry of Defence* [2019] Q.B. 1251; *Anthony Broome v. Cassell* [1972] A.C. 1027; *Rookes v Barnard* [1964] A.C. 1129; *Shawn Scott v Attorney General* [2017] UKPC 15; *Kevin Renaldo Collie v Attorney General* (2016) CLE/gen/00916; *Latario Rolle v Cpl. 2054 Moultrie & Ors.* (Unreported) 2016/CLE/gen/00025; *Gilford Lloyd v Chief Superintendent Cunningham et al* (2016) CLE/gen/00062; *Ruddock & Ors. v Taylor* [2003] NSWCA 62.

RULING

Toote, Assistant Registrar

1. This is the assessment of damages in favour of the Plaintiff's [Morley] claim against the Defendants for (1) assault and battery; (2) loss of his teeth; (3) pain and suffering; (4) constitutional damages; (5) aggravated and exemplary damages.

Background

2. The Plaintiff commenced this action by a specially endorsed writ of summons filed 12th August, 2020. A memorandum of conditional appearance was filed 25th February, 2021 and the defence to the claim was entered on 9th March, 2021.
3. By Consent Order dated 22nd February 2021, and filed 1st June, 2021, I granted leave for judgment to be entered against the Defendants.
4. The facts in the Plaintiff's statement of claim outlines that on 5th October, 2019 around 2:00 am the Plaintiff was conversing with a female outside of Club Enve, in the Down Town area of Nassau, when the Second Defendant approached the couple and enquired whether or not the Plaintiff knew her and if they were having conversations about him (Hall). This is when the Second Defendant removed a firearm from his waist and pointed it in the direction of the Plaintiff placing him in fear for his life. The Second Defendant later identified himself as a police officer, however, he was not on duty or called upon to carry out any police duties.

5. The Plaintiff being fearful, immediately left the Club to head home, yet while traveling on East Street near Big One shoe store, a marked police vehicle driven by uniformed officers of the Royal Bahamas Police Force stopped and ordered him and his passenger to exit the vehicle.
6. Upon exiting his vehicle, the Second Defendant, arrived on the scene in a private vehicle, approached the Plaintiff and punched him twice in his mouth which resulted in two (2) teeth immediately becoming loose. In totality, the Plaintiff received damages to eight (8) of his teeth.
7. The Plaintiff underwent medical dental treatment under the care of Dr. Dante Bazard who reported that the Plaintiff required an eight-unit bridge which would eventually cost \$9,856.00 to repair his teeth. The cost of the dental plan is exhibited to the Plaintiff's Affidavit.
8. The Second Defendant was eventually prosecuted by the Police Tribunal for his involvement in the matter where he plead guilty to the allegations.
9. In the instant matter the only evidence relied on by the Plaintiff in support of his damages was his Affidavit filed on 21 July, 2021. The Defendants did not cross examine the Plaintiff or call any witnesses to defend against the claims. Hence, I accept the version of events by the Plaintiff that (i) he was assaulted and placed in fear of his life and (ii) that he was battered and suffered the loss of two (2) teeth and damage to six (6) others which require an eight unit bridge in order to repair.

Assessment

10. I turn now to the issue of damages. Counsel for the Plaintiff submitted that the manner in which the assault was committed warrants an award of aggravated and exemplary damages to the Plaintiff. The assault on the Plaintiff by the Second Defendant resulted in the loss of two teeth and requires an eight unit bridge in order to properly repair his mouth. The Plaintiff submitted that the Second Defendant's conduct ought to be taken into account in the award of aggravated and exemplary damages. The Plaintiff's Counsel submitted that in this case, no apology has been proffered by the Defendants which demonstrates a lack of remorse.
11. In order to make an appropriate award for general damages, guidance is usually obtained from similar cases decided within the jurisdiction. The Privy Council in **Shawn Scott v Attorney General** [2017] UKPC 15 (a personal injury case) sanctioned Bahamian courts to develop its jurisprudence in this area of law. Insofar as it is relevant, the Privy Council stated:

“The Bahamas must likewise be responsive to the enhanced expectations of its citizens as economic conditions, cultural values and societal standards in that country change.... Guidelines from different jurisdictions can provide insight but they cannot substitute for the Bahamian courts’ own estimation of what levels of compensation are appropriate for their own jurisdiction.”
12. The Plaintiff in support of the assessment of damages referred the court to several authorities in particular:
 - a) **Rookes v Barnard** [1964] 1 All ER 367;

- b) **John v MGN** [1996] 2 All ER 35;
 - c) **Cassell & Co. v Broome** [1972] AC 1027.
13. Similarly, the Defendants referred the court to the following authorities:
- a. **Woodside v Hemsley** [2004], Kemp & Kemp D7-005;
 - b. **G (A child) v Lancashire CC** [2000] Kemp & Kemp D7-008;
 - c. **Thompson v Metropolitan Police Comr** [1998] QB 498;
 - d. **Appleton v Garrett** [1996] PIQR P1.
14. This brings me to the question as to whether it would be appropriate to utilize these cases as guidance in the assessment of damages in our jurisdiction. As difficult as it may be, courts should endeavor to arrive at our best estimate of appropriate compensation for personal injuries in The Bahamas. Indeed, consideration may be given to awards in other jurisdictions, however, it is best that we search for and rely on awards made in this jurisdiction and only when necessary should the court rely on awards in jurisdictions which are similar to us in social, economic and industrial conditions. Such an approach would avoid the difficulty of determining what level of discount would be required to be applied to an award made in a country with dissimilar conditions, in order for it to reflect our reality.
15. In **Shawn Scott v Attorney General** [2017] UKPC 15, (a personal injury case) the Privy Council opined at paragraph 42 of the judgment that:
- “... the Board considers that a mechanistic adherence to JSB guidelines with an automatic increase cannot be the proper way in which to assess general damages in the Bahamas (sic). If such an approach was appropriate, it could only be contemplated on the basis of evidence to establish the fact that there was a difference in the cost of living between the two countries, rather than an assumption that this was so. It should be made clear, however, that the Board does not commend such an approach. As already observed, JSB guidelines can provide an insight into the proper awards of compensation for pain and suffering and loss of amenity in the Bahamas but only in so far as they meet the standards and expectations of Bahamians. An automatus method of assessing general damages by seeking out the norm in England and adding an automatic increase cannot fulfil those requirements.” (Emphasis added)**
16. I agree and join in sounding the clarion call for the production of a local judicial studies guideline to assist both the bench and bar.
17. In reliance on our local jurisprudence, I found the following cases to be particularly relevant and helpful.
18. In **Kevin Renaldo Collie v Attorney General (2016) CLE/gen/00916**, the Plaintiff, was arrested while at work, on his job as a Customs Officer, and was awarded \$35,000 for unlawful arrest and false imprisonment lasting 32 hours. In **Gilford Lloyd v Chief Superintendent Cunningham et al (2016) CLE/gen/00062** a shotgun was put to the Plaintiff’s forehead, when the police mistakenly conducted a search for illegal contrabands on the wrong house [Lloyd’s] and he had to stand in handcuffs for approximately 30 minutes in the presence of his neighbors and as a result soiled himself out of fear. Lloyd, a Senior Officer in the Department of Fisheries was awarded \$30,000 for his false imprisonment. In **Shawn Scott** *ibid* the Plaintiff was awarded \$315,000 after being left a paraplegic from an encounter with the Police. **Aaron Whyly v Commissioner**

of Police [2019] unreported was awarded \$465,000 globally when he suffered a collapsed lung from being assaulted while in Police custody.

19. In the instant case the Plaintiff was never arrested or detained, however, it is the Plaintiff's case that he is entitled to constitutional damages.
20. Pursuant to its Writ of Summons, the Plaintiff pleaded among other things, claims for (1) violation of the Plaintiff's fundamental rights and freedoms pursuant to Chapter III Articles 17-25 and (2) damages for breach of constitutional rights.
21. In response, Ms. Luana Ingraham, Counsel for the Defendant argued that the circumstances surrounding this case does not warrant an award for constitutional damages principally on the ground that Article 28(2) of the Constitution provides that the Supreme Court shall not exercise its power ... if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.
22. The Plaintiff was assaulted by the Second Defendant, however, the Plaintiff never pleaded a specific constitutional breach and even if he did, I find it difficult to determine which one of his fundamental rights were violated.
23. The evidence discloses that the Plaintiff was initially approached by the Second Defendant, who assaulted him with a firearm. It is important to note that Hall was not on duty at the time of the incident, in essence he was not acting in the capacity of a Peace Officer. *A fortori*, this is a tort involving two private citizens and not an agent of the State. The vicarious liability of the State is concerned with the omission of on duty (uniform) officers to prevent a wrong from occurring, which I will address later.
24. Indeed, the conduct of the Second Defendant was an indictable assault, but in my humble estimation does not amount to a constitutional breach of Article 17 when compared to matters cases such as **Gilford Lloyd v Chief Superintendent Cunningham et al** and **Merson v Cartwright** [2005] UKPC 38 in which their liberty was suspended and compelled to be subjected to demeaning circumstances.
25. According to the European Commission on Human Rights, inhuman and degrading treatment is defined as "cruel treatment that debases an individual, showing a lack of respect or diminishing their human dignity". This refers to prohibition against torture and other ill-treatment that qualifies as a matter of *jus cogens* which is an essential norm of international law.
26. Counsel for the Plaintiff, Mr. Bjorn Ferguson, further contended that when the Defendant stopped the Plaintiff near Big One shoe store on East Street in the marked police patrol car, the conduct of the State amounted to a detention and inhuman treatment towards the Plaintiff. He submitted that the Officers while observing the assault, failure to intervene and prevent the Second Defendant from attacking the Plaintiff is tantamount to an unlawful detention which subjected the Plaintiff to inhuman treatment. Mr. Ferguson stated that had the marked patrol car not stopped the Plaintiff and ordered him to exit his vehicle, then the Second Defendant would not have had the access to the Plaintiff that he did.
27. Certainly, the conduct of the uniformed Officers did establish sufficient connection to their employment as police officers which gives rise to vicarious liability in the

Commissioner of Police as the 1st Defendant. Notwithstanding, the circumstances of events when considered as a whole, did not create conditions which were so oppressive using the standard of **Tynes v Barr** (1994) 45 WIR 7 and **Merson v Cartwright** (ibid) that it invoked any of the Plaintiff's constitutional rights.

28. Therefore, I will apply the proviso of Article 28 of the Constitution and accept the Defendants' submission that adequate means of redress for the wrong suffered by the Plaintiff is sufficiently addressed in tort, and there is no need to consider an award for constitutional damages.
29. The court has to be mindful of any potential duplication between the tort of assault and battery on the one hand and the constitutional guarantee against inhuman and degrading treatment on the other. I must emphasise that a perceived violation of a constitutional right will not always be coterminous with the pleaded cause of action.
30. I now turn to the award of damages suffered by the Plaintiff.
31. The evidence before the court is that the Plaintiff was firstly assaulted with a deadly weapon outside of Club Enve and later had his teeth punched out in his attempt to avoid further confrontation.
32. In assessing the Defendants' conduct, I am often reminded that the matter must be judged by reference to the pressure of the events and in the agony of the moment, not by reference to hindsight.
33. In the case of **Latario Rolle v COP** (unreported) 2016/CLE/gen/00025 I applied the decision of the Court of Appeal in **Douglas Ngumi v Attorney General and Ors.** (unreported) SCCivApp. No. 6 of 2021 to determine an appropriate award for pain and suffering and loss of teeth. In that matter, I award the sum of **\$35,000** for the assault and battery which caused him to lose his teeth and will reapply the same amount along with an additional award of **\$10,000** for the initial assault at Club Enve when the Second Defendant endangered the Plaintiff by pointing a firearm to his face.
34. The Plaintiff further claimed special damages for dental expenses by Dr. Dante Bazard, exhibited to his Affidavit in the amount \$9,856.00 which is the cost for the eight-unit bridge that is necessary to repair his teeth. The Defendants by their written and oral submission objected to the allowance of special damages on the grounds that it was not specifically pleaded. This is not accurate; in fact the Plaintiff pleadings stated Special Damages and claimed "medical expenses". The amount of medical expense was not specifically stated.
35. Special damages are awarded to compensate for actual out-of-pocket expenses and provable losses incurred as a direct result of the Defendant's actions or behaviour. The claiming party must be able to support their claim with compelling and accurate evidence of the losses sustained.
36. If a party specifically pleads a special damage but does not precisely state the monetary amount because the amount is unknown at the time should they claimant be denied the award?

37. I am satisfied that the specificity of an award for special damages is associated with the category of the award and that the same must be strictly proven. The Plaintiff strictly proved the same, therefore, I accept the claim made by the Plaintiff and allow the award.

Exemplary & Aggravated Damages

38. As aforementioned, Counsel for the Plaintiff submitted that the circumstances of events entitles Morley to damages for exemplary and aggravated damages.

39. It must be noted that exemplary and aggravated damages could be awarded in an action of tort where the defendant has not only committed a legal wrong but has also behaved in an outrageous and insulting manner.

40. Exemplary damages are awarded to punish arbitrary, oppressive and unconstitutional behaviour perpetrated by agents of the State.

41. Aggravated damages are awarded when the Defendant's conduct causes injury to feelings, humiliation or mental suffering occasioned by the Defendant's conduct. The objective of aggravated damages is to compensate the Plaintiff for the wrong or mental distress or injury to his feelings.

42. Having regard to the fact that the Plaintiff loss two teeth and suffered damage to eight teeth in total, it is reasonably expected that there was a period when the Plaintiff had to endure public scrutiny with missing teeth as the evidence disclosed two of them were missing immediately after the index assault and battery.

43. The conduct in this matter is nothing less than a contemptuous disregard for the Plaintiff. The Second Defendant conduct in particular was high-handed and outrageous. From the evidence, it appears that the sole reason for the assault was to publicly showcase Hall's "machismo".

44. In **Martin Orr v Attorney General and ors.** (unreported) 2017/CLE/gen/00983, Winder, J. when awarding damages for exemplary and aggravated damages allowed a global sum of \$15,000.00 to the Plaintiff a cruise ship employee who was unlawfully detained in the Bahamas for a period of 5 months and maliciously prosecuted.

45. Having considered the severity of the abuse suffered by the Plaintiff, I will award the sum of **\$5,000** for exemplary damage and **\$5,000** for aggravated damages.

Cost

46. I instructed Counsel to provide submissions as to cost for fixed determination. There was no substantive trial in this matter and the Defendants declined to call any witnesses or cross examine the Plaintiff's witness. Taking into consideration disbursements, the time spent and research involved in this matter, I will fix legal cost to the Plaintiff in the amount of **\$18,000.00**.

Conclusion

47. For that reasons hereinbefore set out, the assessment is as follows:

1. Special damages: \$ 9,856.00

2. Assault & Battery:	\$45,000.00
3. Aggravated damages:	\$ 5,000.00
4. Exemplary damages:	\$ 5,000.00
5. <u>Legal Costs:</u>	<u>\$18,000.00</u>
Total Damages	<u>\$82,856.00</u>

48. The Court awards interest at 3% from the date of the filing of the Writ until judgment and the statutory rate of 6.25% from the date of judgment until payment.

Dated 22nd October, A.D. 2021

[Original Signed & Sealed]

Renaldo Toote
Assistant Registrar