

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT OF THE BAHAMAS
COMMON LAW AND EQUITY DIVISION
2013/CLE/gen/FP/00399**

**BETWEEN
PAUL WALLACE WHITFIELD
Plaintiff**

**AND
THE ATTORNEY GENERAL
1st Defendant**

**AND
THE COMMISSIONER OF POLICE
2nd Defendant**

**AND
CORPORAL 265 COREY DAMIANOS
3rd Defendant**

BEFORE: The Honourable Justice Petra M. Hanna-Adderley
APPEARANCES: Mr. Harvey Tynes, QC and Tanisha Tynes-Cambridge for the Plaintiff
Mrs. Sophia Thompson-Williams and Ms. Aramantha Hepburn for the Defendants
TRIAL DATES: June 8 and October 31, 2016; January 23 and April 27, 2017

JUDGMENT

Hanna-Adderley, J

I must straightway apologize profusely for the delay in the delivery of this Judgment.

Introduction

1. The Plaintiff's claim is for damages for assault and false imprisonment of the Plaintiff on November 12, 2012 at Central Police Station, Freeport, Grand Bahama by the 3rd Defendant, a police corporal under the direction and control of the 2nd Defendant and in the performance or purported performance of his functions.
2. This is an action commenced by the Plaintiff against the Defendants by way of Generally Indorsed Writ of Summons filed on November 11, 2013 and Statement of Claim filed May 19, 2015.

3. In his Statement of Claim the Plaintiff claims that at about 4:10 pm on November 12, 2012 while attending a police interview of a client at Central Police Station, Freeport, Grand Bahama, he was unlawfully assaulted by the 3rd Defendant when the 3rd Defendant grabbed the Plaintiff by his left forearm several times, pushed him out of the interview room, mauled him in his face and pushed him against the wall of the passageway. The Plaintiff further claims that the 3rd Defendant without reasonable or probable cause wrongfully arrested him and unlawfully detained him at Central Police Station contrary to the provisions of Article 19(1) of the Constitution. The Plaintiff claims that as a result of the 3rd Defendant acting in the purported performance of his duties as a police officer the Plaintiff's reputation has been harmed, he has suffered mental anguish, he was prevented from attending his business, he was deprived of his liberty, he has suffered loss and damage and aggravated and/or exemplary damages for the oppressive arbitrary conduct by the Second Defendant and his servants or agents including the 3rd Defendant.
4. The Defendants filed their Defence and an Amended Defence on July 8 and September 3, 2015 respectively denying the Plaintiff's claim. In particular, they state that the Plaintiff without provocation sought to interfere with the police interview and became loud and belligerent with the 3rd Defendant and refused to allow him to complete the said interview. Further they state that the Plaintiff failed to carry out the lawful orders of the 3rd Defendant and subsequently assaulted the 3rd Defendant and that the Plaintiff behaved in a disorderly manner. Moreover, they deny that the Plaintiff was unlawfully arrested and detained and that his arrest and detention was based on reasonable and probable cause that he committed the said offences. Additionally they state that the Plaintiff failed to leave the room when requested and resisted by grabbing hold of the cubicle resulting in a struggle between the Plaintiff and the 3rd Defendant whereby the Plaintiff assaulted the 3rd Defendant. They also state that the Plaintiff interfered with the Second and 3rd Defendants as they carried out their lawful duties and contends that the Plaintiff's reputation was harmed as a result of his refusal to permit the officers from conducting their interview, his refusal to leave the interview room when requested and his petulance and assault on the 3rd Defendant.

5. The Court must determine whether the 3rd Defendant's conduct towards the Plaintiff amounted to an assault or whether the Plaintiff's conduct towards the 3rd Defendant justified his lawful arrest and detention.
6. I find for the Plaintiff in this action for the following reasons.

Statement of Facts

The Plaintiff's Case

7. The Plaintiff in support of his claim relied only on his evidence which was contained in his Witness Statement filed February 3, 2016.
8. The Plaintiff stated in his evidence-in-chief that on November 12, 2012 while attending to a detained client at the Gerald Bartlett Police Complex, he participated in an interview with Officer D'Angelo Thomas, himself and his client, Benjamin LaFleur. The interview began at about 3:40 p.m. and was conducted by DC 3454 Woods but WDC 3167 Bullard and the 3rd Defendant were also present in the room. At about the 6th question and answer into the interview, the 3rd Defendant interrupted the interview by scribbling on a piece of paper and letting it fall in the direction of Woods then asking the Plaintiff's client a question. The Plaintiff indicated to the 3rd Defendant that he was interrupting and disrupting the interview and the 3rd Defendant responded that he was a supervisor and as such was free to ask questions.
9. The interview continued by Woods and at about the 16th question and answer the 3rd Defendant interrupted again by scribbling on a piece of paper and letting it fall in the direction of Woods and then asking the Plaintiff's client the same question repeatedly. The Plaintiff indicated that the question asked had already been answered and the 3rd Defendant told him that they were in a police station where he controlled things and that the Plaintiff was acting disorderly in a police station and he threatened his removal from the office. When the Plaintiff replied that he was not going anywhere the 3rd Defendant demanded that he leave but the Plaintiff ignored him and remained seated for the continuation of the interview. The 3rd Defendant strode up to him, demanded that he leave the room and grabbed his left forearm with his right hand forcing him from a seated position to his feet. He demanded that the 3rd Defendant unhand him and the 3rd Defendant continued to tug on his left forearm and ordered him out of the room. He repeated to the 3rd Defendant to unhand him and the 3rd Defendant spun him around to face the door of the room and then forcibly pushed him from behind and ejected him

into the passageway with the help of DC 3192 Thomas. The 3rd Defendant then grabbed him by his left arm with his right hand and proceeded to maul his face with his left hand, whilst simultaneously forcing him up against the wall of the passageway. He demanded to the 3rd Defendant to unhand him again but his response was that they were beyond that now. The 3rd Defendant then informed him that he was under arrest for being disorderly in a police station and continued to forcibly push him against the wall face first.

10. The Plaintiff stated that DC 3192 Thomas then handcuffed him and WDC 3167 Burrows exclaimed that the time of arrest was 4:12 p.m. He was then unceremoniously marched from DEU through the building to the exit downstairs then to the desk of the Custody Suite via the exterior of the building by DC 3192 Thomas and WDC 3167 Burrows. The 3rd Defendant entered the foyer of the Custody Suite from the interior of the building and repeated that he was charged with being disorderly in a police station. He was subsequently placed in a jail cell with other persons and was told that he was charged with the additional charges of assaulting a police officer and resisting arrest. Sometime later he was photographed and fingerprinted. He was given police bail around 10:40p.m. that night and released from police custody. The Plaintiff was arraigned before Magistrate's Court #2 with respect to the three charges however, the charges were dismissed by the Magistrate on July 2, 2014.
11. During cross-examination by Counsel for the Defendants, Ms. Aramantha Hepburn, the Plaintiff stated that Officer Woods was the interviewing officer and that the 3rd Defendant was not supervising Officer Woods during the interview. That the 3rd Defendant was not a part of anything, he was neither the questioner nor the observer when himself, his client and Officer Woods went in the room and that the 3rd Defendant was gravitating between his cubicle and whatever else was going on in the room. That the 3rd Defendant told him to conduct himself in an appropriate manner and he replied that he was not conducting himself in the manner he suggested. That the 3rd Defendant demanded him to leave the room atleast twice and that he only left when the 3rd Defendant physically ejected him from the room. That he did not voluntarily leave the room because the 3rd Defendant unlawfully assaulted and physically ejected him from the room. That as Counsel and Attorney he had a right to be present in the interview room and that he was not interfering with the 3rd Defendant's interview because the 3rd

Defendant was not conducting any interview. That he did not push the 3rd Defendant or grab him by his shirt as he had his writing pad in his left hand and his pen in his right hand. That Officer Thomas did not have to assist the 3rd Defendant; he voluntarily interjected himself into the situation whereby he placed handcuffs on him. That the 3rd Defendant did not caution him at this time but that he was told by the 3rd Defendant that he was under arrest. That following the incident he wrote the Magistracy in Freeport with an attempt to commence a private prosecution but the matter never proceeded and that he did not file a complaint at the Complaints and Corruption Branch of the Royal Bahamas Police Force.

The Defendants' Case

12. The Defendants relied on the evidence as contained in the Witness Statements of Corporal 3245 Roberto Murraray filed herein on June 17, 2015, Sergeant Corey Damianos filed herein on January 28, 2016, DC 3454 Kareem Woods filed herein on January 28, 2016, W/Cpl 3167 Jill Bullard Burrows filed herein on January 28, 2016 and DC 3192 D'Angelo Thomas filed herein on February 2, 2016.
13. The evidence-in-chief of Sergeant Corey Damianos is that he was on duty at the Drug Enforcement Unit and was in the interview room supervising Officer Woods who at the time was in the process of conducting an interview of Benjamin LaFleur. That during the interview he put a question to the suspect in relation to the alleged offence after assessing that Officer Woods, his subordinate had not asked sufficient questions to him. That at this point the Plaintiff who was present during the interview in his capacity as legal counsel appeared irate and loud and told him not to ask his client the questions again. That he told the Plaintiff he was free to advise his client not to answer the questions put to him but that he did not have the authority to tell him not to do his job or suggest that he had no right to question the suspect. That as a result the Plaintiff continued to argue and became loud and disruptive and that he told the Plaintiff to calm down. That he advised the Plaintiff if he continued to behave in a disruptive manner and interfere with his duties he would ask him to leave the room. That the Plaintiff refused and continued to argue and interfere with the interview and he told the Plaintiff again that he was doing his job and he would not be allowed to continue to disrupt the interview. That the Plaintiff continued to be disruptive and so he told the Plaintiff again that if he did not behave he would ask him to leave the room. That the Plaintiff then

stood up in an aggressive manner and stated that he would like to see him move him from the room. That he also stood up and approached the Plaintiff and took hold of his right hand and attempted to escort him from the room. That the Plaintiff held onto the cubicle in defiance, staunching and refusing to leave the room so he removed him from the room.

14. The 3rd Defendant stated that in the hallway the Plaintiff continued to struggle and the Plaintiff assaulted him by pushing him in the chest, pointing his finger in his face and then grabbing him by his shirt collar. That Officer 3192 Thomas came to his assistance as the Plaintiff continued to act in an aggressive manner and as a result of the Plaintiff's continued belligerence the 3rd Defendant and Officer 3192 Thomas placed handcuffs on the Plaintiff. That he placed the Plaintiff under arrest and cautioned him and he was then transported to cell block. That he returned to the interview room where the suspect agreed to continue his interview in the absence of his attorney. That he completed a report in reference to this matter and that he gave evidence in this matter before Magistrate Charlton Smith sometime later. That at no point during the struggle he mauled the Plaintiff in the face as alleged.
15. During cross-examination by Counsel for the Plaintiff, Mr. Tynes, QC. he stated that he prepared his report right after the incident but could not recall the exact time of day when he prepared it. That when he prepared the report the events that took place leading to the arrest of the Plaintiff were still fresh in his mind. That he was supervising an interview conducted by DC 3454 Woods but he did not know how long DC Woods had been an officer before that interview took place. That DC Woods was the officer responsible for investigating the matter to which he was conducting the interview and that he did not think DC Woods was incompetent. That he asked when he reworded the question during the interview he expected an answer from the suspect and that his questions and the suspect's answers were recorded but he has no idea where the recorded questions and answers are now.
16. The 3rd Defendant stated that he was present at the start of the interview and the suspect was told at the start of the interview that all of the questions and answers were being recorded. That the file concerning this suspect was sent to Court Number 3 and he has not seen the file since. That when he reworded the questions to the suspect he was trying to get a true and accurate account from him and that he was acting on

certain information which led him to reword the questions. That he thought the answers given by the suspect were inconsistent and he drew it to the suspect's attention and that counsel interjected by being irate. That at that time he told Counsel that all questions and answers will be written down by Officer Woods. That he told the Plaintiff that he cannot tell a police officer how to conduct his interview and at that point he was just doing his job and that he was in charge of the station.

17. The 3rd Defendant stated that he felt that the argument with the Plaintiff began because of the Plaintiff's body language and his voice projecting. That the Plaintiff was throwing his hands up and that he was very loud and that the argument began when he told him that he already asked his client that question and why was he asking him that question again. That he told the Plaintiff he had the authority to advise his client and that he was being reasonable. That he did not think the Plaintiff was being reasonable when he told him that he already asked him that and why did he ask him that again because of the tone and manner in which he behaved. That the Plaintiff's tone, body language and loud voice made the interview very disruptive. That the Plaintiff's body language at that time was the Plaintiff pointing with his two hands and "doing that stuff". That he told the Plaintiff to calm down or he will put him out into the hallway. That he did not argue with the Plaintiff in response and that the Plaintiff said to him how was he going to do that. That the Plaintiff persisted in being disruptive by his hands and shouting and that during the interview when trying to ask a question the Plaintiff persisted in asking why are you asking that same question but he was trying to move on.

18. The 3rd Defendant stated that he wanted to continue the interview but the Plaintiff was still fixed as to why his client was being asked the same question and that they were only able to continue the interview after they put the Plaintiff out of the room. That when he told the Plaintiff be quiet by saying "shhh" that was because he was being very loud. That although in his report he says after he told the Plaintiff to calm down he began to speak in a loud voice, the Plaintiff was loud from the beginning. That he told the Plaintiff to calm down and if he continued to act in such a way he will put him out of the interview to which the Plaintiff asked him what and how will he remove him and he warned the Plaintiff again whereby he continued to ask how will he remove him. That he

told the Plaintiff that he would personally remove him and the Plaintiff responded that he wish he would.

19. The 3rd Defendant stated that after that exchange he took the Plaintiff by his right hand and held his hand by using either his right or left hand. That the Plaintiff shoved him in his chest but he could not remember which hand but it had to be the left because he was holding his right hand. That he made the first contact between himself and the Plaintiff by holding the Plaintiff's hand. That he held the Plaintiff's hand to tell him that he had to leave and that he asked him to leave three times but he did not leave. That he asked or requested the Plaintiff to leave the room and that he did not grab the Plaintiff's hand, he just took hold of his hand and told him to leave. That the Plaintiff told him to take his hands off him and that he started to walk towards the door while still holding the Plaintiff's hand. That at that point there was no pulling by himself or the Plaintiff but the Plaintiff pulled away from him and told him to take his hands off him. That when they started walking towards the door he told the Plaintiff it was time to leave and at that point the Plaintiff pulled away. That he was exerting minimum force against the Plaintiff and that he did not pull or yank the Plaintiff. That when the Plaintiff began to resist he told him to calm down in the station or he would be placed under arrest if he continued with that behavior. That the Plaintiff refused to relinquish his behavior and loud voice and it was at that point he informed him that he was under arrest and he was arrested. That after the Plaintiff was arrested he was taken to the immediate area, not cell block and informed why he had been arrested and cautioned.
20. The 3rd Defendant stated that during the interview with the suspect he was not assessing DC Woods' performance however he felt that DC Woods could have asked more questions and that is why he became involved. That he was just supervising the interview. Mr. Tynes QC referred the 3rd Defendant to his report, and his statement therein that the Plaintiff appeared "irate and loud" and Mr. Tynes QC asked him to explain how one appeared "loud". The 3rd Defendant said that to his ears, the Plaintiff was very loud.
21. Mr. Tynes (Q) referred the 3rd Defendant (A) to certain inconsistencies in his Report and his Witness statement. The exchange was as follows:

- “Q. On 17th June, last year, you prepared a statement in preparation for this trial. I’ll tell you where it is. Do you see a bundle of Witness Statements? It is at Tab 4.
- A. Yes sir.
- Q. This would have been almost three years after the incident took place on 12th November?
- A. Yes sir.
- Q. How did you go about refreshing your memory, if at all, after the events had taken place on the 12th?
- A. I was able to review my report.
- Q. You went back to this report that I just took you through?
- A. Yes sir.
- Q. You rely heavily on this report that I took you through?
- A. This one that I wrote?
- Q. In preparing your witness statement for this trial, you went back to this report?
- A. Yes sir.
- ...
- Q. You used the word “assessed”. I am referring you to paragraph 6 of this Witness Statement.
- A. I understand. This is the—
- Q. Did you do an assessment of Woods and the quality of his interviewing the suspect?
- A. But I didn’t use that word.
- Q. You did not use that word in your witness statement?
- A. No.
- Q. But you signed this witness statement, didn’t you?
- A. To me, this is a summary of what I said. But if I had typed this out, it would have been in my exact words. I agree with the contents. It follows.
- Q. You agree with it but you did not use the word “assessed”?
- A. No sir.
- Q. But by signing you adopted the language of this witness statement as your own, didn’t you?
- A. Because I understand what the documents is saying.
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- Q. Again, this is a question of English and A C grade. How does one appear loud? He appeared irate and loud.
- A. He was loud on that date that I could recall.
- Q. And told me not to ask his client the question again; did he? Did he tell you not to ask his client the question again?
- A. No. He asked why I was asking his client the same question again.
- Q. Why do you put this here? “He told me not to ask his client the question again” or if you didn’t prepare this witness statement, you adopted it as your evidence in chief.
- A. It is a summary of this.
- Q. He did not tell you not to ask his client the question again.
- A. He asked me why I was asking his client---

- Q. No. Let's deal with the question I asked you. He did not tell you not to ask his client the question again?
- A. No, he never did not tell me not to ask that question again.
- Q. So this is incorrect?
- A. I guess you are right.
- Q. Who do you blame for this, you or someone else?
- A. Well, I signed it.
- Q. Meaning what? You adopted it as your evidence in evidence chief?
- A. As a summary, I adopted it.
- Q. Look at 13. "The Plaintiff then stood up in an aggressive manner". How does one stand up in an aggressive manner?
- A. He was sitting down and he sprung up. "I would like to see you try." That's aggressive.
- Q. No, no. You are adding words to his standing up. Sergeant ----
The sentence reads : "The Plaintiff then stood up in an aggressive manner and stated that he would like to see me move him from the room." You are now adding the words, "I would like to see you try it, which don't fit into that.
- A. He said, "I wish you would. I wish you would Damianos."
- Q. Officer, don't let us ramble.
"The Plaintiff then stood up in an aggressive manner." How does one stand up in an aggressive manner?
- A. Like this (demonstrating). "I wish you would. I wish you would, Damianos." That's aggressive.
- Q. What you just demonstrated is someone springing to his feet?
- A. To confront another man.
- Q. You sure you were not just embellishing and adding junk?
- A. There is no need for that.
- Q. To what did not appear in your original report?
- A. I can't put action in writing. I could only describe it as best.
- Q. Look at 15. "The Plaintiff held on to the cubicle in defiance, stenching and refusing to leave the room."
- Q. Now, when you use the word "stenching", you are not referring to smell?
- A. I'm sorry.
- Q. "He held on to the cubicle in defiance, stenching and refusing to leave the room." That does not appear in your report. It kind of jumped out at me as something you added to embellish your account for the purpose of this trial.
You care to comment?
- A. I hold his hand and I tell him he had to leave. He pulled away. He resisted.
- Q. Don't repeat and go on. "The Plaintiff held on to the cubicle in defiance, stenching and refusing to leave the room." Can you explain why that is not in your original report?
- A. Maybe I might have forgotten it.
- Q. Or maybe you were just embellishing?
- A. No. He resisted. When I said that, he pulled away and he resisted. What he was doing to resist at that time---

- Q. Please, if you can address the question.
- A. I'm describing the action.
- Q. Why is this not in the original report which was—
- A. Because at the time—
- Q. At the time it was fresh in your memory.
- A. When I was doing this, I write this fresh from my memory. I was being questioned—
- Q. You referred back to your original report and added this.
- A. I referred to my original report and attorney from the Attorney General's Office, they asked me to explain exactly what he did to resist, and I said that he grabbed on to my cubicle.
She asked me questions. This is from my memory when she asked me what he did—
- Q. Officer, a while ago you told us that you referred back to this report in order to prepare the Witness Statement.
- A. But she asked me to be descriptive on exactly what I mean as, what was he doing to resist me? How? And I said, he grabbed on to my cubicle.
At the time I was writing this, I was flowing mentally and I didn't ask myself, how he did this. But when I sat in the Attorney General's Office, I was interviewed. She said, how did he resist you and I said he held on to my cubicle.
-
- Q. "As a result of his continued belligerence---" You don't tell us when it started. When did he declare war, whether it was Whitfield, Damianos, War II or War I? "As a result of his continued belligerence, Officer Thomas and I placed him in handcuffs."
- A. Yes, I was assisted by Officer Thomas.
- Q. But the language seems to get stronger in this Witness Statement and it sort of jumped out at me. You will comment on it later."
(Excerpted from page 46, lines 18-32; page 47, lines 1-5, 13-32, page 50, line 2-32, page 51, lines 1-32, page 52, lines 1-32, page 53, lines 1-32 of the transcript of proceedings on June 8, 2016).

22. The evidence-in-chief of DC 3454 Kareem Woods is that on November 12, 2012 he was on duty at the Drug Enforcement Unit conducting a record of interview of Benjamin LaFleur in the presence of his attorney, the Plaintiff. That during the interview he was being supervised by the 3rd Defendant and PC 3192 Thomas was also present. That during the interview the 3rd Defendant asked the accused some questions to which he answered and that at one point the Plaintiff interjected and said to the 3rd Defendant that he already asked him that. That in response to the Plaintiff the 3rd Defendant told him that all questions and answers are recorded and that he has a right to advise his client not to answer a question but he does not have the right to tell the police how to conduct its investigation. That he heard again when the Plaintiff said loudly that he

already asked him that and he heard when the 3rd Defendant said to the Plaintiff that if he continued to act in such a way he would remove him from the interview. That the Plaintiff in response to the 3rd Defendant asked him how will he remove him. That he saw when the 3rd Defendant got up and took the Plaintiff by the right hand and attempted to escort him out of the room but that the Plaintiff refused to leave and began resisting. That he observed that Officer 3192 Thomas assisted in removing the Plaintiff from the interview room area while he remained in the room with the accused. That he completed a report in reference to this matter and he was later summoned to give evidence in the Magistrates Court in relation to this matter.

23. During cross-examination by Mr. Tynes, Q.C. he stated that his report filed herein was prepared by himself after witnessing the incident. That it was procedure for everyone who was present at the incident to write a report and that he submitted his report to Officer Murraby who was the investigating officer. That his report was intended to be a full and accurate account of what had taken place in his presence. That he observed everything that happened in his view of what occurred between the 3rd Defendant and the Plaintiff. That there was a time when they had left the room that he was in and entered the corridor and at that point he was unable to see what happened. That he was being supervised by the 3rd Defendant and that he needed to be supervised because he had not done much files in that unit. That at that time the interview on that day was one of the first interviews he had conducted since becoming an officer. That he did not ask for the supervision from the 3rd Defendant and that he supervised him by reading and asking questions based on the case.

24. Officer Woods stated that the 3rd Defendant succeeded in escorting the Plaintiff out of the interview room after the 3rd Defendant told the Plaintiff that if he continued to act in such a way he would remove him from the interview room and the Plaintiff replied by asking 'or else what' and how would the 3rd Defendant remove him. Woods stated that the 3rd Defendant took the Plaintiff by his right hand above the elbow and pulled him towards the door and that the 3rd Defendant used one hand to hold the Plaintiff. That the Plaintiff was seated when the 3rd Defendant gripped/grabbed him by his right hand using one hand. That he remembered the 3rd Defendant used his left hand to grip/grab the Plaintiff. That before the Plaintiff and the 3rd Defendant moved towards the door, the Plaintiff stood up when the 3rd Defendant took him by the hand. That the first

physical contact was made immediately after the Plaintiff asked the 3rd Defendant how will he remove him. That he did not hear the 3rd Defendant say anything in response. That when the Plaintiff stood up, he pulled his arm back from the 3rd Defendant and the 3rd Defendant took the Plaintiff's hand back. That the 3rd Defendant attempted to take the Plaintiff to the door by pulling on him and it was at that point the 3rd Defendant asked Officer Thomas for assistance. That the Plaintiff told the 3rd Defendant to let him go and that the 3rd Defendant only response was to ask Officer Thomas to bring his cuffs. That Officer Thomas went and assisted the 3rd Defendant outside of the door. That he did not see any cuffs in Officer Thomas' hand when he was heading to the door. That when the Plaintiff and the 3rd Defendant exited through the door he did not see or hear anything else.

25. Officer Woods stated that when they left the room the 3rd Defendant was still holding on to the Plaintiff and the 3rd Defendant was still pulling the Plaintiff. That prior to the 3rd Defendant's intervention during the interview himself, the Plaintiff and the Plaintiff's client were all seated in the cubicle and the 3rd Defendant was standing nearby. That during the interview he was recording the questions and answers and that the Plaintiff had something during the interview, possibly a pad and pen but he did not recall if he was writing anything. That he did not recall if the Plaintiff still had his pad and pen in his hand when the 3rd Defendant grabbed him the first time. That he did not see if the Plaintiff had put down or dropped his pad and pen at that time.
26. During re-examination by Ms. Hepburn he stated that before that interview he had done about three and that it was correct for the 3rd Defendant to supervise him during that interview. That in his report his reference to the Plaintiff acting "in such a way" was him being irate when the Plaintiff had told the 3rd Defendant that he already asked him that question and that the Plaintiff was very loud.
27. The evidence-in-chief of Woman Corporal 3167 Jill Bullard Burrows is that on November 12, 2012 around 4:00 p.m. while on duty at the Drug Enforcement Unit she was present during the interview of suspect Benjamin Lafleur. That officers DC 3192 Thomas, DC 3454 Woods, the 3rd Defendant and the Plaintiff were also present during the interview. That during the interview she heard the 3rd Defendant ask the accused some questions and the Plaintiff saying that he already asked him that question. That the 3rd Defendant responded that all questions and answers were being recorded and the Plaintiff has a

right to advise his client however he did not have a right to tell the police how to do their job. That as a result of the 3rd Defendant's response the Plaintiff became loud and began shouting at the 3rd Defendant that he already asked him that question. That the 3rd Defendant told the Plaintiff to behave himself and calm down and that if he did not conduct himself properly he would be asked to leave the room. That she heard the Plaintiff say to the 3rd Defendant in response "what", "what" and "how are you going to remove me from this room?" That at that point the 3rd Defendant got up and told the Plaintiff to leave the room and when the Plaintiff refused the 3rd Defendant took him by the arm and attempted to escort him out of the room. That at this point the Plaintiff became hostile and refused to leave and resisted the attempt to remove him from the room.

28. Officer Bullard Burrows stated that the Plaintiff struggled and resisted but the 3rd Defendant got him out of the room. That the Plaintiff continued to struggle against the 3rd Defendant in the hallway and she observed when the Plaintiff pushed the 3rd Defendant in the chest, it was at this time the 3rd Defendant told the Plaintiff that he was under arrest for disorderly behavior and assaulting a police. That she heard the 3rd Defendant tell the Plaintiff that he needed to calm down and the Plaintiff continued acting in a disorderly manner. That the 3rd Defendant asked for a pair of handcuffs and when he received the handcuffs he managed to put one pair onto the Plaintiff's hand when the Plaintiff pulled away from the 3rd Defendant. That the 3rd Defendant requested assistance so she along with DC 3192 Thomas assisted him in securing the Plaintiff and it was her and Officer Thomas that took the Plaintiff to the cell block area where he was handed over for safekeeping. That she completed a report in reference to this matter and sometime later gave evidence in this matter before Magistrate Charlton Smith.

29. During cross-examination by Mr. Tynes, QC. she stated that she prepared the report filed herein on November 12, 2012 because she was a witness to an incident that took place in the Drug Enforcement Unit. That she was asked by the Officer in Charge at the time, Inspector Brian Rolle to prepare the report because the Plaintiff was locked up. That she intended her report to be a full and accurate account of the incident that took place and that she was present inside the room where the interview was taking place and the continuation of events that spilled out into the corridor outside the room. That she

prepared the report between 5:00 p.m. and 6:00 p.m. that night following the incident and that the account in her report is from her own knowledge.

30. Officer Bullard Burrows stated when referred to a part of her report by Mr. Tynes QC that the 3rd Defendant placed his hand on the Plaintiff's hand when he attempted to escort the Plaintiff out of the interview area. That the 3rd Defendant held the Plaintiff by his right hand and tried to get him out of his seat. That the 3rd Defendant pulled the Plaintiff out of his seat because he did not want to get up. That the Plaintiff eventually stood up but the 3rd Defendant appeared to be exerting a whole lot of force to get the Plaintiff to his feet. That the 3rd Defendant told the Plaintiff to leave but he refused to do so and that the Plaintiff was staunching a lot and so the pulling had to happen. That after the 3rd Defendant pulled the Plaintiff to his feet, he continued to pull him out of the interview room. That the 3rd Defendant did not let go of the Plaintiff's hand, it was the Plaintiff "yucking" his hand from the 3rd Defendant. That when he "yucked" himself away from the 3rd Defendant the Plaintiff told the 3rd Defendant to let him go and to get his hands off of him. That they separated briefly but the 3rd Defendant got a grip on him again. That when the Plaintiff "yucked" his hand from the 3rd Defendant, the Plaintiff pushed him in the chest and the 3rd Defendant held him again. That at this point they were no longer in the interview room. That the scuffle between the 3rd Defendant and the Plaintiff, him pulling the Plaintiff from his feet, the Plaintiff "yucking" his hand away and the 3rd Defendant pulling the Plaintiff into the corridor took about two to three minutes.

31. Officer Bullard Burrows stated that she did not know the distance between the interview room to the corridor. That while the 3rd Defendant was pulling the Plaintiff to the corridor the Plaintiff was pulling away but the 3rd Defendant continued holding him. That they were both speaking while in the corridor but she did not recall what the 3rd Defendant was saying and that the Plaintiff was telling the 3rd Defendant to let him go. That when the Plaintiff pushed the 3rd Defendant in his chest, the 3rd Defendant was standing in front of him as they were facing each other. That the 3rd Defendant was trying to grip the Plaintiff again by grabbing his hand and the 3rd Defendant was telling the Plaintiff to behave himself and to stop acting disorderly. That while in the corridor after the Plaintiff pushed the 3rd Defendant in the chest he informed him that he was under arrest. That she was present at the start of the interview of the Plaintiff's client.

That the Plaintiff's client was seated but she could not recall whether he was in the inside or outside of the cubicle. That Officer Woods was inside the cubicle and that the Plaintiff was there at the start of the interview. That Officer Woods was writing and preparing himself for the interview. That the Plaintiff was seated but she could not recall if he was making notes or if he had a pad and pen in his hand.

32. During re-examination by Ms. Hepburn Officer Bullard Burrows stated that it was not unusual to be asked to prepare a report following an incident and that she prepared her report on her own and did not have sight of any other reports from the other officers who would have prepared reports in the matter.
33. The evidence-in-chief of Corporal 3245 Roberto Murray is that on November 12, 2012 he was stationed at the Central Police Station, Grand Bahama. That sometime after 4:00p.m. while on duty at the station he was informed by his supervisor Sergeant 437 Cooper to conduct an investigation into a matter with reference to the Plaintiff who was in custody. That the Plaintiff was placed under arrest and was detained for disorderly behavior in a police station, assaulting a police officer and resisting arrest. That he then collected the reports from three of the officers involved in the incident and subsequently reviewed them. That he also obtained a statement from the client of the Plaintiff who was a witness to the initial stage of the incident however to him it was clear that the client was bias to varying degrees. That as a result of his review of the officers' reports he conducted an interview of the Plaintiff under caution where he willingly participated in a question and answer interview but denied all the offences. That at the end of his investigation he concluded that there was reasonable and probable cause and sufficient evidence to charge the suspect with the offences of disorderly behavior in a police station, resisting arrest and assaulting a police officer. That he released the Plaintiff on police issued bail and was summoned later to give evidence as a witness in Magistrate's Court but was never called to give such.
34. During cross-examination by Mr. Tynes, QC. he stated that he was not present at any stage of the incident that he was investigating. That he obtained a statement from the Plaintiff and the Plaintiff's client at that time. That the basis upon which he said the information he received from the Plaintiff's client was a biased version of the event was that he said the Plaintiff, his attorney, became "irate" but that he remained calm during the incident. That he could not figure out how someone could be angry but calm and so

he believed the Plaintiff's client was being lenient with the truth. That he could not recall if the Plaintiff's client used the words "angry" or "irate" to describe the Plaintiff but that he told him that the Plaintiff was calm throughout. That assertions by the Plaintiff's client that the Plaintiff was "angry" or "calm" was not included in his Witness Statement.

35. The evidence-in-chief of DC 3192 D'Angelo Thomas is that on November 12, 2012 he was on duty at the Drug Enforcement Unit when Benjamin LaFleur was being interviewed by officers DC 3454 Woods and the 3rd Defendant and the Plaintiff as attorney for the suspect. That he was not a part of the interview proceedings and initially did not pay any attention to it until he heard the exchange between the 3rd Defendant and the Plaintiff. That he was positioned in the cubicle east of where the interview took place and there was nothing impeding his view and no noises to prevent him from hearing what was taking place. That he heard when the 3rd Defendant asked the suspect some questions and the Plaintiff saying that he had already asked him that question. That the 3rd Defendant responded that all questions and answers are being recorded and he has a right to advise his client however he does not have a right to tell the police how to conduct their investigations. That as a result the Plaintiff became loud and he heard when the 3rd Defendant told the Plaintiff that if he did not behave himself he would be removed from the interview and that the Plaintiff responded by asking "Or else what" and "How will you remove me?" That he heard when the 3rd Defendant warned the Plaintiff again to behave himself or he would be removed from the interview and the Plaintiff responded by asking how would the 3rd Defendant remove him.

36. Officer Thomas stated that at that point the 3rd Defendant got up and took the Plaintiff by the arm and told him to leave the room. That he heard the Plaintiff telling the 3rd Defendant to release him and that he observed when the Plaintiff pushed the 3rd Defendant in his chest and the 3rd Defendant telling the Plaintiff that if he did not behave he would place him under arrest. That at this point the Plaintiff became hostile and demanded to be released and the 3rd Defendant informed him that he was under arrest. That he also observed when the Plaintiff pointed his index finger in the 3rd Defendant's face. That the 3rd Defendant asked him to get his handcuffs and he handed them to him. That he saw when the 3rd Defendant placed the handcuff on the Plaintiff's right hand but he pulled away and resisted. That the Plaintiff continued to struggle against the 3rd Defendant so he assisted in detaining the Plaintiff. That himself and

W/DC Bullard-Burrows escorted the Plaintiff to the cell block area where he handed over for safekeeping. It was at this time while in cell block that the 3rd Defendant informed the Plaintiff of the reasons for his arrest and cautioned him. That en route to Custody Suites he heard the Plaintiff say that this was ridiculous and while in Custody Suites he said that this was not necessary. That he completed a report in this matter and sometime later he was summoned to give evidence in this matter before Magistrate Charlton Smith.

37. During cross-examination by Mr. Tynes, Q.C. Officer Thomas stated that initially he was not part of what was going in the cubicle near to him and that he was not a part of the interview. That he heard the 3rd Defendant ask the Plaintiff's client some question and that he knew the Plaintiff's client. That he did not recall how many questions the 3rd Defendant asked the Plaintiff's client but that it was more than one. That the 3rd Defendant initiated the physical contact between himself and the Plaintiff in the cubicle where the interview was taking place. That he saw when the 3rd Defendant grabbed the Plaintiff by his right hand and told him to leave the office and go to the front area. That the Plaintiff told the 3rd Defendant to let go of him, pushed the 3rd Defendant in his chest with both arms and the 3rd Defendant responded that if he continued he would be arrested.
38. Officer Thomas stated that up to that point the Plaintiff had not been arrested and the Plaintiff continued to struggle against the 3rd Defendant, and he shouted for the 3rd Defendant to release him. That at this point the Plaintiff and the 3rd Defendant had already begun to leave the office as the 3rd Defendant was pulling the Plaintiff towards the door. That they were not leaving quickly and that between the Plaintiff and the 3rd Defendant the Plaintiff is bigger than the 3rd Defendant in terms of size. That it took about two minutes for them to get from the cubicle to the corridor adjacent to the room. That he only heard the Plaintiff tell the 3rd Defendant to release him when they were moving from the cubicle to the corridor but the 3rd Defendant did not release him at that point. That he was still in his cubicle when the 3rd Defendant was pulling the Plaintiff from the cubicle to the corridor. That when they got to the corridor he saw when the Plaintiff pulled his hand away from the 3rd Defendant and pointed his index finger in the 3rd Defendant's face.

39. Officer Thomas stated that following that the 3rd Defendant asked him to get his handcuffs as he had gone to see what was happening when they reached the doorway. That he went back to his desk for his handcuffs and that during the two minutes of dragging from the cubicle to the doorway he did not see a need to get his handcuffs and that he only became aware of the need for them when the 3rd Defendant asked for them. That when he got his handcuffs he gave them to the 3rd Defendant and he placed the handcuffs on the Plaintiff's right hand. That the Plaintiff pulled his left hand away at that time and moved it out of reach of the 3rd Defendant and the 3rd Defendant warned him to stop resisting. That the 3rd Defendant told the Plaintiff he was under arrest during the two minutes of moving from the cubicle to the corridor. That himself and WDC Bullard Burrows escorted the Plaintiff, that is, walked him to Cell Block and that while they were heading to the custody suite he heard when the Plaintiff said that this was ridiculous.

Findings of Fact

40. I accept that around or about 4:00p.m. on November 12, 2012 the Plaintiff was attending to a client that had been detained at the Gerald Bartlett Police Complex and that in his capacity as Counsel and Attorney accompanied his client to the interview. I also accept that the said interview was conducted by DC 3454 Woods and that the 3rd Defendant, PC 3192 Thomas and W/DC 3167 Bullard-Burrows were present in the room during the said interview. I accept that at the start of the interview DC 3454 Woods, the Plaintiff and the Plaintiff's client were seated in the cubicle and the 3rd Defendant was standing nearby.
41. I accept that the 3rd Defendant as supervisor of the Drug Enforcement Unit at the time intervened in the said interview by asking the Plaintiff's client several questions to which he responded. I also accept that the Plaintiff in his capacity as Counsel and Attorney told the 3rd Defendant that he had already asked his client the same question on more than one occasion and that his client had answered the question, to which the 3rd Defendant responded that he could not tell a police officer how to conduct an interview, that he was just doing his job, that he was in charge of the station and that all questions and answers will be written by DC 3454 Woods.
42. I accept that following the aforementioned exchange between the Plaintiff and the 3rd Defendant, the 3rd Defendant told the Plaintiff that they were in a police station where

he controlled things and that he was acting disorderly in a police station and if he continued to act in such a way he will put him out of the interview. I also accept that in response to the 3rd Defendant the Plaintiff asked him how he would remove him from the interview room.

43. I accept that following the aforementioned exchange the 3rd Defendant grabbed the Plaintiff by his left forearm (above the elbow) and pulled him from his seated position towards the door, with the intention of ejecting him from the room, not to arrest him. I also accept that it was the 3rd Defendant who made the first physical contact with the Plaintiff. I accept that the 3rd Defendant did not let go of the Plaintiff's left forearm and that the Plaintiff demanded that the 3rd Defendant let him go. I accept that the 3rd Defendant's pulling of the Plaintiff from the cubicle to the corridor took about three minutes and that during that time the 3rd Defendant continued to hold on to the Plaintiff. I also accept that the 3rd Defendant told the Plaintiff on several occasions during the aforementioned exchange that it was time to leave, again, clearly his intention was to eject the Plaintiff from the room, not to arrest him.
44. I accept that the 3rd Defendant then grabbed him by his left arm with his right hand and proceeded to maul his face with his left hand, whilst simultaneously forcing him up against the wall of the passageway. I accept that the Plaintiff attempted to pull his left forearm away from the 3rd Defendant as they were in the corridor when the 3rd Defendant grabbed it and that the 3rd Defendant requested the help of PC 3192 Thomas and that the 3rd Defendant and PC 3192 Thomas attempted to place handcuffs on the Plaintiff while in the corridor. I accept that it was at this point the 3rd Defendant told the Plaintiff that he was under arrest and that after the Plaintiff was unceremoniously marched from DEU through the building to the exit downstairs then to the desk of the Custody Suite via the exterior of the building by DC 3192 Thomas and WDC 3167 Burrows. That the 3rd Defendant entered the foyer of the Custody Suite from the interior of the building and repeated that he was charged with being disorderly in a police station and he was subsequently cautioned.
45. I accept that the Plaintiff was released from police custody on police bail around 10:40p.m. that night, approximately 6 hours after being detained. I also accept that he was arraigned before the Magistrate Court with respect to the charges of being

disorderly in a police station, assaulting a police officer and resisting arrest but the charges were dismissed sometime later.

46. I had the advantage of seeing and hearing the witnesses who testified before me and was able to observe their demeanour, and as such, I prefer the evidence of the Plaintiff to that of the 3rd Defendant and the other witnesses for the Defendants. It is clear that the 3rd Defendant's Witness Statement embellished the events that occurred at the Police Station in an attempt to ground the charges of disorderly behaviour and resisting arrest, so as to justify those charges.
47. Moreover, I found it curious that the Reports to which the witnesses for the Defendants relied upon to refresh their memory all bared strikingly similar wording and recollection of the events herein, and typographical errors, which also led me to question the credibility of these witnesses.

Issues

48. Having accepted that the 3rd Defendant made the initial physical contact between himself and the Plaintiff these are the issues to be determined: -
- a. Whether such contact amounted to an assault of the Plaintiff which renders the subsequent arrest and detention unlawful; and
 - b. Whether the defence of justification is available to the Defendants.

Submissions, Analysis and Conclusion

The Law

Assault

49. The Plaintiff relies on his Skeleton Arguments filed April 22, 2016. Mr. Tynes, Q.C. referred the Court to Section 20(1) of the Penal Code as the provision that defines assault as follows:

"a person makes an assault and battery upon another person if, without the other person's consent and with the intention of causing harm, pain, fear or annoyance to the other person, or of exciting him to anger, he forcibly touches the other person, or causes any person, animal or matter to touch him forcibly."

50. He also submits that where a police officer restrains a person, but does not at that time intend or purport to arrest him, then he is committing an assault, even if an arrest would have been justified and relies on the case of **Fraser Wood v Director of Public Prosecution [2008] EWMC 1056** in support of this submission. Moreover, he submits

that the 3rd Defendant's actions of grabbing the Plaintiff's forearm, pushing the Plaintiff out of the interview room, mauling the Plaintiff's face with his left hand and pushing the Plaintiff against the wall of the passageway face-first prior to effecting an arrest of the Plaintiff amounted to an assault. Mr. Tynes, Q.C. further submits that the 3rd Defendant's actions were not done as an integral step in the process of arresting but were done as a means to secure an opportunity and relies on the case of **Kenlin and Another v Gardiner and Another [1967] 2 Q.B. 510** in support of his submission.

51. Mr. Tynes, Q.C. in his oral closing submissions states that the evidence as provided by the 3rd Defendant shows that the first physical contact between the Plaintiff and the 3rd Defendant was made by the 3rd Defendant in his attempt to move the Plaintiff. He further submits that the sequence of events is not disputed by the defence. It is his submission that the Plaintiff was not arrested until he was in the hallway long after the 3rd Defendant approached him and grabbed him. He submits that there is nothing in the evidence of the 3rd Defendant that would suggest or from which the Court can draw the inference in the absence of his suggestion that the 3rd Defendant grabbed a hold of his hand and subsequently moved him and dragged him from the room. He also submits that there is nothing in the evidence to suggest that in doing that, he was carrying out a lawful arrest.
52. Moreover, he submits that in the instant case the evidence in the 3rd Defendant's Witness Statement shows that when the Plaintiff was eventually put under arrest, there is no question that the 3rd Defendant's intent was to grab the Plaintiff to remove him from the room and not to effect an arrest. Further, he submits that there is no suggestion by the 3rd Defendant that at the time he grabbed the Plaintiff by the arm he thought he was justified in arresting him and even if he thought he was, it was the 3rd Defendant's obligation to tell the Plaintiff that he was under arrest and what he was arresting him for. He submits that the conduct of the 3rd Defendant prior to the purported arrest was an unlawful assault and the Plaintiff was entitled to resist and this all took place prior to an attempt to effect an arrest.
53. It is Mr. Tynes', Q.C. submission that when trying to restrain a person and the efforts of doing so is not an integral part of carrying out a lawful arrest, then an unlawful arrest has been committed. He submits that there is nothing in the 3rd Defendant's evidence to suggest that he was carrying out a lawful arrest and the Plaintiff was assaulted and

put in handcuffs before he was arrested and thrown in the cell. He relies on the case of **Fraser Wood v Director of Police Prosecution (supra)** in support of his submission. He further submits that there is evidence that shows as to how long the journey from the cubicle to the corridor was and that it was only after the 3rd Defendant dragged him from the cubicle to the corridor and handcuffed, it was at that point the 3rd Defendant placed him under arrest and what happened before was an assault.

54. The Defendants rely on their Written Submissions filed April 22, 2016 and April 20, 2017. Ms. Hepburn submits that the evidence on behalf of the Defendants shows that the 3rd Defendant was justified in the actions that he took against the Plaintiff as he was carrying out his lawful duty and the Plaintiff contravened the same and that the actions of the Plaintiff which resulted in his arrest was justified. She referred the Court to Section 31(1) and (2) of the Police Force Act, Section 206 of the Penal Code, Section 11 of the Criminal Procedure Code and Article 19 of the Constitution of The Bahamas in support of her submissions. She further submits that the statutes indicate that the 3rd Defendant had the authority by virtue of his office to effect the arrest on the Plaintiff even to the extent of using harm within the prescribed context. Additionally, she states that no evidence was adduced by the Plaintiff complaining of excess force by the 3rd Defendant nor any medical records to support the same.
55. She submits that the officers only needed to have a reasonable and probable cause for the arrest of the Plaintiff and relies on the test, she submits established by **Osadebay, Senior Justice at paragraph 21 in Williams v. Moxey [2001] BHS J. No. 40**. It is her submission that even if the 3rd Defendant was angry at the Plaintiff for his actions in the interview room, if he had reasonable and probable cause for arresting the Plaintiff, the arrest was with merit.
56. Ms. Hepburn also submits that the Plaintiff knew that the officers were acting in their capacity as police officers and that the subsequent arrest was the result of his disorderly and/or insulting behaviour in a police station and that his arrest was justified and the Plaintiff cannot rely on self defence. Therefore, the case of **Kenlin and Another (supra)** does not apply.
57. She submits that the requirement as stated by **LJ Toulson in Joshua Shields (by his litigation friend Rebecca Shield) v. Chief Constable of Merseyside Police [2010] EWCA Civ 1281** was fulfilled as the Plaintiff was informed that he was under

arrest and that his arrest was lawful and as such the Plaintiff's claim for wrongful arrest and false imprisonment must fail. Moreover, she refers the Court to the case of **R v. Iqbal [2011] EWCA Crim 273** in support of her submission that when the 3rd Defendant arrested the Plaintiff he did not anticipate that at some future or unspecified time the Plaintiff would be arrested and this was supported by the Plaintiff being placed in handcuffs, cautioned and told he was under arrest. She further submits that the case of **Pawel Sobczak v Director of Public Prosecutions [2012] EWHC 1319** should be examined in the same light of the instant case as similar to Constable Howe in the aforementioned case, the 3rd Defendant affected the arrest in the execution of his duty which was attempting to preserve the peace. Ms. Hepburn submits that the Plaintiff acted in contravention of the law, namely disturbing the peace in a public place and that in the instant case the 3rd Defendant was faced with an attorney who was irate, belligerent, disruptive who did not respect the walls of a police station and did not want the 3rd Defendant to exercise his right under the Police Act to conduct a necessary investigation and by extension preserve the peace in a police station.

58. Assault as defined at paragraph 528 of the Fifth Edition of **Halsbury's Laws of England** (2015) Volume 97 is an intentional and overt act causing another to apprehend the infliction of immediate and unlawful force. The threat of violence exhibiting an 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. An assault may be committed by words or gestures alone, provided they cause an apprehension of immediate and unlawful force.
59. The evidence before the Court is that following the request or demand of the 3rd Defendant to the Plaintiff to leave the interview room, the 3rd Defendant grabbed the left forearm of the Plaintiff and pulled him from his seated position during an interview of the Plaintiff's client. Additionally, the evidence is also that the 3rd Defendant pulled the Plaintiff from the interview room to the hallway corridor by holding on to the Plaintiff's left forearm. The 3rd Defendant has not disputed this and the evidence supports that he made the first physical contact between himself and the Plaintiff.
60. I note the sequence of events as provided by the evidence that is before the Court for one reason, were the actions of the 3rd Defendant carried out as a means to arrest the

Plaintiff. To my mind, they were not and it is on this point that I accept Counsel for the Plaintiff's submission.

61. Moreover, while the 3rd Defendant and the various witnesses who gave evidence on behalf of the Defendants could testify as to what the Plaintiff had said during the "scuffle" between the interview room and the hallway corridor, I found it rather curious and incredulous that they were unable to recall or state what the 3rd Defendant had said to the Plaintiff at that time. The 3rd Defendant, himself in cross-examination said that when he and the Plaintiff were walking towards the door he told him that it was time to leave but that he did not tell him at that point that he was under arrest.
62. I find the case of **Kenlin and Gardiner (supra)** to be persuasive in that the action of the 3rd Defendant of grabbing the Plaintiff by his left forearm, pulling him from his seated position and pulling him through the corridor was not done as an integral step in the process of arresting the Plaintiff as the subsequent arrest did not happen until both the Plaintiff and the 3rd Defendant were in the hallway outside of where the interview had taken place. I find that the actions of the 3rd Defendant were done as a means to throw the Plaintiff out of the interview room and not to arrest him. Moreover, even if the subsequent arrest could have been justified, at the time of grabbing the Plaintiff the 3rd Defendant did not intend nor did he purport to arrest the Plaintiff, as the evidence before the Court was that his statements to the Plaintiff during that time was for him to leave the room (**Fraser Wood v Director of Police Prosecution (supra)**).
63. The case law relied on by the Defendants can clearly be distinguished from the case law relied by the Plaintiff on the facts. The Plaintiff relied on two cases in support of his case, **Kenlin and Gardiner (supra)** and **Fraser Wood v Director of Police Prosecution (supra)**.
64. In **Kenlin and Gardiner (supra)** the appellants, both schoolboys, aged 14, were seen by two police officers in plain clothes going from house to house in a street. The officers became genuinely suspicious of their conduct, which, however, was in fact quite innocent. One of the officers went up to the boys and said 'We are police officers, here is my warrant card. What are you calling at the houses for?' The boys, apparently, did not appreciate from the warrant card that the respondents were police officers and were frightened at being accosted by strange men. Accordingly, instead of replying, one of them tried to run away, was caught hold of by one of respondents and struggled

violently, hitting and kicking him. The other appellant started to run off, was caught and he too struggled and hit the officer. Both appellants were charged with assaulting the police in the execution of their duty contrary to Police Act 1964 s 51. The magistrates found that the boys had technically assaulted respondents and convicted them, but granted them an absolute discharge. On appeal it was held the police officers' acts in catching hold of appellants were not done in the course of arresting either of appellants, but for the purpose of detaining them in order to put questions to them, and thus the acts were technically assaults; accordingly the justification of self-defence was open to the appellants in answer to charges based on such assaults, and, as it had not been found that the force used by appellants in self-defence had been excessive, the convictions of appellants would be quashed.

65. In **Fraser Wood v Director of Police Prosecution (supra)** the brief facts were in February 2006, the police received a report that a person known as 'Fraser' had been disruptive and had smashed an ashtray at a public house. When police officers arrived at the scene, they were given a vague description of 'Fraser'. A check of the Police National Computer revealed that the man they were looking for had a reputation for violence and was infected with Hepatitis B. Acting on that information, the officers approached a wine bar which was located near to the public house. A man fitting the description, the appellant, emerged from the wine bar. One of the officers asked: 'Are you Fraser?'. The appellant denied that he was. Thereafter, others emerged from the wine bar and spoke to the appellant referring to him as 'Fraser'. The appellant was subsequently restrained, and arrested. The reasons for his arrest were given a short while later, in the light of the fact that the appellant had repeatedly attempted to resist arrest. Thereafter, the appellant was charged with two offences, namely assaulting police officers and threatening behaviour. He was found guilty of those offences by justices. The appellant appealed to the Crown Court, arguing that the actions of the police were unlawful on the basis that he had been restrained, but not arrested. The Crown Court found that it was a question of semantics as to whether the appellant had been restrained or arrested, and that there was nothing to suggest that a lawful arrest had not been made. Accordingly, the appeal was dismissed. The appellant appealed by way of case stated. The issue was whether the Crown Court had been correct to find that a lawful arrest had been made. The appeal was allowed. It was settled law that where a police officer had

restrained a person, but had not intended or purported to arrest that person at the time, he committed an assault, even if the arrest would have been justified. In order for there to be a lawful arrest, an officer had to, first, have reasonable grounds to suspect that a person had committed an arrestable offence, and secondly, that person had to be informed that he was under arrest either at the time of arrest or within a reasonable time thereafter. In the instant case, the Crown Court had been wrong to find that a lawful arrest had been made. The officer in question had not intended or purported to arrest the appellant when he had restrained him, and at no stage in the course of the fracas which resulted, had the appellant been informed that an arrest was being made.

66. The authorities to which the Defendants submitted in support of their case were not helpful in that the facts of those cases differed greatly from the instant case, in particular the cases of **Williams v Moxey**(*supra*) and **Joshua Shields (by his litigation friend Rebecca Shield) v. Chief Constable of Merseyside Police (supra)**.

67. In **Williams v Moxey (supra)** the Plaintiff, a minor at the time claimed against the Defendants for unlawful arrest, assault, unlawful imprisonment and breach of his constitutional rights following an incident at Government High School, Nassau, on January 17, 1995. He claimed that following an incident with the daughter of the 1st Defendant whereby he had cut her on her wrist, the 1st Defendant grabbed him by the waist of his pants and marched him from the school premises to a police car and was driven to the Grove Police Station. The Plaintiff also alleged that the 1st Defendant's exercise of his powers of arrest was an abuse of authority in that he was motivated by personal anger. The Defendants relied mainly on the provisions of Section 103(1)(e) of the Penal Code in support of their Defence. The Court preferred the evidence of the Defendants in favour of the Plaintiff and determined that the evidence failed to justify the allegation by the Plaintiff and that the 1st Defendant had not touched the Plaintiff throughout his investigation. Justice Osadebay stated that the test in the case was not whether the arresting officer was angry at the time of the arrest but whether a reasonable man, assumed to know the law and possessed of the information which was in fact possessed by the arresting officer, would believe that there was at the time of the arrest reasonable and probable cause for the arrest. Justice Osadebay also went on to provide the meaning of reasonable and probable cause as stated by Hawkins J in *Hicks v*

Faulkner (1991) 8 QBD 167 "I should define reasonable and probable cause to be, an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of 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." As the Defendants had relied upon Section 103(1)(e) of the Penal Code in support of the Defence, the Court determined in favor of the Defendants as that section provides for a power of arrest for the offence of aggravated assault. As the 1st Defendant's daughter had made a complaint against the Plaintiff for an aggravated assault which was committed by the Plaintiff (whether it was accidental or intentional). Moreover, the Court accepted based on the evidence before it that the 1st Defendant honestly believed in the guilt of the Plaintiff based upon a full conviction, founded upon reasonable grounds and that he had reasonable and probable cause for the prosecution of the Plaintiff for the aggravated assault committed by him against Rosaline Moxey, notwithstanding that Rosaline was his daughter.

68. In **Joshua Shields (by his litigation friend Rebecca Shield) v. Chief Constable of Merseyside Police (supra)** in May 2006, the police received a telephone call from a mother who believed that her daughter had suffered injuries at the claimant's address. An ambulance had been called, but she was not allowed into the house, and abuse was being shouted from the window. A police officer, H, arrived at the scene. He was allowed inside the property. He found the daughter in the kitchen. The claimant's father then appeared and told him in strong language to leave. Anticipating further trouble, he used his radio to call for assistance. The claimant joined in shouting at H and then the claimant's father attacked H. Whilst struggling with the claimant's father, H pressed the emergency button on his radio. The claimant also attacked H and punched him to the side of the head. Other police officers, including M, then attended at the scene. At that stage H was struggling with the claimant's father and the claimant was screaming abuse and obscenities at H. Shortly after, H said to M, 'He's under arrest for assault police', referring to the claimant. M then seized the claimant by his wrists. The officers handcuffed the claimant, and M told him that he was under arrest for assaulting the police. He was then taken out of the house and put in a police vehicle, where he was reminded that he was under arrest for assaulting the police. The claimant and his father

were subsequently charged with offences of assaulting a police officer in the execution of his duty but were acquitted after trial. They brought a claim against the defendant chief constable for damages for assault and false imprisonment. The case was tried by a judge and jury. At the conclusion of the trial, the judge put 13 questions to the jury, covering issues where there was a material conflict about what happened between the evidence of the claimant and his father's witnesses and the evidence of the defendant's witnesses. In every instance the jury rejected the claimant's evidence and accepted the defendant's evidence. In the light of those findings, the judge dismissed the claims. The claimant appealed. He did not challenge the findings themselves, but he argued that the judge had erred in law in holding that his arrest was lawful. There was no appeal by the claimant's father. The issue that arose for determination was whether the claimant had been the subject of a lawful arrest. The claimant argued that the judge had failed properly to apply the provisions of s 24 of Police and Criminal Evidence Act 1984, as amended, because M neither had sufficient information available, at the time when he had been detained, to form a reasonable suspicion that he had committed the offence for which he was detained, nor had he gone through the mental process necessary for carrying out a lawful arrest. The appeal would be dismissed. In all the circumstances of the case, there had been amply sufficient material for M reasonably to suspect that H was there in the execution of his duty. However, even if M only had ground for reasonable suspicion that the claimant had committed the offence of common assault that would be sufficient to make the arrest lawful, provided that the necessity requirement set out in s 24(5) had been met. M had reasonably suspected that the claimant was guilty of assaulting H and reasonably believed that it was necessary to arrest the claimant to prevent him from causing further physical harm to officers and to ensure the prompt and effective investigation of the offence. Having the power of arrest and reasonably believing it to be necessary, he was not required to go through any further mental process before detaining the claimant. The fact that he had erroneously believed that H had begun the process of arrest was immaterial to the lawfulness of the arrest made by him.

69. The above authorities in support of the Defendants case I have found causes more confusion than clarity for the Defendants. While both cases are similar in that there was an action or event that preceded the ultimate arrest of an individual, there appears to be

two different tests to which the Court made their determination. In **Williams v Moxey (supra)** the test arises from the officer having a reasonable and probable cause, whereas in **Joshua Shields (by his litigation friend Rebecca Shield) v. Chief Constable of Merseyside Police (supra)** the Court relied upon Section 24 of PACE (an act that has not been enacted in the Bahamas) which establishes that an officer only needs a reasonable suspicion that a person committed the offence as sufficient for making a lawful arrest.

70. The authorities to which the Defendants rely upon as justification for the 3rd Defendant's actions are contradictory in that they differ on the simple premise of the test what must be applied prior to making any arrest. To my mind, it cannot be that the 3rd Defendant could have had a reasonable and honest belief and a reasonable suspicion of the Plaintiff committing an offence or having committed an offence. The facts of the instant case differ from the facts of the cases relied upon by the Defendants.
71. Section 31(2)(a) of the Police Force Act provides that an arrest may be made without a warrant if the officer "reasonably suspects" the person of having committed an offence. Although the Defendants have not relied upon that provision in support of their case, I take note of such as that provision provides the test of reasonable suspicion. However, the evidence before the Court by the Defendants failed to establish that the 3rd Defendant reasonably suspected that the Plaintiff had committed any offence while in the interview room. Moreover, as I have found that the evidence of the Defendants were contradictory from each witnesses' own Reports, each witnesses' own Witness Statements, each witnesses' viva voce evidence during the trial and their evidence against each other, they failed to establish that the Plaintiff committed any of the offences he was charged with while in the interview room which would have justified the actions of the 3rd Defendant.
72. Therefore, I find that the 3rd Defendant assaulted the Plaintiff and the subsequent arrest and imprisonment was unlawful.

Unlawful Arrest & False Imprisonment

73. Counsel for the Plaintiff submits that Section 22(1) of the Penal Code defines the offence of false imprisonment and states that the total restraint to the liberty of the person for

however short a time by the use or threat of force or by confinement is an imprisonment. **See Halsbury's Laws of England, 4th Ed., Vol. 45, para 1325**

74. He also submits that a constable is liable for false imprisonment if he unlawfully arrests or detains another in circumstances which do not amount to a valid arrest and relies on the case of **Warner v Riddiford [1885] 4 CBNS 180**. Moreover he submits that once the Plaintiff can establish a prima facie case that he was imprisoned by the Defendant, the burden of proof is reversed and lies on the Defendant. **See Halsbury's supra**.
75. Counsel for the Defendants submits that the tort of false imprisonment involves the infliction of bodily restraint that is not expressly or impliedly authorized by law and refers the Court to **R v Governor of Brockhill Prison ex parte Evans [2001] 2 AC 19 HL**. Moreover, it is their submission that the burden of proof is on the claimant to establish that the detention occurred and once shown the burden shifts to the defendant to show that there was lawful justification for the detention. Lastly, they rely on Article 19(1)(d) of the Constitution of the Bahamas in support of their submission.
76. Section 22(1) of the Penal Code states "A person imprisons another person if, intentionally and without the other person's consent, he detains the other person in a particular place, of whatever extent or character and whether enclosed or not, or compels him to move or be carried in any particular direction."
77. It is not disputed that the Plaintiff was arrested by the 3rd Defendant when they had ended up in the corridor. Additionally, as a finding of fact, the Plaintiff was told of the reason for his arrest at the time of his arrest.
78. As illuminated by Lord Justice Toulson in **Joshua Shields** (supra) at paragraph 15, he stated:-
- "Common law principles about what constitutes an arrest remain unchanged. They were stated by Lord Diplock in *Holgate-Mohammad v Duke* [1984] AC 437, 441-2, [1984] 1 All ER 1054, [1984] 2 WLR 660. Arrest is a continuing act. It starts with the arrester taking a person into his custody, either by action or by words restraining him from moving anywhere beyond the arrester's control, and it continues until the person so restrained is either released from custody or remanded in custody by a judicial act. **The mere act of taking a person into custody does not constitute an arrest unless the person knows, either at the time when he is taken into custody or as soon thereafter**

as it is reasonably practical to inform him, upon what charge or on suspicion of what crime he is being arrested.(emphasis mine)”

79. The evidence before the Court was that at the time of arrest of the Plaintiff by the 3rd Defendant in the corridor of the Police Station, the 3rd Defendant informed the Plaintiff of the reason for his arrest and as such the arrest of the Plaintiff was effected after the Plaintiff was assaulted by the 3rd Defendant.
80. It is important to note that the burden of proof is reversed and lies on the Defendant once the Plaintiff can establish a prima facie case that he was imprisoned by the Defendant (Haslbury’s supra and **R v Governor of Brockhill Prison ex parte Evans (supra)**) it is for the Defendants in the instant case to provide justification for the Plaintiff’s arrest.
81. Counsel for the Defendants, Ms. Hepburn has submitted that the defence of justification is applicable as the various provisions of several statutes provide such. In particular I note the following provisions:-

Section 31(1) and (2) of the Police Force Act states:

“The members of the Force shall have all powers, authorities, privileges, advantages and immunities and be liable to such duties and responsibilities as constables and peace officers now have or thereafter may be vested with, either by common law or by virtue of an Act now or hereafter be in force in The Bahamas, or as may be directed and imposed by any regulation made under this Act.

(2) Without prejudice to the generality of the foregoing or any other provision of this Act, a police officer may, without warrant, arrest a person – (c) who commits a breach of the peace in his presence; and (d) who obstructs a police officer whilst in the execution of his duty.”

Section 97 (1) of the Penal Code which states:

“(1) For the purposes of this Code, force or harm is justifiable which is used or caused in pursuance of such matter of justification, and within such limits, as are hereinafter in this Title mentioned.”

Section 98 (1) and (3) of the Penal Code which states:

"Force may be justified in the cases and manner, and subject to the conditions, hereafter in this Title mentioned, on the ground of any of the following matters, namely —

(1) express authority given by a statute; and

(3) authority of an officer to keep the peace or of a court to preserve order"

Section 99 (1) and (2) of the Penal Code which states:

"Notwithstanding the existence of any matter of justification for force, force cannot be justified as having been used in pursuance of that matter — (1) which is in excess of the limits hereinafter prescribed in the section of this Title relating to that matter; (2) which in any case extends beyond the amount and kind of force reasonably necessary for the purpose for which force is permitted to be used."

Section 100 of the Penal Code which states:

"Whoever is authorised by the provisions of this Code or any other statute to use force may justify the use of necessary force according to the terms and conditions of his authority."

Section 102 of the Penal Code which states:

"Whoever is authorised as a peace officer, or in any judicial or official capacity, to keep the peace or preserve order at any place, or to remove or exclude a person from any place, or to use force for any similar purpose, may justify the execution of his authority by any necessary force not extending to a blow, wound or grievous harm."

Section 105 of the Penal Code which states:

"Whoever has authority, by warrant or other legal process or under the provisions of any statute, to arrest, detain or search another person otherwise than for felony, may justify any necessary force not extending to a blow, wound or grievous harm, if the other person has notice or believes that the force is used by virtue of any such authority."

Sections 11 (1) and (2) of the Criminal Procedure Code Act which states:

"(1) In making an arrest the peace officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action. (2) If the person to be arrested

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 that nothing in this section contained shall be deemed to justify the use of greater force than was reasonable in the particular circumstances in which it was employed or was necessary for the apprehension of the offender.”

82. While Counsel for the Defendants rely on the provisions of the above statutes in support of their defence of justification, I have difficulty concluding that the 3rd Defendant's actions were justified. The evidence by the Defence witnesses was that the 3rd Defendant was smaller than the Plaintiff and as such he would have had to exert much more force than normal to firstly pull the Plaintiff from a seated position and then pull him through the corridor. Moreover, the actions of the 3rd Defendant occurred before any arrest was effected or any announcement by the 3rd Defendant of his intention to arrest the Plaintiff, therefore Sections 11 (1) and (2) of the Criminal Procedure Code are not applicable nor the other statutes relied upon by the Defendants.
83. Further I find that the Amended Defence filed herein is contradictory to the evidence as provided by the witnesses of the Defendants and the Defendants fail to plead the provisions of the necessary statutes to which the 3rd Defendant grounded his defence of justification.
84. Counsel for the Defendants also rely on Article 19(1)(d) of the Constitution as justification for the Plaintiffs arrest. Article 19(1) of the Constitution states:-
- “(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases —
- (d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;”
85. The Plaintiff was charged with disorderly behavior, assaulting a police officer and resisting arrest.
86. The Defendants' pleaded case and the evidence that is before the Court, to my mind does not provide any justification for the Plaintiff's arrest. The evidence of the Defendants fails to show that the Plaintiff assaulted the 3rd Defendant, that the Plaintiff resisted arrest (as the evidence shows that when the Plaintiff was told of his arrest the

3rd Defendant and DC Thomas was able to place the handcuffs on him) or that the Plaintiff's actions prior to his arrest gave rise to disorderly behavior.

87. It is on that basis that the Plaintiff's subsequent arrest and imprisonment was unlawful.

Breach of Article 19(1) Constitutional Rights

88. The Plaintiff also seeks damages for breach of Article 19(1) of the Constitution which gives protection for citizens of the Bahamas from arbitrary arrest or detention.

89. While the Court has determined that the Plaintiff's arrest was indeed unlawful, I am not minded to award damages for breach of his Article 19(1) right. The Plaintiff's claim for the breach is adequately covered by his parallel claim for damages for the wrongful arrest and false imprisonment. Moreover, there was nothing capricious or arbitrary about the circumstances of the Plaintiff's arrest that would make it appropriate to grant him Constitutional relief. I do not find that the instant case disclosed any special feature by way of the evidence before me that would justify an award of damages by way of constitutional redress for which he could not be adequately compensated in his parallel claims in tort. In short, this is a proper case for the proviso to Article 28(1) of the Constitution to be invoked.

90. In addition to the above, I do not find that there are any aggravating or special features that would qualify the Plaintiff for an award of aggravated or exemplary damages.

Disposition

91. Having found that the Plaintiff was assaulted by the 3rd Defendant and was wrongfully arrested and imprisoned Judgment is entered for the Plaintiff.

92. As costs usually follow the event I see no reason to depart from this, costs are to be awarded to the Plaintiff to be taxed if not agreed. I will hear Counsel on the assessment of damages on an adjourned date.

Dated this 17th day of November, A.D. 2020


Petra M. Hanna-Adderley
Justice