

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity Division**

2018/CLE/gen/01309

BETWEEN

LASHAWN COOPER

Plaintiff

-AND-

THE COMMISSIONER OF POLICE

1st Defendant

THE ATTORNEY GENERAL

2nd Defendant

SERGEANT 2816 NADIA MUNNINGS

3rd Defendant

CONSTABLE 3615 TROY ADDERLEY

4th Defendant

CONSTABLE 3827 CHAVEZ SAWYER

5th Defendant

Before: The Honourable Madam Senior Justice Indra H. Charles

Appearances: Mr. K. Melvin Munroe of Themis Law for the Plaintiff
Mr. Kirkland Mackey and Ms. Raquel Whyms for the Defendants

Hearing Dates: 11, 12 May, 2 November 2021

Civil - Unlawful arrest – Wrongful assault – False imprisonment – Defamation – Onus on Plaintiff to prove his case on the balance of probabilities

Sometime after 10:00 p.m. on 6 February 2018, the Plaintiff, a Corporal of Police, was in his car with a male friend in an isolated and dark area of Stokes Cabana Beach, off Yamacraw Road in the Eastern District of New Providence. Police were patrolling the area as a result of a spate of

armed robberies when they observed a car parked on the western side of the beach. As a result, they approached the car, shone their flashlights inside the car and saw two males in a compromising position. The police suspected that the male in the passenger seat was under age so they ordered both occupants out of the car. The passenger voluntarily exited the car. His identification confirmed that he was not under age. He was asked to go home without being arrested and/or assaulted. The Plaintiff, who was the driver, refused to exit the car. He was behaving in a disorderly manner and using profanities. After several commands to get out of the car, he was removed. His disorderly and loud behaviour continued as the officers attempted to handcuff him. He was also shouting and pointing his finger towards one of the officers. He was warned about his behaviour. As it did not cease, the Police called Police Control Room for assistance. The Plaintiff was later placed under arrest for disorderly behaviour, using obscene language and assaulting a police officer. At some point during the ordeal, the police realised that the Plaintiff was also a police officer, indeed, a Corporal of Police. Acting upon instructions, the Plaintiff was taken to Central Detective Unit and then to Police Quarter Guard for safe keeping. He was released the following morning.

The Plaintiff sued the Commissioner of Police and the officers for unlawful arrest, assault, false imprisonment and defamation. He also seeks damages.

The Defendants denied the account given by the Plaintiff. They say that the Plaintiff was lawfully arrested, he was not assaulted nor was he falsely imprisoned. The Defendants also denied that they defamed the Plaintiff.

HELD: Finding that the Defendants did not unlawfully arrest, assault, falsely imprison and defame the Plaintiff, the action is dismissed with costs of \$10,000 to the Defendants.

1. In civil cases, the burden of proof is on the plaintiff and the standard required of the plaintiff is that he proves his case against the defendant on a balance of probabilities.
2. The evidence given by the Plaintiff is sharply in contrast to the evidence of the Defendants and their witnesses. On a balance of probabilities, the evidence of the Defendants is to be preferred to the evidence of the Plaintiff who was found to be unimpressive and inherently unreliable. Further, he could have brought his male friend who was present at the scene to testify on his behalf. That male friend's evidence could have assisted the court: **Bernard Kenneth Bonamy II and Dwight Miller v Police Constable 3002 William Hunt et al** [2007/CLE/gen/00088] [unreported] relied upon.
3. On the issues of unlawful arrest, assault, false imprisonment and defamation, the evidence of the Defendants is to be preferred to that of the Plaintiff.

JUDGMENT

Charles Sr J:

Introduction

[1] The Plaintiff, Lashawn Cooper ("Cpl. Cooper") is a Corporal of Police. He is now on study leave in the United Kingdom. He sued the Commissioner of Police and three other police officers for damages for unlawful arrest, assault and battery,

false imprisonment and defamation of his character. He also sued the Attorney General but, in his Statement of Claim, failed to state in what capacity the Attorney General is being sued. In fact, nowhere in the Statement of Claim is there any mention of the Attorney General. I shall therefore strike out his claim against the Attorney General.

[2] The action proceeded against the other Defendants.

Background facts

[3] Some of the facts are agreed between the parties. To the extent that there are disputed facts, then what is expressed must be taken as positive findings of fact that I made having considered the totality of the evidence.

[4] Sometime after 10:00 p.m. on 6 February 2018, Cpl. Cooper was in his silver Mercedes Benz with an adult male friend, Julian Ormeus. The car was parked in an isolated and dark area of Stokes Cabana Beach, off Yamacraw Road in the Eastern District of New Providence.

[5] Due to the spate of armed robberies in the area, the police were on mobile patrol. On the night in question at about 11:15 pm, the crew of Charlie 44 comprising Woman Detective Sergeant Munnings (“Sgt. Munnings”), Detective Constable 3615 Adderley and Detective Constable 3827 Sawyer were patrolling the area when they spotted a car parked in the isolated area of the beach.

[6] The officers, clad in police paraphernalia (tam and bullet-proof vest), headed in the direction of the parked car. They exited their vehicle and approached the parked car. They shone their flashlights inside the car. They saw two males in a compromising position in the car. When the male (whose head was in the driver’s lap) lifted his head, the police suspected that he was underage.

[7] Obviously, they wanted to investigate further. Sgt. Munnings then asked the occupants to exit the car. Julian complied and exited the vehicle. He was asked to

produce an identification which he did. He was an adult. He was asked to go home. He complied and left. He was not arrested or assaulted by the police.

- [8] The driver, Cpl. Cooper, remained in the car. Sgt. Munnings gave another command for him to exit the car. He refused. Thereafter, Officer Sawyer and Officer Adderley used necessary force to get him out of the car. The situation escalated when Cpl. Cooper got out of the car and the officers attempted to handcuff him. So, Sgt. Munnings went on her radio set and requested assistance from Police Control Room ("PCR"). Some officers were dispatched to assist.
- [9] In the intervening period, Sgt. Munnings instructed Cpl. Cooper to put his hand on the vehicle. Again, he did not comply. In an attempt to subdue and handcuff him, he pushed Officer Sawyer and stated that *"ain't no junior officer arresting fucking me, call a fucking inspector or above, I'm a police officer"* while he continued to struggle with the officers. After a brief struggle, Cpl. Cooper was placed under arrest and cautioned for disorderly behaviour, obscene language and assaulting a police officer.
- [10] Cpl. Cooper was asked to identify himself and he said that he was Officer Smith. The officers searched his car and found police issued warrant card in the name Constable 3170 Lashawn Cooper. When questioned about the warrant card which bore his image, he then admitted that he is a Corporal of Police. The officers did not realise that Cpl. Cooper was a police officer or indeed, a Corporal of Police.
- [11] Throughout the entire incident, Sgt. Munnings was in contact with the duty officer at PCR via radio set and mobile phone. Chief Supt. Cash, the Officer in Charge of the Central Detective Unit, was also informed.
- [12] Cpl. Cooper was eventually booked in at Central Detective Unit. He was subsequently taken to Police Quarter Guard for safekeeping. At about 10:00 a.m. the following morning, he was released.

Issues

[13] The following issues arise for determination namely:

1. Whether Cpl. Cooper was unlawfully arrested, assaulted and falsely imprisoned?
2. Whether Cpl. Cooper was defamed by the Defendants?
3. Whether Cpl. Cooper is entitled to damages?

The evidence

Cpl. Lashawn Cooper

[14] Cpl. Cooper testified on his own behalf. He chose not to bring any witness, in particular, his friend Julian, who was present during the initial part of the incident. He stated that, on the night in question, he along with Julian were in his car by the beach off Yamacraw Hill. Whilst parked there, a male dressed in a camouflage outfit and a gun in his hand, came to his car. The male identified himself as an officer from the Royal Bahamas Defence Force ("RBDF") and demanded that he and Julian exit the vehicle. They obeyed the instructions and came out of the vehicle.

[15] The officer then asked for their names which they gave. Cpl. Cooper said that he also identified himself as a police officer and showed him his identification. The officer left since he was satisfied.

[16] About five minutes later, another vehicle pulled up. He observed a female coming out of the red vehicle, walking in the direction of his vehicle. The female was in plain clothes and it was an unmarked police vehicle. The female whom he recognized as Sgt. Munnings came to his car and said "*What are y'all doing in this fucking vehicle?*" She continued by saying "*Y'all is fucking bongie bandits that's what y'all is*". She also said "*y'all sissies out here doing shit, that's how y'all is die. Who bought this car for you? Ya sissy boyfriend aye? Come out of this fucking car.*"

- [17] Julian came out first and he came out with a phone in his hand. At this time, he observed two males coming from the same unmarked vehicle. One of the males walked up to him and said "*get off this fucking phone.*" He then hit the phone off his hand. It fell to the ground.
- [18] The same male said that he was under arrest for being with a minor and placed a pair of handcuffs on him. He said that, at this point, he identified himself as a police officer and the male hurled some profanities at him and struck him in his stomach. The other male also struck him. He was subsequently arrested for disorderly behaviour, resisting arrest, using obscene language and assaulting a police officer. He spent a night in a cell and, the following morning, he was released. Later on, he saw a photo of him on Facebook with the caption "*Police Officer caught with underage boy on beach.*" He was devastated.
- [19] Under intensive cross-examination by learned Counsel Mr. Mackey who appeared for the Defendants, Cpl. Cooper stated that Sgt. Munnings said "*You out here with an underage male. You out here with an underage male. I am going to expose you, you boongie bandit*" and she proceeded to go on her radio set. At the same time, the two other officers told him to come out of the car and get off the phone. Then the officers hit the phone out of his hand.
- [20] Cpl. Cooper confirmed that the police officers did not beat or arrest Julian who was made to leave after ascertaining his age by showing his driver's licence. He said that the officers assumed that Julian was under age so, they placed him (Cpl. Cooper) under arrest for that. He insisted that when Sgt. Munnings shone the light in the car, Julian's head was not in his lap.
- [21] When questioned about the questions in the Record of Interview which he gave to the police on 24 January 2019 wherein he stated that the RBDF Officers approached him around 6:00 or 7:00 p.m. The sun was still out and there was still light. He was on the phone when the officers approached him and asked him to come out of the car but since he did not recognize them as police officers, he

remained in his car, he evasively answered the questions. When asked further whether Sgt. Munnings is senior to him in terms of ranking, he said that she is but she was not the one who placed him under arrest.

[22] Upon re-examination, Cpl. Cooper stated that, since he is a corporal of police, the procedure for dealing with matters relating to him would necessitate an inspector or above and that is the reason why he requested a supervisor to come to the scene. He further stated that when the officers arrived at the scene, they asked him to come out of his car which he did. He had his phone in his hand and the officers hit it off his hand and proceeded to put handcuffs on him.

[23] He was never charged for any of these offences for which he was arrested.

Sgt. Nadia Munnings

[24] Sgt. Munnings filed a witness statement on 15 March 2021 which stood as her evidence in chief. She stated that, on the night in question, at about 11.15 p.m., she was on mobile patrol with Officer Adderley and Officer Sawyer when she observed a silver car parked on the western side of the beach. She alerted Officer Sawyer (who was the driver) to go in the direction of the parked car. They exited their vehicle and approached the parked car while shining a flash light at the vehicle. They were dressed in police paraphernalia. She noticed two males in the vehicle. The driver's seat was laid back and the passenger had his head in the driver's lap. She knocked at the window. The passenger raised his head and she noticed the driver's zipping up his pants. She said that, after the passenger raised his head, he appeared to be underage and, after identifying themselves as police officers, she gave verbal instructions for both males to exit the car. The passenger did and produced an Identification bearing his date of birth of 16 September 1987. She gave a second command for the driver to step out of the car and he said "*for what, I didn't do nothing, nothing happening here.*" She asked the driver two more times to exit the vehicle. After he refused, both officers used necessary force to get him out of the car. Sgt. Munnings said that the driver got very disorderly and loud so she requested assistance from PCR. She then instructed the driver to put

his hand on their vehicle and he refused to do so. She informed him that if he continues to do so, he will be arrested for disorderly behaviour. The driver then said *“arrest for fucking what? I am not disorderly”*. After the driver continued to behave disorderly, violently pushing Officer Sawyer and hurling obscenities at them, she placed him under arrest for disorderly behaviour, obscene language and assaulting a police officer. She stated that he assaulted Officer Sawyer who was attempting to handcuff him and he also stated that *“ain’t no junior officer arresting fucking me, call a fucking inspector or above. I’m a police officer”*.

[25] After a short struggle, Cpl. Cooper was arrested and cautioned. Sgt. Munnings said that she asked him to identify himself and he said that he is Officer Smith. She asked him for his police number and attachment which he refused. Cpl. Cooper’s car was searched and his police issued warrant card was found in the name of Constable 3170 Lashawn Cooper. When questioned, he said that he is a Corporal of Police.

[26] Sgt. Munnings stated that, throughout the incident, she was in contact with the duty officer at PCR via radio set and mobile phone. Cpl. Cooper was later booked in at Central Detective Unit. The other male gave his name as Julian Orneus of Eastern Road.

[27] Under cross-examination by learned Counsel Mr. Munroe, who appeared for Cpl. Cooper, Sgt. Munnings stated that they arrived at the scene around 10:50 to 11:15 in the night. They were in a white Explorer Jeep. She said that the reason for approaching the car was that there were armed robberies in the area so they were placed there for that purpose. She asserted that their instructions were to stop and search any vehicle or person in that area to ensure that they were not suspects in respect of the armed robberies. She said that the way the car was parked aroused her suspicion. She did not hear any sounds coming from the car and, when they approached the vehicle, she saw that the driver had his seat leaned back and the passenger’s head was in his lap. She shouted “police”. The passenger raised his head up and, according to her, he appeared to be under age. It was at that point

that she ordered them to come out of the vehicle. She further stated that she informed the occupants that the passenger appeared to be under age and that was the reason for instructing them to come out of the car. On the first command, the passenger came out of the vehicle. She stated that, for safety reasons, she could not continue with her job unless both persons came out of the car.

[28] Sgt. Munnings stated that after the driver refused a fourth command to get out of the vehicle and he was 'shuffling around' in the car as though he was looking for something, she instructed Officers Adderley and Sawyer to take him out of the vehicle. According to her, Cpl. Cooper got extremely disorderly and loud and, at this point, she requested assistance from PCR.

[29] Under cross-examination, Sgt. Munnings stated that Cpl. Cooper assaulted her by coming towards her, using obscenities and pointing his hand at her which made her fearful. She denied that she called Cpl. Cooper a "*boongie bandit*" or said that she would expose him.

[30] Sgt. Munnings stated that because of Cpl. Cooper's behaviour, she had to call PCR. She realized that he was a police officer when he said that "*no fucking junior officers arresting me, call and Inspector.*" She said that because Cpl. Cooper was using obscenities, she opened up the airwaves so that PCR could hear what was taking place.

[31] Under further cross-examination, she was asked why she photographed Cpl. Cooper and she stated that she did not. Also, she did not allow the other officers to assault Cpl. Cooper. According to her, the officers used necessary force to place the handcuffs on Cpl. Cooper.

Detective Constable 3827 Chavez Sawyer

[32] Officer Sawyer signed a witness statement on 12 March 2021 which stood as his evidence in chief. His version of events which led to the arrest of Cpl. Cooper did not differ materially from that of Sgt. Munnings.

[33] Under cross-examination, he stated that he observed two males in the vehicle. He approached the vehicle on the driver's side and Sgt. Munnings was on the passenger's side. While he was taking the driver out of the car, he was using profanities and behaving disorderly.

Detective Constable 3615 Tony Adderley

[34] On 16 March 2021, Officer Adderley signed a witness statement which stood as his evidence in chief at the trial. He also replicated what Sgt. Munnings and Officer Sawyer stated.

[35] Under cross examination, he said that he had a flashlight in his hand and when he shone it in the vehicle, he saw the silhouettes of two occupants; one on the driver's side and one on the passenger's side. He confirmed that Sgt. Munnings also had a flashlight. Officer Adderley stated that the driver was very confrontational and was resisting when he and Officer Sawyer attempted to remove him from the car. He asserted that it was Sgt. Munnings who told the driver the reason why they were there.

[36] Under further cross-examination, Officer Adderley stated that the driver did not attack him but he made advancements towards Sgt. Munnings while pointing his finger and he pushed Officer Sawyer. He was very violent.

[37] Officer Adderley maintained that Sgt. Munnings gave the driver a reason why they should exit the car; in that the male passenger appeared under age and they needed to confirm that he was not.

ASP Charmain Leadon

[38] The next witness called by the Defendants to testify was ASP Charmain Leadon who is attached to PCR. Her witness statement which was filed on 1 April 2021 stood as her evidence in chief. She stated that sometime around 10:53 p.m. on 6 February 2018, she overheard a transmission from a Charlie unit with reference to two males in the Yamacraw beach area and one of whom was very disorderly.

During the time that the female officer was communicating with PCR via the radio set, a loud male voice could also be heard on the set interrupting the communication. As a result, the dispatcher, Cpl. 3310 Rogers asked that she contact PCR by phone to get a better understanding of what was happening. ASP Leadon said that she provided necessary information and Cpl. Cooper was taken to Police Quarter Guard.

[39] ASP Leadon was cross-examined. She stated that the loud voice she heard was that of Cpl. Cooper. She was able to recognize his voice because he had worked in PCR for a number of years. She also stated that Cpl. Cooper also called PCR during the incident and spoke with Sgt. Richardson and Cpl. Rogers.

Sgt. 377 Ryan Richardson

[40] The final witness to testify on behalf of the Defendants was Sgt. Ryan Richardson. He signed a witness statement on 31 March 2021 which stood as his evidence in chief. He is attached to PCR. He averred that sometime around 11:00 p.m. on 6 February 2018, while on duty at PCR as the Supervisor/Dispatcher, the crew of Charlie 44 comprising Sgt. Munnings, Officers Sawyer and Adderley contacted PCR via radio set and stated that there was a police officer in a silver Mercedes Benz car, parked in a dark area near Stokes Cabana off Yamacraw Hill Road with a young male who appeared to be under age. Sgt. Munnings stated that the officer refused to give his name, posting and date of birth and he was behaving disorderly. They requested the assistance of an additional unit to assist at that location. As a result, he dispatched the crew of E-228 which was made up of PC 3118 Rolle and PC Minnis.

[41] Sgt. Richardson further stated that, at the time that Sgt. Munnings was with him on the radio set, Cpl. Rogers was on speaker with Cpl. Cooper who was identified as the officer involved in the incident.

[42] Under cross-examination, Sgt. Richardson asserted that Cpl. Cooper was requesting to speak with ASP Leadon who was the duty officer at the time. He

overheard a call between Cpl. Rogers and Cpl. Cooper. Cpl. Cooper was requesting to speak with the duty officer. He stated that during the time that Cpl. Cooper was on the phone with Cpl. Rogers, you could hear the back and forth altercation, obscenities and some struggle. He said that he heard Cpl. Cooper's voice on the radio set. He was able to recognize his voice because he had worked with him for several years in PCR. He also recognized Sgt. Munnings' voice. She was calling for help. Those were the two voices that he recognized.

Factual findings

- [43] In civil cases, the burden of proof is on the plaintiff and the standard required of the plaintiff is that he proves his case against the defendant on a balance of probabilities.
- [44] Credibility is at the heart of this action. The account given by Cpl. Cooper is sharply in contrast with that given by the Defendants and their witnesses. Examining the evidence which was presented to the Court and having had the opportunity of seeing, hearing and observing the demeanour of the witnesses as they testified, I was much more impressed with the evidence given by the Defendants and their witnesses than that of Cpl. Cooper.
- [45] On the whole, I found all of the officers to be frank, calm and composed as they testified. They also gave their evidence in a clear and straightforward manner. I also found them to be credible when they asserted that Cpl. Cooper refused to obey the commands given by Sgt. Munnings for him to exit his vehicle and that the passenger, Julian exited the vehicle voluntarily. After Julian showed his identification and they verified that he was not under age, he was told to go home. Cpl. Cooper himself confirmed that Julian was not assaulted or arrested.
- [46] The critical question then is: why was Cpl. Cooper arrested if he came out of his car voluntarily? It seems plain to me that since Cpl. Cooper did not come out of the car voluntarily, the Officers had to resort to necessary force to get him out. I also found as a fact that Cpl. Cooper was loud and disorderly which caused Sgt.

Munnings to call PCR to seek further assistance. The testimony of both ASP Leadon and Sgt. Richardson confirmed that during the time that Sgt. Munnings was communicating with PCR via the radio set, they heard a loud male voice interrupting the communication. Their respective accounts corroborated what Sgt. Munnings, Officer Sawyer and Officer Adderley stated.

[47] Against their evidence is the testimony of Cpl. Cooper. I am afraid that I do not believe his account of what took place. He brought this case so it is his duty to prove it, on a balance of probabilities. He could have brought his friend, Julian whose evidence might have assisted the Court. In this regard, I rely on Sir Michael Barnett, CJ's dicta in the case of **Bernard Kenneth Bonamy II and Dwight Miller v Police Constable 3002 William Hunt et al** [2007/CLE/gen/00088] (unreported). Sir Michael opined that he was satisfied that an incident occurred on the morning in question involving the Plaintiffs and the police but he made no finding that it took place in the manner alleged. He was not satisfied that the Plaintiffs have proven that it was the First Defendant who assaulted them. At paragraph 13 of the judgment, Sir Michael said:

“On the one hand, the only persons who give evidence on behalf of the Plaintiffs as to the incident were the Plaintiffs themselves. Although there were other independent persons who should have been available to give evidence (Fowler and the security officer) they were not called. Their evidence could have assisted the court....”

[48] Sir Michael opined that no independent witnesses were called to testify although they were available. Sir Michael was not satisfied that the Plaintiffs had discharged the burden which rested on them that the First Defendant assaulted them that morning.

[49] In similar vein, Cpl. Cooper could have brought Julian whose evidence might have supported his allegations as to whether he came out willingly from the vehicle and whether the police hit the phone off his hand because Julian was present at this time. Furthermore, it seems odd that the police would just arrest someone who was willingly complying with their commands and would permit the passenger (who

was also complying) to go freely home. It seems odder that the police would even request police assistance from PCR if Cpl. Cooper was indeed complying with lawful commands.

[50] All in all, I found Cpl. Cooper to be a very unimpressive and evasive witness. He was clearly reluctant to agree to anything put to him on behalf of the Defendants, even when it appears obviously correct.

The law

Unlawful arrest

[51] In the landmark case of **Christie v Leachinsky** [1947] A.C. 573, H.L. (affirming the judgment of the Court of Appeal) it was held that *“it is a condition of lawful arrest that the party arrested should know on what charge or on suspicion of what crime he is arrested, and, therefore, just as a private person arresting on suspicion must acquaint the party with the cause of his arrest, so must a policeman arresting without warrant on suspicion state at the time [emphasis added] (unless the party is already acquainted with it), on what charge the arrest is being made or at least inform him of the facts which are said to constitute a crime on his part. Even if circumstances exist which may excuse this, it is still his duty to give the information at the first reasonable opportunity after the arrest. The exigency of the situation which justifies or demands arrest without a warrant cannot justify or demand either a refusal to state the reason of arrest or a mis-statement of the reason.”*

[52] Unquestionably, the law attaches superlative importance to the liberty of an individual. Indeed, that liberty is enshrined in the Constitution of this Commonwealth. It is the constitutional right of every citizen to know why he is being detained so that he will be in a position to know whether he is entitled to resist the arrest.

[53] In a classic passage in **Christie v Leachinsky** at page 587, after referring to a panoply of cases, Viscount Simon summarised the position in a series of propositions as follows:

“(1) If a policeman arrests without warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words, a citizen is entitled to know on what charge or on suspicion of what crime he is seized. (2) If the citizen is not so informed but is nevertheless seized, the policeman, apart from certain exceptions, is liable for false imprisonment. (3) The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained. (4) The requirement that he should be so informed does not mean that technical or precise language need be used. The matter is a matter of substance, and turns on the elementary proposition that in this country a person is, prima facie, entitled to his freedom and is only required to submit to restraints on his freedom if he knows in substance the reason why it is claimed that this restraint should be imposed.(5) The person arrested cannot complain that he has not been supplied with the above information as and when he should be, if he himself produces the situation which makes it practically impossible to inform him, e.g. by immediate counter-attack or by running away. There may well be other exceptions to the general rule in addition to those I have indicated and the above propositions are not intended to constitute a formal or complete code, but to indicate the general principles of our law on a very important matter...If a policeman who entertained a reasonable suspicion that X has committed a felony were at liberty to arrest him and march him off to a police station without giving him any explanation of why he was doing this, the prima facie right of personal liberty would be greatly infringed. No one, I think, would approve a situation in which when the person arrested asked for a reason, the policeman replied “that has nothing to do with you, come along with me”.

[54] Applying the legal principles to the facts of the present case, as I found them, Cpl. Cooper was not unlawfully arrested. He refused to exit his car and refused to obey the commands given by Sgt. Munnings.

Assault

[55] The tort of assault and battery comprise of the act of making contact with the Plaintiff. It must be a direct and intentional act. The Plaintiff must not have consented to the act.

[56] Croom-Johnson LJ in **Wilson v Pringle** [1986] EWCA Civ 6 (26 March 1986) states at page 4 of the judgment:

“Another ingredient in the tort of trespass to the person is that of hostility. The references to anger sufficing to turn a touch into a battery (*Cole v Turner*) and the lack of an intention to assault which prevents a gesture from being an assault are instances of this. If there is hostile intent, that will by itself be cogent evidence of hostility. But the hostility may be demonstrated in other ways.”

[57] In the case of **Seymour v. The Commissioner of Police and another** [2012/CLE/gen/01339], Stephen Isaacs, Sr. J. in dealing with a similar issue referred to **Halbury's Laws of England 3rd Ed Vol 10** page 740, where the learned authors define assault and battery as follows:

"An assault is an offer or attempt to apply force or violence to the person of another in an angry or hostile manner; and if force is actually applied, directly or indirectly, either illegally or without consent of the person assaulted, and in an angry, rude, revengeful or violent manner, the assault becomes a battery, however slight the force may be.

The direct application of any physical force to the person of another may amount to a battery ...anything that can be called a blow, whether inflicted with hand, weapon or missile is a battery. See: *Clerk & Lindsell on Torts, 14th edition at page 357.*" [Emphasis added]

[58] See also: **Melinda Nickie Robins Robinson v Satcheel Amin Robinson** [2008/CLE/gen/01838] – Judgment delivered on 25 October 2018 (Bahamas Judiciary website).

[59] On the issue of whether Cpl. Cooper was assaulted by the Defendants, I did not believe his evidence that his phone was hit off his hand by the police and that he was struck about his body by Officer Adderley and Officer Sawyer. On the contrary, I accepted the Defendants' evidence that Officers Adderley and Sawyer used necessary force to remove him from his car after he refused to obey Sgt. Munnings who requested that he exit his car. Cpl. Cooper produced a hospital form and medical certificate which confirmed that he had some injuries but, in my opinion,

those injuries were sustained when the police used necessary force to remove him from his car.

False imprisonment

[60] Another issue which confronts the Court is whether Cpl. Cooper was falsely imprisoned when he was handcuffed and taken to Central Detective Unit and later to Police Quarter Guard for safe keeping. The Defendants did not deny that Cpl. Cooper spent the night at the Police Quarter Guard and sometime around 10:00 the following morning, he was released by his supervisor, Inspector Darrington Sands.

[61] False imprisonment is defined by *Clerk and Lindsell on Torts*, 17th ed. (1995) pp. 592-593, para 12-17 as “complete deprivation of liberty for any time, however short, without lawful cause.” The work then quotes the “*Termes de la Ley*”: “Imprisonment is no other thing but the restraint of a man’s liberty, whether it be in the open field, or in the stocks, or in the cage in the streets or in a man’s own house, as well as in the common gaols; and in all the places the party so restrained is said to be a prisoner so long as he hath not his liberty freely to go at all times to all places whither he will without bail or mainprise or otherwise”.

[62] The principle was explained by Deyalsingh J In **Bostien v Kirpalani’s Ltd** (1979) High Court of Trinidad and Tobago, No. 861[unreported], per Deyalsingh J: see page 13 in this way:

“It is clear from the authorities that to constitute false imprisonment there must be restraint of liberty...a taking control over or possession of the plaintiff or control of his will. The restraint of liberty is the gist of the tort. Such restraint need not be by force or actual physical compulsion. It is enough if pressure of any sort is present which reasonably leads the plaintiff to believe that he is not free to leave, or if the circumstances are such that the reasonable inference is that the plaintiff was under restraint even if the plaintiff was himself unaware of such restraint. There must in all cases be an intention by the defendant to exercise control over the plaintiff’s movements or over his will, and it matters not what means are utilised to give effect to this intention....”

- [63] False imprisonment as a form of trespass to the person is actionable *per se*. In **Murray v Ministry of Defence** [1988] 1 W.L.R. 692 at 703-704, H.L. overruling *Herring v Boyle*[1834]1 C.M. & R. 377, Lord Griffiths stated that “**the law attaches supreme importance to the liberty of the individual and if he suffers a wrongful interference with that liberty it should remain actionable even without proof of special damage.**”
- [64] No doubt, an unlawful arrest is a false imprisonment and if the requirements of the law as to making it clear to the arrested person that he is under lawful restraint, or informing him promptly of the grounds of his arrest, or taking him before the appropriate authorities within a reasonable time are not complied with, an arrest which might otherwise have been justified will be unlawful and ground an action for false imprisonment.
- [65] At paragraph 15 of his witness statement, Cpl. Cooper stated that the males (policemen) placed him in their vehicle and allowed Julian to leave. He was taken to Central Detective Unit. There he was booked in for disorderly behaviour, resisting arrest, using obscene language and assaulting a police officer. At paragraph 16 of his witness statement, he asserted that he was later taken to Police Quarter Guard for safe keeping. Then, at paragraph 17, he stated that “*I was placed in a cell where I slept overnight. Sometime around 10.00 a.m, I was released.*”
- [66] In my opinion, Cpl. Cooper was a very volatile person on the night of the incident. The fact that he was arrested and taken to Police Quarter Guard for safe keeping cannot amount to false imprisonment. On a balance of probabilities, I find that the police were merely “cooling down” a hot-tempered officer when they kept him overnight. Although none of the police officers spoke of intoxication, the officer who recorded the first entry in the Detention Record at 11:15 p.m. wrote “...*He appears to be intoxicated speaking with a slurred speech*”. I make no finding as to whether Cpl. Cooper was intoxicated on the night in question.

Defamation

[67] Defamation is defined in the case of **Sim v Stretch** [1936] 2 All ER 1237 as untrue publication that would tend to lower the plaintiff in the estimation of right thinking members of society. Libel is actionable per se. The defamation must be false. Therefore, proof that it is true by a defendant is a full defence.

[68] In order to succeed in an action for libel, the Plaintiff must establish:

- a) that the words are defamatory;
- b) that they refer to him;
- c) that they were published to at least one person other than the Plaintiff himself.

[69] In establishing whether words are defamatory, the court is required to decide whether the words are capable of being defamatory. Further, if that question is answered in the affirmative then the court must decide whether the words are defamatory in the circumstances of the particular case: **Woolford V Bishop (1941) LRBG 93** at p 95.

[70] In **Lewis V. Daily Telegraph Ltd.** [1964] AC 235 at 258, Lord Reid made this very important statement:

“There is no doubt that in actions for libel the question is what the words convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is inhibited by the knowledge of the rules on construction.”

[71] In the present case, Cpl. Cooper stated that upon approaching his car, Sgt. Munnings made the comments that she was going to expose him after calling him “*boongie bandit*”, a colloquialism for homosexual. As I preferred the evidence which was adduced by the Defendants and their witnesses, I did not find that Sgt. Munnings uttered these words.

[72] Further, according to Cpl. Cooper, this evidence was supported by the evidence of Sgt. Richardson when he stated that he overheard via radio transmission that

Sgt. Munnings said that she has an officer on the beach with an under age male. In his witness statement, Sgt. Richardson stated that “...*the crew of Charlie 44 ... contacted Police Control Room via radio set and stated that there was a Police Officer in a silver Mercedes Benz licence plate #AC4949, parked in a dark area near Scouts (sic) Cabana off Yamacraw Hill Road with a young man believed to be under aged male in his vehicle.*” This is not the same as stating that Cpl. Cooper is a homosexual.

[73] Based on my factual findings and the applicable law relating to defamation, Cpl. Cooper has not, on a balance of probabilities, satisfied this Court that the actions of Sgt. Munnings fell within the definition of defamation. I will dismiss this aspect of the claim as well.

Conclusion

[74] For all the reasons stated above, Cpl. Cooper’s action is dismissed in its entirety. As the Defendants are the successful party in this action, they are entitled to their costs. Counsel for the Defendant submitted a Bill of Costs for \$10,900. That amount is very reasonable but I will further discount it by \$900. I will order that Cpl. Cooper pays costs to the Defendants in the sum of \$10,000.

Dated this 15th day of July, 2022

**Indra H. Charles
Senior Justice**