

IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO: DOMHCV 2021/0035

BETWEEN:

DANIEL LUGAY	-	Claimant
V		
[1] THE ATTORNEY-GENERAL OF THE COMMONWEALTH OF DOMINICA	-	First Defendant
[2] MICHAEL SEBASTIEN	-	Second Defendant
[3] MARTIN ANATOL	-	Third Defendant

BEFORE: HONOURABLE MR JUSTICE COLIN WILLIAMS

APPEARANCES:

Mr David Bruney for the Claimant
Ms Pearlisa Morvan, Ms Juliette Theophile, and Mr Jason Lawrence for the Defendants

2025: March 13th,
April 2nd,

JUDGMENT

1. **WILLIAMS J:** The Claimant, Mr Daniel Lugay, is alleging that he was assaulted and battered, wrongfully arrested, and falsely imprisoned or kidnapped, by police officers of the Commonwealth of Dominica Police Force, CDPF, on the 15th of August 2020. He is seeking remedies from the State, in particular damages for what he believes are torts committed by agents of the State. At the time of the incident on the 15th of August 2020, Mr Lugay, ('the Claimant'), was the elected Representative for the Roseau North constituency in the Parliament of the Commonwealth of Dominica. He was a member of the opposition United Workers Party, UWP.
2. The Claimant was arrested outside of the Prime Minister's residence at Morne Daniel in the early evening of Saturday the 15th of August 2020, by then Inspector of Police, Mr Michael Sebastien, ('the Second Defendant'). Mr Sebastien, who is now an Assistant Superintendent of Police, at all material times has been the Supervisor of the Protective Services Unit, PSU, Special Branch Department, SB, of the CDPF. The PSU/SB of the CDPF provides security for the Head of State (the President) and Head of Government (the Prime Minister) and their respective families.

3. When the Second Defendant arrested the Claimant on the 15th of August 2020, he took the Claimant to his (the Second Defendant's) personal vehicle. The Claimant was then placed in the custody of Mr Martin Anatol, ('the Third Defendant'), who at the time was a Corporal of Police in the CDPF and attached to the PSU/SB. The Third Defendant then transported the Claimant to the Police Headquarters in Roseau. Another police officer from the PSU/SB was present during that journey to Roseau.
4. The Claimant, in his Statement of Claim¹ filed on the 12th of February 2021, alleges that he was assaulted and battered,² falsely imprisoned,³ and kidnapped⁴ by the Second and Third Defendants. The Claimant alleges that the Second and Third Defendants "wrongfully and without a genuine and honest suspicion of the Claimant[s] involvement in any offence caused his false imprisonment, assault and battery and kidnapping."⁵
5. The Claimant said that as a result of the actions of the Second and Third Defendants, he is entitled to damages for any torts, as well as aggravated damages, exemplary damages, interest, and costs.⁶
6. The Second and Third Defendants were said to be at all times performing duties in their capacity as members of the CDPF.⁷ The Attorney General, ('the First Defendant'), is joined as a party in this suit by virtue of the **State Proceedings Act**.⁸
7. The Defendants deny the Claimant's allegations and deny that they are liable to the Claimant.⁹

The trial

8. At trial, the Claimant testified on his own behalf. He also called three witnesses: the two persons who were with him in the vehicle at Morne Daniel on the 15th of August 2020, (Mr Lennox Linton and Mr Oliver Walsh), as well as Mrs Andra Edwards-Lewis. They relied on the witness statements they signed on the 9th of May 2022¹⁰ to stand as their evidence in chief. The Claimant did not call the witness Ms Dania Emanuel for whom a witness statement was previously filed. The Defendants took no issue with her absence.

¹ Page 11 of the Core Bundle (No 3)

² See paragraphs 8 (a), (b), and (c) of the Statement of Claim, at pages 11 and 12 of the Core Bundle (No 3)

³ See paragraph 17 (a), (b), (c), and (d) of the Statement of Claim, at page 15 of the Core Bundle (No 3)

⁴ See paragraph 19 (a), (b), (c), (d), and (e) of the Statement of Claim, at page 16 of the Core Bundle (No 3)

⁵ Form 1: Claim Form at page 3 of the Core Bundle (No 3)

⁶ See Form 1: Claim Form at page 4 of the Core Bundle (No 3), also paragraph 23 of the Statement of Claim, at pages 17 and 18 of the Core Bundle (No 3)

⁷ See paragraph 2 of the Statement of Claim, page 11 of the Core Bundle (No 3)

⁸ Chapter 7:80 of the Laws of the Commonwealth of Dominica, Revised Edition

⁹ Paragraph 45 of the Defence filed on behalf of the Defendants, at page 50 of the Core Bundle (No 3)

¹⁰ See respectively the statements for Mr Lugay, Mr Linton, Mr Thomas and Mrs Edwards-Lewis at pages 3, 21, 17, and 9 of Core Bundle (No 2)

9. For the Defendants, the Second and Third Defendants relied on their witness statements dated respectively the 6th of May 2022,¹¹ and the 11th of March 2022¹² as their evidence in chief.
10. Pursuant to Part 29.9(c) of the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023**, the Second and Third Defendants both sought and obtained leave to comment on the evidence contained in the Claimant's witness statement.¹³
11. All witnesses were cross-examined by opposing counsel.
12. Following the trial, Counsel for both sides filed 'Closing Submissions' by the stipulated deadline¹⁴ and submitted authorities.

The facts

13. There were material conflicts of the narratives of the Claimant on one hand and the Defendants on the other, particularly relating to:
 - a) What transpired on the road at the entrance to the driveway of the Prime Minister's house at Morne Daniel on the evening of the 15th of August 2020; and
 - b) The context in which the interaction between the Claimant and the police officers occurred.
14. Most aspects of the evidence were however not in dispute.
15. The non-contentious parts of the evidence were that on the evening in question, the Claimant, along with the Parliamentary Opposition Leader, Mr Lennox Linton, were in the Claimant's vehicle, a white Mitsubishi SUV, at Morne Daniel. The vehicle was driven by Mr Oliver Walsh. The three men had just returned from a funeral in Woodford Hill. The initial intention was to drop off Mr Linton who lived in Morne Daniel. Mr Walsh drove up the Morne Daniel main road past the intersection along that road which leads to Mr Linton's house. After driving for five minutes past the intersection to Mr Linton's home, Mr Walsh turned the vehicle on to a secondary road that headed in a westerly direction and leads towards the Prime Minister's residence. The driver brought the vehicle to a stop close to the Prime Minister's driveway. There was an ongoing altercation involving two persons.¹⁵ The passengers of the vehicle sat watching the altercation for about ten to fifteen minutes. Mr Walsh then turned the vehicle around and started heading in an easterly direction, back up the incline that he earlier drove

¹¹ At page 25 of Core Bundle (No 2)

¹² At page 31 of the Core Bundle (No 2)

¹³ The Second Defendant to paragraphs 5, 6 and 8 of Mr Lugay's statement and the Third Defendant to paragraphs 7, 13 and 14

¹⁴ 25th of March 2025

¹⁵ The persons involved in the stated altercation played no part in this case

down when he headed towards the Prime Minister's residence. Mr Walsh drove the vehicle to an area about fifty feet away from where it was originally and brought it to a stop.

16. While the three men were seated in the vehicle in the vicinity of the Prime Minister's driveway, the Second Defendant arrived in a dark coloured Forester vehicle. The Second Defendant exited the Forester vehicle and proceeded to the front passenger side of the white SUV where the Claimant was. The Second Defendant said something to the Claimant. The Second Defendant arrested the Claimant. The Second Defendant took the Claimant to the Forester vehicle and the Claimant was placed in the vehicle with the Third Defendant and another police officer, both of whom were dressed in plain clothes. The Claimant was then taken in the Forester vehicle to the Police Headquarters, where he was escorted into the building. While the Claimant was at the Police Headquarters, the police sought to question the Claimant. He requested that his lawyer be present for any interview. The Second Defendant, who had by that time returned to Police Headquarters, called the Counsel whose presence the Claimant requested. Soon after the lawyer arrived, the Claimant upon the direction of the lawyer, left Police Headquarters in the company of the lawyer.

Claimant's narrative

17. The Claimant said that on the evening of Saturday the 15th of August 2020, he was at Morne Daniel, seated in his vehicle, along with Mr Walsh, who was the driver of the vehicle, and Mr Linton.

"Mr Oliver Walsh drove into Morne Daniel and on arrival there, I observed and altercation involving Mr Steve Astaphan and a Cuban national by the name of Dr Julian.¹⁶

"Mr Oliver Walsh brought the vehicle to a standstill and I, along with Mr Oliver Walsh, [and] Mr Lennox Linton spent some time observing the altercation. I observed somebody I know as Kenno Soanes attempting to quell the altercation which was pretty aggressive."¹⁷

18. After looking on at the altercation for about ten minutes, the driver moved the vehicle about fifty feet. The Claimant said he noticed two female members of the congregation from the church he attends, were at the road side. One of them was the witness, Mrs Andra Edwards-Lewis. The Claimant engaged his church sisters in conversation. The vehicle was stationary. The Claimant said he heard a loud shout and he saw someone approaching the vehicle. The person was dressed in plain clothes. It was the Second Defendant, whom he knew.¹⁸ The Claimant said that the Second Defendant shouted "Come out, come out," and "yanked open

¹⁶ Paragraph 3 of the Claimant's Witness Statement, page 4 of the Core Bundle (No 2)

¹⁷ Paragraph 4 of the Claimant's Witness Statement, page 4 of the Core Bundle (No 2)

¹⁸ In cross-examination the Claimant confirmed that he knew the Second and Third Defendants and that they were a part of the Prime Minister's security detail

the passenger door and forcibly held my left arm and pulled me out of the vehicle.”¹⁹ The Claimant said his response to the Second Defendant was: “What’s going on?”

19. The Claimant said:

“Having pulled me out of the vehicle, Officer Michael Sebsatien grabbed me forcibly and held me by the back of my waist pants from the back (sic) and marched me in the direction of [an] unmarked vehicle being a Forester that was dark in colour, but I noticed it did not have any government or police identification. I was shoved onto the back seat of that vehicle and two other men in plain clothes sat at the front and they reversed the vehicle from the public road into the driveway of the residence of the Prime Minister.”²⁰

20. The Claimant went on to say:

“They brought the vehicle to the halt and switched off the engine and we remained seated and stationary in the driveway of the Prime Minister’s residence for between five to ten minutes²¹....

“I then saw Mr Lincoln Corbett whom I know to be the Deputy Commissioner of Police and, he drove a pick-up vehicle and blocked off the entrance to the Prime Minister’s residence, which meant the Forester I was aboard could not drive out of the Prime Minister’s residence. I was trapped.”²²

21. Two of the Claimant’s witnesses, Mr Linton and Mr Walsh, in their witness statements, stated that the Forester remained stationary for about 20 minutes.²³

22. When the Forester with the Claimant in it pulled out, Mr Walsh and Mr Linton followed it in Mr Lugay’s vehicle. The witnesses saw the Forester enter the Police Headquarters. Mr Linton made a telephone call to a lawyer to apprise the lawyer of the situation. The lawyer arrived at the Police Headquarters about 40 minutes after the telephone call.²⁴ The lawyer went into the Police Headquarters. Mr Walsh and Mr Linton remained outside the Police Headquarters; they saw the Claimant come out of the Police Headquarters with the lawyer about ten minutes after the lawyer first entered the building.²⁵

¹⁹ Paragraph 5 of the Claimant’s Witness Statement, at page 4 of the Core Bundle (No 2)

²⁰ Paragraph 6 of the Claimant’s Witness Statement, at page 4 – 5 of the Core Bundle (No 2)

²¹ Paragraph 7 of the Claimant’s Witness Statement, at page 5 of the Core Bundle (No 2)

²² Paragraph 8 of the Claimant’s Witness Statement, at page 5 of the Core Bundle (No 2)

²³ Mr Walsh at paragraph 12 of his Witness Statement, page 19 of the Core Bundle (No 2) and Mr Linton at paragraph 12 page 23 of his Witness Statement, page 23 of the Core Bundle (No 2)

²⁴ Paragraph 14 of Mr Linton’s Witness Statement, at page 23 of the Core Bundle (No 2)

²⁵ Paragraph 13 of Mr Walsh’s Witness Statement at page 19 of the Core Bundle (No 2), and paragraphs 14 and 14 of Mr Linton’s Witness Statement, at page 23 of the Core Bundle (No 2)

23. Neither Mr Linton nor Mr Walsh in their witness statements mentioned anything about Deputy Commissioner Corbette arriving on the scene at Morne Daniel, or of the Deputy Commissioner blocking the driveway when the Forrester reversed into the driveway. Similarly, the other witness for the Claimant, Mrs Edwards-Lewis, did not mention anything in her witness statement about Deputy Commissioner Corbette arriving on the scene and blocking the driveway.
24. Mrs Edwards-Lewis said she was in Morne Daniel to attend a baby shower. She, like the Claimant, was a member of the Roseau Christian Union Mission Church. They also lived in an area of Dominica known as Goodwill. During cross-examination, Mrs Edwards-Lewis explained what occurred after the Second Defendant arrested the Claimant:

“They took Brother Danny, put him in a white vehicle. Private vehicle. No ‘G’. They drove off with Brother Danny. The vehicle Brother Danny was in followed the private vehicle.”

25. According to the two male witnesses for the Claimant, the Forester vehicle the Claimant was placed in was black. Mrs Edward-Lewis however, during cross examination, in speaking of the vehicle the Second Defendant arrived in, which was turned around after the Claimant was placed in it, as being white. She said that the vehicle headed back up the incline with the vehicle which was being driven by Mr Walsh following. She did not mention anything about a vehicle being driven into the Prime Minister’s property, or about there being any delay.
26. Mr Linton in his witness statement said that he came out of the vehicle driven by Mr Walsh to observe what was going on between the Second Defendant and the Claimant. Mr Linton said that he:

“...re-entered the vehicle driven by Oliver Walsh and it remained stationary and after about 20 minutes, I observed the same dark Forester vehicle pull out of the driveway and at that point Oliver started the vehicle we were sitting in and began following the Forester vehicle.”²⁶

27. In cross-examination as to what transpired after the Claimant was taken to the Forester, Mr Linton said:

“I remember the vehicle, before leaving, it entered the driveway of the Prime Minister’s residence. Then it came out of the driveway a short time after and went East; then out of Morne Daniel. I can’t say if it remained for 60 seconds [in the Prime Minister’s premises], I can’t give a time count. I don’t know what the police officers were doing. I don’t know why the vehicle went into the driveway. The vehicle reversed into the driveway.”

²⁶ Paragraph 12 of Mr Linton’s Witness Statement, at page 23 of Core Bundle (No 2)

Defendant's narrative

28. According to the Defendants, when they arrived at the scene in Morne Daniel, an individual was seen on the concrete pavement leading to the Prime Minister's residence and holding a device that appeared to be a cell phone pointed towards the residence. A white SUV was parked at the entrance of the drive way leading to the Prime Minister's residence; the front left passenger door of the vehicle was open.²⁷ The individual who was on the concrete pavement entered the white SUV through the left front passenger door.²⁸

29. The Second Defendant said he exited his vehicle and walked to the SUV:

- He recognised all the passengers, including the Claimant, whom he said was the individual that he had earlier seen outside of the vehicle on the concrete pavement.²⁹
- He approached the Claimant, identified himself as a police officer in plain clothes and asked the Claimant to disembark the vehicle. The Claimant complied.³⁰
- He informed the Claimant of the information that he earlier received of a male obstructing the Prime Minister from entering his premises and verbally abusing the Prime Minister.³¹
- He invited the Claimant to go with him to Police Headquarters for questioning about the report he received and about what he saw; but the Claimant refused, saying "what nonsense I am hearing here I am not going anywhere with you" and began walking away.³²
- He held on to the Claimant's hand, but the Claimant pulled away his hand.³³
- He informed the Claimant that he was arresting him on suspicion of being involved in an incident of obstructing the Prime Minister and verbally abusing the Prime Minister. The Second Defendant then escorted the Claimant where the Third Defendant and another police officer, (Corporal Demier), were in the Forester vehicle.³⁴
- He instructed the officers to take the Claimant to Police Headquarters.³⁵

²⁷ Paragraph 7 of the Second Defendant's Witness Statement, at page 26 of the Core Bundle (No 2), and Paragraph 5 of the Third Defendant's Witness Statement, at page 32 of the Core Bundle (No 2)

²⁸ Paragraph 7 of the Second Defendant's Witness Statement, at page 26 of the Core Bundle (No 2)

²⁹ Paragraph 8 of the Second Defendant's Witness Statement, at page 26 of the Core Bundle (No 2)

³⁰ Paragraph 9 of the Second Defendant's Witness Statement, at page 26 of the Core Bundle (No 2)

³¹ Paragraph 9 of the Second Defendant's Witness Statement, at page 27 of the Core Bundle (No 2)

³² Paragraph 10 of the Second Defendant's Witness Statement, at page 27 of the Core Bundle (No 2)

³³ Paragraph 11 of the Second Defendant's Witness Statement, at page 27 of the Core Bundle (No 2)

³⁴ As above

³⁵ As above

- He remained at the Prime Minister's residence and conducted inquiries and he learned that the Claimant was not the person who was obstructing and verbally abusing the Prime Minister.
- He made unsuccessful attempts to contact the officers who left with the Claimant headed to the Police Headquarters. He then left the Prime Minister's residence for Police Headquarters.³⁶
- He met the Claimant sitting in the interview room at the Criminal Investigation Department with Corporal Demier (who was one of the officers who left Morne Daniel earlier with the Claimant in the Forester). The Second Defendant heard Corporal Demier inform the Claimant that the police were investigating a report that someone obstructed the Prime Minister from driving to his residence and that the person verbally abused the Prime Minister. He also heard Corporal Demier read to the Claimant what the Claimant's rights were. Corporal Demier also informed the Claimant that he had a right to have a lawyer present. The Claimant requested to have his lawyer present.³⁷
- He left the interview room and called the lawyer that the Claimant requested. He informed Corporal Demier that he spoke with the lawyer.³⁸
- He knows that the lawyer arrived a few minutes later. He heard Corporal Demier inform the lawyer that the Claimant was brought to the Station to be questioned in relation to obstruction and verbal abuse at the residence of the Prime Minister.
- He heard the lawyer inquire of Corporal Demier whether the Claimant was under arrest. He heard the Corporal inform the lawyer that the Claimant was no longer under arrest, but may be required to return to the CID for further questioning.³⁹
- He heard the lawyer instruct the Claimant to leave the interview. Both the lawyer and the Claimant left the CID interview room and Police Headquarters.

30. The Defendants at trial denied that Deputy Commissioner of Police Corbette came on the scene at Morne Daniel at any time.

The differences

31. The material differences between the Claimant's narrative as to what occurred and what the Defendants said, rested primarily on:

³⁶ Paragraph 12 of the Second Defendant's Witness Statement, at page 28 of the Core Bundle (No 2)

³⁷ Paragraph 13 of the Second Defendant's Witness Statement, at page 28 of the Core Bundle (No 2)

³⁸ Paragraph 14 of the Second Defendant's Witness Statement, at page 28 of the Core Bundle (No 2)

³⁹ Paragraph 15 of the Second Defendant's Witness Statement, at Page 29 of the Core Bundle (No 2)

- i. Whether the Claimant was initially outside of the vehicle, prior to him being approached by the Second Defendant;
- ii. What the Second Defendant actually said to the Claimant at the scene;
- iii. How did the Claimant end up outside of his vehicle after the Second Defendant's arrival;
- iv. Whether the Forrester vehicle proceeded immediately to the Police Headquarters after the Claimant was placed in the vehicle;
- v. Whether Deputy Commissioner of Police, Lincoln Corbett arrived on the scene prior to the Claimant being taken to Police Headquarters.

Some preliminary observations

32. It is noteworthy that the Claimant in his Witness Statement did not identify where in Morne Daniel he was in the vehicle observing this altercation. He said:

“Mr Lennox Linton actually lives at Morne Daniel and as a consequence, Mr Oliver Walsh drove into Morne Daniel and on arrival there, I observed an altercation involving Mr Steve Astaphan and a Cuban national by the name of Dr Julian.”⁴⁰

33. Was this a deliberate attempt to obfuscate the location of the incident?
34. The first time there was any acknowledgement in the Claimant's witness statement that he was anywhere in the vicinity of the Prime Minister's residence was when he described what happened after he was arrested and: -

“I was shoved onto the back seat of that vehicle [a Forester that was dark in colour]... and they reversed the vehicle from the public road into the driveway of the residence of the Prime Minister.”

35. There was conflict within the Claimant's case as to what transpired after he was placed in the Forrester vehicle. The recollection of the witness Mrs Edwards-Lewis supports the sequence outlined by the Defendants.
36. Mr Linton in cross examination said he could not recall precisely how long the Forester remained in the driveway before proceeding out of Morne Daniel; his description at trial seemed to be in keeping with the narrative of the Defendants.

⁴⁰ Paragraph 4 of the Claimant's Witness Statement, page 4 of the Core Bundle (No 2)

37. The Defendants in the 'Defence filed on behalf of the Defendants,'⁴¹ obliquely raised the issue as to whether the Second and Third Defendants were acting in the course of their employment. In the pre-trial filings, Counsel for the Defendants stated:

"It is averred that the State will not be liable for the acts of servants of the State unless a Claimant establishes to the satisfaction of the court that the alleged tort has been committed in the course of the servant's employment."⁴²

38. The averment must have been solely intended to state a legal principle, rather than an assertion as to what obtained in the factual circumstances of this case. There was absolutely no doubt that the Second and Third Defendants were at all times performing their duties as police officers and were acting in the course of their employment. The evidence in the witness statements of the Second and Third Defendants clearly point to performing their roles as members of the PSU/SB of the CDPF.

Issues to be resolved

39. Counsel Mr David Bruney on behalf of the Claimant summed up the issues to be determined at the trial⁴³ this way:

"Whether the conduct of the 2nd and 3rd Defendants as depicted by the pleadings and described evidentially by the said five Witness Statement[s] provide the necessary standard of proof to confirm the commission of the violation of established and procedural protocols requires (sic) by Police Officers in such situations together with assault and battery, false imprisonment and alternatively the criminal offence of kidnap by the 2nd and 3rd Defendant[s]."

40. The Defendants contended that the issues to be determined were:

- 1) Whether the 2nd and 3rd Defendants assaulted and beat the Claimant.
- 2) Whether the Claimant was falsely imprisoned.
- 3) Whether the Claimant was kidnapped. And:
- 4) Whether the Claimant is entitled to damages including aggravated and exemplary damages.⁴⁴

41. A reasonable way of proceeding in resolving the live issues would be to consider:

⁴¹ On the 22nd of March 2021

⁴² Paragraph 3 of the Defence filed on behalf of the Defendants, page 44 of the Core Bundle (No 3)

⁴³ See b) at page 5 of the Pre-Trial Memorandum in the Core Bundle (No 1)

⁴⁴ See the Pre-Trial Memorandum filed on behalf of the Defendants, at pages 9 and 10 of the Core Bundle (No 1)

1. Was there any legal basis for the Second Defendant's conduct?
2. Did the police officers act unreasonably or excessively or improperly?
3. What remedies are available to the Claimant if his rights were violated?

Small Charges Act

42. The Second Defendant deponed that when he arrested the Claimant, that he informed the Claimant that he (the Second Defendant) suspected the Claimant was involved in obstructing and verbally abusing the Prime Minister. These were offences contrary to section 10 of the **Small Charges Act**.⁴⁵
43. The offence of harassment was added to the **Small Charges Act** in 2001.⁴⁶ It is an offence for any person to "at any time harass another person in any public place."⁴⁷
44. At section 10B of the **Act**, the issues of 'Power, charge and arrest' are addressed. The section provides that:

"A police officer may charge or, without a warrant, arrest or both charge and arrest any person whom he sees harassing or whom he reasonably suspects to be harassing or to have harassed another person."⁴⁸
45. The Second Defendant, being a police officer, pursuant to the **Small Charges Act**, was authorized to either arrest, or to arrest and charge, anyone whom, in a public place:
 - 1) He sees harassing another person;
 - 2) He reasonably suspects is harassing another person; or
 - 3) He reasonably suspects did harass another person.
46. It was a requirement that any offence to be committed pursuant to any of the provisions of section 10 of the **Small Charges Act**, must occur in a public place. The interpretation section of the **Act** states:

⁴⁵ Chapter 10:39 of the Laws of the Commonwealth of Dominica, Revised Edition

⁴⁶ By Act No 4 of 2001

⁴⁷ Section 10A(1)

⁴⁸ Section 10B

“In this Act, ‘public place’ includes any road, street, square, sidewalk, alley, Court, path, wharf, pier, jetty, bridge, shop, courthouse or any other place to which the public have access or are admitted without payment.”⁴⁹

47. No suggestion was made by either party regarding the location of the incident, that where it occurred was not a public place.
48. The **Police Act**⁵⁰ stipulates, *inter alia*, that:

“It shall be the duty of the Police Force to take lawful measures for –

- (a) preserving the public peace;
- (b) preventing and detecting crimes and offences;
- (c) apprehending and causing to be apprehended persons who have committed, or are charged with or suspected of having committed or having abetted the commission of, or being about to commit, any crime or offence.”⁵¹

Context

49. The incident which occurred on the evening of Saturday the 15th of August 2020 at Morne Daniel, must be viewed within the broader context, in order to determine whether the Second Defendant acted reasonably or not.

- a) The Third Defendant disclosed in cross examination, that he had been on duty since 7:00 am on Saturday, the 15th of August 2020, in response to certain information that the PSU/SB received regarding protest action.
- b) The Third Defendant said that on the day in question at about 5:00 p.m., he was with then Inspector Sebastien (the Second Defendant) and Corporal Demier conducting surveillance in the Second Defendant’s vehicle. (They were responding to a report of protest action scheduled to be held in the Canefield area).⁵² Canefield abuts Morne Daniel.
- c) On the 15th of August 2020, the Second and Third Defendants visited the Prime Minister’s residence at Morne Daniel prior to the incident on at least two occasions.

⁴⁹ Section 2

⁵⁰ Chapter 14:01 of the Laws of Dominica

⁵¹ Section 12. (1)

⁵² Paragraph 4 of Martin Anatol’s Witness Statement, at page 31 of Core Bundle (No 2)

- d) When the Claimant and two of his witnesses left Morne Daniel to go to a funeral in Woodford Hill – in the north east of the island – police officers dressed in Special Services Unit, SSU, uniform were at the foot of the Morne Daniel main road, where it joined the Canefield main road (or E.O. LeBlanc Highway).
- e) The Claimant and his two witnesses left Woodford Hill between⁵³ 5:15⁵⁴ and 5:30⁵⁵ p.m. and journeyed to Morne Daniel. They went in the vicinity of the Prime Minister’s residence where they witnessed an on-going altercation.
- f) The Second Defendant received a telephone call from one of his officers, informing him about the conduct of an “adult male” preventing the Prime Minister “from proceeding along the driveway to his residence... and verbally abusing”⁵⁶ the Prime Minister.
- g) The Second Defendant was also informed in the course of a telephone report that there was “a white vehicle parked at the entrance of the driveway of the Prime Minister.”⁵⁷

50. The evidence from the Second Defendant in his witness statement was that when he arrived at Morne Daniel:

- a) He saw “a white SUV parked at the entrance of the drive way leading to the residence of the Prime Minister.”⁵⁸
- b) The left front passenger side door of the vehicle was open and “a male adult,” (the Claimant), was standing outside of the vehicle on the concrete pavement leading to the Prime Minister’s residence. The “male adult” (the Claimant) was holding a device, which appeared to be a cell phone that the Claimant had pointed in the direction of the Prime Minister’s residence.
- c) He saw the “male adult” (the Claimant) walk back to the white SUV and enter the vehicle.
- d) He went to the SUV and he recognised that the male adult was the Claimant, who was then seated in the vehicle. He identified himself as a

⁵³ According to the witness, Oliver Thomas Walsh, at paragraph 4 of his Witness Statement, page 18 of Core Bundle (No 2), it was “between 5:15 and 5:30 p.m.” that they left Woodford Hill

⁵⁴ According to the witness, Mr Lennox Linton, at paragraph 4 of his Witness Statement, page 22 of Core Bundle (No 2), they left at 5:15 p.m.

⁵⁵ According to the Claimant, Mr Daniel Lugay, at paragraph 2 of his Witness Statement, page 1 of Core Bundle (No 2), they left at 5:30 p.m.

⁵⁶ Paragraph 5, Second Defendant’s Witness Statement, page 26 of Core Bundle (No 2)

⁵⁷ As above

⁵⁸ Paragraph 7, Michael Sebastien’s Witness Statement,, page 26 of Core Bundle (No 2)

police officer in plain clothes and asked the Claimant to disembark the vehicle so that they may speak.

- e) He told the Claimant after the Claimant came out of the vehicle, that he received information that “a male individual obstructed the Prime Minister from driving along the drive way to his official residence and verbally abused him.”⁵⁹
 - f) He requested that the Claimant accompany him to the Police Headquarters to undergo questioning in relation to the report that the Second Defendant had received. The Claimant declined and started to walk away.
 - g) He then placed his hands on the Claimant, arrested the Claimant, and informed the Claimant that he was being arrested “on suspicion of being involved in the incident of obstructing the Prime Minister from driving to his residence and in verbally abusing him which is an offence pursuant to section 10 of the **Small Charges Act**.”⁶⁰
51. It was those existing circumstances at the scene as outlined by the Second Defendant which grounded his suspicion that the Claimant committed an arrestable offence.
52. What has to be assessed is whether the objective circumstances as they existed were sufficient to ground a reasonable belief on the part of the Second Defendant that the Claimant may have committed an offence.

Lighting

53. There was no direct evidence with regard to the quality of the lighting at the time of the incident.
54. What is known from the Defendants is the time the PSU/SB officers were on surveillance duties in Canefield.
55. On the Claimant’s case, he left Woodford Hill by 5:30 p.m.
56. Whatever transpired at Morne Daniel must have occurred at dusk.

⁵⁹ Paragraph 9, Michael Sebastien’s Witness Statement, page 27 of Core Bundle (No 2)

⁶⁰ Paragraph 11, Michael Sebastien’s Witness Statement, page 27 of Core Bundle (No 2)

No response

57. Following the events of Saturday the 15th of August 2020, the Claimant on Tuesday the 18th of August 2020, wrote to the Commissioner of Police, Mr Daniel Carbon, about the incident with the Second and Third Defendants.
58. A statement from the Claimant was appended to the correspondence that he sent to Police Commissioner Carbon.
59. The Police Commissioner did not respond to the Claimant.⁶¹
60. The Claimant, in his Reply⁶² to the Defence, asserted that the correspondence to Police Commissioner Carbon: -

“was an unchallenged report to the Commissioner of Police and... an accurate account of the behaviour of the 2nd and 3rd Defendants as directed at the Claimant. The Claimant avers that the failure of the Defendants to provide a required response adds to the veracity of the Claimants assertions....”⁶³

61. In the ‘Closing Submissions of the Claimant,’ Counsel Mr David Bruney opined that the fact that the correspondence of the 18th of August 2020 was “pointedly ignored”⁶⁴ by the Commissioner of Police and the Defendants, was an aggravating factor. He stated:

“It is submitted further that aggravated damages can be imposed on a Defendant whose conduct increased the injury to the Claimant, causing distress, embarrassment, humiliation and damage to reputation.”⁶⁵

No settlement and costs

62. When this matter came up for case management on the 15th of February 2022,⁶⁶ pleadings were closed. The Case Management Order recited:

“IT IS DIRECTED that:

- [1] at all stages the parties must consider settling this litigation by means of Alternative Dispute Resolution (including mediation); any party not engaging in such means proposed by another must serve an affidavit giving reasons within 21 days of that

⁶¹ See paragraph 19 of the Claimant’s Witness Statement, page 7 of the Core Bundle (No 2)

⁶² Filed on the 1st of April 2021. Page 21 of the Core Bundle (No 3)

⁶³ The Claimant’s Reply at page 23 of Core Bundle (No 3)

⁶⁴ Paragraph 4.4 at page 11 of the Closing Submissions on Behalf of the Claimant

⁶⁵ Paragraph 4.5 at page 11 of the Closing Submissions on Behalf of the Claimant

⁶⁶ Before the then Master (Acting), Mr Alvin Pariagsingh

proposal; such affidavit much (sic) not be shown to the trial judge until questions of costs arise;

[2] if at any time after this hearing a consent order is arrived at between the parties in respect of the whole or any part of issue in this claim, the parties are at liberty to file a draft consent order signed by both parties for the consideration of the Court in Chambers without hearing; and

[3]”

63. The parties apparently did not yield to the direction of the Learned Master to resolve the matter “by means of Alternative Dispute Resolution (including mediation).” In those circumstances, the matter came on for trial three years later, in March 2025.
64. At the commencement of the trial, Counsel for the Claimants and for the Defendants agreed that the costs in this matter be fixed at five thousand dollars (\$5,000.00).

The learning – assault and battery

65. In the recent case of **Steven Astaphan and JARS (Sales and Services) Limited v Delroy Julien and The Attorney-General of the Commonwealth of Dominica**,⁶⁷ issues relating to assault, battery, arrest and false imprisonment were discussed. With regard to assault and battery, some paragraphs of that case are worth repeating:

“[23] Assault and battery are two separate and distinct torts. An assault has to do with the apprehension of fear, while battery is the actual application of force by one individual on another person. Often, an assault may precede battery. An assault is the threatening conduct. But there can be battery without any assault; and likewise, there can be an assault without any accompanying battery. (See **Jones v Sherwood**)⁶⁸

“[24] Mr Gilbert Kodilinye in the first edition of his text, **The Law of Torts in the West Indies Cases and Commentary**, pointed out (at page 8) that:

“Although the distinction between assault and battery in the law of torts is clearly established, it has to be admitted that in West Indian and other jurisdictions the courts have tended to blur the distinction and describe as an ‘assault’ conduct which in strict law amounts to battery.”

⁶⁷ DOMHCV 2021/0019, delivered on the 6th of March 2024

⁶⁸ [1942] 1 KB 127

“[25] Mr Kodilinye in an updated version of his text, titled **Commonwealth Caribbean Tort Law**, Fourth Edition, (at page 11) noted that:

“An assault is a direct threat made by the defendant to the plaintiff, the effect of which is to put the plaintiff in reasonable fear or apprehension of immediate physical contact with his person.”

“[26] Similarly, the authors of **Clerk & Lindsell on Torts 19th edition**, at paragraph 15-12 cite **Collins v Wilcock**⁶⁹ for the proposition that:

“An assault is an act which causes another person to apprehend the infliction of immediate, unlawful force on his person.”⁷⁰

“[27] A battery is, going back to the ancient case of **Tuberville v Savage**,⁷¹ “a direct act of the defendant which has the effect of causing contact with the body of the plaintiff without the latter’s consent.”

“[28] It is not every perceived battery that gives rise to an actionable tort. In **Donnelly v Jackman**⁷² the alleged battery by a constable was classified as a mere trivial interference with a citizen’s liberty, insufficient to take the constable outside of his duty.”

66. The evidence from the Claimant does not suggest that when he was being arrested that he “apprehended immediate and unlawful violence.”⁷³ Indeed, the first time the Claimant deponed to experiencing fear was after he was in the back seat of the Forester vehicle:

“They brought the vehicle to the halt, switched off the engine and we remained seated and stationary in the driveway.... I was frightened and asked the two men seating (sic) at the front... what is going on.”

67. Although the accepted evidence is that the vehicle was not brought “to the halt” and engine switched off, there is no clear indication as to what the Claimant was fearful of. It is accepted that, as the learning in **Halsbury’s Laws of England**⁷⁴ states: “An assault may be committed by words or gestures alone, provided they cause apprehension of immediate and unlawful force.” An assault must put the Claimant in reasonable fear or apprehension of immediate imminent harmful or offensive contact.⁷⁵

⁶⁹ [1984] 1 WLR 1172

⁷⁰ At page 1178

⁷¹ (1669) 1 Mod Rep 3

⁷² [1970] 1 WLR 562

⁷³ The Claimant’s Closing Submissions at paragraph 3.6 on page 9 acknowledged that to be the standard

⁷⁴ (2021) Vol 97A

⁷⁵ At paragraph 5 of the Defendants’ Closing Submissions, citing Clerk and Lindsell, Sweet & Maxwell, 2006, 19th ed

68. In the present case, there were no threats of violence, nor demonstrable acts of violence that could have been considered as an assault.
69. The Second Defendant in the process of (and as a requirement of) arresting the Claimant, did touch and hold on to the Claimant. The Second Defendant also escorted the Claimant to the Forester vehicle. While there was intentional physical contact between the Second Defendant and the Claimant, it was not of a kind to make it an actionable battery.

The Learning – false imprisonment and arrest

70. An appreciation of the tort of false imprisonment may be enhanced by understanding the foundation of the criminal offence of false imprisonment. The learned authors of **Archbold Criminal Pleading Evidence & Practice**⁷⁶ state that:

“False imprisonment is the unlawful and total restraint of the personal liberty of another, whether by constraining him or compelling him to go to a particular place or by confining him in a prison or police station or private place, or by detaining him against his will in a public place.... (B)ut the essential element in the offence is the unlawful detention of the person or the unlawful restraint on his liberty. Thus, it is false imprisonment to detain a prisoner after his acquittal or after his term of imprisonment has expired: (**Mee v Cruickshank**⁷⁷). So the detention of a man upon warrant or process which is regular in form is unlawful if the warrant be executed at an unlawful time, e.g., in the case of civil process, on a Sunday, or in a privileged place, such as a royal palace or a court of justice, or on a person privileged from arrest.”⁷⁸

71. What was said in **Steven Astaphan and JARS (Sales and Services) Limited v Delory Julien and The Attorney General of Dominica** on the issues of false imprisonment and arrest also bear repeating:

“[99] Ms de Freitas in her submissions quoted extensively from **Bastien v Kirpilani’s Ltd**,⁷⁹ a case out of Trinidad and Tobago, which was referred to in Mr Kodilinye’s text. Mr Justice Deyalsingh in that case stated that:

“...to constitute false imprisonment there must be a 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 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

⁷⁶ Thirty-Sixth Edition, by Butler and Garsia, Sweet & Maxwell, reprinted 1988

⁷⁷ 20 Cox 210

⁷⁸ Paragraph 2801

⁷⁹ No: 861 of 1975

was under restraint even if the plaintiff himself was unaware of such restraint.”

“[100] Counsel for the Defendants relied on the case of **Davidson v Chief Constable of North Wales**.⁸⁰ That case involved the police arresting two customers of a store and detaining the claimant for two hours upon erroneous information about shop lifting. A store detective had given information to the police that the two persons took a cassette without paying for it. They were released later without charge when the shop assistant telephoned the police station and indicated that the plaintiff in fact paid for the cassette. The Court of Appeal upheld the trial judge’s ruling that the police had no case to answer for false imprisonment.”

“[101] The tort of false imprisonment and unlawful arrest are concepts that are quite familiar to the criminal law. In this matter their occurrence must be decided by applying the standard of proof in civil matters, that is, a balance of probabilities.”

“[102] To effect an arrest, a police officer must touch or confine the body of the person to be arrested unless that person submits by words or action.”

“[103] The authors of **Blackstone’s Criminal Practice 2017** in looking at the legal characteristics of an arrest, at paragraph D1.15 note that:

“Arrest is an ordinary English word and whether or not a person has been arrested depends not on the legality of the arrest but on whether he has been deprived of his liberty to go where he pleases (**Lewis v Chief Constable of the South Wales Constabulary**).⁸¹ A second approach is that context and purpose are relevant. In **Austin v Commissioner of Police of the Metropolis**⁸² the House of Lords distinguished between a deprivation of liberty and restriction on movement. Whether a situation amounts to deprivation of liberty as opposed to a restriction of movement is a matter of degree and intensity and is highly fact-sensitive. A whole range of factors has to be considered including the individual’s specific situation, the context in which the restriction occurs and the purpose of the confinement or restriction”

72. There is no doubt that the Second Defendant arrested the Claimant. The Second Defendant did so by uttering words as well as touching and confining the body of the Claimant. The Claimant remained a prisoner until he left the Police Headquarters in the company of his lawyer.

⁸⁰ [1994] 2 All ER 597

⁸¹ [1991] 1 All ER 206

⁸² [2009] 1 AC 564

73. The Claimant's Counsel, Mr Brunej, in his Closing Submissions expressed the view that the Second Defendant exceeded his authority when he arrested the Claimant. Counsel referred to the case of **Bolai v St Louis**,⁸³ where a police officer without a warrant proceeded to arrest a suspect for committing a summary offence. Wooding, CJ, said in that case:

"The offence for which he was charged is a summary offence. In such circumstances, the respondent can invoke neither common law nor statutory power to arrest as he did without a warrant.... The arrest cannot be justified and, consequently, that the appellant was falsely imprisoned."⁸⁴

74. In contrast to the circumstances in **Bolai**, the Second Defendant was empowered by the section 10B of the **Small Charges Act** to arrest anyone whom he "reasonably suspects" to have committed the summary offence of harassment.

75. Counsel, Ms Pearlisa Morvan, in the 'Closing Submissions Filed on Behalf of the Defendants,' addressed the reasonableness of the Second Defendant's belief. Ms Morvan relied on Lord Wolf's analysis in **Castorina v Chief Constable of Surrey**:⁸⁵

"It is submitted that the reasonable suspicion requires both that the officer carrying out the arrest actually suspects (a subjective test) and that a reasonable person in possession of the same facts as the officer would also suspect (an objective test). It is further submitted that information required to establish a reasonable suspicion is of a lower standard than that required to establish a *prima facie* case."⁸⁶

76. In **Elcardo Jacobs v Anthony Walters and The Attorney General of Saint Christopher and Nevis**,⁸⁷ Ward J, (as he was then), noted that to find there was reasonable justification for the arrest, both the subjective and objective tests needed to be answered in the affirmative.

77. The subjective test asks whether at the time the police officer exercised the power of arrest, he held an honest belief, based on reasonable grounds that the arrested person committed an offence.

78. The objective test asks whether a reasonable man, assumed to know the law and possessed of the information, would believe that there were reasonable grounds for suspecting that the arrested person had committed the offence.

⁸³ (1963) 6 WIR 453

⁸⁴ At page 456 letter D

⁸⁵ (1988) LG Rev 241, (1988) 138 NLJ 180

⁸⁶ Paragraph 16 of Closing Submissions Filed on Behalf of the Defendants

⁸⁷ SKBHCV2019/0274

79. Justice Ward in the **Elcardo Jacobs** case noted that the House of Lords in **O'Hara v Chief Constable of the Royal Ulster Constabulary**,⁸⁸ held: -

“that there must be sufficient material from which an inference could be drawn and that the officer had reasonable grounds for his suspicion. Such material may include information known to him, though not necessarily from his own observation. He could form a view based on what he had been told and it was not necessary to prove that any of the facts on which he based his suspicion were true.”⁸⁹

80. Having assessed the circumstances detailed earlier in this judgment under the subhead “Context,” one can conclude that the Second Defendant, based on the information that the Second Defendant received, intelligence in the possession of the PSU/SB, and what the Second Defendant physically observed at Morne Daniel, he had reasonable grounds for suspecting that the Claimant had committed an offence in breach of the **Small Charges Act**.

Kidnapping

81. Kidnapping is described as: -

“The stealing and carrying away, a secreting of any person of any age or either sex against the will of such person.... The most aggravated form of any kidnapping is the forcible abduction or stealing and carrying away of any person into some other or to parts beyond the seas.”⁹⁰

82. The Claimant contends that if the tort of false imprisonment is not established, then, alternatively, he was kidnapped. The Statement of Claim contained the ‘Particulars of the Offence of Kidnapping.’ The Claimant contended that:

“The Claimant was taken away by the 2nd Defendant from his stationary vehicle by force and against his will and without explanation.”⁹¹

83. Counsel for the Claimant in his closing submissions, selected parts of **Blackstone's Criminal Practice 2008**,⁹² stating that:

“False imprisonment is a common law offence that is not often charged. The overlap with kidnapping... means that those offences are more likely to be charged than a simple false imprisonment.”⁹³

⁸⁸ (1997) Crim LR 432, (HL)

⁸⁹ At paragraph 16

⁹⁰ Archbold Criminal Pleading Evidence & Practice Thirty-Sixth Edition at paragraph 2802

⁹¹ Paragraph 19 (a) of the Statement of Claim, page 16 of Core Bundle (No 3)

⁹² Paragraph B2.74

⁹³ Paragraph 4.0 at page 10 of the Closing Submissions on Behalf of the Claimant

84. **Blackstone's Criminal Practice 2017** states:

“The *actus reus* of kidnapping is similar to that of false imprisonment insofar as it involves the unlawful deprivation of V's liberty; but it differs from false imprisonment in that it requires V to be taken or carried away, either by force, (including the threat of force: **Archer**⁹⁴) or by fraud.”⁹⁵

85. The absence of consent of the victim is central to the offence of kidnapping.

86. Kidnapping differs from abduction.

87. Abduction is where a person uses force or any deceitful means to induce a person to go from any place.

88. In the case of kidnapping, the offender “steals and carries away” or secretes the victim without the consent of the victim.

89. Kidnapping would also occur where -

- a person who imprisons another in such a manner as to prevent that imprisoned victim from applying to a court to be released; or
- preventing the victim from informing any other person where the victim is imprisoned; or
- imprisons the victim in such a manner as to prevent lawfully entitled persons to have access to the victim; or
- by preventing any lawfully entitled person from discovering where the victim is imprisoned.

90. The Defendants have always resisted the Claimant's allegation of any liability for kidnapping. In the 'Pre-Trial Memorandum Filed on Behalf of the Defendants,'⁹⁶ they contended that:

“Kidnapping is a criminal common law offence that is triable only on indictment. There is no tort of civil kidnapping.”⁹⁷

91. According to the Defendants:

⁹⁴ [2011] EWCA Crim 2252

⁹⁵ Paragraph B2.102

⁹⁶ Page 9 of Core bundle (No 1)

⁹⁷ At paragraph 15 v. page 11 of Core Bundle (No 1) and repeated at iv of the conclusion of the Closing Submissions Filed on Behalf of the Defendants

“The Defendants submit that the case at bar is civil in nature and as such the allegation of kidnapping is not a tort which can be claimed in a civil action. As stated in **R v D**⁹⁸ kidnap is a common law offence which is criminal in nature.”⁹⁹

“It is further submitted that notwithstanding the fact that kidnap is considered an aggravated form of false imprisonment, the actions of the Defendants were neither highhanded nor oppressive and was not without lawful excuse.”¹⁰⁰

92. What in summary form is the evidence in this case on that issue? The Second Defendant arrested the Claimant at Morne Daniel. This was done in full view of the Claimant's colleagues and friends. The Claimant was taken in a vehicle to Police Headquarters in Roseau. The Claimant's companions who were earlier traveling with the Claimant followed the vehicle in which the Claimant was placed from Morne Daniel to Roseau. That information was relayed to a lawyer by one of the Claimant's companions. At the Police Headquarters, the Second Defendant at the Claimant's request, got in touch with a lawyer to come and visit the Claimant.
93. On the facts, no issue of a kidnapping arises. There was no need therefore to address the submission that there was no such thing as civil kidnapping.

Findings

94. The questions that were posed earlier as constituting the issues to be resolved¹⁰¹ may be answered seriatim.
- i Was there any legal basis for the Second Defendant's conduct?
95. The Second Defendant as supervisor of the PSU/SB, was charged with the responsibility of, among other things, securing the Prime Minister and his family. On Saturday the 15th of August 2020, the police received information of planned protest action by the Parliamentary Opposition. During the course of the evening, the Second Defendant received further information of an incident outside the Prime Minister's residence at Morne Daniel and about a white coloured vehicle. When the Second Defendant got to the residence in Morne Daniel, the Claimant, who was a member of the Parliamentary Opposition, was there. A white SUV was there. The Claimant was seated in the white SUV when the Second Defendant approached the vehicle. The Second Defendant, in his quest to discover the author of the offending acts, relied on the **Small Charges Act** to arrest the Claimant. Based on the Second Defendant's evidence, he had grounds for reasonably suspecting that the Claimant committed an offence.

⁹⁸ [1984] AC 778

⁹⁹ At paragraph 18 of the Closing Submissions Filed on Behalf of the Defendants

¹⁰⁰ At paragraph 19 of the Closing Submissions Filed on Behalf of the Defendants

¹⁰¹ At paragraph 41

96. The threshold is clearly stated in the **Act**:

“A police officer may... without a warrant, arrest... any person... whom he reasonably suspects... to have harassed another person.”

97. Based on what the Second Defendant knew, observed, and believed, there were sufficient grounds for a “genuine and honest suspicion of the Claimant[’s] involvement in an offence.”¹⁰² The Second Defendant was therefore in the circumstance entitled to execute an arrest.

i Did the police officers act unreasonably or excessively or improperly?

98. The evidence reveals that the Second and Third Defendants dealt with the Claimant in a decisive and confident manner.

99. The Claimant alleged, (but it is not believed), that he was “forcibly held and pulled out of the vehicle.” Then afterwards he was “grabbed forcibly” and marched to an unmarked vehicle and “shoved onto the back seat.” There were no allegations of beating, or using more force than was reasonably necessary, or the Defendants causing any injury or damage which necessitated a medical examination.

100. Physical abuse, however, is not the only unlawful act that may be perpetrated on a detained person. There can be other conduct which may result in what was previously a legitimate act, becoming one which breaches the rights of an individual.

101. The Second Defendant shortly after arresting the Claimant and dispatching the Claimant to Police Headquarters with the Third Defendant and another officer, learned that the Claimant did not do the acts the Second Defendant suspected. The Second Defendant said he made unsuccessful attempts to contact the PSU/SB office.

102. When the Second Defendant returned to Police Headquarters from Morne Daniel, he did not immediately discharge the Claimant. Rather, the Second Defendant permitted the continued restraint of the Claimant. The Second Defendant permitted one of his junior officers to caution the Claimant in relation to the same offence the Second Defendant already knew the Claimant did not commit. By this time, the continued detention was clearly wrongful.

103. The Second Defendant further facilitated and extended wrongful detention of the Claimant by leaving the Claimant in the custody of an officer, (Corporal Demier), to go and telephone the Claimant’s lawyer. That call was to summon the lawyer to come to the Police Headquarters where the PSU/SB officer awaited to do a custodial interview with the Claimant.

104. As was noted earlier in an extract from **Archbold**, “it is false imprisonment to detain a prisoner after his acquittal or after his term of imprisonment has expired.”

¹⁰² See note 5

105. What originally was a lawful arrest became false imprisonment. The Second Defendant neglected and failed to immediately release the Claimant, but rather supervised the Claimant's wrongful detention.

i What remedies are available to the Claimant if his rights were violated?

106. The claimant was seeking damages for various torts as well as aggravated damages and exemplary damages.

107. The Claimant experienced a mild infringement of his rights when the police failed to release him from custody in a timely manner. It was only a very brief period during which the Claimant was falsely imprisoned, that is, the time that elapsed following the Second Defendant's return to Police Headquarters from Morne Daniel and the Claimant's eventual departure from Police Headquarters in the company of his lawyer. The period of unlawful imprisonment included the time that the Claimant was in the interview room at the CID, following the return of the Second Defendant from the Prime Minister's residence.

108. The Claimant suffered no physical injury. Apart from the tort of unlawful imprisonment, what the Claimant demonstrated was that he experienced hurt feelings.

109. With regard to the quantum of damages, the authorities referred to by the parties have been considered. The cases included: **Wakeem Guishard v Attorney-General of the Virgin Islands**,¹⁰³ **Marius Peltier v Police Constable Jefferson Drigo, Police Corporal Chaucer James and The Attorney-General of the Commonwealth of Dominica**,¹⁰⁴ **Raymond Warrington and Kari Peters v Cleville Mills and The Attorney-General of The Commonwealth of Dominica**,¹⁰⁵ and **Elcardo Jacobs v Anthony Walters and The Attorney-General of Saint Christopher and Nevis**.¹⁰⁶

110. A small, nominal sum ought to be awarded to the Claimant for the tort of unlawful imprisonment committed by the Defendants.

The Order

111. The Claimant was falsely imprisoned when he was unreasonably and unlawfully detained beyond what was necessary, and even after the Second Defendant knew that the Claimant was not the person of interest who was involved in harassing, obstructing and verbally abusing the Prime Minister.

112. In the circumstances, the First Defendant shall:

¹⁰³ BVICVAP2018/006

¹⁰⁴ DOMHCV2012/0267

¹⁰⁵ DOMHCV2006/0038

¹⁰⁶ SKBHCV2019/0274

- i. Pay to the Claimant the sum of \$5,500.00 in damages.
- ii. Pay the sum of \$5,000.00 in costs, being the figure agreed to prior to the commencement of this matter.

113. The total sum of \$10,500.00 shall be paid by the First Defendant by Wednesday the 30th of April 2025.

**Colin Williams
High Court Judge**

BY THE COURT

REGISTRAR