

AMLS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV787/2006

BETWEEN	DEVON WHITE	CLAIMANT
AND	LENWORTH CAMMOCK	1 ST DEFENDANT
AND	THE ATTORNEY GENERAL	2 ND DEFENDANT

Mr. Ernie Smith and Ms. Marsha Smith instructed by Smith & Company for the Claimant

Ms. Daniella Archer and Mrs. Amina McNoon for the Defendants

Heard: March 9 & 10 and April 2, 2009

**False Imprisonment- Assault- Malicious Prosecution-
Exemplary Damages**

Straw J

The claimant, Devon White, alleges that on June 1, 2000, he was shot three times by a police officer whom he has identified as Constable Lenworth Cammock of the Brown's Town Police Station. He was then thrown in a police jeep and taken to St. Ann's Bay (Hospital) and subsequently arrested and charged for the offences of Illegal Possession of Firearm, Illegal Possession of Ammunition, Shooting with Intent and Shop-breaking and Larceny.

He is suing the Attorney General (by virtue of the Crown Proceedings Act) for Assault, False Imprisonment, Malicious Prosecution and Exemplary and/or Aggravated Damages.

The Assault

In relation to the Tort of Assault, Doctor Kondisetti saw Mr. White at St. Ann's Bay Hospital in the early hours of June 1, 2000.

On examination the following injuries were noted:

1. 1cm penetrating wound with powder burn (entry gunshot wound) to left upper arm from posterior aspect; bullet appeared to have lodged in the soft tissue.
2. 2cm grazing abrasion with powder burn to the right flank of abdomen just below the costal margin, the posterior axillary line.
3. 1cm penetrating wound with powder burn to the right flank just above right iliac bone (entry GSW). The abdomen, on examination was diffusely tender with generalized guarding suggestive of bowel perforation and contamination.
4. Compound (open comminuted and unstable fracture to both bones of distal third of the left ankle, bone was seen protruding through an irregular laceration to the medial aspect of lower leg.
5. Fracture of proximal right tibia with haemorthrosis of the right knee.

According to Dr. Kondisetti, injuries 1, 2 and 3 appeared to have been sustained as a result of gunshots, while injuries 4 and 5 appeared to have been as a result of a fall while in motion.

Torts of False Imprisonment and Malicious Prosecution

It is alleged that the police officers, maliciously and without reasonable cause, arrested the claimant and took him into custody at the St. Ann's Bay Hospital and thereafter, maliciously and without any reasonable or probable cause, preferred charges of Shooting with Intent, Illegal Possession of Firearm, Illegal Possession of Ammunition and Shop-breaking with Intent against the claimant.

He was kept at the St. Ann's Bay Hospital under police custody for 14 days and then transferred to Cornwall Regional Hospital, St. James, again under police custody, for a further 14 days. He was eventually discharged from the hospital on June 27, 2000 and taken to Brown's Town Police Station.

Mr. White states that he was taken there on a Wednesday and released on bail on the Saturday. In relation to the offences of Illegal Possession of Firearm and Ammunition and Shooting with Intent, the charges were dismissed against him in the High Court Division of the Gun Court on September 16, 2003.

No evidence has been led before this Court in relation to the offence of Shop-breaking and Larceny. It appears that he was never tried on this charge. The court considers and applies the reasoning of my brother, Brooks J, in **Keith Bent et al vs Attorney General** consolidated claims, B330/1998, B384/1998 and B385/1998.

In that case, Brooks J considered the effect of an adjournment *sine die* in relation to the tort of Malicious Prosecution *and* stated at page 8 of his judgment:

"...I am of the view that a prosecution which has been adjourned sine die and which has not been restored to the Court's list within a reasonable time, may be deemed abandoned by the prosecution and as such the prosecution deemed discontinued. There would therefore have been a determinant in favour of the person charged."

The effect of the failure to prosecute the claimant on the charge of Shop-breaking and Larceny since 2000 lends itself to the view that the matter may be deemed abandoned.

The claimant also seeks to be awarded Exemplary and/or Aggravated Damages as a result of the oppressive, arbitrary and/or unconstitutional actions of the police officers involved which were motivated by malevolence against him.

The Evidence

The defence presented no evidence. The claimant was therefore the sole witness to the facts that resulted in his being shot and injured.

The claimant testified that on June 1, 2000, at about 5:00 a.m., he had just left his post as watchman at Container Meats, Top Road, Brown's Town. He was driving his Lada motor car along Top Road. He was alone. In his vehicle were goods such as rice, flour and sugar covered with a tarpaulin. He stated that he sells these goods from the trunk of his car at the Brown's Town Market. He had purchased all these goods previously and had the receipts in the car pocket.

He alleges that he was experiencing some difficulty in starting the car as the battery had run down. As a result, he did not turn on the lights. There was enough 'juice' in the battery, however, to enable him to turn on the hazard lights. While he was attempting to 'clutch' start the car, he heard a car horn blowing. He stated that he signalled the driver to go around but that the vehicle made no attempt to pass him. He therefore put on the hazard lights and pulled to the left side as far as possible.

Mr. White further testified that he heard two loud explosions and became frightened. He looked behind to see who fired the shots and lost control of the car which hit the Anglican Church wall, spun around and stopped.

At this point, according to Mr. White, he jumped out of the vehicle with his hands in the air. The headlights of the vehicle were shining directly in his face and he saw a man with a gun pointed at him. He identified himself to this man.

The court did find it strange that he identifies himself to a man that he has not indicated that he recognized at all or as a police officer.

He testified that the man then shot him in his left foot and that he fell to the ground. The medical report does not support any gunshot injury to the left foot. The man with the gun then asks him if he did not hear him stopping him and then fires two more shots, one to his right side and one on his left upper arm. He again dropped to the ground. This man then kicks him in his side with his boots and asked him 'weh di gun deh?' At this point he looks up and recognizes the man is a police officer named Lenworth Cammock from the Brown's Town Police Station. He then enquires of Mr. Cammock why he shot him.

The court notes that, during this interchange, he speaks of seeing no other police officer.

He stated that he asked Mr. Cammock if he was not going to take him to the hospital and that Mr. Cammock said he was going to call for the jeep. He further stated that his foot was bleeding and the bone hanging out. He was also vomiting and his belly 'start swell up.' He testified that when the jeep came, he heard another man's voice and asked this man if he did not know him. The man then said to Mr. Cammock that he knew him and he should not shoot him again. At this stage, he is flung in the jeep by the police. According to Mr. White, he felt as if his other leg broke due to the force of the throw. He said he received the injury to the right leg when he was thrown into the van. He was taken to St. Ann's Bay Hospital

and then blacked out. When he came to, he was in hospital. He was handcuffed to a bed and a policeman was standing guard.

It is quite clear that Mr. White only saw another or other police officers after he received the gun shot injuries.

1. Was the claimant shot by the police officer?

There is no issue as to whether Mr. White was shot by a police officer. He has stated it was Mr. Cammock and there is no evidence to the contrary.

2. Has the claimant proven that the police were acting maliciously or without reasonable and probable cause when he was shot?

It was suggested to Mr. White that he was running from the police officer when he was shot. He denied this. It was suggested to him that he had taken the goods that was in his car from "Container Meats" and refused to stop his car when he was asked by the police. He denied this. He denied that the charge for shop-breaking was in relation to goods taken from Container Meats. He denied that he jumped out of the Lada and ran when he realized that the police were stopping him.

Ms. Archer submitted on behalf of the defendants that the claimant has not proved that the police officers were acting maliciously or without reasonable and probable cause.

She relies on Section 13 of the **Constabulary Force Act** which reads as follows:

"The duties of the police under this Act shall be to keep watch by day and by night, to preserve the peace, to detect crime, apprehend or swear before a Justice of the Peace, persons found committing any offence or whom they may reasonable suspect of having committed any offence..."

She submits that Mr. White's evidence is not credible and that the claimant was a fleeing felon, that the police gave chase and the shots sustained by the claimant were a result of the lawful attempt of the police to execute their duties.

She pointed the court to the following inconsistencies in the evidence:

Firstly, Mr. White states that he was shot in the left foot and fell to the ground.

The doctor's evidence does not support this. Secondly, Mr. White states that he came out of the vehicle with his hands up in the air whilst facing the police. However, the medical report of Dr. Kondisetti speaks to an entry gun shot wound to the left upper arm from the posterior aspect.

He also received a gun shot injury to the right side.

She asks whether his story, that he was facing the police at the time of the injuries, can be believed.

She also submits in relation to the injuries to the left leg and right that he cannot be believed as Dr. Kondisetti has stated these two injuries were caused as a result of a fall while in motion. She further stated that this assessment is contrary to the claimant's story that he was shot in the left leg and that his right leg was injured when he was thrown in the van.

Based on these inconsistencies and discrepancies, she submits that it was logical to conclude that Devon White was fleeing the police and was not shot whilst facing the police.

Counsel referred the court to the case of **George Finn v Attorney General** 1981, 18 JLR pg. 120 where it was held *inter alia*:

"... that, it being established that the men were fleeing felons, the question which fell for consideration was what degree of force it was necessary to use in their apprehension; it was settled law that an officer may repel force by force where his authority to arrest or imprison is resisted, and will be justified in so doing even if death

should be the consequence, yet he ought not to proceed to extremities upon every slight interruption not reasonable necessary."

The facts are distinguishable in the above case. The plaintiff had been shot several times fleeing from the police while riding a motor cycle with a pillion rider at the back. The evidence for the defendant was that the police officers had received a report of robbery of jewellery, that they followed the plaintiff's motor cycle and shouted, "Stop, police."

The plaintiff continued and the pillion rider pulled a gun, jumped from the cycle and engaged the police in a shoot out. He was mortally wounded and a search of his person revealed the items reportedly stolen.

The court held that, on a balance of probabilities, the pillion rider did rob the complainant and that the police pursued the men because of the report and were justified in so doing in view of their duties.

Although the court found that the men were fleeing felons, the judge, Wolfe J, (para c, pg 121) stated that the fleeing felons were unarmed, that the force used in their apprehension was excessive and wholly disproportioned to the injury or mischief it was intended to prevent and that the injuries were therefore unjustified and done without reasonable or probable cause.

In the present case, there is no evidence of any report that the police received so as to draw any inference that Mr. White was a fleeing felon. Even if the court were to find that he attempted to run from the police, the only inference would be that the police were suspicious of his activities.

The medical evidence speaks to three firearm related injuries. Two of these injuries had powder burns at the site of the wounds. He was therefore shot at fairly close range. There is no evidence that he had a firearm or that a firearm was recovered at the scene. He

was shot and held by the police on the scene. There is no evidence of any other person being present on the scene with Mr. White.

Although he has stated he was shot in the left leg, it is clear that this was not so. However, he did suffer severe injuries to both legs. The court accepts that his ability to recall might be impaired at this point as the incident happened in 2000 and the injuries to the legs, especially the left, would have been received under traumatic circumstances.

The court is also of the view that the injuries to both legs could have been caused while he was thrown into the jeep which would accord with a 'fall while in motion.'

The court is therefore of the view that the claimant has established on a balance of probabilities that his injuries were unjustified and done without reasonable or probable cause.

False Imprisonment

In a claim for False Imprisonment, the claimant must show that his liberty has been restrained by another against his will and without lawful justification (**Peter Fleming v Detective Corporal Myers and the Attorney General** 1989 26 JLR, pg 524).

Has the claimant proved that the police had no reasonable or probable cause or acted maliciously in detaining him, and for the period of time that he was detained?

The claimant was taken to the hospital on June 6, 2000 under police custody and remained in a medical institution until June 27, 2000. He was charged for the offences of Illegal Possession of Firearm, Illegal Possession of Ammunition, Shooting with Intent and Shop-breaking and Larceny. The period of incarceration while in hospital was 27 days. According to him, he was taken from the hospital on a Wednesday and taken to the police station and released on bail on the Saturday. This would be a further three days.

There is no issue in relation to the detention of the claimant and the period of time that he was detained. The onus of proving the absence of legal justification would be on the

claimant. (See **Flemming**, supra at pg 527c). The claimant's detention for the first 27 days would be due to his treatment in the hospital.

There is no evidence presented by the defence in relation to the offences of Illegal Possession of Firearm, Illegal Possession of Ammunition and Shooting with Intent and Shop Breaking and Larceny.

Mr. White is of the view that he was arrested for gun related charges because he was shot by the police. He was eventually dismissed of the first three offences in the High Court division of the Gun Court.

Based on the evidence, the court is of the view that the police officers had no legal justification for arresting him in relation to these offences.

False imprisonment is the unlawful imposition of constraint on another's freedom of movement from a particular place.

The tort is established on proof of:

1. The fact of imprisonment;
2. Absence of lawful authority to justify that imprisonment.

In an action of trespass to the person, once the trespass is admitted or proved, it is for the defendant to justify the trespass if he can, to show he acted with lawful excuse.

Counsel for the defendant, Ms. Archer, has submitted that the award should be granted only if the court is of the view that the police had no reasonable and probable cause to arrest the claimant and that the court should consider whether the period of detention was unreasonable having regard to the police powers of detaining a person for a reasonable time after having reasonable suspicion.

Has the Claimant proved the fact of False Imprisonment on a Balance of Probabilities?

In this case, Mr. White spoke of his activities on the morning of June 1, 2000, the purpose for goods being in his car covered with tarpaulin and the fact that he was shot by the police and charged for the offences listed above.

The court has already determined that the claimant has proven on a balance of probabilities that there was no reasonable and probable cause in relation to the gun related offences. There is also no evidence before the court in relation to the offence of Shop-breaking and Larceny.

Even if the court were to draw an inference, based on actions of Mr. White, that he may have committed an offence in relation to the goods in the car or the police may have had reasonable suspicion about the goods in his car, there is no evidence before this court to make such a finding.

The defence, in fact, have not discharged the evidential burden to justify the trespass once it is proved.

The court therefore finds that the defendants are liable for the tort of False Imprisonment.

Period of Detention

The court considers that the claimant was in hospital for 27 days. However, he was in handcuffs and under police guard. Even if he were in a condition to be released, he was not free to do so, his liberty was restrained.

After his release from hospital, he was in a lock-up for a further three days. According to Mr. White, he was in the lock-up from the Wednesday until the Saturday when he got bail.

This evidence has not been contradicted by the defence so the court will draw the inference that there was no offer of bail until the Saturday. The words used are ambiguous.

No evidence has been led as to the reason for the delay between Wednesday and Saturday. He had already been under police custody in hospital for 27 days.

In assessing an award under this head, the court will therefore award a sum for 30 days, the delay of three days after discharge being unreasonable.

Malicious Prosecution

The Tort of Malicious Prosecution is made out where, on a balance of probabilities, a claimant establishes that:

- a. A prosecution has been instituted against him.
- b. The prosecution ended in his favour.
- c. The institution of the prosecution was done 'maliciously' or without 'reasonable and probable cause.' (See **Flemming** supra, per Forte J A, where His Lordship held that, under Section 33 of the **Constabulary Force Act**, a claimant suing a police officer for malicious prosecution is required to prove either that he acted maliciously or without reasonable and probable cause).
- d. The claimant suffered damage.

Based on the analysis of the evidence, the court is of the view that the claimant has proved his case in relation to the first three (3) ingredients.

It is quite clear to this court that these charges were fabricated against Mr. White because he had been shot by a police officer. In the tort of Malicious Prosecution, the claimant must prove damage. He was charged for serious criminal offences which must of necessity result in damage to his reputation as an upstanding and decent citizen in his community and the society. The implication would be that he is a dangerous person.

The court is satisfied that the tort of Malicious Prosecution has been made out.

Assessment of Damages for False Imprisonment and Malicious Prosecution

False Imprisonment

The claimant was detained and placed in custody both at St. Ann's Bay Hospital and Cornwall Regional for 27 days.

He was handcuffed to a bed and a policeman stood guard near to his bed. He then spent three more days in custody at the Brown's Town lock-up. He described the cell as dark and dirty and that he could not help himself even to go to the bathroom. He described himself as depressed while he was in the hospital under police guard and that he felt as if the hospital staff thought he was a thief and gunman.

The award for false imprisonment is for loss of liberty. Ms. Archer has asked the court to consider that the defendants would have no control over the claimant's healing process and the length of time he spent in hospital.

The authorities demonstrate that awards for false imprisonment and malicious prosecution should be adjustable for future inflation.

A number of cases also reflect divergent views in relation to the assessment of an award:

1. In **Ellis v. The Attorney General** – Civil Appeal no. 37/01, an award of \$100,000.00 for seven hours was made to a Justice of the Peace on December 20, 2004. The updated award is \$161,484.09
2. **Keron Campbell v. The Attorney General** – CLC 385/1998, an award of \$70,000.00 for 2½-3 hours to security personnel was made on 6th January 2005. Updated award is \$114,087.01

3. **Herwin Fearon v The Attorney General** – CL 1990/F-046, an award of \$280,000.00 was made for 3½ days on March 31, 2005 at a daily rate of \$80,000.00. Updated award is \$128,551.33.
4. **Arthur Baugh v Courts (Jamaica) Ltd et al**, an award was made in October 2006 in the sum of \$200,000.00 for an unreasonable detention between 6:00 p.m. on November 19 to November 21. The updated award is \$274,666.92
5. **Cornel McKenzie v The Attorney General** CL M 022/2002, an award of \$442,000.00 was made to a truck driver for 25 days at a rate of \$17,680.00 per day in June 2003. Updated award is \$35,048.19 per diem.
6. **Winston Simpson v The Attorney General** CL 1993/S144, an award of \$7,000.00 per diem was made for 120 days in May 2002. Updated award is \$15,620.16 per diem.
7. **Michael Bennett v The Attorney General of Jamaica and Adolphus Williams v The Attorney General of Jamaica** CL 1993/B309 and CL 1993/W237, an award of \$180,000.00 made to the claimants for 12 days in January 1996. Updated award is \$664,816.80.
8. **Sharon Greenwood-Henry v The Attorney General of Jamaica** CL G116/1999, an award of \$100,000.00 was made for 15-16 hours on October 26, 2005. Updated award is \$145.387.05.
9. **Maxwell Russell v The Attorney General et al** Claim No. 2006HCV4024, an award of \$515,000.00 was made for 12 days in January 2008 at a rate of \$75,000.00 for the first 24 hours and then at a progressively reducing scale by Mangatal J. Updated award is \$591,344.21.

The claimant in the above case had also been shot by the police and subsequently spent 10 days in hospital under police guard and in handcuff, then to the police station for a further two days. Updated award of \$75,000.00 is approximately \$86,000.00.

The court finds the approach of Mangatal J in the above case as the most appropriate. The circumstances were similar to the present case. The use of the reducing scale is also most appropriate as the claimant spent 27 out of 30 days in the hospital recovering from his injuries.

The claimant has stated that he felt as if everybody in his community thought that he was a gunman. He also stated that he was well known by the community as he sold in the Brown's Town Market and the courthouse. He further stated every time he attended court he felt ashamed and embarrassed.

The court will assess the award at \$90,000.00 for the first day and at \$50,000.00 for the next 29 days. The amount of \$1,540,000.00 is therefore awarded for False Imprisonment.

Malicious Prosecution

The claimant was charged for the offences of Shooting with Intent, Illegal Possession of Firearm and Ammunition and Shop breaking and Larceny. His evidence is that he attended the Brown's Town Resident Magistrate's Court about eight times before the matter was committed to the Gun Court Division of the St. Ann Circuit Court. He also said that he attended the Circuit Court in St. Ann's Bay about 13 times.

The prosecution of the offences lasted for just over three years and the claimant had to live with this state of affairs for that period of time.

1. In **Maxwell Russell** supra, an award of \$250,000.00 was made in similar circumstances. However, the prosecution in that case lasted for just about a year. This award was made in January 2008. The updated award is \$287,060.29.

2. In **Kerron Campbell** supra, the sum awarded was \$90,000.00. In **Campbell**, the claimant sustained a broken leg and was arrested and charged for Possession of Ganga, Assaulting Police and Resisting Arrest on May 12, 1997. The charges were dismissed on July 22, 1997. The updated award is \$146,683.30.

This court is of the view that an updated award in the **Russell** case is the most appropriate. However, the court bears in mind that in the present case, there is a distinction in the length of time of prosecution. The court will therefore make an award of \$380,000.00.

Damages for Assault

The claimant suffered the Injuries as noted in the Medical Reports dated June 1, 2004 and July 12, 2004 and as described as above.

The damages for assault are actually in relation to battery. As expressed by Gilbert Kodilinge in **Commonwealth Caribbean Tort Law** (second edition, Cavendish Publishing Ltd), at page 14), the courts in the Caribbean and other jurisdictions have tended to blur the distinction and to describe as an 'assault' conduct which in strict law amounts to battery.

It is not clear whether he sustained two or three gun shot injuries, as one is described as an abrasion. However, the injury to the right flank was most serious. The bullet perforated through the ascending colon and the terminal ileum with leakage of bowel contents. Resection of the damaged bowel was performed.

He also suffered fracture of both bones to the left ankle and a fracture of the right tibia. The wound to the left ankle region was explored and irrigated and the protruded bone was replaced. The fracture was immobilized in a cast. The right knee was also immobilized in a cast.

In the opinion of Dr. Kondisetti, Mr. White sustained multiple trauma to the left upper limb and the abdomen and bony injuries to both lower limbs.

In the opinion of the doctor, he would have needed two months rest at home after discharge for complete recovery.

He recovered completely from the abdominal operation and was not expected to suffer from any long term disability.

Mr. White was referred to the Orthopaedic Clinic on June 13, 2000. He was admitted to the ward and underwent an operation to his right tibia on June 23, 2000 where a single screw was affixed to his left ankle. There are no follow-up records in relation to Mr. White after June 26, 2000.

During the trial, the claimant stated that he still feels pain in his 'belly bottom,' knee and left hand. He has difficulty working. He can no longer run, bend freely, cut his yard, play football or swim.

Dr. Kondisetti's opinion was that the fractures sustained by him were disabling and that information regarding the convalescence and progress and nature of the long term disability should be obtained from the Orthopaedic team.

As stated earlier, there is no such medical evidence available to this court.

Ms. Smith, Counsel for the claimant, cited various cases in relation to particular injuries for the courts' consideration. These included awards for injury to abdomen, injury to left upper arm, injury to ankle, injury to the knee, and injury to both lower limbs.

She has submitted that an award for pain and suffering and loss of amenities should be made in the sum of \$6,500,000.00.

The court has to make an appropriate award that is consistent with previous awards while, at the same time taking into account the totality of what Mr. White has suffered.

Counsel for the defendants cited the following cases:

1. **Renford Facey v Constable Burnett Hall and The Attorney General**, Khans 4 pg 201.

The claimant was shot in the back by the police in July 1980 and experienced pain in the abdomen and right leg. Exit and entrance wounds were bleeding and X-rays showed fractures of L4 and L5 vertebrae as well as a non-functioning right kidney. The spinal nerves were also damaged resulting in his inability to lift his left leg.

On examination in 1990, his injuries were thought to be unlikely to produce permanent disability and could improve with treatment. The doctor also thought the pain in the plaintiff's back, leg and abdomen resulted from the presence of the fragments and were to continue.

The award for the Assault was \$500,000.00 in November 1994. The updated award is \$2,396,853.00.

In this case, there appeared to be some residual disability.

2. **Roy Douglas v Reid's Diversified Ltd et al** CL 1991 D086, Khans 4, pg 61.

The claimant suffered a compound fracture of the malleolus of the right ankle and fracture of posterior malleolus of right ankle and spinal fracture of distal of right fibula.

He was diagnosed with Permanent Partial Disability (PPD) of 10 – 15% of the function of right leg. The award for General Damages was assessed at \$240,000.00 in October 1995. The updated award is \$975,800.70.

The defendant has submitted that a reasonable award would therefore be in the range of \$3,620,077.50. The court also considered the case of **Maxwell Russell v The Attorney General and McDonald**, (supra). An award of \$500,000.00 was made in respect of damages for Assault in January 2008. The updated award is \$574,120.59.

In that case, the claimant suffered gun shot entry wound overlying his right scapula. He was discharged after one week in hospital with no adverse sequelae anticipated. The injuries in this case were certainly not as serious as those of Mr. White.

The cases cited by Counsel for the claimant included **May Hibbert v Reginald Parchment**, Khans 5, pg 191. The claimant was shot by her employer in the abdomen. She wore a colostomy bag which caused great embarrassment for six months. She was awarded \$900,000.00 in May 1999. The updated award is approximately \$2.5 million.

The court bears in mind that the claimant in this case used a colostomy bag for six months.

In the present case, Mr. White suffered gun shot injuries and fractures in relation to both legs. He has recovered from the gun related injuries.

In June 2000, the doctor considered the fractures to be disabling. Although Mr. White has spoken of his limitation at this time as a result of these injuries, there is no medical evidence to assist the court with the veracity of his testimony, neither is there evidence of any permanent disability.

The court is of the view that an appropriate award for Pain and Suffering and Loss of Amenities would be in the amount of \$4.5 million.

Handicap on the Labour Market

The claimant has asked the court to award him \$700,000.00 under this head as the injuries to the lower limb were disabling.

The claimant was a watchman and vendor at the time he received his injuries. He states he has difficulty working and that he cannot work as a watchman or as mason. There is

no cogent evidence to support his evidence of his continuing disability. He has also not spoken of any earnings that he is making at this time in terms of his work as a vendor.

The case of **Willard Morgan v Valley Fruit Co. Ltd** HCV0805/2003 was cited. In that case, the claimant was an employee of the defendant who received a crush injury to his right leg which resulted in the amputation of the leg below the knee. At the time of the assessment of damages, he was unemployed except for a 'little farming' from which he earned insubstantial amounts. His loss of earning capacity was considered to be realistic and understandably so. The court is not of the opinion that an award under this head is appropriate in the present case.

Aggravated and/or Exemplary Damages

The claimant in his pleadings has made a claim for both heads of damages.

He has averred at (paragraph 10) as follows:

“The treatment meted to the claimant --- amounted to a fundamental breach of his constitutional rights to freedom of movement, freedom from arbitrary arrest and detention and freedom from unwarranted trespass to his person.”

Exemplary Damages may be awarded where there is evidence of oppressive, arbitrary or unconstitutional action by government servants (per **Rookes v Barnard** (1964) AC 1129).

Aggravated damages are awarded where the commission of the tort is such so as to injure the complainant's proper feelings of dignity and pride (see **Clerk and Lindsell on Tort** 19th Edition, London, Sweet & Maxwell 2006 paragraph 29-137). The authorities suggest that the facts supporting such a claim must be pleaded (**Rookes v Barnard** AC, 1129). No such facts have been pleaded in this court. The court therefore declines to make an award for aggravated damages.

Counsel for the defendant has cited the case of **The Attorney General and Another v Noel Gravesandy** 1982 19 JLR pg 501 as authority for the proposition that Exemplary Damages must be pleaded together with the facts supporting it. This court is of the view that the case decided no such point. It was held that exemplary damages must be pleaded and proved.

The court is of the view that the actions of the police officers were oppressive and arbitrary. There was no reasonable and probable cause for the arrest and prosecution of Mr. White in relation to the Gun Court offences. The court draws the inference that the motives of the police officers were not actuated by any desire to secure the ends of justice but was done in order to cover up the wrong action of the police officer who shot and injured Mr. White. He was then flung into a jeep which resulted in further injuries. This was an abuse of authority and an award for Exemplary Damages is justified.

The court makes an award of \$600,000.00 under this head.

Special Damages

Medical Expenses

Exhibits 3a and 3b represent expenses associated with the treatment of Mr. White's injuries. The two receipts are for the amounts of \$11,170.00 and \$2,000.00. The Particulars of Claim, however, refer to an amount of \$4,500.00. The court therefore makes an award of \$4,500.00.

Legal Expenses

An amount of \$450,000.00 is claimed under this head but there is no evidence to support this.

Cost of Transcript

The transcript of the criminal trial could be considered as a reasonable expense for the preparation of the civil case. However, there is no receipt to justify this amount. The court declines to make any award.

Travelling Expenses

An amount of \$12,900.00 is claimed under this head in relation to his travel to the hospital.

The claimant states that after he was released from hospital, he travelled three times from Brown’s Town to Cornwall Regional Hospital as an outpatient. He also stated he travelled three times to St. Ann’s Bay Hospital and that he was unable to take public transportation. He sets out the expenses as follows:

Round trip from Brown’s Town to Cornwall Regional	- <u>\$800.00 x 3</u>
Taxi fare (round trip from Brown’s Town to St. Ann’s Bay Hospital)	- <u>\$2,500.00 x 3</u>
Revisits to St. Ann’s Bay Hospital for treatment using the bus	- \$3,000.00

No receipts were presented to the court. However, bearing in mind the injuries suffered by the claimant, the claim is reasonable.

An award is therefore made for the amount of \$12,900.00.

Loss of Goods

The claim is for \$20,000.00. Mr. White states that he had goods valued at \$20,000.00 in the vehicle at the time he was shot. He also had the receipts in the said vehicle. He never recovered these goods. The defendant has not denied that there were goods in the vehicle.

He was deprived of his liberty for one month. There is no evidence as to the whereabouts of either the car or the goods. The court will therefore make the award for the amount of \$20,000.00 as pleaded.

Loss of Income

The claimant has stated that he was unable to work for three years and seven months and pleads the sum of \$2,580,000.00 under this head.

He stated that he earned \$10,000.00 fortnightly as a watchman and \$40,000.00 monthly as net profit for selling goods in the market and the Court house.

The court considers the following factors in relation to this award:

1. There is no medical evidence that supports his evidence that he was unable to work for the period of time stated.
2. There is no evidence that he attempted to obtain any document from Container Meats in relation to his employment as a watchman to verify his earnings.
3. The court does consider that there may not be any documentation in relation to his earnings as a vendor at this time.

It appears he is an itinerant and informal vendor. The claim was filed in March 2006, almost six years after his injury and arrest. Bearing in mind the medical reports, the court will make the award in relation to his earning as a vendor at \$40,000.00 monthly for 12 months.

The award for Loss of Earnings is \$480,000.00.

Special Damages are therefore awarded in the amount of \$517,400.00 with interest at 6% from June 1, 2001 to June 22, 2006 and thereafter at 3% from June 23, 2006 to April 2, 2009.

General Damages for Pain and Suffering and Loss of Amenities	-	\$4,500,000.00
False Imprisonment	-	1,540,000.00
Malicious Prosecution	-	380,000.00
Exemplary Damages	-	<u>600,000.00</u>
Total General Damages	-	\$7,020,000.00

Interest of 6% on the General Damages, less the sum awarded for Exemplary Damages, from March 7, 2000 to June 22, 2006 and thereafter at the rate of 3% from the 23rd day of June 2006 to April 2, 2006.

Costs to the claimant according to the schedule.