

**EASTERN CARIBBEAN SUPREME COURT  
SAINT CHRISTOPHER AND NEVIS  
NEVIS CIRCUIT**

**IN THE HIGH COURT OF JUSTICE  
(CIVIL)**

Claim Number: **NEVHCV2018/0086**

Between

**Caldre Chapman**

Claimant

-and-

**The Attorney General of Saint Christopher and Nevis**

Defendant

**Before: His Lordship Justice Ermin Moise**

**Appearances:**

Mrs. Sherry-Ann Liburd-Charles of counsel for the claimant

Ms. Eshe Hendrickson Johnson of counsel for the defendant

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2020: September, 28<sup>th</sup>  
December, 1<sup>st</sup>

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**JUDGMENT**

[1] **Moise, J:** This is a claim for declarations and damages for wrongful arrest and/or false imprisonment. The claimant alleges that on 20<sup>th</sup> April, 2017 he was arrested and detained for a period of 7 days by agents of the state, who did so with malice and/or without reasonable or probable cause. After reviewing the evidence and the submissions of counsel for the parties I have determined that the claimant's case is made out and that he is entitled to the remedies which he seeks. These are the reasons for my decision.

**The facts**

[2] The claimant is a citizen of the Federation of Saint Christopher and Nevis. In April of 2017 he resided at Crook's Ground, Gingerland, Nevis. He states that on 20<sup>th</sup> April, 2017 at approximately 10:30am he went to Pearlett's Shop at Rawlin's Village. He states that he went to the shop "to chill" and met 3 other persons there sitting on a bench. Overtime a few more persons came where they

engaged in some socializing. The shop itself was closed but the claimant and his companions sat on the premises outside.

- [3] Mr. Chapman states that during this time he observed a Toyota Rav 4 driving on the road next to the shop. He observed that there were 4 soldiers of the Saint Christopher and Nevis Defence Force inside of the vehicle. They were dressed in camouflage and armed with long guns. The soldiers pulled up in front of the shop and came out of the vehicle. One of the soldiers, who he described as the leader of the group, said good morning and no one answered. The soldier then said *“everybody on the f\*\*\*g ground.”* One of the persons who was socializing with Mr. Chapman apparently stated that *“you not supposed to be searching us without the police.”* The soldier replied *“you want to f\*\*\*g test me this morning?”* The other three soldiers cranked their weapons.
- [4] It was Mr. Chapman’s evidence that once the soldiers had cranked their weapons, everybody started to move. The leader instructed them to go to the stage in the yard of the shop and lay face down with their hands behind their heads. The claimant states that he complied with these orders. In doing so, he could no longer see what the soldiers were doing but heard noises coming from a distance as if they were conducting a search. He heard something like a big stone being moved. One of the soldiers apparently made a phone call after which members of the police force from the Gingerland Police Station arrived at the scene. Later on, members of the Criminal Investigations Department also appeared.
- [5] At that point, according to Mr. Chapman, he and the other persons who were present at the scene were told to stand up and were all handcuffed by Police Officer Weekes and taken to the area where the Toyota Rav 4 was parked. Mr. Chapman states that whilst approaching the vehicle, he overheard one of the officers saying *“we got him now”*. According to him, he noticed a pillow case in the trunk of the vehicle with a mask, guns and ammunition laid out. During this time one of the police officers also said *“I am going to lock up all of you for bad mind.”*
- [6] It was Mr. Chapman’s evidence that he was placed in the back of a police pick-up truck and escorted to the Gingerland Police Station. He was placed in a cell with the 5 other persons who were arrested with him. Whilst at the police station he was placed against a wall and searched. He was eventually escorted to his home where he resided with his mother. It was his evidence that the

police entered the house by breaking a window after he informed them that his keys had been taken from him at the police station. He said that a piece of paper was placed in front of his face but he could not see what was on it. I take the evidence to suggest that this was in fact a search warrant which had been obtained by the police. The property was searched and nothing of substance was found.

- [7] Mr. Chapman was then taken to the Charlestown Police Station and placed in a holding cell. It was his evidence that the cell was unlit, hot and emitted a foul smell. He was forced to sleep on a concrete bench inside of the cell with no bedding. He states that the ventilation was poor and described it as being extremely upsetting for him to have remained in that condition for 7 days. During that time he was questioned twice by police officers. They requested saliva samples from him, to which he declined. Whilst detained at the Charlestown Police Station, the claimant was again taken to his home in order for a search to be conducted. During this search, the police took custody of 2 black shirts and a short camouflage pants.
- [8] On 23<sup>rd</sup> April, 2017, Mr. Chapman was formally charged for the offence of firearm possession and smuggling of a firearm and ammunition. There were 4 charges in total. He was supposedly granted bail on Thursday, 25<sup>th</sup> April, 2017 but remained in custody until 27<sup>th</sup> April, 2017. He states that when he was initially arrested he had 2 cellular phones, a silver bracelet with his name engraved in gold and 2 gold chains. These items were taken from him upon his detention. When he was released on bail, the items were not initially returned to him but allegedly kept as part of the police investigation. Mr. Chapman states that he was upset about his arrest and subsequent charge.
- [9] Mr. Chapman states further, that on 6<sup>th</sup> February, 2018, 10 months after he was charged, he attended the Charlestown Magistrate's Court where the charges were withdrawn by the prosecutor for lack of evidence. After the charges were withdrawn his cellphones were returned to him but he did not recover his gold chains and silver bracelet from the police. He also complains that his reputation had been ruined as a result of the publicity which was derived from the charges leveled against him. He provided evidence of the charges being broadcast on social media and the internet. He stated that he was thereafter perceived as a gun man and that persons were looking and pointing at him. He felt emotionally traumatized.

[10] Mr. Chapman states that since the charges against him were dropped he eventually found employment at a bus driver. He states however, that he was so often stopped and searched by the police that the owner of the mini-bus relieved him from his employment. He also states that prior to his arrest he had been enlisted in the farming program in Canada. He had proceeded to that country the previous year and had again applied for the year 2017. He remains convinced that the charges leveled against him was the reason for his inability to proceed to Canada thereafter.

[11] The claimant also led evidence from Territo Browne and Clijhaun Henry during the course of the trial. Whilst there were some discrepancies and inconsistencies between their evidence and that of Mr. Chapman, I do not find these to have any impact on the decision I am called upon to make. Other than these their evidence was largely corroborative of what Mr. Chapman had to say about the involvement of the police and the defence force on the day in question.

[12] The defence led evidence from Nigel Caines who is an officer of the Federation's defence force. He stated that in April, 2017 he was in charge of a contingent of soldiers stationed at Camp Fountain, Nevis. The soldiers were stationed on the island with the objective of assisting with the maintenance of law and order. There was apparently a significant increase in serious violent crime plaguing Nevis at the time and the army was dispatched with a view to assist in curbing this spike.

[13] Mr. Caines states that on 20<sup>th</sup> April, 2017 at about 9:00am he and three soldiers were on patrol in a motor vehicle. Whilst in the vicinity of the shop at which the claimant was socializing, the vehicle began to experience mechanical problems and came to a stop. The soldiers exited the vehicle and it was at that time that he noticed 6 male individuals sitting outside of the shop. The claimant was one of them. Mr. Caines states that the claimant commented by saying "*nobody can search us.*" He states that after this comment was made he and other soldiers approached Mr. Chapman and he instructed one of the soldiers to search him as well as the other persons in his company. He instructed Mr. Chapman to lean up against the stage and he, along with the other persons present, was reluctant to obey. After again instructing them, they obliged to his command.

[14] Mr. Caines states that he instructed another soldier to search the surrounding area. He observed when Private Carey searched and came across a loose rock which came out from a hole by the shop. He observed Private Carey search the hole and remove a white mask and a pillow case. Private Carey handed this over to Mr. Caines and he, according to his evidence, placed it on a

table in the presence of the claimant and his companions. He opened the pillow case and saw what appeared to be firearms and ammunition. He immediately closed the pillow case and contacted the Gingerland Police Station. He also ordered the claimant and the other persons present to get on the stage face down with their hands on their head. The police arrived about 25 to 30 minutes later. Mr. Caines states that he handed the items recovered over to Sargeant Ray Gordon.

[15] Sargeant Gordon, for his part, states that at about 11:00am on 20<sup>th</sup> April, 2017 he received information that a white mask, firearm and ammunition were found at Rawlins Village in Gingerland. He proceeded to the scene along with Corporal Charles and PC Mills. Upon arrival he was handed a pillow case with the items allegedly recovered by Mr. Caines and his team. Sgt. Gordon saw what appeared to him to be firearms, ammunition and a white mask. It was his evidence that Mr. Chapman and his companions were cautioned and arrested on suspicion of possession of firearm and ammunition. Sgt. Gordon handed the pillow case over to Corporal Weekes and observed him remove what appeared to be one Cobray Semi-Automatic pistol, one jacket hollow point cartridge of 9mm luger caliber and one extended magazine of thirty rounds and two full metal jacketed ball point 9mm luger cartridges and a white mask. He then escorted Mr. Chapman and his companions to the Gingerland Police Station and instructed an officer to place them in a holding cell.

[16] It was Sgt. Gordon's evidence that, about ten minutes later, he informed Mr. Chapman that he had a warrant to search his residence for controlled drugs, arms, ammunition and articles to be used in the commission of a crime. He, along with Cpl. Charles and other police officers, escorted Mr. Chapman to his home and conducted a search. He insisted, contrary to Mr. Chapman's own evidence, that he used Mr. Chapman's key to enter the house. He was adamant that no windows were broken to facilitate entry. Nothing of substance was found during this search. Thereafter Mr. Chapman was escorted to the Charlestown Police Station where he was kept in police custody. Upon arrival at the station, Sgt. Gordon states that he observed one band, one chain and one condom being taken from Mr. Chapman. These, according to Sgt. Gordon were placed in the Exhibit Room and recorded in the custody record sheet.

[17] Sgt. Gordon went on to state that he requested DNA samples from Mr. Chapman who refused to agree to this. On 23<sup>rd</sup> April, 2017 he formally cautioned and charged Mr. Chapman and others for possession of firearm and smuggling of ammunition. I note here that although the claimant was

charged on that date, he complains that the charges were laid more than 72 hours after he was arrested. This complaint was not contested by the defence. Sgt. Gordon also claims that he checked the firearm registry in Charlestown and discovered that there has been no firearm license issued to Mr. Chapman or any of his companions.

[18] It was Sgt. Gordon's evidence that Mr. Chapman was in fact brought before the Magistrate on 25<sup>th</sup> April, 2017 where he was granted bail. He insisted that Mr. Chapman was unable to satisfy his bail conditions and was therefore remanded to a cell at the Charlestown Police Station. He was aware that Mr. Chapman was released on 27<sup>th</sup> April, 2017 when he was able to satisfy the bail conditions set by the Magistrate. Mr. Chapman disputes this and states that he was in fact never brought before the Magistrate during the period of his incarceration. The station diary has no record of Mr. Chapman having been brought to court at any point. Upon Mr. Chapman's release, Sgt. Gordon states that he handed over his cellphone to him and asked that he return to collect the band, chain and condom as the custodian of the exhibit room was overseas. According to Sgt. Gordon, Mr. Chapman never returned to collect these items.

[19] Corporal Javern Weekes gave evidence at trial. His evidence speaks to his observations on the scene at Rawlins Village on the day in question. He also took photographs of what he observed. It is not necessary to repeat his evidence in any detail.

## **The Law**

[20] One can harbor no doubt about the significant role which law enforcement officers play in ensuring that the islands on which we live are peaceful and stable. The citizens of the Federation of Saint Christopher and Nevis are at times plagued by the effects of serious violent crime. The powers of arrest, detention and prosecution are significant in curbing such violence and ensuring that perpetrators of crime are brought to justice. However, the exercise of those powers must at all times be subject to an appreciation of the fact that we do not live in a police or militarized state. The citizen must also enjoy his right to freedom of movement and the general dignity of the person without the threat of harassment and abuse by the police of the powers they have been granted by law. As Ramdhani J stated in the case of *Everette Davis v. The Attorney General of Saint Kitts*

**and Nevis<sup>1</sup> “[t]he law enforcement arm of the state wields considerable coercive power that must not be exercised except for good cause. Thus, when the time comes for accountability, more must be given to the court to show such good cause.”**

[21] In light of this, the common law has long recognized the torts of wrongful arrest and detention and provided remedies to citizens where these have been committed by agents of the state. In essence, the law requires that where a police officer arrests a citizen without a warrant to do so, he must have reasonable and probable cause to believe that the arrest and/or detention is justified according to law in that the person is either about to commit or has committed an arrestable offence. As noted by Ramdhani J **“[t]he test as to whether there is reasonable and probable cause is both subjective and objective.** He goes on to state as follows:

***The perceived facts must be such as to allow the reasonable third person and actually cause the officer in question to suspect that the person has committed or is about to commit a crime. It does not matter if the information available to the police leads equally or more to a view that the person may be innocent of the offence, once it leads reasonably to a conclusion that he may have committed, or is about to commit the offence, that is sufficient to ground the arrest. The reasonable police officer is assumed to know the law and possessed of the information in the possession of the arresting officer, and would have believed that the claimant was guilty of the offence for which he was arrested. The term ‘reasonable suspicion’ relates to the existence of facts at the time. It does not relate to a perception on the state of the law.”***

[22] The evidence upon which the police rely at the stage of arrest need not be admissible evidence. It must nonetheless be enough to satisfy the objective tests referred to above. As noted by Lord Diplock the test is **“... whether a reasonable man, assumed to know the law and possessed the information which in fact was possessed by the defendant, would believe that there was reasonable and probable cause.”**<sup>2</sup> Wooding CJ put it this way in the case of *Irish v. Barry*<sup>3</sup>:

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<sup>1</sup> SKBHCV 2013/0220

<sup>2</sup> *Dallison v. Caffrey* [1963] 2 All ER 610

<sup>3</sup> [1965] 8 WIR 177

***What is important is that in such a case as this, no person should exercise the power of arrest unless he had proper and sufficient grounds of suspicion. If he does, then he is acting hastily and/or ill advisedly. In all cases, therefore the fact, known personally and/or obtained on information ought to be carefully examined.***

[23] Whilst the test is an objective one, it is ultimately to the facts of the case the court must turn. The court must determine what were the facts relied on by the police in deciding to arrest and detain the claimant and then determine whether a reasonable man, taken to know the law and possessed with such information would believe that the basis of the arrest and detention was reasonable. Having examined the facts of this case I am satisfied that there were not proper and sufficient grounds of suspicion upon which the claimant ought to have been arrested and detained in the circumstances of this case.

[24] The first observation to be made is that the military officers who initially confronted the claimant did not do so on the basis of information relating to any crime. It was claimed that their vehicle broke down near the shop where the claimant was socializing. On the basis of a comment allegedly made, the soldiers decided to search the claimant and others and found nothing on his person to warrant any suspicion. Thereafter, a search of the compound revealed a pillow case with a firearm, ammunition and a mask in it. This was not found on or near the claimant but underneath the shop beneath a stone. It must be noted that although the shop was closed at the time, the vicinity is a rather public place. Whilst the law in relation to possession does not require that an item of this nature be found on the person of the claimant, it does require some evidence of a sufficient degree of control over the item in order to show that he had it in his possession. The claimant does not own the shop or the premises and it is not in dispute that this is an open environment where people frequently socialize.

[25] Whilst I would accept that the presence of this group of young men on that occasion may have given some reason to at least question the claimant as to whether he knew anything about the firearm and other items, without more I am not prepared to accept that this was a sufficient basis to arrest and detain him, much less charge him for these offences. To add to that, he was kept in custody for 7 days, his home was searched and he was charged after the police obtained no further

evidence other than that the items were found under the shop on that day. The prosecutor who was assigned to this case was of the view that there was insufficient evidence against him and after 10 months decided that the case should not proceed to trial.

[26] The evidence also suggests that the claimant spent a total of 7 days in police custody. He states that 72 hours elapsed before he was charged and that although he was granted bail after 7 days, he was never brought before the Magistrate for a bail hearing. The defendant denies this. However, even taking the defence case at its highest, he was not brought before a Magistrate for bail until 5 days had elapsed. They argue that he was granted bail and only spent the remaining 2 days in custody because he could not have met the bail conditions. That fact, even if it had been proven, would not avail the defendant much. If the basis of the arrest and detention was wrong in the first place, then the claimant's inability to meet the bail conditions ought not to work to his disadvantage. However, what is curious is that whilst the defence argued that the claimant was bailed on 25<sup>th</sup> April, 2017, the station diary does not reflect that he was brought to the Magistrate for bail. The diary records that the defendant was bailed on 27<sup>th</sup> April, 2017. Whether this meant that his bail was processed on that day is unclear. However, I must note that it is the duty of an arresting officer to ensure that where a prisoner is kept in a police station, there is a proper record of every significant fact relating to that prisoner whilst in custody. If called upon to account, the state must be in a position to do so. The lack of evidence that he was brought before the Magistrate on the date and time asserted by the witnesses for the defence is a factor which weighs in the claimant's favour.

[27] I therefore find that not only was the claimant's arrest unlawful, but his continued detention for a period of 7 days was also unlawful and not for reasonable and probable cause. He is therefore entitled to damages as a result of this infringement of his personal liberty and the conditions he had to endure during this period of time. I wish finally to state that whilst there was some pleading of malice by the claimant and submissions put forward by counsel for the defence on the issue of malicious prosecution, the claimant did not plead this as part of his claim.

## Damages

[28] De La Bastide CJ (as he then was) has provided guidance as to the manner in which the court ought to approach an award of damages in such cases. His judgment in the case of *Millette v. McNicolls*<sup>4</sup> has been cited with approval in our own jurisdiction on a number of occasions. He states as follows:

*“there is an element of initial shock when a person is first arrested and imprisoned which must first be taken into account and compensated in the assessment of damages for wrongful arrest and false imprisonment, regardless of whether the term of imprisonment is long or short. The extent of the compensation for the initial shock will depend on the facts of the case (and not the length of the imprisonment) and factors which may be relevant include: the way in which the arrest and initial imprisonment are effected, any publicity attendant thereon, and any affront to dignity of the person. While any normal person will adjust to some extent to the circumstances of imprisonment is to be taken, the longer the imprisonment lasts the more burdensome it becomes: and the length of the imprisonment is to be taken into account in this context. Damages in such cases should not however be assessed by dividing the award strictly into separate compartments (initial shock, length imprisonment, etc) but by taking all such factors into account and then approaching the appropriate figure in the round” compartments, one for initial shock, the other for length of imprisonment and so on. All the factors are to be taken into account and an appropriate figure awarded.”*

[29] Further guidance can be found in the decision of Ramdhani J (a.g.) in the case of *Everette Davis v The Attorney General of St. Christopher and Nevis*<sup>5</sup> where he states as follows:

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<sup>4</sup> Civil Appeal No. 14 of 2001

<sup>5</sup> SKBHCV 2013/0220

***“In fixing the compensation the court should consider a number of factors including, the loss of liberty, the loss of reputation, humiliation and disgrace, pain and suffering, loss of enjoyment of life, loss of potential normal experiences, such as starting a family, other foregone development experiences, loss of freedom and other civil rights, loss of social intercourse with friends, neighbours and family, whether the claimant suffered assault in prison, the fact that he had to be subjected to prison discipline, and accepting and adjusting to prison life, and what effects the unlawful detention might have had on his life. In any given case some of these may not be relevant whilst some may have a greater effect on the eventual sum”***

[30] I observe that in the decision of de la Bastide CJ this award for the initial shock is provided for whether the period of incarceration was long or short. It is designed to address this initial shock which one will naturally suffer upon the violation of his personal liberty in this way. As the court noted in the case of ***Wakeem Guishard v. The Attorney General of the BVI***<sup>6</sup>, ***“the approach is not one in which the court is to set an exorbitant hourly rate for the first period of detention. The courts have adopted a more general approach in fixing a reasonable sum for this period and then to go on to set a daily rate for the remainder of the time which the claimant had spent in custody.”***

[31] I note that counsel for the claimant relies on the decision in the case of ***Elihu Rhymer v. The Commissioner of Police***<sup>7</sup> where an award of \$20,000.00US was made. Reliance is also placed on the case of ***Shannoid Bass v. The Attorney General of Saint Kitts and Nevis***<sup>8</sup>. In ***Shannoid Bass*** the judge there relied on the case of ***Elihu Rhymer*** and awarded the sum of \$30,000.00 in general damages. It must however be observed that the \$20,000.00US awarded in the case of ***Elihu Rhymer*** was awarded as aggravated damages. In fact, quite apart from the aggravated damages, what the court awarded in that case was nominal damages in the sum of \$1,000.00. It is important to make this distinction as there has begun to emerge a clear line of authority as to the manner in which the court embarks on the award of general damages for wrongful arrest and

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<sup>6</sup> BVIHCV2016/0319, see also the decision of the Court of Appeal, BVIHCVAP2018/0006

<sup>7</sup> BVI Civil Appeal No 13 of 1997

<sup>8</sup> SKBHCV2010/0312

detention. That is to award a lump sum as compensation for the initial shock of the arrest and detention and then to consider an appropriate daily rate for the period of incarceration thereafter. As Lord Wolf stated in the case of *Thompson v. Commissioner of Police of the Metropolis*<sup>9</sup>, “**a plaintiff who has been wrongly kept in custody for – hours should for this alone normally be regarded as entitled to an award of about £3,000. For subsequent days the daily rate will be on a progressively reducing scale.**” This is the manner in which general damages for wrongful arrest and detention ought to be calculated and it is not designed to be a windfall.

[32] Whilst each case must be considered on its own merits, the court should also consider similar cases within the jurisdiction in order to arrive at a reasonable figure. In *Everett Davis*, Ramdhani J was of the view that “**having regard to all the factors set out above, that for the initial period of detention, this claimant is entitled to at least EC\$20,000.00 for the initial act of detention, and a sum of EC\$500.00 per day for each day of detention beyond the initial act of detention.**” Indeed, the daily rate of \$500.00 was also awarded in the Saint Lucian case of *Michael Stevens v. The Attorney General*<sup>10</sup>. It is not that the court must necessarily be bound by the awards in these cases, as the facts of each case must be taken into account in order to arrive at a reasonable figure. However, similar awards of this nature can guide the court and ensure that there is some measure of consistency in the awards made in similar cases.

[33] Having examined the facts of this case I have taken into account the fact that the claimant was subject to searches of his person and the curtailment of his liberty by members of the Defence Force of Saint Christopher and Nevis. These are not civilian police officers. They carried weapons and dressed in camouflage. The evidence suggests that they were somewhat verbally abusive to the claimant and his companions. He was thereafter arrested and taken to two separate police stations within a two day period. His home was searched and items of his clothing were taken. I would not now repeat the conditions under which he slept as I have outlined these earlier in this judgment. I would therefore award the sum of \$20,000.00 in compensation for the initial shock of the arrest to the claimant.

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<sup>9</sup> [1998] QB 498

<sup>10</sup> SLUHCV2013/0425

[34] In considering the daily rate to be applied for the claimant's detention I would not repeat the facts which I have outlined earlier. I would only add that the claimant spent 7 days in a holding cell at a police station. When called upon to provide documented details of his incarceration, the evidence of the defendant fell short. He was charged more than 72 hours after his initial arrest and there is no evidence that he was bailed until 7 days later. This is not acceptable. Holding cells in police stations are not designed for lengthy or even moderate periods of incarceration. The claimant outlined the conditions in which he slept and survived for that period. Whilst the daily rate of \$500.00 was acceptable in the case of *Everett Davis v. The Attorney General*, the circumstances of this case warrants a higher rate. I would award the sum of \$600.00 per day for a period of 6 days amounting to a total of \$3,600.00. In total therefore I would award the claimant the sum of \$23,600.00 in general damages for wrongful arrest and detention.

### ***Aggravated and Exemplary Damages***

[35] I now consider whether an award ought to be made for aggravated and exemplary damages as submitted by counsel for the claimant. I must confess that, for my part, the authorities appear to blur the lines between what constitutes aggravated as opposed to exemplary damages. In some instances the terms are used interchangeably. Counsel asks of this court to make two separate awards for each head respectively. Without attempting to outline the law in relation to these two issues I would decline to accede to counsel's request, as I am of the view that one award would suffice to compensate for the injury to the claimant's emotions and reputation when combined with the manner in which he was arrested and detained by the defence force and the police.

[36] There is clear authority emanating from our jurisdictions that an award for aggravated damages is appropriate in cases such as the present. In fact it appeared to be the practice of the court to award nominal damages for brief periods of incarceration of mere hours and go on to consider whether the circumstances warrant the award of exemplary or aggravated damages. In the case of *Bernadette Matthew v. The Attorney General of Montserrat*<sup>11</sup> Edwards J (as she then was) highlighted a number of these authorities, including that of *Elihu Rhymer* which was referenced by counsel for the claimant. In that case Edwards J awarded \$2,000.00 in nominal damages and \$16,000.00 in exemplary damages. She determined that this was an appropriate award due to the

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<sup>11</sup> Suit No. 15 of 1999

fact that the claimant in that case spent 7 hours in custody and was not manhandled by the police in any way. An award of \$16,000.00 would amount to approximately \$22,000.00 adjusted for inflation. In the present case I consider that whilst the claimant was not manhandled, the defence force appeared to have been somewhat high handed in the manner in which the claimant and his companions were treated. His period of incarceration was for days rather than hours. Taken this into account, along with the other complaints he has made about the injury to his reputation and the humiliation he suffered, I would award the sum of \$30,000.00 in exemplary damages to the claimant.

### ***Special Damages***

[37] In his statement of claim the claimant seeks an award of \$41,000.00 in special damages. This he claims as loss of income. It was his claim that he lost the opportunity to work on the Canadian farm program in 2017. He worked on that program in 2016 and earned \$11.25 per hour for a period of 6 months. The defendant however presented evidence at trial from Ms. Althea Parris. She is the Canadian Administrative Clerk who is the person responsible for processing persons from Saint Kitts and Nevis who are selected for the farming program. She does not deny that the claimant had applied for the program in 2017. However, she states that he was not selected by any of the farmers on the program for that year. It was her evidence that the defendant was somewhat delinquent during his stint in 2016 in that he did not obey the rules and no longer met the requirements to be selected.

[38] Despite this, Ms. Parris presents no evidence to show that this state of affairs had ever been communicated to the claimant. What is uncontroverted however, was that throughout the remainder of 2017 he was a defendant in criminal proceedings brought against him as a result of the circumstances of this case. With that case hanging over him, he could not have been selected for the program. On balance I accept the claimant's evidence that his inability to take up this opportunity was due to the charges which had been brought against him. However, despite claiming \$41,000.00EC in damages, the evidence suggests that what he earned in 2016 was \$30,908.86EC. I would award the sum of \$31,000.00 in loss of earnings in the circumstances.

[39] The claimant also seeks restitution of 2 gold chains which he claims to have had taken from him at the point of his arrest. He claims that the chains cost \$5,000.00EC and seeks this sum in damages in the event that the items are not returned to him. There is some dispute as to what items were taken from the claimant. The custody log does not record that 2 gold chains were taken from him. The difficulty however, is that the custody log also does not record that his two cellular phones were taken from him. This despite the fact that Officer Ray Gordon admitted to having taken those items from the claimant. The effect of this is that the court cannot rely on the log as an accurate reflection of the personal items which were taken from the claimant. On balance I accept his evidence and would order that all personal items taken from the claimant are to be returned to him. In the event that his gold chain is no longer in police custody I would award the sum of \$5,000.00 in compensation. I would do so on a nominal basis as the claimant no longer has receipts for these items. I nonetheless accept his evidence as to the amount he had paid for them.

[40] In the circumstances I make the following orders and declarations:

- (a) The claimant's arrest and detention for a period of 7 days was unlawful;
- (b) The defendant is to pay the sum of \$31,000.00 in damages to the claimant for loss of earnings;
- (c) The claimant is entitled to restitution of his jewelry and other items taken from him at the time of his arrest and detention. In the event that his gold chain is not returned to him within a period of 21 days from the date of this order, he is to be paid damages in the sum of \$5,000.00;
- (d) The defendant will pay the sum of \$23,600.00 in general damages for wrongful arrest;
- (e) The defendant will pay the sum of \$30,000.00 in aggravated damages to the claimant;
- (f) The defendant will pay interest on damages at the statutory rate from the date of this judgment until the debt is paid in full;
- (g) The defendant will pay prescribed costs in accordance with the CPR.

**Ermin Moise  
High Court Judge**

**By the Court**

**Registrar**