THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT

CLAIM NO. SKBHCV2017/0380

BETWEEN:

MATTHEW MCMILLAN

Claimant

and

1. ALONZO CARTY
2. THE ATTORNEY GENERAL OF SAINT KITTS AND NEVIS

Defendants

Appearances:

Mr. Jason Hamilton for the Claimant
Mr. Dane Hamilton Q.C., with him, Mr. Victor Elliot-Hamilton for the Defendants

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2019: October 25
October 28

[*Reissued on 13 November 2019 pursuant to CPR 42.10(1)]*

JUDGMENT

[1] VENTOSE, J.: The Claimant filed an amended claim form and statement of claim on 28 November 2018 in which he sought: (1) damages for the false imprisonment of the Claimant on or about 4 December 2017; (2) damages for the unlawful search of the Claimant's luggage and the subsequent search of the data stored on his cellular phone and laptop and all other electronic equipment; (3) damages for the unlawful seizure of the Claimant's electronic devices on or about 4 December

2017; (4) damages for the unlawful arrest of the Claimant on or about 4 December 2017; (5) special damages; (6) aggravated damages; (7) exemplary damages; (8) interest pursuant to section 27 of the Eastern Caribbean Supreme Court (St Christopher and Nevis) Act; (9) costs; and (10) such further relief as the court may find just.

[2] The questions that arise for determination are as follows: (1) whether Inspector Carty had reasonable suspicion or an honest belief that the Claimant had committed an offence; (2) whether the Claimant's property was unlawfully searched and seized; and (3) what damages should be payable to the Claimant if the court finds in his favour in respect of (1) and (2).

The Evidence of the Claimant

[3] The Claimant was detained at the Robert Llewellyn Bradshaw International Airport (the "Airport") at approximately 8:35 a.m. on 4 December 2017. He was informed that he was on a watch list and that he could not leave the country because he needed to be questioned and that an Inspector from Nevis was on his way to question him. The Claimant was not informed that he was under arrest or that he was under suspicion of committing a crime. Approximately one hour later, the Claimant was taken to the police station in Basseterre. The Claimant was arrested by Inspector Alonzo Carty at 11:27 a.m. for suspicion of "invasion of privacy". The Claimant's personal items were searched and recorded. These were kept in the same room where he was being detained. However, his USB devices, laptop and two mobile phones were confiscated and taken out of the room from around 3:30 p.m. to 8:00 p.m. The Claimant was released from police custody at approximately 8:21 p.m. that evening.

[4] The cross-examination of the Claimant did not undermine any of his evidence in chief. The Claimant struck me as a witness to the truth and he answered the questions posed to him. There is no evidence before the court that the Claimant was in the vehicle with license plate number R1394 (the "Rented Vehicle") when it was allegedly seen by Mrs. Sharon Brantley. I accept his evidence that he does not know exactly where the neighborhood in which Mrs. Brantley lives, and that he

does not remember the color of the vehicle in which he drove on the day in question. The Claimant states that his name was spelt incorrectly on the rental agreement and that his signature was not on the rental agreement, and that the agreement is not in his handwriting. Surprisingly, where the signature section is located, there is what seems to me to be a tick.

[5] I also believe the Claimant when he stated that although he knew Mr. Antonio Wallace, that person was not his travelling companion during the day on 1 December 2017 but that they travelled in the evening together. I also believe the Claimant when he stated that he was not operating a drone in the Brown Hill area and that his political consultancy services do not include the use of drones.

The Evidence of Sharon Brantley

[6] Mrs. Brantley gave evidence that on 1 December 2017, she noticed a drone hovering over her head at her home. She went in her vehicle in pursuit of the drone and she claims that she came upon a suspicious vehicle with a license plate number R1394 which she believed was being driven by the drone operators. It was driven by a white man with a black man in the passenger seat. However, in her letter of complaint to Inspector Carty dated 2 December 2017, after recounting the details of what she saw, Mrs. Brantley stated that her further investigations revealed that the two men who were in the Rented Vehicle work for a group called Buzz Makers and that they are hired propagandists. In her letter of complaint, Mrs. Brantley stated that after googling the names of the team members of Buzz Makers, she found images of them and that two of the photos resemble the men who were seen in the Rented Vehicle. She names the men as the Claimant and Mr. Victor Richardson and she also attached their photos to her letter of complaint.

[7] During cross-examination Mrs. Brantley accepted that she did not see: (1) the direction in which the drone flew after she saw it; (2) exactly where the drone ended up; (3) the drone go into the Rented Vehicle ; (4) the occupants of the Rented Vehicle; (4) inside the Rented Vehicle; (5) the drone inside the Rented Vehicle ; and (6) the occupants of the Rented Vehicle with anything in their hands. She stated that she believed that the persons in the Rented Vehicle were the

operators of the drone merely because there was one exit in the area where she lived, and the Rented Vehicle was the only vehicle exiting the area at the time. She accepted that a drone can be controlled from a long distance away, that one does not need to be in a vehicle to control a drone and that one can be in an office or on the beach while controlling a drone.

[8] When asked by Counsel for the Claimant why she thought the Rented Vehicle was suspicious, apart from her statement that it was the only vehicle on the road at the material time, Mrs. Brantley replied that she did not think the Rented Vehicle was suspicious and it was the only vehicle in the area where the drone descended. She accepted that the only basis she had that the occupants of the Rented Vehicle were the operators of the drone was that it was the only vehicle on the public road at the time. Mrs. Brantley accepted that her belief was based on an assumption and that she did not know who was controlling the drone. She accepted that the occupants of the Rented Vehicle were travelling on the public road in a normal manner and her assumption was based solely on the fact that the Rented Vehicle was the only vehicle on the public road at the time.

Evidence of Inspector Carty

[9] Inspector Carty did not want to accept that there was no offence created by statute, or the common law, known as “invasion of privacy”. He merely replied he did some reading and later stated that, as far as he is aware, there is such an offence. I accept that there is no offence known as “invasion of privacy”. I do not believe the evidence of Inspector Carty. During his cross-examination, he smiled repeatedly before answering. I believe that Inspector Carty was knowingly telling falsehoods to the court. I do not believe his evidence. I accept that when Inspector Carty arrested the Claimant, he was not aware of the offence known as watching and besetting. I also find that Inspector Carty only later researched the matter to find a justification for his arrest of the Claimant. It is clear that the offence for which the Claimant was arrested was suspicion of “invasion of privacy” as is clearly stated on the Custody Record of the Royal St. Christopher and Nevis Police

Force. Inspector Carty nonetheless insists that this was the most appropriate charge or reason for the Claimant's arrest. I do not believe him.

[10] What is even more striking is that Inspector Carty was able to obtain a search warrant for Carino Development Apartment 7A where the Claimant allegedly stayed while in Nevis. The search warrant states that evidence on oath has been given by Inspector Carty that there is reasonable cause to believe that certain property to wit controlled drugs, firearms and ammunition and persons of interest in an investigation alleged to have been concealed is on certain premises to wit Carino Development Apartment 7A. The evidence on which this warrant was obtained was patently false, because Inspector Carty could have had no reasonable cause to believe that these items, namely, controlled drugs, firearms and ammunition, were at the place where the Claimant allegedly stayed while in Nevis. Inspector Carty accepted that the report made to him by Mrs. Brantley did not include drugs, but nonetheless stated that it was appropriate to have obtained the search warrant for that reason (as stated in the warrant) based on his investigations. When asked why by Counsel for the Claimant, Inspector Carty replied that it was based on his knowledge and information at that time. Inspector Carty provided false information to the Justice of the Peace to enable him to obtain the search warrant. Section 4(2) of the Perjury Act CAP 4:23 of the Revised Laws of Saint Christopher and Nevis provides that:

> (2) Where a statement made for the purpose of a judicial proceeding is not made before a tribunal or court, but is made on oath before a person authorised by law to administer an oath to the person who makes the statement, and to record or authenticate the statement, it shall, for the purposes of this section, be treated as having been made in a judicial proceeding.

[11] This matter needs to be investigated by the Director of Public Prosecutions to determine whether the actions of Inspector Carty contravene section 4(2) or any other section of the Perjury Act. In addition, this is a matter that must engage the attention of the Police Service Commission for investigation to determine whether Inspector Carty engaged in any misconduct.

[12] Inspector Carty could not show anything on the search warrant that could have assisted in respect of the investigation of the alleged offence of "invasion of privacy". He accepted that the search warrant assisted his investigation because it allowed him access to the room where the Claimant was allegedly staying while in Nevis. Inspector Carty continued, stating that the search warrant had relevance to the complaint made by Mrs. Brantley. I cannot imagine that Inspector Carty actually believed any of his replies to the questions posed to him by Counsel for the Claimant. He accepted that the report by Mrs. Brantley did not indicate that the: (1) Claimant was in control of the drone; (2) the Rented Vehicle had anything to do with the drone; and (3) Claimant had a drone or that she saw him with a remote for a drone. In his report dated 15 January 2018, Inspector Carty states that there was no evidence to link the alleged drone to the Rented Vehicle or to the Claimant.

[13] When Inspector Carty was asked by Counsel for the Claimant on what basis were the occupants of the Rented Vehicle driving on a public road suspects in respect of the drone, he replied that this was based on information he had during his investigation but that information never formed part of the report into the matter. Inspector Carty stated that *that* information was not part of his report and that *that* information was in his head. It was around this time that Inspector Carty started smiling repeatedly while giving evidence suggesting to the court that he did not actually believe the evidence he was giving on oath was the truth. At times during his cross-examination, the court wondered if Inspector Carty thought this was simply a joke.

[14] Inspector Carty accepted that when a watch alert is placed with the Immigration Department at the Airport the police officer must have had reasonable and credible information that the person had committed an offence. When asked by Counsel for the Claimant what other information he had that the Claimant was in control of the drone, apart from simply being told by Mrs. Brantley that he was one of the occupants of the Rented Vehicle driving on the public road, Inspector Carty merely replied that he had information; and that information suggested that the

Claimant was in fact in possession of a drone and operating the drone. He accepted that he did not record a statement from the person who gave him the information and that this information was again something else in his head. Inspector Carty could not remember exactly when he placed the watch alert with the Immigration Department at the Airport.

[15] Inspector Carty denied that the Claimant was under arrest when he was prevented by the immigration officials from going on the flight at the Airport. He stated that his instructions to the immigration officials in respect of the watch alert was that they should be on the lookout for the Claimant. When it was put to Inspector Carty by Counsel for the Claimant that he was not being honest with the court, and that his instruction to the immigration officials was to detain the Claimant until he arrived, Inspector Carty replied that this was in fact part of his instructions. Once again, Inspector Carty is being untruthful to the court.

[16] In relation to the Claimant's electronic devices, namely, his USB drives, laptop and mobile phones, Inspector Carty accepted that the non-electronic items were kept in the room where the Claimant could see them, but that the electronic devices were taken out of the room. He explained that the electronic devices were separated and taken out of the room because they were to be examined by the Cyber Crime Unit. However, Inspector Carty gave evidence that he did not have a warrant to search the Claimant's electronic devices because he did not follow through with it based on instructions given to him. He accepted that the Claimant was in police custody for nine (9) hours from approximately 11:27 a.m. to 8:21 p.m.

[17] When asked by Counsel for the Claimant whether it was his evidence that he received instructions not to proceed with the warrant to search the Claimant's electronic devices that could have facilitated his investigations, Inspector Carty replied that his instructions were to release the Claimant and hand over to the Claimant his personal items. He admitted that he received the instructions after 8:00 p.m. but when asked by Counsel for the Claimant what prevented him from obtaining the search warrant for the electronic devices during the period from

11:27 a.m. to 8:00 p.m., Inspector Carty replied that there are certain processes and that things take time. Inspector Carty accepted that it would have taken him only a few hours to obtain the search warrant for Carino Development Apartment 7A but insisted that nine (9) hours was insufficient time to obtain the search warrant for the electronic devices based on the investigation.

[18] Inspector Carty stated he was not aware that the Claimant was a consultant for the Nevis Reformation Party (the "NRP") but when he was shown the letter of complaint written to him by Mrs. Brantley, he replied that this was her information not his information. He stated that the fact that Mrs. Brantley was the wife of the then Deputy Premier of Nevis did not influence his decision to arrest the Claimant and that he did not receive any instructions to detain the Claimant before he started the investigation.

[19] Inspector Carty insisted that he told the Claimant that he was detained for the purpose of questioning and that detention is not the same as arrest. When asked by Counsel for the Claimant whether the Claimant was arrested or detained, Inspector Carty replied that the Claimant was not arrested but detained. However, he could not indicate where on the Custody Record it is stated that the Claimant was detained. Inspector Carty continued to insist that the Claimant was detained and not arrested even when Counsel for the Claimant pointed out to him the various places on the Custody Record that made reference to arrest, namely, the first column entitled "ARREST" which provides details in respect of: "reason for arrest", "where arrested"; "arrested by" and "time of arrest" and the second column entitled "ARRESTED PERSON" which is completed with information of the Claimant. Inspector Carty then stated that the Claimant was free to leave only if he asked.

[20] Counsel for the Claimant put it to Inspector Carty that he was not being honest with the court, and he replied yes, he is. I doubt that Inspector Carty actually believed that he was telling the truth. I believe that he was not being truthful in his evidence to the court and, based on the way he answered the questions and his

smiling repeatedly, it was clear that not only was he being untruthful to the court but that he was aware how obvious it was. I reject the evidence of Inspector Carty.

[21] Inspector Carty's evidence on cross-examination contradicts his evidence in chief in his witness statement. On many occasions in his witness statement he refers to the arrest of the Claimant: (1) "I got to know the Claimant … when I arrested him" …" (para [2]); (2) "… at the time of his arrest…" (para [2]); (3) "… I informed him that he was to be arrested on …" (para [2]); (4) "… which led to the arrest of the Claimant." …" (para [3]); (5) "… necessary to arrest the Claimant …" (para [8]); (6) "… items held by the Claimant at the time of his arrest in person." (para [10]); (7) "At the time of his arrest …" (para [13]); and (8) "… and subsequently arrested on …" (para [14]). However, Inspector Carty insisted on multiple occasions that the Claimant was not arrested but that he was merely detained and that he was free to leave if he asked. I do not believe the evidence of Inspector Carty.

[22] Section 4(1) of the Perjury Act provides that:

> (1) A person who, being lawfully sworn as a witness or as an interpreter in a judicial proceeding, wilfully makes a statement material in that proceeding, which he knows to be false or does not believe to be true, commits the offence of perjury and shall be liable to imprisonment for a term of not less than seven years and not more than ten years, or a fine of not less than EC$30,000.00 and not more than EC$50,000.00, or both.

[23] This is a civil trial and the Perjury Act contemplates that persons who make false statements in any judicial proceedings contravene section 4(1). The Director of Public Prosecutions must investigate this matter to determine whether Inspector Carty should be prosecuted for contravening section 4(1) or any other section of the Perjury Act. The administration of justice requires that witnesses tell the truth, particularly police officers whose job it is to maintain the peace and arrest those whom they reasonably suspect have committed crimes.

Whether there was Reasonable Suspicion for the Claimant's Arrest

[24] The power granted to police officers in terms of arrest and detention of persons is derived from section 6(1)(a) of the Police Act CAP 19:07 of the Revised Laws of Saint Christopher and Nevis which provides that a police officer may, without a

warrant, arrest a person he or she reasonably suspects of having committed an offence. Section 7 provides as follows:

> 7. Every Police Officer to be a constable.
>
> A police officer shall have all such rights, powers, authorities, privileges and immunities and be liable to such duties and responsibilities, as any constable duly appointed has or is subject to either at common law or by virtue of any enactment.

[25] A police officer exercising the power of arrest must do so in accordance with section 6(1)(a) of the Police Act. The police officer must first have reasonable suspicion, and this must relate to the commission by a person of an offence. In Dallison v Caffery [1964] 3 WLR 385, a very strong Court of Appeal of England and Wales, comprising Lord Denning M.R., Danckwerts and Diplock L.J.J., stated (at p. 398) that:

> A constable , however, has a greater power. When a constable has taken into custody a person reasonably suspected of felony, he can do what is reasonable to investigate the matter, and to see whether the suspicions are supported or not by further evidence. He can, for instance, take the person suspected to his own house to see whether any of the stolen property is there; else it may be removed and valuable evidence lost. He can take the person suspected to the place where he says he was working, for there he may find persons to confirm or refute his alibi. The constable can put him up on an identification parade to see if he is picked out by the witnesses. So long as such measures are taken reasonably, they are an important adjunct to the administration of justice.

[26] While I accept that the Court of Appeal is there stating that a constable can do many things that are reasonable to investigate a matter, this can occur only where the "constable has taken into custody a person reasonably suspected of felony". Context is everything. And, this is exactly what is required by section 6(1)(a) of the Police Act. In Hussien v Chong Fook Kam [1970] A.C. 942, the Privy Council stated (at p. 947) that:

> An arrest occurs when a police officer states in terms that he is arresting or when he uses force to restrain the individual concerned. It occurs also when by words or conduct he makes it clear that he will, if necessary, use force to prevent the individual from going where he may want to go. It does not occur when he stops an individual to make inquiries.

[27] In Holgate-Mohammed v Duke [1984] AC 437, the House of Lords made it clear that it was not concerned with rights of arrest at common law for it was not disputed that an arrestable offence had been committed. In that case, the House of Lords had to consider section 2(4) of the Criminal Law Act 1967 which is in similar terms to section 6(1)(a) of the Police Act. The House of Lords noted that, first, an arrest is a continuing act; it starts with the arrester taking a person into his custody, (by action or words restraining him from moving anywhere beyond the arrester's control), and it continues until the person so restrained is either released from custody or, having been brought before a magistrate, is remanded in custody by the magistrate's judicial act. Second, the mere act of taking a person into custody does not constitute an "arrest" unless that person knows, either at the time when he is first taken into custody or as soon thereafter as it is reasonably practicable to inform him, upon what charge or on suspicion of what crime he is being arrested.

[28] It is correct that section 6(1)(a) of the Police Act states that a police officer may, without a warrant, arrest a person he or she reasonably suspects of having committed an offence. The use of the word "may" indicates that the police officer has a discretion. In Duke, this was termed an "executive discretion" as to whether to make the arrest or not. The House of Lords stated (at p. 443) that:

> … Since this is an executive discretion expressly conferred by statute upon a public officer, the constable making the arrest, the lawfulness of the way in which he has exercised it in a particular case cannot be questioned in any court of law except upon those principles laid down by Lord Greene M.R. in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223, that have become too familiar to call for repetitious citation.

[29] Wednesbury unreasonableness provides that a court will not interfere with a public authority's exercise of a discretion given to it unless the authority: (a) exercised the discretion mala fides; (b) disregarded relevant considerations in coming to its decision; (c) took irrelevant considerations into account when coming to its decision, or (d) came to a decision that no reasonable authority in its position could possibly come to. No doubt that Wednesbury unreasonableness

was, at the time, the main if not the only standard of review in respect of executive discretion recognized by the common law. Times have, however, changed. This court has accepted that proportionality is now a recognized ground on which executive discretion may be reviewed: Wesk Limited v Saint Christopher Air and Sea Ports Authority (Claim No. SKBHCV 2017/0241 dated 15 January 2018) at [21]. Even using Wednesbury unreasonableness as the standard of review, the arresting police officer must exercise the executive discretion in good faith and not take into account irrelevant considerations. In Duke, the House of Lords referred to the decision of the Privy Council in Chong Fook Kam where the Privy Council stated (at p. 948) that:

> Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: 'I suspect but I cannot prove.' Suspicion arises at or near the starting-point of an investigation of which the obtaining of prima facie proof is the end. When such proof has been obtained, the police case is complete; it is ready for trial and passes on to its next stage …

[30] I have no doubt that this statement correctly describes what the word "suspicion" means but it is misleading to believe that this alone is the test to be applied. Section 6(1)(a) of the Police Act states that a police officer may, without a warrant, arrest a person he or she reasonably suspects. The suspicion described in Chong Fook Kam must be one based on reasonable grounds. This was emphasized by the Privy Council when it stated (at pp. 948-949) that:

> The test of reasonable suspicion prescribed by the Code is one that has existed in the common law for many years. The law is thus stated in Bullen and Leake, 3rd ed. (1868), p. 795, the "golden" edition of (1868):
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> > "A constable is justified in arresting a person without a warrant, upon a reasonable suspicion of a felony having been committed and of the person being guilty of it."
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> Their Lordships have not found any English authority in which reasonable suspicion has been equated with prima facie proof. In Dumbell v. Roberts [1944] 1 All E.R. 326, Scott L.J. said, at p. 329:
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> > "The protection of the public is safeguarded by the requirement, alike of the common law and, so far as I know, of all statutes, that the constable shall before arresting satisfy himself that there do in fact exist reasonable grounds for suspicion of guilt. That

> requirement is very limited. The police are not called upon before acting to have anything like a prima facie case for conviction; …"
>
> There is another distinction between reasonable suspicion and prima facie proof. Prima facie proof consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all. There is a discussion about the relevance of previous convictions in the judgment of Lord Wright in McArdle v. Egan (1934) 150 L.T. 412. Suspicion can take into account also matters which, though admissible, could not form part of a prima facie case.

[31] There must exist reasonable grounds for the suspicion of the police officer before an arrest can lawfully be made. In **Browne v Attorney General of Saint Christopher and Nevis** (Claim No. SKBHCV 2018/0108 dated 5 April 2019), the court stated that:

> [6]. In **Glasgow v Attorney General of Saint Christopher and Nevis** (Claim No. SKBHCV2016/0115 dated 25 March 2019), the following legal principles were distilled from the explanation of the law found in **Davis v Attorney General of Saint Christopher and Nevis** (SKBHCV 2013/0220 dated 30 June 2014) and applied by this court in **Browne v Attorney General of Saint Christopher and Nevis** (Claim No. SKBHCV2016/0074 dated 19 November 2018). First, the police have the right to detain and or arrest anyone upon reasonable and probable cause that the person has committed or is about to commit an offence. Second, the test of whether there is reasonable and probable cause is both subjective and objective, namely, 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. Third, reasonable suspicion can be founded on either admissible or inadmissible evidence that must be shown to have actually existed and was reasonable in the circumstances. Fourth, when it comes to the basis for the preferment of a criminal charge, it must be made clear that no criminal charge can be laid against anyone unless the police ground their suspicion that the person has committed that offence on admissible evidence. Fifth, where the police intend to detain a person without charge for the full 72 hours, some evidence must be presented to justify why the full 72 hours had to be employed.

[32] In **Williamson v Attorney General of Trinidad and Tobago** (2014) 85 WIR 452, the Privy Council, when considering section 3(4) of the Criminal Law Act, CAP 10:04, of the Laws of Trinidad and Tobago, which is in similar terms to section 6(1)(a) of the Police Act, stated (at [19]) that "[t]here is no statutory power to detain

solely for the purpose of questioning" and that "[i]t is, of course, the position that there is no power to 'detain for questioning'." The Privy Council continued that:

> [20] It is clear that, however Constable Caldeira chose to describe it, Mr Williamson's detention and his being taken into custody amounted to an arrest. The plain fact of the matter is that Mr Williamson was detained and was under compulsion to come to the police station and he knew the reasons that this was required of him. That was, as Mr Beharrylal accepted, sufficient to constitute a valid arrest. As Viscount Simon put it in Christie v Leachinsky [1947] 1 All ER 567 at 573, [1947] AC 573 at 587–588:
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> > 'The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained† … a person is† … required to submit to restraint on his freedom if he knows in substance the reason why it is claimed that this restraint should be imposed.'
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> [21] The respondent did not accept that the Court of Appeal was right to conclude that the laying of the 'wrong' charge deprived the prosecuting officer of reasonable and probable cause to prosecute. It submitted that, in any event, it was beyond argument that the reasonableness of an officer's suspicion at the time of arrest cannot be undermined by some defect in the charges eventually laid against the suspect. The Board accepts this submission, which was not challenged on behalf of Mr Williamson. In Christie v Leachinsky [1947] 1 All ER 567 at 575, [1947] AC 573 at 593 Lord Simonds said:
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> > '… it is not an essential condition of lawful arrest that the constable should at the time of arrest formulate any charge at all, much less the charge which may ultimately be found in the indictment …'

[33] To constitute a lawful arrest, the arrested person must be informed of the nature of the charge. It is not necessary for this to be communicated formally if circumstances are such that the arrested person must know the general nature of the alleged offence for which he or she is detained: Christie v Leachinsky [1947] AC 573. In Christie, the House of Lords stated (at pp. 586-587) that:

> The above citations, and others which are referred to by my noble and learned friend, Lord du Parcq, seem to me to establish the following propositions. (1.) If a policeman arrests without warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of

> the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words a citizen is entitled to know on what charge or on suspicion of what crime he is seized. (2.) If the citizen is not so informed but is nevertheless seized, the policeman, apart from certain exceptions, is liable for false imprisonment. (3.) The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained. (4.) The requirement that he should be so informed does not mean that technical or precise language need be used. The matter is a matter of substance, and turns on the elementary proposition that in this country a person is, prima facie, entitled to his freedom and is only required to submit to restraints on his freedom if he knows in substance the reason why it is claimed that this restraint should be imposed (5.) The person arrested cannot complain that he has not been supplied with the above information as and when he should be if he himself produces the situation which makes it practically impossible to inform him, e.g., by immediate counterattack or by running away. There may well be other exceptions to the general rule in addition to those I have indicated, and the above propositions are not intended to constitute a formal or complete code, but to indicate the general principles of our law on a very, important matter …

[34] In Murray v Ministry of Defence [1988] 1 WLR 692, the House of Lords stated that:

> The question remains, however, whether the failure to tell the plaintiff that she was being arrested until the soldiers were about to leave the house renders the arrest unlawful. It has been well-settled law, at least since Christie v. Leachinsky [1947] A.C. 573, that a person must be informed of the reason for his arrest at or within a reasonable time of the arrest. There can be no doubt that in ordinary circumstances, the police should tell a person the reason for his arrest at the time they make the arrest. If a person's liberty is being restrained, he is entitled to know the reason. If the police fail to inform him, the arrest will be held to be unlawful, with the consequence that if the police are assaulted as the suspect resists arrest, he commits no offence, and if he is taken into custody, he will have an action for wrongful imprisonment. However, it is made plain in the speeches in Christie v. Leachinsky that there are exceptions to this general rule.

[35] The Claimant was detained at the Airport at approximately 8:35 a.m. on 4 December 2017. As stated earlier, the police have no statutory power to detain a person solely for the purpose of questioning them. Inspector Carty gave evidence that he placed a watch alert with the immigration officials with instructions to detain

the Claimant until he arrived from Nevis. The Claimant gave evidence that he was detained at the Airport and was informed that he could not leave the country and was taken to a waiting area to wait to be questioned by an Inspector who was to arrive from Nevis and who was making his way to question him. The Claimant was transferred by police officers to the Basseterre Police Station hours later and was questioned by Inspector Carty at approximately 10:30 a.m. The Custody Record indicates that the Claimant was arrested at 11:27 a.m. In so far as the Claimant was detained for the purpose of questioning by Inspector Carty, that detention was unlawful.

[36] Counsel for the Defendants conceded that the arrest of the Claimant took effect from the time of his detention at 8:35 a.m. However, was it a lawful arrest? This would mean that Inspector Carty would have needed to have reasonable suspicion that the Claimant had committed an offence at the time of the Claimant's arrest. Counsel for the Defendants was plainly correct to make that concession. The imprisonment of the Claimant took effect from 8:35 a.m., not at the time of his later formal arrest by Inspector Carty at 11:27 a.m. One can be imprisoned when one's right to liberty is restrained and an arrest is coterminous with imprisonment. However, there is no need for a formal arrest for a person to be falsely imprisoned. An arrest can occur when by words or conduct it is made clear that the person is not at liberty to go where he wishes to go. I have no doubt that the Claimant's detention and arrest were not lawful because the Claimant was not in ordinary circumstances informed of the true ground of arrest. I have no doubt that the Claimant was arrested from approximately 8:35 a.m. when he was detained by the immigration officers. Consequently, the detention and arrest of the Claimant from 8:35 a.m. to 11:27 a.m. were unlawful.

[37] It is necessary to repeat that section 6(1)(a) of the Police Act states that a police officer may, without a warrant, arrest a person he or she reasonably suspects of having committed an offence. The Claimant gave evidence that he was informed by Inspector Carty that he was under arrest for suspicion of "invasion of privacy". This was not denied by Inspector Carty who gave evidence that at the time of the

Claimant's arrest he informed the Claimant that he was arrested on suspicion of "invasion of privacy". However, section 6(1)(a) of the Police Act requires the police officer to have reasonable suspicion at the time of arrest that the arrested person had committed an offence. There is no dispute that there is no statutory or common law offence called "invasion of privacy". Inspector Carty insisted during cross examination that this was an offence, but I do not accept that he actually believed any of those responses he gave. I accept fully the learning in Christie v Leachinsky that it is not an essential condition of a lawful arrest that the police officer should at the time of arrest formulate any charge at all, much less the charge which may ultimately be found in the indictment. However, what is important and critical is that the arresting officer must have reasonable suspicion that an offence had been committed. How could Inspector Carty have had reasonable suspicion that an offence was committed by the Claimant when the "offence" to which that reasonable suspicion related does not exist in law? While I accept that a police officer can arrest on reasonable suspicion that a particular crime had taken place but can later charge the arrested person with a related crime, this is not the same thing as having reasonable suspicion of a non-existent offence, and later proffering an actual offence in the charge.

[38] If this is accepted, a police officer can arrest any person for an offence that does not actually exist in law, or even on a whim, and later justify that arrest on the basis that the actions of the arrested person were such that they would have amounted to other offences of which the police officer was not aware at the time of the arrest but about which he subsequently had the time to research. Section 6(1)(a) of the Police Act states that the reasonable suspicion must relate to "an offence". If the reasonable suspicion does not relate to "an offence", I fail to see how an arrest in those circumstances can be justified. Moreover, the section does not say that the powers of arrest can be made on reasonable suspicion that the arrested person had "done such acts of which the police officer is not now aware is an offence may later amount to an offence after the police officer has done his or her research to determine what offence those acts may cover". The power granted to a police officer can only properly be exercised if, at the time of arrest, the

arresting officer had reasonable suspicion that the person had committed an offence known to law. It does not apply where there is reasonable suspicion that: (1) the person had committed an alleged offence unknown to law; and (2) the person had done acts for which the officer is not aware is an offence, but his or her research later reveals to be an offence. An arresting officer must familiarize himself or herself with the criminal laws of Saint Christopher and Nevis. It is unacceptable and unlawful for a police officer to arrest a person on reasonable suspicion that they had done something contrary to a law that does not exist. One may even question where any reasonable suspicion would reside if the offence does not actually exist. It is a contradiction in terms. Inspector Carty did not have any reasonable suspicion or an honest belief that an offence was committed by the Claimant because he merely parroted what Mrs. Brantley states in her letter of complaint to him. In the letter of complaint of Mrs. Brantley dated 2 December 2017 addressed specifically to Inspector Carty, she mentioned that the drone was a "bold invasion of her privacy" and that it was "a gross invasion of [her] privacy". It beggars belief that Inspector Carty would fail properly to investigate whether an offence had actually been committed by the Claimant and would simply blindly mirror an alleged non-existent offence of "invasion of privacy" mentioned twice in Mrs. Brantley's letter of complaint.

[39] The decision of Bass v Williams and the Attorney General of St. Kitts and Nevis (Claim No. SKBHCV2010/0312 dated 17 October 2012) confirms that there must be a legal basis for the arrest for it to be lawful. In Bass, the Defendants stated that the claimant was lawfully arrested for obstruction of the free flow of traffic and for failing to obey the lawful direction of a police officer contrary to the Vehicles and Road Traffic Regulations, and that she was not falsely imprisoned. Section 78(2) of the Vehicles and Road Traffic Act, CAP 15:06 of the Revised Laws of Saint Christopher and Nevis states that:

> A police officer may apprehend without warrant any person who commits an offence under the regulations within his view, if such a person refuses to give his name and address or gives a name and address which a member of the Police Force has reasonable grounds for believing is false.

[40] The trial judge held that:

> 37. Therefore, in terms of the arrest the power under section 78 (2) is only exercisable in the circumstances where the person to be arrested gives a false address or there is a suspicion by a police officer that the name and address are false. In this connection the uncontradicted evidence is that after the Claimant was ordered to drive his vehicle to the Basseterre Police Stationed accompanied by two armed police officers he was asked his name and address and he complied. There is no evidence that the information given was false. This was confirmed by the 1st Defendant under cross examination that the Claimant did give his name and address. Even after this was done the Claimant was placed in a cell.
>
> 38. Reliance on the case of Christie v Leachinsky that the person to be arrested must be told of the offence cannot assist the Defendant as there was no legal authority contained in section 78(2) of the Act to arrest the Claimant.
>
> 40. As noted before, the only basis upon which a police officer could arrest is where the person to be arrested refuses to give his name and address or there is reasonable suspicion that the information given is false.
>
> 41. The Court therefore agrees with the submissions on behalf of the Claimant that the exercise of power by the 1st Defendant was unlawful.

[41] It is a condition precedent to a police officer's power lawfully to arrest a person without warrant pursuant to section 6(1)(a) of the Police Act that he or she should have reasonable cause to suspect that person to be guilty of committing an offence in respect of which the arrest is being made. The cases have made it clear that whether the police officer had reasonable cause is a question of fact for the court to determine. After outlining in her letter of complaint to Inspector Carty what happened on 1 December 2017, Mrs. Brantley continued that her further investigations revealed that the two men who were in the Rented Vehicle work for a group called Buzz Makers and that they are hired propagandists. In her letter of complaint, Mrs. Brantley stated that after googling the names of the team members of Buzz Makers, she found images of them and that two of the photos resemble the men who she allegedly saw in the Rented Vehicle. She names the men as the Claimant and Mr. Victor Richardson and she also attached their photos to her letter of complaint.

[42] Mrs. Brantley informs Inspector Carty that she hopes that the police will do something about this and that she does not wish to be harassed in her home. She continues that she will not tolerate the gross invasion of her privacy simply because an election is imminent. She concludes that any footage from the drone will be a security breach and she implores Inspector Carty that she trusts that it will be seriously dealt with as such. I share the concerns of Mrs. Brantley. She did the correct thing in making the report. However, the police must ensure that notwithstanding the identity of the maker of the report that they carry out their investigations and use any powers granted to them by the Police Act in a neutral way. The matter should be investigated with no less or no more vigor than a complaint made by someone living in Conaree.

[43] It seems clear that Inspector Carty based his "reasonable suspicion" that the Claimant had committed the non-existent offence of "invasion of privacy" solely on the letter of complaint of Mrs. Brantley. In her evidence at trial, Mrs. Brantley did not identify the Claimant as resembling one of the persons she allegedly saw in the Rented Vehicle as she recounted in the letter of complaint to Inspector Carty. She only stated that the Rented Vehicle was driven by a white man with a black man as a passenger. However, in her report to Inspector Carty, Mrs. Brantley stated that two of the photos she found of the Claimant and Mr. Victor Richardson resembled the men she allegedly saw in the Rented Vehicle. During cross-examination, Mrs. Brantley stated that she did not see the occupants of the Rented Vehicle. I do not believe that Mrs. Brantley saw the Claimant in the Rented Vehicle as this was not her evidence at trial. It is more likely than not that Mrs. Brantley was not telling the truth to Inspector Carty when she reported that the two of the photos she found of the Claimant and another resembled the men she allegedly saw in the Rented Vehicle as she stated in her letter of complaint to Inspector Carty. I believe her evidence at trial that she did not see who the occupants of the Rented Vehicle were except that one was black and the other was white. In addition, Inspector Carty in his report dated 15 January 2018 states that further investigations revealed that the "black man" who accompanied the Claimant was Mr. Stephenson Antonio Bernard Wallace. No evidence was

adduced at trial to show how Mr. Wallace was identified as being the second occupant of the Rented Vehicle although Mrs. Brantley in her letter of complaint identified the second person as Mr. Victor Richardson. I do not believe that either Mrs. Brantley or Inspector Carty knew who the occupants of the Rented Vehicle were at the material time. Mrs. Brantley states categorically in evidence at trial that she could not tell who the two occupants of the Rented Vehicle were. However, she deliberately and without equivocation states in her report to Inspector Carty that the Claimant was one of the two occupants of the Rented Vehicle. Since Mrs. Brantley was unable to identify the occupants of the Rented Vehicle at the material time, I fail to see by which method or means Inspector Carty was able to determine that Mr. Wallace was the other person who accompanied the Claimant and who presumably was the second occupant of the Rented Vehicle.

[44] Inspector Carty gave evidence of the rental agreement on which was stated the name of the Claimant, but which was not signed by the Claimant. A search warrant was conducted at the premises of Mervin Powell of "Mervin's Car Rentals" on 3 December 2017. The search warrant states that evidence on oath has been given by Inspector Carty that there is reasonable cause to believe that certain property to wit controlled drugs, firearms and ammunition alleged to have been concealed is on certain premises to wit Mervin Powell of Prospect. Likewise, in respect of the search of Carino Development Apartment 7A, I find that the evidence on which this warrant was obtained was patently false, because Inspector Carty could have had no reasonable cause to believe that these items, namely, controlled drugs, firearms and ammunition, were at the place from which the Rented Vehicle was allegedly rented. Once again, Inspector Carty is providing false information on oath to a Justice of the Peace to enable him to obtain a search warrant. This is unlawful and must be condemned as such. This too should be investigated by the Director of Public Prosecution to determine if by that act Inspector Carty acted contrary to section 4(2) or any other section of the Perjury Act. This must also be investigated by the Police Service Commission to determine whether the actions of Inspector Carty amount to misconduct.

[45] The Claimant gave evidence that he could not remember if he rented the Rented Vehicle. The rental agreement is not signed, and there is no other evidence that Inspector Carty had at the time of the Claimant's arrest that the Claimant actually rented the Rented Vehicle. This is important and it was overlooked by Inspector Carty. The Claimant also stated during cross-examination that he is not familiar with the areas in Nevis so he could not tell if he was in the Brown Hill area. This answer was not unreasonable for someone who is not familiar with the country. There was no evidence on which Inspector Carty could have had reasonable suspicion that an offence had been committed by the Claimant, putting aside the argument that "invasion of privacy" is not a crime known to the laws of Saint Christopher and Nevis. Neither in his witness statement nor in his report of the incident at the of home of Mrs. Brantley dated 15 January 2018, did Inspector Carty provide any evidence that he interviewed Mrs. Brantley. This is surprising since it was a complaint made by her to Inspector Carty in respect of "invasion of privacy", which is not an offence known to law, but investigated as an offence by Inspector Carty. What is even more concerning is that there is nothing in the evidence of Inspector Carty where he mentioned what steps if any were taken to apprehend, detain or arrest Mr. Victor Richardson. It will be remembered that Mrs. Brantley named Mr. Victor Richardson in her report to Inspector Carty as the second occupant of the Rented Vehicle, presumably the "black man" who Mrs. Brantley stated in evidence was allegedly in the passenger seat. Mrs. Brantley would have named Mr. Richardson as a result of her "further investigations".

[46] Thus far, the search of the Rented Vehicle resulted in nothing being found as Inspector Carty stated in his report dated 15 January 2018. Additionally, Inspector Carty found nothing from his search of Carino Development Apartment 7A, the place where the Claimant allegedly stayed while in Nevis. The only evidence that Inspector Carty had at the time of the Claimant's detention and arrest were the statement of Mrs. Brantley and the unsigned rental agreement in respect of the Rented Vehicle. The statement of Mr. Mervin Powell is dated 31 January 2018 so it could not form the basis of any reasonable suspicion by Inspector Carty that the Claimant had committed an offence. Inspector Carty states in evidence that the

police had not discovered a drone in the possession of the Claimant at the time of his arrest. In his statement dated 15 January 2018, Inspector Carty states that there was no evidence to link the alleged drone to the Rented Vehicle or to the Claimant. I agree with the statement in Dumbell v Roberts [1944] 1 All E.R. 326, quoted above in Chong Fook Kam, that the requirement for the constable before arresting a person to satisfy himself that reasonable grounds do in fact exist for suspicion of guilt is for the protection of the public. That protection will be eroded if a police officer can arrest a person on the basis of little or no evidence or in respect of an offence that does not exist.

[47] Moreover, Inspector Carty has not provided any evidence to explain why it was necessary to arrest the Claimant. He merely states in evidence that it was necessary to arrest the Claimant to facilitate investigations and that, as part of that investigation, it was necessary to determine if the Claimant was in possession of an automated drone, pictures and or video footage of Mrs. Brantley's house. Inspector Carty does not explain what steps if any he took to apprehend the Claimant before the watch alert was placed with the Immigration Department at the Airport. In addition, Inspector Carty, apart from stating that he requested the Cyber Crime Unit to prepare an application for a production order, does not provide any evidence of the steps if any that he took to expedite the process for obtaining the search warrant in relation to the Claimant's electronic devices. All he states is that just after 8:00 p.m. he received instructions from his superiors to release the Claimant and hand over to the Claimant his luggage and electronic devices. Inspector Carty has, therefore, failed to adduce evidence to show that inquiries continued throughout the period between the Claimant's arrest and detention at approximately 11:27 a.m. to approximately 8:21 p.m. when he was released from police custody. The arresting officer must show that the arrest was necessary to facilitate the investigation. In this case, Inspector Carty has failed to do so, and this too is another reason why the initial arrest and continued detention of the Claimant were unlawful.

[48] There is no question that a police officer is not called upon before arresting a person to have a prima facie case for conviction. That is not the requirement found in section 6(1)(a) of the Police Act. I note that the Privy Council in Chong Fook Kam stated that suspicion can take into account matters that could not be put in evidence at all. However, this must be qualified because to be reasonable that suspicion must be objectively verifiable. One cannot assess if the police officer in question had reasonable grounds for his suspicion that a person had committed an offence if the police officer does not put in evidence all of the bases on which he held that suspicion. During cross-examination, Inspector Carty stated repeatedly that he had information that suggested that the Claimant was in fact in possession of a drone and operating the drone. However, Inspector Carty failed to provide the source or nature of the information he had. Inspector Carty merely accepts that the information was in his head. He did not inform the court of any lawful basis why he could not provide the information in his witness statement or to the court during cross-examination. The court got the distinct impression that Inspect Carty was attempting to cover up his unlawful arrest of the Claimant or that he was protecting someone or something else. Based on the evidence Inspector Carty had at the time of the Claimant's arrest, including his failure to interview Mrs. Brantley, the court finds that Inspector Carty had no reasonable basis or honest belief to suspect the Claimant of having committed an offence.

Political Independence of Police Officers

[49] Inspector Carty was asked by Counsel for the Claimant whether the identity of the complainant, Mrs. Brantley, the wife of the then Deputy Premier of Nevis, influenced his decision to arrest the Claimant; he replied no. I do not believe this evidence. It is more likely than not that the identity of Mrs. Brantley played a critical, if not decisive, role in the decision by Inspector Carty to detain and arrest the Claimant. Inspector Carty did not interview Mrs. Brantley, the person who made the complaint directly to him. The reason for the Claimant's arrest was based solely on the statement of Mrs. Brantley that the Claimant invaded her privacy, which is not an offence known to law. Inspector Carty then invented an

offence based on the statements made in Mrs. Brantley's letter of complaint that the occupants of the Rented Vehicle invaded her privacy with the use of the drone over her home. I have no hesitation in concluding that Inspector Carty acted unreasonably in the Wednesbury sense when he arrested the Claimant for suspicion of "invasion of privacy". Inspector Carty took irrelevant considerations into account when he made the decision to arrest the Claimant, namely, the identity of the complainant and by his use of the alleged offence found in Mrs. Brantley's letter of complaint to him as the justification for the Claimant's arrest.

[50] In her letter of complaint to Inspector Carty, Mrs. Brantley stated that the two men she saw in the Rented Vehicle are hired political propogandists. She also stated that she was told that the two men were doing video recordings for an NRP advertisement. The NRP is a political party in Nevis. During cross-examination, the Claimant accepted that he was a political consultant, that he operated out of a company called Buzz Makers and that when he travelled to Nevis on 29 November 2017, he was aware that there was a pending election in Nevis. The Claimant accepted that his company had a contract with the NRP. The Claimant did not deny he was a political consultant, that he stayed at an apartment sourced by the NRP or that he drove around with politicians and others when he was in Nevis. None of these everyday activities are offences.

[51] The Claimant was questioned by Counsel for the Defendants in respect of his affiliation with the NRP. The Claimant is a political consultant and I accept his evidence that his political consultancy services do not include the use of drones. Inspector Carty's evidence in chief did not mention the NRP. On cross-examination, he denied any knowledge that the Claimant was a political consultant for the NRP, stating that the information found in Mrs. Brantley's statement was her information not his. Inspector Carty denied that this was the basis on which he started the investigation into the alleged offence of "invasion of privacy". Inspector Carty insisted that reading the information about the link between the Claimant and the NRP in Mrs. Brantley's letter of complaint did not make him aware of it. I fail to see the logic in Inspector Carty's response. I am compelled to state yet

again that Inspector Carty is being untruthful to the court. I find that he was aware of the link between the Claimant and the NRP, and no doubt he was also aware that Mrs. Brantley was the wife the then Deputy Premier of Nevis. The link between the sighting of the drone and the impending elections in Nevis was made pellucid by Mrs. Brantley when she stated in her letter of complaint to Inspector Carty that she will not tolerate the gross invasion of her privacy simply because an election in Nevis was imminent.

[52] The evasiveness of Inspector Carty's responses to questions during cross-examination, the manner in which he responded, the smiles he repeatedly gave when answering questions, his demeanor, and his overall evidence leads me to the conclusion that Inspector Carty was hiding something. The decisive cross-examination by Counsel for the Claimant laid bare the evidence of Inspector Carty so much so that most if not all of his evidence in chief is not to be believed, as I have earlier found. It is more likely than not that Inspector Carty was influenced either directly or indirectly by the fact that the Claimant was a political consultant to the NRP. If so, it raises serious questions concerning the proper role of police officers and their relationship with the executive.

[53] In R v Police Commissioner of The Metropolis, Ex parte Blackburn [1968] 1 All ER 763, Lord Denning M. R. stated (at p. 769) that:

> 4. The duty of the Commissioner of Police:
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> The office of Commissioner of Police within the metropolis dates back to 1829 when Sir Robert Peel introduced his disciplined Force. The commissioner was a justice of the peace specially appointed to administer the police force in the metropolis. His constitutional status has never been defined either by statute or by the courts. It was considered by the Royal Commission on the Police in their report in 1962 (Cmnd 1728). I have no hesitation, however, in holding that, like every constable in the land, he should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State, save that under the Police Act 1964 the Secretary of State can call on him to give a report, or to retire in the interests of efficiency. I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or no suspected persons are to be prosecuted; and, if need be,

> bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone. That appears sufficiently from Fisher v Oldham Corpn, the Privy Council case of A-G for New South Wales v Perpetual Trustee Co (Ltd).

[54] I distill the following principles from that paragraph: (1) a police officer is independent of the executive; (2) it is the duty of a police officer to enforce the law of the land; (3) in operational matters a police officer is not the servant of anyone except of the law itself; (4) no member of the executive can give directions to a police officer as to how he or she might carry out their duties; (5) the responsibility for law enforcement is that of the police; and (6) a police officer is answerable to the law and the law alone. This decision of Lord Denning M.R. in Ex parte Blackburn was applied by the Privy Council in Antigua Power Company Ltd v Attorney General of Antigua and Barbuda and others (2013) 84 WIR 284 where it stated as follows:

> [52] As explained above, the basic complaint against the Prime Minister is that he should not have instructed the Commissioner or any other member of the police force to carry out a specific policing operation. As Lord Denning MR said in R v Comr of Police of the Metropolis v Blackburn [1968] 1 All ER 763 at 769, it was 'the duty of the Com-missioner of Police, as it is of every chief constable, to enforce the law of the land'. Having given examples of what could be done 'that honest citizens may go about their affairs in peace', he said:
>
> > '... but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone.'
>
> [53] This view was repeated in the more recent decision of the Court of Appeal in R v Secretary of State for the Home Department, ex p Northumbria Police Authority [1988] 1 All ER 556 at 560, where it was described as 'common ground' (between highly experienced counsel) that '[t]he chief constable has complete operational control of his force' and that '[n]either the police authority nor the Home Secretary may give him any directions about that'.

[55] These decisions make it clear that the Commissioner of Police of the Royal Saint Christopher and Nevis Police Force has complete operational control of the Police Force and no member of the executive of the Federal Government can give him or her any directions concerning that. It necessarily follows that they may not give directions to any member of the Royal Saint Christopher and Nevis Police Force, irrespective of rank, to carry out any specific policing operation. The neutrality of the public service particularly the Police Force is important to safeguard the rights and freedoms of persons in society. The Police Act makes it clear that the Police Force is solely responsible for the prevention and detection of crime, and the maintenance of law and order. Section 10(1) of the Police Act states that the Chief of Police shall have the command and superintendence of the Police Force and shall be responsible to the Minister [for National Security] for the efficient management, administration and good government of the Police Force. To be responsible to the Minister for National Security does not in any way suggest that the Chief of Police must act in accordance with any instruction(s) given to him by the Minister for National Security concerning operational matters. What is clear to me is that the Police Force in carrying out its duties under section 5 of the Police Act and any police officer acting pursuant to any power under section 6 of the Police Act may not do so under the direction or instructions of the Minister for National Security or any member of the executive.

[56] Based on these authorities, if Inspector Carty acted on the instructions or directions of any member of the executive of the Nevis Island Administration in detaining the Claimant from 8:35 a.m. to 8:21 p.m. on 4 December 2017 this too would be a basis on which to hold that his arrest of the Claimant was unlawful: Camacho & Sons Ltd v Collector of Customs (1971) 18 WIR 159. These actions of Inspector Carty fell far short of what is expected of an officer of the rank of Inspector in the Royal Saint Christopher Police Force. It is unacceptable and must be condemned in the strongest of terms.

Whether there was a Search and Seizure of the Claimant's Property

[57] In relation to the search of the Claimant's property the decision of the Court of Appeal of England and Wales in Middleweek v Chief Constable of Merseyside [1990] 3 All ER 662, [1990] 3 WLR 481 is instructive. The Court of Appeal stated (at p. 189) that:

> … If the legality is challenged, it is for the police to establish that the search and the way in which it was carried out were justified in the circumstances of the particular case. To quote again the final sentence of the paragraph relied upon from Lindley v. Rutter, "In every case a police officer ordering a search or depriving a prisoner of property should have a very good reason for doing so." If the officer fails to establish that he had such a good reason, the search, even though carried out in accordance with standing instructions, would be unlawful. Whether the search was so justified is, however, a matter to be determined by the court before whom the issue is raised. The fact that at the time of the search the police officer was simply acting in accordance with general instructions does not, of itself, render the search unlawful.

[58] The Claimant gave evidence that his bags were searched twice, and the contents recorded. While the Claimant's bags were in his line of sight, his USB devices, laptop and two mobile phones were removed from the room where he was being held. The Claimant states that he was informed by Inspector Carty that he had a warrant to search all data on his laptop and mobile phones but that no warrant was ever produced or read to him. The evidence of Inspector Carty is that it is the practice of the Royal Saint Christopher Police Force to determine what items any arrested person is carrying to determine what is safe for the arrested person to keep and what must be kept in custody for return on his or her release. The property of the Claimant was then itemized, and a list created. Inspector Carty stated that the Claimant's electronic devise were separated but were not searched. I do not believe the evidence of Inspector Carty.

[59] I note with grave concern that the Claimant's electronic devices were taken away from him at approximately 2:30 p.m. and not returned to him until 8:00 p.m. that evening. The return of the Claimant's electronic devices coincided with the instructions Inspector Carty allegedly received at around 8:00 p.m. to release the Claimant from police custody. There was no reason why the Claimant's electronic devices had to be removed from the room where the Claimant was being kept

along with his other property. Inspector Carty gave evidence at trial that the Claimant's electronic devices were separated and taken out of the room because they were to be examined by the Cyber Crime Unit. I fail to see why it was necessary to remove the electronic devices from the room. Inspector Carty did not produce any warrant for their search as he told the Claimant. Inspector Carty gave evidence that the Claimant's electronic devices were returned to him at approximately 8:00 p.m. after he received instructions from his superiors to release the Claimant and to return his personal items to him. Inspector Carty could provide no reason properly to explain why the police seized and removed the Claimant's electronic devices from the room and kept them somewhere else for over five (5) hours. Consequently, I infer that Inspector Carty had no good reason for seizing and removing the Claimant's electronic devices: Padfield v Minister of Agriculture, Fisheries and Food [1968] A.C. 997. I also find that it is more likely than not that Inspector Carty carried out a search without a warrant on the Claimant's electronic devices.

[60] Since Inspector Carty did not have reasonable suspicion or an honest belief that the Claimant had committed an offence as I have earlier found, it follows that the search of the Claimant's property was unlawful. It was unlawful for Inspector Carty to remove the Claimant's electronic devices from the room where the Claimant could not see them without good reason. I accept the Claimant's evidence that Inspector Carty told him that he had a warrant to search the Claimant's electronic devices when he (Inspector Carty) knew that the Cyber Crime Unit had not yet received a search order. Inspector Carty accepts that he received the search warrant for the Carino Development Apartment 7A within a few hours but failed during cross examination to explain why he could not obtain a search warrant in respect of the electronic devices during the nine (9) hours when the Claimant was detained in police custody following his arrest. The search carried out by Inspector Carty on the Claimant's electronic devices was unlawful.

Is the Claimant entitled to Damages?

[61] The Claimant seeks damages for false imprisonment and unlawful arrest, and damages for unlawful search of the Claimant's luggage and his data stored on his cellular phone and laptop. The Claimant also seeks damages for the unlawful seizure of his electronic devices; special damages, aggravated damages and exemplary damages. In Davis v Attorney General of Saint Christopher and Nevis (SKBHCV 2013/0220 dated 30 June 2014), Ramdhani J. (Ag.) examined various decisions in respect of damages payable for false imprisonment including Raymond Warrington and Karl Peters v Cleville Mills and the Attorney General of Dominica (Claim No DOMHCV2006/0038 dated 2008) where, in 2008, the court awarded Raymond Warrington $20,000.00 for false imprisonment for six hours and $25,000.000 to Cleville Mills for false imprisonment for 9 hours; and the sum of $10,000.00 to each defendant for aggravated and exemplary damages. In Bass, the court in this jurisdiction awarded the Claimant the sum of $30,000.00 for false imprisonment in respect of her detention for seven hours and forty-five minutes by the Defendants at the Basseterre Police Station and $10,000.00 for aggravated damages. In Chance et al v Croft et al (Claim No. ANUHCV2015/0635 dated 24 July 2017) the court in 2017 awarded the Claimants the sum of $50,000.00 each for false imprisonment for 57.5 hours. I believe this amount to be too low.

[62] In Elihu Rhymer v Commissioner of Police and Arthur James Jeremiah Clarke VG 1999 CA 2, [1999] ECSC J0125-2, the Court of Appeal dismissed an appeal against the award by the trial judge of $20,000.00 for false imprisonment for three (3) hours. That was in 1999, approximately 21 years ago. I have no doubt that in the circumstances of this case an award of $75,000.00 for the false imprisonment of the Claimant seems reasonable.

[63] The Claimant did not provide any evidence in respect of his claim for special damages. Special damages must be specifically pleaded and proved. However, the court may award nominal damages. I award $2,000.00 as nominal damages under this head. I also award $13,000.00 for the search and seizure of the Claimant's property.

[64] In Millette v McNicolls (2000) 60 WIR 362, Chief Justice de la Bastide stated (at p. 367) that:

> There is no doubt, that there must be an element of initial shock when a person is first arrested and imprisoned. This is an element which must be taken into account and compensated for in any assessment of damages for wrongful arrest and false imprisonment, regardless of whether the imprisonment is long or short. The extent of the compensation for this will depend on the particular facts of the case. Certainly, the way in which the arrest and initial imprisonment are effected, the publicity which attends them, the affront to the dignity of the person, all of these factors determine the size of the element in the award that is referable to that. It has nothing whatever to do with the length of the subsequent imprisonment.

[65] The Claimant gave evidence that prior to his arrest and detention he had never been in trouble with the law and was not a person known to the law and that he had never been arrested, charged, detained or otherwise involved in a criminal matter. He also stated that his arrest and detention was reported by several media houses throughout the region and widely on social media especially Facebook. He continued that this had significantly affected his future work prospects in the region. I accept the damage may also be aggravated by reason of the good character and reputation of the claimant. No doubt the Claimant's good character and reputation have been negatively affected by his arrest and detention by Inspector Carty. I award the sum of $25,000.00 for aggravated damages.

[66] Lord Devlin in Rookes v Barnard [1964] AC 1129 stated (at p. 1223) that:

> These authorities clearly justify the use of the exemplary principle; and for my part I should not wish, even if I felt at liberty to do so, to diminish its use in this type of case where it serves a valuable purpose in restraining the arbitrary and outrageous use of executive power.

[67] After his comprehensive examination of the authorities, Lord Devlin stated further (at pp. 1225-1226) that:

> These authorities convince me of two things. First, that your Lordships could not, without a complete disregard of precedent, and indeed of statute, now arrive at a determination that refused altogether to recognise the exemplary principle. Secondly, that there are certain categories of cases in which an award of exemplary damages can serve a useful purpose in vindicating the strength of the law and thus affording a practical justification for admitting into the civil law a principle which ought logically

> to belong to the criminal. I propose to state what these two categories are; and I propose also to state three general considerations which, in my opinion, should always be borne in mind when awards of exemplary damages are being made. I am well aware that what I am about to say will, if accepted, impose limits not hitherto expressed on such awards and that there is powerful though not compelling, authority for allowing them a wider range. I shall not, therefore, conclude what I have to say on the general principles of law without returning to the authorities and making it clear to what extent I have rejected the guidance they may be said to afford.
>
> The first category is oppressive, arbitrary or unconstitutional action by the servants of the government. I should not extend this category—I say this with particular reference to the facts of this case—to oppressive action by private corporations or individuals. Where one man is more powerful than another, it is inevitable that he will try to use his power to gain his ends; and if his power is much greater than the other's, he might, perhaps, be said to be using it oppressively. If he uses his power illegally, he must of course pay for his illegality in the ordinary way; but he is not to be punished simply because he is the more powerful. In the case of the government it is different, for the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. . .

[68] I have no doubt that the unlawful exercise by Inspector Carty of the common law and statutory power of arrest in section 6(1)(a) of the Police Act falls within the category of oppressive, arbitrary or unconstitutional action by the servants of the government. The purpose of exemplary or punitive damages is expressed by Lord Devlin in Rookes v Barnard (at p. 1228) as follows:

> In a case in which exemplary damages are appropriate, a jury should be directed that if, but only if, the sum which they have in mind to award as compensation (which may, of course, be a sum aggravated by the way in which the defendant has behaved to the plaintiff) is inadequate to punish him for his outrageous conduct, to mark their disapproval of such conduct and to deter him from repeating it, then it can award some larger sum.

[69] The right to personal liberty is not only a right recognized and protected by the common law in an action for false imprisonment, it is also a fundamental right recognized and protected by section 5 of the Constitution of Saint Christopher and Nevis. In addition, section 9 of the Constitution protects persons from arbitrary search or entry. While the claim is grounded in the common law, the actions of Inspector Carty offend against these fundamental rights and freedoms. The court

must protect the personal liberty of individuals and mark its disapproval of such conduct and deter police officers from engaging in it by awarding a sum for exemplary damages. This case is one of a blatant abuse of the power of arrest by Inspector Carty. In all the circumstances, I award the Claimant the sum of $45,000.00 as exemplary damages.

Conclusion

[70] The Claimant's arrest and detention for the period from 8:30 a.m. to 11:27 a.m. on 4 December 2017 were unlawful because: (1) the Claimant was not informed of the reason for his arrest at the time of his detention and arrest; and (2) the police have no statutory power to detain a person solely for the purpose of questioning them. The Claimant's arrest and detention for the period from 11:27 a.m. to 8:21 p.m. on 4 December 2017 were unlawful because: (1) there is no offence known to law called "invasion of privacy" for the purposes of an "offence" in section 6(1)(a) of the Police Act or the common law; (2) Inspector Carty did not have an honest belief or reasonable suspicion that the Claimant had committed an offence; (3) there was no evidence on which a reasonable third person would suspect that the Claimant had committed an offence; and (4) Inspector Carty took irrelevant considerations into account when he made the decision to arrest the Claimant. The search and seizure of the Claimant's property were also unlawful because there was no lawful basis for his detention and arrest.

[71] There is no doubt that Inspector Carty was acting in the course of his duty as a police officer of the rank of Inspector in relation to his actions above. The Crown, represented by the Attorney General, is therefore vicariously liable for his actions.

Disposition

[72] For the reasons explained above, I make the following orders:

(1) The arrest and detention of the Claimant by the First Defendant were unlawful and constituted false imprisonment.
(2) The search and seizure of the Claimant's property by the First Defendant were unlawful.

(3) The Crown, represented by the Second Defendant, is vicariously liable for the actions of the First Defendant.

(4) Nominal damages in the sum of $2,000.00 to be paid to the Claimant.

(5) Damages in the sum of $75,000.00 for false imprisonment and wrongful arrest to be paid to the Claimant.

(6) Damages in the sum of $13,000.00 for the unlawful search and seizure of the Claimant's property to be paid to the Claimant.

(7) Aggravated damages in the sum of $25,000.000 to be paid to the Claimant.

(8) Exemplary damages in the sum of $45,000.00 to be paid to the Claimant.

(9) The sums payable to the Claimant under paragraphs (4) to (8) shall be paid by the Second Defendant to the Claimant within 14 days of today's date.

(10) The Claimant is entitled to interest at a rate of 5% per annum on the total sum of $160,000.00 from the date of judgment until final payment.

(11) Prescribed costs to the Claimant pursuant to CPR 65.5 to be paid by the Defendant within 14 days of today's date.

Eddy D. Ventose
High Court Judge

By the Court

Registrar