

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2010-00108

BETWEEN

CHARLTON DOVER

CLAIMANT

And

THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO

DEFENDANT

Before the Honourable Madame Justice C. Pemberton

Appearances:

For the Claimant: Mr. S. Roopnarine instructed by Ms. S. Sandy

For the Defendant: Fr. E. Pierre and Ms K. Daniel instructed by Ms. P. Cross

JUDGMENT

[1] **FACTS**

Mr. Charlton Dover (CD), the Claimant in this matter, was arrested on August 29, 2008 and taken to Princes Town Police Station. He was charged with Armed Robbery and appeared in the Princes Town Magistrates' Court to answer to that charge¹. CD remained in police custody until September 2, 2008. On January 12, 2010 CD caused an action for false imprisonment and malicious prosecution to be filed against The Attorney General of Trinidad and Tobago (the AG), the Defendant in this matter.

¹ Notes of Evidence. Case No. 3460/08. Pg. 1. Sept. 2, 2008.

[2] **STATEMENT OF CASE**

CD claims that on August 29, 2010 he was “wrongfully arrested” and his premises were searched without his permission. He claims that the police officers did not produce a warrant which would have authorized them to conduct a search on his premises.² CD claims that on August 30, 2008 he was transported to Marabella Police Station where he remained until September 1, 2008.³ He was then taken to an identification parade “*where he was not identified by anyone as having committed a crime*”⁴. On September 2, 2008 CD appeared in the Magistrates Court where he was informed that he was charged with Armed Robbery.⁵ On June 2, 2009, the matter presiding Magistrate dismissed the matter⁶.

[3] Consequently, CD claims that the AG through his agents and/or servants, the arresting officer lacked reasonable and probable cause or acted with malice towards him. He claims that the police officers:

- (a) *Failed to properly investigate the matter.*
- (b) *Failed to take any written Statement from the Claimant and/or to investigate the Claimant’s denial of...any wrong doing done by the Claimant.*
- (c) *Simply imprisoned the Claimant and then sought to find evidence to implicate the Claimant with an offence to justify the arrest.*
- (d) *Charged the Claimant with an offence even though he was not pointed out in an identification parade.*
- (e) *Charged the [C]laimant knowing or ought reasonably to have known that there was no[t] sufficient evidence as would justify a prosecution.*

² Statement of Case, filed Jan 12, 2010. Para. 4.

³ Id. at para. 6.

⁴ Id.

⁵ Id. at para. 7.

⁶ Id. at para. 8.

- (f) ... who charged the Claimant admitted to the Claimant that he did not know why the Claimant was being charged since there was no evidence to charge the Claimant.⁷

[4] As such, CD claims against the AG:

- (a) Damages including aggravated and/or exemplary and/or punitive and/or vindictory damages, for wrongful arrest and false imprisonment from Friday the 29th August, 2008 to 9:00 a.m. Tuesday the 2nd September, 2008 at Princes Town.
- (b) Damages including aggravated and/or exemplary and/or punitive and/or vindictory damages, for trespass to his premises at Matilda, Princes Town on Friday 29th August, 2008.
- (c) Damages including aggravated and/or exemplary and/or punitive and/or vindictory damages for malicious prosecution.
- (d) Interest at the rate of 12% per annum from 29th August, 2008.
- (e) Such further and/or other reliefs.
- (f) Costs.⁸

[5] **DEFENCE**

On September 29, 2010, the AG filed its Amended Defence in the matter. The AG claims that the police officers involved in the matter, Police Constable Joel Richardson and Police Constable Manohar, received a report of an Armed Robbery during which Ramesh Sookdeo was deprived of \$40,000.00. Upon investigation, Mr. Derron Alleyne, a suspect in the robbery informed them that CD was an accomplice to the crime.⁹ The AG noted that PC Richardson and PC Manohar received additional information regarding the whereabouts of CD and subsequently went in search of him.¹⁰ Upon locating CD, the officers informed him of the investigation and that he was a suspect. The AG stated:

⁷ Id.

⁸ Claim Form, filed on Jan. 12, 2010.

⁹ Amended Defence, filed on Sep. 29, 2010. Para. 4(b)

¹⁰ Id. at paras. 4(c) – (d).

The Claimant replied at this point something to the effect “officer Devon check me to go on that scene longtime and he bring back two Chaguanas men to do the work, we will try to pay back Persad’s the money.”¹¹

CD was then arrested. The AG claims that a search warrant for CD’s premises was secured, shown and read to CD at the police station.¹² He was then taken to his residence for the search to be conducted. The AG also claims that CD was informed of the offence he was being charged with “*prior to being taken to the Princes Town Magistrates’ Court by PC Richardson*”¹³.

[6] The AG maintains that PC Richardson and PC Manohar “*had reasonable and probable cause to lay the charges against the Claimant*”¹⁴. The AG put forth the following justification in the particulars of reasonable and probable cause:

- a. ...
- b. *After the search of the Claimant’s premises he was interviewed some time after by PC Richardson in connection with the robbery.*
- c. *The Claimant informed PC Richardson that Devon/Derron Alleyne had set up the robbery together with the Claimant; that Derron was an employee of Persad’s Superstore. The Claimant indicated that he was waiting at La Paix Road in a vehicle, with two other men from Chaguanas. When Ramesh Sookdeo was entering the vehicle, which Derron Alleyne was going to drive, the men from Chaguanas jumped out of the car and held up Ramesh Sookdeo with a firearm. Ramesh Sookdeo had a pouch around his waist and the men grabbed it and ran back to the car and the Claimant drove off.*

¹¹ Id. at para. 4(f).

¹² Id. at para. 4(i).

¹³ Id. at para. 7.

¹⁴ Id. at para. 9.

- d. *PC Richardson requested a statement from the Claimant, however the Claimant refused to provide one.*
- e. *After the Identification Parade was conducted and the Claimant was returned to the Station PC Richardson formerly charged the Claimant with the offence of robbery with aggravation and informed him of his constitutional rights and privileges.¹⁵*

[7] The AG also denied that PC Richardson told CD that there was no evidence against him and he did not know why he was being charged.¹⁶ The AG noted that the matter in the Magistrates' Court was "*dismissed for the non-appearance of the virtual complainant, Ramesh Sookdeo*" and the matter could not proceed without his evidence.¹⁷

[8] As such, the main issue to be determined by the Court is; was there sufficient evidence to demonstrate that the Defendant possessed reasonable and probable cause in the arrest and subsequent detention of the Claimant?

[9] **CLAIMANT'S REPLY TO THE DEFENCE**

CD denies that he has any knowledge of the occurrences and statements referred to by PC Richardson where he is alleged to have confessed to being involved in the robbery, and "*repeats the facts as stated in his Statement of Case*".¹⁸

[10] **ISSUES**

The following issues have been identified in CD's claim for damages against the AG:

- I. Was the arrest and false imprisonment of CD wrongful?
- II. Did the search of CD's residence amount to a trespass?
- III. Was the prosecution of CD malicious?

¹⁵ Id. at paras. 9(a) – (e).

¹⁶ Id. at para. 9(f).

¹⁷ Id. at para 9(g).

¹⁸ Claimant's Reply to the Defendant's Amended Defence, filed on Oct 28, 2010. Paras. 2-3.

[11] **EVIDENCE**

CLAIMANT'S EVIDENCE

CHARLTON DOVER'S WITNESS STATEMENT

In his witness statement CD stated that Mr. Rufus Teesdale (RT) and himself were parked at a business place along Phillipine road, San Fernando, when they were approached by a marked police vehicle and instructed to "get on the ground"¹⁹. CD stated,

*They told me I was being investigated for robbery. I indicated to the police officers that I knew nothing about any robbery. Some of the officers began to shout at me saying 'you playing stupid. You know why we arresting you.'*²⁰

CD claimed that after the officers searched the car and found nothing, they handcuffed him and RT and placed them in the back of an unmarked police vehicle. CD was then informed that they were being taken to his home.²¹ CD stated that he made no attempts to escape or resist arrest throughout the interaction with the police officers.²²

[12] CD informed the Court through his statement that when they arrived at the Princes Town Police Station, RT was taken into the police station first. He stated that "approximately 10-15 minutes" later, upon asking what was taking place; he was informed that there were going to his residence.²³ CD stated that he was never shown a warrant for the search which was conducted at his residence.²⁴ CD stated that he observed,

*[O]ne of the officers by the name of Manohar searching my room. He removed something from one of my photo albums and placed it in his pocket. I was not aware as to what to what he put in his pocket.*²⁵

¹⁹ Witness Statement of Charlton Dover. Filed on Sep. 19, 2011. Paras. 2-3.

²⁰ Id. At para. 5.

²¹ Id. At para. 6.

²² Id. At para. 7.

²³ Id. At para. 9.

²⁴ Id. At para. 10.

²⁵ Id. At para. 11.

CD noted that the experience “was very embarrassing and humiliating” for him, as it occurred in full view of his neighbours and his sister in law.²⁶

[13] CD noted that nothing was recovered in the search of his residence²⁷. He was then taken back to the Princes Town Police Station where he was kept in a cell with two other persons.²⁸ CD was later questioned by PC Manohar regarding the robbery at Persad’s.²⁹ CD revealed the following interaction;

14. *P.C. Manohar asked me why I brought two “fellas” from Chaguanas to do the robbery. I told him I didn’t know what he was talking about. He then asked me why I called Derron Alleyne, I told him I called him because I know he had a truck. I needed him to move some scrap metal from a garage in St. Julien to my home the following day. I also indicated to the officer that Derron had done jobs like this for me in the past. The officer never asked me the name of the garage owner or any contact information for him.*

15. *P.C. Manohar tried to get me to sign a statement saying I was involved in a robbery. When I refused to sign the statement the officer said that if I don’t sign it he was going to plant marijuana, guns and ammunition in my house and bring down my whole family. I still refused to sign and said I know I was innocent. I told the officer I was at the wake of Mr. Linton of 6th Company, New Grant.³⁰*

CD stated that he remained at Princes Town Police Station until “about 6:00p.m. on Saturday evening” when he was transported to Marabella Police Station.³¹ CD described

²⁶ Id. At para. 12

²⁷ Id. At para. 13.

²⁸ Id.

²⁹ Id.

³⁰ Id. At paras. 14-15.

³¹ Id. At para. 16.

the conditions of the cell in the Marabella Police Station where he was put as “dirty, smelled horrible and filled with cockroaches”³². He also stated that he could not eat and the cell contained rotting food and no beds, so he “put newspaper on the floor to sleep on the cold concrete floor”.³³

- [14] CD stated that he remained at the Marabella Police Station from Saturday night until Tuesday morning³⁴. He noted that he was not allowed to see his family members, but was informed on Tuesday morning that a family member could be present at the ID parade which was scheduled for Tuesday morning.³⁵ CD noted that his family was unable to attend because the officers were unable to contact them. CD stated,

*During the course of the Identification parade I heard over the speaker system that the victim said he did not see the person who robbed him. After the Identification Parade was complete, I was taken back to the cell. I asked the police officers if I could go home. The police officers said no. I couldn't understand [why] even after the Identification Parade where the alleged victim failed to point me out, why I was still being detained.*³⁶

CD was then taken back to the Princes Town Police Station, and attended Magistrate Court the following day.³⁷ CD stated that the first time he heard the offence he was being charged with was at the Magistrate's Court.³⁸ CD was remanded into police custody until September 12, 2008, when he received bail³⁹. The matter was dismissed on 2nd June, 2009.⁴⁰

³² Id.

³³ Id.

³⁴ Id. At para. 17.

³⁵ Id.

³⁶ Id. At para. 19.

³⁷ Id. At para. 20.

³⁸ Id. At para. 21.

³⁹ Id. At paras. 21-22.

⁴⁰ Id. At para. 23.

[15] **CROSS EXAMINATION OF CHARLTON DOVER**

During cross examination, CD confirmed the particulars he stated in his witness statement. Attorney-at-Law for the AG, Father Pierre, enquired of CD if he was informed that he was suspect in a robbery, and CD stated that he was told by the officers that *he knew what he had done*⁴¹. He also claimed that he was not informed of his rights, nor was he cautioned by any of the officers.⁴² Additionally, CD denied ever making the statement, “*Officer, Devon check me to go on that scene long time and ah bring two Chaguanas men to do the work, we will try to pay back Persad’s the money*”⁴³. Father Pierre enquired of CD if he signed the Station diary, to which CD responded that he did not sign anything.⁴⁴ Father Pierre proceeded to show CD the signature on the Station diary. CD claimed that the signature belonged to him, but the handwriting did not belong to him.⁴⁵ On re-examination CD stated that he signed no documents while in police custody.⁴⁶ CD was questioned as to what the officers were doing while RT was inside the police station and he waited outside. He stated, “*some took Rufus Teesdale and took him into the station. I don’t know what the balance of them were doing.*”⁴⁷ CD confirmed that he was being guarded at this point in time.⁴⁸

[16] When Father Pierre questioned CD as to why he did not bring his sister in law as a witness he stated that she was currently out of the jurisdiction.⁴⁹ CD noted that it was impossible that PC Richardson showed and read the search warrant to him as stated by Father Pierre, as PC Richardson was not in the police station, but guarding him in the vehicle in the back of the police station.⁵⁰

⁴¹ Cross examination of Charlton Dover. Apr. 24, 2012.

⁴² Id.

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Re-examination of Charlton Dover. Apr. 24, 2012.

⁴⁷ Cross examination of Charlton Dover.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id.

[17] During the cross examination CD stated that PC Manohar removed a picture of CD and his girlfriend and placed it in his pocket.⁵¹ CD noted that upon returning to the police station, PC Manohar “kicked [him] out of the cell”⁵² and proceeded to question him about Derron Alleyne. He also stated that PC Manohar attempted to get him to sign a statement by stating that “Derron gone home and I just have to sign and I’ll go home.”⁵³ CD noted that PC Manohar threatened him if he did not sign the statement. Additionally, CD denied ever being interviewed by PC Richardson, and also denied confessing to the robbery of Ramesh Sookdeo. CD denied waiting at La Paix Road with two men from Chaguanas and jumping out of the vehicle to rob Ramesh Sookdeo.⁵⁴

[18] **RUFUS TEESDALE’S WITNESS STATEMENT**

RT stated that on the 29th of August, 2008, while in the company of CD outside Mr. Ravi’s business place, they were surrounded by three unmarked police vehicles.⁵⁵ He noted that they were ordered to “put [their] hands up in the air and get on the ground”.⁵⁶ RT stated that he heard CD enquire as to why he was being arrested. He recalled,

*They told him that he was being investigated for a robbery. I heard Charlton say to the police officers that he knew nothing about any robbery. I hear some of the officers shouting at him saying ‘You playing stupid. You know why we arresting you’.*⁵⁷

RT also stated that the officers searched the vehicle but found nothing, and then proceeded to handcuff CD and himself and place them in the back of a police vehicle.⁵⁸ RT stated that they both complained “that the handcuffs were too tight and our hands were beginning to swell”⁵⁹ but nothing was done to address this.

⁵¹ Id.

⁵² Id.

⁵³ Id.

⁵⁴ Id.

⁵⁵ Witness Statement of Rufus Teesdale. Filed Sept. 20, 2011. Para. 1-2.

⁵⁶ Id.

⁵⁷ Id. At para. 3.

⁵⁸ Id. At para. 4.

⁵⁹ Id. At para. 5.

[19] RT stated that on the way to the police station he “heard one of the officers speaking on the telephone to someone and indicated that they had Charlton and myself for that person to prepare a warrant”⁶⁰. RT related that upon arrival at the Princes Town police station, he was taken into the station while CD remained in the police vehicle.⁶¹ RT stated that he was not charged with any offence and was released after approximately two hours.⁶² He additionally stated that he does not know why CD and himself were arrested and we never given a reason for the arrest by the police.⁶³

[20] **CROSS EXAMINATION OF RUFUS TEESDALE**

RT did not appear in Court on the day of the Trial and the Claimant opted to proceed without him. As such, his evidence was untested through cross examination, so I will attach no weight to his evidence.

[21] **DEFENDANT’S EVIDENCE**

Documents Filed By the Defendant

On 17th December 2012, the AG filed the following documents into evidence:

1. *Copy of Station diary Extract from Princes Town Police Station for August 29, 2008 and September 1, 2008.*
2. *Copy of Station diary Extract from the Princes Town Police Station Occurrence Diary for August 29, 2008.*
3. *Copy of Extract from the Identification Parade Register of the Marabella Police Station for August 30, 2008.*
4. *Copy of Station diary Extract from the Marabella Police Station for August 30, 2008 and September 1, 2008.*
5. *Certified Copy of the Notes of Evidence and proceedings taken in the matter of Joel Richardson Police Constable #14538 versus Charlton Dover and Derron Alleyne which was heard and determined before His*

⁶⁰ Id. At para. 6.

⁶¹ Id. At para. 7.

⁶² Id.

⁶³ Id. At para. 8.

*Worship Mr. R. Roopchand at the Princes Town Magistrate's Court on June 2, 2008.*⁶⁴

[22] **WENDELL MANOHAR'S WITNESS STATEMENT**

PC Manohar informed the Court that on 29th August 2008 he was detailed to assist PC Richardson to investigate the robbery of \$40,000.00 from Ramesh Sookdeo, Derron Alleyne and Patrick Joseph.⁶⁵ PC Manohar stated,

*PC Richardson and I interviewed Derron Alleyne, however in the course of the interview Derron Alleyne gave us information that he and the Claimant had planned the robbery. He said words to the effect that 'long time he (the Claimant) wanted me to put him on spot but I only putting him on scene till last night. I tell him I going to pick up Source in Cedar Hill and long time he want we do the work.'*⁶⁶

PC Manohar confirmed that Derron Alleyne signed this statement in the presence of himself and PC Richardson.⁶⁷ PC Manohar also informed the Court that he knew that "Source" is the same person known as Ramesh Sookdeo, as he had "know Ramesh Sookdeo for about 8 years".⁶⁸

[23] PC Manohar recalled that the information which was provided to them by Derron Alleyne led them to Hermitage Village in search of the Claimant. PC Manohar stated,

1. *...We were parked facing north and Hermitage Road was in front of us. Whilst we were parked in the side road, from where we had a clear view of Hermitage Road, I observed the vehicle PCB 9539 proceeding east on Hermitage Road. I saw the Claimant driving the*

⁶⁴ Defendant's List of Documents. Schedule 1. Part 1.

⁶⁵ Witness Statement of Wendell Manohar. Filed on Mar. 24, 2011. Para. 4.

⁶⁶ Id. At para. 5.

⁶⁷ Id.

⁶⁸ Id. at para. 6.

vehicle PCB 9539. I was able to recognize the Claimant as I had had interacted with him previously in the course of my duties...

10. ...

11. On approaching the vehicle PCB 9539, I observed that there was a male passenger in the front seat, who I later learnt to be Rufus Teesdale. The other officers and I identified ourselves to the Claimant and Mr. Teesdale by means of our Trinidad and Tobago Police Service Identification Cards. PC Richardson informed the Claimant of the report made by Ramesh Sookdeo, informed him that he was suspect in the robbery and cautioned the Claimant. I heard the Claimant reply something to the effect "officer, Devon check me to go on that scene longtime and ah bring two Chaguanas men to do the work, we will try to pay back Persad's the money".⁶⁹

[24] PC Manohar informed the Court that upon arresting CD, PC Richardson informed him of his constitutional rights and privileges.⁷⁰ He noted that he informed RT of the possibility of an outstanding warrant for his arrest and proceeded to inform him of his constitutional rights and privileges.⁷¹ Both CD and RT were handcuffed, placed in the back of a police vehicle and transported to the police station.⁷² PC Manohar noted that he made the entry of the arrest in the Station diary and both himself and PC Richardson signed the diary in the presence of CD.⁷³

[25] PC Manohar informed the Court that he, together with three other officers, executed a search warrant on CD's residence "to search for arms and ammunition"⁷⁴. PC Manohar stated,

⁶⁹ Id. at paras. 9-11.

⁷⁰ Id. at para. 12.

⁷¹ Id.

⁷² Id.

⁷³ Id. At para. 13.

⁷⁴ Id. At para. 14.

14. ...Prior to searching the Claimant's house, PC Richardson showed the warrant to the Claimant and read it to him in my presence and the presence of the other officers. I also read the search warrant prior to searching the Claimant's house.
15. The Claimant indicated that he lived on the ground floor of a two-storey house and removed a key from under the mat at the front door to the ground floor and opened the door. I together with PC Richardson and another officer searched the ground floor of the house in the Claimant's presence and the other officers remained outside. However, mentioned in the warrant and nothing illegal was found.⁷⁵

PC Manohar noted that after the search of CD's residence, they took him back to the station and placed him in a cell.⁷⁶ PC Manohar denied removing any items from CD's photo album and placing it in his pocket.⁷⁷

[26] An identification parade was scheduled for 1st September, 2008, however, CD was not identified by the victim in this parade.⁷⁸ PC Manohar informed the Court,

*I never told the Claimant that I did not know why he was being charged; neither did I tell him that there was no evidence to charge him.*⁷⁹

Additionally, PC Manohar claimed that at no point in time during his interaction with CD did he question him, ask him about the robbery or speak to him regarding Derron Alleyne⁸⁰. PC Manohar also denied that he threatened CD and his family in an attempt to get him to sign a statement.⁸¹ He stated,

⁷⁵ Id. At paras. 14-15.

⁷⁶ Id. At para. 16.

⁷⁷ Supplemental Witness Statement of Wendell Manohar. Filed on Oct. 18, 2011. Para. 4.

⁷⁸ Witness Statement of Wendell Manohar. Para. 17.

⁷⁹ Id. At para. 18.

⁸⁰ Supplemental Witness Statement of Wendell Manohar. Paras. 6-8.

⁸¹ Id. At para. 9.

8. *I never questioned the Claimant about the robbery or asked him why he brought two fellas from Chaguanas to do the robbery as the Claimant alleges in Paragraph 14 of his witness statement filed on the 12th April, 2011. The Claimant never told me that he called Derron Alleyne because he knew that Derron Alleyne had a truck. The Claimant never told me that he needed Derron Alleyne to move some scrap metal from a garage in St. Julien Village to his home or that Derron Alleyne had done things like that for him in the past.*
9. *At no point in time did I try to get the Claimant to sign a statement saying that he was involved in a robbery. I never attempted to get the Claimant to sign any statement at all. I absolutely did not tell the Claimant, at any time whatsoever, that I would plant marijuana, guns and ammunition in his house and bring down his family.⁸²*

PC Manohar also noted that CD never informed him that on the night of the robbery he was attending the wake of Mr. Linton of 6th Company, New Grant.⁸³

[27] **CROSS EXAMINATION OF WENDELL MANOHAR**

Attorney-at-Law for the Claimant, Mr. Roopnarine, cross-examined PC Manohar as to the occurrences on the morning of CD's arrest. PC Manohar stated that only 4 officers and 1 police vehicle were present when CD and RT were arrested and that they did not have their guns drawn when they approached the vehicle and made the arrest.⁸⁴ Mr. Roopnarine highlighted the fact that CD, who was the driver of the vehicle at the time, did not attempt to flee, but instead stopped and complied with the requests of the officers.⁸⁵ PC Manohar confirmed that CD and RT were not violent or hostile while the car was being searched. He noted that they were placed in handcuffs due to the fact that they were

⁸² Id. At paras. 8-9.

⁸³ Id. At para. 10.

⁸⁴ Cross Examination of Wendell Manohar. Apr. 24, 2012.

⁸⁵ Id.

being conveyed and there was only one officer in the back of the vehicle with them⁸⁶. When questioned regarding notes in his pocket diary, PC Manohar informed the Court that he did not have a pocket diary because he was not issued one due to a shortage of pocket dairies in the police service. He did not recall if PC Richardson had a pocket diary or if he made any entries into a pocket diary.⁸⁷

[28] PC Manohar stated that during the arrest, he was in close proximity to CD and PC Richardson and overheard CD telling PC Richardson that *“he brought two men from Chaguanas and would give back Ramesh Sookdeo some money”*⁸⁸. PC Manohar stated that he did not see any entry in the station diary regarding the search warrant but he did see the actual search warrant.⁸⁹ PC Manohar informed the Court that after the search of CD’s residence was executed and they returned to the police station, his interaction with CD ceased.⁹⁰ PC Manohar admitted that on Friday afternoon, after returning from the search of CD’s residence, he did not interrogate CD at all.⁹¹ He stated that he did not see CD again until he took him to the Marabella Police Station for the Identification Parade.⁹²

[29] **JOEL RICHARDSON’S WITNESS STATEMENT**

PC Richardson informed the Court that on 29th August, 2008, Ramesh Sookdeo, Derron Alleyne and Patrick Joseph, employees of Persad’s Superstore, reported that they were robbed at gun point of \$40,000.00 in cash.⁹³ He noted that while both he and PC Manohar interviewed Ramesh Sookdeo and Derron Alleyne,

Based on the questions asked and the responses given, it became clear that Derron Alleyne was involved in the robbery and now a suspect in the robbery. As a result, I arrested the said Derron Alleyne; I cautioned him and told him he was a suspect in the robbery. In the course of the

⁸⁶ Id.

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Id.

⁹¹ Id.

⁹² Id.

⁹³ Witness Statement of Joel Richardson. Filed on Sep. 28, 2011. Para. 4.

*interview Derron Alleyne told PC Manohar and me that the Claimant herein was his accomplice in the robbery. He said something to the effect that 'long time he (Sheldon) wanted to put him on spot but I only putting him on scene until last night. I tell him I going to pick up Source in Cedar Hill and long time he want we to do the work.'*⁹⁴

PC Richardson pointed out that *"the Claimant's name it sounded to me like 'Shelton' and when I made the entry in the Station diary I spelt the claimant's name in this way."*⁹⁵ He also was unaware that "Source" referred to by Derron Alleyne was the victim Ramesh Sookdeo, until sometime after the interview.⁹⁶ PC Richardson claimed that Derron Alleyne provided the information as to the License plate and type of car being driven by CD at the time.⁹⁷

[30] PC Richardson claimed that Derron Alleyne provided a statement to this effect; however, he was unable to locate the statement despite several searches. He stated,

*A statement was recorded from Derron Alleyne. I kept the statement in my possession with my other papers relative to the matter. When I was asked to give a statement at the office of the Defendant relative to this matter I made checks amongst all my papers and documents, however, I could not find the statement despite several searches for the same.*⁹⁸

Based on the information provided to us by Derron Alleyne, we conducted a search of the vehicle through the Trinidad and Tobago Police Service Database and located the suspected whereabouts of CD, PC Richardson stated.⁹⁹ *Myself, together with PC*

⁹⁴ Id. At para. 6.

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ Id. At para. 7.

⁹⁸ Id. At para. 8.

⁹⁹ Id. At para. 9.

*Manohar, PC Gordon and Sergeant Mathew Noel left the station at approximately 9:30am to go on enquires and to go to Hermitage Road in search of CD”.*¹⁰⁰

- [31] Upon observing CD passing the vehicle which was identified by Derron Alleyne, PC Richardson informed PC Manohar that he recognized CD.¹⁰¹ PC Richardson noted that they approached and stopped the vehicle, identified themselves as police officers by showing the CD and RT police service identification, and proceeded to inform them that they were investigating the report of a robbery.¹⁰² PC Richardson stated that after he cautioned CD, CD stated,

*Officer, Devon check me to go on that scene long time and ah bring two Chaguanas men to do the work, we will try to pay back Persad’s the money.*¹⁰³

CD was then arrested and informed of his constitutional rights. He was handcuffed and placed in the back of a police vehicle with RT and taken to the police station. ¹⁰⁴

- [32] PC Richardson stated that he obtained a search warrant for CD’s residence, *“to search the Claimant’s house for arms and ammunition which was possibly used in the robbery.”*¹⁰⁵ He noted that he informed CD of the search warrant, showed him the warrant and also read the warrant to him.¹⁰⁶ PC Richardson informed the Court that CD accompanied him and other officers to his residence where he opened the door for the officers and the search was conducted.¹⁰⁷ PC Richardson noted that nothing was found in the search and they returned CD to the police station.¹⁰⁸

¹⁰⁰ Id. At para. 10.

¹⁰¹ Id. At para. 12.

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ Id. At para. 13.

¹⁰⁵ Id. At para. 15.

¹⁰⁶ Id.

¹⁰⁷ Id. At para. 16.

¹⁰⁸ Id. At para. 17.

[33] PC Richardson informed the Court that he also could not locate the search warrant for CD's residence. He noted that CD confessed to the robbery but would not give a statement to that effect. PC Richardson stated,

20. *Sometime after we executed the search warrant on the 29th August, 2008 I interviewed the Claimant in connection with the robbery. During the interview the Claimant told me that he and Derron Alleyne had set up the robbery. Derron Alleyne, who was an employee of Persad's Superstore, was picking up Ramesh Sookdeo and they were going to purchase goods. The Claimant indicated that he was waiting at La Paix Road in a vehicle, with two other men from Chaguanas. When Ramesh Sookdeo was entering the vehicle, which Derron Alleyne was driving, the men from Chaguanas jumped out of the car and held up Ramesh with a firearm. Ramesh had a pouch around his waist and the men grabbed it and ran back to the car and the Claimant drove off.*
21. *I asked the Claimant to allow me to record a statement which he would sign, however, the Claimant said that he would not sign any statement so I was unable to record a statement for the Claimant. After the interview I placed the Claimant back in a cell. I went off duty after that.¹⁰⁹*

PC Richardson informed the Court that CD was taken to an identification parade at Marabella Police Station and then returned to Princes Town Police Station where he was formally charged.¹¹⁰

[34] PC Richardson informed the Court that on the 2nd September he informed the Justice of the Peace at Princes Town Magistrate Court that both Derron Allyene and CD robbed

¹⁰⁹ Id. At paras. 20-21.

¹¹⁰ Id. At paras. 22-24.

Ramesh Sookdeo armed with a pistol.¹¹¹ He noted that on 2nd June 2009, the charges against CD were dismissed.¹¹²

[35] **CROSS EXAMINATION OF JOEL RICHARDSON**

Mr. Roopnarine enquired of PC Richardson his role in the interaction with CD. PC Richardson revealed that he was the investigating officer, the arresting officer and the prosecuting officer in CD's matter.¹¹³ PC Richardson's cross examination also revealed that he sought advice regarding the handling of CD's matter, and he would have informed his advisor that nothing illegal was found when CD's vehicle was searched. He would have also informed his advisor that nothing illegal was found when his residence was searched and that the virtual complainant failed to identify CD as the man who robbed him.¹¹⁴ PC Richardson also confirmed that he informed his advisor that Patrick Joseph did not attend an identification parade, even though he was present during the robbery.¹¹⁵ PC Richardson confirmed that he would not lay a charge without getting advice.

[36] PC Richardson's cross-examination also revealed that Derron Alleyne did not identify CD in any identification parade, nor did he mention CD by full name.¹¹⁶ Counsel also noted that even in the details of the Station diary, CD is not mentioned by name.¹¹⁷ Mr. Roopnarine did bring to the Court's attention the mention of an individual called "Shelton" in the PC Richardson's witness statement.¹¹⁸ When questioned about the "details" in the Station Dairy, PC Richardson informed the Court that he did not include all the details in the Station diary.¹¹⁹ When Mr. Roopnarine asked PC Richardson to explain why he only remembered that he excluded more details on the day of the trial during cross examination, he provided no response.¹²⁰

¹¹¹ Id. At para. 25.

¹¹² Id. At para. 26.

¹¹³ Cross Examination of Joel Richardson. Apr. 24, 2012.

¹¹⁴ Id.

¹¹⁵ Id.

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ Id.

¹¹⁹ Id.

¹²⁰ Id.

[37] PC Richardson stated that he believed that the circumstances regarding the robbery of Ramesh Sookdeo were a “good match” to CD.¹²¹ PC Richardson informed the Court that CD was never asked to identify the two men from Chaguanas, nor were any attempts to locate the two persons mentioned in the witness statement.¹²² PC Richardson stated that at the time he charged CD he was satisfied that he was making the right decision.¹²³ Additionally, he stated that he conducted a thorough investigation and was not under any pressure to charge CD for the robbery.¹²⁴ PC Richardson stated that the utterances of CD which were recorded in the Station diary and bear CD’s signature was enough evidence to charge him with armed robbery of Ramesh Sookdeo.¹²⁵ PC Richardson relied on this written and signed statement to lay the charge against CD. Additionally, Mr. Roopnarine pointed out that the officers did not have their weapons drawn when they approached CD’s vehicle in an attempt to arrest him for a violent robbery.¹²⁶

[38] PC Richardson informed the Court that CD was cautioned in Hermitage, and for a second time when he was about to give a statement to PC Richardson.¹²⁷ Mr. Roopnarine took this opportunity to mention that an incriminating statement could have been used against CD even without his signature in the station diary.¹²⁸ PC Richardson confirmed this. PC Richardson was unable to point to anywhere in the station diary that contained “*further information*” provided by CD.¹²⁹ PC Richardson informed the Court that there were two interrogations of CD. CD’s first interrogation during which he claimed PC Manohar was present, lasted approximately 1 hour, while the second interrogation lasted approximately 10-15 minutes.¹³⁰ Mr. Roopnarine cross-examined PC Richardson regarding his failure to take proper notes of the statement of confession by CD. Counsel highlighted the fact that he did not make any notes on the proper procedural form, nor did he find the information

¹²¹ Id.
¹²² Id.
¹²³ Id.
¹²⁴ Id.
¹²⁵ Id.
¹²⁶ Id.
¹²⁷ Id.
¹²⁸ Id.
¹²⁹ Id.
¹³⁰ Id.

worthy enough to transcribe in into the station diary.¹³¹ PC Richardson admitted that he wrote the information in his personal diary, which is not the pocket diary prescribed by the **TRINIDAD AND TOBAGO POLICE SERVICE STANDING ORDERS**, but an unofficial personal diary.¹³² PC Richardson also informed the Court that there was no station diary extract for CD's first interview exhibited in the Court documents and he did not recall if an entry was made at the time of the interrogation.¹³³ Mr. Roopnarine asked PC Richardson if, as the investigating officer, he was required to record the interrogation in the station diary. He received a positive response to this question.¹³⁴

[39] Counsel highlighted the fact that the station dairy did not mention the search warrant even though it would have been required that this be done.¹³⁵ Counsel informed PC Richardson that CD was at a wake the night of the robbery; however PC Richardson stated that he could not recall anything about a wake when he interviewed CD.¹³⁶ Counsel for CD highlighted the facts that PC Richardson made no notes in the station diary, there was no use of the official forms, proper procedure was not followed, no search warrant was evidenced and there was no proof of a confession.¹³⁷

[40] **DEFENDANT'S SUBMISSIONS**

In his closing submissions, Father Pierre directed the Court's attention to what he considered to be the main deficiencies in the instant matter. These included:

- CD's failure to bring witnesses
- CD's signature in the station diary
- The circumstances of CD's arrest
- Discrepancies with the dates of events
- CD's allegations against PC Manohar¹³⁸

¹³¹ Id.

¹³² Id.

¹³³ Id.

¹³⁴ Id.

¹³⁵ Id.

¹³⁶ Id.

¹³⁷ Id.

¹³⁸ Defendant's Closing Submissions. Paras. 12 – 26. Filed on 25th May, 2012.

[41] Father Pierre noted that although CD claimed that he was arrested in “*plain view of the public*” he failed to bring any witnesses who could attest to the truth of his allegation.¹³⁹ Father Pierre stressed that CD produced no eyewitnesses who were present for his arrest or for the search of his residence “*which was done in the full view of his sister in law and neighbours*”.¹⁴⁰ Father Pierre noted the case of **MAHADEO SOOKHAI V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**¹⁴¹ which spoke to the entitlement of the court to “*draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence.*”¹⁴² Father Pierre noted that the absence of crucial witnesses may be considered a material deficiency in CD’s evidence.

[42] Father Pierre then addressed his mind to CD’s signature in the station diary. He submitted that,

*there was absolutely no challenge whatsoever to the Defendant’s contention that the Claimant signed an entry in the station diary practically confessing to being involved in the robbery. There was ample opportunity for the Claimant to address the issue of his signature as it was revealed by the Defendant in as early as its Defence. The Claimant however failed to respond to the Defendant’s allegations either in his Reply to the Defence or his Witness Statement. In light of this fact, the Defendant submits that a negative inference should be drawn from the utter failure of the Claimant to respond to the Defendant’s contention that he signed the entry in the station diary.*¹⁴³

Father Pierre also submitted that in addition to CD not disputing the fact that the station diary contained his signature, he offered no explanation as to why his signature appeared in the station diary.¹⁴⁴ Father Pierre submitted that the Court possessed the authority to

¹³⁹ Id. at para. 13.

¹⁴⁰ Id. at para. 14.

¹⁴¹ **CV 2006-00986. See WISNIEWSKI V. CENTRAL MANCHESTER HA [1998] PIQR 324.**

¹⁴² Defendant’s Closing Submissions. Para. 16.

¹⁴³ Id. at para. 19.

¹⁴⁴ Id. at para. 20.

compare CD's signature in the station diary with his signatures in his Witness Statement and Statement of Case.¹⁴⁵

[43] Father Pierre submitted to the Court that upon cross examination, CD's version of how he was handcuffed when he was being transported to the police station varied from the account he gave in his witness statement.¹⁴⁶ Counsel submitted that this contradiction is enough to cause the Court to view CD's evidence with "*great skepticism*"¹⁴⁷.

[44] Defendant's Counsel submitted that CD's evidence was also inconsistent in regard to the dates of his transmission between Princes Town police station, Marabella police station and the identification parade. He submitted that the dates in CD's statement of case, witness statement and cross examination were inconsistent. Father Pierre submitted that the inconsistency "*is a clear indication that his evidence is untrustworthy and should not be accepted by this Honourable Court as truthful.*"¹⁴⁸

[45] Counsel for the Defendant submitted that CD did not plea his allegations of threats issued to him from PC Manohar. These threats stemmed from CD's alleged refusal to sign a statement which CD then alleged resulted in PC Manohar stating *that "marijuana, guns and ammunition would be planted on him and his family in order to bring them down."*¹⁴⁹ and "*submits that it is rather curious that the Claimant failed to mention the damning conduct on the part of PC Manohar when he initiated the claim.*"¹⁵⁰ As such, Counsel submitted that CD's allegation against PC Manohar should not weigh heavily against the AG.¹⁵¹

¹⁴⁵ See **CORBETT V. KILMINSTER 4P. & F. 490**
DARREN MC KENNA V. ESTATE CONSTABLE LESLIE GRANT AND THE
ATTORNEY GENERAL OF TRINIDAD AND TOBAGO. CV 2006-03114.

¹⁴⁶ Defendant's Submissions at para 24.

¹⁴⁷ Id.

¹⁴⁸ Id. At para. 25.

¹⁴⁹ Id. At para. 26.

¹⁵⁰ Id.

¹⁵¹ Id.

[46] Counsel submitted that the non attendance of CD's witness, RT, was detrimental to CD's case as it was claimed that he "would have been able to provide this court with valuable evidence as to the Claimant's arrest."¹⁵² Consequently, Father Pierre submitted that a negative inference should be drawn from RT's non appearance in this matter.

[47] In a review of the AG's evidence, Counsel submitted that there was consistency in the evidence of PC Richardson and PC Manohar, save for one deviation. He stated:

*The only major divergence was regarding the interviews conducted after the Claimant was returned to the station from the search of his house. PC Manohar testified that he did not participate in any interrogations of the Claimant as the station however PC Richardson indicated that PC Manohar was in fact present for an interrogation which was conducted at the station.*¹⁵³

Consequently, Counsel submitted that:

*The Defendant also seeks to stress the fact that these inconsistencies in relation to the number of interviews conducted are explainable through the passage of time as this incident occurred about four years ago. The Defendant's witnesses are police officers who would have conducted a considerable number of cases over such a lengthy period and therefore may not be expected to recall every single detail of any specific case*¹⁵⁴.

Father Pierre noted that despite the inconsistencies in the officers testimony, CD confessed "upon being arrested" and both PC. Richardson and PC Manohar maintain that he admitted his involvement in the commission of the crime.¹⁵⁵

¹⁵² Id. At para. 28.

¹⁵³ Id. At para. 36.

¹⁵⁴ Id. At para. 38.

¹⁵⁵ Id. At para 37.

[48] **I. Wrongful Arrest and False Imprisonment**

Counsel submitted that CD's claim for relief as a result of wrongful arrest is in fact a part of the tort of false imprisonment and not a separate wrongful act.¹⁵⁶ Father Pierre noted that there is no separate award for damages for 'wrongful arrest'.¹⁵⁷

[49] Counsel for the AG submitted that according to **CUMMINGS V. DEMAS**¹⁵⁸ "*the onus is on the defendant to prove that the imprisonment of the Claimant was justified*".¹⁵⁹ Father Pierre submitted that the officers received information from Derron Alleyne "*who admitted being implicated in the robbery that the Claimant was also an accomplice to the crime*".¹⁶⁰ Counsel submitted that:

*Since Derron Alleyne admitted to being a party to the commission of the crime there would be no better person to give information about the other persons involved in the robbery than someone who was himself a party to the crime. It is therefore submitted that this information received from Derron Alleyne was compelling evidence against the Claimant*¹⁶¹.

Counsel noted that the officers also sought to verify the information through the Police Service Database and by contacting Ravi Persad.¹⁶² In spite of this, Counsel submitted that the officers were entitled to "*rely in good faith on the information provided to them by Derron Alleyne*"¹⁶³ He submitted that as a consequence of this "*any reasonable person, assumed to know the law and possessed of the information which was in fact possessed by PC Richardson, would believe that there was at the time of the arrest reasonable and probable cause for it.*"¹⁶⁴

¹⁵⁶ Id. At paras. 39-40.

¹⁵⁷ Id. At para. 41.

¹⁵⁸ **(1950) 10 TRI. L.R. 43**

¹⁵⁹ Defendant's Submissions. Para. 44.

¹⁶⁰ Id. At para. 46.

¹⁶¹ Id. At para. 47.

¹⁶² Id.

¹⁶³ Id. At para. 48. See **CECIL KENNEDY V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO CV. APP 87 OF 2004.**

¹⁶⁴ Defendant's Submissions. Para. 51.

[50] Defendant's Counsel additionally submitted that a suspect in a matter may be "*detained pending reasonable enquires and investigations into the matter.*"¹⁶⁵ Father Pierre referred the Court **DALLISON V.CAFFERY**¹⁶⁶ which spoke directly to the right for officers to make reasonable investigations before charging an arrestee¹⁶⁷. Counsel submitted that PC Richardson acted within reason "*in detaining the Claimant until proper investigations had taken place.*"¹⁶⁸ Counsel noted that due to the lack of identification parade facilities in the Princes Town Police Station and the fact that Monday 1st September 2008 was a holiday, it was,

*Absolutely necessary as [CD] was detained over the weekend and could not be taken before the authorities any sooner. The Defendant therefore submits that it should not be liable for false imprisonment of the Claimant as he was taken before the Magistrate's Court as soon as was reasonably practicable in the circumstances*¹⁶⁹.

[51] **II. Trespass**

Counsel for the Defendant made no submissions to the Court regarding trespass onto CD's premises.

[52] **III. Malicious Prosecution**

Father Pierre submitted that in relation to the claim of malicious prosecution, two issues are left for determination:

b. *Whether the Claimant has established an absence of reasonable and probable cause on the part of PC Richardson to initiate proceedings against him and*

¹⁶⁵ Id. at para. 52.

¹⁶⁶ [1964] 2 ALL ER 610.

¹⁶⁷ Defendant's Submissions. Para. 53.

¹⁶⁸ Id. at para. 54.

¹⁶⁹ Id. at para. 56.

c. *Whether the Claimant has proven malice on the part of PC Richardson in initiating those proceedings against him.*¹⁷⁰

[53] In regard to reasonable and probable cause, Counsel highlighted that following Sharma CJ's learning in **CECIL KENNEDY**, this determination contains both subjective and objective elements¹⁷¹. He noted that the objective element is satisfied by the fact that a reasonable man possessed with the information which PC Richardson possessed would have believed CD was guilty of the robbery. He referred to CD's alleged confession and his signature in the station diary.¹⁷² Defendant's Counsel relied heavily on "*the fact that Defendant's evidence regarding the Claimant's signature remains uncontroverted*".¹⁷³ Additionally, Father Pierre submitted that the fact that the officers failed to get a positive identification of CD in the parade is consistent with his confession that he waited in the car while the robbery occurred, "*so it is understandable why the Virtual Complainant could not place him at the Identification Parade*".¹⁷⁴ Counsel submitted that consequently, because CD failed to prove that there was no reasonable and probable cause, "*it is unnecessary to consider the question of malice*".¹⁷⁵ The Court was referred to **RANDOLPH BURROUGHS V. THE ATTORNEY GENERAL** and Father Pierre submitted that "*since the Claimant has not discharged this onus the issue of malice does not arise and the action for malicious prosecution fails.*"¹⁷⁶

[54] In regard to the element of malice, Counsel reminded the Court that the burden of proof is on CD to produce the evidence to demonstrate that the officers "*were actuated by malice*".¹⁷⁷ Father Pierre offered several definitions of malice to the Court. He highlighted that the finding of a lack of reasonable and probable cause did not lead to an automatic finding of malice. He submitted an excerpt from **BROWN V HAWKES (1891) 2QB 719** which states:

¹⁷⁰ Id. at para. 59.

¹⁷¹ Id. at para. 61-62.

¹⁷² Id. at para. 64-65. See **VENTOURIS V. MOUNTAIN [1992] 3 ALL ER 414**.

¹⁷³ Id. at para. 67.

¹⁷⁴ Id. at para. 68.

¹⁷⁵ Id. at para. 69.

¹⁷⁶ Id.

¹⁷⁷ Id. At para. 71.

But I am not prepared to assent to the proposition that where there is want of reasonable and probable cause, the jury may always find malice, no matter what the circumstances may be. In this country we rely on private initiative in most cases for the punishment of crime; and while, on the one hand, it is most important to firmly to restrain any attempt to make the criminal law serve the purposes of personal spite or any other wrongful motive, on the other hand it is equally important, in the interest of the public, that where a prosecutor honestly believes in the guilt of the person he accuses, he should not be mulcted in damages for acting on that belief except on clear proof, or at all events reasonable suspicion, of the existence of some other motive than a desire to bring to justice a person whom he honestly believes to be guilty.¹⁷⁸

Counsel submitted that even if there was a finding of the absence of reasonable and probable cause, there is also no basis for an inference of malice.¹⁷⁹ Father Pierre also submitted that the failure to secure a positive identification of CD as the perpetrator of the crime is not evidence of malice on the part of the officers.¹⁸⁰ He reminded the Court that prosecution of CD in the Magistrates Court was discontinued because of the absence of the Virtual Complainant and thus CD failed to prove the presence of malice in the actions of the officers.¹⁸¹

[55] **CLAIMANT'S SUBMISSIONS**

I. Wrongful Arrest and False Imprisonment

Mr. Roopnarine submitted that the AG bears the burden of proof in this matter, and must demonstrate that CD's arrest was reasonable and probable. He referred the Court to the

¹⁷⁸ Id. At para 74.

¹⁷⁹ Id. At para 75.

¹⁸⁰ Id.

¹⁸¹ Id.

Privy Council Appeal of **CHANDRAWTEE RAMSINGH V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**¹⁸². Mr. Roopnarine noted that in the matter at bar:

*In order to discharge the burden of proof, the Defendant must disclose to the Honourable Court all evidence possessed by the arresting police officer so as to satisfy the Court that the arresting officer possessed reasonable and probable cause to justify an arrest without warrant.*¹⁸³

Counsel submitted that the evidence offered by the AG to justify CD's arrest cannot "stand up to objective scrutiny".¹⁸⁴ Mr. Roopnarine referred the Court to the extract of the Station Dairy which was submitted by the AG as evidence of reasonable and probable cause for CD's arrest¹⁸⁵. He stated:

*The Defendant contends that these gibberish-like words are to be taken to mean firstly that the Claimant was identified by that statement and secondly that the Claimant was somehow involved in armed robbery.*¹⁸⁶

Mr. Roopnarine also highlighted the fact that CD was never mentioned by name, nor was he identified as the perpetrator by the victim in the robbery.¹⁸⁷ Counsel also reminded the Court that the AG provided no answer to how the word "Shelton" in the Station diary is translated to "Charlton Dover".¹⁸⁸

[56] Mr. Roopnarine noted that the AG claimed that,

¹⁸² Privy Council Appeal No. 0111 of 2010.

¹⁸³ Claimant's Submissions. Pg. 3. Filed on May 29, 2012.

¹⁸⁴ Id. at pg. 5.

¹⁸⁵ Id. at pg. 3.

¹⁸⁶ Id.

¹⁸⁷ Id.

¹⁸⁸ Id.

*A statement was allegedly recorded from Derron Alleyne in which the Claimant was implicated. This statement was not produced to the Court.*¹⁸⁹

He reminded the Court that PC Richardson initially stated that he kept the statement in his possession, but could not produce it. However, upon cross examination, PC Richardson claimed that the statement of Derron Alleyne was placed in the Court's case file and then lost.¹⁹⁰ Counsel submitted that because of PC Richardson's inconsistencies, lack of official records and the lack of the written statement from Derron Alleyne, the Court should disbelieve PC Richardson's evidence.

[57] Mr. Roopnarine submitted that:

*Where the police effect an arrest without obtaining an arrest warrant, the Court ought to be extra vigilant to ensure that the fundamental rights of the citizens are not trampled upon.*¹⁹¹

Counsel thus requested that the Court find that CD's arrest was unlawful. Mr. Roopnarine submitted that even if the officers were justified in arresting CD, there was no justification for his prolonged detention.¹⁹² Counsel submitted that the AG offered no explanation for CD's detention in police custody from Friday 29th August 2008, until Tuesday 2nd September, 2008.¹⁹³ Mr. Roopnarine submitted that according to Lord Diplock in **DALLISON V. CAFFERY**¹⁹⁴, the prolonged detention of CD must be justified by the AG, by showing that it was reasonable.¹⁹⁵

¹⁸⁹ Id. at pg. 4.

¹⁹⁰ Id.

¹⁹¹ Id. At pg. 5.

¹⁹² Id. at pg 6.

¹⁹³ Id.

¹⁹⁴ Id. See. A964 2 All ER 610

¹⁹⁵ Id. at pg. 5.

[58] **II. Trespass**

Mr. Roopnarine submitted that the Defendant never produced a search warrant which would have evidenced to the Court that he had the authority to search CD's premises. He also highlighted that the AG could not even produce the notes in the station diary which would have spoken to the search warrant being issued as well as documented the execution of the search on CD's premises.¹⁹⁶ Mr. Roopnarine referred the Court to the **POLICE SERVICE ACT**¹⁹⁷ which mandates that the search warrant must be produced into evidence in these matters.¹⁹⁸ Mr. Roopnarine submitted that the AG has failed to produce such evidence. He also referred the Court to **NIGEL LASHLEY V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**¹⁹⁹ which mandates that a search warrant shall not be kept secret from the person whose premise is being searched. Mr. Roopnarine submitted that the lack of a search warrant produced into evidence together with the lack of documentary evidence to show of its existence proves that no search warrant existed and thus the search was improper.

[59] **III. Malicious Prosecution**

Like Father Pierre, Mr. Roopnarine focused his attention on the two contentious issues in proving malicious prosecution; that there was no reasonable and probable cause and that there was malice in law.²⁰⁰ Mr. Roopnarine submitted that there was no reasonable and probable cause for CD's prosecution as he was not identified by the victim of the crime to be the perpetrator and no other eye witness attended the identification parade.²⁰¹ Mr. Roopnarine emphasized the point that the AG failed to explain to the Court why the other eye witnesses failed to attend the identification parade, and he relied on the learning of Sharma CJ (as he then was), who stated:

¹⁹⁶ Id. at pg 9.

¹⁹⁷ Id. See also Section 49. Chapter 15:01 Laws of T&T.

¹⁹⁸ Id.

¹⁹⁹ HC 1274 OF 2009, CV 2009-01274.

²⁰⁰ Claimant's Submissions. Pg. 11.

²⁰¹ Id. at pg. 12.

*Any omission on the part of the Prosecutor to sift the information which appears to be suspicious may be evidence of want of reasonable and probable cause.*²⁰²

Mr. Roopnarine reminded the Court that the search of CD's residence produced no incriminating evidence, and the alleged confession which was recorded in PC Richardson's desk diary, was never produced to the Court.²⁰³

[60] Mr. Roopnarine reminded the Court that even though the searches of both CD's vehicle and his residence did not reveal any incriminating evidence.²⁰⁴ PC Richardson claimed that CD confessed to the crime and as such he decided to prosecute him²⁰⁵. Mr. Roopnarine also noted that PC Richardson was unable to produce any evidence of the alleged detailed confession which he stated was recorded in his desk diary. Counsel submitted that the Court should disbelieve PC Richardson because:

The Claimant's demeanor when giving evidence is to be preferred over the Defendant's witnesses and the Claimant has denied confessing as alleged or at all.

The Claimant allegedly confessed his involvement to PC Richardson but the Court is asked to disbelieve this evidence because one would have expected that PC Richardson would have made notes in the official police paper, for taking down what a suspects said, regardless of whether it is signed or not. One would have expected to see a note in the Station diary. One would have expected the interview to have taken place in the designated interview room not in the Court and Process Room. One

²⁰² **KENNEDY V. MORRIS & THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO. CV APPEAL NO. 87 OF 2004.**

²⁰³ Claimant's Submissions. Pgs. 12-13.

²⁰⁴ Id. at pg. 12.

²⁰⁵ Id. at pg. 13.

would have expected that PC Richardson would have ensured that another police officer also would have witnessed the confession.

PC Richardson's evidence is not to be believed because he did not supply the Court with any evidence of notes made in his :-

Pocket Diary

Station diary

*Desk Diary*²⁰⁶

Mr. Roopnarine submitted that consequently the Court may draw adverse inferences from these points.

- [61] Mr. Roopnarine noted that CD denied signing the station diary and proceeded to remind the Court that CD's personal effects "*including the Claimant's National ID Card*" were handed over to PC St. Louis²⁰⁷. Mr. Roopnarine asked the Court to hold that CD did not sign the station diary. He stated that alternatively, even if the signature did belong to CD, the statement in the station diary "*hardly amounted to a confession*". He noted that:

*The alleged response given by the Claimant, that was taken down in the Station diary Extract referred to two (2) Chaguanas men, whereas the victim as well as the Patrick Joseph and Derron Alleyne described **only one perpetrator**. It was as if the Claimant was confessing to an entirely different crime and provided no clear or cogent evidence to support the charge that that Claimant committed armed robbery.*²⁰⁸

Mr. Roopnarine submitted that PC Richardson, while lacking "*any other incriminating evidence whatsoever*", acted unreasonably in the face of this evidence.²⁰⁹

²⁰⁶ Id.

²⁰⁷ Id. at pg. 14.

²⁰⁸ Id.

²⁰⁹ Id. at pg. 15.

[62] Additionally, Mr. Roopnarine submitted that the grave discrepancy between the cross-examination evidence of PC Richardson and PC Manohar regarding the interrogation on Friday 29th August 20[08] is cause for the Court to disbelieve PC Richardson.²¹⁰ Mr. Roopnarine again reiterated:

*Having looked at the evidence used for arresting the Claimant, **an ordinarily prudent and cautious man** placed in the same situation would not have come to the same conclusion as the prosecuting officer, given the lack of incriminating evidence.²¹¹*

As such, he submitted that the officers lacked reasonable and probable cause when arresting and charging CD.²¹²

[63] When examining malice, Counsel referred the Court to **BROWN V. HAWKINS**²¹³ to provide a widely used definition of malice. Mr. Roopnarine submitted that:

Malice may be inferred from want of reasonable cause where there was no honest belief on the guilt of the accused.²¹⁴

Mr. Roopnarine subsequently invited the Court to infer the existence of malice because of the lack of reasonable and probable cause in the instant matter.²¹⁵

[64] Counsel referred the Court to the case of **HAROLD ROWLEY**²¹⁶ which speaks to implied malice based on a defendant's attitude towards the claimant. The defendant's explanation in **ROWLEY** was not investigated, leading to a premature belief of guilt.²¹⁷ Likewise, in the

²¹⁰ Id.

²¹¹ Id.

²¹² Id.

²¹³ See also, **SOOKDEO HARRICHARAN V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO AND PC CECIL SANTANA NO. 10817. POS NO. 3068 OF 1999.**

²¹⁴ Claimant's Submissions. Pg. 16.

²¹⁵ Id.

²¹⁶ **HAROLD ROWLEY V. ESTATE SERGEANT SYLVESTER, ESTATE CONSTABLE HOSIEN & TEXACO TRINIDAD LTD. HCA 1388 OF 1989.**

²¹⁷ Id. See also Claimant's Submissions. Pg. 16.

instant matter, Mr. Roopnarine submitted that CD's alibi that he was at Mr. Linton's wake in New Grant on the night of the robbery was not investigated by prosecuting officers.²¹⁸ Additionally, he noted that:

*No attempt was made to apprehend the two men that the Claimant allegedly identified in his confession. No other investigation was done or inquiries made to ascertain more information from the victim Ramesh Sookdeo or the other eye witnesses. Despite all other concrete and detailed evidence that P.C. Richardson allegedly extracted from the Claimant, no evidence of any of these "confessions" were placed before the Court.*²¹⁹

Mr. Roopnarine relied on Wooding CJ's musings in his dissenting judgment in **IRISH V. BARRY**²²⁰ and further submitted that "*P.C. Richardson's suspicions were incautiously and precipitately formed without due and sufficient inquiry*".²²¹

[65] **LAW AND ANALYSIS**

*A man's liberty is at the bedrock of any civilized society and I daresay that Trinidad and Tobago is to be counted among the number.*²²²

Several issues are presented for ventilation in this matter. However, the main issue for determination is:

Has the defendant successfully evidenced that the actions taken against the claimant were conducted with reasonable and probable cause?

²¹⁸ Id. at pg. 17.

²¹⁹ Id.

²²⁰ (1965) 8 WIR 184.

²²¹ Claimant's Submissions. Pg. 17.

²²² **ADESH MAHARAJ V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO. S-788 OF 1998. Para. 25.**

I will first ventilate the issues of the Claimant's claim for wrongful arrest and false imprisonment, as well as trespass. Thereafter, I will direct my attention to the crux of the matter.

[66] **I. Wrongful Arrest and False Imprisonment**

Elements of the Tort of False Imprisonment

The hurdles which must be surpassed in order to bring a successful claim for the tort of false imprisonment are evidence of,

- a) *the fact of imprisonment; and*
- b) *absence of lawful authority to justify that imprisonment*²²³

In the instant matter, the fact of imprisonment is not a point of contention. The narrower issue to be ventilated therefore is did the Defendant possess the lawful authority to justify the imprisonment of the Claimant?

[67] **Analysis**

The onus sits squarely upon the shoulders of the AG to prove to the Court that the "*imprisonment of the Claimant was justified*".²²⁴ Defendant's Counsel noted that the officers relied heavily on the information they received from a suspect in the commission of the crime, Derron Alleyne. Even if as the AG claims, the officers were entitled to rely upon the information provided to them by Derron Alleyne, they did not do so. Derron Alleyne did not provide the officers with the name "Charlton Dover". Mr. Alleyne is alleged to have signed the Station Dairy containing the information he provided to the officer, but this script does not contain the name "Charlton Dover". There is no record of any attempt to correct this allegedly erroneous name in the station diary which Mr. Alleyne signed, and which is relied upon as material evidence in the case. Consequently, I find that the AG's logic is faulty. In addition to this, the AG was unable to produce any documentary evidence, such

²²³ Clerk and Lindsell on Torts. 19th Ed. Pg. 891. See also Defendant's Submissions. Para. 43.

²²⁴ CUMMINGS at 43.

as the statement which Mr., Alleyne is alleged to have given to PC Richardson, to prove that the officers were empowered to imprison CD.

[68] Additionally, the AG, in referring me to **DALLISON**²²⁵ attempted to justify the prolonged detention of CD. Counsel reminded me that the learning in **DALLISON** supports the detention of arrestees while officers conduct “reasonable investigations”²²⁶. The pertinent question therefore is **can the investigations conducted by the officers, while CD was in police custody, be considered reasonable?** The short answer is no. Lord Denning categorized the meaning of reasonable investigations by stating,

*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 stolen property is there...he can take the person suspected to the place where he says that he is working...the constable can put the suspect 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; by which I mean, of course, justice not only to the man himself but also to the community at large.*²²⁷

The evidence clearly reveals that the officers conducted no investigation into the existence or whereabouts of the two mystery men from Chaguanas mentioned in CD’s alleged confession. Also, although the identification parade constitutes part of a reasonable investigation,²²⁸ what were the implications of this identification parade on CD’s liberty? First, the victim, Ramesh Sookdeo did not positively identify CD as the perpetrator of the crime. Armed with this information, the officers **still** proceeded to continue to detain and

²²⁵ **DALLISON** at 610.

²²⁶ *Id.* at 617.

²²⁷ *Id.*

²²⁸ *Id.*

charge CD with the crime. Why then did the officer subject CD and Ramesh Sookdeo to the identification parade if the outcome of the identification parade was inconsequential to CD's continued detention? How is this just to CD and Ramesh Sookdeo? Second, the evidence submitted by both sides reveals that CD was transferred to the Marabella Police Station for the purposes of taking part in the identification parade. He was ultimately detained in the Marabella Police Station from Saturday 30th August, 2008 until Monday 1st September, 2008, when the identification parade was finally conducted. Where was the proper administration of justice when dealing with CD's freedom and liberty? The AG stated that the delay in the processing of CD was due to the fact that Monday 1st September 2008 was a holiday. This does not move me. I echo my sentiments in **ADESH MAHARAJ**²²⁹ in noting that although there may be deficiencies prevalent within the inner workings of the Police Service such as the limited number of identification parade facilities; this cannot be a justification for the deprivation of a man's right to liberty.

[69] I disagree with Counsel for the AG in his assertion that the officers acted reasonably and possessed an honest belief that there was reasonable and probable cause for arresting and charging CD. The lack of evidence is telling;

- There was a contradiction in the name uttered by Mr. Alleyne and that of Charlton Dover.
- There was no statement from Derron Alleyene produced to the Court as documentary evidence of the AG's case.
- The fact that 3 days had elapsed before CD was even put on identification parade. During this 3 day period, CD was detained at the Marabella Police Station where the facilities for the identification parade were readily available.
- The fact that the prosecuting officer chose to ignore the inability of Ramesh Sookdeo to identify CD as the person who robbed him.

In the face of these glaring deficiencies, the AG is hard pressed to convince me that the officers possessed lawful authority to justify CD's imprisonment.

²²⁹ **ADESH MAHARAJ** at para. 25.

[70] **II. Trespass**

For a defendant to properly defend against a claim for trespass he must satisfy Section 49 of the **POLICE SERVICE ACT**. This section states,

(1) When an action is brought against a police officer for an act done in obedience to a warrant or order of a Magistrate or Justice, the officer shall not be responsible for any irregularity in the issuing of the warrant or order or for any want of jurisdiction in the Magistrate or Justice issuing it.

(2) In any action brought under subsection (1), the court shall give judgment for the officer if he fulfils the following conditions:

(a) he gives the warrant or order in evidence;

(b) he proves that the Magistrate or Justice signed the warrant or order; and

(c) he proves that the act complained of was done in obedience to the warrant or order.²³⁰

[71] **Analysis**

The AG offered no assistance to the Court under this heading. In any event, it is difficult to see what type of assistance may have been offered. Clearly, the lack of evidence on the part of the Defendant has placed him at a disadvantage in defending the claim of trespass against CD. Mr. Roopnarine has pointed out, the fact of the matter is that the AG did not comply with the **POLICE SERVICE ACT** and I concur. The AG has failed to produce the search warrant to the Court as documentary evidence for the deliberation of this matter. I cannot in the face of the AG being unable to produce such a vital document, rule in favour of the AG. It is clear that a trespass was committed upon CD's property, and as such, he should be compensated accordingly.

[72] **III. Malicious Prosecution**

Elements of the Tort of Malicious Prosecution

²³⁰ **THE POLICE SERVICE ACT 2006**. CHAP 15:01.

In an action for malicious prosecution, there are several hurdles which a claimant must cross so as to be successful. Halsbury's states:

To succeed in a claim for damages for malicious prosecution a claimant must prove:

- (1) the prosecution by the defendant of a criminal charge against the claimant before a tribunal into whose proceedings the criminal courts are competent to inquire;*
- (2) that the proceedings complained of terminated in the claimant's favour;*
- (3) that the defendant instituted or carried on the proceedings maliciously;*
- (4) that there was an absence of reasonable and probable cause for the proceedings; and*
- (5) that the claimant has suffered damage.²³¹*

[73] **Analysis**

In the matter at bar, CD has successfully fulfilled all the requirements necessary to sustain an action in malicious prosecution. It is undisputed that CD has endured prosecution by the AG. This is a matter of court record. It is also undisputed that the prosecution was determined in favour of CD. The two outstanding pertinent issues are the absence of reasonable and probable cause and the presence of malice in the actions of the officers.

[74] Counsel for the AG argued that “*on a balance of probabilities*”²³² CD did not prove each element of the tort of malicious prosecution. I disagree. Father Pierre thought it of importance to highlight to the Court that the prosecution of the matter against CD did not proceed because the Virtual Complainant failed to appear. I find this of no significance. Progress in the prosecution of the matter is not required for CD to prove that the officers

²³¹ Halsbury's Laws of England. Vol. 97 5th Ed. Sec. 636.

²³² Defendant's Submissions. Para. 76.

acted maliciously. Mr. Roopnarine invited me to infer the existence of malice in the actions of the officers if it was determined that there was a lack of reasonable and probable cause in the arrest of CD. Father Pierre venomously disagrees.

[75] The achilles heel of the AG's defence is the contradictory evidence of PC Richardson and PC Manohar. The AG's evidence reads like a Shakespearean comedy of errors. The main protagonist CD appears to have fallen victim to a cruel joke, while one of the main antagonist, PC Richardson, just can't seem to get his evidence right. He seems to have hastily acted up the following:

- A statement from an alleged cohort, Derron Alleyne, which has been lost in transmission;
- A mismatched name of the perpetrator of the crime;
- A public and embarrassing arrest without a warrant;
- A public and embarrassing residential search without a warrant;
- A confession without a witness;
- No official police recording of the alleged confession.
- and the catalytic event, the main antagonists giving contradictory statements regarding an interview with CD.

It is blatantly clear to me that the AG has failed to evidence to the Court that the officers possessed reasonable and probable cause in the arresting and charging of CD. He was deprived of his liberty as a free citizen of Trinidad and Tobago for 4 days, while the world went about its business

[76] **Reasonable and Probable Cause**

Is the Court entitled to have Regard to PC Richardson's viva voce evidence regarding the details of the information he had at the time when he charged the plaintiff?

In this regard, I refer to Mon Desir J. in **DHANIRAM DHANPAT**.²³³ Like in **DHANIRAM DHANPAT** this case is plagued with a lack of documentary evidence on the part of the AG.

²³³ **DHANIRAM DHANPAT V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO.**
HCA 458 OF 1997/S-43 OF 1997

Mon Desir J. addressed the entitlement of the Court to consider the viva voce evidence in relation to the information the officer claimed he possessed at the time of the arrest of CD. The case is analogous because as in **DHANIRAM DHANPAT** there is no documentary evidence to support the defence put forth by the AG. Mon Desir J. stated:

In the instant case all that the Court has is the 'say so' of PC Mohammed that he was seized of sufficient information to lay the charges against the Plaintiff, to which evidence the Court has attached very little weight: See Stephen Lewis v. The Attorney General of Trinidad and Tobago. In my view, the unexplained absence of significant documentary evidence coupled with the fact that the event took place some sixteen (16) years ago make PC Mohammed's oral evidence quite unreliable. The Court therefore finds that there is not sufficient evidence before it to consider and determine whether PC Mohammed honestly believed in the charges which he laid against the Plaintiff on 31st March 1994 and finds that on a balance of probabilities all of the said charges were laid without reasonable and probable cause.²³⁴

It is PC Richardson's 'say so' upon which the AG is misguidedly placing its hopes. As in **DHANIRAM DHANPAT** I have cause to doubt the integrity of the testimony of the officer. PC Richardson's testimony was shaky as he frequently stalled in answering questions during cross-examination and in some cases did not answer the question at all. Comparatively, CD remained unshaken during his cross-examination and answered his questions assertively and with full confidence. Further, PC Richardson's blatant disregard in following procedure raises doubt in my mind as to the reliability of his evidence. As a seasoned officer of the law, PC Richardson is well aware of the proper procedural records which must be taken when interviewing a suspect. I remain unsatisfied as to why an experienced officer such as PC Richardson has either chosen to omit imperative information from official police records, or through a course of epic bad luck, has lost all

²³⁴ Id at para. 48.

documentary evidence of either CD's guilt or documents which would show there was reasonable and probable cause in the arresting and charging of CD. Whatever the reason, the lack of evidence has left the Defence deficient to the AG's detriment.

[77] In addressing CD's signature in the Station diary, I considered the fact that, CD remained consistent in denying signing any documents while in the station. CD remained resolute in this assertion and I have no reason to doubt him. I do not find the AG's argument that "*there was absolutely no challenge* " to the assertion that CD signed the station diary to be a determinative factor. Despite Father Pierre's most sincere invitation for me to compare CD's signatures, I will not be undertaking such an exercise as, firstly, CD admitted to the fact the signature is his own so there is no allegation of fraud and secondly, I reserve such exercises for the experts in those areas.

[78] I must ask myself, in the pursuit of justice can I look at the evidence before me and determine that the officers honestly believed that they were acting with reasonable and probable cause? I echo the musings of Henderson J. who followed the teachings of the House of Lords in **HERNIMAN V. SMITH**²³⁵

*An honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime.*²³⁶

I dare say, I cannot. Based on the evidence presented to the Court, I do not find that a reasonable man would possess an honest belief that CD was guilty of the crime for which he was arrested. The evidence which the officers acted upon amounted to an utterance from Derron Alleyne implicating someone named "Shelton" in the robbery. There is no

²³⁵ HCA NO S-348 OF 2001. See also **HICKS V. FAULKNER** and **HERNIMAN V. SMITH**

²³⁶ Id.

evidence that Mr. Alleyne made any attempt to change the name to “Charlton Dover”, so as to ensure the officers had the correct information. What is evident is that, without more, it appears that Derron Alleyne signed the station diary with the name ‘Shelton’. Am I to infer that Derron Alleyne really meant to say ‘Charlton Dover’? What would this inference be based on? The evidence does not guide me in that direction.

[79] Additionally, it is passing strange that the AG has highlighted the deficiencies in CD’s evidence, referring the Court to contradictions in the dates when he was transferred between the Princes Town and Marabella Police Stations which are ultimately inconsequential to the substantial issue; yet requested that the Court ignore the glaring deficiencies in the evidence of officers. Such deficiencies included:

- No evidence of a search warrant
- No evidence of the statement from Derron Alleyne
- No evidence of any notes taken during the alleged interview during which CD allegedly confessed
- No evidence of notes recorded in the officers pocket diaries

The reasoning of the AG is contradictory. I cannot apply one line of reasoning in which to treat CD’s evidence, and then apply a contrasting line of reasoning by attempting to justify the numerous deficiencies in the AG’s evidence. Check and balances are systematically institutionalized so as to avert these situations. Had PC Richardson pursued his work responsibilities with more attention, he would have been able to produce the documentary evidence necessary to prove his defence. I cannot, without more find that the officers had reasonable and probable cause to arrest and charge CD.

[80] **Malice**

The final and determinative element of malicious prosecution is proof of malice. Kangeloo J’s (as he then was) dicta in **TED ALEXIS V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**²³⁷ is instructive on this issue. He referred to the **Civil Actions Against**

²³⁷ HCA NO. S-1555 OF 2002.

the Police²³⁸ which highlights three methods which may be employed to prove malicious prosecution. These include:

1. where there is specific malicious motive
2. where the prosecution is brought on the basis of false evidence
3. the lack of reasonable and probable cause is evidence on which malice can be inferred.²³⁹

In this matter, the third method is used to prove the case of malicious prosecution.

[81] As in **DHANIRAM DHANPAT**, I rely on the case of **BERNARD BAPTISTE V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**²⁴⁰ and the submissions of Mr. Roopnarine which utilizes the absence of reasonable and probable cause to infer the existence of malice. Father Pierre attempted to persuade me that a finding of a lack of reasonable and probable cause does not lead to an automatic inference of malice. He stated:

*It is submitted that even if this Honourable Court is minded to find that there was no reasonable and probable cause on the part of the Defendant, there is no [t] sufficient evidence to infer malice in the instant case. The Claimant has not proven any malice nor has he shown any circumstances from which wrong or improper motive can be imputed.*²⁴¹

Under the umbrella of the third method of proving malicious prosecution, malice may be inferred once there is a finding of lack of reasonable and probable cause. It is thus not necessary for CD to prove malice. Consequently, I find that as par for the course, that malice in the actions of the officers is inferred from my finding of a lack of reasonable and probable cause.

²³⁸ 3rd Ed. Para. 8-071. Pg. 372.

²³⁹ Id.

²⁴⁰ HCA 3617 of 2001.

²⁴¹ Defendant's Submissions. Para. 75.

[82] **DAMAGES AND COSTS**

DEFENDANT'S SUBMISSIONS

General Damages

Counsel for the AG submitted that contrary to the 14 days stated in CD's witness statement, general damages ought to be considered for 4 days.²⁴² Counsel referred the Court to the decisions of Master Alexander in **CHABINATH PERSAD**²⁴³ and Master Doyle in **ANTHONY SORZANO**²⁴⁴ to buttress his submission that the AG may only be liable for 4 days of damages. Counsel submitted that should the Court choose to award CD with damages this amount should be in the range of \$50,000 to \$60,000.²⁴⁵ He based his determination on the amounts awarded in successful cases of false imprisonment and malicious prosecution for a 4 day period. Counsel referred the Court to the cases of **HAROLD BARCOO**, **DARREN MCKENNA** and **AZAM KARIM**²⁴⁶ and submitted that they were instructive to the amount of damages CD should receive if the claim is successful. Father Pierre additionally submitted that a nominal sum of not more than \$10,000 should be awarded to CD for his claim in trespass.²⁴⁷

[83] **Aggravated Damages**

Counsel for the AG submitted that "*there were no aggravating circumstances to warrant uplift in the award*".²⁴⁸ He noted that CD's allegations of the conditions of the cell were denied by the officers and CD's first mention of this circumstance appeared in his witness

²⁴² Id. at para. 83.

²⁴³ Id. At para 86. See also **CHABINATH PERSAD V. THE ATTORNEY GENERAL CV2008-04811**

²⁴⁴ Id. See also **ANTHONY SORZANO AND STEVE MITCHELL V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO. HCS 46/1996; HC 162/1996.**

²⁴⁵ Id. At para. 90.

²⁴⁶ **HAROLD BARCOO V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO AND INSPECTOR PHILLIP BROWNE. CV1388 OF 1989.**
DARREN MCKENNA V. ESTATE CONSTABLE LESLIE GRANT AND THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO AND ANOR. CV2006-03114
AZAM KARIM V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO AND ANOR. HCA 5897 OF 1985.
HAROLD BARCOO V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO AND INSPECTOR PHILLIP BROWNE. CV1388 OF 1989.
DARREN MCKENNA V. ESTATE CONSTABLE LESLIE GRANT AND THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO AND ANOR. CV2006-03114.
AZAM KARIM V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO AND ANOR. HCA 5897 OF 1985.

²⁴⁷ Defendant's Submissions. Para. 91.

²⁴⁸ Id. At para. 92.

statement. Additionally, Counsel highlighted the fact that CD did not bring any witnesses to corroborate his claim that he was “arrested in full view of the public and that his home was searched in full glare of his family and neighbours”.²⁴⁹ As such, Counsel submitted that CD experienced no aggravating circumstances to warrant an award.

[84] **Exemplary Damages**

In this regard, Father Pierre submitted that CD did not plead any facts warrant an award of exemplary damages, and relied on the case of **ALPHONSUS MONDESIR**²⁵⁰ to buttress his submission that the learned judge is disallowed from awarding exemplary damages when a claimant failed to plead these damages.

[85] **Special Damages**

Counsel admitted the amount of \$10,000 in special damages for CD’s legal fees from R.G. Bunsee, which was exhibited by receipt.²⁵¹ On the other hand, Counsel for the AG rejected CD’s claim for loss of earnings as he did not submit any evidence to the Court in support of his alleged loss of earnings as a Tradesman.²⁵²

[86] **Interests and Costs**

Father Pierre relied on **CIVIL PROCEEDINGS RULES, 1998 (CPR 1998)**, part 8.5(3)²⁵³ in putting forth his submission that CD is not entitled to an award of interest, as he failed to plead same in his claim form. He referred the Court to the decision of Stollmeyer J. (as he

²⁴⁹ Id.

²⁵⁰ Id. At para. 93. See **ALPHONSUS MONDESIR V. THE ATTORNEY GENERAL HCA NO. 1903 OF 1997.**

²⁵¹ Id. At para. 95.

²⁵² Id.

²⁵³ This part states:

If the claimant is seeking interest, he must -

- a. say so expressly on the claim form, and*
- b. include details of*
 - i. the basis of entitlement; and*
 - ii. the rate; and*
 - iii. the period for which it is claimed; and*
 - i. where the claim is for a specified amount of money, the total amount of interest claimed to the date of the claim; and*
 - v. the daily rate at which interest will accrue after the date of the claim on the claim form or in his statement of case*

then was) in support of this submission. Counsel also submitted that alternatively, should the Court rely on **SANDRA JUMAN**²⁵⁴ in the awarding of damages, then CD is entitled to only 6% interest in general damages and 3% interest in special damages.²⁵⁵

[87] Counsel for the AG submitted that costs in the matter should be determined on the prescribed scale.²⁵⁶

[88] **CLAIMANT'S SUBMISSIONS**

General Damages

Mr. Roopnarine submitted that the award for damages take into consideration injury to liberty as well as injury to feelings/reputation.²⁵⁷ He also referred the Court to the matter of **CHABINATH PERSAD** which speaks to the lasting effect an event such as that which CD endured, would have on him (CD).²⁵⁸ Mr Roopnarine also relied on the cases of **JOEL CROMWELL, WAYNE CLEMENT** and **CHARRAN FRANCIS** to be instructive as to the amount that should be awarded for false imprisonment.²⁵⁹ As to the claim of malicious prosecution, Mr. Roopnarine relied on the cases of **STEPHEN LEWIS** and **SOOKDEO HARRICHARAN**²⁶⁰, which both awarded a sum of \$75,000 in damages to the claimant. Mr. Roopnarine highlighted the rate of inflation over time and submitted that an amount of \$120,000 should be awarded to CD as general damages for false imprisonment and malicious prosecution.²⁶¹

[89] **Aggravated Damages**

Although Mr. Roopnarine requested aggravated damages in his claim form, he made no closing submissions to the Court regarding this head.

²⁵⁴ **SANDRA JUMAN V. PC ABBOTT NO. 11999 AND THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO. HCS 490 of 2001.**

²⁵⁵ Defendant's Submissions. Para. 99.

²⁵⁶ Id. At para. 100.

²⁵⁷ Claimant's Submissions. Pg. 19.

²⁵⁸ Id. At pg. 20.

²⁵⁹ Id. At pg. 21.

²⁶⁰ Id. At pg. 22.

²⁶¹ Id.

[90] **Exemplary Damages**

Mr. Roopnarine submitted that CD is entitled to exemplary damages as he endured “oppressive, arbitrary or unconstitutional action by servants of the government” according to musings of Lord Delvin in **ROOKES V. BARNARD**²⁶². Mr. Roopnarine listed the following for consideration under this heading:

- *The Claimant’s person, car and premises was searched and no incriminating evidence was found;*
- *The Claimant was not informed for what he was charged with until he appeared before the Magistrate on 2nd September, 2008*
- *The Claimant was not positively identified by the victim as the perpetrator*
- *No further investigations were conducted whilst the Claimant was kept in custody from Friday, 29th August, 2008*
- *No attempts were made by the police officers to contact the other persons alleged to have been a part of the crime;*
- *The Claimant remained handcuffed for the duration of the drive to the police station and during the search of his house, despite having complained that the handcuffs were too tight and the fact that he was not resisting arrest;*
- *The Claimant was only identified as “Shelton” which is not the Claimant’s name and is the only evidence the officers used as a basis for his arrest.*
- *The Claimant was placed in an overcrowded filthy cell which [smelt] of urine and f[æ]ces and was infested with rats and co[ck]roaches*
- *The Claimant remained in custody until the 12th September, 2008 before he was granted bail.*
- *Upon arrest was not informed and given his right to contact a legal officer, only able to speak to his Attorney, Mr. Bunsee when he appeared before a Magistrate on the 2nd September, 2008.*
- *No evidence was brought forward by the police officers to substantiate the Claimant’s arrest and continued detention.*

²⁶² Id. At pg. 22.

- *The Claimant's charges remained pending for approximately a year, exposing him to fear, distress and worry.*²⁶³

Mr. Roopnarine used the cases of **ALEXIS V. THE ATTORNEY GENERAL HCA 1555/2002**, **MARTIN REID V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO** and **ELLEN WILLIAMS V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO** in which exemplary damages were awarded as a guide in the matter at bar.²⁶⁴ Consequently, he submitted that CD should be awarded \$50,000 in exemplary damages.

[91] **Special Damages**

Mr. Roopnarine submitted that CD earned \$350 per day and as a consequence of his unlawful detention he lost 4 days of earnings, and had to pay \$10,000 to defend the matter. These special damages amounted to \$11,750. Mr. Roopnarine noted that the AG did not cross examine CD on these issues. He submitted that CD is entitled to recover the total amount of \$11,750 in special damages.

[92] **Interest and Costs**

Mr. Roopnarine requested interest on damages at a rate of 12% from 12th January 2012 and a rate of 6% interest on special damages from 29th August 2008.

[93] **ANALYSIS**

General Damages

In determining a fair and adequate compensation for CD under this heading, I considered the following cases instructive:

DHANIRAM DHANPAT V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO
HCA 458 OF 1997 / S-43 OF 1997
HCA 1043 OF 1997 / S-272 OF 1997

²⁶³ Id. At pgs. 23-24.

²⁶⁴ Id. At pg. 24.

In this claim for damages for malicious prosecution, determined in December 2011, the plaintiff was unlawfully detained for 8 hours. He received an award of \$30,000 in general damages.

**ADESH MAHARAJ V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO
CLAIM NO. S-788 OF 1998**

I also referred to my May 2011 judgment in **ADESH MAHARAJ** when analyzing the matter at bar. In this matter the applicant was awarded \$20,000 for an unlawful detention of 2 hours and 50 minutes.

**SIEWNARINE BUCHOON AND OTHERS V. THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGO
CV 2006-01846**

In this matter determined in September 2011, the first claimant was unlawfully detained for 3 days, the second claimant for 7 days and the third claimant for 1 day. The awards for damages ranged from \$25,000 to \$90,000.

In the circumstances the Court is prepared to award CD the amount of \$60,000 for general damages.

[94] **Special Damages**

CD has claimed special damages for two items:

1. Legal fees for defending the action in the amount of \$10,000
2. Loss of income for 4 days as a Tradesman in the amount of\$ 1,750

The burden of proof regarding special damages lies squarely on the shoulders of the claimant, who is required to prove the special damages which he pleads. While the dicta of Archie CJ in **ANAND RAMPERSAD**²⁶⁵ has given the Court discretion to consider what is reasonable in the circumstances²⁶⁶. Consequently, I find that CD's circumstances to be such that proof of income which is needed to be evidenced in Court may be attained

²⁶⁵ **ANAND RAMPERSAD V. WILLIES ICE CREAM LTD. CIV APP. NO. 20 OF 2002.**

²⁶⁶ Id.

through receipts from work completed or his annual individual income tax returns. As such, I veer in the direction of caution echoed by Mon Desir J. in **DHANIRAM DHANPAT** in which he reminded,

*That a judicial officer was not to assume the role of adjuster or estimator, and that it is the Plaintiff who should lead evidence to show the basis upon which the claim was made and that it was not simply plucked out of the air.*²⁶⁷

The cost of CD's legal fees is evidenced by a receipt from Mr. Bunsee and is thus recoverable. However, CD submitted no evidence to the Court regarding his daily earnings. I am unable to accommodate CD in this part of his claim. In this regard CD will be awarded \$10,000 in special damages, representing the legal fees he paid in the defence of the matter.

[95] **Exemplary Damages**

Damages are categorized into various groups so as to specify what a claimant is being awarded damages for specifically. In the matter of **GLEN BAPTISTE ET AL V. ASSISTANT SUPRENTENDANT ANTHONY GONZALES ET AL.**²⁶⁸ Harris J. noted,

The courts will usually award exemplary damages where:

(a) The awards for compensatory damages are perceived as inadequate to achieve a just result between the parties.

(b) The nature of the defendant's conduct calls for a further response from the courts.

(c) The conscious wrongdoings by a defendant is so outrageous that something more is needed to show that the law will not tolerate such behaviour.

²⁶⁷ **DHANIRAM DHANPAT** at para. 58.

²⁶⁸ H.C.A No. 1842 of 1997

CV 2008-02487, BABOOLAL AND DE FREITAS V A.G. OF TRINIDAD AND TOBAGO.

(d) Without an award of exemplary damages justice will not be done otherwise.

(e) It is usually a last resort to fill a “regrettable lacuna”²⁶⁹

From the evidence put forth, I see no instance where exemplary damages could be justified in this matter. When I review Mr. Roopnarine’s submissions on this point, I find that CD’s damages for each of the injuries claimed will be addressed under another category of damages. I find that CD can be adequately compensated for his injuries without receiving an award under this head.

[96] **Aggravated Damages**

McGregor on Damages provides a clear guide as to what type of action falls into the category of aggravated damages. This learning refers to the dicta of Lord Woolf M.R., in **THOMPSON V. COMMISSIONER OF POLICE OF THE METROPOLIS**²⁷⁰ which states,

Aggravating features can include humiliating circumstances at the time of arrestor any conduct of those responsible for the arrest or the prosecution which shows that they had behaved in a high handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution. Aggravating features can also include the way the litigation and trial are conducted.²⁷¹

Based on this authority, I find the humiliation endured by CD during his public arrest and public search to be analogous with those in **THOMPSON**.²⁷² Although Mr. Roopnarine submitted that CD’s damages should fall under the heading of exemplary damages, I do not find his public embarrassment regarding the arrest and search to be so damaging that they warrant a reward under exemplary damages. As such, I shall award CD aggravated damages in the sum of \$20,000.

²⁶⁹ Id at para. 30.

²⁷⁰ [1998] QB 498 CA, 516.

²⁷¹ Id.

²⁷² Id.

[97] **CONCLUSION**

Due to the lack of evidence by the Defendant, I cannot find that the officers acted with reasonable and probable cause and without malice in the arresting and charging the Claimant. Consequently, the Claimant shall be awarded general and aggravated damages in the amount of \$80,000.00 and special damages in the amount of \$10,000.

[98] **INTEREST AND COSTS**

Mr Roopnarine submitted that CD should be entitled to pre judgment interest from date of service of Claim Form until date of judgment, and that costs in this matter should be based on this figure. I concur. Following the decision of the Privy Council in **LERICHE v MAURICE**²⁷³ the computation of costs will reflect the amounts awarded as paid judgment interest on the awards as determined.

IT IS HEREBY ORDERED AS FOLLOWS:

1. That there be judgment for the Claimant against the Defendant on the Claim Form and Statement of Case filed on January 12, 2010.
2. That the Defendant do pay to the Claimant's damages in the sum of \$80,000.00 inclusive of aggravated damages together with interest at the rate of 6% from the 18th January 2010 to 18th December 2012 and at the rate of 12% from the date of judgment until payment.
3. That the Defendant do pay the Claimant special damages in the sum of \$10,000 together with interest at a rate of 4% from August 29, 2008 until date of trial and then interest on the principal sum of \$10,000.00 at the rate of 12% from the date of judgment until payment.
4. That the Defendant do pay the Claimant's costs in the sum of \$24,120.00.

Dated this 18th day of December 2012.

/s/ CHARMAINE PEMBERTON
HIGH COURT JUDGE

²⁷³ Privy Council Appeal 25 of 2004 (St Lucia)