

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2012 – 02813**

**Between**

**DAVE COWIE**

**Claimant**

**And**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**First Defendant**

**SERGEANT EDGAR BAIRD REGIMENTAL NUMBER NO. 12510**

**Second Defendant**

**CORPORAL KIRK DANIEL REGIMENTAL NUMBER NO. 12254**

**Third Defendant**

**KEVAUGHN NOREIGA**

**Fourth Defendant**

**Before the Honourable Mr Justice Ronnie Boodoosingh**

**Appearances:**

Mr Ernest Koylass SC leading Mr Abdel Ashraph and Dr Sanjay Badri-Maharaj instructed by Ms Veena Badrie-Maharaj for the Claimant

Mr Israel Khan SC leading Ms Kelisha Bello instructed by Ms Avaria Niles for the first, second and third Defendants

The fourth Defendant did not appear and was unrepresented

## JUDGMENT

1. The claimant is an attorney at law in practice for over 35 years. The second and third defendants were acting in the performance of their duties as police officers. The first defendant is sued under the State Liabilities Act. Thus the Attorney General is defending the first three defendants. The fourth defendant was a police informant. He has put in no defence.
2. On 14 July 2008 the police conducted a search at the claimant's home located at Acono Road, Maracas St. Joseph. The police say they found an unlicensed firearm and a quantity of drugs. The claimant also owned a firearm for which he was the holder of a Firearm Users' License along with approval for 25 rounds of ammunition. The police say they found 26 rounds. He also had an air rifle along with authorisation from the Commissioner of Police for its use. He was charged with offences relating to the unlicensed firearm, the marijuana and the round of ammunition in excess of the 25 he was permitted.
3. The licensed firearm and air rifle were seized also. These have not been returned.
4. The charge for having the extra round of ammunition was heard summarily before a Magistrate and dismissed on a no case submission.
5. The claim before the court is one for the unlawful and malicious procurement of the search warrant by the second claimant, then Corporal Baird. There is a claim relating to the failure to return his licenced firearm and air rifle. There is also a malicious prosecution claim and false imprisonment claim related to the dismissed charge of possession of the extra round of ammunition.

6. In relation to the ammunition charge, what took place was that only one bullet was submitted for analysis to the forensic examiner. The other 25 were not submitted. Thus the Magistrate could not conclude that the claimant was in possession of an extra round of ammunition since it was not proved that the other items seized were in fact ammunition. The case was rightly dismissed at the no case submission case. The claimant's case was, however, that he was only in possession of the approved 25 rounds and the extra round was made up by the police.
7. The entirety of the charges have not been concluded. He has been committed to stand trial at the High Court for possession of marijuana for trafficking and possession of a firearm without a Firearm's Users Licence.
8. If the claimant is found not guilty of those charges he will have the opportunity to consider if he should bring proceedings for malicious prosecution for those charges. The issue of false imprisonment may also have to be considered. If he is found guilty of those charges then malicious prosecution and false imprisonment will not arise.
9. The claimant has also challenged the search warrant in these proceedings. The manner in which the search warrant was procured and executed can of course be challenged in the criminal proceedings. But this is a tort in itself and no point has been taken in submissions about this and nothing has been advanced to suggest that the court should not deal with this claim in its entirety at this stage.
10. The claims with respect to the licensed firearm and air rifle are ones which can properly be dealt with at the beginning. Based on the evidence there would have been no basis for the seizure of either of these items. They were lawfully being held at the time by the claimant.
11. Issues however now arise concerning whether the court can properly make an order for the return of the firearm. There is no evidence before the court that the FUL remains current for the firearm. The question is whether damages can be awarded as an alternative.

12. Having said the above there were several troubling features of this case which came out in the evidence in this claim.
13. Very serious allegations were made against the third defendant, a police officer, and the fourth defendant, a person on criminal charges and who was said by the claimant to be a police informer. Trials are contests between different parties. Where facts are contested, each side bears an evidential burden to bring evidence in relation to those contested facts. The fourth defendant was served, but chose not to take part in these proceedings. The third defendant was a party represented by the Attorney General.
14. A witness summary was submitted on behalf of the third defendant on the condition that he would make himself available at the trial of this claim. There has been no adequate or proper explanation advanced by Counsel for the State for his absence. I had been told before he was abroad and would be available for the trial. At the trial he did not attend. I was told he was abroad. Counsel for the defendant could not even indicate if he was still a police officer.
15. Where a person against whom serious allegations are made has chosen not to come forward to refute them he must stand the consequences of whatever findings of fact the court may make. Further, the court's duty is to make findings of fact in accordance with the evidence before it. Civil trials in this jurisdiction remain largely an adversarial process when they get to trial. The court applies well established rules of evidence in making its findings of fact based on the evidence placed before it. From this duty the court cannot shirk even where the findings of fact may lead to unsettling waters.
16. It is in this context that the court has the duty to carefully examine the evidence and make such findings as are consistent with the evidence before the court.
17. My first finding is that Officer Baird's evidence was substantially disturbed in cross examination as the analysis below will show.
18. The filed Defence of the Defendants accepted Officer Kirk Daniel was present at the scene. This is denied by Sgt Baird in his evidence.

19. The Defence pleading accepted that 7 persons were present, including two persons wearing masks. This was denied by Sgt Baird in his evidence.
20. The filed Defence accepted that Kirk Daniel took part in the search. Sgt Baird said he was not there.
21. The claimant said that the fourth defendant, Noreiga, was one of the men who had on the mask which he later removed. Given the acceptance by the State in the pleadings that there were two masked men, and the contention by the claimant that one of them, who removed his was Noreiga, this makes the inconsistency between the Defendants' pleadings and the evidence of Officer Baird more significant.
22. There were other inconsistencies in the evidence in cross-examination given by Sgt Baird even with his own witness statement. Further there were a number of matters which he said he could not recall which he would reasonably have been expected to recall given the fact he had come to give evidence in a claim in which he was a named defendant. The record of the proceedings show how many times he was unable to recall.
23. As noted above, a witness summary was filed for Kirk Daniel. However he did not attend the trial to give evidence. A witness summary was permitted on the condition that he would attend the trial to adopt the witness summary and be cross-examined. No proper explanation was given for his absence. A statement was made that he is abroad but no further information was provided as to why arrangements were not made for him to be present at the trial. Thus his witness statement was struck out. Several serious allegations were made against him and there was no evidence before the court by him to refute it.
24. There was also contradictory evidence about when the photographs relied on by the defendants were taken.
25. I found Officer Baird's testimony to be severely undermined in cross-examination. I found his evidence to be materially different from the pleaded case. I could therefore place little reliance on it.

26. I also drew unfavourable inferences against the defendants from the absence of Officer Daniel and Noreiga. The court is entitled to do so where no evidence is forthcoming from one side on important issues where no adequate explanation is given for the absence. In such circumstances I am entitled to and I draw inferences in favour of the claimant. I accepted his evidence.
27. Noreiga was alleged by the claimant to be someone who had broken into the claimant's home before. The claimant said Noreiga had confessed to this. The fact that the police got information from him against the claimant and relied on it without proper investigation beforehand must impact on the question of how the warrant was procured. Baird also said he relied on surveillance of the claimant's property. But there was nothing from that surveillance that was told to the court that would have excited suspicion on his part.
28. The fact that a Justice of the Peace had issued the warrant here is not determinative. There is no evidence that the issuer of the warrant was told that there was an allegation that the informant had broken into the property of the claimant. That would have been a material consideration that a Justice of the Peace / Magistrate would have likely taken into account.
29. The defendants raised the issue that it was only the claimant who gave evidence of the malicious procurement of the warrant. The defendants pointed to the lack of a neutral party or expert to support him. It is difficult to conceive what kind of expert would have assisted the claimant nor was it suggested by the defendants from where this neutral party would manifest. A person the subject of a conspiracy in circumstances like these would likely not have the benefit of other persons who would have knowledge of events.
30. In contrast there was Officer Baird for the defendants who stood alone when both Officer Daniel and Noreiga could have given evidence refuting what the claimant advanced but they did not do so. There was simply no denial of the acrimonious relationship between the claimant and Noreiga.
31. Consequently, the claimant's evidence remaining consistent after cross-examination, there is no reason to reject his evidence in favour of the non-evidence of the fourth

defendant, corroboration lacking notwithstanding. What we do have are circumstances which showed the claimant was due to give evidence against someone who the claimant said was a confederate of Noreiga in the Magistrates' Court the day after the search warrant was executed.

32. Mr Baird's evidence was that the information he had was that the claimant was seen talking to one Ryan Charles who was known to be a drug dealer and gang leader. Further that the Ryan Charles man was seen going in and out of the claimant's house with guns. How precisely this was known was not stated. But from the evidence given by Baird it seems this was not first-hand because Daniel could only give him a name "Cowy" and there was nothing from Baird's evidence for him to conclude, as he did, that Daniel had seen this himself.
33. In cross-examination Mr Baird accepted that he had no personal information that Ryan Charles was a gang leader and he had not ever investigated him nor had he had any cause to check if that was so. He did not know if he had a criminal record.
34. He did not know if the fourth defendant was in protective police custody even though the Defence admitted this. He did not recall how many persons comprised the police party. The Defence had accepted that there were seven persons.
35. There was much that Officer Baird could not recall in cross-examination. In particular he could not remember when the conversation with Daniel took place when the information was supplied; how long that conversation was; he couldn't recall the place it occurred. Significantly he could not remember if Ryan Charles' name was mentioned even though this was an important aspect of his evidence in his witness statement of the information given to him about the claimant.
36. There was this exchange between counsel for the claimant and Officer Baird:

Q: Did he tell you he saw persons going with guns?

A: No.

Q: People going with drugs?

A: ...

Q: Did he tell you people involved in drugs going to his home?

A: Can't recall.

Q: Did he tell you about those people having exchanges with him?

A: I want to tell you exactly what he told me.

Q: Did he tell you Ryan Charles going to his house?

A: He told me he was storing guns there.

Had no conversation about Ryan Charles.

Q: Conversation about drugs?

A:...

Can't remember about if Ryan Charles and him were exchanging packages.

Q: What you saying Daniel told you?

A: That he was storing firearms there.

Q: Nothing else?

A: Can't remember.

37. Mr Baird did not ask Officer Daniel about how he came to the information that the claimant was storing guns there.

38. The information also was of a suspicious package passing. What was suspicious about this package passing, the court is not told. He said Officer Daniel told him the claimant was storing firearms at his house. He did not take the time to question Officer Daniel about how he came to that conclusion. It is, with due respect, incredible that a police officer would be as flippant about serious allegations such as that not to interrogate it fully even if the source of the information was a police officer. This is all the more remarkable since he had gotten this information some time before in June and the warrants were obtained near the middle of July. Officer Baird therefore took no steps to



verify or investigate this information even though he did not act on the information immediately.

39. The information Officer Baird said he got was from Officer Daniel. It is Officer Baird's honest belief that must be considered. However, where serious allegations are made against both Officer Daniel and Noreiga and where there are inconsistencies about the presence of Officer Daniel on the scene and there are unanswered allegations against them, the court is entitled to consider the evidence against them. If the factual basis on which the warrant was obtained is tainted, as I conclude it was, this must necessarily affect the bona fides of the obtaining of the warrant by Officer Baird.
  
40. In contrast the claimant said he never knew Ryan Charles and had never spoken to him. Officer Daniel's evidence would have been important to refute this but it was not forthcoming. What is more is that the claimant had from 2005 written to the police giving information about break-ins to his house and criminal activity of persons, including the said Ryan Charles, who he was being alleged to have dealings with, and the fourth defendant, among others, which included Elvis Richards who was before the court on a break-in charge in relation to his property. The claimant also gave evidence of a letter sent on 1 September 2006 to the Superintendent of the Northern Division c/o the Maracas/ St Joseph Police Station specifically complaining about the fourth defendant's involvement in criminal activity and against the same Ryan Charles that he was being alleged to be in league with. Also he had complained about threats made to him by Noreiga as early as August 2006 including one that "we go fock you up, you cunt."
  
41. By letter of 6 October 2006 the claimant had also provided information to a police officer at the Maracas Police Station that Keron Noreiga, Elvis Richards, Ryan Charles and others were involved in serious offences. What follows from this is the very credible suggestion from the claimant that he would have been vulnerable to allegations being made about him by persons whom he had given information about.
  
42. Officer Baird knew nothing of these things. But he knew nothing because he had made no checks. He just took Officer Daniel's word. We have no evidence from Daniel so we can't say where he got the information from. The claimant suggests it may have been from Noreiga who had a vendetta against him. The claimant says he must have obtained

it from the fourth defendant who he said was on the scene. Officer Baird does not know if the information came from Noreiga.

43. He also sat on this information for at least two weeks and possibly as much as a month. This was information that guns were being stored by the claimant. This, in itself, to use the claimant's words are a "tale worthy of discredit".
44. This was the kind of information that it would have been reasonably expected that Baird would not just accept wholesale but it was information that he ought to have enquired into the truth and accuracy of: **Lister v Perry [1971] J.P. 5.**
45. Clearly there was no due diligence shown about the information Officer Baird said he got from Officer Daniel. Further, there was significant documentary evidence advanced by the claimant that the fourth defendant had an axe to grind about him. Also the information that the claimant was in league with Ryan Charles loses significant traction because it is clear that the claimant had well before the warrant was obtained made allegations against Ryan Charles in relation to criminal activities in his area. There is nothing to suggest that Officer Baird was precluded from investigating these matters before and we have no evidence from Officer Daniel about his checking on these matters either.
46. All of the evidence available to me leads to the objective conclusion that there was an improper purpose in the procurement of the warrant.

### **Malicious Prosecution**

47. The second aspect of the claim that I can determine is the claim for malicious prosecution. The charge was that the claimant had one round more in his possession than what his licence permitted. The charge was instituted and dismissed by the Magistrate. The complainant, Officer Baird, had failed to submit all the items he said he found for testing. Thus he was unable to prove that the claimant had one more round than he was supposed to have because he did not prove the other 25 were in fact ammunition. This was an elementary blunder by the complainant. It added to the shaky credibility as

shown by his evidence of what he had failed to do with the information he received from Officer Daniel.

48. In contrast the claimant's evidence was that he never had 26 rounds. He said he had 25 as permitted by his licence. He says in effect he was set up by the police officers in particular Inspector Baird. If he did not have an extra round then the case was made up. The officer could not subjectively then have had reasonable and probable cause.
49. Between the claimant and the evidence of Officers Baird and Pitt, who supported Baird, for the reasons set out above, I preferred the evidence of the claimant on a balance of probabilities. It follows that if the officer had no honest belief in the guilt of the claimant and this was because he knew this was a false charge, then the element of malice would be made out. That is what I conclude.

### **False Imprisonment**

50. Dealing with this claim poses some practical difficulty. The claimant was charged with more than one offence. He has been committed to stand trial before a jury for possession of a firearm without a licence and for possession of marijuana for trafficking which the police say they found in his house. Having succeeded in a malicious prosecution claim in respect of the possession of ammunition charge, it cannot be said at this stage that his detention was unlawful since there has been no finding of guilt of those pending charges and there can be no claim for malicious prosecution at this time. If there is a finding of guilt, the police would have been entitled to detain him and there would be no claim for false imprisonment. In such circumstances the correct order to make, even though this was not argued by the defendants, is to stay the hearing of the false imprisonment claim pending to a date after the determination of the criminal High Court proceedings.

### **Damages**

51. I note that the defendants' submissions did not address this aspect of the case. Nonetheless the court had to consider and interrogate the claimant's submissions and make appropriate conclusions.

52. The evidence of Officer Baird is that the claimant never sought to collect the air rifle and firearm back. They ought not to have been taken in the first place. The proper order in this case would be one for damages. The value of these items according to the claimant which has not been challenged is \$8,500.00 for the air rifle and \$19,000.00 for the firearm. Damages in lieu of the return of the air rifle and firearm are assessed payable in these sums.
53. On general damages the claimant is an attorney at law of long standing. This must have impacted on his reputation and his practice. His practice would have been affected if only by the many times he had to attend court and take the time to prepare for defending himself against the ammunition charge. He indicated he was involved in political activity at a high level in his political party, which had to be curtailed. Having to attend court on the ammunition charge must have caused him considerable distress and consternation over the course of the trial. Damages must therefore be on the higher end for these claims.
54. For the malicious procurement of the warrant the defendants are to pay the claimant the sum of \$75,000.00 in damages.
55. For the malicious prosecution, the defendants must pay the claimant the sum of \$75,000.00.
56. This case is an appropriate case for exemplary damages given the findings of facts which I have made. The conduct of the police officers cannot be put down to mere negligence or lack of care. There were deliberate failures to question the information the police officers say they obtained. There was a failure to have any investigation done in relation to the information. The police would have had records of the complaints made by the claimant, but these were not considered. The police relied on information supplied by a person or persons against whom the claimant had previously made allegations. There are grounds for suspecting an oblique motive against the claimant. The conduct can be seen to be arbitrary and oppressive as it impacted on the claimant, and the court must signal its disapproval. Accordingly, I award the claimant \$75,000.00.

57. The claimant produced various cheques showing payments made to different attorneys for legal services. However, at paragraph 91 he said this was for legal services during the preliminary enquiry. He did not specify here the cost of legal services provided for the summary trial of the ammunition charge. In those circumstances the claimant cannot recover those fees paid since they do not relate to the summary trial.

58. There is therefore judgment for the claimant against the defendants. There is a stay of the false imprisonment claim until completion of all existing criminal proceedings against the claimant. The defendants must pay the claimant damages as set out above. Interest is payable on the damages awarded, except for exemplary damages, at 2.5% per annum from the date of the filing of the claim form to the date of judgment. The defendants must pay the claimant costs on the prescribed scale taking account of the total of damages awarded and interest up to the date of judgment. There is a stay of execution of 42 days.

Ronnie Boodoosingh

Judge