

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No. **CV2012-05160**

BETWEEN

**CORNEAL THOMAS**

Claimant

AND

**P.C. LLEWELLYN BETHELMY #16347**

First Named Defendant

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

Second Named Defendant

**BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES**

**Appearances:**

For the Claimant: Mr. Murphy instructed by Mr. Sookoo

For the Defendant: Ms. Moore & Mr. Francois instructed by Mr. Forrester

Date of Delivery: 6<sup>th</sup> October 2016

**JUDGEMENT**

## **THE CLAIM**

- [1] By Claim Form and Statement of Case filed on 20<sup>th</sup> December 2012 the Claimant claimed against the Defendant damages for assault, battery and malicious prosecution as well as aggravated and exemplary damages.
- [2] He pleaded that he was walking with his sister along Cascade Road on 25<sup>th</sup> December 2008 when two men dressed in plain clothes ordered them to turn around and go back up the road; those men did not identify themselves as police officers although they stood a short distance away from a marked police vehicle.
- [3] The Claimant pleaded further that he and sister continued along the road whereupon one of the men cursed his sister, called her a rat and stated that they were police officers. He also ordered her to return the way she had come. The Claimant and one of the men then had a verbal exchange in which the officer told the Claimant that he and his sister were rats, whereupon the Claimant told the men who identified themselves during this exchange as police officers that they were 'bullermen'. The Claimant and his sister returned to their home where a short while later the two police officers aforesaid arrested him and took him to the Belmont Police Station where he was savagely beaten about the head until he fell unconscious. When he regained consciousness he was fingerprinted and an officer threatened to shoot him if he attempted to run when the cell was opened. He was later charged with resisting a police officer in the execution of his duty and using obscene language.
- [4] The Claimant averred that upon his release the same day, he went to the Port of Spain General Hospital where he was refused medical treatment.
- [5] On the 26<sup>th</sup> December 2008 the Claimant's uncle accompanied him to the Central Police Station where a formal complaint was lodged to WPC

Gibson who gave him a Medical Report Form to take to the hospital where he was warded for four days.

- [6] The Claimant first appeared before the Magistrate on the 29<sup>th</sup> December 2008 when he pleaded not guilty to the charges. The matter was called a few times and eventually dismissed due to the nonappearance of the First Defendant on the 7<sup>th</sup> June 2010.

### **THE DEFENCE**

- [7] The Defendants gave a different account of the events leading up to the arrest of the Claimant. They pleaded that they went to #43 Cascade Road in response to a report from a resident that a man was seen on his premises. Whilst the officers were speaking to the resident, they observed four persons liming on the pavement opposite, one of whom was the Claimant. The officers checked out the premises then returned to the resident who informed them that they suspected a certain person (named) was the trespasser. When the resident said this, the Claimant approached the man aggressively and accused him of trying to get his family in trouble.
- [8] At this point, the First Defendant identified himself to the Claimant as a police officer, told the Claimant that he was investigating a complaint and requested that he desist from interjecting and leave the area. The Claimant then cursed the First Defendant in the presence of residents and PC Francis. The First Defendant then told the Claimant that he had committed the offence of using obscene language, cautioned him and informed him that he was under arrest. On attempting to hold onto the Claimant's right hand, the latter pulled away and cursed the officers once more. The Claimant was then arrested, informed of his rights and privileges and taken to the Belmont Police Station.

[9] The First Defendant denied that the Claimant was beaten in the station; the Defendant also denied the Particulars of Malice pleaded against them in the Statement of Case. They asserted that if the Claimant sustained injuries it was not at their hands at the Belmont Police Station.

## **THE EVIDENCE FOR THE CLAIMANT**

### ***Corneal Thomas***

[10] The Claimant filed a witness statement in which he testified as to the events which lead to his arrest on 25<sup>th</sup> December 2008. His evidence was that he was arrested by the First Defendant and another officer in front of his house sometime after a verbal confrontation between himself and those officers a short while earlier as outlined in his Statement of Case.

[11] He testified that he was handcuffed and marched along Cascade Main Road by his jersey and placed in a police jeep and taken to the Belmont Police Station. At the station he was placed in a cell whereupon two officers came into the said cell and violently assaulted him. They cuffed him about the head, neck and upper back. The Claimant testified that those blows were inflicted with great force; they jarred his vision and 'caused lights to flash before his eyes'. He could not block the blows and eventually he fell unconscious.

[12] The Claimant stated that when he regained consciousness he was stripped, made to cough then fingerprinted and charged for resisting arrest and using obscene language to the annoyance of persons in the street. He stated further that he was given station bail later that day and released into the custody of his uncle Roger Whiteman who took him to the Port of Spain General Hospital where he was refused medical attention on the basis that he needed a police document. He then went home where he experienced pain, stiffness and swelling in his neck and

shoulders. He was then taken by his uncle Wendell Thomas to the Cascade Police Station where a report was made to WPC Gibson who gave him a Police Medical Report Form to take to the Port of Spain General Hospital. He returned to the Port of Spain General Hospital where he was warded on the 26<sup>th</sup> December 2008.

[13] Mr. Thomas was diagnosed with soft tissue injury to his neck and left shoulder, muscle spasms, stiffness and pain to those areas. He was also found to have suffered brief loss of consciousness consequent to a head injury and was given a cervical collar and placed on an IV. He remained bedridden for two days suffering severe pain; he had several x-rays done and was administered pain medication during this time. A medical report was disclosed as part of his case.

[14] He testified that he was discharged on the 28<sup>th</sup> December 2008 whereupon he returned the collar since he was advised that he would not need it any longer. He attended Court on the 29<sup>th</sup> December 2008 and pleaded not guilty; the matter was adjourned on several occasions until dismissed on 7<sup>th</sup> June 2010 for nonappearance of the Complainant, the Defendant.

### ***Cross examination of Corneal Thomas***

[15] The Claimant admitted that his mother was a witness to his arrest but is not a witness in this matter. He denied the Defendants' account of how he came to be arrested. He specifically denied that the officers were in plain clothes and that they identified themselves to him before ordering him to go back the way he had come that morning.

[16] He asserted that two officers beat him in his cell at the Belmont Police Station, however, he could not recall whether PC Bethelmy or PC Francis assaulted him. He insisted that he was not attended to at the Port of

Spain General Hospital when he first visited the institution on the 25<sup>th</sup> December 2008. He did not seek medical attention elsewhere that day even though he knew that it was wise to do so. The Claimant admitted that he didn't produce in evidence the police medical form but explained that the hospital had kept it. He also explained that Wendell Whiteman and Wendell Thomas are one and the same person – his uncle. He also acknowledged that his uncle was not called as a witness.

[17] In answer to counsel for the Defendant, the Claimant admitted that he had no explanation for an inconsistency in his case – that officers in the army had also assaulted him<sup>1</sup>. He stated that this was not true.

***Dianne Whiteman***

[18] She affirmed her evidence given in Chief and was not shaken in cross examination. This witness stated she saw someone behind the police jeep on Cascade Road for the first time. She denied that there was anyone else along the Cascade Road apart from the officers, the Claimant and herself.

**THE EVIDENCE FOR THE DEFENCE**

***Police Officer Llewellyn Bethelmy***

[19] PC Llewellyn Bethelmy, the First Defendant, gave a witness statement which was consistent with the facts pleaded in the Defence.

[20] He denied that the Claimant was mistreated, assaulted in any way by himself or any other police officer. He also asserted that he was unaware

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<sup>1</sup> Paragraph 20 (c) of the Statement of Case

that the Claimant had been to the hospital and he specifically stated that he could not recall whether the Claimant complained to the Magistrate about being beaten by the police but did notice that the Claimant wore a neck brace on 29<sup>th</sup> December 2008. He blamed his failure to attend court on the 7<sup>th</sup> June 2013 on the fact that he could not obtain the adjourned date of the matter despite several attempts to do so.

***Cross examination of PC Llewellyn Bethelmy***

- [21] In cross examination PC Bethelmy revealed that the report which led to his arrival at Cascade on 25<sup>th</sup> December 2008 was made approximately three hours earlier by telephone. By that report they were informed that the alleged intruders on the compound had been confronted by the resident and had driven off in a green hatchback vehicle. Notwithstanding this fact, he and PC Francis still conducted a search of the premises. He testified further that he was informed by the residents on the scene that the suspect was on the premises with someone that they know. He also stated that when the Claimant spoke derisively about himself and the other officer he, the Claimant, was among a group of persons liming on the opposite pavement.
- [22] PC Bethelmy asserted that he made an entry in his pocket diary with respect to the events that transpired between himself and the Claimant. He confirmed that the entry in the station diary was made based on what he related to the sentry on duty. He did not include in his pocket diary entry the name of the man allegedly on the premises because he could not remember the name of the man. It was also his testimony that he left the station after charging the Claimant, however he could not recall what he did between 8:00 am and 9:30 am when he was still at the station. He admitted that there was no record of the discharge of prisoner from the station. He denied that he or any other officer beat the Claimant at the

station; he also denied that the Claimant was arrested in the circumstances described by the Claimant.

### ***Police Officer Tisean Francis***

[23] Tisean Francis, the officer who accompanied PC Bethelmy to Cascade Road on 25<sup>th</sup> December 2008 also gave a witness statement. His evidence mirrored that of PC Bethelmy in that his account of the incident leading up to the arrest of the Claimant was very similar. He too denied assaulting the Claimant at the Belmont Police Station or observing anyone mistreating him at the said station.

[24] PC Francis did not testify. Counsel indicated that numerous attempts to contact him proved futile. In the circumstances, I gave no weight to the evidence contained in his witness statement.

### **ANALYSIS**

[25] The determination of this case depends on the version of the facts that I accepted.

[26] I am guided in my assessment of the evidence by opinion of Lord Ackner in **Reid v Charles**<sup>2</sup>,

*“...where there is an acute conflict of evidence between neighbours, particularly in rights of way disputes, the impression which their evidence makes upon the trial judge is of the greatest importance. This is certainly true. However, in such a situation, where the wrong impression can be gained by the most experienced of judges if he relies*

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<sup>2</sup>Privy Council No 36 of 1987

*solely on the demeanour of witnesses, it is important for him to check that impression against contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability of the rival contentions, in the light of the particular facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard witnesses.”*

[27] I also had regard to **Wisniewski v Central Manchester Health Authority**<sup>3</sup> where Brooks LJ opined,

*“a. In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issues in an action.*

*b. If a court is willing to draw such inferences they may go to strengthen the evidence adduced on that issues by the other party or weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witnesses.*

*c. There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference; in other words, there must be a case to answer on that issue.*

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<sup>3</sup> (1998) 7 PIQR 323

*d. If the reason for the witness's absence or silence satisfies the court then no such adverse inference may be drawn. If, on the other hand, there is some credible age 19 of 57 explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified."*

- [28] I generally found the witnesses for the Claimant to be straightforward and consistent. PC Bethelmy on the other hand was generally evasive and frequently hesitated before answering simple questions.
- [29] In assessing this case, I noted that both the Claimant and Defendants failed to call witnesses to the incident. However, the Claimant's sister did testify and as noted above, I found her to be consistent and straightforward. The absence of PC Francis, however, is inexcusable. He is a police officer against whom a serious allegation of abuse to his authority has been made by a citizen in that it is alleged that he together with PC Bethelmy wrongfully deprived that citizen of his liberty and wrongfully charged him with criminal offences. This is a very serious charge made against a police officer and PC Francis' inexplicable failure to attend court to be cross examined has caused me to disregard his evidence altogether and draw an adverse inference against the Defendants' case – that PC Francis is unwilling to support the Defendants' case because it is not true.
- [30] The inconsistencies in the Claimant's case were not, in my view fatal to his case. The fact that he did not go to another hospital after being turned away at the Port of Spain General Hospital can be explained by the fact that he was in pain and tired after a long day. The fact is that he did attend hospital the next day and submitted a medical report consistent with the injuries that he said he sustained at the hands of the police. No explanation has been forthcoming from the Defendants as to

how the Claimant sustained these injuries except to say that it was not at their hands. I did not accept the Defendants' account of the incident and accepted the evidence of the Claimant and his witness about his arrest and assault. I found as a fact that the Claimant was arrested in the circumstances as he described and that he was severely beaten by the police whilst at the Belmont Police Station. I also hold that there was no justification for the Claimant's arrest and subsequent charge.

[31] In light of the above there could be no reasonable and probable cause for the arrest of this Claimant and I so hold. Having accepted the Claimant's evidence I also hold that in the circumstances PC Bethelmy acted out of spite/ill will against the Claimant, arresting and charging him as a result of the unfortunate exchange among the Claimant, his sister, PC Bethelmy and PC Francis earlier that day. The absence of reasonable and probable cause for this arrest as found by me supports my conclusion that the First Defendant had no proper motive for the arrest of the Claimant.

[32] In the circumstances I give judgment for the Claimant against the Defendants. On the facts of this case I have decided to award aggravated as well as exemplary damages. Not only was the Claimant arrested without reasonable and probable cause, he was charged and prosecuted. Additionally, he was assaulted by the police.

## **CONCLUSION**

[33] I therefore Order:

- a) Judgement for the Claimant against the Defendant;
- b) The Defendants to pay to the Claimant damages for assault and battery in the sum of \$35,000.00;
- c) Damages for Malicious Prosecution in the sum of \$25,000.00;

- d) Exemplary Damages in the sum of \$20,000.00;
- e) Interest at the rate of 3 percent from the filing of this claim to the date of judgement
- f) Prescribed costs on the award of damages and interest above.

**Joan Charles**

**Judge**