

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2014-00542

BETWEEN

DERYCK WARNER

Claimant

AND

ASSISTANT SUPERINTENDENT CLARKE

First Defendant

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Second Defendant

Before the Honourable Justice V Kokaram

Date of Delivery: 12th February 2016

Appearances:

Ms. Sophia Chote S.C leading Mr. Anil Maraj instructed by Ms. Nisha Abiraj for the Claimant

Ms. Coreen Findley and Ms. Ronnelle Hinds instructed by Mr. Bryan Basdeo for the Defendants

JUDGMENT- SUMMARY

1. This is a claim for damages for assault and battery, false imprisonment and malicious prosecution arising out of an alleged high speed chase and “shoot out” with the police one Carnival Friday evening on 12th February 2010. The Claimant Deryck Warner, a 22year old University of Trinidad and Tobago (UTT) student, sustained a near fatal gunshot wound after

passing a police roadblock at the Piarco Roundabout. Some 13 days later, after being warded in the hospital on two occasions under police guard and undergoing two critical surgeries, he was eventually charged by Ag Assistant Superintendent Clarke with the offences of possession of a firearm and ammunition and 6 counts of shooting with intent to cause grievous bodily harm. Those charges were dismissed on 25th July 2013 after lingering for three and half years in the Magistrates' Court without the prosecution being in any position to proceed.

2. However, the parties' respective versions of the events leading to the Claimant's arrest on that Carnival Friday evening are diametrically opposed. The Claimant alleges that he was "liming" at a bar with some friends and left Malabar driving his father's white panel van TBU 5282 to head home in Cunupia. He travelled West along the Eastern Main Road then turned South on the Golden Grove Road, Arouca. On approaching the Piarco Roundabout on BWIA Boulevard, at about 6:15p.m. he passed some police officers and some police vehicles on the left. He then heard loud explosions. He saw that he was being followed by police and he immediately pulled over. He was unarmed. He got out of the vehicle and felt a burning sensation in his back and belly area where he had been shot by the police. He blacked out. He was taken to the Arima Health Facility by Emergency Personnel and then taken later that night to the Eric Williams Medical Sciences Complex, Mt Hope where he regained full consciousness. He was kept under police guard for 11 days until he was discharged. He was then taken to the Arouca Police Station where he was questioned for some 3 to 4 hours and then rushed back to the hospital later that night on 23rd February 2010. He spent 2 further days at the hospital and upon his discharge again taken back to the Arouca Police Station where he was eventually charged and granted bail.
3. If the Claimant's version is accepted he was simply at the wrong place at the wrong time and the charges laid were all trumped up to cover up a serious, grievous error by the police.
4. According to the Defendants however the Claimant was driving the white panel van around 6:45p.m. in a Westerly direction on the Priority Bus Route at the Mausica intersection when he almost collided with a police vehicle being driven by PC Rupert Williams. The officer turned his vehicle around and gave chase. He overtook the vehicle, came out and called upon

the Claimant to stop but he did not. The Claimant almost collided with the officer and sped off. PC Williams again gave chase and radioed in the chase to the Police Command Centre. The Claimant refused to stop despite PC Williams calling on the Claimant to do so over the loud speaker. He broke the traffic light and went onto the Eastern Main Road. PC Williams noticed there were two other occupants in the van, one in the passenger seat and one seated in the back. The Claimant then turned off the Eastern Main Road and headed South onto the Golden Grove Road. By then a roadblock was set up at the Youth Training Centre (YTC) to catch the Claimant. Shots were fired at PC Williams from the back seat passenger as he neared the roadblock. At the roadblock there was an exchange of some 16 to 20 shots between the police at the YTC roadblock and the occupants of the van. The Claimant then skilfully drove around the roadblock while the back seat occupant exited from the right side of the van at the side of the roadblock and ran off into the bushes opposite YTC, (of all places) heading West. He was never pursued nor apprehended by the police. PC Williams continued his chase and the vehicles crossed South over the Churchill Roosevelt Highway unto BWIA Boulevard when he was joined by two other police vehicles one driven by PC Inniss. Again the Claimant fired shots at the police and PC Williams returned fire. The panel van sped towards another roadblock which was set up near the Piarco Roundabout. Again shots were traded between the Claimant and the police. This time however it appeared that the near fatal shot was made, the Claimant's van eventually came to a stop and the second assailant alighted from the left front passenger side of the vehicle and ran into the bushes or river never to be pursued by the police nor apprehended. PC Williams approached the Claimant and took him out of the van. He was bleeding. One of the police vehicles that arrived on the scene was detailed to take the Claimant to seek medical treatment.

5. If the Defendant's version is accepted then the Claimant was a dangerous criminal taking flight from an array of police vehicles in a dramatic police chase where he and two other unknown occupants in his van exchanged gun fire with the police. If that is the case, the police officers are to be commended for their bravery. If it is not, their actions are to be soundly condemned.
6. This is a difficult case as there is only one witness for the Claimant who can testify as to the events that took place that night. This is so as it is accepted by both parties that at the time of

his arrest, the Claimant was the sole occupant of the van. He is handicapped in the presentation of his case not only by the fact that he was the only occupant of the van when he was arrested but that he lost consciousness soon after he was shot and could not give any details for that period between when he was stopped and when he fully revived in the hospital later that night. Further there is no dispute as to his medical evidence which revealed his severe injuries. The effects of this incident on his psychiatric state is also not in dispute and at the date of trial he was suffering from post traumatic stress disorder with some of the symptoms being impairment in concentration and impairment in memory. There is no doubt for the Claimant he suffered a traumatic incident.

7. On the other hand there are several police officers who testified for the Defendant. They comprised the investigating officer, ASP Clarke with some 35 years experience in the service. What I will refer to as crime scene officers: WPC Arlene Skeritt-Marshall and PC Victor Lewis. Then there are three eye witnesses to the police chase: the main witness PC Rupert Williams with some 35 years experience in the service who alleged he followed the Claimant's van from the beginning of the chase. PC Vernon Inniss who joined the chase at the traffic lights at the intersection of Golden Grove Road and the Churchill Roosevelt Highway. PC Garvin Bissessar who was one of the officers at the roadblock in the vicinity of the Piarco Roundabout. They are all experienced officers, had the benefit of their notes, station diary extracts and were able to provide their version of the events after in some instances discussing it with the other officers who were involved. There is no doubt that the Defendants have the upper hand in the presentation of their case. It may be a simple matter to say that the burden lies on the Claimant to prove his case on a balance of probabilities and indeed in circumstances where there is no corroboration of the Claimant's version, his case will be "hoist with his own petard".
8. However the Court cannot ignore the special features of this case namely the use of armed force and a near fatal injury to the Claimant as a result of gunshots from the police. Moreover the Defendant has pegged its case on the fact that the Claimant was a dangerous assailant in possession of a firearm and engaging the police in a shoot out. Indeed there is no evidence of any officer formally arresting the Claimant that evening as the Defendant relies solely on the fact of the chase and shoot out with the police which made the Claimant's detention self

evident. Such a chase is however being asserted in circumstances where there is no evidence of any arms or ammunition in the possession of the Claimant nor in his van. No gunpowder residue on his person nor in his vehicle. No forensic finger print evidence of any other occupant in the vehicle. Conflicting independent contemporaneous records of the time of this incident. Evidence of only three shots hitting the van and none hitting the police vehicles despite the severe gun play as described by the officers between the police and the Claimant. In such circumstances the evidence for both parties must fall for anxious scrutiny.

9. The witnesses for the Claimant and the Defendant all appeared at times to be speaking with conviction. However the demeanour of the witnesses under cross examination in this case can at times detract from the forensic exercise of assessing their credibility. In **Horace Reid v Dowling Charles and Percival Bain** Privy Council Appeal No. 36 of 1987 at page 6 the Privy Council outlines an aspect of this forensic exercise:

“[Counsel] in his able submissions ... emphasised to their Lordships that where there is an acute conflict of evidence ..., 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 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 in particular of 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 the witnesses.”

10. See also **Mumtaz Properties v Ahmed** [2011] EWCA 610 where the Judge agreed that the witness's credibility should be assessed not just from their "general demeanour" but the Court should also consider what other independent evidence was available. Contemporaneous written documentation is stated to be of "the greatest importance in assessing credibility" and is significant both in its presence and absence. See also the Court of Appeal's treatment of the

assessment of credibility in **AG V Anino Garcia** CA Civ 86/2011 and the CCJ in **Shanique Myrie v Barbados** [2013] CCJ 3.

11. Demeanour of witnesses now plays a diminishing part of the Court's exercise of truth determination and fact finding. On its own it is misleading and can give rise to intuitive but analytically incorrect decisions. As in this case the slow reaction of a witness to respond to questions may not be due to his inability to remember but to understand questions or unfamiliarity with cross examination. Quick and assertive responses may just as well be an overzealous witness or an untruthful one. More so in this new civil landscape where half of the witnesses story is already reduced into writing and the demeanour of the witness only comes through the "performance" of the witness under the probe of cross examination, a Court will be hard pressed to say it can guarantee just decisions relying solely on the witnesses demeanour. More reliably truth determination must be an overall assessment of the witnesses evidence cross checking contemporaneous documents, the pleadings and witness statements, reflecting on the inherent plausibility or probabilities of the respective version of the incident, assessing the expressed or implied motives and interests of witnesses to serve and being alive to any opportunity for fabrication or allegations of manipulation of documentation.
12. The main issues for determination at the trial were identified by the parties as (a) whether the police used reasonable force in effecting the arrest and/or detention of the Claimant (b) whether the police has reasonable and probable cause to arrest and prosecute the Claimant, (c) whether ASP Clarke brought the said charges maliciously in this case knowing that the charges were baseless and wholly fabricated and knowing that he could not successfully prosecute the Claimant.
13. At the nub of this case was an allegation by the Claimant that he was unarmed and was shot by the police after he has passed a roadblock at the Piarco Roundabout. The Defendant's defence is that he was evading the police, engaged in a shoot out with several police officers and was carrying other occupants in his vehicle who also shot at the police and evaded capture. One of the central issues of fact therefore was whether the Claimant shot at the

police in a dramatic police chase from Mausica to Piarco or whether the officers fired shots at the Claimant without provocation and without cause.

14. In the Claimant's claim for assault and battery there can be no dispute that he was shot by the police. It is the Defendant who takes on the burden pursuant to section 4(1) of the Criminal Law Act Chapter 10:04 to demonstrate that they used such force as is reasonable in the circumstances in the prevention of crime. In this case it is not merely that the Claimant was driving dangerously or in breach of traffic regulations but that he was an armed assailant together with other armed men which justified the use of force by the police by shooting at the Claimant. There is no dispute that the Claimant was under arrest from the moment he was taken out of his van by the police officers. Any total restraint of the liberty of the person for however short a period of time by the use of threat or force or by confinement is an imprisonment. The onus lies on the Defendant of proving a justification for this imprisonment. See **Hicks v Faulkner** [1878] 8 QBD 167 **Harold Barcoo v AG** HCA 1388 of 1989 and **Ijaz Bernadine v AG** CV 2010-02956. The restraint of liberty is the gist of the tort of false imprisonment. Again importantly it is for the person arresting the Claimant to inform him of the reasons for his arrest unless the reason is apparent from the circumstances where he is caught red handed and his crime is patent. It is therefore important for the Defendant to demonstrate that the reason for his detention was plainly obvious in that he was an armed assailant, not that he simply broke traffic regulations.
15. For the tort of malicious prosecution it is the Claimant that bears the burden in the main that the Defendant in this case ASP Clarke, instituted or carried on the proceeding maliciously. The Claimant must prove that ASP Clarke did not have reasonable and probable cause to institute the proceedings. The Claimant must prove that ASP Clarke did not believe the Claimant was guilty or that a person of ordinary prudence and caution in the face of the facts which he honestly believed would not conclude that the Claimant had been guilty. See **Glinski v McIver** [1962] AC 726. As Mendonca JA pointed out in **Barcoo**, this test of reasonable and probable cause has both an objective and subjective element. The classic formulation of **Hicks v Faulkner** demonstrates that for the Defendant to have reasonable and probable cause to prosecute the Claimant: (a) there must be an honest belief by ASP Clarke in the guilt of the accused. (b) Such belief must be based on an honest conviction of the

existence of circumstances which led ASP Clarke to that conclusion. (c) Such belief must be based on reasonable grounds. (d) The circumstances so believed and relied on by ASP Clarke must be such as to amount to reasonable ground for belief in the guilt of the Claimant.

16. However, only ASP Clarke knows the reason why it took three years without him ever putting together a file for the prosecution for this matter. The only irresistible inference that can be drawn is that either he was irresponsible or he had no honest belief in the guilt of the Claimant. Indeed he confessed that he had his own personal reasons why he never attended Court. He simply did not take this case seriously. I would return to ASP Clarke in a moment as his evidence has given me a great degree of concern.
17. In assessing the evidence in this case I am of the view that the Claimant's version suffers from inconsistencies. He claims that he was driving in the vicinity of the Piarco Roundabout at 6:15p.m. both in his witness statement and statement of case. But he later explains that he was liming with some friends in a bar in Malabar with one Maurice and did not leave there until 6:30p.m. This was not explored in cross examination. Indeed that may have been consistent with the Defendant's case (PC Phillip) of finding him driving at Mausica at 6:45p.m. The Claimant does not explain in his statement of case where he was coming from that night. In the face of the Defendants' explanation of the route that they followed him from Mausica as stated in the Defence he remains silent in his Reply until under cross examination when he admits that his route was along the Eastern Main Road West then turned South on the Golden Grove Road, consistent with some of the evidence of PC Williams.
18. In his witness statement the Claimant only identifies two police vehicles parked on the left shoulder and two uniformed officers standing outside of those vehicles. That would be presumed to be to his left, although not explored in cross examination. It is noted however that only one bullet entered the left of the vehicle and two bullets entered the right. It is impossible for the officers to have shot the right side of the van when they only occupied the left shoulder of the road. This evidence however does corroborate the fact that there was a roadblock set up that night at the area of the Piarco roundabout. There may have been officers on the right hand side of the Claimant who may not have been observed by him.

19. He is ambivalent as to exactly when he was shot. First he says that it was upon negotiating the roundabout. Under cross examination he says it was after. In his further and better particulars he says he was shot in the back when he came out of the vehicle. He says in his cross examination that he came out with his hands up but this is not in his statement of case nor in his witness statement. It is clear from the forensic evidence that the near fatal shot hit the Claimant while seated in the vehicle from a bullet from the right hand side. This is consistent with PC Williams' account that he was bleeding before he came out of the vehicle. The forensic evidence is not consistent with the Claimant's allegation that he was shot in the back when he came out of the vehicle. It may well be that he only realised that he was shot after he came out the vehicle.
20. He further contends that he stopped immediately upon hearing the gun shot which may put his car coming to rest at the roundabout. However the evidence of the photographer reveals the vehicle a distance away from the roundabout. To believe the Claimant would mean that the officers on top of concocting the story moved the vehicle when there was no need to do so if their version is to be believed. Alternatively what he said under cross examination may be correct that he stopped about a few seconds or a minute after hearing the shots fired after passing the police vehicles which would put his car a short distance South from the roundabout. Significantly he says he was on the right hand side of the road when the officers say that the roadblock had their vehicles parked on the left hand side of the road occupying the left lane in an East to West direction.
21. He is also found exaggerating his case in his account of the events at the hospital immediately after the shooting. The allegation that he was beaten in the hospital is not true and he has simply failed to prove this. He alleges he was handcuffed to the bed for the entire time of his stay which he admits is not true. He complains without any supporting evidence that he was discharged by the police from the hospital on two occasions. The documentary evidence of the hospital however suggests otherwise. Dr. Majunath's evidence demonstrates that the Claimant was discharged by the medical personnel. The records show however that he left under police escort. The Claimant makes no mention that he saw an attorney at law at the police station in his statement of case and indeed complains that he had no access to his

attorney. But in his witness statement he admits that his attorney Mr. Singh did visit and consult with him.

22. These inconsistencies would have to be taken in the context of the main allegations of the Claimant and as well his fragile state of suffering a serious gunshot wound. The minutiae of detail in his recollection of some details may be excusable but had there been more rigorous cross examination it may have proven fatal. Quite apart from these inconsistencies there was no serious challenge to his medical evidence and his stay in the hospital. Nor was he seriously tested nor shaken with the material aspects of his evidence that he was unarmed, that he was not in any police chase, that he was under police guard and handcuffed, that he was taken out of the hospital in handcuffs, that he was in excruciating pain and was interrogated for several hours at the Arouca Police Station before being taken back for further treatment, that he was later charged and released and that he suffered a near fatal injury for which he needed continuous treatment and for which he still suffers psychological trauma. The fact that the Claimant may have exaggerated his version of what took place at the hospital may be credited to the type of injuries which he sustained and his state of mind at the hospital.
23. However noting the Claimant's inconsistencies is one thing but the Defendants case is even more troubling. There are a number of unsettling features of the Defendants case. The chase begins with a "bad drive" that turns into a serious criminal act committed by the Claimant who has no criminal record. The Defendants case prevaricates as to whether the Claimant himself shot at the police. The officers attempt to place two other occupants in the van who flees without apprehension in very unusual circumstances. The first flees in the very face of a roadblock at YTC. There are no corroborating witnesses of that roadblock exercise at the YTC that the Claimant allegedly breached. That may be insignificant when one considers that the corroborating eye witnesses joined the chase after this incident. But there are 16 shots fired at the YTC roadblock according to PC Williams, yet only three shots hit the van that night and in all probability the near fatal bullet would have been shot later in Piarco. No one knows who ordered this YTC roadblock to be set up or who it comprised. ASP Clarke himself is none the wiser after his investigation and he left it out of his report.

24. The first occupant who runs away at YTC is described as a back seat passenger. But the pictures of the van reveal that there is no back seat. It is further unclear whether this panel van had a right sliding door at all for the alleged first occupant to make good his escape.
25. The other occupant was in the passenger front seat and it is alleged that he alights from the van when it stops at the roadblock at Piarco and he runs off. The officers themselves gave conflicting accounts as to whether there was another occupant and whether this occupant ran into a river or bushes and whether any attempt was made to chase the occupant at all. One officer who was an eye witness to the Piarco Roundabout shooting confesses he saw no other occupant run away. However having painted the scene of two gun totting men in the van who fled the scene all that the police are left with is the Claimant himself shot in the back with no gun, no ammunition. The van bears no signs of spent shells being shot from inside the van. It was not dusted for fingerprints nor gun powder residue. It must be accepted that the Claimant himself did not have any gun powder residue on himself. What is further troubling is that the officers who attended the scene from Piarco and La Horquetta made their entries in the station diary hours after the incident. Their explanation being that they had to complete their duties and in one case the officer admitted that they collaborated to prepare their reports. The opportunity for fabrication cast a shadow of doubt over the officers' reports and station diary entries. Even more disconcerting is that there is a Command Centre report produced by the Defendant. This is an independent contemporaneous record, which despite the Court's attempt to reconcile it with the officers' first-hand account of their version of the facts simply mires their case in further confusion. It is accepted by the officers that the report bears the times when the officers make their calls to the Command Centre and the details of the call. But the record bears times of the occurrence of incidents which are clearly inconsistent with the testimony of the police. The first recorded broadcast was 8:23p.m. and the last broadcast recorded is at 9:22p.m. The first entry begins even before the report that the vehicle gave PC Williams a "bad drive" and is coded as a "Shooting." Not only did the alleged chase not begin with a shooting but at that time 8:23p.m. the medical records at the Arima Health Facility records the Claimant as having already been admitted. If I give the Defendants the benefit of the doubt and assume the times on the records are incorrect the actual record of what is reported does not correspond to PC Williams' account of making multiple calls to

Command Centre during his case. In fact in one entry there is one call made at 9:18p.m. (almost one hour after the Claimant is admitted to the Arima Health Centre) where there is a call by an officer of an entire summary of the incident starting with the vehicle going onto the Eastern Main Road and ending with two men escaping when the van drove into a bushy area.

26. Further, if indeed the report accurately reflects the time when the communications were first made it is confirmatory of the fact that the officers had enough time to radio in or relay a story to the Command Centre an hour after the fact. Another opportunity for fabrication. This probably may have been the case as some officers arrived after the Claimant was detained and saw him handcuffed on the ground which is inconsistent with PC Williams' account that he was taken from the van to the hospital almost immediately.
27. Even if the Defendant can contend that the evidence was largely consistent with the station diary reports those reports are not independent contemporaneous records and cannot dilute the impact of the Command Centre Report which leaves many questions unanswered. Even the intake form at the Arima Health Facility is ambivalent as to whether the Claimant was brought in by an EHS vehicle or by the police.
28. I am simply not convinced on the state of this evidence that the Claimant was armed or that he engaged in a shoot out with the police to justify their use of lethal force on the Claimant.
29. I am not satisfied that anyone would therefore have brought to the Claimant's attention the reason for his arrest when he was handcuffed on the evening when he came out of his car. In fact there is no such evidence from PC Williams.
30. Insofar as Ag Assistant Superintendent Clarke is concerned when he laid the charges and persisted in the prosecution of the Claimant, I am underwhelmed by his enthusiasm for this case. ASP Clarke's attendance record at the Magistrates' Court was abysmal. His excuses proffered for failing to follow up the adjourned date lacked credibility and was plainly irresponsible. He made absolutely no attempt to prepare this case after three years to proceed with any prosecution and alarmingly only after the charges were dismissed did he obtain forensic evidence in connection to this matter more probably than not in preparation to

defend a claim of malicious prosecution than for the genuine attempt to prosecute serious gun charges against the Claimant, a man with no criminal record. He was fully aware that there was no ammunition retrieved, no gun obtained, no gun powder residue on the body of the Claimant and no ammunition or residue discharge in the panel van driven by the Claimant that night. It is very easy to see that ASP Clarke by his own inactivity had very little faith in the success of this prosecution. However had he made inquiries and examined the reports from the various police officers a little more closely he too would have to conclude that there was no reasonable and probable cause to charge the Claimant with any such gun related offences. ASP Clarke did not sift the evidence. He did not comply with standing orders with respect to the prosecution and failed to reconcile the Command Centre's Report which did not corroborate the stories of the officers. I am inclined to believe he simply charged the Claimant to save face for a police shooting of an unarmed civilian with no probable cause and was complicit in a cover up. In these circumstances I am prepared to accept that ASP Clarke acted with malice in laying and pursuing these charges. There was definitely not only no honest belief in the charge but there is an indirect motive in ASP Clarke to lay these charges which is an abuse of the prosecutorial process and is incompatible with a desire to secure the interests of justice. It was an outright abuse of the criminal process to protect officers who acted recklessly.

31. One may be inclined to believe the Defendants' version by assuming it is more implausible for there to be such an intricate police cover up. But under these circumstances I am more inclined to the view that the person who has the motive to conceal the truth is not the Claimant a UTT student with no criminal record but experienced police officers with their reputations on the line in the face of an obvious embarrassment.
32. If I am to believe the Defendants' version it would include two occupants in the van who were never found let alone described by anyone. A roadblock set up at YTC where there is no corroborating evidence of same and whose officers have vanished. The van being pursued hotly by PC Williams actually slowing down at a roadblock for one person to run away in the face of the roadblock and who was not even pursued by the police. That another person ran out when the vehicle came to a stop and was never pursued by the police. That the alleged gun wielding criminal was the Claimant who had no criminal record, no incriminating object

nor evidence on his person. That the police firing all these shots at this van didn't hit it until at the roadblock at Piarco and made their mark only 3 times. That with his siren blaring he could not have overtaken the vehicle and needed so much back up. That the Command Centre call records somehow corroborates the time that these witnesses say that this incident occurred and its sequence. This entire story would be highly implausible... even for a Carnival Friday evening.

33. There will be judgment for the Claimant against the Defendants.

Damages

34. Although the Claimant has sought declarations for constitutional relief the Claimant made no submissions on this aspect of his case in his written submissions. Such declarations may not be necessary as firstly the Claimant has resorted to the correct procedure of bringing an action for the tort of assault and battery and false imprisonment. See **Antonio Webster v AG** [2011] PC 22. Second I am not convinced that he was deprived of his attorney at law when his evidence demonstrated that his attorney did attend the police station and render advice to him. In my award of damages I have considered the written and oral submissions of both parties. I have assessed the Claimant's damages for assault and battery in the sum of \$300,000.00, inclusive of aggravated damages, false imprisonment and malicious prosecution in the sum of \$200,000.00 inclusive of aggravated damages and Exemplary damages in the sum \$90,000.00. Interest on general and special damages at 6% and 3% per annum respectively. See **Samantha Hosein v Central Rentals** CV2009-00301.

35. Insofar as special damages must be strictly proven the Claimant has proven the following expenses: legal expenses in defending the magisterial proceedings, his medical expenses at the Medical Associates, the cost of replacing his father's vehicle and his loss of earning in attending the failed criminal proceedings. These expenses were the subject of his testimony in his evidence in chief, with supporting documentation and he was not cross examined on this aspect of his case. His total special damages amount to \$37,500.00, \$18,000.00, \$1440.00 and \$176,690.00 a total of \$233,630.00.

36. Insofar as damages for assault and battery the Claimant sustained the severe injuries as set out in his witness statement and medical reports. He also sustained psychiatric injury as described in the medical report of Dr. Gopaul.
37. I have had regard to the principles of **Cornilliac v St Louis** [1965] 7 WIR 491 in arriving at an appropriate award of damages. I have also considered some comparators in analogous cases such as **Boodraj St Clair v AG** 2008-2268, **Nigel Mayers v AG** 2007-2297 and **Kenton Sylvester v AG**. An appropriate range of award for this type of injury sustained by the Claimant would be within the range of \$250,000.00 to \$380,000.00 inclusive of aggravated damages.
38. For damages for false imprisonment I have considered the period of detention from the time of his arrest to the time of his charge approximately 13 days. Comparable cases considered were **Baptiste v AG** HCA 18420 of 1997, **Brahim Rampersad v AG and Stephen Seemungal v AG** CV 2009-1832. I have also considered the *Handbook on awards for False Imprisonment and Malicious Prosecution*, a publication of the Judicial Education Institute of Trinidad and Tobago (JEITT) at pages 32 to 33. Significantly his stay at the cell in the Arouca police station was minimal compared to his stay at the hospital where he was treated for his injuries. Insofar as malicious prosecution is concerned I have considered **Barcoo v AG** HCA 1388/1989, **Felix Hyndman v AG** HCT 71/1996 **Curtis Gabriel v AG** HC 2544 of 2003 **Siewchand Ramanoop v AG** H.C.A. NO. S-47 of 2001 and **Terrence Calix v AG** [2013] UKPC 15 to be particularly useful.
39. This is also a fitting case for an award of exemplary damages. See **Sean Wallace v AG** CV 2008-04009 and **Ijaz Bernadine v AG**. The Courts have repeatedly expressed its angst of cases of oppressive arbitrary and unconstitutional action by police officers in the service. No doubt that they have difficult jobs to do but they are to be trusted to keep that fine balance between the lawful use of force and the lawful suppression of crime. Their actions in this case as I indicated at the outset is to be soundly condemned resorting to cover ups when there should be a full appreciation of police error and wrong and dealing with the victim humanely. The best that the law can do in these circumstances is to mark its disapproval and to deter them from repeating it by the award of exemplary damages. Such conduct destroys the trust

between the police and lawful abiding citizens as indeed this Claimant's psychiatric evidence reveals. The police service should revisit their approach to police errors such as this one. Dragging the obviously innocent through a doomed criminal process and later stoutly defending civil proceedings should I hope be a strategy of the past. In the future apologies to the victim and their families for the first thing will be useful. As well as the more frequent use of mediation where matters such as these can afford officers the privacy needed to atone for their wrongs to the victims who may receive the satisfaction of mental healing and the rebuilding of trust in the police force.

40. There will be judgment for the Claimant against the Defendants for:

(a) Special Damages in the sum of \$233,630.00 with interest at the rate of 3 per cent per annum from 1st August 2013 to the date of judgment.

(b) General damages for:

(i) Assault and battery in the sum of \$300,000.00 inclusive of aggravated damages and;

(ii) False imprisonment and malicious prosecution in the sum of \$200,000.00 inclusive of aggravated damages.

Together with interest on those sums at the rate of 6% per annum from the date of the filing of the claim to the date of judgment.

(c) Exemplary damages in the sum of \$90,000.00.

(d) The Defendants shall pay the Claimant costs on the prescribed scale.

V. Kokaram
Judge