REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-04003

BETWEEN

RYAN PUNCHAM

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice V. Kokaram

Date of Delivery: Friday 19th January 2018

Appearances:
Mr. Chase Pegus instructed by Mr. Vikash Indar Lal for the Claimant
Mr. Ebo Jones instructed by Mr. Ryan Grant for the Defendant

JUDGMENT

1. In the early hours of the morning on 9th December 2012 there was a brawl at a sports bar in Arouca involving the Claimant, Police Constable Hillaire and other persons. Both men were at the bar in company with their respective friends having their own celebrations when the melee broke out. Arising from that incident the Claimant was charged with assaulting P.C Hillaire in the execution of his duty, using obscene language, behaving in a disorderly manner and resisting P.C Hillaire in the execution of his duty. These charges were eventually dismissed on 22nd October 2014 in the Arima Magistrates' Court. The Claimant however claims to have been beaten by two police officers, P.C Jovon Hillaire and P.C Rodney Lavia and that there was no foundation for the charges. Before the Court is the trial of his claim for assault, false imprisonment and malicious prosecution.

2. The main issues which arise for determination at this trial are:

(i) Which party assaulted the other? Whether P.C Hillaire assaulted the Claimant or acted in self-defence to an assault by the Claimant and whether P.C Lavia assaulted the Claimant at all.

(ii) Whether P.C Hillaire and P.C Lavia had reasonable and probable cause to charge the Claimant for the offences charged.

(iii) If not whether the officers were actuated by malice in so charging the Claimant.

(iv) Whether the Claimant is entitled to general damages, special damages including, aggravated and exemplary damages.

3. At the trial, the dispute turned on an assessment by the Court of the credibility of the witnesses for the Claimant and the Defendant to determine whose version of the main events were to be accepted by the Court: Whether the Claimant, as he alleged, was assaulted on three occasions, twice at the bar by P.C Hillaire (one inside and one outside the bar) and once by P.C Lavia in an unmarked vehicle en route to the Arouca Police Station. Alternatively, whether P.C Hillaire acted in self-defence to an assault by the Claimant inside the bar and the two other assaults never happened. These were by no means the only dispute of fact in this case but represents the core conflict between the parties.

4. The Court having carefully examined the evidence, the contemporaneous records[1], the cross examination of the witnesses, the plausibility of their story and reflecting on any inherent inconsistencies in the parties evidence, I am satisfied that P.C Hillaire did assault the Claimant inside the bar. He did not act in self-defence to an aggression by the Claimant but in fact retaliated when he was slapped by the Claimant which was a disproportionate response to the Claimant's action. However, equally, I am satisfied that the Claimant did assault P.C Hillaire by slapping him once and used obscene language. On that basis, the Defendant had reasonable and probable cause to lay the criminal charges against the Claimant. Further the Claimant failed to prove on a balance of probabilities that the two other assaults were committed, one outside the bar and another allegedly committed by P.C Lavia.

[1] The Station Diary extract 9th December 2012, the Notice to Prisoner, the Copy of the Extract of the Magistrate's Court Case Book for the Arima Magistrates' Court dated 22nd October 2014, Referral from the A&E Department of the Arima Health Facility dated 9th December 2012.

5. For the reasons set out in this judgment the Claimant will be awarded $10,000.00 in damages for the assault against him by P.C Hillaire and his claims for false imprisonment and malicious prosecution would be dismissed.

Brief Facts

6. The Claimant contends that on 9th December 2012 at around 1:00am he was a patron of the Hott Shotts Sports Bar and was in the company of his friends, one of whom was Mr. Rudo Mungroo. In this bar there is a dance hall area, an area to play pool, toilet facilities and on the outside of the bar is an area for patrons. After leaving the dance hall area, the Claimant was waiting by the pool table area for three of his friends to leave the washroom. While waiting on his friends, P.C Hillaire bumped into Mr. Mungroo and the Claimant heard Mr. Mungroo say "Whoa" to which he replied "What." The Claimant contends that he noticed P.C Hillaire becoming aggressive and P.C Hillaire rushed to him and pushed him against the pool table. As he tried to regain his footing, P.C Hillaire pushed him a second time and a scuffle ensued. The Claimant contended that he was unable to defend himself because the people who were at the bar with P.C Hillaire surrounded him and began to beat him as well.

7. The attack was eventually broken up by the bar's security and the Claimant was taken back into the dance floor area and P.C Hillaire was taken out of the bar. The Claimant contended that he noticed his gold chain was missing and he requested a CCTV recording from the manager of the bar because he wanted to make a report.

8. Thereafter, the Claimant exited the bar and he alleges that he was beaten a second time by P.C Hillaire who rushed at him with a glass bottle. He contended that P.C Hillaire swung at his head and missed and he was beaten by P.C Hillaire and his friends. The Claimant contended that P.C Hillaire appeared to be drunk. This assault was then broken up by the bar security and the Claimant was taken back into the bar. He contended he was approached by a woman police officer and while he was explaining the situation to the woman police officer, P.C Lavia entered the bar and detained him. He was then escorted out of the bar and placed in an unmarked vehicle with the woman police officer seated in the back seat with him and P.C Lavia in the front passenger side.

9. It is in this unmarked vehicle that he contended that he was assaulted yet a third time by P.C Lavia who hit him on his head, neck and body.

10. The Claimant contends that he was taken to the Arouca Police Station around 1:30am and placed in the charge room. He did not notice P.C Hillaire entering the police station until 9:00am. He further contended that he did not receive any medical treatment for his injuries until 11:00am when he was taken to the A&E Department of the Arima Health Facility. He was subsequently released on station bail at around 2:00pm. The Claimant produced photographs annexed to his witness statement[2] of his face which demonstrated that he had a swollen left eye, swollen face, a bruised upper and lower lip and bruises on his arms. The Claimant also attached the referral from the A&E Department of the Arima Health Facility dated 9th December 2012[3] which stated he suffered blunt trauma in left orbit and blurry vision.

11. He contended that P.C Hillaire and P.C Lavia failed to attend at the hearing of the matter in the Arima Magistrates' Court and the matter was eventually dismissed.

12. One of the Defendant's contentions is that the second and third assaults simply did not occur. With regard to the first assault, the Defendant contends that on 9th December, 2012, P.C Hillaire was at the Hott Shotts Bar with other police officers celebrating the birthday of one of the police officers. Around 2:00am, P.C Hillaire was exiting the dance floor area of the bar when the Claimant bounced into him. P.C Hillaire asked the Claimant "was dat one boi" to which the Claimant replied to him stating "wuh is wat one and who the f*** is you." P.C Hillaire contended that before he could introduce himself as a police officer, the Claimant slapped him. P.C Hillaire then retaliated by rushing to the Claimant but was unable to get to him because the Claimant's friends accosted P.C Hillaire. The police officers tried to separate the Claimant and his friends from P.C Hillaire who was then escorted outside of the bar. P.C Lavia then spoke to the Claimant in the presence of the security at the bar and identified himself as a police officer. P.C Lavia also spoke to P.C Hillaire who informed him that he observed the security repeatedly telling the Claimant about resting his drinks on the pool table and when he tried to speak to the Claimant about same the Claimant used obscene language towards him and slapped him. P.C Lavia then instructed P.C Hillaire to leave the premises and he went back

[2] Exhibited "R.P.4" in the witness statement of Ryan Puncham filed on 22nd June 2017.
[3] Exhibited "R.P.5" in the witness statement of Ryan Puncham filed on 22nd June 2017.

to the Claimant in the bar and informed him of the offences he committed, cautioned him and arrested him. The Claimant was then taken to the police station by P.C Richards and was formally charged by P.C Lavia for assaulting a police officer in the execution of his duty. He was charged by P.C Hillaire for use of obscene language, behaving in a disorderly manner and resisting arrest.

13. P.C Hillaire contended that he attended the Arima Magistrates' Court on four occasions. On the first occasion the Claimant was not present and the matter was stood down to 1:00pm on the same day. The Claimant entered a plea of not guilty and the matter was adjourned to another date. P.C Hillaire contends that he attended court on the postponed date and the Claimant was not present. On the third occasion, he discovered the matter was listed for the next day and when he attended Court the next day he was informed the matter was actually heard the day before. He contends that he was unaware that the matter was dismissed.

Assault and Battery

14. The Claimant submitted that he was assaulted on three separate occasions, twice by P.C Hillaire at the Hott Shotts bar and once by P.C Lavia while he was being transported to the Arouca Police Station. In **Collin Carrera v The Attorney General** CV2010-00694 des Vignes J (as he then was) referencing Pemberton J in **Sedley Skinner v The Attorney General of Trinidad and Tobago** CV2006-03721 defined assault and battery as follows:

> "An assault is "the threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact." An assault is established once the Claimant can prove that a reasonable man, if placed in his position at the relevant time, might have feared that unlawful physical force was about to be applied to him.
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> A battery is defined as "the application of force to another, resulting in harmful or offensive contact". Based on the authorities, it can be said that elements necessary to constitute a battery as follows:
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> 1) The application of physical force; and,
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> 2) The absence of a lawful basis for applying same."

15. The Defendant submitted that the injuries suffered by the Claimant were as a result of the Defendant's servants/agents acting in self-defence and/or retaliation as a result of being assaulted by the Claimant. Critically, the burden of proof in a defence of self-defence lies on the Defendant. In **Romeo Grannum v The Attorney General** CV2010-4394 Rajkumar J (as he then was) observed at paragraph 74:

> "The burden of proof lies on the defendant's agents to establish that –
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> a. they acted in self-defence,
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> b. there was a real risk of imminent attack,
>
> c. it was reasonable to take the action they did – and I consider this to include demonstrating that the use of force did not transgress the limits of the occasion, and was in the circumstances proportionate."

16. **Clerk and Lindsell on Torts 20th Edition** paragraph 31-02 and 31-03 importantly underscored the importance of the reasonable use of force:

> "It is lawful for one man to use force towards another in the defence of his own person, but this force must not transgress the reasonable limits of the occasion, what is reasonable force being a question of fact in each case. But the law does not require that a person when labouring under a natural feeling of resentment consequent on gross provocation should very nicely measure the weight of his blows.
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> In **Ashley v Chief Constable of Sussex Police** [2008] UKHL 25 the House of Lords clarified two important differences between self-defence in criminal law and self-defence to claims for the tort of trespass to the person. First, in contrast to criminal law, the burden of proof with regard to self-defence in civil law is on the defendant. Secondly, in criminal law an honest but mistaken belief- even if unreasonable- that it is necessary to defend oneself is a defence to a criminal assault. In contrast, in civil law the defendant must show that, where he is being attacked or in imminent danger of attack, he honestly and reasonably believed that it was necessary to defend himself (as well as that the force used was reasonable in all the circumstances). Indeed, the majority of their Lordships left open whether there is any defence of self-defence at all in civil law where the defendant cannot

show that there was actually an attack or an imminent danger of attack. In other words, it may be irrelevant that the defendant mistakenly and reasonably believed that there an actual or imminent attack: what may be needed is proof that there was in fact an attack or imminent attack."

17. Section 4 of the **Criminal Law Act Chap 10:04** provides that a person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large. However in this case, there is common ground emerging from the undisputed facts that no attempt was being made by P.C Hillaire to effect an arrest of the Claimant when he assaulted the Claimant, or to use his own words, "retaliated." The Defendant's contention was that the Claimant was arrested after the melee subdued. There was no evidence from the Defendant's own witnesses that any attempt was made to arrest the Claimant by using reasonable force. To retaliate as the Defendant's own witnesses deposed was in my view a disproportionate response to the Claimant's actions that morning. However, equally, the Claimant is not without fault. An analysis of the evidence in this case demonstrates that the Claimant did in fact slap P.C Hillaire and use obscene language which lay a foundation for his eventual arrest and charge.

Analysis of the Evidence

The Claimant's evidence

18. The Claimant proved to be an unreliable witness. He was prone to exaggeration and embellishment of his story. His answers under cross examination were inconsistent with his evidence in chief and even under the Court's questioning to seek clarification of his evidence he strayed even further from his testimony and pleaded case. I formed the view of his lack of credibility based on the following:

    (i) Inconsistencies: There were a number of inconsistencies in the Claimant's cross examination such as:

        a) He stated that P.C Hillaire approached him and said "What what what" but this is not stated in his witness statement.

        b) He stated that he was standing between the two pool tables but this was not stated in his witness statement.

c) He stated that when P.C Hillaire pushed him a second time during the first assault he did not push P.C Hillaire to defend himself. This in inconsistent with his evidence in chief when he stated "I tried to defend myself and pushed P.C Hillaire away from me." That evidence later morphed into him hugging P.C Hillaire in an attempt to defend himself.

d) He stated that he did not know if P.C Hillaire was taken out of the Hott Shotts Bar but in paragraph 5 of his witness statement he stated that P.C Hillaire was taken out of the bar.

e) He indicated that after the second assault, P.C Lavia informed the female police officer to lock him up and they handcuffed him. He told the female officer that he did not want to be placed in the car with the same boy who he had the altercation with. However, this was not stated in his witness statement.

f) He indicated that he found out later that P.C Hillaire was outside the police station and did not want to come inside the police station but this was not included in his witness statement.

g) He did not know if he was placed in a charge room but in his witness statement at paragraph 12 he stated that he was placed in a cubicle in the charge room.

These are only some of his many inconsistencies. I am acutely aware that witnesses should be given a reasonable latitude to tell their stories and at times there will be variances from their printed "script" in their evidence in chief. However, there was an accumulation of such discrepancies and also material inconsistencies which weighed against him.

(ii) He had the propensity of being difficult during cross examination and obstinate in his replies. Counsel for the Defendant encountered many challenges in controlling this witness. The Claimant also appeared to become aggressive and difficult during cross examination. A couple of examples are sufficient. When he was questioned on the second assault and if P.C Hillaire could hide behind an umbrella he replied "Ok I want you to go inside the Hott Shotts and see the heights of the umbrella and see if you could actually see somebody face when they coming out." Also the issue of time is a critical

matter in this case. The Claimant alleges that the incident occurred at 1:00am but the Defendant alleges that it occurred much later than that, a matter corroborated in the station diary. When questioned on the issue of time he arrived at the Arouca Police Station he stated in cross examination that he lost track of time and thereafter stated that time in his witness statement was "correct at the time right there." When questioned by Counsel if it was correct at the time he gave the witness statement he retorted rudely "You could tell me the time how long you talking to me right now?" There is ample judicial literature on the insignificance of demeanour in the assessment of a witness evidence. However, it is not a tool that has been jettisoned altogether. Certain conclusions a Court may wish to draw based on observing a witness giving his evidence must be cross checked with the other forensic tools available in assessing evidence. After observing this witness under cross examination in the calm of the light of day it could be reasonably inferred how aggressive he may be at the wee hours of night at a sports bar.

(iii) There was an inherent implausibility of the story of the police officer attacking him for yet a second time and for him to have been attacked a third time over such a minor incident. In fact with regard to the third assault in the vehicle it is implausible that he will be beaten with no attempt by him to raise his hands to defend himself as he contends in his cross examination.

19. The Claimant's witness Mr. Rudo Mungroo under cross examination admitted that he did not gesture to P.C Hillaire when P.C Hillaire bounced into him so that part of his witness statement was incorrect. He also stated that after P.C Hillaire bounced into him, he bawled out "Whoa" to which the Claimant also replied "Whoa" as opposed to "What" like the Claimant stated in his witness statement. He testified that P.C Hillaire did assault the Claimant a second time. However, unlike the Claimant who stated P.C Hillaire came from the side to attack him during the second assault, Mr. Mungroo stated P.C Hillaire did not come from the side to attack the Claimant but from the front. He also indicated that P.C Hillaire was armed with a bottle which he swung at the Claimant and missed but this was not in his witness statement. This evidence of the second assault given by this witness must also be weighed with the evidence of the Defendant's witnesses and the limited and superficial cross examination which left many main

areas of their testimony untouched and unshaken. When making an overall assessment of the evidence therefore the Court must resort to the burden of proof and make an assessment based on that limited cross examination of the Defendant's witnesses as to whether the Claimant has in fact made out its case of the three assaults.

The Defendant's evidence

20. A critical feature of the Claimant's case is that he was assaulted three times, twice at the Hott Shotts Bar when he was in the bar and when he attempted to leave the bar and the third assault was when he was being escorted to the police station. However, the Defendant's witnesses were not seriously cross examined on the last two assaults, that is when the Claimant attempted to leave the bar and when he was being transported to the Arouca Police Station. The testimony on these two assaults stands unshaken. It is insufficient to point to the inconsistencies of the Defendant's witnesses generally and draw any adverse inferences on this specific incident if there was no proper cross examination on it and an opportunity to the witness to deal with the Claimant's case on those assaults.

21. I accept that there were minor discrepancies in the station diary. At the same time, I note the limited literacy of the person who compiled that station diary report. Although, equally, there were certain inconsistencies in the Defendant's evidence it did not blemish the overall tenor of the evidence that the Claimant did slap P.C Hillaire and use obscene language and that the other two assaults did not occur.

22. In cross examination, P.C Hillaire indicated that he did not get the time to caution the Claimant when the Claimant used obscene language against him. He agreed that the obscene words which he alleged the Claimant used were not recorded in the station diary but he maintained that the Claimant did use obscene language. He also admitted that he did not have any other contemporaneous note that the Claimant used obscene language. P.C Hillaire, however, maintained that he had reasonable and probable cause to charge the Claimant. He further maintained that he saw the medical which he received for his treatment to the slap the Claimant delivered to his face and he knew the medical was in possession of P.C Lavia. He indicated that the station diary incorrectly recorded that the Claimant was transported to the Arouca Police Station in his vehicle and he only became aware of the mistake in the station diary when five years elapsed. When questioned by the Court if he consumed any alcoholic beverages that

night he replied he did not and that he drank malta. However, in paragraph 6 of his witness statement he stated that he had two beers.

23. In P.C Lavia's cross examination, he however indicated that he did not retrieve the medical on behalf of P.C Hillaire since at the time he was escorting the Claimant to be treated for his injuries but he maintains that a medical was retrieved for P.C Hillaire. He admitted that he did not ask P.C Hillaire which obscene words were used by the Claimant. He also agreed that he did not have a contemporaneous note or that he spoke to an independent person about the incident or that he tried to retrieve the CCTV footage of the incident. He was not cross examined on the alleged assault he committed in the car to the Arouca Police Station save for a question which was simply put to him that on the night in question he assaulted the Claimant to which he replied he did not.

24. There were inconsistencies of this case on both sides. These inconsistencies do not allow the Court to disregard the totality of the evidence of either party. Equally the cross examination of the Defendant's witnesses surprisingly omitted any serious challenge with respect to the second and third assaults.

25. There was no doubt that there was a melee. The Court's task is to reconstruct the events as best as it can with the evidence proffered. In my view it is more probable than not that there was an exchange of words between the two men at the pool table. The Claimant, in the wee hours of that morning, lost his temper, used obscene language and slapped P.C Hillaire who at that time would have been in plain clothes. It is more probable than not that P.C Hillaire instead of there and then attempting to arrest him (as P.C Lavia shouted later to him)[4] retaliated and lunged at the Claimant and a scuffle ensued between them and then others joined. The Claimant did suffer injuries albeit minor injuries which may have been exacerbated in the ensuing scuffle with the other men. But it is also possible that P.C Hillaire would have gotten off a strike before the scuffle ensued. I accept the Claimant's position that P.C Hillaire ought not to have retaliated and assaulted the Claimant. This does not take away from the fact that it is also probable that the Claimant delivered the first blow giving rise to P.C Hillaire's reasonable and probable

[4] Paragraph 5 of the witness statement of P.C Lavia filed on 30th June 2017 which states:
"On observing what was happening at the time I called out to PC Hillaire and said "stop that s**t, if allyuh locking up the man lock him up, don't get into no bacchanal with nobody."

cause to lay the charges which he did. It is evident that both P.C Hillaire and the Claimant assaulted each other and as such, there was reasonable and probable cause for P.C Lavia to lay the charges against the Claimant for assaulting a police officer which eliminates any consideration of a wrongful arrest or malicious prosecution.

Wrongful Arrest and False Imprisonment

26. The Claimant pleaded the following particulars of wrongful arrest and false imprisonment:

    (i) The said P.C Lavia wrongfully and without reasonable or probable cause forcibly arrested and assaulted the Claimant by beating him;

    (ii) At the time of the arrest the said P.C Lavia failed to inform the Claimant of the reason for his arrest nor did he inform the Claimant of the offences he committed;

    (iii) The said P.C Lavia arrested the Claimant despite knowing that there was no evidence to implicate the Claimant of an arrestable offence;

    (iv) The said P.C Lavia caused the Claimant to be detained for approximately 12 hours at the Arouca Police Station without any reasonable cause to justify the detention.

27. The arresting officer bears the burden of justifying the arrest of the Claimant and establishing reasonable and probable cause for the arrest. In **Dallison v Caffery** [1964] 2 All ER 610 at 619 C-D Lord Diplock noted:

> "Where a felony has been committed, a person, whether or not he is a police officer, acts reasonably in making an arrest without a warrant if the facts which he himself knows or of which he has been credibly informed at the time of the arrest make it probable that the person arrested committed the felony. This is what constitutes in law reasonable and probable cause for the arrest. Since arrest involves trespass to the person and any trespass to the person is prima facie tortious, the onus lies on the arrestor to justify the trespass by establishing reasonable and probable cause for the arrest."

28. In **Ramsingh v The Attorney General of Trinidad and Tobago** [2012] UKPC 16 the Privy Council commented on the relevant principles of false imprisonment as follows:

"8. The relevant principles are not significantly in dispute and may be summarised as follows:

i) The detention of a person is prima facie tortious and an infringement of section 4(a) of the Constitution of Trinidad and Tobago.

ii) It is for the arrestor to justify the arrest.

iii) A police officer may arrest a person if, with reasonable cause, he suspects that the person concerned has committed an arrestable offence.

iv) Thus the officer must subjectively suspect that that person has committed such an offence.

v) The officer's belief must have been on reasonable grounds or, as some of the cases put it, there must have been reasonable and probable cause to make the arrest.

vi) Any continued detention after arrest must also be justified by the detainer.

9. These principles are established by a series of cases, both in England and in the Caribbean. See in particular Dallison v Caffery [1964] 2 All ER 610, per Lord Denning MR at 617 and per Diplock LJ, in a well-known passage at 619; and Holgate-Mohammed v Duke [1984] 1 All ER 1054 per Lord Diplock at 1059. See also two decisions in Trinidad and Tobago which make it clear that the lawfulness of continued detention raises different questions from those relevant to the arrest: Mauge v The Attorney General of Trinidad and Tobago HCA No 2524 of 1997 and Page 5 Mungaroo v The Attorney General of Trinidad and Tobago HCA Nos S-1130 and 1131 of 1998."

29. The Defendant does not deny that the Claimant was imprisoned and arrested without a warrant. The power of a police officer to arrest and detain a person without a warrant is set out in section 46 of the **Police Service Act Chap 15:01** and section 3(4) of the **Criminal Law Act Chap 10:04**. Section 46 (2) of the **Police Service Act** provides:

"46(2) Without prejudice to the powers conferred upon a police officer by subsection (1), a police officer, and all persons whom he may call to his assistance, may arrest without a warrant a person who within view of such police officer commits an offence and whose name or residence is unknown to such police officer and cannot be ascertained by him."

30. Section 3(4) of the **Criminal Law Act** provides:

> "(4) Where a police officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence."

31. Further **Dallison v Caffrey** [1965] 1 Q.B. 348 where Lord Diplock stated at page 366:

> "The test whether there was reasonable and probable cause for the arrest or prosecution is an objective one, namely whether a reasonable man assumed to know the law and possessed of the information which in fact was possessed by the Defendant would believe that there was reasonable and probable cause."

32. In **Mc Ardle v Egan and others** [1933] All ER Rep 611 Lord Wright noted:

> "A constable is justified in arresting a person without a warrant, upon a reasonable suspicion of a felony having been committed….and of the person being guilty of it, although no felony has in fact been committed, and whether the reasonable grounds for suspicion are matters within his own knowledge or are facts stated to him by another. So that the inquiry is as to the state of mind of the chief constable at the time when he ordered the arrest, and it involves that it must be ascertained what information 'he had at the time, even though that information came from others. Of course, the information must come in a way which justifies him in giving it credit; the suspicion upon which he must act, and, indeed, ought to act, in the course of his duty, must be a reasonable suspicion."

33. The arrest was made by P.C Lavia. Notably there was no serious cross examination of P.C Lavia as to his state of mind when he arrested the Claimant or the basis upon which he arrested the Claimant save for whether he requested the CCTV footage of the incident or spoke to an independent person or made a contemporaneous note. It is plain from his own evidence that he witnessed the assault of P.C Hillaire and the melee. He made reasonable enquiries then and there of both men and reasonably exercised his powers of arrest. Later, he together with P.C Hillaire would lay charges against the Claimant at the Arouca Police Station. In my view that was a factual basis for laying those charges.

Malicious Prosecution

34. The Claimant bears the burden of proving on a balance of probabilities that the Defendant instituted or carried on the proceedings without reasonable and probable cause and did so maliciously. In **Cecil Kenedy v Donna Morris and The Attorney General of Trinidad and Tobago** Civ App. No 87 of 2004 the law of malicious prosecution was summarised as follows:

> "[10] Malicious prosecution has been defined as "an abuse of the process of the court by wrongfully setting the law in motion on a criminal charge": Mohamed Amin v Jogendra Kumar Bannerjee.
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> [11] To succeed in an action for damages for malicious prosecution a plaintiff must prove:
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> (i) the prosecution by the defendant of a criminal charge against the plaintiff before a tribunal into whose proceedings the criminal courts are competent to inquire;
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> (ii) that the proceedings complained of terminated in the plaintiff's favour;
>
> (iii) that the defendant instituted or carried on the proceedings maliciously;
>
> (iv) that there was an absence of reasonable and probable cause for the proceedings and
>
> (v) that the plaintiff has suffered damage."

35. It is not in issue that the Defendant charged the Claimant and that the charges were discharged against him. The question in this case is in relation to the third and fourth elements referred to above: whether Defendant had reasonable and probable cause to set the prosecution in motion and did so maliciously.

Reasonable and Probable cause

36. The classic formulation of **Hicks v Faulkner** [1881-85] All ER Rep 187 demonstrates that for the Defendant to have reasonable and probable cause to prosecute the Claimant: (a) there must be an honest belief by the Defendant in the guilt of the accused. (b) Such belief must be based on an honest conviction of the existence of circumstances which led the Defendant to that conclusion. (c) Such belief must be based on reasonable grounds. (d) The circumstances so believed and relied on by the Defendant must be such as to amount to reasonable ground for belief in the guilt of the Claimant.

37. In **Glinski v. McIver** [1962] 1All E.R. 696 Lord Delvin in considering the meaning of 'reasonable and probable cause' stated:

> "…what is meant by reasonable and probable cause? It means that there must be cause…for thinking that the plaintiff was probably guilty of the crime imputed: Hicks v. Faulkner. This does not mean that the prosecutor has to believe in the probability of conviction: Dawson v. Vandasseau. The prosecutor has not got to test the full strength of the defence; he is concerned only with the question of whether there is a case fit to be tried."

38. In **Halsbury's Laws of England Vol 45(2)** paragraph 472 it is stated:

> "Reasonable and probable cause for a prosecution has been said to be an honest belief in the guilt of the accused based on a full conviction founded upon reasonable grounds of the existence of a state of the circumstances which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of an accuser, to the conclusion that the person charged was probably guilty of the crime imputed."

39. **Gloster v The Attorney General of Trinidad and Tobago** Civ. App No. 274 of 2012 where it was noted:

> "There may be reasonable and probable cause for preferring a criminal charge even though the prosecutor has before him only a prima facie case, or such as might not be admissible before a jury, and the question will be whether the impression produced on the mind of the prosecutor by the facts before him was such as would be produced on the mind, not of a lawyer, but of a discreet and reasonable man."

Malice

40. The Claimant pleaded the following particulars of malice:

(i) That the said P.C Hillaire and P.C Lavia knew or ought to have known that there was no evidence to implicate the Claimant in the commission of these or any offences;

(ii) The said P.C Hillaire and P.C Lavia knew or ought to have known that the Claimant was innocent of the said offences;

(iii) The said P.C Hillaire and P.C Lavia laid the said charges to falsely validate the wrongful arrest of the Claimant.

(iv) Notwithstanding the said P.C Hillaire and P.C Lavia knowing that there was no evidence against the Claimant instituted and continued to prosecute him.

(v) The said P.C Hillaire and P.C Lavia instituted criminal proceedings against the Claimant to validate the assault and battery committed by the said officers on the Claimant.

(vi) The said P.C Hillaire and P.C Lavia instituted criminal proceedings against the Claimant to validate the use of extreme force in arresting and detaining the Claimant.

(vii) The said P.C Hillaire and P.C Lavia were negligent in the discharge of their duties as police officers as it related to the arrest/prosecution of the Claimant.

41. In **Brown v Hawkes** [1891] 2 Q.B. 718 Cave J defined malice as follows:

> "Now malice, in its widest and vaguest sense, has been said to mean any wrong or indirect motive; and malice can be proved, either by shewing what the motive was and that it was wrong, or by shewing that the circumstances were such that the prosecution can only be accounted for by imputing some wrong or indirect motive to the prosecutor. In this case I do not think that any particular wrong or indirect motive was proved. It is said that the defendant was hasty and intemperate…. He may also have been hasty, both in his conclusion that the plaintiff was guilty and in his proceedings; but hastiness in his conclusion as to the plaintiff's guilt, although it may account for his coming to a wrong conclusion, does not shew the presence of any indirect motive."

42. He further went on to state at page 728:

> "As I understand the argument for the plaintiff, it was said that the evidence to prove malice was that the defendant did not make proper inquiry as to the facts of the case. If that is all, and if that evidence is sufficient, the result would be that the finding on the first question put to the jury, that the defendant did not take proper care to inquire into the facts of the case, would, without more, determine the action in favour of the plaintiff. That cannot be so, and when I look at the evidence (as I have done with care) to find what evidence there

was of sinister motive, I can find none on which the jury could reasonably find that the defendant was actuated by malice. Upon that ground I agree that the appeal should be allowed."

43. Of course if the Court holds that there was reasonable and probable cause to lay the charges then that is the end of the matter and no consideration of malice would arise. However, this Court's role is to assess the evidence as it is presented and determine which version of events more than likely occurred. As I have already determined there was an assault of P.C Hillaire. The Claimant was later taken to the police station and placed in a cubicle in the charge room. P.C Lavia was informed by P.C Arthur that they were not going to accept the Claimant without a medical. Thereafter, P.C Lavia and P.C Richards took the Claimant to the Arima Health Facility where a medical certificate was obtained on behalf of the Claimant. The Claimant was then returned to the Arouca Police Station and charged by P.C Lavia for assaulting a police officer in the execution of his duty.

44. There was a sufficient cooling off period for P.C Lavia for one to draw the conclusion that he acted rationally and without malice. The evidence of the witness on this aspect of the case remained unshaken.

Damages

45. As I have found P.C Hillaire committed an assault on the Claimant by hitting and scuffling with him, the Claimant is entitled to damages for assault. However, the injury sustained were minor injuries and were set out earlier in this judgment. The Court's award of damages is based on the principles set out in **Cornilliac v St. Louis** (1965) 7 WIR 491 which are:

    (i) The nature and extent of the injuries suffered.

    (ii) The nature and gravity of the resulting physical injuries.

    (iii) The pain and suffering endured.

    (iv) The loss of amenities.

    (v) Future pecuniary loss.

46. The Claimant was suffering from blunt trauma to his face and blurry vision when seen at the Accident and Emergency Department of the Arima Health Facility. There was no profuse bleeding, broken bones, no fractures, no requirement for surgical intervention, no lingering pain and no lingering disabilities. Notably his evidence in chief on the extent and seriousness of his injuries are simply as follows:

> "23. I sustained several injuries from the beating I received from P.C Hillaire and from P.C Lavia which were a swollen left eye, swollen face, bruises on my arms, blurry vision and headaches and body pains…."

47. There was no corroborating evidence in the medical report of injuries to the arm.

48. The Claimant in his written submissions contend that such injuries should be awarded an outrageous sum of $100,000.00. He referred to the cases of **Ijaz Bernadine v The Attorney General of Trinidad and Tobago** CV2010-02956**, Morris Kenny v The Attorney General** H.C.A T-62 of 1997 and **Lester Pitman v The Attorney General** CV2009-00638. These cases are clearly distinguishable on their facts. In **Ijaz Bernadine** the Claimant was chased by the police after he took a detour via the Priority Bus Route while driving home around midnight. He was shot at, assaulted and beaten and detained for 15 1/2 hours. He sustained a right eyebrow laceration, ecchymoses of right eye as well as soft tissue injuries and was awarded the sum of $55,000.00 inclusive of aggravated damages for assault and battery. In **Morris Kenny** the Claimant who was beaten with a cable about his body in a prison setting and suffered severe back pains, was unconscious for 2 days; suffered soft tissue injuries consisting of welts and abrasions to lower back and back of right thigh; and warded for one week was awarded general damages inclusive of aggravation in the sum of $50,000.00 and exemplary damages of $60,000.00. In **Lester Pitman** the Claimant was beaten in the condemned division of the Port of Spain Prison by prison officers. Two of the prison officers used their closed fists to beat the Claimant while one used his riot staff. The Claimant suffered soft tissue injuries as a result of the attack. The Honourable Justice Jones awarded the Claimant the sum of $90,000.00 in general damages and $30,000.00 in exemplary damages.

49. There is no submission that there should be an award of aggravated damages by the Claimant and in the circumstances of this case of a "retaliation" in the heat of the moment, I see no basis for any such award.

50. A more reasonable award would be in the range of $7,000.00 to $12,000.00. I say so based on the following authorities which, although dated, they do give an indication of a suitable range in which similar minor injuries were under consideration:

    i. In **Saul and Piper v Doo Young and Pierre** 1407/78 the Claimant was awarded $4,500.00 (adjusted to 2010 is $14,940.00) for laceration across eye and loss of teeth.

    ii. In **Nanan v Archer** S191/84 the third Claimant was awarded the sum of $2,000.00 (adjusted to 2010 is $8,769.00) for laceration to face and minor scarring.

    iii. In **Wylie, Wylie, and Titus v Sorzano** S733/92 the 2nd Claimant was awarded $5,000.00 (adjusted to 2010 is $11,547.00) for minor soft tissue injury to shoulder, neck and head.

    iv. In **Mohammed v Ho** 2050/72 the sum of $500.00 (adjusted to 2010 is $10,670.00) was awarded for fracture of jaw and loosening of teeth.

    v. In **Bruno v Joseph** 2070/77 the sum of $600.00 (adjusted to 2010 is $6,805.00) was awarded for bruises to forehead and right knee.

    vi. In **Dalsingh v Knight** S1035/75, the 1st Claimant was awarded the sum of $750.00 (adjusted to 2010 is $5,997.00) for blow to forehead and abrasions to chest and ribs.

51. In my view a reasonable award would be the sum of $10,000.00.

Conclusion

52. For the reasons set out in this judgment I would award the Claimant damages for assault in the sum of $10,000.00. I dismiss his claims for wrongful arrest and malicious prosecution.

53. There will be no order as to costs.

Vasheist Kokaram

Judge