

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2017-03766**

BETWEEN

MARK PHILLIPS

Claimant

AND

**THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO**

Defendant

Before the Honourable Mr. Justice V. Kokaram

Date of Delivery: **Wednesday 12 December 2018**

Appearances:

Mr. Dons Waithe Attorney at Law for the Claimant

Mr. Andrew Lamont instructed by Ms. Kezia Redhead Attorneys at Law for the Defendant

JUDGMENT

1. The main issue for determination at this trial is whether the officers of the Professional Standard Bureau (PSB) had reasonable and probable cause to arrest and detain Mr. Mark Phillips, the Claimant, for larceny of a quantity of cocaine. Mr. Phillips, who himself is an officer a Police Corporal (Ag), was arrested on 31st October 2013. His home was searched he was interviewed and subsequently released without charge on 2nd November 2013. He claims damages for wrongful arrest and false imprisonment for his detention.
2. The main facts are not in dispute. There is no dispute that the arresting officer was Sergeant Deodath Seepersad. The arrest of the Claimant occurred at the 31st October 2013. The main ground for the arrest was Sergeant Seepersad's suspicion that the Claimant had taken four (4) packets of cocaine which was part of a court exhibit which was temporarily in his custody around 2nd August 2013. He was detained for the purpose of conducting a search of

his home where nothing was found. He was then further detained to conduct an interview which was done in the presence of his wife and an attorney at law. He was further detained for the arresting officer to receive instructions from the Director of Public Prosecutions (DPP) whether formal charges were to be laid.

3. The real question at the trial is whether the Defendant can, in light of the circumstances known to the arresting officer, justify the initial arrest and the Claimant's detention for approximately fifty eight (58) hours. The relevant principles are clear: it is for the Defendant to justify the arrest; the arresting officer may arrest the Claimant with reasonable cause that he suspects that the Claimant committed an arrestable offence; the arresting officer must subjectively suspect the Claimant has committed such an offence; the officers belief must have been on reasonable grounds or there was reasonable and probable cause to make the arrest and any continued detention after the arrest must also be justified by the Defendant.
4. I have examined the evidence led at this trial from the Claimant and his two witnesses, his wife Melissa Phillips and his brother in law Keith Mottley as well as from the Defendant's witness, Sergeant Seepersad. I have also reviewed the contemporary documentation. I am of the view that while the arresting officer did not have a perfect reason to arrest the Claimant he had sufficient facts to reasonably form an honest belief that the Claimant had committed an arrestable offence. The initial arrest was reasonable and each further period of detention thereafter was justified to conduct a search, question him and await formal instructions. The actions of the arresting officer were professional and in the circumstances reasonable and I find no merit in the claim for wrongful arrest and false imprisonment.

Brief Factual Background

5. Much of the facts are agreed between the parties. On 31st October 2013, at around 11:00am, while the Claimant was at the Police Administration Building, Corner Edward and Sackville Street, Port of Spain he saw Inspector Roberts and Officer Durga from the Organized Crime Narcotics and Firearm Bureau Department (OCNFB) looking at him. He was approached by officers who identified themselves as being attached to the Professional

Standard Bureau (PSB) led by Acting Assistant Superintendent Totaram Dookie and Montrichard, Sergeant Seepersad, Corporal Joefield and Inspector Walker. They informed him that they were investigating the disappearance of narcotics from the OCNFB and they took him into custody.

6. He was searched and nothing illegal was found. His belongings were confiscated. He was arrested and escorted through the main entrance of the Police Administration into the roadway and into a Black Parado SUV No.13418. The parties dispute where he was then taken. The Claimant alleged that he was taken to the PSB Headquarters, Matco Building, Henry Street, Port of Spain where he was questioned. The officers then informed him that they would be taking him to his home. The Defendant alleges that he was taken straight to his home to conduct a search and then returned to headquarters for questioning. This discrepancy in the parties' account is in my view immaterial there is no evidence from the Claimant to demonstrate that the alleged "questioning" was for any significant period of time nor does it detract from the necessity of the officers to conduct the search.
7. When the Claimant was taken to his home to conduct the search, it is accepted that he was taken up the stairs leading to the house where his wife, Melissa Phillips enquired from Sergeant Seepersad what was taking place. She was shown a search warrant and informed that they were there to search the house for illegal drugs that disappeared from the OCNFB. The house was searched but nothing illegal was found.
8. The Claimant, according to the Defendant, was taken to the Belmont Police Station and kept for safe keeping from 2:30pm to 5:15pm. He was then taken to the PSB Headquarters to be interviewed. His interview which was witnessed by his attorney and his wife, began around 9:00pm according to the Claimant and 8:19pm according to the Defendant on the said day. The Claimant was questioned in relation to the signing for an exhibit of narcotic that day which he indicated that he returned. Sergeant Seepersad conducted the interview. Inspector Deryck Walker took the notes. It concluded around 1:55am on 1st November 2013 according to the Defendant but 4:00am according to the Claimant.
9. After the interview he was transferred from the PSB Headquarters to the Belmont Police

Station that morning of 1st November where he was placed in a cell. He was released without charge the following day.

10. By its Defence, the Defendant contends that on 8th August 2013, the OCNFB sent an official request to the PSB for an investigation to be conducted into missing narcotics which had formed part of a Court exhibit. The Claimant was the Complainant in that matter. A quantity of narcotics was found missing when the exhibit was returned by the Claimant on 2nd August 2013. Acting Sergeant Deodath Seepersad who was part of the PSB at the time was detailed to investigate the matter.
11. Sergeant Seepersad visited the OCNFB and spoke to the narcotics keeper, Inspector Roberts. He obtained statements from other persons in relation to the allegations and had various court documents relating to the proceedings in his possession.
12. On 29th October 2013, he obtained a Search Warrant for the Claimant's premises. By 31st October 2013, he contended that he had reasonable and probable cause for the arrest of the Claimant in relation to the disappearance of the narcotics. He made this conclusion based on his observation that the 2nd August 2013 was not a day which the matter involving the exhibit was actually scheduled to be heard and was a date after the matter was discontinued by Notice of Discontinuance dated 27th July 2013 based on the death of the accused.
13. There are extensive notes of the interview and a detailed report of the investigating officer, Sergeant Seepersad, setting out the basis of his investigation and his findings which led to the arrest and detention of the Claimant.
14. The witness statement of Mark Phillips is in keeping with his Statement of Case. However, in neither the Statement of Case nor witness statement nor pre-action protocol letter has the Claimant condescended to the particulars of the unlawful arrest or false imprisonment. It is presumed that his claim is based on the fact that there was no reasonable and probable cause to arrest and detain and it is for the Defendant to justify the arrest and detention. See **Williamson v The Attorney General of Trinidad and Tobago** [2014] UKPC 29.
15. It is admitted by the Claimant that there was a search warrant to execute a search of the

home. He was arrested and informed of his rights. He was afforded the right to seek legal advice and his attorney was present during the interview. It is not in contest that they sought the advice of the DPP on whether charges were to be laid. His wife, Melissa Phillips did not corroborate his version of any deplorable state of his cells.

16. The Defendant's witness for the large part is also consistent with their defence and was unshaken in cross examination. Importantly, Sergeant Seepersad admit that he is the arresting officer. Inspector Walker was the supervisor on this exercise. It is important to note that the Defendant's witness, Inspector Walker was unavailable for cross examination on the day of the trial. I explained to Counsel for the parties that rather than adjourn the trial which was scheduled for one day to facilitate Inspector Walker's cross examination, the trial would conclude without him but no adverse inference would be drawn for his failure to attend.

17. Sergeant Seepersad provided his own view of the factual basis on which he based his belief that the Claimant was probably guilty of having stolen some of the exhibits. He openly confessed to the inconsistencies found in his investigation and that the DPP advised against a prosecution. He, however, left it open to pursue disciplinary action against a number of persons including the Claimant who would have been included in the chain of custody of the said cocaine.

18. Critically, the following material facts now are not in contest. The time of the Claimant's detention was less than three (3) days. There is no dispute that the Claimant was informed of his legal rights, that a search warrant was properly procured to conduct the search, that the parties were advised of the search warrant and that the Claimant made no objections and co-operated with the search. At the interview the Claimant initially was unresponsive and then with the presence of his attorney responded fully to all questions and his responses recorded by the arresting officer. The contemporaneous documents were not discredited by the Claimant. In my view, where there are any inconsistencies in the Claimant's version of the arrest, search and interrogation with the Defendant, having regard to the uncontested contemporaneous records, it is likely that the Claimant's version were an exaggeration of the events and do not deflect from the core facts which form the basis

for an analysis of the issue of whether there was a false imprisonment.

19. The Claimant's period of detention can be analysed in three distinct phases. First, his arrest and his search of his home. Second, when nothing was found in the search rather than release him, he is further detained for interrogation. Finally, after taking his statement he is further detained to await the DPP's instructions. I shall examine each of these phases of his detention to determine whether these periods were justified and proportionate.

Legal Principles

20. A person must be told of his rights and the reason for his arrest when reasonably practicable. He need not be told with legalistic precision but must be told reasonably clearly. **Clarke v Chief Constable of North Wales Police** [2000] Lexis Citation 2790.

21. It is not in dispute that where a person is imprisoned without lawful excuse the tort of false imprisonment is established. The person imprisoned need only prove imprisonment and the Defendant must then justify it. (**Halsbury's Laws of England** Fourth edition reissue Volume 45(2) page 299.).

22. Section 3(4) of the **Criminal Law Act** Chapter 10:04 of the Laws of Trinidad and Tobago confers on police officers the power to arrest a person whom he suspects, with reasonable cause, has committed an arrestable offence, where he also suspects, with reasonable cause, that such an offence has been committed. The offence in this case was that of larceny. **Section 4** of the Larceny Act Chapter 11:12 of the Laws of Trinidad and Tobago defines Simple Larceny and notes that it is punishable with imprisonment for five years; it is an arrestable offence.

23. Section 46(1)(f) of the **Police Service Act** Chapter 15:01 of the Laws of Trinidad and Tobago confers on Police Officers the power to arrest without warrant persons whom the Police Officers suspect on reasonable grounds of having committed or being about to commit an offence. In **Harold Barcoo v The Attorney General of Trinidad and Tobago** HCA 1388 of 1989 Mendonca J (as he then was) referred to the test to determine reasonable and probable cause as follows:

- a) Did the officer honestly have the requisite suspicion or belief?
- b) Did the officer when exercising the power honestly believe in the existence of the “objective” circumstances which he now relies on as the basis for that suspicion or belief?
- c) Was his belief in the existence of these circumstances based on reasonable grounds?
- d) Did these circumstances constitute reasonable grounds for the requisite suspicion or belief?

24. In determining whether the arresting officer had reasonable and probable cause, the first enquiry is to ascertain what was in the mind of the arresting officer and to determine whether the grounds on which the arresting officer relied as the basis for his suspicion were reasonable. Wooding L.J. in **Irish v. Barry** [1965] 8 WIR 177 put the two questions to be separately posed and answered as follows: (1) do those facts warrant a suspicion that a felony has been committed, and (2) do they also warrant a suspicion that the person whose arrest is contemplated committed it or was a party to its commission?

25. At the same time, however, it is the duty of the police officer to avoid mistaking the innocent for the guilty. Where there is no danger of escape by the suspect or some other reason which will justify swift action, they should make reasonable enquiries and act on the assumption that their prima face suspicion is ill advised.

26. The mind of the officer is relevant and his suspicion must be based on grounds, in his mind, which would lead a reasonable person to suspect the arrested person of the offence. The matters creating the suspicion in the Police Officer’s mind must reasonably give rise to such suspicion and they must be both honestly held in the officer’s mind and reasonably believed by the officer. In **O’Hara v Chief Constable of the Royal Ulster Constabulary** [1997] 1 All ER 129 it was held:

“When determining whether an arresting officer had reasonable grounds for his suspicion under s 12(1) of the 1984 Act (Prevention of Terrorism (Temporary Provisions) Act 1984), the court was not required to look beyond what was in the officer's mind,

since it was the grounds which were in his mind at the time which were relevant. Furthermore, the officer's suspicion did not need to be based on his own observations but could be based on what he had been told, or on information which had been given to him anonymously, and it was not necessary for him to prove what was known to his informant or that any of the facts on which he based his suspicion were in fact true. Whether such information provided reasonable grounds for the officer's suspicion depended on its source and context, viewed in the light of the whole surrounding circumstances..”

27. In **Shaaban Bin Hussien v Chong Fook Kam** [1970] 2 WLR 441, it was observed at 445-446:

“Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: "I suspect but I cannot prove." Suspicion arises at or near the starting-point of an investigation of which the obtaining of prima facie proof is the end. When such proof has been obtained, the police case is complete; it is ready for trial and passes on to its next stage. It is indeed desirable as a general rule that an arrest should not be made until the case is complete. But if arrest before that were forbidden, it could seriously hamper the police. To give power to arrest on reasonable suspicion does not mean that it is always or even ordinarily to be exercised. It means that there is an executive discretion. In the exercise of it many factors have to be considered besides the strength of the case. The possibility of escape, the prevention of further crime and the obstruction of police inquiries are examples of those factors with which all judges who have had to grant or refuse bail are familiar.....

.....

The ordinary effect of this is that a police officer either has something substantially more than reasonable suspicion before he arrests or that, if he has not, he has to act promptly to verify it.”

28. **Ramsingh v The Attorney General of Trinidad and Tobago** [2012] UKPC 16 neatly summarized the law on false imprisonment at paragraphs 7 and 8:

“7. The legal principles are clear. Section 3(4) of the Criminal Law Act 1936, Chapter

10.04 provides: "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."

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."

29. The arresting officer, in this case Sergeant Seepersad, is submitted to have had reasonable grounds for suspecting the Claimant of the commission of an offence in connection with the missing dangerous drugs. Amongst the offences which may have been reasonably suspected is larceny of the drugs.

30. Counsel for the Defendant quite correctly identified the main issue to be resolved was whether Sergeant Seepersad had reasonable grounds for suspicion and whether those grounds were justified. He pointed out that notwithstanding the fact that other police officers may have been in breach of standard protocol to safeguard the integrity of the Court exhibit, the issue is not reasonable grounds for suspecting any other person but whether on the facts in relation to this Claimant. It was reasonable in all the circumstances to arrest and detain the Claimant for the period he was detained.

31. The Claimant's main submissions were as follows:

- The Claimant was detained for an inordinately long period of time when nothing incriminating was found on him or his premises;
- There were other persons in the chain of custody of the Court exhibit who breached standard protocol;
- The Claimant was always co-operative and not evading the police;
- Other officers could be reasonably said to be culpable for taking the narcotics.

These main facts demonstrate that there was no reasonable ground for Sergeant Seepersad to suspect that the Claimant had committed a crime.

32. In my view, however, the evidence demonstrates a measured and careful approach by Sergeant Seepersad to the investigation. There is no evidence of malice or ill-will to suggest that he was singling out the Claimant for ill treatment. Although the Claimant was co-operative, equally, it was reasonable for the arresting officer, Sergeant Seepersad, to detain him in light of the information he had and the detention was not longer than necessary to conduct reasonable enquiries in the shortest possible timeframe in the circumstances.

33. Having regard to the facts obtained by Sergeant Seepersad in his investigation, they objectively supported his honest belief that the Claimant is guilty of committing an arrestable offence. These conclusions are drawn from my analysis of the Claimant's arrest and detention.

The initial arrest

34. In my view there was sufficient factual basis for Sergeant Seepersad to objectively hold the honest belief that the Claimant was responsible for the missing packets of cocaine.

35. The grounds for the reasonable suspicion are based on the unshaken and unrefuted evidence of the Defendant that:

- i. there were no missing packets of the exhibit before the Claimant received it on 2nd August 2013 but the exhibit was missing some packets after the Claimant

- returned it on 2nd August 2013¹;
- ii. the exhibit was in the Claimant's custody between the time it was received by the Claimant and the time it was returned with the packets missing weight²;
 - iii. the Claimant took the exhibit when the associated matter was not scheduled to be heard in Court³;
 - iv. the Claimant took the exhibit when the associated matter had in fact been dismissed⁴; and
 - v. the Claimant took the exhibit when the Court was not formally open⁵;
 - vi. the Claimant made previous requests for the exhibit when the associated matter was not scheduled;⁶
 - vii. an attempt by officers to question him had proven futile⁷;
 - viii. there was a clear explanation of the standing protocol and the Claimant's breach of them;⁸
 - ix. there was an investigation at the Couva Police Station which buttressed his suspicion.⁹

36. These facts emerged from Sergeant's Seepersad's unshaken and credible testimony. I took a careful note of his cross examination and found him to be open, frank and direct in his answers, professional and familiar with the case and spoke with a degree of conviction of his belief that the Claimant was culpable. Indeed he was amongst a number of person who failed to follow established protocol and which inevitably led to the missing cocaine. The fact that ultimately the DPP for good reasons chose not to prosecute him does not take away from the facts which Sergeant Seepersad relied upon to make this arrest. Those facts

¹ See paragraph 3 of Sergeant Seepersad's witness statement filed 28th September 2018

² See paragraph 5 of Sergeant Seepersad's witness statement filed 28th September 2018 and the report of Sergeant Seepersad exhibited "DS4" in his witness statement

³ See paragraph 5 of Sergeant Seepersad's witness statement filed 28th September 2018 and the report of Sergeant Seepersad exhibited "DS4" in his witness statement

⁴ See paragraph 5 of Sergeant Seepersad's witness statement filed 28th September 2018 and the report of Sergeant Seepersad exhibited "DS4" in his witness statement

⁵ See exhibit "DS.4" in the witness statement of Sergeant Seepersad filed 28th September 2018

⁶ See cross examination of Sergeant Seepersad

⁷ See witness statement of Melissa Phillips and the cross examination of Sergeant Seepersad

⁸ See cross examination of Sergeant Seepersad

⁹ See exhibit "DS.4" in the witness statement of Sergeant Seepersad filed 28th September 2018

are not in the least farfetched, nor fanciful nor spurious and are reasonable to hold such a view. This was after all a very serious matter of internal police investigation where due to an internal breach of protocol cocaine from a court exhibit was missing.

37. In this case the arresting police officer is submitted to have told the Claimant with reasonable clarity of the offence for which he was suspected, and to have told him that he was arrested in connection with missing drugs. The Claimant does not deny and in fact admits that he was told that the police were investigating the disappearance of narcotics from the OCFNB when he was taken into custody. It is the Claimant's testimony that:

"After the I finished conducting business, I was waiting at the public reception area to sign out and return the entrance pass, while waiting there, I saw Inspector Roberts and Officer Durga both from the Organized Crime Narcotics and Firearm Bureau Department standing looking at me, I was then approached by Officers who identified themselves as being attached to the Professional Standard Bureau (hereinafter referred to as PSB) led by Acting Assistant Superintendent Totaram Dookie and Superintendent Montrichard. The party of officers included Sergeant Seepersad who identified himself by means of his Trinidad and Tobago Police Identification Card, Corporal Joefield and Inspector Walker. Sergeant Seepersad then informed me that they were investigating the disappearance of Narcotics from the OCNFB and that they were taking me into custody."¹⁰

38. It is clear that the Claimant was also told of his rights and privileges. The Claimant was demonstrably afforded the right to legal counsel. The Claimant does not query this, as noted in Paragraph 17 of the Claimant's Statement of Case and in paragraphs 21 and 22 of the Claimant's Witness Statement. Paragraph 17 of the Statement of Case states:

"An interview was then conducted with the Claimant, witnessed by his attorney and his wife Melissa Phillips, which began around approximately 9:00pm or thereabout on the said Thursday 31st October 2013....."

39. The Claimant's testimony at paragraphs 21 and 22 his witness statement states:

¹⁰ Paragraph 4 of the Claimants witness statement filed 1st October 2018

“21. I then asked Sergeant Seepersad for the interview to be stopped for my wife to contact our Attorney at Law Mr. Joseph Honore.

22. The interview was resumed, witnessed by his attorney and my wife Melissa Phillips, which began around approximately 9:00pm or thereabouts on the said Thursday 31st October 2013.”

40. In so far as there is some criticism that it was a team decision to arrest the Claimant, I am satisfied that the arresting officer himself had sufficient information to arrest the Claimant. In **O’Hara v Chief Constable of the Royal Ulster Constabulary** it was observed at page 142:

“The statutory power does not require that the constable who exercises the power must be in possession of all the information which had led to a decision, perhaps taken by others, that the time has come for it to be exercised. What it does require is that the constable who exercises the power must first have equipped himself with sufficient information so that he has reasonable cause to suspect before the power is exercised.”

41. The Claimant was therefore properly informed of the reason for his arrest, advised of his rights and there were sufficient facts for Sergeant Seepersad to hold the honest belief that the arrest was warranted.

The search

42. The Claimant admitted there was a search warrant for his home. He was taken to his home and Sergeant Seepersad led him up the stairs and show his wife a search warrant in his name. He informed the Claimant’s wife, Melissa Phillips that they were there to search the house for illegal drugs which disappeared from the OCNFB. The Claimant’s wife protested a bit to the search because on 2nd August 2013 when the alleged drug went missing a contingent of officers visited the house but left without search and now two months later, she wanted to know why they were coming to search the house for the drugs. Even though she contends she was not allowed to reach the search warrant, she stated that the Claimant told her to allow the officers to do their job.¹¹

¹¹ Paragraph 9 of the Witness Statement of Melissa Phillips

43. The house was searched in the presence of the Claimant's wife, brother in law, Keith Mottley and his eleven month old daughter. Nothing illegal was found during the search. This was corroborated by Sergeant Seepersad who also admitted that nothing illegal was found during the search.
44. There was nothing to suggest that the search of the premises was conducted illegally, nor was it unwarranted. The Claimant himself complied with the search. The search warrant was executed in the presence of the Claimant's wife and brother in law and Sergeant Seepersad explained the reason for their visit and the execution of the warrant.

The Interview

45. After the search, the Claimant was taken to the PSB headquarters where an interview was conducted. Sergeant Seepersad was the interviewer and Inspector Walker was the recorder. Shortly after the interview commenced, the Claimant contends that concerned by the manner in which the interview was proceeding due to Sergeant Seepersad's aggressive demeanour, he requested for the interview to be stopped for his attorney to be contacted. The interview then resumed, witnessed by his attorney and his wife, Melissa.
46. Sergeant Seepersad contends that he conducted the interview in a professional manner and he did not seek to intimidate the Claimant. The interview was also paused at the Claimant's request, as stated by the Claimant himself, to facilitate communication with the Claimant's lawyer.
47. The contemporaneous documents are the interview notes and the report of the arresting officer. The interview notes were copious notes recorded by Inspector Walker. It reflected that the Claimant was initially hesitant to answer the questions of Sergeant Seepersad and the interview was eventually paused so that he could contact his attorney. Questions were posed to him concerning the matter to which he was the Complainant and he answered them in a straightforward manner. He was asked about the quantity of cocaine involved in the matter and the amount of packets it contained to which he replied approximately 20 packets. He further explained that he became aware of the nolle prosequi in the matter when he phoned the DPP's office to inform them that he would be late for the matter and

was told the matter was determined. He was questioned on his involvement in the matter, his court appearances and when he would have presented the exhibit to court.

48. He was also asked to explain the procedure in collecting and returning the narcotics exhibit which he explained that a telephone message request is made, the narcotics property keeper would remove the exhibit prior to the date of the request and hand it over to the sentry who would place it in the charge room. There is a narcotics request book that the sentry on the duty writes the request in from the telephone message book than then when the officer in question who requested the exhibit goes to collect it, it is handed to him or it is to him by the sentry on duty who usually leaves it on a trolley close by due to the size or scene. The officer collecting the exhibit would write up the narcotics movement books which is a book for recording exhibit in or out. The officer would sign the book and the sentry countersigns. Upon taking the exhibit the officer reports to the sentry and then upon returning it the officer would write up the narcotics movement book after having handed over the exhibit to the sentry. The officer would sign and the sentry would countersign the book.
49. He was questioned about the checks made by the sentry on duty of the property keeper on the return of the exhibit and he explained that checks are done. When questioned on which dates he would have collected the exhibits, he was given the opportunity from Sergeant Seepersad to refresh his memory from his personal diary which was seized from him upon his arrest. He was shown the Dangerous Drug movement register in which he would have made entries taking and returning the exhibit. He could not recall if the exhibit was checked in his presence when it was handed to him and if anyone checked the exhibit when it was returned.
50. There was nothing in the interview notes to suggest that Sergeant Seepersad was being aggressive or conducted the interview in a manner as to instruct the Claimant to answer the questions asked. The Claimant was even afforded breaks to use the washroom and also to refresh his memory from his personal diary so that he can answer the questions posed to him to the best of his knowledge. There was no indication that Sergeant Seepersad was hostile during the interview.

51. The report of Sergeant Seepersad to the PSB dated 4th February 2014, another contemporaneous document, further provides evidence of the careful approach of Sergeant Seepersad and the facts relied upon to support his reasonable suspicion. He stated that he was detailed to investigate a report made by Supt Garrick of the OCNFB that on 2nd August 2013, PC Phillips of Couva CID visited the OCNFB and collected an exhibit consisting of ten blocks of cocaine to attend the San Fernando High Court in a matter in which the Claimant was the Complainant. When the exhibit was returned, four blocks of cocaine were discovered missing. PC Phillips was contacted about same but did not give a satisfactory account of the missing narcotics. In the report, Sergeant Seepersad explained that he conducted enquiries, interviewed persons and obtained documents including a listing of the sequence of activities of the matter. He obtained a statement from the State Attorney in the office of the DPP who indicated that she never saw the exhibit or requested it to be produced in Court on 2nd August 2013. Sergeant Seepersad also visited the office of the OCNFB, seized the Drugs Request Register, the Dangerous Drug Movement Register, obtained a copy of the General Property Register and pertinent station diary extracts. He also requested photographs of the exhibit. He obtained reports from personnel who were on duty at the OCNFB charge room on the morning the Claimant collected the exhibit and reports from personnel on the shift on duty at the Couva Police Station where PC Phillips allegedly lodged the exhibits on the day in question. He detailed his arrest of the Claimant and the subsequent interview and indicated that the Claimant was released without charge on 2nd November 2013 because the DPP advised that a criminal prosecution not be undertaken.

Awaiting instructions

52. It was reasonable to detain the Claimant for a few more hours (approximately 19 hours and 30 minutes) to ascertain the official position to proceed. It was not a concession that there was no good cause but rather a prudent and reasonable step to take before launching into a serious prosecution.

53. Overall there is no malice, no spite nor ill-will demonstrated against the Claimant. The Claimant was held no longer than a reasonable time necessary to finalise the investigation,

and upon the police conferring with the DPP and learning the DPP's opinion that no charge could usefully be brought, the police released the Claimant.

Conclusion

54. For these reasons, I am of the view that the Defendant has justified the arrest and detention of the Claimant. The arresting officer had sufficient facts and reasonable cause to form an honest belief that the Claimant had committed an arrestable offence. The Claimant's detention of approximately fifty eight (58) hours was also justified for the officers to conduct a search, interview of the Claimant and to await formal instructions from the DPP to charge the Claimant.

55. The claim is therefore dismissed. There will be no order as to costs.

Vasheist Kokaram

Judge

APPENDIX A

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2017-03766**

BETWEEN

MARK PHILLIPS

Claimant

AND

**THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO**

Defendant

From the Honourable Mr. Justice V. Kokaram

Wednesday 12 December 2018

LETTER TO THE PARTIES

1. Mr. Phillips your claim is for damages for wrongful arrest and false imprisonment. You were arrested on 31st October 2013, your home was searched, you were interviewed, kept in a cell at the Belmont Police Station and released without charge on 2nd November 2013. I understand you suffered distress from this arrest and detention and no charges were laid which suggest to you that there was no reason to detain you. I also understand that you felt badly treated by the officers of the Organized Crime Narcotics and Firearm Bureau Department (OCNFB). They were investigating a serious matter of a missing narcotic from a Court exhibit and you felt there was no need to treat you in that manner.
2. The main issue at your trial is to determine whether the arresting officer, Sergeant Seepersad had reasonable grounds to suspect that you had taken four (4) packets of cocaine which was part of a court exhibit which was temporarily in your custody around 2nd August 2013.
3. Mr. Phillips the real question is whether the Defendant can, in light of the circumstances known to the arresting officer, justify the initial arrest and your detention for approximately

fifty eight (58) hours. As I explain in my judgment the relevant legal principles are that it is for the Defendant to justify the arrest; the arresting officer may arrest you, Mr. Phillips with reasonable cause that he suspects that you committed an arrestable offence; the arresting officer must subjectively suspect that you have committed such an offence; the officers belief must have been on reasonable grounds or there was reasonable and probable cause to make the arrest and any continued detention after the arrest must also be justified by the Defendant.

4. Mr. Phillips I would like you to understand that suspicion in its ordinary meaning is a state of conjuncture or surmise where proof is lacking: "I suspect but I cannot prove." Suspicion arises at or near the starting-point of an investigation of which the obtaining of prima facie proof is the end. If an arrest before prima facie proof were forbidden, it could seriously hamper the police. In the exercise of the powers of arrest, many factors have to be considered besides the strength of the case.
5. Mr. Phillips I have examined the evidence led at this trial by you and your two witnesses, your wife Melissa Phillips and your brother in law, Keith Mottley. I have also examined the evidence of the Defendant's witness, Sergeant Seepersad and read the contemporary documentation. I am of the view that while the arresting officer did not have a perfect reason to arrest you, he had sufficient facts to reasonably form an honest belief that you had committed an arrestable offence. The initial arrest was reasonable and each further period of detention thereafter was justified to conduct a search, question you and await formal instructions. The actions of the arresting officer were professional and in the circumstances reasonable. I set out in fuller detail the reasons for my decision in my judgment.

Vasheist Kokaram

Judge