

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**No. CV 2018-1739**

**BETWEEN**

**ANAND DASS**

**Claimant**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Defendant**

**Before The Honourable Madam Justice Margaret Y Mohammed**

**Date of Delivery: January 29, 2021**

**Appearances:**

**Mr. Jared Jagroo and Ms. Alana Rambaran Attorneys at law for the Claimant.**

**Ms. Niquelle Nelson Granville instructed by Ms. Laura Persad Attorneys at law for the Defendant.**

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## JUDGMENT

1. It is a serious allegation that a police officer has misbehaved in public office. It is even more serious when a police officer is arrested for the offence of misbehaviour in public office. In the instant case the Claimant, a police officer, attached to the North Eastern Divisional Task Force (“NEDTF”), was arrested for the offence of misbehaviour in public office. He remained in custody from 13 August 2017 to 16 August 2017 before he was released without charge. He has brought the instant action seeking damages, including aggravated and or exemplary damages for false imprisonment.

### **THE CLAIM**

2. The Claimant alleged that on Saturday 12 August, 2017, he was on duty at the office of the NEDTF when he received information that there was a robbery in progress at the Ming Wang Chinese Restaurant (“the Restaurant”) situated on the Aranguez Main Road. He, together with several other officers including: Acting Corporal Majeed Registration Number 15005 (“PC Majeed”), PC Lezama Registration Number 18094 (“PC Lezama”) were dispatched to the scene (“the scene of the incident”). Upon arrival at the Restaurant they noticed someone lying on the road who appeared to have suffered a gunshot wound and proceeded to make investigations and enquiries.
3. A short time later, whilst the Claimant was on his way to the Erin District to conduct an exercise, he was accused by ASP Ramkhelawan on the telephone of being connected with the removal of a Digital Video Recorder (“DVR”) from the scene of the incident. The Claimant immediately denied this allegation and advised that he did not have any knowledge of any missing DVR and that he did not remove any DVR from the Restaurant. The Claimant was requested to attend to the Arouca Homicide Region 2 immediately. Upon arrival he met with Inspector Lawrence and ASP Flaveney who informed him of an allegation of a missing DVR from the Chinese Restaurant on 12 August 2017.
4. The Claimant was asked to provide a report by 8:30am on 13 August 2017, regarding the robbery incident at the Restaurant. The Claimant provided the report (“the

Claimant's Report") on the same day in which he gave an account of the events which transpired on 12 August 2017 and he denied removing any DVR from the "Ming Wang Chinese Restaurant".

5. On 13 August 2017, Senior Superintendent James of the Homicide Division at Arouca requested the Claimant to attend the said Division. At or about midday, whilst on duty and outfitted in his police uniform, together with colleagues, the Claimant attended the Homicide Division at Arouca in a marked police vehicle. He waited at the Homicide Division on a chair at the lobby from 12:00 noon to 6:00pm until he was called into a room to be questioned by 3 officers namely Acting Corporal Joefield ("PC Joefield"), Police Constable Moore ("PC Moore") and another East Indian officer whose name the Claimant was unable to recall.
6. The Claimant was informed that he was a suspect in an investigation as he was allegedly seen walking out of the Restaurant with a man who had a bag containing a square-like object resembling the DVR. He was told that he was being arrested by PC Joefield for the offence of misbehaviour in public office. The Claimant was searched, placed in a police vehicle and taken to the Morvant Police Station on the 13 August 2017. At the Morvant Police Station the Claimant was interviewed and asked whether he had a locker and the location of this locker. He replied in the negative and checks were made which confirmed this. He was subsequently placed in a marked police vehicle and taken to the Central Police Station while he was wearing his police trousers and a dark blue under t-shirt.
7. On 14 August 2017 the Claimant was placed in a police vehicle and taken to the Belmont Police Station at or about 8:40pm. At or about midday on 15 August 2017, the Claimant was taken to a room to be interviewed by PC Joefield regarding the allegations of the stolen DVR. He chose to remain silent. He was subsequently placed in an unmarked police vehicle and taken to his home where a search was conducted for about 25 minutes for the DVR.

8. The Claimant asserted that he was humiliated in front of his neighbours as he was then escorted outside his home, and taken back to the Belmont Police Station and held in a cell until 16 August 2017. He was released on 16 August 2017 at about 2:29 pm by PC Joefield, based on the instructions from the Director of Public Prosecution (“the DPP”) pending the completion of certain investigations. No charges were laid against the Claimant regarding the DVR.

#### **THE DEFENCE**

9. The Defendant denied the assertions made by the Claimant. The Defendant’s position was that its servants and/or agents lawfully detained the Claimant for the purpose of investigating a report of a stolen DVR from the Restaurant following a robbery/shooting attempt on 12 August 2017.
10. The Defendant alleged that on Saturday 12 August 2017, PC Majeed, PC Lezama and the Claimant were at the office of the NEDTF at the Morvant Police Station along with Police Constable Celestine Registration Number 17054 (“PC Celestine”), Acting Corporal Lavia Registration Number 16731 (“PC Lavia”) and Police Constable Cudjoe Registration Number 18813 (“PC Cudjoe”). At or around 1:45pm on that day, information was received that a robbery was in progress at a Chinese restaurant in the vicinity of Jury Rampersad Street, Aranguez which was later discovered to be the Restaurant.
11. PC Majeed, PC Lezama and the Claimant immediately left the said police station to respond to the report in a marked police vehicle which was driven by PC Majeed. PC Celestine, PC Lavia and PC Cudjoe also left the said police station to respond to the said report in another marked police vehicle which was driven by PC Celestine.
12. While PC Majeed, PC Lezama and the Claimant were on the way to the scene of the incident, further information was received from the Police Command Center that there were loud explosions in the Aranguez area to which PC Lezama responded and updated the Command Center. In order to surround the Restaurant, both marked

police vehicles approached the scene of the incident from different directions and using different streets.

13. Upon arrival at the scene of the incident, a large crowd was gathered around the Restaurant, the surrounding road and the pavement area. The aforementioned police officers observed a man of African descent, heavy built, dark in complexion who was wearing a dark coloured vest and blue jeans lying on the southern side of the Restaurant. This man appeared to be suffering from gunshot wounds and was bleeding profusely. The said man was later identified as Kareen Fleary (“the deceased”). At the time, several persons were gathered around the deceased and began shouting, *“Officers, they went to rob. It good for them!”*
14. PC Majeed, PC Lezama and the Claimant attempted to interview persons gathered around the scene concerning the said incident. The Claimant then walked into the Restaurant. At approximately 1:50pm on the same day, Woman Corporal Weekes Registration Number 13577 (“WPC Weekes”), Woman Police Constable Dates Registration Number 16702 (“WPC Dates”) and Police Constable Ball Registration Number 18220 (“PC Ball”) of the North Eastern Division CID who were on mobile patrol in the Aranguéz police district in a marked police vehicle arrived at the scene of the incident. PC Majeed reported the information concerning the incident to WPC Weekes.
15. PC Majeed called out to PC Lavia and PC Cudjoe to assist with placing the deceased into the marked police vehicle so that he could be transported to the Eric Williams Medical Sciences Complex (“the Hospital”). They exited the vehicle, and PC Celestine who was driving the said vehicle brought the vehicle closer. PC Cudjoe also cautioned and arrested a woman who was said to be in the company of the suspects who was later handed over to WPC Weekes. The deceased was placed into the marked police vehicle which was driven by PC Celestine and PC Lavia, PC Celestine and PC Cudjoe transported the deceased to the Hospital where he subsequently succumbed to his injuries.

16. On the said 12 August 2017 at the Restaurant, WPC Weekes instructed WPC Dates to cordon off the area to preserve the crime scene, and at or around 1:58pm, WPC Weekes communicated with the Crime Scene Investigative Department and requested their services. WPC Weekes and PC Ball, both of whom were dressed in civilian clothing, then proceeded inside the Restaurant. There were two cameras positioned on the wall behind the counter.
17. After approximately 3 minutes, a woman of Chinese descent approached the counter speaking Chinese. Shortly thereafter, a young Chinese girl approached the counter and spoke to WPC Weekes and PC Ball in English. WPC Weekes and PC Ball informed the said girl that they were police officers, and she informed the said officers that her name was Jinyu Chen ("Ms Chen"). Ms Chen indicated that she was the daughter of the owner of the Restaurant. A few minutes into the conversation with Ms Chen, WPC Weekes observed the Claimant push a gate to exit from behind the counter of the Restaurant from where Ms Chen was standing, and he walked past her. At the time of the incident, WPC Weekes had known the Claimant for approximately 3 years and at that time, he was dressed in blue police operational wear. A few seconds after the Claimant passed by, WPC Weekes also observed a male of East Indian descent in civilian wear, slim built with a dark brown complexion, approximately 5 feet 6 inches tall and appearing to be in his early to mid-twenties holding a plastic bag against his chest and walking past her quickly. The top of the bag appeared to be square in shape. The speed with which the unidentified man passed WPC Weekes aroused her suspicion that he had something to hide. Both the Claimant and the unidentified man exited the Restaurant.
18. WPC Weekes enquired of Ms Chen whether the cameras at the Restaurant were working, to which Ms Chen responded that they were not working. Ms Chen also confirmed to WPC Weekes that she did not know the unidentified man who came from behind the counter. WPC Weekes and PC Ball then proceeded outside the Restaurant. WPC Weekes then asked the Claimant whether he knew the unidentified man who came from behind the counter with him, and the Claimant responded that he did not know the man. WPC Weekes observed that there was a camera on the side

of the Restaurant where the deceased was lying on the roadway. WPC Weekes and WPC Dates proceeded inside the Restaurant to make further enquiries. Ms Chen informed them that *“A man come in police uniform and a man come with him dressed like allyuh and he say he going and check the footage and bring it back. I think he was one ah allyuh.”*

19. Shortly thereafter on the said 12 August 2017, police officers attached to the Homicide Bureau arrived at the Restaurant and interviewed Ms Chen. After having a conversation with Acting Inspector Fuentes, WPC Weekes checked to see if the DVR was behind the counter. WPC Weekes entered the gate, went behind the counter, made a left turn when she observed several cables on a wooden shelf. Above the shelf was a monitor mounted on the wall which did not appear to be functioning. WPC Weekes looked to see if there was any DVR but noticed that the cables she saw were not connected to anything.
20. Subsequently, PC Majeed, PC Lezama and the Claimant proceeded to the Hospital to deliver a police medical report form. Upon arrival there, the said police officers were informed that the deceased had succumbed to his injuries. The police officers then returned to office of the NEDTF at the Morvant Police Station and were subsequently briefed to carry out exercise duty in the Erin District.
21. On the 13 August 2017, DCP Crime and Support, Mr. Harold Phillip (“DCP Phillip”) detailed the Professional Standards Bureau (“the PSB”) to assist the Arouca Homicide Bureau Region II in an investigation surrounding the shooting of the deceased at the Restaurant on the 12 August 2017. Acting Superintendent Robert Williams Registration Number 11771 (“Superintendent Williams”), PC Joefield and other members of the PSB proceeded to the Arouca Homicide Bureau Region II office.
22. Upon arrival at the Arouca Homicide Bureau, the said officers of the PSB including Superintendent Williams met with various officers including ACP Persad, Acting ACP Baldeo, Senior Superintendent James and Inspector Lawrence. Senior Superintendent James of the Homicide Bureau informed them of the said incident concerning the



shooting of the deceased on the 12 August 2017 at the Restaurant and confirmed that PC Majeed, PC Lezama, PC Lavia, PC Celestine, PC Cudjoe and the Claimant from the NEDTF and WPC Weekes, WPC Dates and PC Ball of the North Eastern CID responded to the said shooting.

23. Senior Superintendent James further reported that he received information that a male police officer of East Indian descent, dressed in police operational wear and identified as the Claimant, in the company of another male of East Indian descent dressed in civilian clothing went into the Restaurant and took possession of the DVR which may have contained potential evidence in relation to the fatal shooting of the deceased. Senior Superintendent James then handed over several reports to Superintendent Williams including the statements from the said police officers who responded to the report of the shooting at the Restaurant, and the statement of Ms Chen (“the First Chen Statement”).
24. Senior Superintendent James under the instructions of DCP Phillip gave certain police officers instructions to conduct investigations in the field. These police officers also visited the Restaurant in an effort to retrieve any CCTV footage from the scene of the crime and made efforts to locate Ms Chen with the intention of recording a further statement from her, however same proved futile.
25. PC Joefield was provided with copies of the statements from the police officers who responded to the report of shooting including the Claimant, and the First Chen Statement. After reviewing the said statements, WPC Weekes was asked to visit the Arouca Homicide Bureau. WPC Weekes was interviewed and she provided a statement (“the Weekes Statement”) in relation to the incident. The Claimant was also contacted and asked to attend the Homicide Bureau. The Claimant attended the Arouca Homicide Bureau at approximately 12:40 pm on 13 August 2017.
26. On the evening of 13 August 2017, Superintendent Williams gave instructions to PC Joefield to interview the Claimant relative to the missing DVR. At approximately 6:45pm on the said 13 August 2017, PC Joefield met the Claimant in an enclosed room

at the Arouca Homicide Bureau in the presence of PC Rampersad and PC Moore. PC Joefield, PC Rampersad and PC Moore identified themselves to the Claimant by showing him their Trinidad and Tobago Police Service Identification Cards (“TTPS ID Card”). PC Joefield informed the Claimant of the report which he was investigating, that a male person fitting the Claimant’s description, dressed in police operational wear, in company with another male person of East Indian descent dressed in civilian wear, went to the Restaurant and took possession of the DVR. He explained that the DVR may have contained potential evidence in relation to the shooting and subsequent death of the deceased on 12 August 2017, and that the whereabouts of the DVR remained unknown. PC Joefield cautioned the Claimant in accordance with Rule II of the Judge’s Rules.

27. PC Joefield informed the Claimant that he was under arrest for the offence of misbehaviour in public office and the Claimant was informed of his constitutional rights and privileges, including the right to retain a legal advisor of his choice and to hold communication with him. PC Joefield made a note of what transpired at the interview of the Claimant, but the Claimant refused to sign it.
28. PC Joefield then enquired from the Claimant whether he was suffering from any ailments or taking any medication to which he replied “No”. PC Joefield also enquired whether the Claimant was hungry or thirsty, or wanted anything to eat or drink, and the Claimant indicated that he was hungry. PC Joefield asked the Claimant if he wanted anything specific to eat and offered to buy same for him but the Claimant indicated that he would have a relative provide him with a meal.
29. At approximately 7:10pm on 13 August 2017, police officers attached to the PSB, including Superintendent Williams and PC Joefield conveyed the Claimant to the Morvant Police Station. At the Morvant Police Station, a search of the Task Force Office and the male dormitory was conducted in the Claimant’s presence to determine whether he had a locker, however, it was confirmed that none of the lockers was occupied by him. The Claimant was not interviewed during the said search but was only questioned about whether any locker belonged to him, and he made no request

for his Attorney-at-Law to be present at that time. This exercise lasted for approximately 15 minutes.

30. On 13 August 2017 at approximately 8:30 pm, the Claimant was then taken to the Central Police Station where he was handed over to Woman Police Sergeant Narine Registration Number 16241. PC Joefield instructed Woman Police Sergeant Narine that the Claimant should be granted a telephone call to his Attorney-at-Law, and Woman Police Sergeant Narine assured that same would be done. The police officers attached to the PSB then left the said police station.
31. On 14 August 2017, PC Joefield continued enquiries relative to the allegations made against the Claimant concerning the DVR. A further statement was recorded from Ms Chen (“the Second Chen Statement”) by a police officer attached to the Homicide Bureau. Ms Chen confirmed that in the First Chen Statement a male, slim police officer of East Indian descent dressed in blue uniform together with another man came into the Restaurant and the latter requested that she hand over the DVR. He then placed the DVR into a plastic bag. Both men then left the inside of the said Restaurant.
32. PC Joefield went to the Central Police Station at approximately 6:10pm on 14 August 2017 and had a conversation with the Claimant. PC Joefield enquired from the Claimant whether he was in good health, whether he had a bath and a change of clothing, to which the Claimant responded affirmatively. PC Joefield then informed the Claimant that he intended to conduct an interview with him on 15 August 2017, relative to the matter for which he was arrested and informed him of his right to have an Attorney-at-Law, relative or friend of his choice present at the interview, if he chose to participate.
33. Acting Corporal Marcano Registration Number 14709 (“PC Marcano”) and PC Joefield were informed that the Claimant was transferred to the Belmont Police Station. At approximately 11:30am on 15 August 2017, both officers proceeded to the Belmont Police Station to interview the Claimant and arrived at the said police station at approximately 11:45am. At the Belmont Police Station, PC Marcano and PC Joefield

met with the Claimant who requested to brush his teeth and this was facilitated. Thereafter, the Claimant was taken into an interview room at the Belmont Police Station. At approximately 11:50am, the Claimant's Attorney-at-Law, Ms. Chelsea P. John, arrived at the Belmont Police Station to be present at the interview with the Claimant. Both PC Joefield and PC Marcano again identified themselves to the Claimant and Ms. John by showing them their TTPS ID Card. PC Joefield informed the Claimant of his intention to conduct an interview relative to an allegation for which he was arrested. Prior to the interview, Ms John requested to speak with the Claimant privately and PC Marcano and PC Joefield left the room. When the Claimant and Ms John finished speaking and PC Marcano and PC Joefield returned to the interview room, Ms John indicated that she advised her client on his right to silence, following which she left the interview room and the police station at approximately 12:06pm.

34. Shortly thereafter, PC Marcano and PC Joefield proceeded to interview the Claimant and enquired from him whether he had any objection to the interview. The Claimant refused to participate, stating *"I am innocent of all allegations and I do not want to participate in any interview or give any statement at this time"*. PC Joefield made notes of what transpired but the Claimant refused to sign the interview notes.
  
35. At approximately 2:00pm on 15 August 2017, PC Joefield and other senior officers of the PSB met with the DPP concerning the investigations into this matter. The DPP advised that further statements be taken from Ms Chen, confirmation be made that WPC Weekes was the police officer Ms Chen spoke with on 12 August 2017, and that a search warrant be executed at the residence of the Claimant. The police officers including PC Joefield were then advised to return to the office of the DPP for his final decision on the matter.
  
36. A search warrant dated 15 August 2017 was issued upon the oath of PC Joefield to search the residence of the Claimant located at Neverson Street, Bridge Road, San Juan on the basis that there is *"reasonable ground for believing that Lorex Digital Video Recording devices and other related articles which there is reasonable ground for believing will afford evidence as to the commission of an Indictable Offence namely*

*Misbehaviour in Public Office under Common Law are concealed in the premises of Anand Dass at Neverson Street Bridge Road San Juan.”*

37. On 15 August 2017, a party of officers from the PSB, including PC Joefield arrived at the Belmont Police Station then left the said police station with the Claimant to execute the search warrant at the Claimant’s residence. PC Joefield enquired from the Claimant whether he had anything mentioned in the warrant, concealed in the premises, to which the Claimant responded “no”. A search was conducted of the Claimant’s residence but nothing mentioned on the warrant or anything illegal was found. The Claimant was then taken back to the Belmont Police Station pending further enquiries and arrived there at approximately 8:20pm.
  
38. On the 15 August 2017, officers of the PSB went to the Restaurant to further interview Ms Chen and to obtain a third statement from Ms Chen and to conduct a verification exercise with her concerning the female police officer she spoke about in her previous statements. After giving the statement (“the Third Chen Statement”), Ms Chen read over and agreed with the contents of same, however, she indicated that she could not sign the statement as her mother was very upset and had instructed her not to sign, as her family was fearful for their lives after she had provided the First Chen Statement and the Second Chen Statement.
  
39. At approximately 12:00pm on 16 August 2017, PC Joefield and another officer of the PSB met with the DPP. The DPP indicated that he was in receipt of all of the evidence gathered thus far and that in light of the unwillingness of Ms Chen and the other proprietors of the Restaurant to assist in the matter, the Claimant should be released. After this meeting, Acting Inspector Hill and PC Joefield went to the Belmont Police Station at approximately 2:25pm, where they informed the Claimant of the decision by the DPP to release him. The Claimant was then released at or around 2:35pm on 16 August 2017 based on instructions of the DPP.

## THE ISSUES

40. If the Claimant's version of the events is correct, it means that he was detained without reasonable and probable cause by PC Joefield from 13 August 2017 to 16 August 2017. Conversely, if the Defendant's version is correct then PC Joefield had reasonable and probable cause to suspect that the Claimant had committed an offence and to continue to detain him until the DPP gave instructions to release him.
41. For the Claimant to obtain the orders he has sought, the following issues are to be determined in his favour:
- (a) Did PC Joefield have reasonable and probable cause to suspect that the Claimant had committed an offence?
  - (b) Was the Claimant's detention after his arrest justified?
  - (c) Is the Claimant entitled to damages for his detention, and if so, what is the quantum to which he is entitled?
42. Based on the parties' respective pleaded cases, there are factual disputes to be resolved in order to determine the aforesaid issues. In such circumstances, the Court has to satisfy itself which version of events is more probable in light of the evidence. To do so, the Court is obliged to check the impression of the evidence of the witnesses against the: (1) contemporaneous documents; (2) the pleaded case; and (3) the inherent probability or improbability of the rival contentions, (**Horace Reid v Dowling Charles and Percival Bain**<sup>1</sup> cited by Rajnauth–Lee J (as she then was) in **Mc Claren v Daniel Dickey**<sup>2</sup>).
43. The Court must also examine the credibility of the witnesses, based on the guidance of the Court of Appeal judgment in **The Attorney General of Trinidad and Tobago v Anino Garcia**.<sup>3</sup> In **Anino Garcia**, the Court of Appeal stated that in determining the credibility of the evidence of a witness, any deviation by a party from his pleaded case immediately calls his credibility into question.

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<sup>1</sup> Privy Council Appeal No. 36 of 1897

<sup>2</sup> CV 2006-01661

<sup>3</sup> Civ. App. No. 86 of 2011 at paragraph 31

## THE WITNESSES

44. At the trial, the Claimant gave evidence and he called 2 witness, PC Cudjoe and PC Lezama. The Defendant's witness were the arresting officer PC Joefield, PC Lavia, PC Majeed and WPC Weekes.

## DID PC JOEFIELD HAVE REASONABLE AND PROBABLE CAUSE TO SUSPECT THAT THE CLAIMANT HAD COMMITTED AN OFFENCE?

45. The onus is on the police to establish reasonable and probable cause for the arrest and detention of the Claimant. Narine JA in **Nigel Lashley v The Attorney General of Trinidad and Tobago**<sup>4</sup> described the onus as:

“It is well settled that the onus is on the police to establish reasonable and probable cause for the arrest: **Dallison v. Caffery** (1964) 2 All ER 610 at 619 D per Diplock LJ. The test for reasonable and probable cause has a subjective as well as an objective element. The arresting officer must have an honest belief or suspicion that the suspect had committed an offence, and this belief or suspicion must be based on the existence of objective circumstances, which can reasonably justify the belief or suspicion. A police officer need not have evidence amounting to a prima facie case. Hearsay information including information from other officers may be sufficient to create reasonable grounds for arrest as long as that information is within the knowledge of the arresting officer: **O’Hara v. Chief Constable** (1977) 2 WLR 1; **Clerk and Lindsell on Torts** (18th ed.) para. 13-53. The lawfulness of the arrest is to be judged at the time of the arrest.”<sup>5</sup>

46. At page 8 Narine JA continued:

“The power to arrest is by its very nature a discretionary one. A police officer may believe that he has reasonable and probable cause to arrest a suspect, but may decide to postpone the arrest, while he pursues further investigations. His exercise of the discretion may be based on the strength or weakness of the case, the necessity to preserve evidence, or the need to ensure that the suspect does not abscond to avoid prosecution. The exercise of the discretion must be

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<sup>4</sup> Civ Appeal No 267 of 2011

<sup>5</sup> Supra para 14

considered in the context of the particular circumstances of the case. The discretion must be exercised in good faith and can only be challenged as unlawful if it can be shown that it was exercised “unreasonably” ... Arrest for the purpose of using the period of detention to confirm or dispel reasonable suspicion by questioning the suspect or seeking further evidence with his assistance is an act within the broad discretion of the arrestor... A police officer is not required to test every relevant factor, or to ascertain whether there is a defence, before he decides to arrest... Further, it is not for the police officer to determine whether the suspect is in fact telling the truth. That is a matter for the tribunal of fact.

47. The tort of false imprisonment is established by proof of the fact of imprisonment and the absence of lawful authority to justify the imprisonment<sup>6</sup>. In **Ramsingh v The Attorney General of Trinidad and Tobago**,<sup>7</sup> the Privy Council repeated the principles to determine the tort of false imprisonment as:

- 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; that is the Defendant in this case;
- 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 the person has committed such an offence; and
- 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”.

48. **Ramsingh** reinforced that in an action for unlawful arrest, the onus is on the police to justify the arrest and to establish reasonable and probable cause for it.<sup>8</sup> The test is

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<sup>6</sup> Clerk & Lindsell on Torts 20 ed at paragraphs 15-23

<sup>7</sup> [2012] UKPC 16 at para 8

<sup>8</sup> *Dallison v Caffery* [1965] 1 Q.B. 348 at 370).



partly objective and partly subjective<sup>9</sup>. It is subjective because the arresting police officer must have formulated a genuine suspicion within his own mind that the accused person committed the offence. It is partly objective, as the arresting officer must have reasonable grounds for the suspicion at the time when the power is exercised.

49. The power of a police officer to detain a person without warrant exists not only at common law, but also under statute. These powers are encapsulated in the provisions of the Police Service Act<sup>10</sup> and the Criminal Law Act<sup>11</sup>.

50. Section 46 of the Police Service Act provides:

“(2) Without prejudice to the powers conferred upon a 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.”

51. Section 3(4) of the Criminal Law Act 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.”

52. The distinction between reasonable suspicion and prima facie proof was examined by the Privy Council in **Shaaban & Ors v Chong Fook Kam & Anor**<sup>12</sup>. At page 1630 of the judgment Lord Devlin stated:

“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.

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<sup>9</sup> O’ Hara v Chief Constable of the Royal Ulster Constabulary [1997] 1 AER 129 p 138j –139a) per Lord Hope of Craighead

<sup>10</sup> Chapter 15:01

<sup>11</sup> Chapter 10:01

<sup>12</sup> PC appeal No 29 of 1968

When such proof has been obtained, the police case is complete; it is ready for trial and passes on to its next stage.”

53. Lord Devlin continued at page 1631:

“There is another distinction between reasonable suspicion and prima facie proof. Prima facie consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all ... Suspicion can take into account also matters which, though admissible could not form part of a prima facie case.”

54. The House of Lords in **Holgate Mohammed v Duke**<sup>13</sup> concluded that a police officer’s use of his discretion to make an arrest where reasonable grounds for suspicion exist, cannot be questioned except on Wednesbury grounds. Lord Diplock explained at page 443 of the judgment that:

“...since the wording of the subsection under which he acted is "may arrest without warrant," this left him with an executive discretion whether to arrest her or not. Since this is an executive discretion expressly conferred by statute upon a public officer, the constable making the arrest, the lawfulness of the way in which he has exercised it in a particular case cannot be questioned in any court of law except upon those principles laid down by Lord Greene M.R. in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 K.B. 223...The first of the Wednesbury principles is that the discretion must be exercised in good faith. The judge in the county court expressly found that Detective Constable Offin in effecting the initial arrest acted in good faith. He thought that he was making a proper use of his power of arrest.”

55. The offence of “misbehaviour in public office” is a common law offence. In **R v Bowden**,<sup>14</sup> it was held that the common law offence of misbehaviour in public office applied generally to every person who was appointed to discharge a public duty and was paid compensation in whatever form, whether from the Crown or otherwise. The

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<sup>13</sup> (1984) 1 AC 4

<sup>14</sup> [1995] 4 All ER 505,

Court affirmed the dicta of Lord Parker C.J. in **R v Llewellyn-Jones**,<sup>15</sup> that the offence of misbehaviour in public office involves an element of dishonesty or fraud on the part of a public officer.

56. It was submitted on behalf of the Claimant that the Defendant has not demonstrated sufficient facts, evidence or information to justify the Claimant's arrest, as the Defendant's main witness, PC Joefield's credibility was severely undermined during cross-examination. Counsel also submitted that the Defendant's pleaded case was not supported by the contemporaneous Station Diary extracts and that the failure by the Defendant to produce Ms Chen as a witness, must cause the Court to make an adverse inference that she would not have supported the Defendant's case.
57. Counsel for the Defendant argued that PC Joefield had reasonable cause to suspect the Claimant had committed an offence at the time he was arrested as he had: (i) reports of a fatal shooting at the Restaurant; (ii) reports of a male police officer of East Indian descent and dressed in police operational wear fitting the Claimant's description being involved in the disappearance of a DVR at the Restaurant, which may have contained potential evidence in relation to the fatal shooting of the deceased; (iii) the Majeed Statement, the Lezama Statement, the Lavia Statement, the Cudjoe Statement, the Celestine Statement and the Claimant's Report, all of which placed the Claimant at the scene of the incident and entering the Restaurant unattended; (iv) the First Chen Statement which identified a male police officer of East Indian descent in police uniform, exiting from behind the counter at the time that she was speaking with a female police officer, together with another civilian male of East Indian descent who took possession of the DVR from the Restaurant; and (v) the Weekes Statement which positively identified the Claimant as the male police officer of East Indian descent who exited from behind the counter at the Restaurant and who appeared to be holding a plastic bag against his chest that was square in shape.

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<sup>15</sup> [1967] 3 All ER 225

58. Counsel submitted that an ordinarily prudent and cautious person, seized of the said information which was held by PC Joefield, would have considered the seriousness of the offence in question and that the evidence thus far pointed to the Claimant having knowledge of the disappearance of the DVR and dishonestly concealing potential evidence in a crime.

### **The Claimant's Evidence**

59. The Claimant's evidence in chief prior to his arrest was set out at paragraphs 2 to 21 of his witness statement and it mirrored his Statement of Case. He stated that on Saturday 12 August, 2017, around 1:35 pm he was on duty at the Morvant Police Station, when he received a phone call on his cell phone from a person unknown to him. The caller informing him that there was a robbery in progress at the Restaurant. He explained that he habitually gave his cell phone number to persons in the area so that they could contact him if they were in any danger or in the event that they had any information that could assist the police in solving a crime.
60. The Claimant stated that he relayed the information to the senior officer present at the time at the said Police Station, who instructed that a briefing be held immediately. A team of officers including the Claimant met to discuss the phone call he had received. The Claimant was instructed by the senior officer to proceed to the scene of the incident immediately, so he was unable to make a contemporaneous note in the Station Diary at the time he received the phone call or immediately thereafter. He was also unable to make a note of the phone call in his diary since the police service diary which was issued to him, was finished and a new one had not been re-issued to him.
61. According to the Claimant, the officers who proceeded to the Restaurant with him were PC Majeed, Constable Ali, Constable Duncan, Constable Duke and Constable Hyde. These officers were all dressed in police uniform and travelled to the scene of the incident in about 3 to 4 marked police vehicles. The Claimant stated that he was seated in the backseat of a marked police vehicle on the way to the Restaurant and there were 2 other officers in the vehicle. On their way to the Restaurant, they received communication from the Police Command Centre via the wireless radio

transmission in the vehicle that there were loud explosions in the said Aranguez area. They also coordinated with police officers from other units through the wireless radio transmission, to ensure that they all arrived around the same time.

62. The Claimant stated that, the vehicle he travelled in, arrived at the Restaurant a few minutes later. Several police vehicles from various police units also arrived at the scene of the incident from different directions and at different times. He also stated that by the time he got to the Restaurant, the robbery was finished and he saw the deceased was lying on the floor outside the Restaurant a short distance away. He was unable to recall the description of the deceased, but he recalled that the latter was bleeding from what appeared to be a gunshot wound. He asked several people who were standing around the deceased, what had happened at the Restaurant.
63. According to the Claimant, after speaking with several people outside of the Restaurant, he entered the Restaurant through the front door. He then began making checks to see if he could find anything that would have been able to assist in the investigation of the robbery of the Restaurant. At that time, he did not find anything useful at the Restaurant to assist with the investigation so he exited the Restaurant using the front door.
64. The Claimant stated that he then assisted a group of officers to place the deceased in one of the marked police vehicles, which took the deceased to the Hospital for medical attention. He and PC Majeed remained at the Restaurant to conduct further enquiries and to secure the scene of the incident, as there were several people standing around. The Claimant stated that after asking several people who were standing nearby and making his own enquiries, he did not find any useful information at the Restaurant to assist in the enquiry. He and PC Majeed then left the Restaurant within about 5 minutes and proceeded to the Hospital to carry a medical report form. According to the Claimant, he was not alone at any time at the scene of the incident he did not make any note in his diary as he was not the investigating officer.

65. According to the Claimant, a short time later, whilst he was on his way to the Erin District to conduct an exercise, he was contacted on his cellphone by ASP Ramkhelawan who accused him of having knowledge of the DVR from the Restaurant. He stated that he immediately denied this allegation, informed ASP Ramkhelawan that he had no knowledge of any missing DVR and he had no idea what he was speaking about. ASP Ramkhelawan requested that the Claimant proceed to the Arouca Homicide Region 2 immediately to discuss the incident that occurred at the Restaurant.
66. The Claimant stated that he arrived at the Arouca Homicide Region 2 late on that same evening and upon arrival he met with Inspector Lawrence and ASP Flaveney, who informed him that there was an incident of a missing DVR from the Restaurant on 12 August 2017. He was also informed that he was required to produce a detailed report by 8:30 am on 13 August 2017 to Inspector Lawrence and ASP Flaveney regarding the robbery incident at the Restaurant. He prepared the Claimant's Report in which he gave an account of the events which transpired on 12 August 2017 and denied the allegation that he had removed any DVR from the Restaurant. He submitted the Claimant's Report on 13 August 2017, sometime before 8:00am to Senior Superintendent James.
67. The Claimant stated that on 13 August 2017, at or about 10:00am, he was contacted and informed to proceed to the Homicide Division at Arouca for questioning. At that time he was on patrol duty with 2 other officers and he was wearing his police uniform. He attended the Homicide Division at Arouca in a marked police vehicle as requested by Senior Superintendent James.
68. According to the Claimant, he arrived at the Arouca Homicide Region 2 at or about 12 noon and he waited for approximately 6 hours until he was called into a room where he was questioned by 3 officers, namely PC Joefield and 2 other officers. During the interview, he was given a rule 2 caution and he was informed that he was a suspect in an investigation regarding the missing DVR at the Restaurant. He was told that he was

seen walking out of the Restaurant with a man who had a bag containing a square-like object resembling a DVR. During the interview, the officers did not show him any video footage of this incident at the Restaurant or any evidence linking him to this incident by the officers during the interview.

69. The Claimant was cross-examined on his failure to make any contemporaneous notes of the incident; his activities at the Restaurant on the day of the incident; his relationship with WPC Weekes; the contents of the Claimant's Report and the interview conducted by PC Joefield.
70. In cross-examination, the Claimant accepted that he could have made the entry in the Station Diary about the phone call he had received informing him of the robbery at the Restaurant, after he returned to the Station but he had not done so. He also accepted that the report of the robbery at the Restaurant was important and an entry should have been made in the Station Diary, but agreed that he did not do so and he did not cause any other person to do so.
71. The Claimant also testified in cross-examination, that upon arrival at the scene of the incident, he saw the deceased lying on the floor outside, a short distance away from the side of the Restaurant which was located on Kanhai Street. He immediately went to that side of the Restaurant to investigate and then after about 2 minutes he went around to the Aranguez Main Road side and entered the Restaurant through the front door. He stated that he entered the Restaurant alone and he could not recall where PC Majeed and PC Lezama were at that time. The Claimant also testified that PC Lavia, PC Celestine and PC Cudjoe were present at the scene of the incident when he entered the Restaurant, but he did not know if any of the said officers had entered the Restaurant with him. He stated that after he entered the Restaurant, he made checks to see if he could find anything that would have assisted the investigation and he had spent less than a minute inside. He accepted that in his witness statement he had not specified what checks he had made inside the Restaurant.

72. The Claimant maintained in cross-examination that he assisted the other officers in placing the deceased into a marked police vehicle. He accepted that neither PC Cudjoe nor PC Lezama were with him the entire time and he did not call any other witnesses, who could have stated that they had been with him at the scene or inside of the Restaurant. He also agreed that even though there were other officers present on that day, he had not brought any of those officers as witnesses.
73. The Claimant agreed in cross-examination that he had been contacted by a senior police officer on the afternoon of 12 August 2017, who had informed him that a report had been made, that a police officer matching his description and a man in civilian attire had entered the Restaurant, and requested and obtained from one of the Chinese persons working there, footage from the Restaurant on 12 August 2017.
74. The Claimant also admitted in cross-examination that he was fairly familiar with WPC Weekes, as they worked in the same division but not the same unit. He stated that at the time of the incident in August 2017, he knew WPC Weekes for approximately 4 or 5 years. He confirmed that WPC Weekes had been present at the scene of the incident. However, their paths did not cross when he went inside the Restaurant. He denied that he entered the Restaurant, went behind the counter and on his way out he had walked passed WPC Weekes who was speaking with a young Chinese girl. He denied that WPC Weekes had seen him exiting from behind the counter at the Restaurant on 12 August 2017, together with another man in civilian attire, who was holding a bag and that she made a report stating same. He further denied that WPC Weekes asked him on the said day, while outside of the Restaurant, if he knew who the unidentified man was that came from behind the counter with him.
75. The Claimant accepted that in the Claimant's Report, he never denied removing the DVR from the Restaurant. He explained that this information was not necessary in a homicide report and although he was informed of a missing DVR before he did the Claimant's Report, he did not think that it was important to address it because he had no information pertaining to same.



76. The Claimant accepted that during the interview conducted by PC Joefield, the latter had informed him that he was investigating a report that a male fitting his description, dressed in police uniform, together with another male in civilian attire, went inside the Restaurant and took possession of the DVR, which may have contained potential evidence in relation to the shooting and death of the deceased.
77. In my opinion, the Claimant's evidence was a mixed bag. His consistent position in the Claimant's Report, in his witness statement and in his evidence in cross examination was that he went inside the Restaurant on the day of the incident. Therefore, he admitted being inside of the Restaurant on the day of the incident.
78. Although the Claimant stated in his witness statement that he was never alone at the scene of the incident, this evidence was not credible, as it was noticeably absent from the Claimant's Report. Additionally, the Claimant admitted in cross-examination that he did not know if PC Celestine, PC Cudjoe or PC Lavia entered the Restaurant with him and he could not recall where PC Majeed and PC Lezama were at the time he entered the Restaurant. In my opinion, it was more probable that if any of the other officers were with him when he entered the Restaurant, the Claimant would have included this information in the Claimant's Report which he recorded within 24 hours of the incident at the Restaurant. It is also more probable that his failure to include this information, meant that he was not accompanied by any of the other police officers when he entered and was in the Restaurant.
79. The Claimant's evidence in his witness statement, that in the Claimant's Report he had denied the allegation made against him concerning the missing DVD, was lacking in credibility and an embellishment of his evidence. There was no such denial in the Claimant's Report. Although, in his witness statement and in cross-examination, the Claimant admitted that he had been told about the allegation against him of the missing DVR, prior to his preparation of the Claimant's Report, he stated in cross-examination that he was only instructed to provide a detailed report with respect to the robbery incident at the Restaurant. In my opinion, that implied that he was not

asked to address the missing DVR and therefore there was no basis for him to deny any such allegation.

### **PC Cudjoe's Evidence**

80. PC Cudjoe stated in his witness statement that on Saturday 12 August, 2017, on or about 1:45 pm, while he was on duty at the Morvant Police Station he became aware that the Claimant had received information on his personal cell phone from an anonymous caller that there was a robbery in progress at the Restaurant. He further stated that because they were instructed to immediately respond to the information, it was impossible for him to make a contemporaneous note in the Station Diary or his personal diary, at the time.
81. PC Cudjoe continued that he left the Morvant Police Station in the same marked police vehicle as PC Lavia and PC Celestine to go to the Restaurant. Shortly after, they received instructions from PC Majeed on the wireless radio transmission to approach the scene from the northern side of the Aranguez Road and they complied. Upon arrival at the Restaurant, he observed that there was a crowd gathered at the front and side of the Restaurant and there were several persons standing around the deceased, who was lying on the floor outside of the Restaurant on the southern side. PC Majeed instructed him, PC Celestine and PC Lavia to take the deceased to the Hospital.
82. According to PC Cudjoe, at the same time, he also heard several persons saying "*she with dem*" and pointed to a woman inside the Restaurant. He went into the Restaurant looking for the woman everybody was pointing to. The woman was of African descent wearing a dark coloured jacket, white vest and green shirt. He approached the said woman to make certain enquiries. She provided her name and he identified himself by showing his TTPS ID Card. He told her of the information received regarding a robbery at the Restaurant and that she was a suspect. He cautioned and informed her of her rights and privileges and arrested her. He then handed her over to WPC Weekes. He stated that together with PC Lavia and PC Celestine, he placed the deceased in the marked police vehicle and took him to the Hospital. The deceased was

pronounced dead whilst undergoing emergency treatment. Sometime after, PC Majeed, PC Lezama and the Claimant arrived at the Hospital and they handed him a medical report form. Shortly after, he was handed a medical report and a bag containing the personal belongings of the deceased. He then left the Hospital and returned to the Morvant Police Station. At the station, he and several other officers had a short briefing and proceeded on an exercise duty in the Erin District. He stated that it was impractical for him to make a note of what transpired in the Station Diary at that time, as he went out on another exercise almost immediately after. He stated that he provided the Cudjoe Statement to the Senior Superintendent of the Homicide on 12 August 2017.

83. PC Cudjoe was cross-examined on his duty as a police to ensure that entries are made in the Station Diary; the Claimant's whereabouts at the scene of the incident and the contents of the Cudjoe Statement.
84. In cross-examination, PC Cudjoe agreed that as a police officer, the mandatory procedure was that an entry should be made in the Station Diary as soon as practicable, in respect of every incident, occurrence, or report that took place at a police station. He appreciated that if such an entry could not be made in the Station Diary at the time of the incident, the entry could be made at a later point. He agreed that as a police officer who was familiar with the procedure, the information that was received by the Claimant about the robbery in progress was something important that ought to have been recorded in the Station Diary. He then testified that he was aware that an entry was made afterwards, but he was unsure whether it was the Claimant who had made it.
85. PC Cudjoe testified that while at the scene of the incident, the crowd pointed out Tanisha St John to him. He recalled that while he was at the scene of the incident, he had seen the Claimant, but he admitted that the Claimant had not been in his presence for the entirety of the time. He confirmed that in his witness statement, he had not stated that the Claimant had assisted him in placing the deceased into the police vehicle. He explained that the Claimant was not with them at that time.

86. PC Cudjoe confirmed that he was asked to prepare the Cudjoe Statement to assist in the investigation of this matter and that was the extent of his involvement. He could not confirm the date of the Cudjoe Statement but he accepted that it was attached to his witness statement as KC1.
87. In the Cudjoe Statement and in PC Cudjoe's evidence both in chief and in cross-examination, PC Cudjoe maintained his position that he entered the Restaurant where he arrested Ms St John. Notably absent in the Cudjoe Statement was any mention that PC Cudjoe saw the Claimant in the Restaurant at that time. It is plausible that when PC Cudjoe was inside the Restaurant, the Claimant was not there as PC Cudjoe had admitted in cross-examination that he was not with the Claimant for the entirety of the time that they were at the scene of the incident. It was more probable that the Claimant did not assist in putting the deceased in the police vehicle as PC Cudjoe's evidence was unshaken that the Claimant did not assist him and PC Lavia and PC Celestine.

#### **PC Lezama's Evidence**

88. A witness summary was filed on behalf of PC Lezama and at the trial, he adopted its contents. It stated that on Saturday 12 August, 2017, at around 1:40 pm he was on duty at the Morvant Police Station when information was received that there was a robbery in progress at the Restaurant. PC Lezama and the Claimant left the Morvant Police Station to go to the Restaurant, in a marked police vehicle which was driven by PC Majeed. He stated that there were other officers in the same police vehicle he was in. He was seated in the front passenger seat and the Claimant was seated in the back. He also stated that about 3 or 4 marked police vehicles responded to the report concerning the Restaurant.
89. According to PC Lezama, he was unable to make a contemporaneous note in the Station Diary at the time as the entire exercise happened so quickly; he did not have a police service pocket diary since the one that was issued to him a couple years ago, finished and a new one had not been issued to him.

90. PC Lezama stated that whilst on the way to the Restaurant, he received communication from the Police Command Centre via the wireless radio transmission in the police vehicle, that there were loud explosions in the said Aranguez area and he responded to the communication and updated the Police Command Centre. About 5 minutes later, the vehicle in which he was in and several other police vehicles from various police units arrived at the Restaurant.
91. PC Lezama stated that upon arrival there was a large crowd gathered at the intersection of the Aranguez Main Road and Kanhai Street. There were several persons standing around the deceased who was lying on the roadway outside the Restaurant a short distance away. He asked several people who were standing around the deceased what had happened at the Restaurant. They stated that the deceased had just robbed the Restaurant. He also attempted to interview persons standing around at the scene of the incident to ascertain if he could obtain some useful information on the events, which had occurred earlier. He stated that during this time he had seen PC Majeed and the Claimant also interviewing persons outside the Restaurant.
92. According to PC Lezama, shortly after this, PC Lavia, PC Celestine and PC Cudjoe arrived at the Restaurant in a marked police vehicle. He also stated that other officers from the CID and the Barataria Police Station had arrived at the scene of the incident and it was at that time, that he noticed the Claimant enter the Restaurant from the front door and he lost sight of him thereafter.
93. PC Lezama stated that he assisted with placing the deceased in one of the marked police vehicles and PC Lavia, PC Celestine and PC Cudjoe left to convey the deceased to the Hospital. He also stated that together with Majeed and the Claimant, he remained at the Restaurant to conduct further enquiries and to secure the scene of the incident after the shooting.
94. According to PC Lezama, after making enquiries, he did not find any useful information at the Restaurant to assist in the enquiry. Sometime after, together with the Claimant

and PC Majeed, he left the scene of the incident to hand over a medical report form to PC Cudjoe at the Hospital.

95. PC Lezama stated that shortly after dropping off the form, he left the Hospital to go on another exercise with PC Majeed and the Claimant. He explained that as he was not the investigating officer assigned to the enquiry he did not make a note of his investigations in his personal diary or the Station Diary. He stated that he provided the Lezama Statement to the Senior Superintendent of the Homicide Bureau on 12 August 2017, to assist in the investigation of this matter.
96. PC Lezama was cross-examined on the reasons he did not make any contemporaneous notes concerning the shooting incident at the Restaurant; his actions and observation at the scene of the incident and the contents of the Lezama Statement.
97. In cross-examination PC Lezama testified that at the time of receiving the information relating to the robbery at the Restaurant, it was still in progress and as such, he could not make a contemporaneous note in the Station Diary. He also admitted that he did not make any notes in the said Station Diary afterwards. However, he admitted that the usual and mandatory procedure was that an entry should be made in the Station Diary in respect of every incident, occurrence, or report that took place at a police station, either at the time of receiving the report or at a later point. Notwithstanding this, he reiterated that he still had not made an entry in the Station Diary or his personal diary when the incident was reported or after and he was unaware if any of the other officers had made an entry.
98. PC Lezama testified in cross-examination that at the scene of the incident, along with PC Majeed and the Claimant, he tried to interview the persons who were outside the Restaurant to find out what had happened. Shortly after they began interviewing these persons, he observed that PC Celestine, PC Cudjoe and PC Lavia had arrived in a marked police motor vehicle and it was at that time he saw the Claimant enter the Restaurant from the front door. He was unable to recall if any other person had entered the Restaurant with the Claimant. He testified that he lost sight of the

Claimant afterwards so he was unable to indicate what the Claimant did inside. He agreed that he could not say whether the Claimant was inside the Restaurant conducting legitimate enquiries or if he had gone behind the counter with another individual and took possession of the DVR. He stated that during the time that the Claimant was inside the Restaurant he was preoccupied assisting PC Celestine, PC Lavia and PC Cudjoe with placing the deceased in the vehicle that they had arrived in. PC Lezama was unable to recall if the Claimant assisted with placing the deceased inside the vehicle. Yet he later stated that the Claimant did not assist in placing the deceased inside the vehicle because at that time, the Claimant was still inside of the Restaurant.

99. PC Lezama testified in cross-examination that he was asked to prepare the Lezama Statement on the same day that the incident occurred. He stated that he never included in the Lezama Statement that the Claimant assisted with placing the deceased into the vehicle, because the Claimant was still inside the Restaurant at that time.
100. PC Lezama's Statement, his evidence in chief and cross-examination was consistent, that he saw the Claimant enter the Restaurant and he then lost sight of the Claimant. The Lezama Statement did not indicate that the Claimant was one of the officers who assisted in placing the deceased in a marked police vehicle. In my opinion, his evidence in cross-examination that the Claimant did not assist, as he was inside the Restaurant at that time was more plausible.

#### **PC Majeed's Evidence**

101. PC Majeed testified that on 12 August 2017, he was attached and on duty at the NEDTF when they received a report of a robbery in the El Socorro area, to which he responded. He stated that he provided the Majeed Statement in this matter, which he identified by his signature.
102. PC Majeed was cross-examined on his actions at the scene of the incident and the contents of the Majeed Statement.

103. In cross-examination, PC Majeed testified that upon arrival at the Restaurant, he observed a large crowd at the scene and saw that there were other officers present, however, he could not recall the names of these officers. PC Majeed also stated that at the scene of the incident, he observed the deceased in the roadway suffering from what appeared to be gunshot wounds. He, the Claimant and PC Lezama dispersed to interview the persons outside of the Restaurant to ascertain what had happened. He was unable to recall with whom he had spoken to and he had not recorded any of their statements. He accepted that during this time he lost sight of the Claimant. PC Majeed also stated that he was at the side of the Restaurant and based on where he was, he did not and could not see the Claimant or any other officer walk inside the Restaurant. He testified that he never went inside the Restaurant but he stayed outside to take statements from the persons who were outside and he gave instructions to PC Lavia, PC Celestine and PC Cudjoe to take the deceased to the Hospital. He was unable to recall who assisted in putting the deceased into the marked police vehicle.
104. PC Majeed testified that the Majeed Statement was given for the purpose of investigating the robbery and shooting at the Restaurant to which he had responded. PC Majeed recalled that in the Majeed Statement, he had stated that he had seen the Claimant and PC Cudjoe walking towards a party of officers with a woman, who was later handed over to WPC Weekes, but he was unable to recall the name or description of the said woman. He stated that he had not seen the Claimant walking out of the Restaurant at any point and that eventually they had left the scene of the incident together to drop off a medical form at the Hospital.
105. PC Majeed further testified that on their way to the Hospital, he did not see the Claimant in possession of any square like object or anything that may have resembled a DVR and he had not seen the Claimant with anything similar to that when they left the Hospital. He stated that after leaving the Hospital, they returned to the Morvant Police Station, where they were briefed for an exercise that they had planned prior to the incident and they left for said exercise.



106. PC Majeed's evidence in cross-examination contradicted the information contained in the Majeed Statement in 2 material aspects namely, whether he saw the Claimant enter the Restaurant and whether the Claimant was one of the officers who assisted in placing the deceased into the marked police vehicle. In my opinion, the contents of the Majeed Statement is the more credible and accurate account, as it was made one day after the incident and at that time the details of the events would have been more fresh in his mind.

**PC Lavia's Evidence**

107. PC Lavia testified that on 12 August 2017, he was attached and on duty at the NEDTF when they received a report of a robbery, to which he responded. He stated that he provided the Lavia Statement in this matter, which he identified by his signature.
108. PC Lavia was cross-examined on his observations and his actions at the scene of the crime. PC Lavia testified that upon arriving at the Restaurant, he observed a large crowd of people. He denied that other officers were already on the scene. PC Lavia stated that the first thing he did when he arrived at the scene of the incident was exit the vehicle and then he paid attention to his surroundings. He stated that he did not attempt to take statements from any of the persons present at the scene of the incident and he did not see the Claimant speaking to any person. He stated that he saw the Claimant and a party of other officers who had just arrived, walking towards the intersection at Kanhai Street and Aranguez Main Road where he was located. He further stated that he had not seen see the Claimant or any other officer walk inside the Restaurant.
109. According to PC Lavia, he left the scene of the incident when he was asked to take the deceased to the Hospital. He also stated that the Claimant did not leave with him and he was unable to recall where the Claimant was when he was leaving. He stated that he went directly to the Hospital and sometime later the Claimant arrived at the Hospital with a form. PC Lavia denied seeing the Claimant at any point in time with any square like object resembling a DVR. He stated that although the Claimant was in another vehicle, they all left the Hospital at the same time.

110. The Lavia Statement did not state that PC Lavia observed the Claimant enter the Restaurant. The information contained in the Lavia Statement and PC Lavia's evidence in cross-examination was consistent that his observations and interactions with the Claimant were outside the Restaurant when the Claimant and PC Majeed approached him and then at the Hospital when the Claimant brought the form.

**WPC Weekes's Evidence**

111. WPC Weekes testified that she was a retired Corporal and on 12 August 2017 she was on duty and attached to the Barataria Police Station. She stated that she received a call from her Inspector at the time, informing her that there was a possible robbery at Aranguez, to which she responded and subsequently made the Weekes Statement concerning the incident on the said date. She identified the Weekes Statement by her signature.

112. WPC Weekes was cross-examined on her role at the scene of the incident, the contents of the Weekes Statement and the provision of an initial statement prior to the Weekes Statement.

113. In cross-examination, WPC Weekes stated that at the time of the incident she was the most senior officer on her shift. She had the responsibility for the general supervision of officers under her control, inclusive of police exercises within the division. When she had attended the scene of the incident in Aranguez, she was still the most senior officer there and she thought that she was responding to a shooting and robbery incident in her division, to which she would be the Investigator. As an Investigator, her conduct was governed by the Standing Orders and Standing Order No. 28 prescribed the policy and procedure in respect of investigations.

114. WPC Weekes testified that in keeping with section 13 of Standing Order No. 28 and as the Investigating Officer, she spoke with PC Majeed who was one of the first officers who had arrived on the scene of the incident and she had also visited same and made notes. WPC Weekes stated that even though it was mandated that notes were to be made in a pocket diary, she did not have a pocket diary at the time so she made her

notes in her personal diary and then later in the Station Diary at the Barataria Police Station. She admitted that she did not mention in the Weekes Statement that she had made notes concerning the incident in her personal diary. She explained that this information was not required. She agreed that she had not produced the said personal diary or disclosed the relevant Station Diary extracts.

115. WPC Weekes agreed that the reason for the guidelines in the Standing Orders was to ensure proper investigations — to detect, solve and prevent crime and they were meant to protect an officer from allegations of wrongdoing. However, she disagreed that a breach of these guidelines amounted to a neglect or misconduct of her professional duties.
116. WPC Weekes agreed in cross-examination that as the Investigating Officer, she had a responsibility to secure any object or article of assistance to the investigation and this was also in accordance with the Standing Orders. She stated at the time of the incident she had been a Corporal with more than 10 years of experience and she agreed that as the Investigating Officer, one of the first and most important things one would have done when responding to a crime scene was to ascertain whether there are CCTV cameras. She further stated that as the Investigating Officer, she had command of the junior officers around her, so she gave instructions for the interviewing and recording of statements from witnesses while she made inquiries about the camera footage. She stated that she had not directed any of the junior officers to obtain or make inquiries about the camera footage. She agreed that it would have been odd to see a junior officer walking away with a DVR.
117. WPC Weekes denied that she had stated in the Weekes statement that she saw a junior officer together with an unidentified civilian leaving with the DVR. She also denied identifying the Claimant as that officer. However, after being shown the Weekes Statement, she agreed that she had identified the Claimant in it and that she had described him as dressed in blue police operational wear and leaving behind the counter with a civilian behind him, holding a bag. She stated that at the time she had seen the Claimant she was in the company of PC Ball. She further stated that she was

aware that PC Ball had given a statement (“the Ball Statement”) in relation to the incident, but she was unaware if he had identified the Claimant in it. After being shown the Ball Statement she agreed that there had been no mention of the Claimant in it. She stated that she went outside to the Claimant and inquired whether he knew the person who had been behind him and he stated that he did not.

118. WPC Weekes also testified in cross-examination that she had not made any allegation of a wrongdoing against Claimant. She also stated that she had only made one statement relating to the incident and she was unaware of a giving a second statement to PC Joefield. She was also unaware of whether she gave the Weekes Statement pursuant to the shooting incident or the allegation of misbehaviour in public office against the Claimant. After being prompted, WPC Weekes stated that she had attended the Arouca Police Station on 13 August 2017 and she was asked to provide the Weekes Statement in relation to the wrongdoing of the Claimant.
119. In my opinion, WPC Weekes evidence in cross-examination that she had only provided one statement to PC Joefield and that she did not provide any other statement was credible, as it was consistent with the Defendant’s case. However, her denial in cross-examination that she did not identify the Claimant in the Weekes Statement was not credible as she admitted that she did, after she was shown it. Her evidence that she was unaware that the Weekes Statement was made with respect to the allegation of wrongdoing by the Claimant was also not credible as she later admitted that it was.

#### **PC Joefield’s Evidence**

120. PC Joefield was the officer who arrested the Claimant. At paragraphs 2 to 15 of his witness statement, he outlined the matters which were within his knowledge before he took the decision to arrest the Claimant. According to PC Joefield he has been a police officer for the past 15 years and since February 2012 he has been attached to the PSB, which is responsible for treating with criminal reports made against police officers.

121. PC Joefield stated that on 13 August 2017, the PSB was detailed by DCP Phillip to assist the Arouca Homicide Bureau Region II with an investigation surrounding the shooting of the deceased at the Restaurant on 12 August 2017. On the said 13 August 2017, he proceeded to the Arouca Homicide Bureau Region II office together with other senior police officers and other members of the PSB. Upon arrival, he and those senior officers and members of the PSB met with other senior officers. They were informed of the said incident concerning the shooting of the deceased on 12 August 2017 at the Restaurant and it was confirmed that PC Majeed, PC Lezama, PC Celestine, PC Cudjoe, PC Lavia and the Claimant from the NEDTF and WPC Weekes, WPC Dates and PC Ball of the North Eastern CID had responded to the said incident.
122. Senior Superintendent James further reported that he had received information that a male police officer of East Indian descent, dressed in police operational wear and identified as the Claimant, in the company of another male of East Indian descent dressed in civilian clothing went into the Restaurant and took possession of a DVR. The said DVR may have contained potential evidence in relation to the fatal shooting of the deceased. Senior Superintendent James then handed over several reports to PC Joefield concerning the said shooting at the Restaurant.
123. According to PC Joefield he was assigned as the main investigator to conduct investigations into the missing DVR from the Restaurant. He was then provided with copies of the Majeed Statement, the Lezama Statement, the Lavia Statement, the Cudjoe Statement, the Claimant's Report and the First Chen Statement. He stated that the Cudjoe Statement, the Lezama Statement and the First Chen Statement were all dated 12 August 2017, and the Lavia Statement and Majeed Statement were dated 13 August 2017.
124. PC Joefield stated that he was apprised as the investigator that some police officers including officers attached to the PSB, also visited the Restaurant to retrieve any CCTV footage from the scene of the incident and efforts were also made to locate Ms Chen with the intention of recording a further statement from her, however same proved futile.

125. According to PC Joefield, he remained at the Arouca Homicide Bureau Region II office and reviewed the statements provided to him. Based on his perusal of the First Chen Statement, less than five minutes after the deceased was shot in the vicinity of the Restaurant on 12 August 2017, a police jeep pulled up and a tall, skinny man of East Indian descent wearing the blue police operational wear, together with another man, asked to see the camera at the Restaurant. Ms Chen also stated that she had indicated to the 2 men that the camera was not working and the said man who was with the police officer indicated that they wanted "the box". Ms Chen then stated that she opened the gate and carried the police officer and the said man to where the DVR was located. She further stated that the said man who had accompanied with the police officer then took up the DVR and both men walked back out. Ms Chen stated that at that time, the police officer and the said man crossed paths with a female police officer who had been questioning Ms Chen that day.
126. PC Joefield stated that after reviewing all the statements provided to him, WPC Weekes was asked to come into the Arouca Homicide Bureau Region II office on the said 13 August 2017 to provide a statement. WPC Weekes was interviewed on that day by another officer of the PSB who was assisting him in the investigations into the matter concerning the missing DVR and the allegations against the Claimant. The Weekes Statement was recorded and then provided to him.
127. According to PC Joefield, he reviewed the Weekes Statement. Based on the Weekes Statement, shortly after the shooting of the deceased on the 12 August 2017 at the Restaurant, she had a conversation with Ms Chen relative to the incident. WPC Weekes stated that during this time, she observed the Claimant who was dressed in blue police operational wear push a gate to exit from behind the counter of the Restaurant where Ms Chen was standing, he walked past her followed by a male of East Indian descent in civilian wear who was holding a plastic bag against his chest and who walked past her quickly, and they both exited the Restaurant. WPC Weekes also stated that Ms Chen informed her that a man in police uniform and another man said they were going to check the camera footage and bring it back.

128. PC Joefield stated that based on the information he had received at that point, including the statements of the officers who responded to the scene of the incident, the First Chen Statement and the Weekes Statement, he reasonably and honestly believed that the Claimant was involved in the incident concerning the missing DVR and that he was therefore guilty of the offence of misbehavior in public office.
129. PC Joefield stated that the Claimant was contacted and asked to attend the Arouca Homicide Bureau Region II office and he attended on the 13 August 2017 together with PC Majeed and another officer. PC Joefield also stated that at approximately 6:45pm on 13 August 2017, he met the Claimant at the Arouca Homicide Bureau Region II office in the presence of 2 other officers. He identified himself to the Claimant by showing him his TTPS ID Card and the 2 other officers did likewise. He informed the Claimant that he was investigating a report that a male person fitting his description, dressed in police operational wear, in company with another male person of East Indian descent dressed in civilian wear, went to the Restaurant and took possession of a DVR. He further informed the Claimant that the said DVR may have contained potential evidence in relation to the shooting and subsequent death of the deceased on 12 August 2017, and that the whereabouts of the DVR remained unknown. He cautioned the Claimant in accordance with Rule II of the Judge's Rules. He then informed the Claimant that he was under arrest for the offence of misbehaviour in public office and he informed the Claimant of his constitutional rights and privileges, including the right to retain a legal advisor of his choice and to hold communication with him. He made a note of what transpired when he met with the Claimant, but the Claimant refused to sign it.
130. PC Joefield was cross-examined on the visit that officers from the PSB made to the Restaurant after the incident; the information contained in the Statements which he had in his possession before he arrested the Claimant; the Claimant's Report; and the importance of the contemporaneous documents to his decision to arrest the Claimant.

131. PC Joefield agreed in cross-examination that two officers from the PSB visited the Restaurant to speak with Ms Chen, in order to obtain a further statement prior to arresting the Claimant.
132. PC Joefield confirmed in cross-examination that he was investigating the Claimant for the offence of misbehaviour in public office, which amounted to a wilful neglect of one's duties or abuse of one's powers. He confirmed that prior to the Claimant's arrest he had received copies of the Majeed Statement, the Lezama Statement, the Lavia Statement, the Cudjoe Statement, the Weekes Statement, the Claimant's Report and the First Chen Statement. He stated that these statements were the written complaints against the Claimant. However, after reviewing the said Statements, he admitted that none of them mentioned that the Claimant had taken a DVR. He also admitted that Ms Chen did not specifically mention the Claimant in the First Chen Statement and that she had only mentioned that an officer who was in the company of another person, had removed the DVR from the Restaurant. However, PC Joefield still maintained that he had received a report against the Claimant. PC Joefield then agreed that there was nothing in the statements which referred to an allegation of neglect or abuse by the Claimant. He agreed that with the exception of the First Chen Statement, the statements of the police officers were in relation to the shooting incident.
133. PC Joefield confirmed that in the Majeed Statement, the Cudjoe Statement, Lezama Statement and Lavia Statement, the officers had identified 3 other officers, namely PC Ball, PC Celestine and WPC Davis. He agreed that he had not interviewed those officers prior to arresting the Claimant and that they were only interviewed after he had arrested the Claimant. He disagreed with the suggestion that his failure to collect statements from PC Ball, PC Celestine and WPC Davis, prior to the arrest amounted to a neglect of his investigative duties.
134. PC Joefield also testified in cross-examination that he had sought out WPC Weekes for reasons he had not mentioned in his witness statement. He indicated that WPC Weekes was sought out based on a report he had received from Superintendent



James. He said that Senior Superintendent James had told him that WPC Weekes was the officer who had made the report against the Claimant and even though he had not mentioned it in his witness statement that she was the complainant, it could have been inferred. He stated that the initial report that had been given by WPC Weekes had not been mentioned in his statement or attached to these proceedings because it had been inadvertently misplaced. He further stated that because the initial report of WPC Weekes had been misplaced, she was summoned to give the Weekes Statement in relation to the incident and that it was not as detailed as her initial report. He stated that WPC Weekes was summoned to Arouca Homicide on 13 August 2017 and she was interviewed by another officer prior to the Claimant's arrest. PC Joefield maintained that in the undisclosed report of WPC Weekes, she had identified the Claimant as having removed a DVR from the crime scene.

135. PC Joefield agreed in cross-examination that the Weekes Statement was the only statement provided by a police officer which specifically dealt with the alleged removal of the DVR. He admitted that WPC Weekes stated in the Weekes Statement that she had known the Claimant for about 3 years, and on the day of the incident, he came from behind the counter and walked past her, followed a few seconds later by another man, who also walked past her but who was holding a black plastic bag close to his chest. WPC Weekes had also stated that the latter passed her really quickly while she was paying attention to PC Ball.
  
136. PC Joefield accepted that WPC Weekes described the Claimant in the Weekes Statement, as being of East Indian descent, fair skin, 5 feet 7 inches and about 25 years old, and she then described the other person as being of East Indian descent, male, slim built, dark skin and 5 feet 6 inches. He accepted that WPC Weekes stated in the Weekes Statement that shortly afterwards, she met with the Claimant and asked him if he knew the man who had passed behind him and he stated that he did not and she went back inside the Restaurant to question Ms Chen. He also accepted that WPC Weekes had stated that she had asked Ms Chen about the cameras and she had been told that they were not working, so she made no further enquiries because she was of the opinion that there was no robbery and that Ms Chen was hiding something. He

agreed that in the Weekes Statement she had stated that she had not seen anything unusual about the Claimant but she was suspicious of Ms Chen and the man with the black bag.

137. PC Joefield also testified in cross-examination that at the time of the incident, WPC Weekes was a Corporal attached to the North East CID and as she was responding to a shooting she would have been the Investigator. According to the Standing Orders, WPC Weekes' duties when she arrived on the scene of a crime after other officers were already present, was to interview the first officer who visited the scene, as well as visit the scene herself and make notes. PC Joefield agreed that WPC Weekes had not mentioned in the Weekes Statement that she had made notes. He stated that although the Standing Orders, outlined the duties of the Investigating Officer, at that point in time WPC Weekes was not the Investigating Officer. However, he agreed that as the Investigating Officer, WPC Weekes was supposed to "secure any objects or articles that would render assistance to the investigation".
138. In relation to WPC Weekes observing and allowing an unidentified civilian to leave the scene of the crime with what looked like a DVR under his arm, PC Joefield stated that before deeming her actions 'highly strange', one would have to consider what information an officer had at the time that he/she responded to the report. He agreed that if WPC Weekes had knowingly failed to secure objects and articles which rendered assistance to the investigation, she would have been in neglect of her own duty as an Investigating Officer and she would have been rendered liable to a criminal or disciplinary charge.
139. PC Joefield maintained in cross-examination that the Weekes Statement coupled with the other statements that he had received, reflected an act being done by the Claimant that amounted to misbehaviour in public office. As a result, he asked the Claimant to report to the station on 13 August 2017 and the Claimant arrived around midday and waited until he arrived at around 6:45 pm. PC Joefield confirmed that before arresting the Claimant, he had the Claimant's Report which he had received

that morning and that report was relative to the shooting incident and not the allegation of the missing DVD.

140. PC Joefield stated that on 13 August 2017, he had identified himself to the Claimant and informed him of the report concerning the missing DVD and that he was a suspect relative to same. He also stated that he had cautioned the Claimant, informed him of his constitutional rights and that he was under arrest and the Claimant stated that he wanted to call his Attorney-at-Law. He testified that that at the time the Claimant was arrested, he had received sufficient evidence in the form of Statements, and he did not find it necessary to ask the Claimant anything further about the allegation. He stated that when he had cautioned the Claimant, he received a reply and as a result of that reply, he did not think that he should conduct an interview with him.
141. PC Joefield also testified in cross-examination that he was aware that officers were obligated to make notes in the Station Diary of all occurrences that take place at the station and once those things were recorded in the diary, it formed a contemporaneous record of what occurred at the station on that day. He stated that he had made entries in the Station Diary for the Arouca Homicide Bureau on 13 August 2017, but he agreed that while he had not attached an extract from it, the Claimant had attached it to his witness statement. After being shown the Station Diary extract for 13 August 2017, he agreed that it was a true copy of the Station Diary extract and that it recorded what took place on that day, namely who visited and who left the station. However, he could not identify where it had been recorded that WPC Weekes had arrived to give the Weekes Statement. He stated that he would have needed an opportunity to peruse the Station Diary for himself. He disagreed with the suggestion that the reason WPC Weekes' name did not appear in the Station Diary on 13 August 2017, was because she was not at the station on that date to give the Weekes statement.
142. Initially, PC Joefield disagreed that he was not obligated to record the complaint against the Claimant in a Complaints Register. However, he later stated that whenever reports are made to the PSB in relation to police officers, they are obligated to take

the report and enter it into the Station Diary as they do not have a Complaints Register. He further stated that in some instances he was obligated to receive a written complaint from the Complainant and this was one such instance.

143. PC Joefield testified that while he was being briefed he had not made a note of the information in his pocket diary or anywhere else. He agreed that as a prudent investigator he was obligated to and had made a note of what he had been told at the meeting.
144. PC Joefield agreed that the Station Diary from the Arouca Homicide Bureau on 13 August 2017, stated that PC Majeed had handed over to PC Thomas, 6 reports relative to the shooting incident. He testified that the 6 reports that were handed over to the Homicide Bureau by PC Majeed, did not include the First Chen Statement because Homicide Officers had taken her statement themselves. However, he admitted that there was no note in the Station Diary extract that the First Chen Statement was received from Ms Chen separately.
145. PC Joefield also agreed that even though he had stated earlier that he had sent two officers to the scene of the incident on 13 August 2017, to make enquiries and obtain a further statement from Ms Chen, there was also no record in the Station Diary of those two officers leaving the station. He further agreed that the Standing Orders required that the coming and going of officers be recorded in the Station Diary and by not complying with the Standing Orders, this amounted to a breach of the roles and responsibilities of a police officer.
146. PC Joefield agreed that the Claimant's Report was consistent with the statements provided by the other officers, save and except the Weekes Statement and the First Chen Statement. He also agreed that the Claimant's Report did not address the allegations against him because at the Claimant had given it, he had not been aware of the allegations. PC Joefield asserted that based on the several statements that he had received, he formed the belief that that the Claimant was guilty of misbehaviour in public office and he duly informed him of the allegations and arrested him.

### **The Court's Findings**

147. PC Joefield's evidence that at the time he was given the 6 Statements at the meeting on 13 August 2017, he was also in receipt of an initial report from WPC Weekes where she had made a complaint against the Claimant concerning the missing DVR, was not credible as it was not the Defendant's case; PC Joefield did not refer to this initial report in his witness statement; the first time this was brought to the Court's attention was during his cross-examination and WPC Weekes denied in cross-examination that she had made any initial report against the Claimant. I therefore find that PC Joefield was not in possession of any initial report by WPC Weekes where she made a complaint against the Claimant with respect to the missing DVR.
  
148. Although there was no record in any Station Diary Extract that shortly after PC Joefield was made the investigator with respect to the missing DVR, officers visited the Restaurant in an effort to retrieve any CCTV footage and to further interview Ms Chen, I find that PC Joefield's evidence was credible as he admitted that the visit produced no further material information to assist him with his investigation of the Claimant.
  
149. Further, I accept that the Weekes Statement was recorded on 13 August 2017 at the Arouca Police Station Homicide Bureau Region II, even though there was no Station Diary Extract produced by PC Joefield in support, as WPC Weekes' evidence in cross-examination corroborated PC Joefield's evidence on the date and place the said Statement was recorded.
  
150. In my opinion, at the time PC Joefield took the decision to arrest the Claimant he had the following information in his possession: the Majeed Statement, the Cudjoe Statement, the Lezama Statement, the Lavia Statement, the Weekes Statement, the First Chen Statement and the Claimant's Report. He did not have any initial report from WPC Weekes which he stated implicated the Claimant in the alleged disappearance of the DVD. He also did not have any statement from any of the other officers such as PC Ball and WPC Dates who were also at the scene of the incident.

151. The Majeed Statement, the Cudjoe Statement, the Lezama Statement, the Lavia Statement and the Claimant's Report were about the shooting incident at the Restaurant and did not address the alleged role of the Claimant in the missing DVD and they did not implicate the Claimant in the missing DVD.
152. The Claimant's Report did not address the allegation of the missing DVR, as he was told to provide a report on the shooting incident and not on any allegations against him. The Claimant's Report admitted that the Claimant entered the Restaurant and this was consistent with the information contained in the Majeed Statement, the Lezama Statement, the Cudjoe Statement and the Weekes Statement. From the Statements, the only police officer who saw the Claimant inside the Restaurant was WPC Weekes as PC Majeed, PC Lezama, PC Cudjoe and PC Lavia all stated that they did not see him inside the Restaurant.
153. However, the Claimant's Report which stated that he assisted in placing the deceased into a marked police vehicle was inconsistent with the information contained in the Majeed Statement, the Lezama Statement and the Cudjoe Statement. In my opinion, the Claimant's version was less plausible since at least one of the other officers would have recalled him assisting in placing the deceased in the marked police vehicle. It is equally probable that he may have still been inside the Restaurant or he may have been conducting enquiries with persons who were outside the Restaurant.
154. In the Weekes Statement, WPC Weekes stated that she observed the Claimant and another man with a black bag close to his chest. She also stated that she knew the Claimant prior to the incident and she had enquired from the Claimant if he knew the said man and he responded "no". She then returned to question Ms Chen. WPC Weekes further stated that she was of the opinion that there was no robbery and she was suspicious of Ms Chen and the man with the black bag. Notably WPC Weekes did not state in the Weekes Statement that she was suspicious of the Claimant. In my opinion, if WPC Weekes was suspicious of the Claimant at that stage she would have stated this in the Weekes Statement, but more importantly she would have taken steps to have the Claimant's activities restrained at the scene of the incident.

However, her failure to do so meant that she did not see the Claimant as any threat with respect to the evidence at the scene of the incident.

155. PC Joefield had the First Chen Statement which did not name the Claimant as being the officer who was involved in the disappearance of the DVD but it gave a description of the said officer. He had no further information from Ms Chen at that time as attempts to receive a further statement before he arrested the Claimant were futile.
156. PC Joefield also did not have any CCTV footage of the scene of the incident on 12 August 2017. In my opinion, this lack of CCTV footage was material as this could have at least confirmed movements of the Claimant at the scene of the incident on 12 August 2017 and the description of the man with the black bag.
157. PC Joefield did not interview the Claimant about the allegations against him concerning the missing DVD.
158. In my opinion, a reasonable person who was in possession of the aforesaid objective facts would not have formed the genuine suspicion that the Claimant had committed any offence.

#### **WAS THE CLAIMANT'S DETENTION AFTER HIS ARREST JUSTIFIED?**

159. It was submitted on behalf of the Claimant that if the Court had found that there was reasonable and probable cause for PC Joefield to arrest the Claimant then the subsequent detention was unreasonable.
160. According to paragraph 17 of PC Joefield's witness statement, after he arrested the Claimant, he conducted a search of the lockers at the NEDTF Office and the male dormitory at the Morvant Police Station in the presence of the Claimant to determine if he had a locker. It was confirmed that the Claimant did not have a locker there.
161. At paragraph 19 of PC Joefield's witness statement, he stated that a further statement from Ms Chen was recorded ("the Second Chen Statement") on 14 August 2017. PC

Joefield stated that from his perusal of the Second Chen Statement, Ms Chen confirmed that a male, slim police officer of East Indian descent, 6 feet 2 inches tall, dark skin who appeared to look in his late thirties, dressed in blue uniform together with another man who she described as skinny, 5 feet 6 inches tall, dark skin, in his late twenties and of East Indian and African mixed race came into the Restaurant. She said that the other man requested that she hand over the DVR. Ms. Chen confirmed that he then placed the DVR into a plastic bag and that both men then left the inside of the Restaurant.

162. PC Joefield also stated at paragraphs 20 to 23 of his witness statement that on 15 August 2017 he attempted to interview the Claimant. However, the Claimant's Attorney-at-Law indicated that she had advised the Claimant of his right to silence and the Claimant refused to participate in any interview.
163. According to paragraph 24 to 25 of his witness statement, PC Joefield stated that on the afternoon of the 15 August 2017, he and other senior officers of the PSB visited and obtained advice from the DPP. The DPP advised them to obtain a further statement from Ms Chen; to confirm the contents of the Weekes Statement with WPC Weekes and that a search warrant be executed at the Claimant's home.
164. PC Joefield stated that the search warrant was obtained and the search was conducted in the presence of the Claimant but nothing mentioned in the search warrant and nothing illegal was found. He also stated that officers from the PSB sought to obtain a further statement ("the Third Chen Statement") from Ms Chen, who provided it but refused to sign it.
165. PC Joefield was cross-examined on the Second Chen Statement; a statement from PC Ball which he obtained on the 14 August 2017; the initial advice received from the DPP; the efforts by the PSB to obtain the Third Chen Statement; efforts to obtain a further statement from WPC Weekes; and the outcome of the execution of the search warrant.



166. PC Joefield testified in cross-examination that the Second Chen Statement supported the allegation against the Claimant and corroborated the Weekes Statement. He admitted that in the Second Chen Statement, Ms Chen described "a slim policeman in long blue uniform, about 6 feet 2 inches, East Indian descent, dark skin, late thirties and looking old". However, WPC Weekes described the Claimant as "5 feet 7 inches, 25 years old, young and fair skin". When these differences in descriptions were highlighted to PC Joefield, he accepted that there was some differences in the description provided by Ms Chen and WPC Weekes, as it related to the complexion and height of the Claimant. He agreed that in relation to both descriptions, the difference in height and complexion were significant but the difference in age was subjective. He further agreed that even though he had stated that the Second Chen Statement and the Weekes Statement corroborated each other and implicated the Claimant, the description of the Claimant were very different in terms of the height and complexion that had been given and did not corroborate each other. However, PC Joefield disagreed that when compared to the Weekes Statement, the Second Chen Statement had identified someone completely different. He maintained that the descriptions given by both Ms Chen and WPC Weekes only differed in relation to height and complexion.
167. PC Joefield also testified in cross-examination that in the Second Chen Statement, Ms Chen had described the unidentified man as being of mixed descent and she stated that he had put the DVR in a white plastic bag. However, WPC Weekes described the unidentified man as a slim, East Indian man walking with a black bag. PC Joefield agreed that in relation to the description of the bag that held the DVR, there were inconsistencies between the Second Chen Statement and the Weekes Statement and that he had received from both of them by 14 August 2017.
168. PC Joefield testified in cross-examination that he received a statement from PC Ball on 14 August 2017 ("the Ball Statement"), which was pursuant to his investigation concerning the Claimant. He admitted that he had not mentioned it in his witness statement. He stated that PC Ball was with WPC Weekes in the Restaurant and would have been present with her at the time she stated that she had seen the Claimant

leaving from behind the counter. He agreed that since PC Ball was with WPC Weekes, he would have had crucial evidence to determine or corroborate whether the Claimant had actually been involved in the removal of the DVR.

169. PC Joefield also admitted that in the Ball Statement, PC Ball did not identify the Claimant as leaving behind the counter of the Restaurant and he did not make any allegations of a wrongdoing against the Claimant. However, by the time he had received PC Ball Statement, the Claimant had already been arrested and investigations were continuing. He agreed that he had received another statement from a Police Officer who had also been standing beside WPC Weekes and in the said statement, there had been no mention of the Claimant or any wrongdoing against him. He denied that the statement of that Police Officer coupled with the Ball Statement were inconsistent with the First Chen Statement and the Weekes Statement.
170. PC Joefield admitted in cross-examination that although he had not mentioned it in his witness statement, he had sought out PC Ball after he had received the Ball statement so that he could clarify whether he had seen the Claimant in the Restaurant. He stated that even though he had sought out PC Ball, he had not attempted to get another statement from him. PC Joefield agreed that the Ball Statement was inconsistent with the Weekes Statement, the First Chen Statement and the Second Chen Statement but he did not seek clarification from another witness, as he had already interviewed and received reports from all the persons who were there.
171. PC Joefield admitted in cross-examination that despite the differences between the Second Chen Statement and the Weekes Statement, as it related to the height and complexion of the unidentified man, he had not sought a second interview with WPC Weekes or any other person who was present at the scene of the incident on 12 August 2017. He indicated that after noting the conflict between the Second Chen Statement and the Weekes Statement, he had attempted to make further enquiries about the unidentified man who was allegedly holding the DVR, but no useful information was obtained.

172. According to PC Joefield, he subsequently went to the DPP to seek advice and he disclosed to the DPP all the statements and reports that he had received during the course of the investigation. He admitted that he had not mentioned in his witness statement that he had disclosed those statements to the DPP, but maintained that he had done so. He confirmed that the DPP had advised him to obtain a further statement from Ms Chen and specified that it should be taken to see if she could identify WPC Weekes.
173. PC Joefield testified in cross-examination that he had sent officers to speak with Ms Chen to obtain the Third Chen Statement to determine whether she could identify WPC Weekes. He admitted that the Claimant was one of the persons that she needed to identify. He stated that Ms Chen did not want to assist the officers any further and she did not want to engage in an ID parade to identify the Claimant. He agreed that even though Ms Chen did not want to assist the officers by participating in an ID parade, there was more than one way to seek the identification of a suspect, such as showing her a photograph of the Claimant. However, he stated that though this was provided for by the Standing Orders, this was not practiced in the Trinidad and Tobago Police Service. He agreed that he could have also arranged a public or private meeting, as provided for by the Standing Orders but he had not done so. PC Joefield stated that if either of those methods were embarked upon, it would still have required the assistance of Ms Chen and even though Ms Chen had been assisting them for 3 days up until that point, she no longer wished to be of assistance. He denied that it had been open to him during those 3 days, to use those two alternative identification methods and stated that there had still been some issues that needed to be resolved before they reached that stage. He admitted that in some instances positive identification was a crucial part of a criminal investigation, and a positive identification of the Claimant would have closed the case. However, up to 15 August 2017, he had not received a positive identification of the Claimant and he received no such identification thereafter.
174. PC Joefield also confirmed in cross-examination that he then secured a search warrant for the search of the Claimant's home, which was searched and nothing found. PC

Joefield agreed that despite making continuous enquiries while the Claimant was in custody, he was unable to find additional evidence to support the allegation against the Claimant but nonetheless he continued to detain him.

175. In my opinion, the Claimant's continued detention after his arrest was not justified as PC Joefield did not have in his possession any additional objective information which would have caused a reasonable, prudent person in his position to still suspect that he had committed a crime. In particular, PC Joefield confirmed that he never obtained any positive identification of the Claimant in circumstances where he could have taken steps to obtain same from Ms Chen, but he failed to do so and he still continued to detain the Claimant. He also became aware that the Claimant did not have a locker at the Morvant Police Station and that the execution of the search warrant did not reveal any new information which implicated the Claimant in any wrongdoing concerning the missing DVR.
176. Further, PC Joefield received the Ball Statement after he arrested the Claimant and he noted that PC Ball did not implicate the Claimant in any wrong doing. He was also in receipt of another statement from an unnamed police officer, who was at the scene of the incident, which he noted did not implicate the Claimant in any wrongdoing concerning the DVR. Yet PC Joefield still contained to detain the Claimant.
177. PC Joefield had noted that there were material inconsistencies between the First Chen Statement, the Second Chen Statement, the Weekes Statement and the Ball Statement yet he did not seek out WPC Weekes or any other person to obtain any clarification of the inconsistencies. Although PC Joefield stated in cross-examination that he sought out PC Ball for clarification, this evidence was not credible as this was not the Defendant's case, he did not state this material fact in his witness statement and the first time he made this assertion was during his cross-examination.

**IS THE CLAIMANT ENTITLED TO DAMAGES FOR HIS DETENTION, AND IF SO, WHAT IS THE QUANTUM TO WHICH HE IS ENTITLED?**

178. In a claim for wrongful arrest and false imprisonment, the Claimant is entitled to recover general damages for the imprisonment and any physical or mental injury, which results directly from it as well as damages for the loss of liberty itself, should reflect the length of the unlawful detention<sup>16</sup>.

179. **McGregor on Damages**<sup>17</sup>, states:

“The details of how the damages are worked out in false imprisonment are few: generally, it is not a pecuniary loss but a loss of dignity and the like, and is left much to the jury’s or judge’s discretion. The principal heads of damage would appear to be the injury to liberty, i.e. the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings, i.e. the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status and injury to reputation.” (Emphasis added)

180. In this jurisdiction, Jamadar JA (as he then was) noted at paragraph 12 of the judgment in **Thaddeus Clement v The Attorney General of Trinidad and Tobago**<sup>18</sup> that damages in cases of false imprisonment are awarded under three heads:

- i) Injury to Reputation – to character, standing and fame;
- ii) Injury to Feelings – for indignity, disgrace and humiliation caused and suffered;
- iii) Deprivation of Liberty – by reason of arrest, detention and/or imprisonment.

181. In awarding general damages, the Court can award aggravated damages where there are factors, which can justify an uplift in the form of an award for aggravated damages. In **Bernard v Quashie**<sup>19</sup>, it was held that a single figure is awarded for all heads of compensatory damage, including aggravated damages. Lord Wolf in **Thompson v**

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<sup>16</sup> Halsbury’s Laws of England Tort Vol. 97 (2015) paragraph 556

<sup>17</sup> 18<sup>th</sup> Edition, paragraph 37-011

<sup>18</sup> Civ Appeal No 95 of 2010

<sup>19</sup> Civ App. No. 159 of 1992, at page 9

**Commissioner of Police of the Metropolis**<sup>20</sup> in giving the judgment of the court stated at page 516:

“Such damages can be awarded where there are aggravating features about the case which would result in the Plaintiff not receiving sufficient compensation for the injury suffered if the award were restricted to a basic award. Aggravating features can include humiliating circumstances at the time of arrest or the prosecution which shows that they behaved in a high handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution.”

182. It was submitted on behalf of the Claimant that a reasonable award for general damages, given the particular circumstances of the instant case, having regard to the period of detention of approximately 75 hours is between \$70,000.00 and \$90,000.00. Counsel also argued that there were several disturbing features of the instant case which justify an award for aggravated damages and that such award should be \$120,000.00.
183. Counsel for the Defendant argued that given that the Claimant was detained for approximately 74 hours, the Claimant’s injury to liberty be assessed for the duration of this period and in the circumstances of this case a reasonable award including an uplift for aggravated damages is in the sum of \$75,000.00.
184. In my opinion, the period of detention of the Claimant was approximately 75 hours. The Claimant’s evidence on the injury to his reputation was set out at paragraph 55 of his witness statement, where he stated that some of his family members, friends and neighbours have avoided him since this incident which has damaged his reputation as an officer. He stated he suffered humiliation, distress and embarrassment as a result of the arrest and upon resuming duty his colleagues shunned and avoided him at work and called him names. This aspect of the Claimant’s evidence was not shaken in cross-examination. I therefore found this aspect of his evidence to be credible.

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<sup>20</sup> [1998] QB 498

185. The Claimant pleaded that he was subjected to distress and that he continues to feel upset and angry. At paragraphs 43 and 44 of his witness statement, he stated that the arrest and search of his home was done in the full view of his neighbours, who were standing outside on the roadway looking on at what was taking place and knew that he was a police officer. Although he was not handcuffed he still felt humiliated as his neighbours continued to stare at him
186. The Claimant also stated that he felt humiliated whilst being escorted by police and walking out from his house to the unmarked police vehicle in front of his neighbours. He was escorted outside his home in public view and commotion. He stated that he was not handcuffed whilst he was being transported back to the Belmont Police Station. The Claimant admitted in cross-examination, that when he was taken to his home it was dark and that there were no sirens or lights used by the police officers in the unmarked police vehicle which transported him home.
187. PC Joefield's evidence and the Station Diary extract from the Belmont Police Station dated the 15 August 2017<sup>21</sup>, stated that the Claimant left the police station with the police officers in an unmarked police vehicle at approximately 7.45pm to go to his home to conduct the search.
188. Given that the Claimant was taken to his home in an unmarked police vehicle without the use of police sirens, at night when it was dark and he was not handcuffed, it is less probable that the Claimant's neighbours were standing outside on the roadway looking on at what was taking place. In my opinion, the Claimant exaggerated this aspect of his evidence and for this reason I have found it to be lacking in credibility and I attached little weight to it.
189. The Claimant stated at paragraph 56 of his witness statement that as a result of this incident he still has nightmares and for several nights he was been unable to sleep. He stated that he began seeing a medical doctor because he felt that this incident affected

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<sup>21</sup> Agreed Bundle of Documents- page 521 of Trial Bundle Volume

him emotionally. According to the Claimant, the Doctor diagnosed him with acute stress disorder and he was forced to take sick leave from work for several days. He stated that he attached a copy of the sick leave certificates dated 18 August 2017 and 9 October 2017 as "A.D.7" to his witness statement to support his alleged condition.

190. In my opinion, the Claimant failed to demonstrate that he was diagnosed with acute stress disorder, as the sick leave certificate dated 18 August 2017 is silent on such diagnosis and there was no sick leave certificate dated 9 October 2017. The second sick leave certificate which was dated 22 August 2017, referred to acute stress disorder, but in my opinion this sick leave cannot be equated with a medical report which ought to have contained the details of such a diagnosis. In the absence of any medical report with a diagnosis that the Claimant suffered from acute stress disorder I have attached no weight to this aspect of the Claimant's evidence.
191. With respect to the aggravating factors, the Claimant stated in his witness statement on 13 August 2017 when he was being interviewed by PC Joefield, that he was not provided with any food and was not given any breaks during questioning. Based on the notes of the interview, the Claimant's interview commenced at 6.45pm at the Arouca Homicide Bureau and only lasted a few minutes. PC Joefield's evidence was that he and other police officers left the Arouca Homicide Bureau with the Claimant around 7.10pm. In my opinion, there was no need for the Claimant to be provided with any food or given any break as the interview was short. Further, the Claimant has sought to make much of his evidence that prior to the interview he was made to wait for 6 hours. In my opinion, during this time there was nothing preventing the Claimant from leaving for a brief period to get something to eat as he was not under arrest at that time.
192. The Claimant also stated that after he was taken by PC Joefield and other officers to the Morvant Police Station he was still not provided with any food. He stated that he was provided with food when his relatives visited him at the Central Police Station and took food for him.



193. However, PC Joefield stated that before leaving the Arouca Homicide Bureau on the said 13 August 2017, he asked the Claimant whether he was suffering from any ailments or taking any medication to which he replied no, and whether he was hungry or thirsty and wanted anything to eat or drink. PC Joefield also asked the Claimant if he wanted anything specific to eat and offered to buy it for him but the Claimant indicated that he would have a relative provide him with a meal. This was also stated in the Station Diary Extract dated 14 August 2017 from the PSB<sup>22</sup>. In my opinion, the version of events provided by PC Joefield was more credible, as it was supported by the contemporaneous note in the Station Diary of the PSB and the Claimant had admitted under cross-examination that as a police officer the Station Diary at a police station is a reliable document containing a record of all that happens at a station. Therefore, I do not accept that the Claimant was deprived of any food on 13 August 2017 after he was arrested.
194. The Claimant admitted that while he was at the Central Police Station he was allowed to contact his Attorney-at-Law, Ms Chelsea John. He was also permitted to change his clothes which his parents gave him when they visited him at Central Police Station. The Claimant was also permitted to have his Attorney-at-Law visit him at the Belmont Police Station to provide him with advice. The Claimant's own evidence was that he was never handcuffed when in police custody and was not placed in a cell during his detention at the Central Police Station. Therefore, I did not consider these matters to be aggravating factors.
195. In my opinion, the sole aggravating factor was the condition of the cell the Claimant was kept in at the Belmont Police Station for two days. The Claimant described the conditions of the cell at paragraphs 37 and 38 of his witness statement as:
- "37. I was kept in a dirty prison cell from 14<sup>th</sup> August 2017 to 16<sup>th</sup> August 2017. During this time in the 10 x 10 prison cell, I was subjected to inhumane conditions particularly faeces on the floor near to the toilet area, accompanied by foul odours. The cell was adjacent to other prisoners who were held for serious crimes

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<sup>22</sup> Exhibit "L.J.4" witness statement of PC Joefield

and who realized that I was a Police Officer since the other officers referred to me as “officer” whilst I was held in the cell. Since the prisoners knew that I was an officer, I was ridiculed and taunted by the prisoners whilst I was detained. This was embarrassing and demoralizing to me. I felt humiliated, ashamed and depressed whilst I was in the cell. I felt like my dignity was stripped of me. My rank as an officer was belittled not only by the prisoners but also by the other officers that made sneering remarks at me and looked at me in scorn.

38. There was urine, faeces and old newspapers on the floor that looked as if it had been used as toilet paper and garbage on the floor. The toilet was simply a bowl in the corner of the room which was unable to flush. The cell was also infested with mosquitoes, flies and cockroaches. There were no sleeping facilities in the cell and I was therefore forced to sleep on a dilapidated, dirty sponge that was inside the cell."

196. In my opinion, the relevant authorities in the instant matter which guide the Court on the quantum of damages are:

- (a) **Anil Roopnarine v The Attorney-General of Trinidad and Tobago**<sup>23</sup>. The Claimant sued for, inter alia, unlawful arrest and false imprisonment. There was no claim for damages for malicious prosecution. The Court found that the time which he spent in custody was excessive, by 2½ days. On the 3 February, 2017, the Claimant was awarded \$50,000.00 in general damages.
- (b) **Frank and Bathazar v The Attorney General of Trinidad and Tobago**<sup>24</sup>; The Claimants were detained from the 9 to the 12 August, 2011. The Claimants were awarded a sum of \$65,000.00 each on 10 January 2018.
- (c) **Miguel Benoit v PC Keston Hanooman No. 18725 & Ors.**<sup>25</sup> The Claimant was charged with the offences of escaping lawful custody, throwing missiles, using obscene language and possession of a weapon. The Claimant was detained for 3 days and 1 hour prior to attending court. As a result of his

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<sup>23</sup> CV 2013-04439

<sup>24</sup> CV 2015-02719

<sup>25</sup> CV 2017-01506

arrest and charge a picture of him appeared in the newspapers. Prior to his arrest he has never been arrested and charged. On the 9 October 2019 the Court awarded the Claimant the sum of \$75,000.00 inclusive of an uplift in aggravated damages for false imprisonment and \$50,000.00 for malicious prosecution.

(d) **Azim Hosein v The Attorney General of Trinidad and Tobago**<sup>26</sup>. The Claimant was an ex-police officer and was arrested and charged by officers. He was detained for approximately 9 hours. He was taken to court the next day and the matter was dismissed. As a result of his arrest he became depressed and failed to fulfil his religious and work obligations. The Claimant being diabetic, also was not fed while he was detained. On the 11 February 2020 the Court awarded the sum of \$75,000.00 with an uplift for aggravated damages for both false imprisonment and malicious prosecution.

(e) **Clint Attong v The Attorney General of Trinidad and Tobago**.<sup>27</sup> The Claimant was charged with the offence of larceny and intent to defraud on 18 October 2014. He remained in custody until 20 October 2014, when he was taken to the San Fernando Magistrates Court to answer the said charges, was offered bail and released. The Claimant was detained for three days prior to attending court and while in police custody he suffered an anxiety attack and was subsequently taken to the San Fernando Hospital for treatment. Prior to his arrest he has never been arrested and charged. As a result of his arrest he had cause to appear before the San Fernando Magistrates Court several times before the matter was dismissed on 11 September 2017. On 20 November 2020 the Court awarded the Claimant the sum of \$70,000.00 for wrongful arrest and false imprisonment and \$70,000.00 for malicious prosecution. Both sums included an uplift for aggravated damages.

197. In arriving at an award for damages, I have considered that the period of detention was approximately 75 hours. I have also taken into account the Claimant's evidence on the filthy conditions of the cell in which he was kept during his detention at the

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<sup>26</sup> CV 2014-03962

<sup>27</sup> CV 2018-3747

Belmont Police Station and the embarrassment the Claimant suffered at work from other police officers.

198. In my opinion, a reasonable range for the award of general damages for the period of detention is between \$70,000.00 and \$90,000.00. I have found that the conditions of the cell in which the Claimant was kept was an aggravating factor and for this reason I award the sum of \$75,000.00 for the false imprisonment which includes an uplift for aggravated damages.

### **Exemplary damages**

199. It was submitted on behalf of the Claimant that in the instant case the police officers abused their powers and therefore this would be an appropriate case for the award of exemplary damages.
200. It was submitted on behalf of the Defendant that based on the instant facts, there was no basis for an award of exemplary damages, as there was no evidence of any oppressive, arbitrary or unconstitutional conduct by PC Joefield or any of the other officers involved in the investigations.
201. Exemplary damages may be awarded where there is the presence of outrageous conduct disclosing malice, fraud, insolence and cruelty. In **Rookes v Barnard**,<sup>28</sup> Lord Devlin stated that exemplary damages are different from ordinary damages and will usually be applied –
- (i) where there is oppressive, arbitrary or unconstitutional conduct by servants of government;
  - (ii) where the defendant's conduct had been calculated to make a profit; and
  - (iii) where it was statutorily authorised.
202. The function of exemplary damages is not to compensate but to punish and deter and that such an award can appropriately be given where there is oppressive, arbitrary or

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<sup>28</sup> [1964] AC 1129

unconstitutional action by servants of the government. Lord Carswell in the Privy Council case of **Takitota v The Attorney General of Bahamas**<sup>29</sup> stated that, “[T]he awards of exemplary damages are a common law head of damages, the object of which is to punish the defendant for outrageous behaviour and deter him and others from repeating it ...”.

203. In computing the award for exemplary damages there are several criteria, which the court should take into account. Lord Devlin in **Rookes v Barnard** set it out as follows:
- (i) A plaintiff cannot recover exemplary damages unless he is the victim of the punishable behaviour;
  - (ii) An award of exemplary damages should be moderate; and
  - (iii) Awards of exemplary damages should be considered in light of the means of the parties.
204. In addition to the three criteria set out by Lord Devlin the learned authors of **McGregor on Damages**<sup>30</sup> set out additional criteria as:
- (i) The conduct of the parties;
  - (ii) The relevance of the amount awarded as compensation;
  - (iii) The relevance of any criminal penalty;
  - (iv) The position with joint wrongdoers; and
  - (v) The position with multiple claimants.
205. I have decided against making any award for exemplary damages, as I was not convinced from the evidence that the actions of PC Joefield were oppressive or calculated by him to make any profit. The Claimant was informed upon his arrest about his constitutional rights and privileges. He was permitted to communicate with his Attorney-at-Law during his detention. Further, his relatives were permitted to visit him, to take food and a change of clothes to him.

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<sup>29</sup> P.C.A No. 71 of 2007

<sup>30</sup> 19<sup>th</sup> Edition at paragraphs 13-033 to 13-044

## **INTEREST**

206. The award of interest on damages is discretionary pursuant to section 25 of the **Supreme Court of Judicature Act**<sup>31</sup>. The Court of Appeal in **The Attorney General of Trinidad and Tobago v. Fitzroy Brown et al**<sup>32</sup> reduced interest awarded for false imprisonment, where allegations of assault were made, at the rate which is payable on money in court placed on a short term investment account. As such, bearing in mind that monies are placed in the Unit Trust account and since this was not a case where the commercial lending rates was applicable, the Court of Appeal reduced the interest awarded from 9% to 2.5% per annum.
207. Therefore, interest on general damages in the instant matter is awarded at the rate of 2.5% per annum from the date of service of the Claim Form i.e. 18 May 2018 to the date of judgment.

## **ORDER**

208. Judgment for the Claimant.
209. The Defendant to pay the Claimant general damages in the sum of \$75,000.00 for his false imprisonment. This sum include an uplift for aggravated damages. Interest on the said sums at the rate of 2.5 % per annum from the date of service of the claim i.e. 18 May 2018 until judgment.
210. No award is made for exemplary damages.
211. The Defendant to pay the Claimant prescribed costs in the sum of \$20,011.30

**/S/Margaret Y Mohammed**  
**Judge**

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<sup>31</sup> Chapter 4:01

<sup>32</sup> CA 251 of 2012