

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2012-02652

BETWEEN

SIMON FLEMING

CLAIMANT

And

THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO

DEFENDANT

Before the Honourable Madame Justice C. Pemberton

Appearances:

For the Claimant: Mr. E. Roopnarine instructed by Ms. H Lochan

For the Defendant: Ms. C. Findley instructed by Ms. D. Katwaroo

JUDGMENT

[1] I have decided to present this judgment in this format:

- Background and undisputed facts,
- Essential issues of law,
- Analysis of the evidence,
- Findings and conclusions.

[2] **BACKGROUND**

This is a case in which the Claimant, Simon Fleming (SF), found himself at variance with the law. As a result, he was arrested and charged on two counts, styled:

- a) *“being armed with a firearm robbed (NO) of \$128.00 cash...and one gold chain valued at \$1500.00 contrary to Section 24(1) of the Larceny Act...”*
- b) *“being armed with a firearm did assault (CR) with intent to rob him contrary to Section 24(3) of the Larceny Act...”*¹

SF was eventually tried at the Magistrates’ Court, where the charges were determined in his favour.

[3] **UNDISPUTED FACTS**

On 1st January 2010, SF was arrested in Mon Repos. He was handcuffed and taken to the Mon Repos Police Station. After a short period, he was transferred to the San Fernando Police Station and subjected to interrogation. During this period of interrogation he remained handcuffed, shirtless and barefooted. The interrogation surrounded the robbery of two persons, a man and a woman, which is alleged to have occurred on 12th December 2009. On or about 3rd January 2010, at about 7p.m. SF was informed of the reason for his arrest. He was formally charged on 4th January 2010. He was then transferred to the Remand Yard, Golden Grove, Arouca. He was denied bail. SF remained in prison for eight months until 22nd August 2010. He was released at the hearing on the charges were determined in his favour.

[4] **LAW**

The basic law in this case surround wrongful arrest, false imprisonment, malicious prosecution and damages.

[5] **I. WRONGFUL ARREST AND DETENTION**

The Privy Council in 2012² succinctly set out the six principles by which a court, such as myself must examine in these matters. These principles are based on Section 3(4) of the **CRIMINAL LAW ACT, 1936, Chap 10:04**³:

¹ The names of the Virtual Complainants have been omitted.

² **CHANDRAWTEE RAMSINGH v. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO. [2012] UKPC 16.**

³ *“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.”*

1. *The detention of a person is prima facie tortious and an infringement of section 4(a) of the Constitution of Trinidad and Tobago.*
2. ***It is for the arrestor to justify the arrest.***
3. ***A police officer may arrest a person if, with reasonable cause, he suspects that the person concerned has committed an arrestable offence.***
4. *Thus the officer must subjectively suspect that that person has committed such an offence.*
5. ***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.***
6. *Any continued detention after arrest must also be justified by the detainer.*

(Emphasis mine)

I have extrapolated the following additional principles from Lord Clarke:

7. *"The lawfulness of continued detention raises different questions from those relevant to the arrest."*
8. Continued detention without charge **must be necessary** in order to either secure or preserve evidence in relation to the offence for which he is under arrest or to interrogate him with a view to obtaining that evidence.
9. To decide whether the continued detention without arrest is justified, a court must look at **all** the circumstances of the case.

[6] **THE ARREST**

PRINCIPLE 1

This is accepted without more.

[7] **PRINCIPLE 2**

It is for the Arrestor to Justify the Arrest.

I. WHO IS THE ARRESTING OFFICER?

The first step is to identify who is the arresting officer. There is no doubt that this was Sgt. Alexander (Ag.), who gave evidence in this case.

[8] **II. DID THE ARRESTING OFFICER JUSTIFY THE ARREST?**

It is clear that the burden of proof rests on Sgt. (Ag.) Alexander to justify SF's arrest.

[9] **III. WHAT IS THE TEST FOR THIS JUSTIFICATION?**

The answer lies at Principle 3 set out above. Sgt. Alexander (Ag.) could have arrested SF if he had reasonable cause to suspect that SF had committed an arrestable offence. To answer this question, Sgt. Alexander (Ag.)'s testimony, both in chief and in cross examination, must be examined to ascertain whether the information in his possession at the time SF's arrest, did lead him to have that reasonable suspicion ("the subjective test") and whether he could reasonably have been led to suspect that SF had committed an arrestable offence ("the objective test"). I should add that it is very likely that if the subjective test is not satisfied, then there may be no need to look to whether the objective test has been satisfied. To deal with this issue, I look at Sgt. Alexander (Ag.)'s evidence in some detail.

[10] **EVIDENCE OF SGT. ALEXANDER (AG.)**

Sgt. Alexander (Ag.) testified that he was **not** the investigating officer. He relied on contents of the Station Diary Extract which stated that he received a report from two persons, NO and CR at the Mons Repos Police Station on the 1st January 2010, that they saw "*the person who robbed them on 12th December, 2009*". Further evidence based on the Diary Extract, revealed that he accompanied them to the area where they saw the person and he arrested SF. Sgt. Alexander (Ag.) regretfully could not recall the circumstances of this particular case since between the date that he effected the arrest, 1st January 2010, to the time he gave the witness statement, 5th March 2015, he was involved in a large number of cases. He came to this sweeping conclusion:

In cases such as this where there is an identification by the victim of the perpetrator of the crime it is my view that it is reasonable in those circumstances to arrest that person after a report is made. Given that (NO) and (CR) both stated that the Claimant was one of the persons who robbed them, the arrest of the Claimant would be justified.

[11] Attached to his evidence in chief, were extracts taken from both the Mon Repos and the San Fernando Police Station. The extracts at Mon Repos, revealed that on 1st January 2010 at 7:55a.m., "No. 12209 cpl. ALEXANDER in Company with No. 14096 Pc....." There was a later entry which was unnumbered "SOOKHAI driving TCA 8381 returned to station and brought in (SF) 37 years...on enquires. Re-robber in the San Fernando district." The following entry revealed that 8:10 a.m. "No.13283 Cpl Manwaring in company with No. 14900 Pc Morales and No. 15839 Pc

Simon driving vehicle PCL 9790, left station with SF Re-report of robbery in the San Fernando district". The station diary extract, recorded at the San Fernando Police Station on 1st Jan 2010, mentioned that NO and CR, spoke to "Cpl. Alexander" about their experience on the 12th December 2009 and that they saw one of the men involved in that robbery at a stated location. The extract continued that Alexander and a party of officers went to this site, where both CR and NO pointed out SF, and said in his presence and hearing, that he was one of the perpetrators. It was while NO was saying that SF was one of the men who robbed that day "Cpl Alexander asked Fleming if he heard what was said and he said yes". He then identified himself by means of his Trinidad and Tobago Police identification card, and told SF that an investigation was being done in relation to the incident, and "the fact that he was pointed as one of the men who committed the robbery". It is recorded that Sgt. Alexander (Ag.) cautioned SF but he remained silent. The diary revealed that SF was arrested and informed of his legal rights, and made no requests.

[12] **CROSS-EXAMINATION**

Counsel put the contents of the extract of the Station Diary from the San Fernando Police Station to Sgt. Alexander (Ag.). He admitted that the document at the San Fernando Police Station was not prepared by him, and that he had nothing to do with the endorsements made in the Diary which was extracted and put into evidence. He could not recall the facts that he took into account in effecting the arrest. He said at the time of the arrest though, that he had some facts but that he led none in evidence to buttress his justification for the arrest. The facts, the report made by the two victims only came to him from the San Fernando Station Diary and they came to him for the purposes of preparing his evidence in chief. He agrees with Counsel that his evidence spoke to what he did – arrest SF- but not why he effected the arrest. He disagreed with Counsel though, that he arrested SF without any proper basis even though he could not say that his evidence in chief set out the facts which he possessed at the time of the arrest.

[13] **DEFENDANT'S SUBMISSIONS**

Counsel relied on the following points:

- The test as to whether there was reasonable and probable cause is an objective one.⁴

⁴ **DALLISON v. CAFFERY [1965] 1 Q.B. 348.**

- Reasonable suspicion, does not mean that the police officer must have evidence amounting to a prima facie case that the alleged perpetrator is guilty of an offence.⁵
- In considering the power of arrest under Section 3(4) of the **CRIMINAL LAW ACT** there is a subjective element to the reasonable and probable cause test, which involves the exercise of his discretion, which must be considered in the context of the particular circumstances of the case, and must be exercised in good faith. Counsel quoted dicta from Rajnauth Lee JA (as she then was), where the Learned Judge opined that the “*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*”.⁶

[14] Counsel has asked me to treat with some sympathy on Sgt. Alexander (Ag.)’s limited interaction with SF, the length of time between SF’s arrest and filing this matter, “*the fact that he has done several cases during that time*”, and his inability to recall the events, save for the reliance on the Station Diary. The Court can have recourse to the Station Diary extracts and the statement of the Virtual Complainants, and the fact of the identification, to infer, that Sgt. Alexander (Ag.) has passed the reasonable and probable cause test, both subjectively and objectively, with flying colours. Of course SF’s Attorney was not so generous.

[15] **ANALYSIS AND CONCLUSION**

I can agree with most of what Counsel to the Defendant has submitted. I am therefore following the lead of Narine JA in **LASHLEY**⁷ and say that, in matters such as these, that reasonable suspicion or reasonable cause to suspect, which is required at this stage, must arise contemporaneously with the arrest, and certainly before. If events after the arrest are to be taken into account, in deciding whether reasonable cause to suspect was within the exercise of the discretion of the arrestor, then all of the circumstances of the particular case, must be examined to see if the discretion was exercised in good faith or if it was exercised capriciously.

⁵ **HUSSAIN v. CHING FOO KHAN [1970] A.C. 942.**

⁶ The case in which my Learned Sister posited this learning was not quoted by Counsel. I wish to align myself however with the dicta.

⁷ **NIGEL LASHLEY v. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO. Civ. App. No. 267 of 2011.**

[16] The difficulty, is that Sgt. Alexander (Ag.), though the arresting officer, could give no reason why he arrested SF. He could not say what facts informed him before the arrest, during the period of arrest, he could not for instance say that the arrest of SF was pending enquires. In fact he admitted that he was the arresting officer but could not enlighten us as to the facts he relied upon in effecting the arrest, save on the identification of two persons. In this trial, that information served him as after acquired knowledge. In fact, he depended on the bare facts of the arrest contained in the Station Diary. I took note of Sgt. Alexander (Ag.)'s attempt at disagreement when Counsel put to him that he arrested SF without any proper basis.

[17] To be fair, I think that Sgt Alexander wished the court to walk with him on the line of distinction between reasonable actions of the arresting officer and the investigating officers. That course however is not open to the court to follow. An arresting officer has duties to perform as he deprives a person of his liberty. He must have reasonable suspicion that that person has committed an arrestable offence. That suspicion must be born either before the arrest is effect, at the time of the arrest and if after, must be based on some form of investigation of the report made by victims. I asked Sgt Alexander what he understood by investigation of the report made by victims. He replied: "*Looking for evidence trying to find out who is the offender of the crime*". He informed me that taking a statement from the alleged victim would be the first thing he would do and he would question them. Why then on the report of the two Virtual Complainants' siting SF, did not Sgt Alexander take a report and question them even after arresting SF to make a case that he had a suspicion even applying the subjective standard? Had he done that, then he may not have had to plead effluxion of time.

[18] That lacuna has led me to conclude that Sgt Alexander (Ag.) was completely in the dark on why SF was being arrested. It is evident that he reacted to the word of the two Virtual Complainants, without more. Therefore the answer to the question, was that information received by Sgt. Alexander (Ag.), from the two Virtual Complainants by itself, and in and of itself, sufficient to deprive a man of his liberty, by placing him under arrest, must be no.

[19] In all circumstances, Sgt. Alexander (Ag.) has failed the subjective test with respect to whether he has satisfied the requirements of possession of reasonable suspicion or reasonable cause to suspect. In the circumstances, there is no need to examine whether the requirements of the

objective test has been satisfied. I can add only that this is not a fine example of 21st Century policing.

[20] **ANY CONTINUED DETENTION MUST BE JUSTIFIED BY THE DETAINER**

LAW

This refers to the requirement that so soon after detention or arrest as is reasonable, an arrested person must be told of his reason for his arrest, be charged and cautioned. This is an important and procedurally fair step to follow when a man is being deprived of his liberty. If there is any detention during the period of arrest and charge, that must be justified by the detainer. This has become standard law in this jurisdiction.⁸ The onus therefore is on the AG to prove to the Court that the continued detention after arrest and without a charge being preferred was reasonable and proportionate and therefore justified.

[21] In **LASHLEY** relied upon by Counsel for the AG, Narine JA opined that “*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*”.⁹The learned Judge used the **RAMSINGH**, gave life to that dicta and in that case, the action found favour with the all of the courts, culminating at the Privy Council in circumstances where medical evidence was to be forthcoming so as to determine the charge to be laid against the arrested person. That detention was therefore not unlawful. One can immediately see that the detention in that case was necessary to ensure that the correct charge was to be laid on the accused.

[22] **ISSUE**

Is such justification clear from the facts and evidence in this case? Has the AG dispelled the burden on this front? I shall not do a detailed statement of the evidence here. The witness who testified on the events at the San Fernando Police Station was Cpl. Morales (who held the rank of Police Constable at the relevant time). There was another officer involved in the incident, PC Manwaring, who since the incidents of 2010, is unfortunately no longer with us. I shall highlight the relevant portions of Morales’s evidence in my analysis.

⁸ See **CUMMINGS** cited in **CHARLTON DOVER** and given appellate sanction in **RAMSINGH**

⁹ See para. 22.

[23] **THE AG'S SUBMISSION**

Counsel's submission was brief and to the point. It was that SF spent approximately 15 minutes in custody at the Mon Repos Police Station before being conveyed to San Fernando. Counsel continued "*The continued detention of (SF) was also justifiable in the circumstances before he was taken before a Magistrate on 4th January, 2010 which would have been the earliest opportunity. During that period NO and CR were interviewed and statements recorded from the, Pc Morales prepared a file in the matter and submitted same to his seniors for instructions before proceeding to charge the Claimant*". A bare recitation of facts submitted to the court!

[24] **SF'S SUBMISSIONS**

SF's Counsel treated this issue with more severity. Counsel asked the Court to take two points into account in deciding in SF's favour. They are first, that the AG produced no evidence of any steps taken in the San Fernando Police Station to advance the investigation of the report made by NO and CR after 1st January 2010, the date of SF's arrest and second, the fact that SF could not be admitted to bail until charged, thus he was deprived of his liberty once arrested.

[25] **ANALYSIS AND CONCLUSION**

This case is plagued by either incomplete memories or no memories at all. This caused some disquiet in my determination as to whether the AG has displaced the burden cast on this issue.

Morales testified in chief that on 12/12/2009, NO came to the station to report that she was a victim of a robbery. She was in company with CR at the time of the alleged offence. One of the men had "*what she believed to be a gun in his possession and threatened to shoot her*". He and other officers accompanied NO to the area to patrol for the suspects. He went to the scene with the party including NO, where he they were shown "*the place where the suspect escape*". NO showed them the route of the perpetrators' escape. After that the party returned to the scene, where he recorded a statement. During the recording, CR came to the station and Cpl. Manwaring recorded his statement. He did not testify that there was any follow-up investigation after that report. The case remained fallow until the events of 1st January 2010.

[26] With respect to the events of 1st January 2010 to the 4th January 2010, Morales testified that he made the journey to the Mon Repos Police Station where he had a conversation with SF. After that

conversation he, left the Police Station and returned to San Fernando, SF in custody. He stated that upon his return to San Fernando, he continued his conversation with SF, cautioned him, told him his rights and placed him in a cell. He stated that SF had nothing to say. Thereafter he presented his file to his Senior officers. On 4th January 2010, he preferred charges on SF. At the time of **charging**, he believed that he had enough information to charge SF. That was his evidence in chief.

[27] I must make mention that the Station Diary Extract for the day, 1st January 2010 regarding SF, made no mention of any conversation between Morales and SF. That part of his evidence is therefore inconsistent with his own documentary evidence and I have discounted it as true.

[28] Under cross-examination, Counsel did not expend any energy in ferreting out what investigations if any took place between 12th December 2009 and 1st January 2010 and correctly so. Counsel devoted his energy in trying to ascertain whether the time that SF spent in custody between arrest and charge was justified and this was the correct approach. Counsel's cross examination however focussed on the absence of the firearm, that the lack of ballistic evidence could not be used to support the charge laid, the nature of the charge laid and the apparent inconsistencies between NO's and CR's statement and the eventual charge.

[29] Whilst this may have been useful, Morales's evidence in chief just did not address the events or circumstances between the time of arrest and the time of the charge, a period of at least two days. What happened? Did the circumstances warrant SF spending two days without being charged? Why did it take two days for Morales to present the file to his Seniors and receive instructions on same from them? What were the police doing to advance the steps to ensure that SF's constitutional rights remained in-tact? These crucial questions have remained unanswered.

[30] The flaw in this case is that there is no evidence of justification for the detention between the arrest and charge. There is nothing before me to consider whether the time spent was "*necessary*" in the **RAMSINGH** sense or whether the test identified by Narine JA in **LASHLEY** was pertinent. There simply was no evidence. The blithe statement that at the time of charging there was enough evidence to justify the charge is immaterial to the issue to be decided. I should have hoped that this

was the case and that this represents a norm in 21st Century policing. To say otherwise is alarming at the very least.

[31] The AG has not discharged this burden so that the continued detention post arrest, that is from at least the afternoon of 1st January 2010 until the time of the charge on 4th January 2010 is unlawful.

[32] **MALICIOUS PROSECUTION**

In any action for malicious prosecution, there are several hurdles which a Claimant must overcome. These have been succinctly stated in many judgments and I now borrow from a trusted source, Halsbury's Laws of England¹⁰ and condense them as follows:

1. *The prosecution by the defendant of a criminal charge against the claimant before a tribunal into whose proceedings the criminal courts are competent to inquire;*
2. *That the proceedings complained of terminated in the claimant's favour;*
3. *That the defendant instituted or carried on the proceedings maliciously;*
4. *That there was an absence of reasonable and probable cause for the proceedings; and*
5. *That the claimant suffered damage.*

[32] It is undisputed that the first two requirements have been fulfilled. It is important for SF to establish all of the other elements in order to be successful in his suit for damages for malicious prosecution. Should he fail on one ground, then his entire claim on this ground fails.¹¹ We must therefore examine SF's case and evidence and Morales's defence and evidence to determine these issues.

[33] **SF'S FACTS**

I would agree with Counsel for the Defendant and use the Particulars of Malice detailed in SF's case to examine whether Morales lacked reasonable and probable cause to prosecute SF and whether the prosecution was actuated by malice. The Particulars read as follows:

¹⁰ **HALSBURY'S LAWS OF ENGLAND VOL. 97 5TH ed. Para. 725**

¹¹ See Mendonça J.A. in **ALISTAIRE MANZANO v THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO Civil Appeal No 151 of 2011 para. 17.**

- (a) *Police Constable, Kerry Morales ... knew or ought to have known that there was no reasonable grounds for the arrest and prosecution of the claimant;*
- (b) *The Claimant was prosecuted ... maliciously and without reasonable and probable cause based on a failure to conduct proper investigations;*
- (c) *The allegations ,, were untrue to the knowledge of the Police Officer;*
- (d) *The said police officers and any other police officers never found a firearm on the Claimant;*
- (e) *None of the items seized were tendered into evidence;*
- (f) *SF was never cautioned, told of his right to an Attorney-at-Law or allowed a telephone call;*
- (g) *The identification parade conducted by the police officers (were) illegal and contrary to Section*

[34] **AG'S FACTS**

In response the AG gave the Police's account of the arrest which largely mirrored SF's save for this interesting and salient fact "*In particular the Defendant denies that any officer pulled out a toy gun from his pocket and accused (SF) of robbing a man and woman on Lord Street, San Fernando*".

In addition, the fact matrix contained the Particulars of Reasonable and Probable Cause as follows:

- (a) A repeat of paragraph 8 which I reproduce in part here:
 - (i) *The fact of the report made by NO on 12/12/2009 together with a certified copy of the Station Diary Extract for that date at the San Fernando Police Station;*
 - (ii) *The written Reports of NO and CR together with copies;*
 - (iii) *The report made by NO and CR at the Mon Repos Police Station on 1/1/2010;*
 - (iv) *That both NO and CR pointed out SF to officers at the NHA Building in Mon Repos as the perpetrator of the robbery on 12/12/2009;*
 - (v) *The conversation which Alexander had with SF re the report of the robbery and his identification as a member of the TTPS;*
 - (vi) *That Cpl Alexander informed SF that an investigation was underway about the robbery and that he was identified as one of the men involved, SF's arrest and transport to the Mon Repos Police Station;*
 - (vii) *That both PC Manwaring and Morales journeyed to Mon Repos where they told him of the report;*
 - (viii) *That the officers escorted NO and CR and SF to the San Fernando Police Station;*
 - (ix) *Morales conversation with SF re the robbery and "the fact that he was a suspect". Caution administered. Evidence of the entry in the Station Diary for that day and event produced.*
 - (x) *Recording of further statement from NO and CR;*
 - (xi) *On 4th January, SF was taken to the San Fernando Magistrate's Court and was remanded to custody for tracing;*

(xii) The matter was called on numerous occasions and Morales attended court on most of the occasions. On 27th August 2010, Morales attended court, gave his evidence. The Virtual Complaints failed to appear and the matter was dismissed.

- (b) That Morales took statements from both NO and CR;*
- (c) The report/statements established a prima facie case of larceny committed against NO and CR. Both persons positively identified SF as one of the persons who had committed the robbery against them on 12/12/2009;*
- (d) There was no malice or ill will on the part of Morales in charging SF;*
- (e) SF was informed of his Constitutional rights, including the right to retain and instruct without delay a legal adviser of his choice and to hold communication.*

[35] **SF'S EVIDENCE**

SF's evidence spoke to his experience on the New Year's morning of 2010. He was visiting his family at Mon Repos at "the Scheme". He noticed a police van approaching. Two armed officers headed straight towards him. He was arrested here in Mon Repos and not in San Fernando. He asked the reason for his arrest and was told that he would find out when he got to the station. Officers from San Fernando came for him who he named as Morales and Manwaring. They took him to San Fernando. He spent about 20 minutes in the cell at Mon Repos. He kept saying that he did not know about robbing anyone. Manwaring interrogated him and kept telling him that he and another robbed two persons in San Fernando. Manwaring pulled a toy gun from his pocket and told him that that was the gun used in the robbery. Manwaring insisted that the toy gun was his and that he had to sign the statement. He was left sitting in the room.

[36] Around midnight, Morales then took him to another room for an ID parade. He was the only person in the room. A woman came to the room. She stood by the door. She shook her head and then left. Later he was given a Notice to Prisoner containing the charge against him. I did not know the persons named in the Notice and was not aware of the incident.

[37] **PC MORALES'S EVIDENCE**

I make the observation that Morales's evidence in chief revolved around the charge preferred against SF in relation to NO. There was no evidence led with respect to the charge laid in relation to CR. That has not been contested at all. In relation to NO, Morales confirmed that on 12th December 2009, as a result of the report made by NO, that she was the victim of a robbery of her gold chain and a sum of money, and that one of the men had what she believed to be a gun in his

possession and threatened to shoot her, he left the San Fernando Police Station and made a patrol of the area for the suspects. He went to the scene. He was shown the place where the suspect escaped and was told the route of the escape.

[38] With respect to the events of 1st January 2010, Morales stated that he went to Mon Repos on receipt of the report that SF was in custody. He testified that he told SF that *inter alia* he was a suspect in the robbery with a firearm that was being investigated. He returned to San Fernando with the Claimant. At that station, he continued to interact with SF and reiterated that he informed SF *inter alia* that he was “a suspect” in the robbery. He insisted that SF made no response or request. He confirmed that SF was placed in a cell. He confirmed that he recorded a further statement from NO and that Manwaring recorded a statement from CR. He was provided with a copy of the statement. The next paragraph was that he passed the file to his seniors and he was instructed to charge SF on 4th January 2010. In terms of the justification for laying the charge, Morales stated that he honestly believed that based on the reports given by NO and CR that he had sufficient to charge SF. Of interest in this paragraph, reproduced above is that he reported that NO was under the impression that during the course of the robbery that the object she saw was a firearm but was later told by CR that it was a toy gun.

[39] **CROSS EXAMINATION**

Morales stated that he would need a certificate to ascertain whether the alleged firearm was a toy gun or not. He could not take CR’s opinion. His evidence was that in relation to NO, she believed that there was a real firearm used in the robbery so that he preferred a charge against SF in her case involving the use of a firearm. He admitted that in order to charge for possession of an imitation firearm one would have to have possession of the imitation firearm. When asked by Counsel whether the mere fact of a report is insufficient to charge anyone in these circumstances, Morales gave a definitive answer in the negative. Morales was startled to know that the charges in relation to both NO and CR read “*being armed with a firearm*”. He admitted that he was surprised that the charge in relation to CR actually bore those words. He said that he did not recall that charge. He admitted that he made no mention in his evidence in chief as to why he preferred the charges against SF in relation to CR. He agreed that the gun which was retrieved on the face of the record was an important piece of evidence. He admitted that there was no statement that he

made any efforts to recover same. Instead he said that the weapon was never handed over to him and there is no record of that and as far as he was aware, there is no evidence of any efforts to obtain or secure the alleged weapon. He then said that the weapon was never brought to the police station. In relation to NO, Morales said that he realised only on the witness stand under cross examination that NO mentioned nothing about seeing a firearm at all. He did not think that forensics would have been an important part of her case against SF. Counsel asked him why he thought it necessary to put that information in his examination in chief. He admitted that that statement would not have been significant in deciding whether to charge SF or not. In relation to securing a conviction, Morales appeared confused by this, but eventually stated that it would have been important to secure expert evidence on the nature of the object used, that it was a firearm to establish the offences and to secure a conviction. Counsel continued this tortuous road with Morales flipping and flopping along the way.

[40] **PC MORALES KNEW OR OUGHT TO HAVE KNOWN THAT NO REASONABLE GROUNDS FOR ARREST AND PROSECUTION EXISTED.**

LAW

There are two elements which SF must address positively to assure his success. These have been styled, the subjective and the objective elements. I shall look to Mendonça JA's dicta and reasoning for assistance in determining this issue. I can pose the question based on the learned Justice of Appeal's dicta, "**where the defendant is a police officer acting on information provided to him by others, what is the honest belief that he must have?**".¹² If the prosecutor is shown "*not to have honestly concluded that the material was such as to warrant setting the process of the criminal law in motion*" then the Claimant would be successful. Put another way, the Prosecutor must show that he had an honest belief that on the material available to him that there was a prima facie case against the accused. That is the subjective standard or test. The other arm is that the Prosecutor's reasonable belief must be based on reasonable grounds. This is the objective standard or test. In other words, when viewed objectively, was there a reasonable and probable cause for the prosecution?¹³

¹² See *infra*. para. 24

¹³ See **DALLISON v CAFFERY** [1965] 1 Q.B. 348; 371 per Diplock LJ: "*The test whether there was reasonable and probable cause for the arrest or prosecution is an objective one, namely whether a reasonable*

[41] **ANALYSIS**

It is noteworthy that on 12th December 2009, when he was taken to the scene, Morales did not say that he followed the route of the alleged perpetrators escape. He remained silent on what investigations he did on that day. He was content to say that neither the items nor the gun have been recovered. I observe as well that Morales did not say in evidence that on 1st January 2010, both NO and CR were on the return trip to San Fernando from Mon Repos as was stated in the Particulars which he relied upon to displace the allegation of lack of reasonable and probable cause. I note too that in the Particulars of Malice pleaded, Morales took statements from both NO and CR. In his evidence in chief, Morales stated that Manwaring recorded CR's statement. However in the Particulars, it was asserted that Morales recorded statements from both NO and CR. What is it? Further, Morales does not enlighten us about when he passed the file to his seniors, what that file contained and what were his findings based on any "investigation" that he conducted.

[42] Morales was satisfied that the reports by NO and her witness CR were enough to prefer charges on SF. Like Counsel for SF, I too recall Morales's surprise when he learnt that he had preferred charges against SF in relation to an alleged robbery perpetrated against CR as well. That tells its own story.

[43] The court was concerned that Morales had preferred a charge involving the use of a firearm under the Larceny Act but there was no firearm. This in and of itself may not be enough to displace the requirement of lack of reasonable and probable cause and on this account I agree with Counsel for the AG. Morales's cross examination was alarming on this score. He reasoned that if one was preferring a charge for use of an imitation firearm you would have to have possession of the imitation firearm. Since there was no imitation weapon, he could not prefer a charge involving a firearm. An examination of the evidence and charges revealed that CR's statement clearly stated that he thought the weapon was a "toy gun" or imitation weapon. If Morales's reasoning was in place at the time of charging SF, then the question is how could he have charged SF with the offence of robbery "being armed with a firearm" in relation to CR?

man, assumed to know the law and possessed of the information which in fact was possessed by the defendant, would believe there was reasonable and probable cause...".

- [44] When all of the circumstances of this issue are examined however, a disturbing picture emerges. CR's statement spoke to his seeing a toy gun. NO did not state that she saw the gun. Morales said in his statement that NO told him that the man in possession of the gun threatened to shoot her. If she did not see the gun, why would she feel apprehensive about the threat? The Station Diary Extract of 12th December 2009, makes mention that the "*victims managed to retrieved a black toy gun which was dropped by one of the suspects*". Where was that gun? Was it taken into custody? Was that the gun shown to SF by Manwaring on 1st January 2010 as he SF asserts? The bare denial that SF was not shown a gun by any officer on 1st January 2010, is not enough, especially since the charge contemplated was pursuant to Section 24 of the Larceny Act. It does not resolve the logical question to be asked when the Station Diary extract of 12th December 2009 is examined with a probing eye.
- [45] Again, how could Morales testify that the preferment of charges was justified based on a statement made by NO that she was under the impression that the object that she saw was a firearm when she never said that she saw one? We have at that point CR saying that it was a toy gun, the Extract saying that the gun was retrieved, and SF's statement that Manwaring showed him a black plastic gun. Morales stayed away firmly from this dilemma and casually stated that since no gun was retrieved, he had nothing to take for testing. This entire line was demolished in cross examination. I say no more.
- [46] It is true that the prosecutor's duty is not to resolve conflicts of evidence and certainly, knowledge of the conflicts does not lack of reasonable and probable cause found. In a case like this however, I ask, how can a prima facie case can exist against the accused without that vital piece of evidence?
- [47] It is true too that a careless investigation, in and of itself, does not prove lack of reasonable and probable cause. That learning does not sit too well in this case. When one examines the totality of the evidence in this case, no evidence of any follow up to the report made and the visit to the scene on 12th December 2009; unexplained issue of retrieval of a "toy gun" and the showing of a gun by Manwaring; no alleged firearm at the time of the arrest or charge all lead me to the conclusion that, these gaps are troubling and go some way to belie any assertion by the AG that

they have satisfied the court that that the Police had reasonable and probable cause to prefer the charges that is, to set the prosecution of SF in motion.

[48] Another aspect of this case is that SF must prove that the real facts of the case established no real criminal liability coupled with evidence that those real facts were within Morales's knowledge, or if those facts were not within his knowledge, what was the information which he acted upon in preferring the charges? SF has denied all involvement in the case. His defence was that it was not him. Morales's evidence was untested and uncorroborated. Of course, that in and of itself is not fatal. We come to however that if the real facts were not within Morales's knowledge, what was the information that he acted upon? I have already given my opinion on the information and sadly, it is not helpful to Morales at all.

[49] PC Morales from the evidence, knew that he did not have sufficient evidence to charge SF. In fact, when one looks at the evidence, I am confident that any reasonable officer in Morales's position would not have preferred those charges for all of the reasons outlined above. The requirement of lack of reasonable and probable cause must be decided in SF's favour.

[50] **MALICE**

Again, I lean on Mendonça JA in the **MANZANO** case when the learned Judge opined "*It may therefore be a question of degree whether malice should be inferred from the absence of reasonable and probable cause. If the prosecution was launched on 'obviously insufficient material' that may suffice to support the inference of malice. Malice may also be inferred from the absence of honest belief in the merits of the case. Indeed this can provide strong evidence of malice...*".¹⁴

[51] To me, I can infer malice based on the fact that to me, there was insufficient material to prosecute SF. I have come to that conclusion because there was no evidence of anything in the nature of an investigation of the salient facts, other than the statements of NO and CR. I take on board that the use of uncorroborated evidence to prefer charges may not suffice to ground malice. The totality of the evidence drawn in this case goes beyond that. How can a charge of "*being armed with a firearm*" be supportable on either of the charges when NO never asserted that SF had a firearm at

¹⁴ See *infra*. paras. 48 and 49; **HADDRICK v HESLOP (1848) 116 ER 869** mentioned in that case.

the time of the alleged robbery and CR stated that the alleged firearm was a “dummy gun”? Moreover, the AG’s case is that no firearm was retrieved so that there was no object to exercise forensic investigation.

[52] That to me, is incredible. Further, I do not think that Morales could have taken comfort from reliance upon “instructions” from his seniors to prefer the charges to displace malice on his part in these circumstances. He announced proudly that he was the investigating officer. He was in possession of all of the facts surrounding this arrest and charge. He knew that there was no firearm. How then could he have held the belief that he could make a *prima facie* case let alone have an “honest belief in the merits of the case”? I say no more that SF has proved this case on a balance of probabilities that he was the victim of malicious prosecution for the alleged offences.

[53] Having concluded as I have done, I could not leave this issue to lie fallow and since raised, I shall address it. Counsel for the AG in her submissions made the following statement:” *PC Morales attended court and gave evidence in this matter but the virtual complainants failed to attend court in this matter. It is for this reason that the matter terminated in the Claimant’s favour. ... PC Morales has stated that he was in contact with the virtual complainants and told them of all adjourned court dates. He did not have any reason to think that they would not show up at the trial of the matter. Though the magistrate ordered that witness summons be served on them he did not always receive the summons to enable him to serve them*”.

[54] I now condense the relevant parts of the transcript of evidence. In essence, Morales admitted that the Virtual Complainants could only be relieved from attendance from court with leave of the sitting Magistrate. He said he believed they were so relieved even though there was no note to that effect. In the end, he claimed to be unsure. He claimed that he was in contact with the Virtual Complainants and made efforts to secure their attendance at court. He also said that he told the Magistrate that “*whenever need for a trial date that ... I could get in communication with the victims and have them come to court.*” He admitted to Counsel that he did not tell the virtual complainants about not coming to court but that he “*would have let them know when the matter is for trial*”. Morales agreed that when the Magistrate wanted the witnesses to be present she let them know through him. Instead of answering the question whether he reported back to the Magistrate that he

delivered the summonses, he answered that he did not always receive the summonses for delivery. He admitted that when the summonses were left in his care to effect service he did not serve them in observance of the Magistrate's Order. On no occasion did he ever effect service on the Virtual Complainants.

[55] My reading is that Morales never contacted the Virtual Complainants to come to court. He never complied actively with the Magistrate's Order. In any event, there is no record that Morales let the Magistrate know of his alleged difficulty in complying with the Order. He just let it rest. Can this be condoned whilst a man is incarcerated? I think not.

[56] **DAMAGES**

SF has claimed damages for malicious prosecution; false imprisonment and/or unlawful arrest and detention; Aggravated and/or Exemplary damages and Interest. SF claimed Special Damages as well.

SPECIAL DAMAGES

These comprise the following:

1. Legal Fees	\$ 4,000.00
2. Loss of Earnings	\$ 81,600.00
3. Cost of Notes of Evidence	\$ 20.00
4. Cost of Magistrate's Court Extract	\$ 10.00
TOTAL	\$85, 630.00

It is a well-known rule of procedure that special damages must be specifically pleaded and proved. SF has satisfied the first rule of pleading. The proof is next. No statement of Legal fees incurred was attached. Counsel for the AG made this observation and submitted that this head should be disallowed. I do not have a discretion in this area so that I must accede to this point of view. With respect to his earnings, Counsel advised that deductions for taxation should be done. She has not disputed the figures. SF provided evidence of his employment and earnings through job letters from his employers Leo Charles Antione and Dr. Mirza Ashrap. I accept that evidence.

[57] The period for the loss of earnings would have spanned eight (8) months of 2010. The first \$60,000.00 is exempt from taxation. Taxation would arise on the balance of \$21,600.00 at the rate

of 25%. This gives a tax liability of \$5,400.00. I cannot attribute any deductions for National Insurance or Health Surcharge deductions from his salary as there is no evidence of same. Thus the sum allowed under this head is **\$76,200.00**.

[58] **The other two heads are allowed without more. Thus SF is entitled to Special Damages in the sum of \$76,230.00. On the issue of interest, I am guided by my learned sister Jones J (as she then was)¹⁵ when she rationalized at paragraph 53 that “giving the prevailing economic climate and in particular the low rates of interest being paid by financial institutions at present” and would award interest at the rate of 3% from the date of arrest, 1st January 2010 until the date of payment.**

[59] **EXEMPLARY DAMAGES**

I shall crave Counsel's kind indulgences not to rehearse their submissions on this issue but thank them nonetheless for their assistance. I do not think that this is applicable under this head. There is no proof of any behaviour by an officer of the state that was so oppressive, or arbitrary, or reprehensible and despicable. There was no claim made by SF that he suffered any assault and none proved of any humiliation at the hand of the police. I therefore do not think that this is a proper case for the award of exemplary damages.¹⁶

[60] **FINDINGS OF FACTS IN RELATION TO THE AWARD OF DAMAGES**

I find as a fact that SF was falsely imprisoned from the time of his arrest in Mon Repos at approximately 8 a.m. on the 1st January 2010 until PC Morales was instructed by his superiors to charge him. During this period, further investigations, of which no evidence was provided, were ongoing. SF knew that at midnight on 3rd January 2010, he was about to be charged and received the Notice to Prisoner shortly after. He was taken to the Magistrate at 11:30 a.m. on 4th January 2010. SF's Counsel has tendered a total of 75½ hours of wrongful detention in police custody and a further eight (8) months of incarceration. Counsel for the AG did not address this issue. I find that

¹⁵ **SAMANTHA FAWZIYYAH HOSEIN v. CENTRAL EQUIPMENT RENTALS AND ORS. CV 2009-003201. Paras. 47-54.**

¹⁶ See **RAMANOOP v AG OF TRINIDAD AND TOBAGO H.C.A.S-47 of 2001 per Rajnauth-Lee J (as she then was) paras. 18-23; GORING v AG OF TRINIDAD AND TOBAGO CV2010-03643 per Rajkumar J**

SF spent 75½ hours in custody. The record has proved that SF spent 8 months in custody and I accept that SF must be duly compensated for the deprivation of his freedom.

[61] **SUBMISSIONS**

Counsel for SF gave an omnibus figure of \$950,000.00 representing false imprisonment and/or unlawful arrest and malicious prosecution, inclusive of aggravated damages. Counsel for the AG advanced a figure of \$100,000.00 but admonished the court not to double compensate! I take that seriously. I prefer to separate the heads.

[62] **DAMAGES FOR FALSE IMPRISONMENT AND/OR UNLAWFUL ARREST AND DETENTION**

I have found that SF was arrested and illegally detained for 75½ hours. I have made a finding that the apparent non action by Morales and his company in not charging SF with alacrity was offensive and should be recognised in the award of a sum for aggravated damages. I take guidance from **KOWLESSAR**¹⁷ where my learned brother, Kangaloo JA, awarded the appellants \$8000.00 inclusive of interest for approximately 3 hours of unlawful detention, **ADESH MAHARAJ**¹⁸ in which the claimant was awarded \$20,000.00 inclusive of interest for his excessive detention of approximately 3 hours and more recently, **RICHARDSON**¹⁹ where Dean-Armorer J. awarded the Claimants \$40,000.00 each for false imprisonment for 2 days. In the circumstances, a fair and just award together with uplift for SF's total period of false imprisonment shall be in the amount of \$315,000.00 inclusive of aggravated damages.

[63] **MALICIOUS PROSECUTION**

Using **CLEMENT**²⁰ as my guide, in examining SF's circumstances, I have considered the following:

1. Injury to reputation and character.
2. Injury to feelings, for disgrace and humiliation.
3. Deprivation of liberty by reason of arrest, detention and imprisonment.

¹⁷ **JOYCE HARDAYE KOWLESSAR AND KEITH KOWLESSAR v THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO Civ. App. No. 167 of 2005**

¹⁸ **ADESH MAHARAJ v. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO. Claim No. S-788 of 1998.**

¹⁹ **LENNON RICHARDSON AND JASON ALLEYNE v. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO CV 2007-02686.**

²⁰ **THADEUS CLEMENT v. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO Civ. App No. 95 of 2010.**

Further aggravated by:

1. The humiliation which SF experienced by being handcuffed and taken away whilst barefoot and shirtless, in the presence of his family.
2. The period of 8 months which it took for the case to be dismissed, and the fact that the case was called 22 times, with the Virtual Complainants failing to appear at any hearing.
3. The disregard shown for SF's liberty by PC Morales, as he blithely informed the Court that he never bothered to collect and serve the summonses to appear in court on the Virtual Complainants, despite this being an Order of the Magistrate.

It is my belief that a just compensation to SF would amount to an award of \$185,000.00 inclusive of aggravated damages. In considering these factors I take note of the Privy Counsel's opinion in **CALIX**²¹.

[64] **THE AWARD OF INTEREST**

The award of interest is always discretionary. **As I said above, I find a good exposition of the law in the judgment of my sister Jones J as she then was)**²² I take guidance from the reasoning and apply it to the case at bar. My award of interest will be as follows:

1. **On special damages, the rate of 3% per annum will be applied from the 1st January 2010 until the date of this judgment; thereafter interest at the rate of 7% shall accrue on the principal judgment debt until payment;**
2. On damages for false imprisonment interest shall be awarded at the rate of 4% per annum from the date of filing to the date of judgment and thereafter at the rate of 7% from the date of judgment until payment;
3. On damages for malicious prosecution, interest at the rate of 4.5% per annum from the date of filing to the date of judgment and thereafter at the rate of 9% from the date of judgment until payment.

[65] **THE AWARD OF COSTS**

Pursuant to Part 67.5, costs shall be awarded on the Prescribed scale. The Claimant has recovered the sum of \$576,230.00

²¹ **TERRENCE CALIX v. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO 4-13. PC. App. No. 0003 of 2012. In particular paragraphs 32 and 33.**

²² *Infra.*

Using the provisions and the formula set out in the CPR at Appendix C. The AG's exposure in costs will amount to \$77,217.25.

IT IS HEREBY ORDERED AS FOLLOWS:

- 1. That there be judgment for the Claimant against the Defendant.**
- 2. That the Defendant do pay to the Claimant damages as follows:**
 - a. Special Damages in the sum of \$76,230.00.**
 - b. For False Imprisonment in the sum of \$315,000.00.**
 - c. For Malicious Prosecution in the sum of \$185,000.00.**
- 3. That the Defendant do pay to the Claimant interest on the damages as follows:**
 - a. Special Damages at the rate of 3% from the date of his wrongful imprisonment on the 1st January 2010 until the date of payment**
 - b. False Imprisonment at the rate of 4% from the date of filing until the date of judgment and thereafter at the rate of 7% until the date of payment;**
 - c. Malicious Prosecution at the rate of 4.5% per annum from the date of filing until the date of judgment and thereafter at the rate of 9% from the date of judgment until payment.**
- 4. That the Defendant do pay to the Claimant Costs prescribed in the sum of \$77,217.25.**

I must add a short word. From the start of this case, I had been encouraging the parties to speak to resolve this matter. This plea fell on not so fertile ground. I must record that this was a case that deserved sober consideration, which had that been done might not have caused such an assault on the taxpayer's purse. I wish to thank Counsel and my Judicial Research Counsel for their assistance in this matter.

Dated this 13th day of June 2016.

/S/ CHARMAINE PEMBERTON
HIGH COURT JUDGE