REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2006-1513
HCA No. 1245 of 2003

BETWEEN

MC LEAN DURHAM

Claimant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

First Defendant

JOHN TREAVAJO

(Assistant Superintendent of Police)

Second Defendant

JUDE WORRELL (Reg. No. 11138)

Third Defendant

BEFORE THE HONOURABLE JUSTICE RICKY RAHIM

Appearances:

Mr. K. Thompson for the Claimant.

Ms. A. Alleyne instructed by Ms. K. Mohammed-Carter for the Defendants.

1. This is an action for Wrongful Arrest and False Imprisonment. On the 7th May 1999, the Claimant was arrested at his residence, situate at No. 120 Uranus Drive, Galaxy Gardens, D'Abadie.

2. The Second and Third Defendants were at the material times police officers of the Trinidad and Tobago Police Service and were attached to the Arima Police Station. Both the Second and Third Defendants were senior police officers and were present on the day the incident allegedly occurred.

3. The Claimant has claimed that by reason of the matters complained he was deprived of his liberty and has suffered both mentally and physically and has suffered loss and damage. Consequently, the Claimant claimed in his Statement of Claim:

    (i) *The sum of $878.00*

    (ii) *Damages*

    (iii) *Exemplary and/or Aggravated Damages*

    (iv) *Interest*

    (v) *Costs*

    (vi) *Such further and/or other relief as the Honourable Court may deem jus*t.

4. Evidence in Chief for the Claimant is contained in his Witness Statement filed on the 28th June 2007. Evidence in Chief on behalf of the Defendants is contained in the Witness Statements of Jerome Daniel, Jude Worrell and John Trevajo, all filed on the 28th June 2007.

5. The common facts as appear in the Witness Statements on behalf of the Claimant and Defendants can be briefly stated. The Claimant was arrested on the 7th May 1999 at his

home. His premises were searched and a quantity of items was seized. The Claimant was then taken to the Arima Police Station where he was questioned by officers about rapes which allegedly occurred between 1998 and 1999. The Claimant was then taken to the La Horquetta Police Station on the evening of the 7th May 1999, where he was placed on an identification parade on the 8th May 1999. The Claimant was not identified and was subsequently released.

The Claimant's case

6. The Claimant stated in his Witness Statement that around 10:00 a.m. on the 7th May 1999 three jeeps containing fifteen policemen in total arrived at his home. He stated that he was in his yard when the police officers arrived. He was handcuffed and taken into his house where the officers searched and seized a number of items. The Claimant maintained that he was not told of the reason for his handcuffing, nor was he shown a search warrant.

7. The Claimant alleged that at 10:30 a.m. of the same day, he was taken, handcuffed, from his home into the E99 Police jeep. He claimed that he was placed in the back of the jeep, along with his seized items. The Claimant asserted that when the police officer attempted to close the door, the door was slammed on his shoulder.

8. Upon arrival at the Arima Police Station, the Claimant testified that he remained handcuffed and was placed on a bench at the back of the station and was kept sitting on a bench for about six (6) hours. He averred that he was never told of his right to communicate with a lawyer nor was he told of the reason for his arrest.

9. The Claimant stated that around 5:00 p.m. he was placed in a cell. He alleged that he was given something to eat around 6:00 p.m. The Claimant testified that he was taken to the La Horquetta Police Station sometime during Friday night and he was again placed in a cell.

10. The Claimant further alleged that after the identification parade on the 8th May 1999, at the La Horquetta Police Station, he was given a meal for the second time and subsequently released on the same day at about 5:30 p.m. by a female officer. He was instructed to collect the seized items at the Arima Police Station and was taken to the Arima Police Station in a police jeep. The Claimant stated that when he arrived at the Arima Police Station, he was told that the officer with the keys to the property room where the seized items were stored was not on duty. One of the seized items was a bunch of keys to his house. The Claimant testified as a consequence, upon arrival at his home, he was forced to cut the lock with a hacksaw to gain entry to his home. The Claimant affirmed that he did collect the items on the 10th May 1999 but had to transport the items back to his home. The Claimant alleged that upon returning home he discovered that he was missing a set of twenty spanners, costing $250.00. Additionally, five bags of cement, at a cost of $35.00 per bag, which he had purchased the morning of his arrest were left at the side of his house and were wet by rain and could not be used.

11. The Claimant asserted that about two weeks after the arrest he discovered that his left breast was enlarged and sought medical attention at the Port-of-Spain General Hospital and Mount Hope General Hospital, where he was attended to by Dr. Teelucksingh. The Claimant has attached receipts in support of his contention. However, there was no medical report attached.

The Defendants' case

12. The evidence of the Second and Third Defendants was that on the 7th May 1999 around 11:15 a.m, the Third Defendant, along with other officers, led by the Second Defendant, went to the home of the Claimant. The purpose of the visit, according to the Defendants' evidence, was to execute a search warrant, which they allege was in their possession at the time.

13. The Third Defendant testified that upon arrival at the Claimant's home, the Claimant was inside his home and opened the door for the officers. The Second Defendant then showed the Claimant his police identification card and read the search warrant to the Claimant and explained the purpose of the search to the Claimant. The Third Defendant gave evidence that he explained to the Claimant that the search warrant was obtained in order to collect evidence to aid in the investigation of rapes and burglaries in the surrounding area.

14. The Second Defendant asserted that the Claimant was never handcuffed and was not arrested while the search was being conducted. Further, the Defendants affirmed that during the search a comprehensive list of the items taken were written at the back of the search warrant and that the Claimant verified this list. In support of this the Third Defendant attached a true copy of the search warrant to his Witness Statement. The Third Defendant averred that a subsequent entry detailing the items seized was made in the Arima CID Station Diary and also attached an extract of said diary extract to his Witness Statement. The Third Defendant also denied that a set of twenty spanners and three crescent wrenches were taken.

15. It is the evidence of the Defendants that subsequent to the search, the Claimant was arrested but he was not handcuffed. In denying the Claimant's assertion that the door to

the jeep in which he was placed was slammed on his shoulder, the Third Defendant testified that it would not have been possible for that to occur as the procedure for transporting an arrested person is that a police officer must be seated on either side of the suspect especially where he is not handcuffed. Additionally, both the Second and Third Defendants asserted that the Claimant had made no complaints about his shoulder nor was there any signs of injury to his shoulder.

16. The Third Defendant maintained that he informed the Claimant of the reason for his detention and rights both at his premises and at the Arima Police Station. The Second Defendant testified that while at the Arima Police Station, the Claimant was questioned by officers of various police stations who had received reports of rapes committed in the areas at the time. The Second Defendant asserted that while at the Arima Police Station , the Claimant was kept in the CID office and not in a cell as alleged by the Claimant.

17. It is the Second Defendant's evidence that prior to being taken to the La Horquetta Police Station, he informed the Claimant that he was required to attend an identification parade in connection with alleged rapes, to which the Claimant did not object. The Second Defendant also asserted that he informed the Claimant that he had the right to refuse to participate in the identification parade.

18. The Second Defendant denied that the Claimant was only fed twice while under arrest and asserted that the Claimant was given a total of five meals during his detention. In support of this the Second Defendant attached true copies of the Prisoners' Feeding Accounts.

19. In the Witness Statement of Jerome Daniel, evidence was given that he was instructed by Acting Corporal Michael Modest Regimental number 8869 to make an entry in the

Station CID Report Diary in relation to the items seized on the 7th May 1999 at the Claimant's residence and then returned to the Claimant. Mr. Daniel subsequently made the entry dated 10th May 1999 and the Claimant read the entry verifying its accuracy and signed the station Diary.

Analysis of Evidence prior to arrest

Was the Claimant handcuffed

20. The Claimant asserted that during the search he was handcuffed. However, he gave evidence during cross examination that during the search of his house on the day in question, the Second Defendant asked him for the keys to his wardrobe. The Claimant testified that he "promptly handed over" the keys to the wardrobe. It would seem highly improbable that he would be able to do so, had he been handcuffed as he alleged. When probed about whether he could have done so being handcuffed as he alleged, the Claimant then said that the officers took the keys and he showed them which key was for the wardrobe.

21. The Second Defendant, in cross examination, while admitting that a rapist was a dangerous person, asserted that all necessary precautions were taken on the visit to the Claimant's home but there was no need to handcuff him as he did not pose a threat. The Second Defendant insisted that the Claimant was free to leave at any time but that the Claimant agreed to the search and co-operated throughout.

22. The Court does not believe the Claimant when he alleges that he was handcuffed as soon as the officers arrived at his home. It was apparent to the Court from his evidence and his demeanor that when confronted with the implausibility of his testimony that he promptly

handed over the keys he attempts to make an about face in an effort to cure what is either a mistruth on his part or a mistake.

23. Further, the Court accepts the evidence of the defence that there would have been no need to handcuff the Claimant at this stage as he was not under arrest and appeared not to pose a threat.

Were the Defendants in possession of a warrant to search the premises

24. It must be first noted that during cross-examination, the Claimant was only able to recognize the Second Defendant as being present on the day of the alleged incident. He was unable to say whether the Third-named Defendant was present at the material time. However, he was adamant that he was not told of the purpose of the search nor was he shown any search warrant. Notwithstanding his inability to identify the Third Defendant as being present on the day of his arrest he was insistent that the Third Defendant had said nothing to him during the incident.

25. The Claimant testified in cross examination that no one read or showed him a search warrant. It is the evidence of the Third Defendant that upon arrival at the premises a search warrant was shown and read to the Claimant.

26. The Claimant testified that he could not remember whether the Third Defendant was present at those premises at all on that day. In answer to attorney for the defendants he stated that the Third Defendant may or may not have been there. This the Court finds to be curious in the extreme as it is the Claimant by his very claim who has named the Third Defendant as a party to these proceedings. To compound matters the Claimant further

testified that the Third Defendant did not say a word to him at all. According to him, the officers simply barged into his residence and began to search. The Court finds this difficult to accept in the circumstances.

27. The Defendants have produced a warrant which appears to have been regularly issued in proper form. Further, the Defendants have testified as to the basis upon which they obtained that warrant. According to the Second Defendant, a very senior police officer, due to the series of burglaries and rapes, interviews of the victims were conducted by police officers and descriptions of the assailant had been given to one of the investigators. The Second Defendant further testified that while he had not personally recorded those statements and so could not vouch for the accuracy of the descriptions given, he had met two of the victims.

28. The Third Defendant however testified that he received statements from two of the victims. From those descriptions a sketch was drawn by an artist. the Second Defendant could not say with certainty whether the information given to the sketch artist was correct and could not say therefore whether this sketch represented an accurate account of the information given of the suspect's description. However the Second Defendant believed that the description given to the sketch artist, by his observations of the sketch and the Claimant matched the Claimant's appearance. The Third Defendant also agreed that the Claimant fit the description given by the victims and the sketch and affirmed that he had reasonable grounds to believe that the Claimant was the suspect in the sketch.

29. Additionally, for some two weeks prior to the search, the Claimant had been under surveillance by the Second Defendant and other police officers. The Claimant testified that he was not aware that he had been under surveillance.

30. It is on this basis that the warrant was obtained according to the Second Defendant and the Court believes that he is speaking the truth. This evidence appears to the Court to be highly probable and is borne out by the warrant admitted into evidence. The Court therefore finds that the police were in possession of a warrant to search the premises and that warrant was shown and read to the Claimant.

31. Further, it is reasonable to infer that one of the reasons for conducting surveillance on the Claimant for some time before the search would be to gather enough information to obtain a warrant.

32. The Court notes that the Claimant is not in a position to assist the Court in making a determination on the issue of the obtaining of the warrant, and quite understandably so as the matters testified to by the Defendants in obtaining the warrant could not by their nature have been within the knowledge of the Claimant. The Claimant's failure therefore to challenge these facts has not been held against him.

The Arrest

33. It is the finding of the Court that having searched the premises the Defendants then proceeded to arrest the Claimant and in so doing handcuffed him prior to placing him into the police vehicle. In so finding, the Court has accepted the evidence of the Claimant that he was placed in the back (which this Court interprets to be the cargo area), of the E999 vehicle. It is clear that in order to do so it would have been necessary to handcuff the Claimant to restrict his movement while being transported to the police station.

34. The Defendants' case is that in the circumstances that have been put forward in evidence before this Court, there was lawful authority, pursuant to section 3(4) of the **Criminal**

Law Act[1] and section 46(1)(d) of the **Police Service Act**[2] to justify the imprisonment and as such, the Claimant's case must fail.

35. Section 3(4) of the **Criminal Law Act** provides as follows:

> *"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."*

36. The test as to whether a police officer has reasonable cause to arrest pursuant to section 3(4) of the **Criminal Law Act,** has both a subjective and objective element and is limited to the mind of the arresting officer. See ***Harrylal Singh v. AMOCO Trinidad Oil Company and Attorney General of Trinidad and Tobago*** C.A. 3 of 2002.

37. The subjective test refers to a genuine suspicion in the mind of the arresting officer that the Claimant had committed the arrestable offence. The objective test requires an examination of the grounds that were in the mind of the arresting officer at the time of the arrest and, further, an objective examination as to whether these constituted reasonable grounds for the suspicions claimed.

38. Once the objective test is satisfied, the onus is on the Claimant to establish that the subjective test had not been satisfied, that is, that the arrestor did not have the requisite genuine suspicion. **Mendonca J** as he then was in the case of ***Harold Barcoo v. Attorney***

[1] Chap 10:04
[2] Chap 15:01

General HCA 1388 of 1989 amplified on the objective test by citing **Diplock LJ** in ***Dallison v. Caffery***[3] as follows:

> *"The test whether there was reasonable and probable cause for the arrest or prosecution is an objective one, namely, whether a reasonable man, assumed to know the law and possessed of the information which in fact was possessed by the defendant would believe that there was reasonable and probable cause. Where that test is satisfied the onus lies on the person who has been arrested or prosecuted to establish that his arrestor or prosecutor did not in fact believe what ex hypothesi he would have believed had he been reasonable (See* ***Herniman v Smith*** *per* ***Lord Atkin****). In the nature of things this issue can seldom seriously arise."*

39. In this regard the Defendants argue as follows:

> Section 46(1)(d) of the **Police Service Act** provides as follows:
>
> A police officer may arrest without a warrant -
>
> (*d) a person in whose possession anything is found which may reasonably be suspected to have been stolen or who may reasonably be suspected of having committed an offence with reference to such thing;*

40. Unlike section 3(4) of the **Criminal Law Act,** the standard of proof that is required to show reasonable suspicion under section 46(1)(d) of the **Police Service Act** "is only the objective existence of reasonable grounds." In making this determination, the enquiry is not confined to the mind of the arresting officer (***Harrylal Singh v. AMOCO Trinidad Oil Co. and A.G.*** CA No. 3 of 2002). In the ***Harrylal Singh*** case the Court of Appeal examined the difference between the standard of proof that is required with respect to

[3] [1964] 2 All ER 610 at 619

section 3(4) of the **Criminal Law Act** as compared to section 46(1)(d) of the **Police Service Act** and Mendonca JA noted as follows:

> *"What matters under Section 3 (4) is what is in the mind of the arresting officer. This does not appear to me to be so in relation to Section 46 (1) (d). It seems to me that from the use of the passive tense that the Section is more flexible and broader in scope. It provides for a broader test whether there was reasonable suspicion and does not confine the enquiry to matters in the mind of the arresting officer. What seems to me to be required under Section 36 (1) (d) is only the objective existence of reasonable grounds." (Emphasis Added)*
>
> (See also ***O'Hara v Chief Constable of the Royal Ulster Constabulary*** [1997] 1 All ER 129 at page 134 para.(b) of the judgment **Lord Steyn**, quoting from *Feldman Civil Liberties and Human Rights in England and Wales* (1993) p 199, where it states that "the officer need neither have the reasonable grounds himself nor himself suspect anything; he can simply follow orders.")

41. So that the Defendants argue that the Court can in fact consider not only the mind of the arresting officer but also information emanating otherwise under section 46 (1) (d).

42. However, in the Court's view there was an absence of reason to suspect that the items were stolen and therefore the Defendants cannot rely on the broader test set out in section 46 (1) (d).

The Information

43. The information in the possession of the police at the time of arrest on the evidence was as follows:

    1. There had been a series of burglaries and rapes in the area.

2. The victims provided descriptions which were reduced into an artist sketch.

3. The Claimant was under surveillance for some two weeks.

4. The victims had spoken of a pungent odor and the Claimant had a pungent odor.

5. The Claimant's home was searched and items seized.

44. There is no evidence whatsoever which makes or attempts to establish a link between the items seized at the Claimant's home and those taken from victims. No description has been given of any of the stolen items so that the Court is unaware as to the basis for the officers concluding that the Claimant may have been in possession of stolen items after conducting the search, thus triggering their power under 46 (1) (d). At the very least, the Defendants could have demonstrated some similarity (if there was any) between the items stolen and items found at the home of the Claimant to raise suspicion that he was at the least in possession of stolen items.

45. Further, the descriptions of the seized items listed on the back of the warrant, of their own accord, appear to raise no suspicion that these items may have been stolen. For example, should one be found in possession of several items of the same type or items which are clearly marked as belonging to others, one would have reason to suspect that those items may have been stolen. But this is not the case. Many items were seized, all appearing to be those of common everyday usage.

46. So that it is the finding of the Court that the Defendants may only rely on the test required under section 3 (4) of the **Criminal Law Act** in this case as no foundation has been laid for the application of section 46(1)(d) of the **Police Service Act.** The Court must therefore examine the information which was in the mind of the arresting officer at the

time of the arrest (the objective test) to determine whether they amount to reasonable grounds for suspicion. The Court must then go on to consider the genuineness of the belief of that officer (the subjective test).

The information in the mind of the arresting officer at the time of arrest

47. According to the witness statement of the Second Defendant, the Third Defendant was the arresting officer. The Third Defendant having given a witness statement the Court would have expected to glean from that witness statement, the information of which he was in possession and which was operating on his mind at the time of arrest but the witness statement is conspicuously silent on the issue. However in cross examination, the witness testified as to his participation in the investigation in several respects.

48. Firstly, he assisted with the investigation into about five of the reports and went to the home of one victim with whom he spoke. Secondly, he personally recorded a statement from one of the victims and was given a description of the assailant which closely resembled the description of the Claimant at the time. Thirdly, he accompanied the surveillance team, and observed the Claimant.

49. These by themselves, without consideration of the sketch or any other factor would be sufficient grounds in the Court's view to raise reasonable suspicion in the mind of the arresting officer that the Claimant may have committed at least one of the offences, that is the one in respect of which he recorded a description from the witness. The description given to the Third Defendant is to the Court's mind pivotal to the consideration of whether there was sufficient to constitute reasonable cause for the Claimant's arrest. Put another way, without it the Defendants would have not been in as strong position as they now stand.

50. But additionally, the Third Defendant testified that he knew that the police artist produced a sketch of the suspect based on reports of the victims, bearing in mind that he recorded one such report himself and that he reaffirmed the Claimant's likeness when he saw the sketch. The Third Defendant is entitled to consider the sketch when making an assessment as to suspicion. In this regard, it is the testimony of the Third Defendant that he found that the sketch resembled the Claimant.

51. The issue as to the admissibility of evidence to show reasonable and probable cause in circumstances where the information was provided to the officer by a third party and that third party was not available for cross examination was settled in the Court of Appeal case of ***Chandrawatee Ramsingh v. AG*** Civ. App, 111 of 2007 paras. 18 to 21. At paragraph 21 the Court concluded that such evidence was not hearsay and was admissible pursuant to the well known ***Subramaniam*** principle to establish reasonable and probable cause. In coming to this conclusion the Court had regard to and applied the dictum of Lord Hope of Craighead in ***O'Hara v Chief Constable of the Royal Ulster Constabulary*** [1997] AC 286 at 238A:

> *"The question is whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the arresting officer. It is the arresting officer's own account of the information which he had which matters, not what was observed by or known to anyone else. The information acted on by the arresting officer need not be based on his own observations, as he is entitled to form a suspicion based on what he has been told. His reasonable suspicion may be based on information which has been given to him anonymously or it may be based on information, perhaps in the course of an emergency, which turns out later to be wrong. As it is the information which is in his mind alone which is relevant however, it is not necessary to go on to prove what was known to his informant or that any facts on which he based his suspicion were in fact true."*

52. The Court in ***Chandrawatee Ramsingh v. AG*** (supra) relied on the dictum of **Lord Bridge** in ***R v Blastland*** [1985] 3 WLR 345 at page 350H:

> *"statements made to a witness by a third party are not excluded by the hearsay rule when they are put in evidence solely to prove the state of mind either of the maker of the statement or of the person to whom it was made. What a person said or heard said may well be the best and most direct evidence of that person's state of mind. This principle can only apply, however, when the state of mind evidenced by the statement is either itself directly in issue at the trial or is of direct and immediate relevance to an issue which arises at the trial."*

53. Suspicion has been described as:

> *"Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking; "I suspect but I cannot prove". Suspicion arises at or near the starting point of an investigation of which the obtaining of prima facie proof is the end. When such proof has been obtained, the police case is complete; it is ready for trial and passes on to its next stage. It is indeed desirable as a general rule that an arrest should not be made until the case is complete. But if arrest before that were forbidden, it could seriously hamper the police. To give power to arrest on reasonable suspicion does not mean that it is always or even ordinarily to be exercised. It means that there is an executive discretion. In the exercise of it many factors have to be considered besides the strength of the case. The possibility of escape, the prevention of further crime and the obstruction of police enquiries are examples of those factors with which all judges who have had to grant or refuse bail are familiar."* ***Shaaban Bin Hussien and Others v Chong Fook Kam and Another*** [1970] AC 942.

54. It is therefore the Court's finding that when viewed by a reasonable man, assumed to know the law and possessed of the information which in fact was possessed by the Third

Defendant, the sum of all the information in possession of the Third Defendant by the time he arrested the Claimant would more likely than not have given rise to a suspicion that the Claimant committed one offence of burglary at the very least.

55. Further, once the objective test is satisfied, the onus is on the Claimant to establish that the subjective test had not been satisfied, that is, that PC Worrel "did not in fact believe what *ex hypothesi* he would have believed had he been reasonable." (See ***Dallison v. Caffery*** as cited in the ***Barcoo*** case at paragraph 6 above). The Claimant, in this case, has failed to demonstrate that the belief held by the Third Defendant was one which was not genuinely held by him.

56. The Claimant has relied on ***Ivan Neptune v The Attorney General of Trinidad and Tobago*** [CV2008/03386] and ***John Henry v The Attorney General of Trinidad and Tobago*** [CV2007/03897] in which **des Vignes J** held that the arrest and imprisonment of the Claimants were without reasonable and probable cause without stating the basis upon which the case was relied upon.

57. In ***Ivan Neptune v The Attorney General of Trinidad and Tobago*** (supra) the decision of **des Vignes J** turned on the unreliability of the evidence proffered by the witnesses for the defence. The facts of that case are distinguishable from the facts of this case. In that case the Defendants failed to discharge the burden upon them to prove that the arrest was lawfully justified having regard to the evidence presented. In the instant matter, the Court has found that the evidence of the Defendants is reliable and they have therefore discharged the burden placed on them of proving the arrest of the Claimant was carried out with lawful justification.

58. Similarly, in ***John Henry v The Attorney General of Trinidad and Tobago*** (supra) **des Vignes J** explained that the Defendant had faced two difficulties in its efforts to discharge the onus of justifying the arrest of the Claimant. Firstly, there was an obvious difference between the pleaded Defence and the evidence led from the witnesses and, secondly, the two witnesses gave different versions of the conversation between them concerning the instructions to arrest the Claimant. It was on an evaluation of the evidence given that the learned judge came to the conclusion that the Defendant had failed to discharge the onus of justifying that the arrest of the Claimant. This case can be distinguished in that the findings of that Court were based on its application of the law to the evidence proffered in that particular case.

59. The legal principles applied in the above two cases are consistent with the principles applied herein. The authorities relied on by the Claimant cannot therefore, in the Court's view, assist the Claimant. Further, while the Claimant in his submissions has referred to these cases, he has not set out any legal principles which emanate there from which may be of assistance to him and the Court has likewise found none.

Other Claims

60. The Claimant has alleged that when he brought the items which were seized back to his house, he noticed that a set of twenty spanners which cost $250.00 were missing. However, in the absence of proof by the Claimant that the spanners even existed or that they had been seized, the Court finds that the Claimant has not proven on a balance of probabilities that the items were seized. The Court accepts that the list of items endorsed on the back of the search warrant is a list of the items which were seized.

61. The Claimant further claimed that on the date of his arrest he had purchased five bags of cement at a cost of $35.00 per bag. He alleged that the cement was placed at the side of his house as it was to be used that day. It was the Claimant's assertion that on the Friday night while he was in police custody rain fell and the bags of cement hardened and could not be used. Despite the absence of proof that these bags existed, this Court finds that having regard to the ruling of the Court that the arrest was a lawful one, the Claimant cannot therefore recover the cost of the bags of cement. This determination is made in any even without consideration of the issue of whether damages were recoverable for those items even if the arrest was found to be unlawful, in keeping with the learning on remoteness of damages.

62. Additionally, the Court believes that the Claimant was cautioned and informed of the reason for his arrest and his right to an attorney. In any event the Court accepts that Claimant became aware of the allegations from the moment the warrant was read to him. Certainly he would have been aware of the allegations after being questions by several police officers in relation to the several incidents of burglaries and rapes.

63. The Court also accepts the evidence of the Defendants that the Claimant was fed while in custody as set out in the Prisoner's Feeding Record. The record reflects that there were several persons who were in custody and who were also fed at the same time. It is unlikely that a distinction would have been made between the other persons and the Claimant by the officer in charge of feeding.

64. The Court also finds that there is insufficient evidence from which the court can conclude that the keys to the Claimant's house was not returned to him. Firstly, there is no record of the keys to the house being taken. The Claimant mentions this in a general way when speaking of his collections of the items but it is nowhere recorded. The circumstances under which the Defendants took the keys to the house, that is where and when are

nowhere set out. Neither is it included on the list of items set out on the back of the warrant. Further, there was no complaint on the part of the Claimant of missing keys according to the witness Treavajo. So that the court will not allow the claim for the change of locks.

A possible claim for personal injury

65. The Claimant pleaded that upon his arrest he was placed in the back of an E999 Police Jeep along with his items and that an officer slammed the door on his shoulder. He testified that about two weeks after he was arrested he discovered that his left breast was enlarged. The Claimant gave evidence that he sought medical attention at the Port of Spain General Hospital and at Mount Hope Hospital where he saw a Dr. Teelucksingh. The Claimant further stated that he had head x-rays and a head scan done and spent approximately $600.00 on medical attention.

66. The Claimant has failed to attach any medical report in support of his contention, but has instead provided the following:

    i. A copy of a receipt issued by the Eric Williams Medical Sciences Complex dated 11th November 1999.

    ii. A copy of a cash receipt issued by the Eric Williams Medical Sciences Complex dated 16th March 2001 for a "CT Pit Fossa".

    iii. A copy of an invoice issued by the Eric Williams Medical Sciences Complex dated 12th April 2001 for "Endocrine (R)"

    iv. A copy of a cash receipt issued by the Eric Williams Medical Sciences Complex dated 11th October 2002 for a Medical Report.

67. The Court however sees no causal link between the closing of the door on the Claimant's shoulder if it in fact occurred as he testified and the chest pains experienced by the Claimant two weeks later. There is no medical evidence of injury whatsoever in relation to any injury sustained by the closing of the door and none in relation to the alleged chest pains. In addition to this, the receipts provided by the Claimant in support provided no assistance to the Court.

68. More than this however, the Claimant has not pleaded a claim for assault and battery, neither a claim for negligence given the circumstances of the case. It is not for the court to presume such a claim when none is made. Should such a claim have been made in the pleadings, the Defendants would have been given an opportunity to respond to it in their Defence. Further, neither are such claims set out in the written submissions of the Claimant. The Claimant in fact sets out the only issue for determination at paragraph 40 of his submissions as being whether "*the officers had reasonable and probable cause for arresting and imprisoning the Claimant*".

69. So that even though the court has found it is more likely than not that the Claimant was transported in the cargo booth of the E999 vehicle, there is no medical evidence to support the Claimant's assertion that in an effort to close the door, commonly referred to as the tail gate, he was hit on his shoulder by the said door. The court therefore has not found that the Claimant has proven on a balance of probabilities that the door was slammed on his shoulder resulting in injury. The court will therefore not make an award in that respect, the court being unsatisfied that the Claimant was injured in the process and there being no claim for same.

70. Before disposing of this matter however, the court feels compelled to highlight some observations in respect of the matters complained of in the evidence in this case which appear to be of national applicability and interest. This court has observed the

development of what appears to be a disturbing trend in the transportation of those detained by the police. The images are widely seen by the national community in both the print and other media. These images are of detained persons being transported in some police vehicles, namely sports utility vehicles and pick-up vans, within the confines of areas specifically designated for the transportation of cargo. This is a dangerous modus operandi and it would be to the benefit of the public at large that this practice be discontinued immediately. The reasons for such cessation, though obvious to the Court, bear some repeating.

71. Firstly, and perhaps the most obvious is that human beings are not cargo. The detention of a person does not in any way diminish from his entitlement to be treated with the dignity afforded to all members of the public. The person so transported may, as a consequence, suffer public embarrassment and denigration.

72. Secondly, it may well be apparent to the reasonable man that an attempt to fit a human body or several bodies in an area designated for cargo may result in several adverse physical consequences to the persons being transported. It may be simply awkward. Put another way, sport utility vehicles and pick-up vans are not designed to carry human beings in their cargo booth. There are no seats and depending on one's physical characteristics, fitting into a cargo booth in a reasonably comfortable manner may be exceedingly difficult. It may require some persons to contort themselves in order to sit. One could also well surmise that there will be for some an immense challenge in entering and exiting the cargo booth especially when handcuffed. This is so as the vehicles appear simply not to be designed for passenger entry and exit to the cargo booth.

73. Thirdly, it is dangerous. This unsavory practice begs the question of what is likely to happen to the detainee should the vehicle be rear ended by another vehicle while in motion. It can be reasonably concluded that such an accident will as matter of course

result in injury to the passenger in the cargo booth. In so doing therefore the police may well be knowingly taking an unnecessary risk with the safety of the detainee. By logical extension, the issue of liability is bound to arise.

74. Fourthly, without determining the issue of legality, this Court observes that as a matter of course, police officers quite correctly, routinely stop and admonish drivers who attempt to convey passengers in the cargo booths of their vehicles. However the police are expected to abide by the very rules which they seek to enforce. To do to the contrary, may tend to reduce the credibility of the police service as a whole as relates to the enforcement of rules which are applicable to all, both public and police alike.

75. Fifthly, the practice seems not to accord with what one would expect to be good twenty-first century policing practice and initiatives.

76. The court trusts that the court's concerns expressed herein will be brought to the attention of the Honourable Attorney General.

77. Finally, in relation to the issue of costs, the court notes that the Claimant is legally aided.

Disposition

78. It is therefore ordered as follows:

    i. The claim is dismissed.

    ii. Each party is to bear his own costs.

Dated this 28th day of March, 2012.

Ricky Rahim

Judge