

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2012-00475

BETWEEN

Carter Francis

Claimant

AND

The Attorney General of Trinidad and Tobago

Defendant

Before the Honourable Mr. Justice Ricky Rahim

Appearances:

Mr. B. Charles instructed by Ms. S. Charles for the Claimant.

Mr. K. Hemans instructed by Ms. K. Oliverie for the Defendant.

Judgment

1. The Claimant claims damages, inclusive of aggravated and exemplary damages, for assault and battery and malicious prosecution. The Claimant is a Corporal of Police and at the material time was attached to the Port of Spain Criminal Investigation Department based at the Besson Street Police Station.
2. The incident which gave rise to the Claimant's claim occurred on the 4th February 2008, at the Arima Police Station and is disturbing to say the least. That such an incident would in the first place occur at a police station and of even more concern, between police officers is cause for serious concern.

The Claim

3. The Claimant's case is that on the said day, Carnival Monday he arrived at the Arima Police Station at 8:45 pm accompanied by WPC Joanna Baptiste. Both officers were dressed in plain clothes. As the Claimant and WPC Baptiste approached the entrance, a man rushed past them and into the station. PC Lewis, who had positioned himself at the entrance, then held the Claimant's right hand and said "no one is to enter". The Claimant claims that PC Lewis continued to hold his right hand and that he and WPC Baptiste waited at the door. While there, PC Figaro approached the Claimant and said "Get out of the fucking station. Come out the fucking station". PC Figaro then grabbed the Claimant by his neck with his left hand. The Claimant avers that he told PC Figaro "You can't be speaking to me" and PC. Figaro then kicked the Claimant in his groin area. When the Claimant tried to free himself he was held back by PC Lewis and other officers had to restrain PC Figaro.
4. The Claimant claims he then went to the charge room in an attempt to make a report and was told by Cpl. Williams No. 11632 to "kill that". At that time Police Inspector Nelson entered the room and the Claimant complained to him about the attack. Inspector Nelson then instructed Sergeant Ablack No. 11159 to record a report from the Claimant and to

make follow up enquires. The Claimant avers that although he made the report he did not observe Sgt. Ablack making contemporaneous notes in the police station diary but was instead making notes on a sheet of paper. After making the report, the Claimant left the station and sought medical attention at the Arima Health Facility.

5. The Claimant was subsequently charged by Insp. Nelson for Assaulting Tricia Balewa another police officer and using obscene language. There was a trial at the Arima Magistrate's Court and all the charges were dismissed on the 2nd September 2009. The Claimant contends that the prosecution was instituted with malice and without reasonable and probable cause as the charges against him were fabricated and amounted to an attempt by the officers to defend themselves against the report he had made against them.
6. The Claimant claims that as a result of the assault on him, he suffered both mental and physical distress. Further, that the attack and prosecution was an arbitrary exercise of powers and was oppressive and unconstitutional.

The Defence

7. The Defendant is sued pursuant to the **State Liability and Proceedings Act Chap 8:02**. Although the Defendant admits that the Claimant was at the entrance of the police station on the said day, it is denied that the events occurred as averred by the Claimant. Instead, the Defendant avers that PC. Figaro was stationed outside the station and a man ran passed him into the station and the man was being followed by a crowd. PC Lewis positioned himself outside the front door to prevent anyone else from entering the station. The Claimant and WPC Baptiste are alleged to have been in the crowd of persons following the man and were at the top of the stairs to the entrance of the station when PC Figaro attempted to enter the building. PC Figaro requested that the Claimant step aside on several occasions but the Claimant allegedly responded "No" or words of a similar effect each time. When PC Figaro attempted to open the door, the Claimant allegedly pushed him up against the wall and shouted "What the fuck wrong with you" or words of

a similar effect. PC Figaro struggled to free himself of the Claimant but was unable to do so. WPC Balewa attempted to intervene and the Claimant allegedly said “What the fuck wrong with you” or words of a similar effect and struck WPC Balewa in the face. PC Lewis, Cpl. Williams and other officers assisted in retraining the Claimant.

8. According to the Defendant, the Claimant was led into the charge room. It was at this point that the Claimant identified himself as a police officer and Cpl. Williams told the Claimant that the incident was a miscommunication and that he should end the matter there. The Claimant indicated that he was unwilling to do so and Insp. Nelson instructed Sgt. Ablack to conduct enquiries into the incident.
9. A report was made by the Claimant and was in fact contemporaneously recorded in the station diary.
10. WPC Balewa was treated by Dr. Rajendra Kumar Navuri for the injuries arising from the Claimant’s blow. Although the Defendant admits that the Claimant was treated at the Arima Health Facility, a challenge is made with respect to the medical report obtained subsequent to the Claimant being seen and treated at the health facility. In this regard the Defendant avers that the report does not state with sufficient particularity the nature and extent of any examination to substantiate the findings reached in the report.
11. The Defendant avers that the officers acted in good faith and without malice and in the belief that they were discharging a public duty in prosecuting the Claimant and further that there was reasonable and probable cause to do so.
12. Further, it is contended that any physical injury or mental anguish suffered by the Claimant resulted from the police officers’ application of such force as reasonable in all the circumstances and no more than necessary to subdue the Claimant and prevent him from further breaching the peace of causing further harm.

Undisputed facts

13. The undisputed facts are therefore that:

- a. The Claimant was present on the compound on the day in question;
- b. A man ran into the station before the Claimant could enter the building;
- c. There was an altercation involving PC Figaro and the Claimant;
- d. The Claimant reported the incident while at the station;
- e. The Claimant visited the Arima Health Facility subsequent to giving the statement;
- f. The Claimant was charged on a subsequent date with assaulting Tricia Balewa and using obscene language. He was tried for these offences and the charges were dismissed.

Issues

Assault and Battery

14. An assault is the threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact. Battery is intentional or reckless use of unlawful force on another person, resulting in harmful or offensive contact. See **Sedley Skinner v The Attorney General of Trinidad and Tobago CV 2006-3721 @ paragraphs 25 and 26** per Pemberton J. In this case, the Defendant has admitted that there was an application of physical force but claims that it was reasonable in all the circumstances and no more than necessary to subdue the Claimant and prevent him from further breaching the peace of causing further harm.

15. Thus, the issue that arises in relation to the claim in assault and battery is:

- i. Whether there was a lawful basis for applying same.

Malicious Prosecution

16. In a claim for Malicious Prosecution, the claimant must prove (a) that the law was set in motion against him on a charge for a criminal offence; (b) that he was acquitted of the charge or that otherwise it was determined in his favour; (c) that the law was set in motion without reasonable and probable cause; (d) that in so setting the law in motion the prosecutor was actuated by malice; and (e) that he has suffered damage: see *Halsbury's Laws of England Volume 97 (2010) 5th Edn. Para 627, 636*. Since (a) and (b) were not in dispute, the issues that the court identified were as follows:

- (i) Whether Insp. Nelson had reasonable and probable cause to set the law in motion against the claimant;
- (ii) Whether Insp. Nelson, in so doing had been actuated by malice.
- (iii) If it is found that Insp. Nelson lacked reasonable and probable cause and there was malice involved, whether the claimant has suffered damage.

Assault and Battery

17. While the burden of proving the physical force rests on the Claimant, where the Defendant admits the physical force but proffers a defence, the burden shifts to the Defendant to justify the act. In this case, that justification would be on the ground that it was committed in the defence of his own person and that he used no more force than was reasonably necessary or at least avoided force that was grossly disproportionate: see **Halsbury's Laws of England VOLUME 97 (2010) 5TH EDITION para 532**.

18. It is the Defendant's case that PC Figaro was attacked by the Claimant when he attempted to open the door to the station. The Claimant is alleged to have pushed him up against the wall and shouted "What the fuck wrong with you". It was this attack that PC Figaro allegedly attempted to break free of which resulted in the admitted use of physical force on the Claimant.

19. On the other hand the Claimant's case is essentially that it was the Claimant who was in fact attacked by PC Figaro and the need for self defense did not arise in those circumstances.

20. To discharge the burden of proving it's defence, the Defendant must establish that:

(i) PC Figaro's belief that he had to act in self-defence was honest and reasonable, even if it was a mistaken belief; and

(ii) having regard to all the circumstances of the case, including the fact that the action was taken in the heat of the moment, the action taken by him in self-defence was reasonable in that no more force was used than was necessary:

see Neil Budhoo v Allan Campbell HCA No. S-2355 of 2004, CV-2006-00054; Anino Garcia v AG CV No. 2009-03273 See also *Clerk v Lindsell on Torts* 20th edn paragraph 30-02:

"It is lawful for one person to use force towards another in defence of his own person, but this force must not transgress the reasonable limits of the occasion, what is reasonable force being a question of fact in each case."

Honest and reasonable belief that he had to act in self defence

21. In attempting to determine this issue, the court must determine on the evidence firstly whether the Claimant attacked PC Figaro or whether PC Figaro attacked the Claimant (as is the Claimant's case). The parties are in direct opposition as to the primary events that occurred in relation to a finding in this regard. It is therefore entirely a fact finding task.

Evidence

22. The court has identified the following areas of contention on which the evidence is important in determining the issue:

- (i) Was there a crowd following the unknown man who ran into the station;
- (ii) Was PC Lewis by the station door when the Claimant attempted to enter the station;
- (iii) Did PC Lewis hold the Claimant's hand;
- (iv) Who initiated the altercation between the Claimant and PC Figaro;
- (v) Did PC Figaro choke the Claimant or did the Claimant choke PC Figaro;
- (vi) Did PC Figaro kick the Claimant in the groin area;
- (vii) Was WPC Balewa hit by the Claimant

Evidence on behalf of the Claimant's case

23. Giving evidence for the Claimant was the Claimant himself and WPC Baptiste.

24. The Claimant's evidence was that immediately after the man ran into the station, PC Lewis, who appeared at the door, held onto his right hand and said no one was to enter. The Claimant denied that there was a crowd following the man and stated that there was also no crowd gathered at the entrance.

25. The Claimant further testified that PC Figaro then approached the door and said to him "Get out the fucking station. Come out the fucking station" and then grabbed the Claimant by the neck with his left hand and began choking the Claimant. The Claimant says that he told PC Figaro that he could not be speaking to him like that and PC Figaro kicked him in the groin area. When the Claimant tried to free himself, he was held back

by PC Lewis and eventually other officers had to restrain PC Figaro. The Claimant denies that WPC Balewa attempted to intervene and further denies that he assaulted her.

26. In relation to the injury to his groin area, the Claimant has tendered a medical report dated 27th November 2008 by Dr. Shaik Alla Bakshu. In the report the Claimant was diagnosed with soft tissue injuries. On examination the doctor observed scratch marks on the neck area and a complaint of pain in the scrotal area. He was treated with tetanus injection, BNT powder and pain reliever (Olfen) for 3 days.
27. During cross examination, the Claimant explained that when PC Figaro reached the entrance he (the Claimant) was holding the door and Lewis was in front of him (inside the station) holding the door and his hand on it. WPC Baptist was behind him. The Claimant testified that the grip on his hand by PC Lewis was a restraint from him actually retaliating or defending in any physical way the actions of PC Figaro
28. The Claimant further testified in cross examination that while PC Figaro was choking him all he did was to speak to him. He gave evidence that it was not in his mind immediately that PC Figaro was committing a crime.
29. WPC Baptiste testified that after the man ran past them and into the station, PC Lewis opened the door from inside the station and held onto the Claimant's hand. According to WPC Baptiste, PC Figaro appeared and began cursing at them. PC Figaro then ran up to the Claimant and began choking him. WPC Baptiste gave evidence that the Claimant then told PC Figaro to let him go. At this stage PC Figaro was still cursing and the Claimant was attempting to push him off and PC Lewis was still holding the Claimant's hand while all this was occurring. It was WPC Baptiste's evidence that PC Figaro then kicked the Claimant in his groin area and soon after Cpl Williams intervened and pulled PC Figaro off.

30. WPC Baptiste further testified in cross examination that there were a lot of people in the station yard when they arrived as it was carnival but she could not say whether they were civilians or police officers.
31. The evidence of the physical layout of the Arima police station is important. When one leaves the roadway and enters the compound of the station, almost immediately one meets stairs that takes you up to a corridor which leads to the front door of the station. The corridor is not one of substantial length according to the evidence. WPC Baptiste explained that she was walking along that hallway behind the claimant when PC Lewis held on to the Claimant's hand at the door to the station and prevented them both from going in. PC Figaro then ran from the roadway and began to choke the Claimant. WPC further explained that the corridor or hallway is at the entrance to the station and she would not consider it in the station. Although WPC admits to witnessing the Claimant being choked it is curious that she did not intervene. When questioned on this issue she gave evidence that she stood and watched PC Figaro choke the Claimant as she had recently been sick and had had surgery and knew her limitations as a consequence.
32. WPC Baptiste further testified in cross examination that when Figaro ran in there were officers walking up the stairs, both men and women. However, WPC Baptiste insisted that WPC Balewa was not one of those women.
33. The court thinks that it is strange, to say the least, that WPC Baptiste would witness the choking of her friend, (she admitted to the Claimant being her friend in cross examination) by a man who she did not at the time know to be a police officer and not deal with the situation as a matter of urgency. While WPC Baptiste testified that she could not intervene for health reasons, she observed persons in the yard who she identified as police officers but yet she did not seek assistance immediately or urgently. She gave evidence that when Figaro ran in there were officers walking up the stairs, both men and women, so it would have been a natural reaction, if the situation had unfolded as she said, to seek help immediately. Nevertheless the court also appreciates that this may have impractical because the entire incident appears to have occurred very quickly. What

is clear from the cross-examination though is that WPC Baptiste attempted to identify the claimant as police officers by calling out to Figaro that he was in fact a police officer. This was in the court's view the sensible thing to do in the circumstances. She testified however that quite astoundingly (in the court's view) that no one was taking her on.

34. But it gets worse. WPC testified in cross-examination as follows;

"I did not know Figaro before. He was in black jeans and black jersey. I did not know he was a police officer. He was cursing coming in and talking to Lewis so I would assume he was a police at the time."

35. The import of this evidence is conceptually disturbing. If the court is to understand this officer she is essentially saying that because Figaro was dressed in a particular manner and because he was cursing (no doubt loudly enough for her to hear), she was able to surmise that he was a police officer. It is a sad day for the police service and does not augur well when one of the criteria used by one police officer to identify another is that of the other's bold use of foul language within the very precincts of a police station.

36. Further, the court notes that the Claimant testified in cross examination that he was taller and broader than PC Figaro but that PC Figaro was choking him with one hand. WPC Baptiste gave evidence in cross examination that PC Lewis only held one of the Claimant's hands (which according to the evidence was holding on to the door) and he was using his other hand to pull off PC Figaro's hand from the claimant's neck. The Claimant says that he was able to talk while this was occurring. It is also his testimony in cross-examination that he was kicked in the groin by PC Figaro.

37. The court is of the opinion that the facts as set out in the testimony of the claimant and his witness are quite plausible. There are however two matters which the court will have to consider in this regard. The first is the absence of WPC Balewa from the claimant's version of events. The second is what appears to be the implausibility (to say the least) of

the claimant being held by the neck, being able to speak but at the same time not identifying himself as a police officer. The court shall return to these matters later on.

Evidence on behalf of the Defendant

38. The evidence on behalf of the Defendant was given by PC Figaro, WPC Balewa and Insp. Nelson. Insp. Nelson was not a witness to the incident between the Claimant and PC Figaro. His evidence centres on his observations after the incident and the reports he received after the altercation in relation to it. Thus, his evidence is material only to the charges proffered against the Claimant and therefore the claim for malicious prosecution.
39. PC Figaro testified that after the man ran into the station, a crowd converged at the entrance of the station. He began walking up the stairs and passed through the crowd. When he reached the top of the stairs, the Claimant was blocking his path to enter the building. He testified that he requested the Claimant to move but the Claimant refused to do so. According to PC Figaro, when he attempted to push open the door, the Claimant put his right hand around his neck and pushed him against the wall. PC Figaro gave evidence that all he did was try to push away the Claimant, he insisted that he did not hit the Claimant in any way. It was the evidence of PC Figaro that WPC Balewa walked up the stairs and attempted to part the scuffle, and when she attempted to do so she was struck on the cheek by the Claimant.
40. PC Figaro further testified that after the Claimant struck WPC Balewa, Cpl Williams came through the station door and approached the Claimant. PC Lewis also approached the Claimant at this point and both Cpl. Williams and PC Lewis restrained the Claimant and led him into the station.
41. However, in cross examination PC Figaro testified that before the altercation, when the crowd was gathered at the stairs, PC Lewis was at the door leaning against it (from the

inside) facing forward and was preventing persons from entering into the charge room. He testified further that the Claimant was in his way and that he did not say anything to PC Lewis because it was the Claimant who was blocking him. Although he stated that the Claimant was blocking him, he admitted that he could not open the door unless PC Lewis allowed the Claimant to open the door. Further, he testified that when the scuffle ensued, PC Lewis did nothing to end it initially but stood bracing the door. While PC Figaro testified that the Claimant was choking him, in cross examination he admitted that in the report he gave to Insp. Nelson on the 6th Feb 2008, he never stated that the Claimant put his hand around his neck. According to PC Figaro this was because the report was a brief one.

42. WPC Balewa arrived at the station while the altercation between the Claimant and PC Figaro was on going. She testified that she saw Figaro and the Claimant pulling and pushing each other. Further, she claimed to have seen one of the men's hands around the other's neck but could not figure out who was doing what notwithstanding the fact that she knew PC Figaro well and immediately recognised him. She however did not see any one kick the other.

43. WPC Balewa testified that PC Lewis was standing in the passageway but his back was turned to Figaro and the Claimant. She gave evidence that she attempted to intervene but the Claimant said to her "What the fuck you doing" and hit her to her left cheek. After she was hit PC Lewis and other officers who were in the charge room broke up the fight.

44. During cross examination, WPC testified that when she arrived at the police station, she was with three other officers. However, she was the only one who intervened. She testified that **she ran past PC Lewis** and intervened in the fight.

45. This aspect of WPC Balewa's evidence is, in the court's view, highly implausible for several reasons. Firstly this evidence is inconsistent with all the other evidence on this issue from both the claimant's case and the defence's case. The evidence in this regard is that PC Lewis was at the door leaning against it (from the inside) facing forward and was

preventing persons (including the claimant) from entering into the charge room. It therefore means that if one was looking out of the station from the charge room through the glass door and down the corridor to the roadway, PC Lewis would have been the first person in the line of officers who were participating in the commotion that day. He was the door keeper as it were. Then there would have been the claimant who was trying to get into the station. With him would have been Figaro and then WPC Baptiste. It could therefore not be true to say that WPC Balewa would have to run past PC Lewis to intervene in the commotion. That makes no sense whatsoever. It is clear from the evidence of WPC Balewa herself that she had come from outside of the station. Why then would she have to pass PC Lewis. In passing PC Lewis she would have had to pass everyone else including the integral players in the commotion. The court therefore does find WPC Balewa's testimony in this regard to be unreliable.

46. Further, the court does accept as plausible that the officers who admittedly arrived with WPC Balewa would stand by and not intervene in breaking up the fight. This conclusion would go against all reason. What is more, WPC Balewa makes no mention of a crowd of persons on the stairs contrary to PC Figaro's version of events. Instead she testified that there were two concrete benches on the western side of the stairs leading to the entrance and that there were people standing in the vicinity of both benches. In cross examination she gave evidence that although she couldn't recall how many persons were at the benches at the western side of the stairs, there were a few persons and they were dressed in plain clothes and appeared to be civilians. PC Figaro's evidence was that there was a crowd gathered at the stairs and that he had to pass through the crowd to get to the entrance.

47. In relation to WPC Balewa's injuries she testified that on the same day she visited the Arima Health Facility and has tendered a medical report by Dr. Rajendra Kumar Navuri. She was assessed as suffering from *minimal swelling to the left side of the face* probably inflicted with a blunt object with a mild degree of force.

Submissions and analysis

48. The Defendant submitted that the court must determine which version of events is more likely in light of the evidence. Accordingly, the court must check the impression the evidence of the witness makes upon it against (1) contemporaneous documents (2) the pleaded case (3) the inherent probability or improbability of the rival contentions: **Horace Reid v Dowling Charles and Percival Bain Privy Council App. No. 36 of 1987.**
49. The Claimant submitted that its witnesses were unshaken and truthful. Further it was submitted that the contradictions in the versions have raised disputed issues of fact, and therefore critical analysis and scrutiny is required.
50. The court agrees with both submissions and accepts the authority submitted by the Defendant.
51. The contemporaneous documents relevant to this issue therefore were:
- i. The medical reports of the Claimant and WPC Balewa;
 - ii. The Statements given by PC Figaro, WPC Balewa and Cpl. Williams (whose statement was annexed to Insp. Nelson's witness statement);
52. The court is of the view that the medical report of the Claimant confirms that an altercation occurred. It does not assist the court in determining the instigator nor does it assist in the issue of whether self defence arose.
53. Further, WPC Balewa's medical report confirms that she has struck during the altercation. It does not tell the court who struck her. In this regard the court notes Cpl. Williams' Statement where he says that he observed the Claimant throwing a punch at PC Figaro which missed him and hit WPC Balewa.

54. When the court considers the evidence given by PC Figaro and WPC Balewa, there is an inconsistency in the Defendant's pleaded case that there had been a crowd of persons following the unknown man who ran in the station. This is a key element as PC Figaro specifies that he had to pass through the crowd and when he got to the front of the crowd the Claimant, who was at the front refused to let him through and then assaulted him. The chain of events proffered thus by PC Figaro and WPC Balewa does not add up.

55. On the evidence the court finds that:

- i. There was no a crowd following the unknown man who ran into the station;
- ii. Immediately following this, PC Lewis positioned himself at the entrance to the station and prevented anyone from further entering. PC Lewis held onto the Claimant's hand and told the Claimant not to enter.
- iii. At the time PC Lewis was unaware that the Claimant was a police officer;
- iv. PC Figaro held on to the neck of the Claimant. The medical evidence of the Claimant confirms that the Claimant's neck was held by PC Figaro. There is no medical evidence to support the testimony of PC Figaro that the Claimant held on to his neck.
- v. The medical evidence supports the Claimant's testimony that he was kicked in the groin area during the altercation. The court therefore finds that PC Figaro kicked the Claimant in his groin.
- vi. WPC Balewa was hit at some point during the altercation but not intentionally as the Claimant has maintained that he did not hit her. Further, the court thinks that the fact that WPC Balewa did not specify in her witness statement that the Claimant is the one who hit her speaks volumes. It is clear that she never said this in her witness statement because she was unclear as to where the blow came from. She is an experienced police officer and should she have known for a fact that it was the Claimant who hit her she would have known of the importance of so saying in her witness statement and would have so done.

vii. The burden is that of the Defence to justify his actions once physical contact is proven. The Defence must prove that PC Figaro had an honest and reasonable belief that he had to act in self defence. In the court's view the Defendant has failed to establish on the evidence on a balance of probability that the Claimant attacked him in the first place.

56. In the main therefore the court finds that there was no lawful basis for the application of force against the Claimant as PC Figaro's belief that he had to act in self-defence could not have been honest and reasonable in the circumstances.

Malicious Prosecution

Reasonable and probable cause

57. Reasonable and probable cause is an honest belief in the guilt of the accused founded upon reasonable grounds. It is the honest belief that that circumstances exist which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of an accuser, to the conclusion that the person charged was probably guilty of the crime imputed: see ***Cecil Kennedy v AG of Trinidad and Tobago*** **Cv App 87 of 2004**; **Halsbury's Laws of England Volume 97 (2010) 5th Edn. Para 641.**

58. The presence of reasonable and probable cause does not depend upon the actual existence, but upon a reasonable belief held in good faith in the existence, of such facts as would justify a prosecution: see ***Hicks v Faulkner*** (1881) 8 QBD 167 at 173; ***Herniman v Smith*** (*supra*); **Halsbury's Laws of England Volume 97 (2010) 5th Edn. Para 642.**

59. The question of whether there was reasonable and probable cause involves both subjective and objective tests. The objective element involves a consideration of whether

a reasonable man having knowledge of facts that the Defendant knew at the time he instituted the prosecution, would have believed that the Claimant was guilty of the alleged crime. The subjective test considers whether the Defendant honestly believed that the plaintiff was guilty.

60. The existence of reasonable and probable cause is a question of fact and the court must consider the facts known to the Defendant leading to the Claimant's prosecution. In this regard the evidence of Insp. Nelson is crucial.

61. Insp. Nelson testified that on the said day he was on duty in his office when he heard raised voices coming from beyond his office door. Insp. Nelson gave evidence that he looked out his office door, into the charge room and observed PC Lewis and Cpl. Williams walking with the Claimant and holding his hands. He also observed WPC Baptiste, PC Figaro and WPC Balewa. According to Insp. Nelson, WPC Balewa was holding her hands to her face. Insp. Nelson then walked into the charge room and was told by either PC Lewis or Cpl. Williams that the Claimant had struck WPC Balewa. The Claimant allegedly then told Insp. Nelson that he had a report to make and that PC Figaro had hit him. Insp. Nelson then instructed Sgt. Ablack to conduct enquiries into the incident.

62. Insp. Nelson testified that on the 5th February 2012 he assumed conduct of the enquiry into the incident. He obtained statements from the Claimant, WPC Baptiste, PC Figaro, WPC Balewa, Cpl. Williams, PC Lewis, the evidence from which is highlighted above and also perused extracts from Arima Police Station Diary and the Besson Street Police Station Diary.

63. Therefore before Insp. Nelson was information that:

- a) The Claimant was involved in a scuffle with PC Figaro;
- b) That he failed to identify himself to PC Figaro as an officer;

- c) That WPC Balewa was hit by the Claimant when she attempted to part the fight;
- d) That PC Lewis and Cpl. Williams had to subdue the Claimant; and
- e) That both WPC Balewa and the Claimant sought medical attention subsequent to the altercation.

64. Insp. Nelson thus came to the following conclusions:

- a. The Claimant failed to identify himself as a police officer upon being refused entry to the police station and refused to step aside when told to do so by PC Figaro.
- b. The scrimmage which occurred between the Claimant and PC Figaro was not initiated by Figaro but was a response to PC Figaro being pushed.
- c. The reports of the incident provided by the Claimant and WPC Baptiste were not credible because neither report mentioned WPC Balewa being struck or WPC Balewa even being on the scene at the time of the incident
- d. The Claimant had committed the offences of assault by beating and obscene language.

65. Based on these finding, Insp. Nelson prepared a report and forwarded it to Snr. Superintendent of the Northern Division, Mr. R Maharaj after which he received certain instructions. Insp. Nelson then prepared defendant summonses and served it on the Claimant.

66. The court considers that on the entirety of the evidence a reasonable man having knowledge of facts that the Insp. Nelson knew at the time he instituted the prosecution, would have believed that the Claimant was guilty of the alleged offence.

67. The fact that WPC Baptiste and Figaro makes no mention of WPC Balewa being present and in fact denying that she was hit would have been cause for suspicion. This is so since the Statement and the medical report obtained the same day as the incident confirms that

WPC Balewa received a blow to her face which is consistent with the version of events told by PC Figaro, PC Lewis and Cpl. Williams and would, to a reasonable man cast doubt on the version told by the Claimant and WPC Baptiste.

68. The court notes here that one is not required to test every possible relevant fact before one takes action: see ***Hicks v Faulkner*** (*supra*). The Defendant submitted and the court agrees that it was not necessary for a charging officer to settle conflicting accounts: ***Bernard Baptiste v The Attorney General of Trinidad and Tobago*** HCA Cv 3617 of 2001. According to the Defendant in that case the Claimant denied that he committed the offence but, relying largely on information provided by the victim herself, Elizabeth Fontanelle, the police charged and prosecuted the claimant. In the decision of the subsequent malicious prosecution claim, Stollmeyer J, as he then was, opined:

The police are therefore only required to be satisfied that the evidence available at the time is enough to commence a prosecution in respect of which there is reasonable and probable cause. In those circumstances, it might be said that the say so of Elizabeth Fontanelle was enough ant that the Plaintiff's denial remained to be tested under cross-examination.

69. Further, the Claimant failed to identify himself as a police officer to either PC Lewis or PC Figaro. This is consistent with WPC Baptiste's statement that it was only during the altercation that she identified the Claimant as a police.

70. It is the court's view that the Insp. Nelson held an honest belief in the guilt of the Claimant and had an honest conviction of the existence of the circumstances relied upon. Further, a reasonable man having knowledge of the facts that the Insp. Nelson did at the time he instituted the prosecution, would have believed that the Claimant was probably guilty of the alleged crime.

71. It is therefore the finding of this court that the Claimant has failed to prove that there was an absence of reasonable and probable cause for the institution of the criminal proceedings against him.

Malice

72. A Claimant in a claim for damages for malicious prosecution has to prove “malice in fact” indicating that the Defendant was actuated either by spite or ill-will against the claimant, or by indirect or improper motives: *Halsbury’s Laws of England Volume 97 (2010) 5th Edn. Para 639*

73. The court notes that where lack of reasonable and probable cause is not proved, the question of malice does not arise: *Cecil Kennedy v AG of Trinidad and Tobago* Cv App 87 of 2004. Malice and lack of reasonable and probable cause must unite to produce liability.

74. Having ruled that the Claimant has not proven the lack of reasonable and probable cause, the issue of malice does not arise for consideration.

75. Notwithstanding this, the Claimant has alleged that the allegations against him had been fabricated because he made a report against PC Figaro. However the Claimant has proffered no evidence to satisfy the court that this is so. All that is before the court is the allegation. Further, there is no other evidence which will assist the court in drawing such an inference. The evidence in fact appears to be to the contrary.

76. Additionally, the testimony of the Claimant that Cpl. Williams told the Claimant to “kill that” in relation to the report he intended to make against PC Figaro is on its own insufficient to ascribe an improper motive.

77. The court finds therefore that the Defendant was not actuated by malice as on the evidence, he held no spite, ill-will or harboured any improper or oblique motive. The claim in malicious prosecution therefore fails.

Damages for Assault and Battery

78. In assessing the award of damages for assault and battery, the court ought to be guided by the factors set out by Wooding C.J. in Cornilliac v St Louis (1965) 7 WIR 491. The factors of relevance to this case were essentially:

- the nature and extent of the injuries suffered;
- the nature and gravity of the resulting physical disability; and
- the pain and suffering endured.

79. The Claimant was diagnosed with soft tissue injuries. On examination the doctor observed scratch marks on the neck area and a complaint of pain in the scrotal area. The Claimant experienced severe pain until later that night. It is the testimony of the Claimant in cross-examination that;

"It was a hard kick that Figaro gave me. I felt extreme pain in my testicles....I went to the Health facility. It was because of pain in my testicles and neck from the holding of Figaro. The pain in my testicles was not mild. I can't describe the degree, it was quite painful. It was still paining when I got to the Health Facility and also when I got back to Besson Street."

80. It means that the Claimant would have suffered much discomfort and pain for quite sometime after the incident as he would have spent time at the hospital and would have gone into Port of Spain from Arima while still in pain.

General Damages

81. In order for the court to determine an appropriate award the court had regard to the following cases:

Nanan v Archer S 191 of 1984 – the injuries sustained were minor swelling and tenderness. The court awarded the sum of \$600.00 which was adjusted in 2010 to **\$2,631.00.**

Tookai v Gordon and the AG 1542 of 1984 – the injuries sustained were minor abrasions sustained during wrongful arrest and false imprisonment by police. The court awarded the sum of \$350.00 which was adjusted in 2010 to **\$916.00.**

Patrick v John P.C. Appeal 1/88. The plaintiff in this case suffered temporary unconsciousness and pain. In May 1990 the Court of Appeal awarded the plaintiff \$2,500.00. When adjusted to 2010 prices this amounts to \$8630.00.

Jamurat v Aziz Ahamad Limited 1414/74 reported in *Daly's Damages* page 119. The plaintiff suffered tenderness of the neck and lower back. In April of 1975 the plaintiff was awarded \$250.00. When adjusted to 2010 prices this amounts to \$4,560.00.

Aggravated Damages

82. The court agrees with the submission of the Claimant that aggravated damages ought to be awarded in this case. As set out in the submissions of the Defendant, in the case of **Thaddeus Bernard v. Ouashie** C.A. No 159 of 1992 de la Bastide C.J, stated as follows:

The normal practice is that one figure is awarded as general damages. These damages are intended to be compensatory and include what is referred to as aggravated damages,

that is, damages which are meant to provide compensation for the mental suffering inflicted on the Plaintiff as opposed to the physical injuries he may have received.

Under this head of what I have called “mental suffering,” are included such matters as the affront to the person’s dignity, the humiliation he has suffered, the damage to his reputation and standing in the eyes of others and matters of that sort. If the practice has developed of making a separate award of aggravated damages, I think that practice should be discontinued.

83. The Defendant argues that in this the claim for aggravated damages does not go beyond the pleadings in that there is no evidence of mental suffering as that set out by the Honourable Chief Justice (*supra*). This court cannot disagree more with that submission. It is clear that the Claimant was a police officer (in fact a detective) with many years of experience who would have been assaulted and thereby humiliated in his very workplace (although not his station) in the presence of other officers. This is an affront to his dignity. By itself (and not part of the claim for malicious prosecution) the assault may have done damage to his standing in the eyes of other officers. That would have continued up to today although the passage of time would have logically eroded the effect. This case is therefore more than suitable for an award of aggravated damages.

84. The court therefore considers that an award of \$12,000.00 is an adequate award for general and aggravated damages in the circumstances. In relation to special damages the court notes that no special damages in relation to the assault and battery has been pleaded therefore none will be allowed.

Exemplary Damages

85. Exemplary damages are awarded to mark the court’s disapproval where the offender’s behaviour amounted to oppressive, arbitrary and unconstitutional action. These terms must be read disjunctively. Exemplary damages are usually only awarded if compensatory damages are inadequate to punish the defendant or deter others.

Therefore the court should apply the rationality test to both the questions of whether an award of punitive damages should be made and its quantum.

In this regard the court finds that there was not oppressive, arbitrary or unconstitutional conduct by servants of the government in keeping with the well known authorities including the locus classicus *Rookes v Barnard* [1964] A.C. 1129, (UKHL) 1229. The court is of the opinion that the award made for aggravated damages adequately punishes the Defendant for the wrong committed.

86. Additionally, the court finds that exemplary damages are inappropriate in this case as this type of incident does not appear to be a regular. In fact it appears to be an anomaly. These courts are seldom if at all called upon to adjudicate in claims where police officers are involved in a fracas with other officers. It is quite clear to the court that something went terribly wrong on that day and the officers at the station were trying to repel what they mistakenly believed could have been an attack. The evidence is (which the court accepts) that a man ran into the station. It appears to be fortuitous that the Claimant was attempting to enter the station at the same time behind the man who ran in. The evidence is also that the Claimant was dressed in plain clothes. It is in this context that the entire debacle occurred. The Claimants initial failure to abide by the instruction of PC Lewis not to enter the station is what sparked the confrontation. The court also notes that this was a carnival Monday and it goes without saying that there would have been revelry on the streets. It is also well known and accepted that at carnival time there is an increased incidence of violence on the streets. Therefore the fact of a man running into the station and another appearing to be following may have been cause for concern. That being said the court is of the view that the award for aggravated damages adequately caters for the wrong committed by the officers in dealing with the situation at the time. No further punishment is necessary.

87. The order of the court is therefore as follows:

The Defendant shall pay to the Claimant general damages for assault and battery inclusive of uplift for aggravation assessed in the sum of \$12,000.00 together with interest at the rate of 6% per annum from the date of filing of the claim to the date of judgement.

The Defendant shall pay to the Claimant the prescribed costs of the Claim in the sum of \$3,600.00.

Dated this 8th day of July, 2013.

Ricky Rahim
Judge