

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2015-01346

BETWEEN

ROODAL ARJOON

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice R. Rahim

Appearances:

Mr. S. Roopnarine instructed by Ms. S. Balgobin for the claimant

Ms. M. Smith for the defendant

Judgment

1. By Claim Form filed on the 28th April, 2015, the claimant seeks damages for false imprisonment, malicious prosecution, trespass to property and assault. He further seeks special damages in the sum of \$5,000.00 as well as aggravated and exemplary damages. The incident which gave rise to the claimant's claim occurred on the 16th May, 2013 ("the said date") when Police Constable Jarod Tambie-Sammy ("PC Sammy") arrested him at his house situate at Bhagwansingh Trace, Parforce Gasparillo. The claimant was arrested for allegedly stealing a quantity of copper.

2. According to the claimant, after his arrest, he was taken to the Gasparillo Police Station ("the station") and detained in a room. Subsequently, one Harold Poonwasiesingh ("Harold") visited the station and identified the claimant as the person who stole the cooper from his premises. The claimant allegedly began protesting his innocence when PC Sammy told him to "*hush your fucking mouth*" and slapped him three times. On the 18th May, 2013, the claimant was charged with the offence of larceny contrary to Section 4 of the Larceny Act, Chapter 11:12. The claimant alleges that he was wrongfully incarcerated from the said date to the 20th May, 2013 as PC Sammy failed, neglected and/or refused to take him before any judicial officer until the 20th May, 2013.

3. On the 20th May, 2013, the claimant appeared before a Magistrate at the San Fernando Magistrate's Court and was granted bail with surety in the sum of \$10,000.00 but was unable to secure same. According to him, he was incarcerated in unsanitary and overcrowded conditions for a period of sixteen days. On the 2nd October, 2013, the claimant was found not guilty of the offence of larceny.

The case for the claimant

4. The claimant gave evidence for himself and called one other witness, his wife, Maurina Arjoon ("Maurina").

5. The claimant who is forty-nine years of age is a scrap iron dealer. During cross-examination, he testified that he has been a scrap iron dealer for about six to eight years and that Maurina works with him. On the said date, he was at home when his neighbour, Avinash Ragbir (“Avinash”) called out to him and stated that PC Sammy wanted to speak to him (the claimant). During cross-examination, he testified that this occurred between 5:00 and 5:30 pm and that he was in the bedroom of his house at the time Avinash called out to him. He further testified during cross-examination that there is track leading from Bhagwansingh trace to the yard in the front of his house and that PC Sammy was in his yard.
6. During cross-examination, the claimant denied that he was standing on the side of Bhagwansingh trace when PC Sammy approached him on the said date. He further denied that PC Sammy identified himself, informed him about a report of theft of copper and that he was a suspect in the matter.
7. The claimant went outside to meet PC Sammy and Avinash. He testified that although PC Sammy was dressed in plain clothes, he knew that he was a police officer. During cross-examination, the claimant testified that he knew PC Sammy as PC Sammy had stopped him prior to this incident and searched his vehicle. In his witness statement, he testified that he saw the police van parked on the road upon exiting his house. However, during cross-examination he testified that he could not see the police van when he exited his house. That when he and PC Sammy began walking out to Bhagwansingh Trace, he saw the police van parked on the side of the trace with another police officer in it.
8. According to the claimant, PC Sammy informed him that he wanted to speak to him but as they walked out he was told him to go back into his house and put on a jersey. The claimant did what he was told and upon returning, he was informed that he had to be taken down to the station. During cross-examination, the claimant testified that PC Sammy told him that he was being taken to the station to answer some questions. He testified that he was handcuffed and placed in the van. During cross-examination, the claimant testified that PC

Sammy placed him in the police van. He testified that PC Sammy was accompanied by Corporal Nirvan Joseph (“Corporal Joseph”) who was the driver of the police van.

9. During cross-examination, the claimant testified that PC Sammy did not search his car, yard or house prior to putting him into the police van.
10. The claimant testified that he was very confused and so asked why he was being arrested and taken to the station. PC Sammy informed him at that time that he heard that about 3:00 am the night before, he (the claimant) and two other men of african descent stole copper from the Parforce Junction. During cross-examination, the claimant testified that the cost of copper in 2013 was approximately \$10.00 per pound.
11. According to the claimant, he informed PC Sammy that he knew nothing about the stealing of any copper. It is his case that he usually parked his car at the Seven Day Adventist Church (“the church”) some distance before his home and that his car was so parked for the entire night. He testified that he asked PC Sammy to accompany him to his vehicle which was so parked so as to question the neighbours about the time the car was parked and if it was moved. During cross-examination, he testified that the church is between three to four hundred feet away from his house. He further testified during cross-examination that he parked his vehicle in the churchyard because his car could not be driven on the track which leads to his house from Bhagwansingh Trace. He also testified that Bhagwansingh Trace was a narrow roadway and so as to not inconvenience anyone using the trace he parked in the church’s yard. As such, he denied during cross-examination that his vehicle was parked on the side of Bhagwansingh Trace with the trunk open when PC Sammy approached him and that he gave Corporal Joseph permission to search his car.
12. It was his testimony that whilst repeating that officers were making a mistake, PC Sammy shouted at him stating “*hush your fucking mouth*” and then proceeded to slap him across the face three times. The claimant testified that he felt a ringing sensation in his right ear and his eyes filled up with water. The right side of his face began to feel swollen and felt very warm when he touched it. He felt humiliated. In his witness statement he testified that he made an error in his statement of case as he was slapped in the police van and not at the

station. However, during cross-examination the claimant changed his evidence yet again and testified that PC Sammy cursed and slapped him at the station.

13. When the claimant was taken to the station, he was placed in a room. During cross-examination, he testified that whilst at the station he was not asked to give a statement or alibi. Harold pointed out the claimant after speaking to PC Sammy. During cross-examination, the claimant testified that it was when Harold identified him as the person who stole the copper, that PC Sammy slapped him. From about 6:00 pm on the said date, the claimant was placed in a holding cell which smelt of urine, had newspapers thrown about and boxes of old food in the corners which had cockroaches in it. There was a concrete slab against the wall to sit and/or sleep. The claimant did not sleep but simply sat on the slab. He remained in the same clothes that he left home in and was wearing a rubber slippers.
14. According to the claimant, he remained in the cell for the rest of the night and kept repeating that he was wrongly incarcerated. He asked every officer who came on duty to tell him why he was being arrested but no one bothered with him. During cross-examination, he testified that whilst in the cell, police officers, both male and female would pass by and that he would tell them that he was being locked up innocently. Maurina visited the station but he was not allowed to speak with her.
15. On the 17th May, 2013 (the next day), Maurina brought him food both in the morning and in the afternoon. He testified that there was a small hole in the ground of the cell to use as a toilet which was not very clean as it contained food boxes and cockroaches. Five other persons were placed in the cell with the claimant. He felt sick and embarrassed to use the toilet in front of the other persons. He further testified that the cell was not very big and so it was very uncomfortable to sit and sleep on the slab. He was forced to occupy the floor of the cell which was cold, dirty and smelt of urine.
16. On the 20th May, 2013 the claimant was taken to the San Fernando Magistrate's Court where the charge of stealing a quantity of copper metal valued at \$7,000.00 was read to him. He pleaded not guilty and was granted bail with surety in the sum of \$10,000.00. As

mentioned before, he was unable to secure bail and therefore was taken to the Golden Groove Prison (“the prison”). He testified that this was very distressing. He further testified that there was not much room in the van which transported him to prison and so everyone was squeezed next to each other. He felt like he wanted to vomit because the van was driving very fast and it was very bumpy ride.

17. According to the claimant, the cell conditions at the prison were worse than the holding cell at the station. He testified that there were sometimes up to twelve persons in the cell and he had to sleep on an old carpet on the floor which was very dirty and smelt like urine. He further testified that he would get to use the toilet in the morning before he showered and after that he would have to utilize a bucket in the cell which was in full view of all the other prisoners.
18. It was his testimony that he stayed in the prison for sixteen days until he secured bail. He testified that this was not the first time he was imprisoned but that this time was more stressful because he had been trying to change his life and he knew that he was wrongfully accused.
19. The claimant testified that he sells his scrap iron to a company in Claxton Bay and earns approximately \$300.00 per day. As such, it was his testimony that as a result of his imprisonment, he lost earnings in the sum of \$4,800.00. During cross-examination, the claimant testified that he could not remember the name of the company and that even though the company did provide him with receipts, none of those receipts were provided to the court.
20. In his witness statement, he testified that he attended court on ten occasions and that he spent approximately \$200.00 for both he and Maurina to travel to court. However, during cross-examination, he testified that he drove his vehicle to attend court.
21. **Maurina** is a forty-year-old house wife. During cross-examination, she testified that she would sometimes get temporary work with the Unemployment Relief Program (URP) and that when she was not working, she assisted the claimant. Most of her evidence was the same as the claimant’s in so far as matters at which she was present occurred and it is

therefore unnecessary to traverse it in detail. There were however some inconsistencies within her testimony.

22. In her witness statement, Maurina testified that on the said date Avinash was accompanied by two other men when he called out to the claimant who was at the time in the bedroom of his house. However, during cross-examination, she testified that Avinash was accompanied by PC Sammy alone. She further testified in her witness statement that she believed the men to be police officers because she saw the police van. However, during cross-examination, she testified that she did not see the police van because same was parked on the Bhagwansingh Trace which is approximately one hundred feet away from her house.
23. According to Maurina, the claimant went outside to speak with the men and then came back into the house for a t-shirt and informed her that he was going to answer some questions for the men. She testified that she looked out the window and saw the claimant walk out to Bhagwansingh Trace with the men. She further testified that the men did not look around her house. During cross-examination, she testified that "*the men*" were PC Sammy and Avinash.
24. It was the testimony of Maurina that after waiting a couple of hours for the claimant to return, she decided to go to the station to find out what happened. At the station she was informed that the claimant was arrested in connection with the theft of copper. She testified that she did not understand how that could be true because at the time the offence had taken place, the claimant was at home with her. During cross-examination, Maurina testified that she was told that the offence took place at around 2:00 am on the said date and that she could not recall if she informed the officers that the claimant was at home with her at the time.
25. According to Maurina, the entire ordeal was very distressing to her and her family. She testified that her children were aware that the claimant, their father was imprisoned and was very sad. She further testified that she was disappointed in the police as she felt as though the claimant was arrested because of his past.

The case for the defendant

26. The defendants called three witnesses, PC Sammy, Corporal Nirvan Joseph (“Corporal Joseph”) and Woman Police Constable Gail Brewster (“WPC Brewster”).
27. **PC Sammy** has been a member of the Trinidad and Tobago Police Service (“the Police Service”) for the past six years. He is currently on injury leave. He testified that he knew the claimant prior to his arrest on the said date as he (the claimant) was detained at the station in the past when he was charged with various offences such as possession of cocaine for the purpose of trafficking, larceny of animals and house breaking and larceny.
28. On the said date, PC Sammy was attached to the Criminal Investigation Department based at the station. PC Sammy testified that at around 4:45 pm, Harold visited the station and made a report to the Sentry at the front desk that on the said date at about 3:00 a.m. he was asleep at his house when he was awakened by a loud noise coming from the back of his house. He went outside to observe what was happening and saw two men of African descent and a man of East Indian descent removing material from his place and loading it into a white Sunny motor vehicle, registration number PAU 1958 (“the sunny”) before speeding off. According to PC Sammy, Harold recognized that one of the men was the claimant whom he (Harold) had known for the past ten years. Harold further reported that when he made checks, he realized that a quantity of his scrap copper valued at approximately \$7,000.00 was removed from his premises.
29. During cross-examination, PC Sammy was referred to the station diary extract which recorded the report of Harold (*note that the report erroneously lists the event as occurring at 3:30 pm and not a.m.*). The report stated as follows;

“Number- 23

Reference- 28

Subject- Civilian In, Report of Larceny

Hour- 4:45pm

Nature of Record- Harold Poonwasie Singh of #283-5 Bonne Aventure Road Gasparillo came to station and he reported around 3:30pm today, he was asleep and was awoken by a loud noise coming from the back of his---house and saw two African men and an east indian man taking materials of copper, electrical wire from his compound and loading it in a white Sunny Motor car registration number PAU-1958, he did not give anyone permission to take anything from his property, value to be ascertained.”

30. The report therefore did not identify the claimant and that the copper was worth \$7,000.00. Further, the report in no way suggests that the Harold would have recognized any of the men. During cross-examination, PC Sammy testified that there is a difference between a statement and a report and that he took a statement from Harold and in that statement Harold stated that he recognized the claimant as one of the men. This statement however was not provided to the court and there was no mention of PC Sammy taking a statement from Harold in the Defence or in his witness statement.
31. In his witness statement, PC Sammy testified that as a result of Harold’s report, Corporal Joseph and he were detailed by the Corporal in charge to conduct further enquires. However, during cross-examination, PC Sammy testified that on the said date Corporal Joseph was the senior officer in charge and that it was Corporal Joseph who appointed him (PC Sammy) as the investigating officer into Harold’s report.
32. Corporal Joseph and PC Sammy left the station at about 5:05 pm in a marked police vehicle and followed Harold to his house. Upon arriving there, Harold showed the officers the area from which the copper was stolen and where the claimant and the other two men exited from. PC Sammy observed that Harold’s premises was well fenced except for an opening to the eastern side which contained a track. PC Sammy testified that this was the track that the claimant and his accomplices allegedly used to steal the cooper and carry same to the sunny. PC Sammy further observed that there were spot lights on Harold’s house and emergency lights in the area where the cooper was stolen. Harold stated that the lights were working on the said date.

33. According to PC Sammy, after carefully observing the premises, he formed an honest belief that Harold would have been able to clearly identify the person who was on his premises. Corporal Joseph and PC Sammy then left to conduct further enquiries into the matter. They drove around the area and interviewed several persons about the stolen copper. PC Sammy testified that several persons in the area informed him that they knew the claimant to be a drug addict and a thief. This evidence is inadmissible as hearsay and the court gives no weight to it.
34. Shortly thereafter, Corporal Joseph and PC Sammy spotted the claimant at the side of the roadway at Bhagwansingh Trace. During cross-examination, PC Sammy testified that the claimant was about twenty-five feet away from his house. PC Sammy also observed that the sunny was parked on Bhagwansingh Trace with its trunk open. During cross-examination, he testified that the claimant was approximately ten feet away from the sunny. PC Sammy stopped the police vehicle and he and Corporal Joseph both exited and approached the claimant. PC Sammy identified himself to the claimant by showing his Police Service Identification Card and Corporal Joseph did the same. PC Sammy then informed the claimant of the report of larceny they were investigating and that he (the claimant) was a suspect. PC Sammy testified that the claimant gave Corporal Joseph permission to search the sunny and that nothing illegal was found therein.
35. Corporal Joseph and PC Sammy then accompanied the claimant to his house and searched the surrounding areas in the vicinity of his house but nothing illegal was found. PC Sammy testified that he did not search the claimant's house and yard as he did not have a search warrant. He then cautioned, arrested and informed the claimant of his constitutional rights and privileges. The claimant did not respond. The claimant was allowed to change his clothes before being transported to the station. During cross-examination, PC Sammy testified that the claimant was not handcuffed because he was not violent.
36. According to PC Sammy, they arrived at the station around 6:00 pm. He testified that the claimant was placed in an interview room and that he refused to give a statement. PC Sammy then called Harold and asked him to come to the station to identify whether the claimant was the man he stated was "*Roodal*". During cross-examination, PC Sammy

testified that he would have made the call to Harold at about 6:30 pm. Shortly thereafter, Harold arrived at the station and in PC Sammy's presence positively identified the claimant as the person who stole the copper from his premises. During cross-examination, PC Sammy testified that Harold arrived at the station between 7:00 and 7:30 pm and that the claimant was placed in a holding cell after Harold identified him.

37. However, in his witness statement, PC Sammy testified that at around 6:12 pm, whilst he was in the charge room area of the station, he heard noises coming from the cell area. That when he proceeded to the cell area, he observed the claimant slapping himself in the face. PC Sammy instructed him to desist from slapping himself and inquired whether he wanted medical attention but he refused. As such, PC Sammy denied slapping the claimant and telling him to "*hush your fucking mouth*". The court was provided with the station diary extract wherein PC Sammy recorded this incident. The time recorded in the extract was 6:12 pm however, as seen above PC Sammy during cross-examination testified that the claimant was not placed in a cell until after 7:00 pm. PC Sammy's evidence was therefore inconsistent in this regard.

38. At around 1:00 pm on the 17th May, 2013, PC Sammy and PC Dailey identified themselves to the claimant who was at the time seated on a chair in an enclosed room at the station. PC Sammy again informed the claimant of 1) the larceny report made by Harold 2) that he was investigating same, 3) that he (the claimant) was a suspect and 4) cautioned the claimant. PC Sammy testified that the claimant in response stated "*boss doh ask me about dat*". He then informed the claimant that he was under arrest for larceny, cautioned him and informed him of his constitutional rights and privileges. The claimant remained silent.

39. Subsequently, PC Sammy continued his investigation into the larceny report and also made a number of calls to other police stations to inquire whether the claimant was wanted in relation to other reports of larceny which included recent reports of TSTT wires being stolen. During cross-examination, PC Sammy named three of the stations that he could have remembered calling and testified that those calls would have taken approximately two minutes each. He further testified that after he made the calls to the other police stations, a number of police officers visited the station to interview the claimant.

40. At around 6:05 pm on the 18th May, 2013, after conducting further inquiries, PC Sammy formally charged the claimant for the offence of larceny and served him with a Notice to Prisoner. He again informed the claimant of his rights and privileges and the claimant made no requests or demands. Thereafter, PC Sammy took the claimant's finger prints, searched him and placed him in a cell. During cross-examination, PC Sammy testified that he knew that Harold's report stated that two other persons were involved in the offence and that he proffered the charge against the claimant only notwithstanding that fact.
41. PC Sammy testified that he charged the claimant with larceny as he honestly believed that the claimant had committed the offence because of the report made by Harold, the information he received from Harold's neighbours and the criminal record of the claimant. He further testified that he was acting in good faith throughout his investigation. During cross-examination, PC Sammy testified that the main reason he charged the claimant was because of the information he received from Harold. He further testified during cross-examination that the information he received from Harold's neighbours was not related to the theft of the copper. It follows that the information received from neighbours and the criminal record of the claimant ought not to have been used by PC Sammy as a basis upon which to find reasonable and probable cause to charge as these matters are irrelevant. This is so firstly because the information from neighbours is ambiguous and did not relate to the alleged offence, and secondly as a matter of logic, the fact that an individual has convictions for similar offences is also not relevant to the issue of commission of a subsequent offence unless the prosecution can make a valid similar fact argument which is not here the case.
42. On the 20th May, 2013, the claimant was taken to the San Fernando Magistrate's Court and was granted bail with surety in the sum of \$10,000.00. On the 13th September, 2013 the trial of the claimant's matter proceeded and PC Sammy and Harold gave their evidence. Sometime thereafter, PC Sammy was informed by the police prosecutor that the Magistrate found the claimant not guilty and the matter was dismissed.

43. PC Sammy testified that the claimant never begged him to proceed to where he parks his car at the church yard to make enquiries as to what time the car was parked there and when it was moved on the Thursday morning. He further testified that he did not fail to investigate the claimant's alibi as he was never given one.
44. It was the testimony of PC Sammy that he was not actuated by malice when he charged the claimant but honestly believed that the claimant had stolen the copper from Harold's premises. He testified that when he charged the claimant, he was responsibly discharging his duty as a police officer in accordance with section 45 of the Police Service Act, Chap. 15:01.
45. **Corporal Joseph** has been a member of the Police Service for about twenty-five years. He is currently attached to the San Fernando Police Station. On the said date he was attached to the Gasparillo Police Station. Some of his evidence was the same as PC Sammy's evidence and as such there is no need to repeat that evidence.
46. Corporal Joseph testified that even though he never arrested the claimant prior to the said date, he knew him because the claimant had been arrested and charged by police officers attached to the station. He further testified that the claimant was frequently at the station as he was a suspect in a number of investigations.
47. During cross-examination, Corporal Joseph testified that he was one of the officers who assisted in the arrest of the claimant on the said date and that the claimant was not handcuffed upon being arrested. That he assisted PC Sammy in the arrest of the claimant by holding the claimant's hand and putting him into the police van. He further testified that on the said date he was the officer in charge of the shift and not in charge of the station and so he did not assign PC Sammy to investigate the larceny report made by Harold. That PC Sammy asked him to accompany him on his investigation in to report and he (Corporal Joseph) complied.
48. During cross-examination Corporal Joseph testified that there is a track leading from Bhagwansingh Trace to the claimant's house and that the claimant was standing on the side of the trace about twenty feet away from his house when they approached him. He further

testified that the claimant was about twenty to twenty-five feet away from his car (the sunny).

49. Moreover, during cross-examination Corporal Joseph testified that PC Sammy took a statement from Harold at his house when they visited same on the said date.
50. **WPC Brewster** has been a member of the Police Service for about eighteen years. In May, 2013 she was attached to the station. Her duties included sentry duty, answering the phone, making entries in the station diary, taking reports as well as checking the prison cells to ensure that all prisoners were secured.
51. On the said date, WPC Brewster visited the cells at the station at 9:00 pm, 9:30 pm, 10:00 pm, 10:30 pm, 11:00 pm and 11:30 pm. During her visits at those times, she testified that she found the claimant secured therein and that he made no requests or complaints.
52. She again visited the cell on the 17th May, 2013 on numerous occasions and observed that the claimant was again secured and resting comfortably. She testified that the claimant made no requests or complaints. She further testified that at no time during her visits on the 16th and 17th May, 2013 did the claimant ever inform her that he was slapped by PC Sammy or that he was in any pain or discomfort.
53. On the 19th May, 2013 at about 8:01 am, WPC Brewster visited the cells again and found the claimant secured therein. He also made no requests or complains at this time. The caterer arrived at about 8:04 am with meals for the prisoners and at about 8:10 am the claimant was provided with a meal. Thereafter, WPC Brewster visited the cells again and the claimant made no requests or complaints.
54. WPC Brewster testified that other police officers also conducted cell visits and those visits were recorded in the station diary.

Issues

55. It is undisputed that the claimant was arrested, charged and the charge was determined in his favour. Aside from the main issues of law, there are certain disputes of fact which must be resolved, these are as follows;

- i. Whether the claimant's vehicle and the surrounding areas in the vicinity of his house was searched prior to an arrest; and
- ii. Was the claimant arrested and if so, in what circumstances was the claimant arrested; and
- iii. Whether the claimant was assaulted by PC Sammy.

56. The main issues of law for determination by this court are as follows;

- i. Whether the arrest of the claimant was lawful;
- ii. Was there reasonable and probable cause to charge the claimant;
- iii. If not, was the police complainant actuated by malice;
- iv. Was the detention from Thursday the 16th May to Monday the 20th May, 2013 unlawful; and
- v. Whether the claimant is entitled to damages including aggravated and exemplary damages.

Issues of fact

Issue 1 & 2

The submissions of the claimant

57. The claimant submitted that the cross-examination of the defendant's witnesses revealed that the claimant was arrested at his house with him either being called from inside or being found just outside on Bhagwansingh Trace in front of his house. That a decision on this specific issue is unnecessary given the mutually accepted fact of the arrest at that location.

The claimant further submitted that the arrest can be taken to be in the immediate vicinity of the claimant's house.

58. According to the claimant, the fact that the size, weight, dimension or makeup of the items allegedly stolen was not mentioned in the witness statements of PC Sammy and Corporal Joseph, suggested that the officers were unaware as to what they were looking for. The claimant submitted that this information as to the specifics of the copper was omitted because the officers did not actually conduct any search or if they did, the searches were half-hearted. The claimant further submitted that although the officers both stated that the claimant's vehicle was searched, that evidence was contradicted by the evidence of the claimant and more importantly by the evidence given by PC Sammy at the summary trial of the claimant in the Magistrate's Court where it was explicitly stated that the claimant's vehicle was not searched.

The submissions of the defendant

59. The defendant submitted that the evidence given by the claimant and Maurina in relation to where the police vehicle was parked and who accompanied PC Sammy were inconsistent. In his witness statement, the claimant testified that when he came out of his house to meet PC Sammy, he saw the police van parked on the road. However, during cross-examination the claimant testified that he could not see the police van from his house and only saw same when he began walking out to the trace. Maurina in her witness statement testified that Avinash was with two other men and that she believed the men to be officers because she saw the police van. However, during cross-examination Maurina testified that Avinash was only accompanied by PC Sammy and that she could not have seen the police van from her house.

60. The defendant further submitted that the evidence given by its witnesses on the other hand were consistent throughout. As such, the defendant submitted that it was more probable that the claimant was found and arrested on the roadway and that he gave Corporal Joseph permission to search his vehicle.

Findings

61. The court finds that the evidence of PC Sammy is to be preferred over that of the claimant in relation to where the claimant was found before being arrested. This is so because the evidence given by the claimant and Maurina in relation to where the police vehicle was parked and who accompanied PC Sammy to their house to allegedly call out to the claimant was materially inconsistent. Therefore, the evidence of PC Sammy and Corporal Joseph appeared more plausible in this regard and the court finds that the claimant was found at the side of the roadway of Bhagwansigh Trace.

62. However, the court finds that the claimant's car, registration number, PAU 1958 was not parked along Bhawansingh trace with its trunk open. The court further finds that the claimant's car was not searched. Upon an examination of the Notes of evidence of the proceedings at the Magistrate's court, it is clear that the claimant accepted that vehicle registration number PAU 1958 was his car. Further, according to the notes of evidence, it is pellucid that PC Sammy did not see the claimant's vehicle on the side of the roadway or searched same. The relevant parts of PC Sammy's evidence at the Magistrate's Court are as follows;

"...I continued enquiries on the said date where I met a man of East Indian descent, dark brown complexion, sporting long straight graying hair, who is the defendant before the court (witness points to the defendant) who was standing along the roadway at Bhagwansingh Trace, Gasparillo. I identified myself as a police officer to the defendant by showing him my Trinidad and Tobago Police Identification Card. I then informed the defendant of a report of larceny I was investigating and that he was a suspect and he would be taken to the Gasparillo Police Station on inquiries relative to the report. I continued inquiries on the said date where I identified myself again to the defendant who was seated in an enclosed room at the Gasparillo Police Station...It is not true you did not tell me ask anybody if my car was moved for the night. No, I did not find it necessary to look into the car to see if I find anything like copper. No, I did not find it necessary to go around your house to see if I see anything like copper... No sir, your car wasn't checked. I looked for

copper in nearby areas surrounding the defendant's residence at Bhagwansingh Trace. Gasparillo. No I did not check PAY 1958 for copper..."

63. Therefore, having examined notes of evidence from the Magistrate's Court, the court finds there is a stark difference in the evidence given by PC Sammy to this court. In keeping with common sense, it means that recollection of the events closer to the time of the incident, namely at the magistrate's court is likely to be more accurate having regard to the proximity of the event and the testimony. It is therefore either that PC Sammy is mistaken at this stage or he is attempting to deceive this court by changing his evidence as it relates to the claimant's vehicle. Consequently, the court finds that the claimant's vehicle was parked at the Seven Day Adventist Church's yard at the time of his arrest and that it was not searched prior to his arrest. The court further finds in keeping with its rational above that the nearby areas surrounding the claimant's residence were searched but that neither the claimant's house nor his yard were searched prior to his arrest.

Issue 3

Submissions of the claimant

64. According to the claimant, PC Sammy during cross-examination testified that he heard noises and saw the claimant slapping himself but could not recall what type of noise he heard, how many times the claimant slapped himself or whether medical assistance was offered to the claimant. As such, the claimant submitted that PC Sammy was very vague in describing the events of the alleged self-inflicted physical abuse to the court. The claimant further submitted that it should be noted that the defendant indicated that there was video footage from the night of the arrest and despite an application for specific disclosure, same was never produced.

65. As such the claimant submitted that on a balance of probabilities, it was more probable that PC Sammy slapped the claimant notwithstanding the discrepancy within the claimant's evidence in relation to where the slapping occurred.

The submissions of the defendant

66. The defendant submitted that unlike the claimant who did not even recall when and where he was allegedly slapped, PC Sammy recalled the important elements of where and when he found the claimant slapping himself. As such the defendant submitted that the claimant has failed to establish the details of the alleged assault and/or battery.

Findings

67. The evidence given by the claimant of when and where he was slapped and cursed was internally inconsistent. As a matter of common sense it is reasonable to presume that the claimant would have a good recall of such an event. However, human frailty also dictates that mistakes are made in the giving of testimony so that the inconsistency within the claimant's testimony could have been as a consequence of an honest mistake. An examination of the notes of evidence of the proceedings of the Magistrate's Court does not assist as the claimant did not there directly testify that he was slapped at the station. His evidence is somewhat equivocal in that regard and may be capable of two interpretations. The relevant parts of the notes of evidence are as follows;

“ He put me in the police van and take me to the Gasparillo Police Station...the thing he say is “Hush yuh fucking mouth” and I get three slaps from him after that...”

68. However, the absence of the video footage which would have assisted the court in its determination, in light of there being a functioning video camera at the cells on that day leads the court to draw the inference that PC Sammy is not telling the truth when he testified that the claimant slapped himself several times, quite an odd assertion in any event.

69. The court is fortified in its view by another item of pertinent evidence when during cross examination PC Sammy testified that the claimant was only placed in a cell after 7:00 pm but the station diary extract which reported the incident of the claimant being found slapping himself in the cell bore a time stamp of 6:12 pm. As such, there was a clear

inconsistency within PC Sammy's evidence in relation to the time the claimant was placed in his cell and his self-slapping. The court finds that this inconsistency was a material inconsistency which adversely affected the reliability and credibility of PC Sammy's evidence in relation to this issue. Therefore, the court finds that it is more likely than not that PC Sammy slapped the claimant at the police station. It may well be that the self-slapping action was manufactured in the event that there was a medical report in relation to injury sustained thereby. But there is none.

Issues of law

Issue 1 - *Whether the arrest of the claimant was lawful*

Law

70. **Section 3(4) of the Criminal Law Act, Chapter 10:04** 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."

71. The onus of establishing reasonable and probable cause for an arrest is on the police: See **Dallison v. Caffery (1964) 2 All ER 610 at 619 D per Diplock LJ.**

72. Narine JA in **Nigel Lashley v The Attorney General of Trinidad and Tobago Civ Appeal No 267 of 2011** at paragraph 14 stated as follows;

"...The test for reasonable and probable cause has a subjective as well as an objective element. The arresting officer must have an honest belief or suspicion that the suspect had committed an offence, and this belief or suspicion must be based on the existence of objective circumstances, which can reasonably justify the belief or suspicion. A police officer need not have evidence amounting to a prima facie case. Hearsay information

including information from other officers may be sufficient to create reasonable grounds for arrest as long as that information is within the knowledge of the arresting officer: O'Hara v. Chief Constable (1977) 2 WLR 1; Clerk and Lindsell on Torts (18th ed.) para. 13-53. The lawfulness of the arrest is to be judged at the time of the arrest."

The submissions of the claimant

73. The claimant submitted that during the cross-examination of PC Sammy, it became clear that the following were the reasons for the arrest and prosecution of him;
- i. The report made by Harold;
 - ii. The information he received from Harold's neighbours; and
 - iii. The criminal record of the claimant
74. According to the claimant, PC Sammy further stated that the main reason for the arrest was based on the report made by Harold and the above reasons did not carry equal weight. The claimant submitted that it should be noted that the report refers to "*an East Indian man*" and does not give any particulars of description or of recognition of him by Harold. The claimant further submitted that the information received from the neighbours was only about his general reputation and was therefore unhelpful as regards to the specific offence under investigation.
75. According to the claimant, the witness statements of the officers sought to enhance Harold's report by saying he actually identified the claimant. The claimant submitted that it was suspicious that such vital information was not recorded in the station diary as the station diary is a repository for all detail of events. As such, the claimant submitted that the additional enhancement of "recognition" by Harold ought to be rejected out-right by the court.
76. Moreover, the claimant submitted that the court should question why the statement allegedly taken from Harold (if in fact done) was not provided as evidence in justification of a reasonable arrest.

77. The claimant also submitted that the quality of the defendant's evidence as to searches for the allegedly stolen material was lacking. That in the evidence given in the Magistrate's court, PC Sammy was pellucid in his admission that the claimant's car was not searched. Further, the claimant submitted that whatever searches were or were not carried out, it was clear that there was no evidence found to link the claimant to stealing the copper. That all the evidence against the claimant was an unsubstantial and vague report made at a suspiciously long time after the offence had allegedly occurred. According to the claimant, the time lapse between receiving the report at 4:45pm and returning to the station at 6:00pm with a 'suspect' raises questions as to how thorough the actual process was or whether the claimant was marked to be arrested from the on-set.

78. The claimant relied on the case of **Joyce Hardaye Kowlessar & Keith Kowlessar –v- The Attorney General of Trinidad and Tobago Civil Appeal No. 167 of 2005** wherein Justice of Appeal Kangaloo warned of the dangers of acting on a mere report. His Lordship at paragraph 11 stated as follows;

“Generally, it can hardly be that the police have sufficient evidence upon which a reasonable suspicion could be said to arise simply based on the ‘say so’ of the complainant. Such a conclusion would operate as to put the fundamental rights of citizens in jeopardy.”

79. The claimant submitted that both PC Sammy and Corporal Joseph knew that he was a known offender and therefore arrested him without proper investigations and with no reasonable basis in law. Consequently, the claimant submitted that neither PC Sammy nor Corporal Joseph had probable cause to arrest him.

The submissions of the defendant

80. The defendant relied on the authority of **Harold Barcoo v The Attorney General of Trinidad and Tobago HC 1388 of 1989 at pages 4 & 6**, wherein Mendonca J (now Justice of Appeal) stated that the following questions should be posed in determining the question of reasonable and probable cause;

“(i) Did the prosecutor have an honest belief in the guilt of the accused?”

(ii) Did the prosecutor have an honest conviction of the existence of the circumstances relied on?

(iii) Was the conviction based on reasonable grounds?

(iv) Did the matters relied upon constitute reasonable and probable cause in the belief of the accused guilt?"

81. The defendant further relied on the authority of **Ramsingh v The Attorney General of Trinidad and Tobago [2012] UKPC 16** at paragraph 8 wherein the Privy Council stated the following relevant principles of false imprisonment;

"i) The detention of a person is prima facie tortious and an infringement of section 4(a) of the Constitution of Trinidad and Tobago.

ii) It is for the arrestor to justify the arrest.

iii) A police officer may arrest a person if, with reasonable cause, he suspects that the person concerned has committed an arrestable offence.

iv) Thus the officer must subjectively suspect that that person has committed such an offence.

v) The officer's belief must have been on reasonable grounds or, as some of the cases put it, there must have been reasonable and probable cause to make the arrest.

vi) Any continued detention after arrest must also be justified by the detainer."

82. The defendant submitted that there was reasonable and probable cause to arrest the claimant based on the report and subsequent investigation, along with the positive identification of the claimant by Harold. According to the defendant, the evidence given by the officers showed that Harold identified the claimant and that when PC Sammy visited Harold's premises, he formed the reasonable belief that he (Harold) could have positively identified who stole the copper from the premises because the spotlights offered clear visibility. As such, the defendant submitted that those were therefore the objective circumstances which PC Sammy relied on as the basis for that suspicion or belief. The defendant therefore submitted that PC Sammy satisfied the limbs set out in **Harold Barcoo** supra.

Findings

83. In determining whether the arrest of the claimant was lawful, the court examined the information which the arresting officer possessed at the time of the arrest to determine whether same amounted to reasonable grounds for suspicion (the objective test). The court then went on to consider the genuineness of the belief of that officer (the subjective test).
84. PC Sammy was the arresting officer and Corporal Joseph assisted him in the arrest of the claimant. According to the evidence of PC Sammy, on the 16th May, 2013 at around 4:45 pm, Harold visited the station and reported that on the said date at about 3:00 am he was asleep at his house when he was awakened by a loud noise coming from the back of his house. He went outside to observe what was happening and saw two men of African descent and a man of East Indian descent removing material from his place and loading it into a white Sunny motor vehicle, registration number PAU 1958 (“the sunny”) before speeding off. PC Sammy testified that Harold further reported that he recognized that one of the men was the claimant whom he (Harold) had known for the past ten years. When Harold made checks, he realized that a quantity of his scrap copper valued at approximately \$7,000.00 was removed from his premises.
85. The claimant was therefore arrested based on the report of Harold. However, upon examining the station diary extract which recorded the report of Harold, the court found that Harold did not identify the claimant therein, nor did Harold indicate that he knew one of the men before even if not by name. The contents of the report therefore appear to be inconsistent with the evidence of PC Sammy. PC Sammy testified during cross-examination that there is a difference between a report and a statement and that the claimant was identified by Harold in a statement given prior to the arrest of the claimant. However, this statement is not before the court and no explanation was given for its absence. The court therefore finds that there was no such statement in existence and that PC Sammy was being quite imaginative with the truth.
86. The only aspect of the report which would be capable of providing reasonable and probable cause for arrest would be a link between the claimant and the car in which the copper was

allegedly loaded. Therefore, PC Sammy could have only had a genuine belief in the culpability of the claimant if the claimant was found to be the owner of the sunny as identified in the report or was in possession of the sunny motorcar. As found before the claimant did accept that he was the owner of the sunny however the sunny was at the time of his arrest parked in the church's yard. The fact that the claimant is an East Indian man who has a criminal record and who was identified by Harold's neighbours as a thief and a drug addict could not have amounted to reasonable grounds for suspicion without further investigations. It was therefore incumbent upon PC Sammy to investigate prior to the claimant's arrest whether he was the owner of the sunny or in possession of same as that would have provided a basis for the arrest. From the evidence, it is clear that PC Sammy did not visit the churchyard to investigate whether the sunny was the vehicle as identified by Harold and further that PC Sammy did not search the sunny, the house or the yard of the claimant. So that no credible evidence has been presented to the court that at the time of arrest, PC Sammy had information that the sunny belonged to or was in the possession of the claimant at the time of the commission of the offence. In fact it is for this reason, it appears that in his evidence before this court, PC Sammy attempts to make a link between the claimant and the sunny. In the absence of that link, the claimant was arrested because he was a man of east indian descent who others said (rightly or wrongly) was a thief and who has previous convictions.

87. Clearly, those reasons could not have formed a reasonable and probable basis for the arrest of the claimant without more. 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 was possessed by PC Sammy at the time he arrested the claimant there was no reasonable and probable cause for the arrest and the arrest was unlawful.

Issue 2 - *Was there reasonable and probable cause to charge the claimant*

Law

88. It is settled law that the question of whether there was reasonable and probable cause involves both subjective and objective tests. In *Manzano v The Attorney General of*

Trinidad and Tobago Civil Appeal No.151 of 2011, Mendonca JA delivering the decision of the court set out both the subjective and objective elements of reasonable and probable cause as follows:

“22. What is reasonable and probable cause in the context of the tort of malicious prosecution was defined in Hicks v Faulkner (1881-1882) L.R. 8Q.B.D 167 (which received the unanimous approval of the House of Lords in Herniman v Smith [1938] A.C. 305) as follows: “...an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man placed in the position of the accuser to the conclusion that the person charged was probably guilty of the crime imputed.

23. It is readily apparent from that definition that reasonable and probable cause has both a subjective element and an objective element. Reasonable and probable cause must appear objectively from the facts but also must exist in the mind of the defendant.”

The submissions of the claimant

89. The claimant submitted that for there to be reasonable and probable cause by the police, in respect of both the subjective and objective elements of the test, PC Sammy must have had an honest belief that on the information available to him at the time of the charge, there was a case fit to be tried both as a matter of his subjective belief and as a matter of objective assessment by the court.
90. According to the claimant, the report made by Harold had the following stark inconsistencies;
- i. There was no mention of the claimant. The claimant submitted that if Harold knew the claimant before and recognised him, same should have been mentioned in his report. The claimant further submitted that even if Harold did not know his name,

one would have been expected the report to state that he recognised the perpetrator by sight as a resident in the area but did not know his name.

- ii. The robbery occurred at 3:00 am and a report was not be made until 5:00 pm. The claimant submitted that on the face of it, an explanation would have been expected, more so when there was no independent corroborative information to sustain such a bold accusation.

91. The claimant submitted that the car identified in the report is his but that little or no reliance was placed on this evidence by the witnesses for the defendant who founded their suspicion, arrest and charge of him on his identification by Harold. The claimant further submitted that his identification by Harold was therefore the strongest support of there being reasonable and probable cause on the part of PC Sammy to prosecute. That there was no other evidence linking him to the alleged crime. As such, the claimant submitted that in such circumstances a reasonable prosecutor would have used an identification parade instead of an identification by confrontation. Moreover, the claimant submitted that the confrontation was not a feature which was operating in the mind of PC Sammy when he decided to charge him. That the reasons for the decision to charge the clamant were elaborated at paragraph 16 of PC Sammy's witness statement and repeatedly confirmed in cross-examination.

92. According to the claimant, based upon the confrontation identification, a second interview and/or statement should have been conducted and/or obtained from Harold so as to explore the reasons why there was the delay in the reporting of the incident and the failure in the original report to identify the claimant (even if not by name). The claimant submitted that a second visit to the crime scene may have been warranted to observe the actual vantage point in Harold's house and the view that he may have had as the prosecutor at least had to ensure that there was a proper case to be tried before invoking the criminal process against the claimant.

93. The claimant submitted that it should be noted that in his witness statement, PC Sammy did not identify the confrontation as one of the bases on which he prosecuted the claimant. The claimant further submitted that the defendant's witnesses during cross examination

indicated that PC Sammy obtained a written statement from Harold, but same was never produced to the court. According to the claimant, it would have been obvious to anyone that the statement was crucial and therefore same should have been produced if it existed.

The submissions of the defendant

94. The defendant submitted that the onus of proving that PC Sammy did not have reasonable and probable cause to charge lies on the claimant. In so submitting, the defendant relied on the case of **Tempest v Snowden (1952) 1 KB 130** wherein Evershed M.R. stated the following at page 133;

“...a plaintiff must establish inter alia the following two propositions: first, that the defendant acted without reasonable and probable cause; secondly, that the defendant acted maliciously... the onus of proof lies on the plaintiff ...”

95. The defendant further relied on the case of **Denish Kallicharan v The Attorney General of Trinidad and Tobago CV 2011-00187**, wherein this court at paragraph 24 stated as follows;

“The presence of reasonable and probable cause for a prosecution does not depend upon the actual existence of proof, but upon a reasonable belief held in good faith in the existence of such facts as would justify a prosecution...”

96. Moreover, the defendant relied on the case of **Glinski v McIver [1962] AC 726 at page 758**, wherein Lord Denning stated as follows;

“In the first place, the word ‘guilty’ is apt to be misleading. It suggests that, in order to have reasonable and probable cause, a man who brings a prosecution, be he a police officer or a private individual, must, at his peril, believe in the guilt of the accused. That he must be sure of it, as a jury must, before they convict. Whereas in truth he has only to be satisfied that there is a proper case to lay before the court ... After all, he cannot judge whether the witnesses are telling the truth. He cannot know what defences the accused may set up. Guilt or innocence is for the tribunal and not for him ... So also with a police officer.

He is concerned to bring to trial every man who should be put on trial, but he is not concerned to convict him . . . No, the truth is that a police officer is only concerned to see that there is a case proper to be laid before the court.”

97. According to the defendant, at the trial of the claimant in the Magistrate’s Court, Harold stated as follows;

“I clearly see this one person that I know by the name of Roodal which I have seen in the area for the past ten (10) years. He was about fifteen to twenty feet (15’ - 20’) away from me. No, there was nothing between me and him to obscure my view of him. Yes, if I see that person again I would be able to identify him. Yes, I see him here (Witness points to Defendant) seated on front bench of Court. They take off with a speed in a white Sunny PAU 1958.”

98. The defendant further submitted that it should be noted that during cross-examination, the claimant indicated that while at the station, Harold identified him. As such, the defendant submitted that based on the report made by Harold, PC Sammy had reasonable and probable cause to charge the claimant.

Findings

99. For there to have been reasonable and probable cause in respect of both the subjective and objective elements of the test, PC Sammy must have had an honest belief that on the information available to him at the time of the charge, there was a case fit to be tried both as a matter of his subjective belief and also as a matter of objective assessment by the court.

100. According to the evidence, after the claimant was arrested and taken to the Gasparillo Police Station, Harold visited the station and identified the claimant as the person who stole the copper from his premises. In the circumstances of this case an identification parade may have been the better, prudent or advisable course. This is especially so in cases where the suspect is unknown to the victim. In this case it is the evidence of PC Sammy that Harold did in fact know the Claimant, therefore an

identification parade would not have added to the accuracy of the identification which is its purpose. Further, the court finds that based on the identification of the claimant by Harold, the report of Harold and the investigations PC Sammy would have conducted at Harold's house to determine whether Harold was capable of seeing the claimant, he (PC Sammy) would have had an honest belief that the claimant did steal the copper from Harold's premises immediately upon the identification by Harold having occurred. At that stage, there would have been reasonable and probable cause to charge the claimant. Additionally, the unlawfulness of the detention of the claimant would have also ceased at that time, there being reasonable and probable cause to arrest and detain for the purpose of the charge immediately following the identification. The court therefore finds that PC Sammy had reasonable and probable cause to charge the claimant.

Issue 3 - *Was the police officer actuated by malice*

Law

101. His Lordship Mendonca JA in *Sandra Juman v The Attorney General Civil Appeal No. 22 of 2009* at paragraph 25 in treating with the issue of malice stated as follows;

“Malice must be proved by showing that the police officer was motivated by spite, ill-will or indirect or improper motives. It is said that malice may be inferred from an absence of reasonable and probable cause but this is not so in every case. Even if there is want of reasonable and probable cause, a judge might nevertheless think that the police officer acted honestly and without ill-will, or without any other motive or desire than to do what he bona fide believed to be right in the interests of justice: Hicks v Faulkner [1987] 8 Q.B.D. 167 at page 175.”

102. Having ruled that there was reasonable and probable cause, the issue of malice does not arise for consideration.

Issue 4 – Was the detention from Thursday the 16th May to Monday the 20th May, 2013 before being taken to a Magistrate unlawful detention

Law

103. In **Chandrawatee Ramsingh v The Attorney General of Trinidad and Tobago (2012) UKPC 16**, Their Lordships of the Privy Council stated that whether or not the continued detention of a person is justified depended on all the circumstances of the case. At paragraph 16 Lord Clarke (reading the judgment of the court) stated as follows;

“...the respondent must show that the whole period of detention was justified. However, while it would be wrong in principle to hold that, because the initial arrest was justified it follows that the subsequent detention was also justified, it is important to consider the subsequent detention in light of the arrest.”

104. In the case of **Adesh Maharaj v The Attorney General of Trinidad and Tobago S-788 of 1998**, Pemberton J (as she then was) in determining whether a person’s detention was excessive, stated as follows at paragraph 6;

“...It is clear that it is not enough for the Respondent to say that because a person has been charged, then any period of detention before he is told of his right to bail is reasonable and lawful. If there is to be a detention beyond a reasonable period, there must be good reason for so doing. If there is good reason then the period would not be excessive and no claim for damages for false imprisonment can stand.”

The submissions of the claimant

105. The claimant submitted that PC Sammy testified that he was arrested at approximately 6:00 pm on the 16th May, 2013 and was taken to the station where he was placed in an interview room. The claimant further submitted that according to the evidence of PC Sammy, he remained in the charge room from 6:00 pm until approximately 7:30 pm until he was identified by Harold but was not formally charged until approximately 6:05 pm on the 18th May, 2013. According to the claimant, the defendant attempted to justify

the almost forty-eight hour delay by stating that PC Sammy was conducting further investigations but that PC Sammy failed to address what amounted to further investigations in his witness statement.

106. The claimant submitted that during cross-examination, PC Sammy indicated that on the 16th May, 2013, after the claimant was identified, he was still collecting information from other stations about the claimant. While PC Sammy could not recall the exact stations he contacted, the evidence is that it was approximately five stations. He also testified that he spoke to each station for approximately two minutes and could have concluded this exercise after approximately ten minutes.
107. Further, the claimant submitted that PC Sammy during cross-examination failed to address the delay in questioning him earlier on the 17th May, 2013. According to the claimant, it was clear during cross-examination that PC Sammy repeated his actions from the 16th May, 2013 on the following day to simply satisfy his desire. That despite no new evidence and the maintenance of his innocence, he was not formally charged until sometime afterwards.
108. The claimant submitted that it was key for the defendant to justify the continued detention of him since his right to liberty and freedom are enshrined as fundamental human rights within sections 4 and 5 of Constitution of Trinidad and Tobago. The claimant further submitted that the relevant law provides for an expeditious procedure, however, PC Sammy failed to adhere to his Constitutional duty and offered no assistance to the Court in explaining the excessive delay after the claimant's arrest.
109. Moreover, the claimant submitted that since PC Sammy concluded his investigation and had all of the relevant information required on Thursday 16th May, 2013, he could have been taken before a Magistrate on Friday morning. As such, the claimant submitted that PC Sammy by his inaction, took away his Constitutional right to appear before a Magistrate on Friday 17th May, 2013 and caused him to be falsely imprisoned until Monday 20th May, 2013.

Findings

110. According to the evidence, after the claimant was identified by Harold, he was placed in a cell. This was approximately after 7:00 pm on the 16th May, 2013. As the initial arrest of the claimant was unlawful, he was unlawfully detained until he was identified and the court so finds. However, at the stage the claimant was identified, he was lawfully in custody. On the 17th May, 2013, at around 1:00 pm PC Sammy and PC Dailey identified themselves to the claimant who was at the time seated on a chair in an enclosed room at the station. PC Sammy again informed the claimant of 1) the larceny report made by Harold 2) that he was investigating same, 3) that he (the claimant) was a suspect and 4) cautioned the claimant. PC Sammy testified that the claimant in response stated “*boss doh ask me about dat*”. He then informed the claimant that he was under arrest for larceny, cautioned him and informed him of his constitutional rights and privileges. The claimant remained silent.
111. Subsequently, PC Sammy continued his investigation into the larceny report and also made a number of calls to other police stations to inquire whether the claimant was wanted in relation to other reports of larceny which included recent reports of TSTT wires being stolen. During cross-examination, PC Sammy named three of the stations that he could have remembered calling and testified that those calls would have taken approximately two minutes each. He further testified during cross-examination that after he made the calls to the other police stations, a number of police officers visited the station to interview the claimant.
112. The court accepts PC Sammy’s evidence that he continued investigations into the larceny report and also made a number of calls to other police stations to inquire whether the claimant was wanted in relation to other reports of larceny. It is therefore in the court’s view that it was impractical to take the claimant before a Magistrate until PC Sammy verified that the claimant was not wanted for any of the other reports of larceny. The court therefore finds that PC Sammy justified the continued detention of the claimant.

113. At around 6:05 pm on the 18th May, 2013, after conducting further inquiries, PC Sammy formally charged the claimant for the offence of larceny and served him with a Notice to Prisoner. He again informed the claimant of his rights and privileges and the claimant made no requests or demands. Thereafter, PC Sammy took the claimant's finger prints, searched him and placed him in a cell. During cross-examination, PC Sammy testified that he knew that Harold's report stated that two other persons were involved in the offence and that he proffered the charge against the claimant only notwithstanding that fact.

114. Therefore, after charging the claimant on the 18th May, 2013 PC Sammy took the claimant before a Magistrate within a reasonable time period which was on the 20th May, 2013. Consequently, the court finds that the claimant's detention from Thursday the 16th May to Monday the 20th May, 2013 before being taken to a Magistrate was lawful.

Issue 5 – Damages

115. The claimant claimed damages for false imprisonment, malicious prosecution, trespass to property, assault, special damages as well as aggravated and exemplary damages.

Special damages

116. Special damages must be specifically pleaded and proven: **Grant v Motilal Moonan Ltd (1988) 43 WIR 372 per Bernard CJ and reaffirmed in Rampersad v Willies Ice Cream Ltd Civ App 20 of 2002.**

117. The claimant testified that he lost \$4,800.00 in earnings for the sixteen days during which he was imprisoned. During cross-examination, he testified that he did receive receipts when he sold his scrap metal but those receipts were not provided to the court. Further, in his witness statement the claimant testified that on the occasions he attended court, he paid \$200.00 in traveling. However, during cross-examination, the claimant testified that he used his vehicle to go to court.

118. The court finds that the claim for special damages was not made out. The court would be engaged in the process of speculation should find that the claimant's loss of earnings amounts to the sum of three hundred dollars per day since the court has no proof whatsoever that he did in fact earn three hundred dollars per day. Further, the claimant contradicted his own testimony that he spent two hundred dollars to travel to court by stating that he used his vehicle to attend court.

General damages

119. Damages in cases of malicious prosecution and false imprisonment are awarded under the three following heads;

- i. Injury to reputation- to character, standing and fame.
- ii. Injury to feelings- for indignity, disgrace and humiliation caused and suffered.
- iii. Deprivation of liberty- by reason of arrest, detention and/or imprisonment: **See Thaddeus Clement v the Attorney General of Trinidad and Tobago Civ. App. 95 of 2010 at paragraph 12, per Jamadar JA**

120. Further, in **Thaddeus Bernard v Quashie CA No 159 of 1992** de la Bastide C.J. stated the following in relation to aggravated damages;

“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.”

121. The claimant was arrested and taken to the Gasparillo Police Station on the 16th May, 2013. He was placed in a holding cell after he was identified by Harold. He claimed that the holding cell smelt of urine and was filthy. He further claimed that there was a small hole in the ground of the cell to use as a toilet and that he felt embarrassed and sick to use same because it was dirty and he had to use it in front of the five other persons sharing the cell with him.
122. He was taken to the Magistrate's court on the 20th May, 2013, some four days after being taken into custody. Bail was then set. He however was unable to obtain the bail so that he was taken to the Golden Grove Prison and placed in a cell with other remand prisoners. He testified that he occupied a cell with some twelve inmates. He further testified that the cell was filthy and he had to sleep on an old carpet on the floor. Moreover, he testified that he would get to use the toilet in the morning before showering and after that he would have to use a bucket in the cell which was in full view of the other prisoners.
123. According to the claimant, he remained in prison for sixteen days. The record of the Complaint attached to the Notes of evidence of the proceedings at the Magistrate's court show that on the 3rd June, 2013, he was remanded bail as fixed as opposed to remanded continuing bond. This demonstrates that he was still in the custody of the state at that time. The matter was adjourned to the 1st July, 2017 and by that date he had been released on bail.
124. The claimant pleaded that as a result of his arrest, he was deeply humiliated, embarrassed, suffered mental and physical anguish and was subjected to public odium. However, the claimant did not lead any evidence to demonstrate the manner in which he was subjected to public odium. Further, he did not lead any evidence to show that he suffered mental and physical anguish. The claimant has admitted that this was not the first time he was imprisoned but he testified that this time was more stressful because he had been trying to change his life and he knew that he was wrongfully accused.
125. Having regard to the court's finding that the claimant was unlawfully arrested prior to his identification, the defendant is only liable to pay the claimant damages for his

unlawful arrest and detention for approximately one to one and a half hours on the 16th May, 2013. Further, the court having found that the claimant was slapped, he is therefore entitled to damages for assault.

126. To determine a just figure, the following cases were considered;
- i. **Ijaz Bernadine v The Attorney General CV2010-02956** – The Claimant was awarded general damages inclusive of aggravated damages for assault and battery in the sum of \$55,000.00. The Claimant was chased by police officers, assaulted and beaten for no reason and was detained for fifteen and a half hours.
 - ii. **Nigel Morales v The Attorney General CV2008-02133** - the Claimant was arrested without any legal authority and was accordingly awarded \$20,000.00 damages inclusive of an uplift for aggravation for two hours false imprisonment.
 - iii. **Stephen Singh v The Attorney General & Anor. H.C.A No. 3031 of 1994** – the Plaintiff had been unlawfully detained for two hours at the St. Joseph Police Station before being released without charge. He was awarded \$20,000.00 in damages inclusive of an uplift for aggravation for two hours false imprisonment.
 - iv. **Ivan Neptune v The Attorney General CV2008-03386** – the Claimant was unlawfully detained for seven and a half hours and was awarded general damages in the sum of \$25,000.00 for false imprisonment.
127. Having regard to the evidence before the court, the fact that no medical report was provided, no evidence was led of any serious injuries and the award in similar cases, the court will make an award of \$35,000.00 in general damages for unlawful arrest, detention and assault inclusive of an uplift for aggravation.

Exemplary damages

128. Exemplary damages are awarded in cases of serious abuse of authority. The function of exemplary damages is not to compensate but to punish and deter. The case of **Rookes v Barnard (1964) AC 1129** established that exemplary damages can be awarded in three types of cases namely:

- i. Cases of oppressive, arbitrary or unconstitutional action by servants of the Government;
- ii. Cases where the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff; and
- iii. Cases in which exemplary damages are expressly authorized.

129. The defendant submitted that this case does not merit an award of exemplary damages since PC Sammy's actions in arresting and prosecuting the claimant were not malicious.

Findings

130. The court is of the view that this is a suitable case for the award of exemplary damages. The actions of PC Sammy in arresting the claimant without reasonable and probable cause and thereafter attempting to make a link between the claimant and the car under oath, coupled with the delivery of a slap to the claimant were arbitrary, oppressive and unconstitutional. Some police officers continue to so act on a daily basis without regard for the rights of the citizenry and the courts must continue to send a message in appropriate cases that it will not be tolerated. The proper course would no doubt have been that of inviting the claimant to the police station for the purpose of identification (confrontation in this case). The exercise of power arbitrarily continues to have a deleterious effect on the reputation of the police service as a whole and is unfair not only to the other officers who themselves attempt at all times to perform their duties within the confines of the law but to the citizenry as well.

131. In the case of **Ghanny v PC Ramadhin CV 2015-01921**, Rajkumar J made an exemplary award of \$60,000.00 for assault, false imprisonment and malicious prosecution. Further, in the case of **Sham Jagdeo v the Attorney General of Trinidad and Tobago CV2013-00397**, Des Vignes J (now Justice of Appeal) awarded \$15,000.00 in exemplary damages to reflect the court's disapproval of police officers fabricating charges against citizens to disguise their dishonesty.

132. The court is of the view that this case fell below the \$60,000.00 range despite the finding that PC Sammy did in fact slap the claimant as there was no evidence of injury and further, the court found that the claimant was not maliciously prosecuted. However, taking into consideration the circumstances of this case, the court finds that the award should be over \$15,000.00. As such, an award of \$20,000.00 in exemplary damages is reasonable.

Trespass to property

133. The court having found that the claimant's car, house and yard were not searched, he is not entitled to damages for trespass to property.

Interest

134. The Court of Appeal in the case of the *Attorney General v Fitzroy Brown and others CA 251/2012* set out that the pre-judgment interest rate on general damages should be aligned with the short term rate or the rate of return on short term investments of which there is some evidence before the court. Further, the Court of Appeal in that case reduced the rate of pre-judgment interest rate on general damages from 9% to 2.5%. There being no evidence of the rate of return on short term investments before the court, the court will award 2.5% interest on general damages.

Costs

135. The claimant's case was based on four pillars. He has barely succeeded on two. It means that the defendant has succeeded in respect of two major aspects of the claim. In those circumstances, the court is of the view each party shall bear its own costs and the court shall so order.

136. The order of the court will therefore be as follows;

- i. The defendant shall pay to the claimant general damages for a period of unlawful arrest, detention and assault on the 16th May, 2013 inclusive of an uplift for

aggravation in the sum of \$35,000.00, together with interest thereon at the rate of 2.5% from the date of institution of the proceedings to the date of judgment.

- ii. The defendant shall pay to the claimant exemplary damages in the sum of \$20,000.00.
- iii. The claims for malicious prosecution, unlawful detention from Thursday the 16th May to Monday the 20th May, 2013 and trespass are dismissed.
- iv. Each party is to bear his own costs of the claim.

Dated this 20th day of February, 2018

Ricky Rahim
Judge