

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2017-02395

Between

KYLE NERO

Claimant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice R. Rahim

Date of Delivery: April 10, 2019

Appearances:

Claimant: Mr. R. Chaitoo instructed by Mr. C. Hackett & Ms. V. Bharath

Defendant: Ms. M. Davis instructed by Ms. M. Benjamin

JUDGMENT

1. By Claim Form filed on June 30, 2017 the claimant seeks damages inclusive of aggravated and exemplary damages for wrongful arrest and/or false imprisonment. The claimant alleges that he was wrongfully arrested on August 24, 2016 and unlawfully detained without being charged with any offences. He was released on August 29, 2016.

THE CASE FOR THE CLAIMANT

2. The claimant gave evidence for himself. He is a thirty-eight year old construction worker. He resides at No. 93, 1st Street, Barataria and has two children.
3. On August 24, 2016 ("the said date") at approximately 5:30 pm, the claimant was informed by his father, Michael Sylvester ("Sylvester") that police officers were at his home and that they were looking for him. The claimant was not at home at the time but arrived at his home about twenty minutes thereafter. Upon arrival he was informed by Sylvester that three police officers dressed in police uniform came to his home in a marked police vehicle and gained entry into the house by breaking down the back door of the house. The police officers did not produce any search warrant but entered the house and conducted a search.
4. When the claimant entered his home, he observed that his drawers and wardrobes were open, clothes were scattered on the floor and the cushions were raised off the seats. However, no damage was done to the inside of the premises except for the damage done to the back door of the house.

5. Around 6:30 pm a marked police vehicle returned to the claimant's home and parked at the front of the house. The claimant observed four police officers, all in police uniform and armed with guns. Three police officers exited leaving the driver. One police officer pointed a gun through the window of his home and shouted "*don't move!*" At that time, the claimant was holding his one year old baby. The other two police officers entered the house through the broken down back door. None of the officers identified themselves to the claimant neither did they show him any search warrant.
6. One police officer approached him and said "*turn around*". The claimant was then handcuffed from behind. The officer who arrested the claimant neither identified himself nor produced a warrant for his arrest. As such, the claimant testified that he does not know the name of the arresting officer who he described as being short in height, dark in complexion, slim built and of African descent.
7. The claimant was also not informed of the names of the other two officers. However, the claimant remembered that one of the officers was approximately six feet tall, light skinned, and of African descent and the other was slim, light skinned, approximately five feet five inches in height and of African descent.
8. Further, the claimant was not informed of the reason for his arrest. Upon arrest, he was placed in the back of the marked police vehicle, the driver who was dressed in police uniform asked him, "*You know what we have you for?*" and the claimant responded that he did not. He was neither cautioned nor informed of his legal rights and privileges.

9. At the time of arrest he was dressed in a pair of three quarter pants and was not wearing any shirt. He was arrested in the full view of his father, his baby and the mother of his child.

10. He was conveyed to the San Juan Police Station where he remained in the vehicle with two of the police officers while the other two exited the vehicle and entered the police station. Upon return of the two officers the vehicle proceeded to the Inter Agency Task Force (IATF) building located in El Socorro, San Juan. The driver and another officer came out of the vehicle and went into the IATF building where they spent approximately five minutes. They then returned to the police vehicle and one of the officers said to the other officers in the vehicle *“carry him Chaguanas.”*

11. At around 7:30 pm the police vehicle arrived at the Chaguanas Police Station. The officers took the claimant out of the vehicle and into an office at the station. The claimant was approached by a police officer who identified himself by his Trinidad and Tobago Police Identification card (*“TTPS ID card”*) as Sergeant Mohammed. Sergeant Mohammed told the claimant *“You were arrested concerning a robbery and shooting in Chaguanas area, Edinburgh 500”*. The claimant replied by stating *“I doh know what you are talking about”*. Sergeant Mohammed then left the room.

12. The police officer who arrested the claimant then asked to have a look at his tattoos. At that time, as the claimant was bare back, his tattoos were visible. The arresting officer then took out his phone and took several photographs of the claimant.

13. Sergeant Mohammed then returned with two officers and said, *“Put him in the back”*. The claimant was then locked up in a cell at the Chaguanas Police

Station. The cell was concrete and the entrance to the cell contained one iron door with steel bars. The claimant testified that the cell was poorly ventilated and there was a strong smell of urine and faeces. The cell contained no bed, mattress or sponge and so the claimant had no choice but to sleep on the cold, hard concrete floor from August 24 to August 29, 2016. The cell was never cleaned by anyone at the police station during the time the claimant was detained.

14. On August 26, 2016 at around 2:00 pm, the claimant was allowed to be seen by an Attorney at Law, Mr. Godson Phillip. Sergeant Mohammed informed the claimant that he wanted to conduct an interview with him and the claimant willingly agreed. Sergeant Mohammed then informed the claimant that he was investigating a report concerning the shooting of a police officer on the said date at Edinburgh 500 which occurred around 2:45 pm and that he (the claimant) was suspect in the investigation.
15. The claimant denied being the person responsible for any shooting and the officer instructed him to sign a statement to that effect. The claimant did not see the statement which the defendant disclosed as his statement. That was so because his Lawyer did not get a copy of the statement. The interview started at approximately 2:00 pm and ended at approximately 3:30 pm. After the interview, the claimant was returned to the cell without being released or charged.
16. On August 29, 2016 the claimant was visited by an Inspector who told him he was in charge of the Chaguanas Police Station. The claimant could not recall the name of the Inspector. The Inspector asked him about the date he was arrested and the reason for his arrest. The claimant informed the Inspector

that he was arrested and was in jail since August 24, 2016 and was not charged for any offence.

17. The claimant was released on August 29, 2016 at approximately 10:30 am by Sergeant Mohammed. As such, the claimant was arrested and imprisoned on August 24, 2016 and released on August 29, 2016 without being charged with any offences.¹

18. During the time he was imprisoned, the claimant was not allowed to bathe or brush his teeth. As such, it was his evidence that he was smelling badly and was feeling unwell as a result of the inhumane and poor conditions he had to endure.

19. As a result of the entire ordeal, the claimant felt humiliated and hurt. He was embarrassed by the incident. He felt ashamed as he was arrested and handcuffed in front of his father, baby and the mother of his child and he did nothing wrong.

20. His Attorney-at-Law sent a pre-action protocol letter dated November 4, 2016 to the defendant. By that letter, the claimant claimed that he was wrongfully arrested at his place of residence and thereafter illegally detained and imprisoned at the Chaguanas Police Station. He further claimed that the police officers had no reasonable and probable cause to arrest and detain him and demanded reasonable compensation for the damages he sustained as a result of the unlawful actions of the servants of the State. By letter dated November 15, 2017 the defendant acknowledged receipt of the claimant's pre-action protocol letter and demanded proper identity of the police

¹ A copy of the station diary extract was annexed to the claimant's witness statement at "A".

officers involved in the alleged incident. By letter dated February 1, 2017 the claimant's Attorney-at-Law responded to the defendant's letter and quoted the following dicta of the case of ***Kelvin Parmassar v AG***² wherein Jamadar JA had the following to say at paragraph 11;

“This is an action against the Attorney General (on behalf of the State). It is agreed that what must be established by the Claimant is that police officers, and not any particular police officers, committed the tort of false imprisonment. The failure to particularise the names and regimental numbers of the police officers or the registration number of the police vehicle is not necessarily fatal to the claim. The following statements of Davis J.A. in Civil Appeal No. 71 of 1987 Patrice Kareem v The Attorney General of Trinidad and Tobago, though made in the context of constitutional proceedings, are applicable in a case such as this: In proceedings under the Constitution, which are civil in nature, I do not think that it is necessary to go so far as to name the particular police officer, particularly where there has been concealment of a particular officer's name or identity as the evidence in the case does suggest. Once the Court is satisfied, on a balance of probabilities, that a police officer was responsible, then, in my view, that is sufficient to establish that an arm of the State or some officer of a public authority was involved in the alleged deprivation of a constitutionally guaranteed right. It must be borne in mind that in constitutional suits the proper defendant is the Attorney General, and not the defending officer, the servant or agent of the state.”

21. The letter re-emphasized that the claimant was arrested on the said date by officers from the Movant police station who did not identify themselves and that the claimant provided a description of the officers. The letter further re-emphasized that the officer in charge of the investigation and illegal

² Civ App. No. 120 of 2009

detention of the claimant was Sergeant Maharaj who was attached to the Chaguanas police station. The court notes that the claimant in his witness statement stated that he referred to the officer as Sergeant Maharaj but later found out that the officer's real name is Sergeant Mohammed. The claimant received no further response from the defendant.³

The cross-examination of the claimant

22. Sylvester informed the claimant via a telephone call that the police officers were at his home. The claimant neither telephoned the police station nor visited same to enquire why the police officers were looking for him.
23. The claimant did not inform Sergeant Mohammed or any other officer that he was not cautioned or informed of his legal rights and privileges. He also did not make a report to the Police Complaints Authority that the arresting officer did not caution and inform him of his rights and privileges.
24. When the officers returned to the claimant's home at 6:30 pm, they did not inform him that he was a suspect but he did tell the officers that he had heard that they were by his home and that was why he came home.
25. The claimant was not informed that there were outstanding warrants for his arrest. He testified that there were no outstanding warrants for his arrest.
26. The claimant testified that he did not read the statement he signed during the interview he had with Sergeant Mohammed as he is not good at reading. He then testified that he was fully aware of the contents of the statement as

³ Copies of the pre-action correspondence between the parties was annexed to the claimant's witness statement at "B".

same was read over to him. The statement was an exculpatory one in which the claimant having provided his full particulars went on to provide details of his whereabouts and what he did on the said date which included a denial of going to or being at the place of the incident namely, Edinburgh 500.

THE CASE FOR THE DEFENDANT

27. The defendant called two witnesses, Police Constable Roger Foy (“PC Foy”) and Sergeant Andy Mohammed (“Sergeant Mohammed”).

The evidence of PC Foy

28. For the past three years, PC Foy has been attached to the North Eastern Divisional Task Force (NEDTF). The task force is charged with general policing duties which includes patrols, apprehension of persons on outstanding warrants, the arrest and prosecutions of criminal offenders and detaining of persons of interest.

29. Around 10:00 am on the said date PC Foy reported to duty at NEDTF located at the Morvant Police Station on Busby Street, Morvant. At around 5:00 pm that day, he was paraded and dispatched on mobile patrol. He was dressed in police uniform operational wear. He was dispatched with three other police officers all similarly dressed in police uniform. Their patrol district consisted of all the police station districts in the North-Eastern Division which included the San Juan Police District.

30. Whilst on patrol that day, a call was received via cell phone. PC Foy could not recall who got the call, but it was one of the officers on board the patrol vehicle. The call came from their Task Force Office, but PC Foy could not recall from whom it was transmitted.

31. PC Foy and the other officers were informed that the claimant was a suspect in relation to a shooting of a police officer, Mervyn Williams (“PC Williams”) in the Chaguanas Police District earlier on the said date. Consequently, the instructions received from the call were to go to the home of the claimant. PC Foy knew of the claimant as he (the claimant) is known to the police for several types of offences such as, possession of illegal firearm, robbery and possession of marijuana.

32. However, PC Foy did not know where the claimant was living but the information provided a description of the claimant’s home and its location at 1st Street Barataria. The officers were told to look for a house with a painting garage and with an old school car parked in front. The address was familiar to PC Foy as the car that was referred to, was well known.

33. Upon receipt of the information, the officers made enquiries at their office to ascertain if there were any outstanding warrants for the claimant. They were informed that on the computer systems there were three outstanding warrants for the claimant as follows;

- i. Warrant #P2213 OA issued on July 28, 2009 for Possession of Marijuana by 16651 P.C. Dass of Barataria Police Station.
- ii. Warrant #09 P0179 OA issued on December 1, 2009 by 17251 WPC Ramcharan for Assault by Beating Lyndon John of San Juan Police District.
- iii. Warrant #09 A 504 issued on 30/10/2009 Robbery D. Thomas by No. 16493 P.C. Callendar- Barataria.

34. The officers proceeded to the house at the given address and arrived there between 6:00 and 6:30 pm. They dropped off PC Mc Eachnie on 2nd Street which was located directly behind the claimant’s home. That was done in the event the claimant decided to evade them upon their arrival. The

officers then drove up an unknown street and parked on the corner of 5th Avenue and the unnamed street. All three of them then alighted from the police vehicle and walked a short distance of about fifty feet from that corner to the painting garage.

35. Upon their arrival at the garage, they observed the claimant standing near the roadway dressed in a light blue three quarter jeans wearing slippers. The yard was not fenced to the front. The officers approached the claimant and they identified themselves as police officers and showed him their TTPS ID card. The officers told the claimant that he was a suspect concerning a robbery in the Chaguanas district. PC Foy including the other officers, cautioned the claimant who said, "*Officer, I already hear all yah coming for me, so I come home*". PC Foy also informed the claimant that there were outstanding warrants for his arrest.

36. The officers informed the office that they had arrested the claimant and they were instructed to take the claimant to the IATF at Aranguez. That was because the officers were told that the instructions to have him detained came from the Superintendent of IATF. Consequently, the claimant was taken immediately to the IATF.

37. Upon arrival at the IATF, PC Foy and the other officers were instructed that the claimant was to be taken to the Chaguanas Police Station where he was wanted for questioning. PC Foy and the other officers were then accompanied by Sergeant Mohammed, investigator into the shooting and robbery of PC Williams.

38. The outstanding warrants were to be executed by the Chaguanas Police as the claimant was detained at the station. The actual warrants were in the

possession of the warrant officer who was expected to return to work at 8:00 am the following day. Consequently, the officers were unable to obtain the actual warrants to hand over to Sergeant Mohammed. Sergeant Mohammed would have had to make the arrangements to get the warrants the next day. The officers then returned to their NDTF office and reported off patrol.⁴

39. PC Foy testified that he and the officers were never at the claimant's premises around 5:30 pm on the said date. That they went to the claimant's property once that day. When they arrived, they took the claimant from his yard near the road way. As such, it was PC Foy's testimony that the officers and he neither entered the claimant's house nor did any damage to his property. That they did not have the warrant in their possession at the time but they informed the claimant about the outstanding warrants.

40. According to PC Foy, the claimant was arrested in the presence of persons who he (PC Foy) believed to be his father and other family members. The claimant was handcuffed out of an abundance of caution as he was believed to be a prisoner with outstanding warrants.

The cross-examination of PC Foy

41. PC Foy has been a police officer for eight years. He was not involved in the investigation into the shooting and robbery of PC Williams. He simply received a phone call with instructions and acted on those instructions. He

⁴ A copy of the relevant entry made in the Morvant Police Station diary page 56 paragraph 19 and 20 was attached to PC Foy's witness statement at "RF1".

denied going to the claimant's home at 5:30 pm on the said date. He further denied that he together with other officers broke down the back door of the claimant's home, entered the claimant's home and searched same without a warrant.

42. The claimant was searched. PC Foy could not recall if each of the officers with him cautioned the claimant but he (PC Foy) cautioned the claimant. When the claimant was arrested, he was first taken to the San Juan Police Station. He was taken there so that the officers could have made phone calls to find out where to take him. PC Foy was instructed to take the claimant to the IATF.

The evidence of Sergeant Mohammed

43. Sergeant Mohammed has been in the Trinidad and Tobago Police Service for the past twenty-two years. He is currently attached to the Central Division Criminal Investigation Division based at Chaguanas.
44. At the material time, Sergeant Mohammed was attached to the Chaguanas Police Station. Prior to the said date Sergeant Mohammed had no interaction with the claimant when he was brought in by the North Eastern Divisional Task Force (NEDTF).
45. On the said date, Sergeant Mohammed was officially detailed to conduct enquiries into a report of a shooting at Edinburgh 500, where two police officers, PC Williams and PC Adesh Mano were shot at and robbed. The police intercepted the vehicle involved in the shooting and two persons were held namely; Shawn Nicol ("Nicol") and Ian Thomas ("Thomas"). However, one person evaded capture by the police. The description of the

person who escaped was African Descent, five feet seven inches, brown complexion, medium built, short hair and dressed in light coloured clothing. When Sergeant Mohammed returned from enquiries that day, he made the relevant entries in the station diary.⁵

46. Later on the said date, Sergeant Mohammed had a conversation with Police Constable Rajpath regimental number 18616 (“PC Rajpath”), a detective under Sergeant Mohammed’s command.⁶ PC Rajpath later gave Sergeant Mohammed copies of the statements which he had recorded from PC Mano.⁷ At the time, Sergeant Mohammed was conducting enquiries with the two other persons who were in police custody having been held earlier.

47. On August 25, 2016, Sergeant Mohammed interviewed Nicol at around 5:00 pm. Nicol made certain utterances and so Sergeant Mohammed informed him of his intention to record an interview in the presence of a representative. Nicol requested that his mother be present at the interview. Sergeant Mohammed therefore caused a telephone message to be sent to Nicol’s mother and they waited for her response. However, Nicol eventually admitted that he was involved but did not mention the claimant. Nicol mentioned that he and two other men were involved, but he did not give names of the other two men on August 25, 2016.⁸

⁵ A copy of the entry made in the Chaguanas Police Station Diary page 112 paragraph 12 was attached to the witness statement of Sergeant Mohammed at “AM1”.

⁶ Copies of the Station diary entry made in respect to the identification of the claimant was attached to Sergeant Mohammed’s witness statement at “AM3”.

⁷ Copies of the statements of Adesh Mano were annexed to the witness statement of Sergeant Mohammed at “AM2”.

⁸ A copy of the station diary entry made in respect to that interview was attached to Sergeant Mohammed’s witness statement at “AM4”.

48. On August 26, 2016, PC Mano returned to the Chaguanas Police Station and recanted the identification of the claimant.⁹ However, given that PC Williams was also a victim there was a need for him to be given an opportunity to see the claimant. Sergeant Mohammed conducted an interview with the claimant at around 3:30 pm. The claimant willingly participated in the interview and a representative namely; Daniella Phillip was present. The claimant subsequently also signed the interview notes willingly.¹⁰ Sergeant Mohammed informed the claimant that he would be further detained. That was because PC Williams was still receiving medical attention and was hospitalized at Mount Hope Surgical Ward awaiting surgery.

49. On August 27, 2016 Sergeant Mohammed again attempted to interview PC Williams at the Hospital. Unfortunately, PC Williams was not in a condition to give any information and was still awaiting surgery. Later that day, Sergeant Mohammed received a further statement from Thomas. Thomas confessed that he was involved in the said shooting. He eventually named the driver as Dion Briggs. He did not name the claimant.

50. However, Sergeant Mohammed did not release the claimant at that stage because PC Williams was still in hospital and the claimant fitted the general description given by police officer of the person seen fleeing the scene. Additionally, Sergeant Mohammed was still investigating the claimant's account of his where about at the material time.

⁹ A copy of PC Mano's statement was attached to Sergeant Mohammed's witness statement at "AM5".

¹⁰ A copy of the interview notes taken from the claimant were annexed to Sergeant Mohammed's witness statement at "AM6".

51. Over the weekend, Sergeant Mohammed went to the area where the claimant stated he was at the time smoking weed in Barataria. Persons in the area verified that the claimant was there. Sergeant Mohammed was also in the process of obtaining statements from police officers who assisted in the investigation.
52. Sergeant Mohammed prepared and submitted a case file and consulted with the legal advisor, Inspector Teesdale who instructed that the claimant be released as they were at that time uncertain when PC Williams would be available. Subsequently, Sergeant Mohammed released the claimant on August 29, 2016 and eventually charged the other two offenders with wounding with intent, shooting with intent, possession of firearm and arms to endanger life.¹¹

The cross-examination of Sergeant Mohammed

53. Sergeant Mohammed was investigating a series of offences namely; wounding with intent, shooting with intent, possession of firearm, possession of ammunition, possession of firearm to endanger life and assault with intent to rob. He testified that if he was investigating an offence of robbery, it would have been important to search a suspect and the suspect's home.
54. Sergeant Mohammed could not recall which officer gave the description of the person who evaded capture of the police on the said date. He agreed that the description given was very general. He further agreed that the description could have described just about anyone. Moreover, he agreed

¹¹ A copy of the Station Diary Extracts showing events regarding to the alleged incident were annexed to Sergeant Mohammed's witness statement at "AM7".

that there was nothing specific or unique to link the description to the claimant.

55. Sergeant Mohammed did not give the instructions to arrest the claimant on the said date. Constable Rajpath informed Sergeant Mohammed that the claimant was a suspect in the shooting. Sergeant Mohammed did not search the claimant when he arrived at the Chaguanas Police Station. The claimant's hands or clothing were not tested for gunpowder residue. Further, the claimant was not interviewed on the said date.

56. The claimant was brought to the Chaguanas station at about 7:00 pm on the said date. Although Sergeant Mohammed did not mention what investigations he would have done at the time the claimant was brought to the station, he (Sergeant Mohammed) testified that as soon as he was appointed as investigating officer, the investigations were ongoing. He agreed that he did not give details of the ongoing investigations.

57. The interview with Nicol was in excess of an hour. On August 25, 2016 Sergeant Mohammed conducted the interview with Nicol amongst other things. He accepted that he did not include what the other things were.

58. Sergeant Mohammed agreed that there was nothing in his witness statement to suggest that the claimant was going to abscond from the investigations if he was released.

59. On the weekend which was August 28 and 29, 2016 Sergeant Mohammed visited the claimant at the cell.

ISSUES

60. There were certain issues of fact, however the claimant claimed no relief in relation to the alleged illegal search. Further, the court finds that whether the claimant was arrested in his home as opposed to the side of roadway was of no moment since it was not in dispute that the claimant was in fact arrested on August 24, 2016.

61. The main issues of law for determination are as follows;

- i. Whether the arrest of the claimant was lawful;
- ii. Whether the claimant was falsely imprisoned from August 24 to August 29, 2016; and
- iii. If the defendant is found liable for any of the above, whether the claimant is entitled to damages, including aggravated and exemplary damages.

Issue 1 – *whether the arrest of the claimant was lawful*

Law

62. The onus of establishing reasonable and probable cause for an arrest is on the police.

63. Narine JA in ***Nigel Lashley v The Attorney General of Trinidad and Tobago***¹² 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

¹² Civ Appeal No 267 of 2011

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."

64. Where an arrest is executed without warrant, the defendant must satisfy **Section 3(4) of the Criminal Law Act Chapter 10:04** which 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."

65. Further, **Halsbury's Laws of England Volume 84A (2013)** at paragraph 487 provides as follows;

"A constable may arrest without a warrant:

(1) anyone who is about to commit an offence;

(2) anyone who is in the act of committing an offence;

(3) anyone whom he has reasonable grounds for suspecting to be about to commit an offence; and

(4) anyone whom he has reasonable grounds for committing an offence.

If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.

If an offence has been committed, a constable may arrest without a warrant anyone who is guilty of the offence and anyone whom he has reasonable grounds for suspecting to be guilty of it."

66. **Section 46(1)(d) and (f) of the Police Service Act chapter 15:01**, also empowers a police officer to arrest without a warrant in the following circumstances;

"46. (1) A police officer may arrest without a warrant-

...

(d) a person in whose possession anything is found which may reasonably be suspected to have been stolen or who may reasonably be suspected of having committed an offence with reference to such thing;

...

(f) a person whom he finds in any public or private place or building and whom he suspects upon reasonable grounds of having committed or being about to commit an offence."

Discussion and findings

67. PC Foy was the arresting officer. The court therefore examined the information which was in the mind of PC Foy at the time of the arrest (the objective test) to determine whether same amounted to reasonable grounds for suspicion. The court then went on to consider the genuineness of the belief of that officer (the subjective test).

68. According to PC Foy, whilst on patrol on the said date, a call was received via cell phone. PC Foy could not recall who got the call, but it was one of the officers on board the patrol vehicle. The call came from their Task

Force Office, but again PC Foy could not recall from whom it was transmitted. He later mentioned that the instructions to have the claimant detained came from the Superintendent of IATF. However, that information is immaterial as PC Foy did not have same at the time of the arrest of the claimant and the court so finds.

69. PC Foy and the other officers were informed that the claimant was a suspect in relation to the shooting of PC Williams. Consequently, the instructions received from the call were to go to the home of the claimant. PC Foy knew of the claimant as he (the claimant) is known to the police for several types of offences such as, possession of illegal firearm, robbery and possession of marijuana.

70. However, PC Foy did not know where the claimant was living but the information provided a description of the claimant's home and its location at 1st Street Barataria. The officers were told to look for a house with a painting garage and with an old school car parked in front. The address was familiar to PC Foy as the car that was referred to, was well known.

71. Upon receipt of the information, the officers made enquiries at their office to ascertain if there were any outstanding warrants for the claimant. They were informed that on the computer systems there were three outstanding warrants for the claimant. The warrants were as follows;

- iv. Warrant #P2213 OA issued on July 28, 2009 for Possession of Marijuana by 16651 P.C. Dass, of Barataria Police Station.
- v. Warrant #09 P0179 OA issued on December 1, 2009 by, 17251 WPC Ramcharan for Assault by Beating Lyndon John of San Juan Police District.
- vi. Warrant #09 A 504 issued on 30/10/2009 Robbery D. Thomas by No. 16493 P.C. Callendar- Barataria.

72. The defendant submitted that PC Foy along with the other officers honestly had the requisite suspicion and belief that the claimant was a suspect in the incident of shooting due to the information from his senior (Superintendent of the IATF). As such, the defendant submitted that the arresting officer(s) had reasonable cause to go to the address of the claimant and arrest and detain him. That PC Foy also knew the claimant as he is known to the police for several types of offences such as illegal firearm, robbery and possession of marijuana.

73. The court finds that the claimant was cautioned and informed of his rights and privileges at the time of his arrest. There is a presumption of regularity in favour of PC Foy as a public officer in the performance of his official duties as a police officer. The claimant has failed to adduce sufficient evidence to rebut that presumption. The only evidence presented to this court was the claimant's bare allegation that he was not informed of his constitutional rights at the time of his arrest. As such, the court finds that the claimant was cautioned and informed of his legal rights and privileges at the time of his arrest.

74. The court also finds that the arrest of the claimant was unlawful. 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. PC Foy testified that a phone call was received from his Task Force Office instructing him and the other officers to go to the home of the claimant as the claimant was a suspect in the shooting. However, PC Foy could not recall who received that phone call and from whom it was transmitted. The court finds that this unnamed person (suggested to be the Superintendent of IATF) who transmitted the information to PC Foy and the other officers would have had critical

evidence as to the reasons which led him or her to have an honest belief in the claimant's guilt. But that information as genuine as it may have been was not put before this court. The court therefore drew adverse inferences against the defendant for failing to produce this person as a witness.

75. Further and of utmost importance, PC Foy did not mention the content of the information received save and expect the bald statement that the claimant was a suspect in the shooting. The court finds that it was incumbent upon PC Foy to state both the nature of the information received and the reason why the information caused him to have an honest belief or suspicion that the claimant had committed the offence. Consequently, the court finds that PC Foy did not have reasonable and probable cause to arrest the claimant.

76. In relation to the warrants, the defendant simply pleaded that at the time of his arrest, the claimant was informed that there were outstanding warrants for his arrest. PC Foy in his witness statement particularized three outstanding warrants in relation to the claimant which were allegedly issued in the year 2009. The onus of proving that those warrants were actually in existence was on the defendant. However, the defendant failed to disclose any of those alleged warrants to this court and it was the evidence of the claimant that there were no outstanding warrants for his arrest.

77. Further, there is no evidence that any such warrants were executed on the claimant or that he was taken to court for same after his arrest purportedly thereon. This demonstrated to this court in clear terms that it was more likely than not that at the time of arrest there were in fact no warrants of arrest in existence for the claimant. As such, the defendant having failed to prove that those alleged warrants in fact existed, the court finds that

the claimant was not arrested pursuant to any warrant of arrest whatsoever.

Issue 2 - *Whether the claimant was falsely imprisoned from August 24 to August 29, 2016*

Law

78. The essence of a claim of false imprisonment is the mere imprisonment. The claimant need not prove that the imprisonment was unlawful or malicious, but must establish a prima facie case that he was imprisoned by the defendant; the onus then lies on the defendant of proving a justification.¹³

79. In **Chandrawatee Ramsingh v The Attorney General of Trinidad and Tobago**,¹⁴ 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.”

¹³ Halsbury's Laws of England Tort, Volume 97 (2010) 5th Edition para 542.

¹⁴ (2012) UKPC 16

80. In the case of **Adesh Maharaj v The Attorney General of Trinidad and Tobago**,¹⁵ 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."

Discussion and findings

81. Sergeant Mohammed was the lead investigator in the shooting and he was responsible for the detention of the claimant from August 24 to August 2019. As such, it was pertinent to analyze the evidence of Sergeant Mohammed to determine whether any period of the detention was justified and/or reasonable.

82. According to the evidence of Sergeant Mohammed, on August 24, 2016 he was officially detailed to conduct enquiries into the report of the shooting at Edinburgh 500, where two police officers, PC Williams and PC Adesh Mano were shot at and robbed. The police intercepted the vehicle involved in the shooting and two persons were held namely; Nicol and Thomas. That one person had evaded capture by the police. The description of the person who had escaped was of African Descent, five feet seven inches,

¹⁵ S788 of 1998

brown complexion, medium built, short hair and dressed in light coloured clothing.

83. The court notes that in that station diary extract dated August 24, 2016 it was stated that Sergeant Mohammed went to Mt. Hope where he observed PC Williams on a stretcher suffering from gunshot injuries and awaiting surgery. The extract further stated that Sergeant Mohammed interviewed the common law wife of PC Williams. As such, there was nothing recorded in the station diary which reflected that the police had intercepted a vehicle involved in a shooting and two persons were held namely; Nicol and Thomas and that one person had evaded capture by the police. Further no description of the person who had escaped was recorded.

84. Later on the said date, Sergeant Mohammed had a conversation with PC Rajpath who later gave Sergeant Mohammed copies of the statements which he had recorded from PC Mano. In one of the statements given by PC Mano, the following was stated;

"...around 8:00 pm on Wednesday 24th August, 2016, I was in the charge room of the Chaguanas Police Station talking to an officer, when I observed a few police dressed in tactical wear walking into the station with a man of African descent, medium built about 5 feet 7 inches tall, bare back wearing a light blue ¾ jeans, and realized that he was one of the persons who was involved I pointed to him and I said loudly "Officer that was one of the man he was saying "Look that man have a gun" the officer stopped the other officers who was walking in and ask me if I was sure and I said yes. The police then tell the man something and then the officers carry him to the back. I then gave this statement..."

85. Further station diary extract dated August 24, 2016 page 112 paragraphs 13 and 14 provided as follows;

"...PC Rajpath notes at this time 8pm whilst conducting a further interview of Adesh Mano in the Chargerroom area of the Chaguanas Police Station, he was stopped by the said Adesh Mano who then pointed to a man of African descent, medium built, brown skin complexion about 5 ft 9 inches tall, barebacked wearing blue ¾ jeans, who was at the time being conveyed by police officers... and shouted in a loud tone of voice "Officer that was one of the men who was saying look that man have a gun" Pc Rajpath stopped the said officers enquired from Adesh Mano if he was sure and he said yes Pc Rajpath approached the said man who gave his name as Kyle Nero...and enquired from him if he heard what the said man said and he replied yes Pc Rajpath then informed him of the report of Wounding and Shooting with Intent...and that he has been positively identified as a suspect and cautioned him... he replied "Well I want to know what going on, I don't know what going on"... He was formally arrested and handed over to the sentry for safe keeping."

86. The claimant testified that he did not know PC Mano and that at the station no one pointed him out as a suspect in anything. The court finds that although PC Mano was not a witness in this case that based on the contemporary documents that was disclosed by the defendant that PC Mano did in fact point out the claimant as being one of the men involved in the shooting. As such, the court finds that although the initial arrest of the claimant was unlawful, he was unlawfully detained until he was identified by PC Mano.

87. Subsequently, on August 25, 2016, Sergeant Mohammed interviewed Nicol at around 5:00 pm. Nicol eventually admitted that he was involved but did not mention the claimant. Nicol mentioned that he and two other men were involved, but he did not give names of the other two men on August 25, 2016.¹⁶

88. On August 26, 2016, PC Mano returned to the Chaguanas Police Station and recanted the identification of the claimant.¹⁷ Sergeant Mohammed testified that given that PC Williams was also a victim there was a need for him to be given an opportunity to see the claimant. Sergeant Mohammed conducted an interview with the claimant relative to shooting. The claimant willingly participated in the interview and a representative namely; Daniella Phillip was present. The claimant subsequently also signed the interview notes willingly.¹⁸ Sergeant Mohammed informed the claimant that he would be further detained. That was because PC Williams was still receiving medical attention and was hospitalized at Mount Hope Surgical Ward awaiting surgery.

89. On August 27, 2016 Sergeant Mohammed again attempted to interview PC Williams at the Hospital. Unfortunately, PC Williams was not in a condition to give any information and was still awaiting surgery. Later that day, Sergeant Mohammed received a further statement from Thomas. Thomas confessed that he was involved in the said shooting. He eventually named the driver as Dion Briggs. He did not name the claimant.

¹⁶ A copy of the station diary entry made in respect to that interview was attached to Sergeant Mohammed's witness statement at "AM4".

¹⁷ A copy of PC Mano's statement was attached to Sergeant Mohammed's witness statement at "AM5".

¹⁸ A copy of the interview notes taken from the claimant were annexed to Sergeant Mohammed's witness statement at "AM6".

90. However, Sergeant Mohammed did not release the claimant at that stage because PC Williams was still in hospital and the claimant fitted the general description given by police officer of the person seen fleeing the scene. Additionally, Sergeant Mohammed was still investigating the claimant's account of his whereabouts at the material time.
91. Over the weekend, Sergeant Mohammed went to the area where the claimant stated he was at the time smoking weed in Barataria. Persons in the area verified that the claimant was there. Sergeant Mohammed was also in the process of obtaining statements from police officers who assisted in the investigation.
92. Sergeant Mohammed prepared and submitted a case file and consulted with the legal advisor, Inspector Teesdale who instructed that the claimant be released as they were at that time uncertain when PC Williams would be available. Subsequently, Sergeant Mohammed released the claimant on August 29, 2016.
93. The court finds that after PC Mano recanted his identification of the claimant on August 26, 2016, there was no justification to continue the detention of the claimant. The fact that PC Williams was a victim and still at hospital was not sufficient to justify the claimant's detention as the officer's knew the claimant's address and there was no evidence to suggest that he was a flight risk and would have absconded. Additionally there is no evidence that PC Williams had identified the claimant in any way form or fashion even by way of description so that to keep the claimant detained for the purpose of being viewed after PC Williams recovered was unreasonable.

94. Additionally, without the identification evidence, there was no evidence to link the claimant to the shooting except for the description of the person who escaped. The court finds that the description which Sergeant Mohammed was in possession of was too general in nature so as to justify the continued detention of the claimant. As such, the court finds that the detention of the claimant from August 26 to August 29, 2016 was unlawful.

Issue 3 – Damages

95. The claimant testified that he arrived at the Chaguanas Police Station at approximately 7:30 pm. During cross-examination, Sergeant Mohammed testified that the claimant arrived at the Chaguanas Police Station at approximately 7:00 pm. According to the statement and station diary extract, PC Mano identified the claimant at about 8:00 pm. As such, the claimant was unlawfully detained for approximately half an hour to an hour on August 24, 2016. As the court found that there was no justification for the claimant's detention after PC Mano recanted his identification on August 26, 2016, the claimant is entitled damages for false imprisonment from August 26, 2016. There was no evidence before the court as to what time PC Mano recanted the identification of the claimant. According to the station diary extract dated August 29, 2016 the claimant was released at 10:20 am. As such, the defendant liable to pay to the claimant damages for his unlawful arrest and detention for approximately half an hour to an hour on August 26, 2016 and for approximately two and a half days from August 26 to August 29, 2016.

96. The claimant testified that the cell he was then locked up in was made out of concrete and the entrance to the cell contained one iron door with steel bars. That the cell was poorly ventilated and that it had a strong smell of urine and

faeces. The cell contained no bed, mattress or sponge and so the claimant had no choice but to sleep on the cold, hard concrete floor from August 24 to August 29, 2016. The cell was never cleaned by anyone at the police station during the time the claimant was imprisoned. The claimant further testified that during the time he was imprisoned, he was not allowed to bathe or brush his teeth. As such, it was his evidence that he was smelling badly and was feeling unwell as a result of the inhumane and poor conditions he had to endure.

97. As a result of the entire ordeal, the claimant felt humiliated and hurt. He was embarrassed by the incident. He felt ashamed as he was arrested and handcuffed in front of his father, baby and the mother of his child and he did nothing wrong.

98. Damages in cases of 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.¹⁹

99. In ***Thaddeus Bernard v Quashie***²⁰, de la Bastide C.J. stated the following in relation to aggravated damages;

¹⁹ See *Thaddeus Clement v the Attorney General of Trinidad and Tobago* Civ. App. 95 of 2010 at paragraph 12, per Jamadar JA

²⁰ CA No 159 of 1992

“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.”

100. The defendant did not address the court with respect to damages in its submissions. The claimant is seeking \$100,000.00 (including aggravated damages) and \$25,000.00 in exemplary for his wrongful arrest and false imprisonment. The claimant relied on the following authorities in support of his submission for damages;

- i. **Harold Barcoo v The Attorney General and Inspector Brown**²¹ - five days detention; \$75,000.00 (including aggravated damages) awarded for malicious prosecution and false imprisonment, \$10,000.00 in exemplary damages.
- ii. **Kennty Mitchel v The Attorney General of Trinidad and Tobago**²² - fifty-five and a half hours detention; \$100,000.00 (including aggravated damages) awarded for wrongful arrest and false imprisonment; \$25,000.00 exemplary damages.

²¹ HCA No. 1388 of 1989

²² CV 2007-03220

- iii. **Ricardo Luke Fraser v The Attorney General of Trinidad and Tobago**²³, Mohammed J- five days detention; \$100,000.00 (including aggravated damages) for false imprisonment.
101. The court further considered the following cases;
- i. **Attorney General of Trinidad and Tobago v Kevin Stuart**²⁴ - the Court of Appeal awarded the sum of \$50,000.00 together with interest and costs to the respondent for false imprisonment for a period of 33 hours (including aggravated damages).
- ii. **Indra Samuel and PC Ali and the Attorney General**,²⁵ Donaldson-Honeywell J – the claimant was awarded damages for false imprisonment in the sum of \$45,000.00 inclusive of aggravated damages for the period from around midday on May 8, 2010 to the time of her release on May 10, 2010.
- iii. **Lennon Richardson and Jason Alleyne v the Attorney General of Trinidad and Tobago**²⁶ – Dean-Armorer J awarded the sum of \$40,000.00 in general damages inclusive of aggravated damages, to each claimant for detention of approximately two days.
102. Having regard to the evidence before the court and the awards in similar cases, the court finds that a just award for general damages which sum includes an uplift for aggravation is the sum of \$75,000.00.

²³ CV 2014-03967

²⁴ Civ. App P162 of 2015

²⁵ CV 2014-00608

²⁶ CV 2007-2686

Exemplary damages

103. 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*²⁷ established that exemplary damages can be awarded in the following three types of cases;

- 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.

104. The court agrees with the submissions of the claimant that this is a suitable case for an award of exemplary damages. The actions of PC Foy in arresting the claimant without reasonable and probable cause and the actions of Sergeant Mohammed in detaining the claimant after PC Mano recanted his identification of the claimant and subjecting the claimant to unsanitary prison conditions and deprivation of his liberty were arbitrary, oppressive and unconstitutional. The court finds that in the circumstances of this case an award of \$15,000.00 in exemplary damages is reasonable.

²⁷ (1964) AC 1129

DISPOSITION

105. The order of the court is as follows;
- i. The defendant shall pay to the claimant general damages for false imprisonment inclusive of an uplift for aggravated damages in the sum of \$75,000.00 with interest thereon at the rate of 2.5% from the date of filing of the claim to the date of judgment.
 - ii. The defendant shall pay to the claimant exemplary damages in the sum of \$15,000.00.
 - iii. The defendant shall pay to the claimant the prescribed costs of the claim.

Ricky Rahim

Judge