

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE PORT OF SPAIN

Claim No. CV 2010-02956

BETWEEN

IJAZ BERNADINE

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES:

Mr. Jagdeo Singh instructed by Mr. Michael Rooplal for the claimant

Mr. Emmanuel H Pierre instructed by Ms. Patricia Cross for the defendant

Judgment

INDEX	PAGE
Background	3
The Claim	3
Issues	4
Findings of Fact	5
Conclusion	8
The Role of the Court	10
Disposition and Orders	12
Analysis and Reasoning	13
The Evidence	
Evidence of the claimant Ijaz Bernadine	13
The Alleged Injuries	15
Edison Bernadine	17
Clinton Harripersad	18
Hubert La Rode	19
Challenor Chadee	20
Law	
Right to retain and instruct without delay a legal advisor and to be informed of that right	26
False Imprisonment	27
Assault and Battery	30
Exemplary Damages	31
Conclusion	32
Disposition and Orders	33

Background

1. The claimant claims that after taking a detour via the Priority Bus Route, driving home from work around midnight, he was chased by the police, shot at, assaulted and beaten, detained and eventually released fifteen and a half (15 ½) hours later, after being issued with two fixed penalty tickets for traffic offences.

2. He claims that he was not afforded the right to retain or instruct a legal advisor or allowed to contact his father – an inspector of police.

3. The defendants deny that they assaulted or beat the claimant, but admit that three shots were fired at his vehicle. They assert that they fired shots, after the vehicle had come to a standstill, because they observed a male passenger who alighted from the vehicle with something in his hand resembling a firearm. They claim that passenger ran into a yard and escaped. They deny any infringement of the claimant's constitutional rights.

The claim

4. The claimant claims against the Defendant, the following reliefs:
 1. Damages including aggravated and/or exemplary damages for false imprisonment, assault and battery;
 2. A Declaration that the Claimant was denied his constitutional right pursuant to Section 5(2) (ii) of the Trinidad and Tobago Constitution, to retain and instruct without delay a legal advisor of his choice and hold communication with him.
 3. A Declaration that the claimant was deprived of his constitutional right to communicate with a friend and or relative via a telephone.
 4. Damages for violation of the claimant's constitutional rights.

5. As to the claims for constitutional relief, it is clear, since **Antonio Webster v The Attorney General of Trinidad & Tobago [2011] UKPC 22 Privy Council Appeal No 0079 of 2010** that these were redundant in a claim such as this, which is effectively for damages in private law. However the court is called upon to make findings of fact with respect to the matters which constitute the alleged constitutional infringements, and can factor these into its consideration of whether exemplary damages would be awardable.

Issues

6.

(i) Whether on or about the 15th May 2009 the servants and/or agents of the Defendant:

(a) Shot at the claimant's vehicle while he was driving;

(b) Unlawfully assaulted and beat the Claimant;

(c) Arrested the Claimant without reasonable and probable cause; and

(d) Falsely imprisoned the Claimant.

(ii). Whether the servant and/or agents of the Defendant failed to afford the claimant the opportunity to retain and instruct without delay a legal advisor of his choice and hold communication with him.

(iii). Whether in the circumstances, the Claimant is entitled to an award of aggravated and/or exemplary damages.

7. The issues are primarily factual, and involve a determination of whether or not the claimant is telling the truth. That necessarily involves an assessment and determination as to whether or not the defendants' witnesses are telling the truth, as there is little middle ground.

This is illustrated by the evidence of each in their respective witness statements which are therefore necessarily and unavoidably set out at some length.

Findings of fact

8. In light of the Claimant's overtaking a line of traffic and driving onto the Priority Bus Route, and the Claimant's trying to evade Police Officers, in the process bypassing a police road block, the Police Officers had reasonable and probable cause to attempt to stop the claimant's vehicle and investigate. However they do not contend that they fired shots at the vehicle in trying to bring it to a halt, or that they were shooting at its tyres. They assert that they fired shots when the vehicle had already come to a standstill.

9. Apart from the manner of his driving there is absolutely no evidence that the claimant had committed any offence. Further, it is significant that he was eventually only issued two fixed penalty tickets for traffic offences, which were not arrestable offences.

10. I find that the introduction into the scenario of the alleged passenger with an object resembling a firearm was a concoction designed to explain the gratuitous discharge of a firearm at the claimant in the course of their pursuit of him. As Officer La Rode explained, when a firearm is discharged a first division officer must visit the scene and investigate. The remainder of the scenario, the purported interrogation of the claimant and the search of his premises for arms and ammunition, was only justifiable if there had in fact been a passenger, who did in fact have a firearm or something resembling one.

11. In fact the conduct of the officers confirms that they themselves had no reasonable belief in the existence of such an individual. This is demonstrated for example by their failure to ensure that the claimant's vehicle was dusted for finger prints, and their failure to record in the

station diary, or anywhere, that the claimant was asked the name or identity of his alleged gun toting passenger.

12. I find that there was no such passenger, far less any firearm or item resembling one. That being a concoction and fabrication, the purported interrogation of the claimant, and the search of his premises for arms and ammunition was merely the continuation of a farce, and an unjustifiable infringement and abuse of his rights.

13. I find that in fact the claimant's evidence is far more believable, based on his attitude and demeanour under cross examination and its inherent consistency. I accept therefore that shots were fired at the claimant's vehicle after his admittedly suspicious driving.

14. I do not accept that they were fired **after** the vehicle was apprehended, when a front seat passenger in his vehicle was allegedly observed with something resembling a firearm.

15. I find that as a result, the claimant was, as he testified, in fear for his life and trying to find safety. He panicked and drove past a police roadblock, without realizing that the vehicle and policeman he saw was in fact a roadblock. He drove past a police station in his panic. He thought someone was trying to kill him - a reasonable assumption, as in fact shots were being fired at his vehicle. I find that that was a reasonable explanation which I accept.

16. I find that the claimant was assaulted and beaten as he testified. His injuries are supported by a medical certificate from Mt Hope, and the fact of injury is accepted by the defendants, though not their extent or cause. I find that the explanation of a fall causing those injuries is another fabrication by the defendant's officers, a continuation of their fabrication with regard to:-

a. the alleged passenger,

- b. the alleged item resembling the firearm,
- c. the alleged chase of that passenger.

17. I find that their evidence is untruthful particularly with regard to these aspects of the case.

18. I find that the claimant was detained without being permitted to contact his father as he requested, and he was never informed of his right to consult a legal advisor, or any other right.

19. I find that any detention of the claimant after his vehicle was apprehended and nothing illegal found was unlawful, as being without reasonable and probable cause.

20. If there had in fact been a passenger with something resembling a firearm then the further investigation and detention of the claimant would be more explicable, and in fact justifiable. I have however found as a fact that that was a fabrication by the officers involved which could not stand up to or survive their cross examination.

21. I find that there was no other occupant carrying a firearm in the vehicle, nor could the claimant, nor the fictitious passenger, possibly be under genuine suspicion of having one or threatening to discharge one. This was a concoction by the officers.

22. I find that the claimant was taken to the Tunapuna police station, **then** to Mt. Hope hospital for medical care.

23. I find that the Defendants well knew how the claimant's injuries occurred and in fact had themselves inflicted them upon the claimant.

24. I find that the claimant was not informed of his constitutional rights.

25. The claimant's evidence is accepted that he was chased, shot at, beaten, detained, falsely imprisoned and denied fundamental constitutional rights. I find that the Claimant was falsely imprisoned by the Defendant for a period of 15 and a half hours, that he was subjected to assault and battery by police officers acting on behalf of the Defendant, and that he was not informed of his right to retain and instruct without delay a legal advisor of his choice and hold communication with him, or any constitutional rights.

Conclusion

26. The claimant gave his evidence with conviction. I have absolutely no doubt that he was telling the truth. He was a responsible young person, working a late shift at his job at a cinema, on his way home from work.

27. He was not a bandit, or the friend or accomplice of bandits, and there was no one in the front passenger seat with a firearm or anything resembling one so as to justify the excessive force, and gross over reaction of the defendant's agents in shooting at him, and in assaulting and beating him after they apprehended him. That behaviour was completely unjustified and there was a real possibility it could have resulted in the claimant's death. They were not entitled to assume that the claimant was a criminal. They were not entitled, if they did, to persist in that assumption in the face of evidence to the contrary when they apprehended him.

28. There was nothing that the claimant did that deserved this response and the attempt to portray him as a criminal rather than a victim was conduct in further aggravation of indefensible behaviour by the defendant's agents.

29. They were not entitled to seek to punish the claimant extra judicially. They were not entitled to place the claimant at risk of serious personal injury or death by shooting at him in the absence of a threat to themselves. I expressly find that there was no such threat as there was no passenger in the front seat of the claimant's vehicle. He was alone, and the passenger, and the alleged item resembling a firearm, was fabrications after the incident.

30. They were not entitled to fabricate allegations and charges against the claimant to seek to justify the arrest and ill treatment of the claimant.

31. They were not entitled to attempt to tarnish the reputation of the claimant and to persist in that attempt by portraying and insinuating in their defence that he was associated with characters at night who carried firearms, and was therefore himself associated with criminals or criminal activity. It is the fabrication of those allegations and the persistence to trial in those attempts to tarnish the claimant's character that bring this matter into the category of case where an award of exemplary damages is appropriate.

32. The sweeping powers granted to police officers are to be used within the confines and parameters of the law. In a democracy governed by the rule of law and the Constitution, they are not to be used, as I expressly find was done in this case, to infringe the safety, security, reputation, or constitutional rights, of law abiding citizens.

The role of the court

33. I have found as a fact, on a balance of probabilities:
- a. That the claimant was shot at;
 - b. That the claimant was assaulted and battered for no reason; and
 - c. That police officers, agents of the defendant, deliberately lied on oath:
 - i. About shooting only when the claimant's vehicle had come to a standstill.
 - ii. About seeing a passenger run away from the claimant's vehicle.
 - iii. About seeing that fictitious passenger holding something resembling a firearm and pointing it at them.
 - iv. About not assaulting and battering the claimant.
34. They conspired with one another and were complicit in concealing the truth from their superior officers and from the court.
35. This is serious conduct which should send a chill down the spine of right thinking citizens. It is conduct which embodies the worst nightmares of law abiding citizens - that they, themselves or their families could be branded as criminals and treated as such and face the full force of agents of the State without recourse.
36. The claimant was the law abiding and hard working son of a former police inspector. That was not enough to spare him the ordeal which he endured.
37. The defendants' agents shot at him without any apparent restraint. It was only by luck that he was not killed or maimed for life. No apology was forthcoming. Instead the defendants sought to portray him as a criminal or associate of criminals, and destroy his reputation.

38. The court's role in circumstances such as these must be considered. The law permits compensation to be awarded to him for his detention, and for his injuries sustained as a result of his assault and battery.

39. The law allows such compensation to include an uplift for the aggravating circumstances under which these occurred.

40. The law further allows exemplary damages to be awarded taking into account any breaches of his constitutional rights.

41. The law must go further. It must of course achieve justice for the individual. But the courts also have a wider responsibility to the society in which they operate. That responsibility requires that at a minimum they examine the circumstances and make findings of fact without fear or favour and expose such to the public scrutiny.

42. In this case I have found as a fact that the claimant's vehicle was shot at without there being any threat whatsoever to the safety of the officers involved. The claimant was brutally battered for no reason when he stopped his vehicle causing him to sustain painful injuries. The claimant was treated like a criminal though his only offence was to try to take a short cut via the Priority Bus Route (PBR) and in so doing overtake a line of vehicles waiting at a traffic light. The claimant was detained on the pretext that the officers were investigating the possibility that he had arms and ammunition in his possession, and sought to justify that fictitious investigation by fabricating the existence of a passenger in the claimant's vehicle who allegedly had something resembling a firearm.

43. No such passenger existed. No cause therefore existed to suspect the claimant of any offence involving firearms or ammunition. No cause existed for the attack and infliction of injuries upon him, or for his detention for 15 and ½ hours.

44. Such behavior randomly targets citizens and no one can consider himself immune. The only safeguard is the courts' willingness to expose such behavior and enforce and uphold the rights of citizens. That is a remedy after the fact.

45. To reserve comment in a situation like the instant one is to participate in a culture of complicity which can have as its only end a steady erosion of the rights of law abiding citizens. The further comments of this court are aimed at preventing a repetition of similar behavior in the interest of such citizens as they deserve nothing less.

46. The duty of courts in a democracy which subscribes to the recognition, protection and enforcement of basic standards of treatment of its citizens, requires condemnation of high handed and oppressive actions, behavior and conduct of the servants or agents of the State, lest it be condoned, encouraged, systematized and perpetuated.

47. This matter requires investigation of the officers named in this action, who were all entrusted with the responsibility to protect and serve. Without consequences there is no reason to expect that unlawful behavior violative of the rights of law abiding citizens will not be repeated.

Disposition and Orders

48.

- a. The defendant is to pay to the claimant damages, including aggravated and exemplary damages, for false imprisonment, assault and battery, to be assessed and determined by this court in default of agreement.
- b. The defendant is to pay to the claimant interest thereon at the rate of 6% per annum from the date of service of the claim form to the date of judgment.

- c. The defendant is to pay the claimant's costs on the basis prescribed by the Civil Proceedings Rules for a claim in the amount assessed above inclusive of interest.

Analysis and Reasoning

The Evidence

49. Evidence of the claimant Ijaz Bernadine

2. On the 14th May 2009 I was living at #2 Rose Drive, St. Augustine and employed at *Caribbean Cinemas* located at *Trincity Mall*. On Thursday 14th May 2009 I left my place of employment after completion at around 11.50 pm in my motor vehicle registration number PBF5879. I arrived at *Pasea Corner* and *Priority Bus Route* ***overtaking a line of vehicles and swung left on the Bus Route to make a short-cut by the market road to get to the Eastern Main road on my way home.*** On turning into the market road I saw a vehicle behind me and I turned right onto the *Eastern Main Road* with the intention of driving around the *Tunapuna Police Station* to lose the vehicle. I did not know that the vehicle was a police vehicle. ***At no point in time did I hear the sound of a siren from or see any swivel lights on this vehicle. At all material times I was alone in my vehicle.***

3. ***I turned left onto the Bus Route and in the vicinity of the back of the station I heard several loud explosions and felt the impact of something hitting my vehicle on the right side, I realized someone was shooting at me and panicked. I made a circle around the station and turned left onto the Eastern Main Road heading west. After I passed the market I noticed a police vehicle on the road way and I attempted to drive pass when I again heard several loud explosions and felt the impact of something striking my vehicle. I observed my back windscreen through the rear view mirror and saw that the glass was shattered; a hole was visible in the glass. I realized that someone was shooting at me again and felt that someone was trying to kill me.***

4. ***I turned into St. John Road and then into Austin Street and came to a stop. Someone then ordered me to put my hands outside the car window and I complied, I was then struck with a hard object on the right side of my face which started to bleed profusely. I was then dragged out of my vehicle where I was beaten by several people and thrown to the ground. I was then taken to the back of my vehicle where someone kicked me in my back and I fell to the ground, where I was kicked by several people again to the point where I lost consciousness.***

5. ***When I regained consciousness I was handcuffed and in the tray of a vehicle that was moving. I was in extreme pain at the time. The vehicle arrived at the station where I was dragged out and carried into the station.". Up to that time no one had identified themselves to me as police officers. I later learnt that the person referred to as***

“Harry” was No. 16376 P.C. Harrypersad. I also later learnt that one of the other persons who had beaten me was No. 16351 P.C. Chadee.

6. *The man at the desk asked me what happened to my face I told him I was beaten by these men who had bought me to the station. He then told the men that he was not putting me in a cell until I was taken to hospital to receive medical attention. I was then taken to the back of the station by the said person who they were calling Harry, who took me to the sink and told me to clean up myself because he didn't want to take me to the hospital in my condition. When I had finished washing up my face and cleaning up the counter as instructed I asked the officer if I could be given a telephone call or if he could contact my father, Edison Bernadine, who is also a police officer. He told me that I was joking.*

7. *I was taken to the hospital at Mt. Hope where I received several stitches to my face and was X-rayed for internal injuries and discharged with a prescription for antibiotics, painkillers and given a date for my return to remove the stitches. On my return to the station I was taken to the back and placed in the third cell because the first and second cells had people in them. I again told the said officer that my father was an inspector of police and I would like to call him please. The man who placed me in the cell stated that I was an adult, and asked me why I wanted to call my father, to which I replied, “to inform him of my situation”. I made this request to several police officers throughout the night to no avail.*

8. *At around 11.00 am on the 15th May 2009 I was taken out of the cell and handcuffed. I was then taken to my apartment at #2 Rose Drive, St. Augustine and a party of police officers proceeded to search my apartment where nothing illegal was found.*

On my return to the station I made several requests for a telephone call to inform my parents of my incarceration, none of which were granted. I was told that I would be going home soon, and that I didn't need to call anyone. I told the officer that I was in severe pain and needed the medication that was prescribed at the hospital. I also asked him if he could tell me when I would be allowed to leave to which he replied that they had not decided as yet. I asked him if he could at least call my father so that he could purchase the medicine and he said that he “did not know if that was allowed”. I was then placed in an office at the back of the station.

9. *At around 3.00 pm I was taken out of the office where I had been kept for about three hours after returning with the officers from their search. I was then placed in another office where a police sergeant asked me to give a statement and I replied “Yes”...At around 3.30 pm on the 15th of May 2009 I was given two Notices of Opportunity to Pay Fixed Penalty tickets...and was allowed to leave the station...*

10. *I was detained at the station for a period of approximately fifteen and a half hours. At no point in time upon my arrest and or during my detention was I informed of my right to retain and or instruct without delay a legal advisor of my choice and to hold communication with him. Furthermore, I was repeatedly deprived of my constitutional right to communicate with a friend and or relative via telephone call.*

12. *Early on the morning of the 16th of May 2009 I made a telephone call to my father.*

50. The claimant was driving home from work. It was close to midnight. His route involved a short detour onto the Priority bus route. To get there he overtook a line of vehicles. The claimant set this out clearly in his witness statement and under cross examination frankly admitted that this was the case. That mode of driving clearly attracted the attention of the police. There is no assertion by him that he fell within a category of persons authorized to use the Priority bus route - for use of which authorization is generally required. The police were clearly entitled to follow him and investigate prima facie suspicious conduct.

51. However the penalty for unauthorized use of the priority bus route is fixed by law. It is no part of that penalty that unauthorized users are liable to be shot at or shot, and if shots were fired at the claimant in those circumstances that he described that would obviously demand an explanation.

The alleged injuries

52. The medical report produced by the claimant is to the effect that the claimant sustained the following injuries:

- (i) Right eyebrow laceration;
- (ii) Ecchymoses of right eye.

The report indicated that the injuries were consistent with use of a blunt object with some degree of force.

53. The Claimant also tendered into evidence photographs of injuries as stated on the medical report but no photographs of the other injuries he stated he suffered to his chest, ribs and legs. His documentary evidence in corroboration of his injuries is therefore confined to facial injuries,

save that his father confirmed that he had also complained of soft tissue injuries and that his body had blue black marks.

54. The defendant contended that the claimant's evidence should not be accepted because he did not seek to go the Tunapuna Police Station which he drove past, nor did he seek to stop to seek help by the police vehicle, which he admitted he saw while trying to escape, despite his belief that shots were being fired at him and that someone was trying to kill him. Instead he drove to a location where he thought there would be a security guard. These are valid points, but having heard the evidence of the claimant and his responses under cross examination, I am satisfied that panic, and not logic, dictated his actions that night. He was being shot at and he was fleeing for safety in fear for his life. It is understandable in the circumstances that the idea of stopping at the police station or the side of the road to make a report, or seek to persuade police officers there that he required assistance, would not be not foremost in his mind.

55. In addition it was contended that the medical report did not corroborate the bruising about the body which he testified had been the result of the brutal attack upon him. He testified to being unconscious for a period of several minutes thereafter. The defendant contended, in effect, that this reflected an exaggeration by the claimant which should guide how this court treated with his evidence generally.

I accept the evidence of the claimant's father in this regard. He candidly accepted that he had come to give evidence to assist his son. I do not understand this to mean that he came to fabricate testimony, but rather that he sought to achieve justice for his son. His evidence was measured and sober, as was the evidence of the claimant himself.

With regard to the claimant I find that there was no propensity to fabricate. The events of that night were extremely traumatic and had the most direct impact upon him. His description of them cannot in those circumstances be considered an exaggeration, and I certainly do not find them to be such. I am prepared in the circumstances to accept his testimony and to find that the medical report was incomplete or understated.

Edison Bernadine

56. Edison Bernadine is the claimant's father. He is a retired inspector of police. The claimant called him after the incident. He took pictures and made certain observations on the 16th May 2009. On Monday 18th May 2009 he went to the Eric Williams Medical Sciences Complex Mt Hope and made a request for the medical report in respect of the Claimant's treatment there on May 15th 2009.

57. The claimant did not call him immediately after he had been released from custody, but only after he had gone home and slept. He explained that he did so after not having had anything to eat or drink and that he was in extreme pain.

58. I have had the opportunity to observe the claimant give evidence in this matter. He answered all question put to him candidly without prevarication, regardless of whether the answers would have reflected well on him. I find him to have been a truthful witness who gave honest evidence.

59. His version of events was inherently plausible and did not contain inherent contradictions. I accept his explanation as to why, after a long traumatic ordeal which left him hungry tired and in pain, he did not contact his father after immediately after his release.

60. In fact, if it were being insinuated that the claimant did not contact his father immediately after, because the nature of the incident and his treatment were not so traumatic or serious as not to impel him to contact his father immediately, this is contradicted by the fact that the defendants accept the following:-

a. that the claimant had injuries – though they say they were not responsible for them.

b. that the claimant was detained – though they say that he was detained lawfully.

c. that they did shoot at the claimant's vehicle – though they say that they were justified in taking such action by the presence of the unidentified stranger with the item resembling a firearm.

61. I find that the existence of these uncontested facts makes it impossible to contend that any delay in the claimant contacting his father was attributable to the incident being less traumatic than the claimant now contends.

Clinton Harripersad

62. **Police Constable Clinton Harripersad** stated that he was on mobile patrol along Bharath Street Pasea when he observed the vehicle of the claimant drive through the red traffic lights and drove onto the bus route heading west.

He turned on the swivel lights and siren and P.C Chadee gave chase after the said vehicle PBF 5879 which had another occupant seated in the left front seat of the said vehicle.

He says that they gave chase onto railway road east along the Eastern Main Road, South along Pasea Road, West along Railway Road, East along the PBR, North along Centenary St and West along the Eastern Main Road.

63. During this time he summoned assistance via the wireless, and officers of the Area West Task Force set up a road block on the Eastern main road in Tunapuna near Republic bank. The driver drove through the road block without stopping, after being signaled to stop by the officers of the said task force. P.C Chadee and Harripersad continued giving chase to the vehicle which turned onto St. John's Road.

64. He stated at paragraph 7 that

*On reaching the vicinity of the intersection of Warner Street and St. John's Road, **the vehicle came to a stop and the two occupants alighted.** P.C. Chadee brought the Police vehicle to a stop about 15 feet to the rear of vehicle PBF 5879. The area where the vehicle stopped was not brightly lit but had sufficient light from nearby lighted street light and from the head lights of the police vehicle.*

Paragraph 8

*The male passenger of vehicle PBF 5879 pointed a small black object which appeared to be a firearm in the directions of the P.C Chadee and myself. On seeing this I became afraid for my life and that of P.C. Chadee, and proceeded to take evasive action by taking cover and simultaneously **discharging three rounds of ammunition** from my service pistol, with a view of **disarming the suspect.***

Paragraphs 9-11

*The man with the black object resembling a firearm was of African descent 6 feet tall, slim built and of dark complexion also **wearing dark clothing** turned and ran west into a yard making good his escape. The driver of the vehicle PBF 5879 ran east in the area of Connell Street P.C. Chadee gave chase after the driver of the said vehicle and subsequently held him. A search was carried out in the area for the other suspect without success.*

*...I observed a cut over his right eye and P.C. Chadee questioned him as to how he sustained the injury and **he stated he fell whilst running away from the Police. He was taken to the Eric Williams Medical Sciences Complex** where he was medically examined and a medical report was obtained on his behalf. He was arrested and brought to the Tunapuna Police Station pending further investigation.*

*When the vehicle PBF 5879 was brought to the said station, I observed that the back windscreen and right back fender, right front fender was damaged. **I am uncertain how the damages were done to the vehicle PBF 5879.** Police Seargeant La Rode in the company of P.C. Chadee and myself went to the home of Ijaz Bernadine the Claimant where I executed a search warrant for arms and ammunition but nothing illegal was found.*

Hubert La Rode

65. In his witness statement Hubert La Rode stated:-

6. *After the said Police Officers Chadee and Harripersad gave me that report I introduced myself to the Claimant by showing him my Trinidad and Tobago Police Identification Card and told him of the report made against him. He was further told that as a result of that report a search will have to be conducted of his home. **The Claimant did not object to the search neither did he ask to make a telephone call nor did he complain about being beaten by Police Constables Chadee and Harripersad. ...***

About 3:00 p.m. to 3:30 p.m. I interviewed the Claimant in my office, which was located about twenty or thirty feet east to the general CID's office. Police Constables Chadee

and Harripersad were in the general office. At (sic) this point I had no further dealings with the Claimant.

Challenor Chadee

66. In his witness statement Police Constable Challenor Chadee stated:-

3. *Around 11:45 p.m. Thursday 14th May 2009 I was on duty armed with pistol #6343 and 15 rounds of 9mm ammunition and Galil #6713 and 50 rounds of 5.56 ammunition, driving police vehicle TCB 1226 in company with P.C. Harripersad Regimental No. 16376 who was armed with pistol #6227 and 30 rounds of 9mm ammunition on mobile patrol duty along Bharath Street, Tunapuna on the western side awaiting the traffic lights for vehicles proceeding North along Pasea Road to turn green.*
...

4. *Whilst there I observed a blue Hyundai Accent vehicle bearing number plates PBF 5879 proceeding in a northerly direction along Pasea Road overtook the said vehicle that was at a standstill at the corner of Pasea Road and Bharath Street, **drove through the red traffic lights** and turned west on to the Priority Bus Route (PBR).*

5. *The actions of the driver of vehicle with registration number PBF 5879 aroused my suspicion and I immediately had a conversation with P.C. Harripersad **who turned on the swivel lights and siren** on the said Police Vehicle. I began following vehicle PBF 5879 **which had another occupant who was seated in the left front seat.***

6. *I continued following vehicle PBF 5879 along the PBR on to Railway Road, East along the Eastern Main Road, South along Pasea Road, West along Railway Road, East along the PBR, North along Centenary Street and West along the Eastern Main Road. During this period P.C. Harripersad summoned assistance via the wireless set and officers of the Area West Task Force **caused a road block to be set up** at the Eastern Main Road, Tunapuna in the vicinity of Republic Bank.*

7. *The driver of vehicle PBF 5879 **drove through the road block without stopping** after being signalled to stop by the officers of the Task Force. I continued following vehicle PBF 5879 which turned north onto St. John's Road. On reaching the vicinity of the intersection of Warner Street and St. John's Road, vehicle PBF 5879 came to a stop and **the two occupants alighted.** I brought the Police vehicle to a stop about 15 feet to the rear of vehicle PBF 5879 and I observed the area where the vehicle PBF 5879*

stopped was not brightly lit but had sufficient light from nearby lighted street lights and from the head lights of the said Police Vehicle.

8. *I exited the police vehicle together with P.C. Harripersad when I observed the male passenger who was seated in the front passenger seat of vehicle PBF 5879 pointed a small black object resembling that of a firearm in our direction. On seeing this I became fearful for my life. P.C. Harripersad took evasive action by taking cover and simultaneously discharging three rounds of ammunition from his service pistol, with a view of disarming the suspect.*

9. *The man with the black object resembling that of a firearm was of African descent and about 6 feet tall, slim built and of dark complexion also wearing dark clothing turned and ran west into a yard and P.C. Harripersad immediately gave chase but the said man made good his escape. The driver of vehicle PBF 5879 subsequently ran east in the area of Connell Street. I gave chase after the driver of the said vehicle and during this time I lost sight of him for a few seconds and subsequently held him a short distance away. I observed damage to the said vehicle PBF 5879 but unable to say if the said damage was done by P.C. Harripersad during the discharge of his firearm. A comprehensive search was carried out in the area for the other suspect without success.*

10. *The driver gave his name as Ijaz Bernadine age 22 years of Rose Drive #2 St. John's Road, St. Augustine. I observed a cut over the right eye of Ijaz Bernadine and I questioned him as to how he sustained the injury and he stated he fell whilst running away from the Police. He was taken to the Eric Williams Medical Sciences Complex where he was medically examined and a medical report was obtained on his behalf. He was arrested and brought to the Tunapuna Police Station pending further investigation. During the time of his arrest Ijaz Bernadine the Claimant was conscious at all time. At no time did I beat the Claimant Ijaz Bernadine in anyway nor did any officer on the scene. ...*

11. *Sometime later I issued two fixed penalty notices to the Claimant Ijaz Bernadine for breach of the PBR and branch (sic) of Traffic sign #B 455395 and #B 455394.*

67. The cross examination of these officers revealed inherent contradictions and implausibilities in their evidence as follows:-

- i. Both PC Harripersad and PC Chadee admitted in cross-examination that the alleged second occupant of the Claimant's vehicle was not wearing dark clothing but that this alleged person had on a white T-shirt.
- ii. PC Harripersad admitted that in his witness statement he stated that the alleged second occupant ran off into a yard while in the Station Diary he stated that he ran off into some bushes and that "bushes" and "yard" were not the same thing. He claimed that these bushes were about 4 to 5 feet high and that bushes were present throughout the said yard. Strangely, despite having just observed a man, with what they thought was a firearm, point that object at them, PC Harripersad did not go into the yard and bushes to pursue the alleged second occupant nor did he see anyone else do so. The possibility of that person, never apprehended or disarmed, remaining hidden in the bushes and firing at them did not seem to concern them. Though he claimed that officers from the North Division Task Force would have cordoned off the area, this witness admitted that he did not see anyone go into the bushes into which the alleged passenger/second occupant ran.
- iii. He admitted that it was not true that the Claimant ran north after exiting his vehicle. In cross-examination, PC Harripersad claimed that the Claimant ran east.
- iv. PC Harripersad also admitted that it was not true that the alleged second occupant ran west. He claimed in cross-examination that he ran south.
- v. PC Harripersad stated in cross-examination that contrary to the contents of his witness statement, the Claimant was taken to the Tunapuna Police Station **first** before being taken to the Mt. Hope Hospital. His evidence on this aspect fluctuated throughout his cross examination. The station diary entry which recorded that the claimant was taken to Tunapuna police station first, and which was the basis for the defence, was amended on the basis of this officer's purported recollection, years later, that the claimant was **first** taken to Mt. Hope for medical attention. This is yet another example of a suspicious failure of consistency on key details of this incident, in an attempt to sanitise the

defendant's version of events. It fails because it is inconsistent with the contemporaneous documentation – the entry in the station diary.

- vi. According to PC Harripersad, he did not call in crime scene analysis officers to subject the Claimant's vehicle to finger print analysis, although the alleged passenger - with an object resembling a firearm, - would have had to have touched the door handle to open it.
- vii. PC Harripersad claimed that he asked the Claimant the name of the alleged second occupant. The witness admitted that he did not state this in his witness statement nor did he make a note in his pocket diary or the station diary to this effect.
- viii. As regard to the Claimant's injuries, PC Harripersad did not see where the Claimant had allegedly fallen.
- ix. PC Harripersad initially admitted that Claimant had not committed an arrestable offence, but later stated that the Claimant had committed the offence of "wanton driving". He admitted that he never cautioned the Claimant in respect of this offence.
- x. He claimed that he cautioned the Claimant in respect of the offence of being in possession of arms and ammunition. However he admitted that this was never stated in the Station Diary. In fact, he admitted that no note of this was made anywhere.
- xi. The witness denied that the Claimant was placed in a cell at the Tunapuna Police Station, and this denial was an express allegation in the defence filed.
- xii. PC Chadee also admitted that the alleged second occupant was wearing a white T-shirt and not dark clothing as stated in his witness statement. His strident attempts to explain why, despite the T-shirt that the alleged passenger wore being white, the overall effect of

the clothing was dark, justifying its description as dark coloured, were singularly unconvincing.

- xiii. This witness also claimed that the alleged second occupant ran into a yard. PC Chadee stated that this yard was fenced and that there were bushes to the exterior of the fence. These bushes were taller than him.
- xiv. According to PC Chadee, he and PC Harripersad jumped the fence and went into the yard.
- xv. He stated that no one cordoned off the area.
- xvi. The witness admitted that it was not true that the Claimant was taken to the Mt. Hope Hospital first. According to PC Chadee, the Claimant was taken to the Tunapuna Police Station first.
- xvii. This witness admitted that he had no evidence that the Claimant had committed any offence. He admitted that one can only arrest someone if they committed an arrestable offence.
- xviii. The witness admitted that he saw no note that the Claimant was told he was a suspect and cautioned. He admitted that the offence of breaching a traffic light and driving on the Priority Bus Route (PBR) without the requisite pass were non-arrestable offences.
- xix. PC La Rode admitted that a man pulling a gun on the police is an important matter. He agreed that this was not in his statement. Curiously, he made no note of both officers telling him this.

- xx. He admitted to interviewing the Claimant at the cell of the station.
- xxi. He stated that he did not give instructions to dust the Claimant's vehicle for fingerprints but photographs of scene were taken.
- xxii. This witness admitted, upon questioning by the Court, that the Claimant had injuries to his face. He stated that he did not ask Claimant how he got those injuries.
- xxiii. The witness admitted that breaching traffic lights or driving on the PBR without a PBR pass were not arrestable offences.

68. I consider that where, as here, a person in police custody is being interrogated by a senior officer who observes that he has injuries, he has a duty to make inquiry of him as to how those injuries have been sustained.

Law

69. **Right to retain and instruct without delay a legal advisor of his choice and to hold communication with him and to be informed of that right.**

5. The Constitution provides that *Parliament may not*: -

(c) Deprive a person who has been arrested or detained-

(i) Of the right to be informed promptly and with sufficient particularity of the reason for his arrest or detention;

(ii) Of the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with him;

70. Where a person who has been arrested or detained has the statutory or common law right to communicate with a legal adviser, he should be informed of that right as soon as possible after his arrest, and in any event before any interrogation in custody takes place. See **The Attorney General of Trinidad and Tobago v Whiteman [1992] 2 All ER 924** at 927-8 **infra**.

Paragraph 8(b) of Appendix B to the Judges Rules adopted in 1965 requires that persons in custody should be informed orally of the rights and facilities available to them, and that notices describing these should be displayed at police stations and drawn to the attention of persons in custody. This is properly to be regarded as a provision, and it prescribes a certain procedure to be followed. The rights referred to include the right to communicate with a legal adviser. Their Lordships are of the opinion that persons who have been arrested or detained have a right to a provision of this character, by virtue of s 5(2)(h), because otherwise the right so to communicate might not receive effect. In any event para 8(b) of Appendix B to the Judges Rules had been standing for over ten years when the 1976 Constitution came into force. It superseded the 1962 Constitution and therefore the time of its introduction is the appropriate time to consider the existence of a 'settled practice' within the meaning of Lord Diplock's description in Thornhill v A-G of Trinidad and Tobago [1981] AC 61 at 71. There is no reason to suppose that the requirements of para 8(b) had not been regularly observed up until 1976, and a settled practice of doing so must therefore be held to have then existed.

Their Lordships accordingly consider that persons who have been arrested or detained have a constitutional right to be informed of their right to communicate with a legal adviser both upon a proper construction of s 5(2)(h) of the Constitution of 1976 and on the basis of a settled practice existing when that Constitution was introduced. Davis JA said towards the end of his judgment in the Court of Appeal:

'I am not prepared to lay down any general rule as to the precise point in time when a person in custody ought to be informed of this right, but it should be as early as possible, and in any event before any "in-custody interrogation" takes place.'

Their Lordships would indorse that. It is possible to envisage circumstances where it would not be practicable to inform the person of his right immediately upon his arrest. ...

I find that there is no evidence in this case of any notices at the police station as contemplated by the Judges Rules and by the Privy Council. I find that there are absolutely no circumstances in this case which would have made it impracticable to have informed the claimant of his rights immediately upon arrest. To the extent that the officers claim that they did, their evidence is disbelieved. They have attempted to mislead this court on other fundamental issues of fact. The claimant denies that they so informed him. In fact he goes further and says they actively denied

him access to a telephone call to his father despite his requests. Nowhere is it recorded that they so informed him.

71. I accept the claimant's submission that it is clear from the evidence that the Claimant was not informed of his constitutional rights and that he was denied his right to speak to his father. It is simply not credible that the Claimant, having been informed of those rights, would have elected not to exercise them, given his medical condition, and the physical and mental trauma I find that he had experienced. Contacting his father, an Inspector of Police, and /or a legal advisor could have prevented a very traumatic situation from degenerating yet further.

False Imprisonment

Reasonable and probable cause to justify arrest and continued detention

72.

1. The relevant principles were recently summarised in **Ramsingh v. The Attorney General of Trinidad and Tobago [2012] UKPC 16** delivered May 23 2012 as follows (emphasis added).

2. Section 3 (4) of the Criminal Law Act Ch 10.04 provides "*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.*"

- 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.**

3. The onus is on the police to justify the arrest of the Plaintiff in an action for unlawful arrest and to establish reasonable and probable cause for the arrest: (**Dallison v Caffery [1965] 1 Q.B. 348 at 370**).

4. The test required was stated in **O' Hara v Chief Constable of the Royal Ulster Constabulary [1997] 1 AER 129 at p138j –139a per Lord Hope of Craighead** as partly objective and partly subjective. The test is subjective because the arresting Police Officer must have formulated **a genuine suspicion** within his own mind that the accused person has **committed the offence**.

5. Further, the test is partly objective as reasonable grounds for the suspicion are required by the arresting officer and this must be judged at the time when the power is exercised. (See also the judgement of the Honourable Mendonca J as he then was in **Harold Barcoo v A.G of T. & T. and Browne – HCA 1388 of 1989** delivered December 19, 2001 page 5 –6 where he adopted the following analysis from the text (**Clayton & Tomlinson Civil Actions against the Police (1987)**).

6. The test whether there was reasonable and probable cause has both subjective and objective elements.

- 1. Did the officer **honestly** have the requisite suspicion or belief?

2. Did the officer when exercising the power **honestly** believe in the existence of the **objective** circumstances which he now relies on as the basis for that suspicion or belief?
3. Was his belief in the existence of these circumstances based on reasonable grounds?
4. Did these circumstances constitute reasonable grounds for the requisite suspicion or belief?

7. The first two are subjective and the second are objective and as Mendonca J, as he then was, pointed out, if the answer to any one of these questions is no then the officer would not have had reasonable grounds.

8. In determining whether the arresting officer had reasonable and probable cause, the first enquiry is to ascertain what was in the mind of the arresting officer and to determine whether the grounds on which the arresting officer relied as the basis for his suspicion were reasonable.

73. It is clear therefore that if the arresting officers knew there was no passenger, and no object resembling a firearm, then they could not possibly have had any **genuine** suspicion that the claimant had committed any arrestable offence, far less any reasonable grounds for the requisite suspicion or belief that the claimant had committed any arrestable offence.

74. In fact they eventually acknowledged that they had no basis for believing or suspecting that the claimant had committed any arrestable offence by their actions in simply releasing him after serving him with two fixed penalty tickets – the penalty on each being \$200- for traffic offences.

75. I find that neither PC Harripersad nor PC Chadee had any genuine basis for arresting the claimant in the absence of the alleged passenger and the alleged object resembling a firearm. I

find that after cross examination of these witnesses exposed the several glaring contradictions in their evidence, it is clear that neither the passenger nor the alleged object existed. They were both fabrications of these witnesses concocted to justify their unnecessarily violent and brutal treatment of the claimant, whom they had pursued, and at whose vehicle they had fired shots.

76. It follows that the continued detention of the claimant under the guise of continued investigation of the alleged passenger, and the possibility that the claimant was also complicit in the unlawful possession of arms and ammunition, was unjustified.

Assault & Battery

77. It is clear that the police officers PC Harripersad and PC Chadee have deliberately tried to mislead this court as to the existence of an unidentified passenger with an item allegedly resembling a firearm. That concoction was clearly for the purpose of justifying the discharge of a firearm in circumstances where it was a gross overreaction and not at all warranted.

78. Their evidence under cross examination revealed an alarming propensity to conceal the truth by evasions and fabrications. Equally therefore, their evidence as to how the claimant sustained his injuries is disbelieved and not accepted. The claimant's evidence was far more forthright, cogent and compelling, and I have no hesitation in accepting and preferring the evidence of the claimant as to how those injuries were sustained. I find as a fact that they were sustained, at the hands of those and other unidentified officers at the scene of the claimant's apprehension.

79. I find that the Claimant was falsely imprisoned by the Defendant for a period of 15 and a half hours, that he was subjected to assault and battery by police officers acting on behalf of the Defendant, and that he was not informed of his rights, including the right to retain and instruct without delay a legal advisor of his choice and hold communication with him.

Damages

Exemplary Damages

80. The House of Lords in **Rookes v Bernard** [1964] AC 1129 recognized categories of cases in which an award of exemplary damages would be appropriate at common law, including where there is evidence of “oppressive, arbitrary or unconstitutional action by the servants of the Government.”

81. In **Bernard v Quashie (supra)** the Honourable de la Bastide CJ stated “the function of exemplary damages is not to compensate but to punish and deter.”

82. In **Takitota v AG of the Bahamas, Privy Council Appeal 71 of 2007** delivered March 18 2009 it was stated:

[12] The award of exemplary damages is a common law head of damages, the object of which is to punish the Defendant for outrageous behaviour and deter him and others from repeating it. One of the residual categories of behaviour in respect of which exemplary damages may properly be awarded is oppressive, arbitrary or unconstitutional action by the servants of the government, the ground relied upon by the Court of Appeal in the present case. It serves, as Lord Devlin said in Rookes v Barnard [1964] AC 1129 at 1223, [1964] 1 All ER 367, [1964] 2 WLR 269, to restrain such improper use of executive power. Both Lord Devlin in Rookes v Barnard and Lord Hailsham of St Marylebone LC in Broome v Cassell & Co Ltd [1972] AC 1027 at 1081, [1972] 1 All ER 801, [1972] 2 WLR 645 emphasised the need for moderation in assessing exemplary damages. That principle has been followed in The Bahamas (see Tynes v Barr (1994) 45 WIR at 26), but in Merson v Cartwright and the Attorney General [2005] UKPC 38, [2006] 3 LRC 264 the Privy Council upheld an award of \$100,000 exemplary damages, which they regarded as high but within the permissible bracket.

Need for moderation

83. The need for moderation must be borne in mind when assessing exemplary damages. That must be balanced with the need to send a message of condemnation of the behavior involved and to deter its recurrence.

84. The matters which support an award under this head of damage are as follows:-

(i) The fact that the unlawful battery of the claimant was compounded by his detention and his ordeal being prolonged by a show of investigating the circumstances surrounding the imaginary passenger with the gun, and the farce of searching for arms and ammunition as a result.

(ii) The urgent need to deter such conduct before there is loss of life.

85. I consider that this is an appropriate case for the award of exemplary damages which will be a component in any damages assessed by this court.

Conclusion

86. The claimant gave his evidence with conviction. I have absolutely no doubt that he was telling the truth. He was a responsible young person, working a late shift at his job at a cinema, on his way home from work.

87. He was not a bandit, or the friend or accomplice of bandits, and there was no one in the front passenger seat with a firearm or anything resembling one so as to justify the excessive force, and gross over reaction of the defendant's agents in shooting at him, and in assaulting and beating him after they apprehended him. That behaviour was completely unjustified and there was a real possibility it could have resulted in the claimant's death. They were not entitled to assume that the claimant was a criminal. They were not entitled, if they did, to persist in that assumption in the face of evidence to the contrary when they apprehended him.

88. There was nothing that the claimant did that deserved this response and the attempt to portray him as a criminal rather than a victim was conduct in further aggravation of indefensible behaviour by the defendant's agents.

89. They were not entitled to seek to punish the claimant extra judicially. They were not entitled to place the claimant at risk of serious personal injury or death by shooting at him in the absence of a threat to themselves. I expressly find that there was no such threat as there was no passenger in the front seat of the claimant's vehicle. He was alone, the passenger, and the alleged item resembling a firearm, were fabrications after the incident.

90. They were not entitled to fabricate allegations and charges against the claimant to seek to justify the arrest and ill treatment of the claimant.

91. They were not entitled to attempt to tarnish the reputation of the claimant and to persist in that attempt by portraying and insinuating in their defence that he was associated with characters at night who carried firearms, and was therefore himself associated with criminals or criminal activity. It is the fabrication of those allegations and the persistence to trial in those attempts to tarnish the claimant's character that bring this matter into the category of case where an award of exemplary damages is appropriate.

92. The sweeping powers granted to police officers are to be used within the confines and parameters of the law. In a democracy governed by the rule of law and the Constitution, they are not to be used, as I expressly find was done in this case, to infringe the safety, security, reputation, or constitutional rights, of law abiding citizens.

Disposition and Orders

93.

i The defendant is to pay to the claimant damages, including aggravated and exemplary damages, for false imprisonment, assault and battery, to be assessed and determined by this court in default of agreement.

ii The defendant is to pay to the claimant interest thereon at the rate of 6% per annum from the date of service of the claim form to the date of judgment.

iii The defendant is to pay the claimant's costs on the basis prescribed by the Civil Proceedings Rules for a claim in the amount assessed above inclusive of interest.

Dated this 20th day of July 2012.

Judge

Peter A. Rajkumar

The Court would like to record its appreciation to attorneys at law representing the parties for their assistance to this court and to judicial research assistant Ms. E. Ali for her contribution to this judgment.