

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2018-02923

BETWEEN

AFISHA WILLIAMS

**As Administrator Ad Litem of the Estate of Tiba Thomas of the Order of the
Honourable Mr. Justice David C. Harris dated 7th August, 2018**

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Appearances:

Claimant: Lemuel Murphy instructed by Alexia Romero

Defendant: Stefan Jaikaran instructed by Savitri Maharaj

Before the Honourable Mr. Justice Devindra Rampersad

Date of delivery: March 17, 2021.

JUDGMENT

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Introduction

1. These proceedings arise out of the claimant's claim for damages for wrongful arrest, false imprisonment, and assault and battery¹ from an incident which occurred on 11 August 2014 where the claimant's deceased partner, Tiba Thomas (the deceased) was allegedly shot by police officers and injured. In addition, the claimant also claims aggravated and exemplary damages, interest and costs.
2. The claimant says the deceased was taken to hospital as a result and then wrongfully detained at the Belmont Police Station from 12 August 2014 to around 12pm on 14 August 2014 for a period of about 48 hours.
3. In response, the defendant alleged that the deceased was shot accidentally as a result of their reasonable response to being shot at by a third party with whom the deceased was in company with. Liability was therefore denied on that ground.
4. The court has preferred the claimant's version of the events and has awarded damages and costs to her on behalf of the estate of the deceased.

Discussion on Liability

5. There is no doubt that the deceased was shot by the police. The issue, however, is whether he was wrongfully arrested, forcefully imprisoned and assaulted and battered. The claimant seeks damages for those claims.
6. The circumstances under which the deceased was shot are widely divergent. The claimant alleges that the deceased was shot at the entrance to the property occupied by him and the claimant at No. 4 Blackette Lane, Gonzales.

¹ The statement of case replaced "*assault and battery*" as claimed in the claim form with "*malicious prosecution*" but the case, and the parties, proceeded on the basis of the former.

She said that the property is at the top of the hill laid out with two front gates joined by a short passageway with two separate flights of stairs approximately 10 m apart before reaching the roadway.

7. On 11 August 2014, at around 3 PM, she saw the deceased opening the first gate from the road holding a box of food in his hand. When the deceased pulled opened the last gate to the house, there was an officer at that gate approaching him with his gun drawn. The deceased started walking backwards slowly and as he pulled back, he raised his hands in the air and was shot twice by the police officer with the gun. She said that there were about four more gunshots fired at the deceased. The deceased then began "*running back down*" and the officers were running after him but caught up with him and held him. She said he was clearly injured. She then said shortly after, the neighbours and other people who were in the vicinity of the shooting at the time came out to see what was happening.
8. In cross-examination, after describing the property, she said that the police officers were at her home before the deceased reached. In fact, she said that the officers were searching her house before. She knew one of the officers - Matthew Billingsy - and he was inside. A different officer, whom she did not identify, was the person who remained outside and who she said shot the deceased as he was walking backwards slowly. According to her, he was shot by the last gate leading to the house but he did not fall there. He fell outside on the road before getting up and running. The other officers who were in the house went outside and she called her father to tell him to come outside with her. She then repeated what she had said in her witness statement at paragraphs 6 and 7.
9. None of those other persons who were present, or anyone else at all, attended to give evidence in the matter. Her father did not give a statement and was not called, without explanation. Further, there was no mention whatsoever in the pleadings about the police officers being in her house prior to the shooting so

that evidence to that effect was struck out from her witness statement, although it crept in in cross-examination.

10. The witnesses for the defendant wished this court to believe that their version was more credible. Officer Jarrel Garcia gave evidence that he, PC Billingsy, PC Weekes and PC Ali were on foot patrol in the area along Pittman Lane and as they were about to descend a staircase along the Lane, he saw two men proceeding in their direction. It is not clear whether those two men were already on the steps to come up or were further down. Officer Garcia said that as the two men saw the officers, they abruptly turned around in the opposite direction and began running away. He said that he shouted out loudly "Police, Stop!" and he heard the other officers also do the same. The men did not stop and they continued running. The officers chased after them and one of the men who was clad in dark clothing, about 6 feet tall, dark complexion and of slim build, turned around and pulled out an object resembling a firearm from his waist, pointed it in their direction and a loud explosion was heard. Fearing for his life, and the life of his colleagues, he returned fire and the other man, who turned out to be the deceased, fell to the ground while the shooter escaped. He said that officers Billingsy and Ali made checks in the immediate area for the shooter which were futile.
11. As is evident, this is a marked difference from what the claimant alleged.
12. Officer Garcia went on to give evidence as to what happened with the deceased after he was shot. He was taken to the Port of Spain General Hospital where he was medically examined and warded but he was never told that he was under arrest since the normal procedure when a civilian a shot is to take the person to a hospital to seek medical treatment. At the hospital, officers Billingsy and Ali remained until about 7 PM when they left leaving Officer Garcia who remained until he was relieved from duty.
13. After the incident, and after his discharge the day after, according to the statement of case, the deceased was transported to the Belmont Police Station

where he was placed in a dirty cell for further inquiries at around 1 PM and he remained there overnight until the investigator, Assistant Superintendent of Police James Caruth, interviewed him and took his information. He was not released until around 12 PM on 14 August 2014 when he was informed by Assistant Superintendent Police Roach that there was no evidence against him. All of this information was not within the claimant's personal knowledge and she stated that she was relying upon what the deceased told her.

14. There is evidence before the court by way of a death certificate of the deceased that he died on 8 August 2017 of gunshot wounds which were not apparently related to this incident in 2014. Despite the fact that there was correspondence issued on behalf of the deceased in 2015 which was apparently sent off upon his instructions by an attorney-at-law to the Police Complaints Authority and others, none of those correspondence formed part of the record of evidence at the trial.
15. Further, the attorney-at-law for the defendant filed a supplemental list of documents on 17 June 2020 disclosing, amongst other things:
 - 15.1. The statements taken from the claimant and the deceased on 19 and 13 of August 2014 respectively by ASP Caruth;
 - 15.2. The report from Kelvin Ramlogan from the Criminal Records Office;
 - 15.3. The report from the police photographer with 4 attached photographs of the scene;
 - 15.4. ASP Caruth's report to the ACP Professional Standards Bureau dated October, 2014 relating to his investigation of the incident.
16. Regrettably, none of this information either, along with the several other documents that were disclosed, formed a part of the evidence in this matter. It would have been open to the claimants to have produced those documents through the disclosure process and to have relied upon them by the appropriate Hearsay Notices, and other foundational devices, but that opportunity was not taken. Therefore, valuable corroborative and

contemporaneous available documents and information were excluded from this court's attention at the trial.

17. In analyzing the evidence before the court, apart from the claimant's failure to produce witnesses and plead the police presence in her home, the court notes the following:

17.1. That an investigation into the shooting was done by a forensics team for the police and a report was prepared and photographs taken. Obviously, those would have been in the hands of the police and ought to have been given in evidence but were not. To my mind, this is a material nondisclosure on the witness statements because the investigation may have identified exactly where the incident occurred which would have gone a great distance towards resolving the conflicting stories. Obviously, if the deceased was shot around the entrance gates to the house at Blackette Lane, there may have been at least two spent ammunition shells present there. Identifying where all of the shells dispatched on the day were found, together with the photographs, would have been of great assistance. Further, the report may have identified if any shells from the alleged shooter were found and where they were. That too would have established greater credibility to the officers' story. As it is, the only evidence that there was a shooter is the viva voce evidence of the officers notwithstanding the fact that there may have been other hard contemporaneous evidence available;

17.2. The claimant indicated that both she and the deceased gave witness statements to the police yet none of those were presented to this court. Any statements given by the deceased would have been helpful to the court to understand what exactly he was saying in relation to the incident;

- 17.3. Officer Billingsy, gave a different account of how things transpired in his report to Acting ASP Caruth dated 13 August 2014 when he said:

*“Whilst on patrol we **proceeded down a staircase** in a westerly direction along the said Lane where we encountered two men proceeding in our direction.”*

[Emphasis added]

While the others had said that they noticed the two men as they were *about to descend* the staircase, his version was that they had already proceeded down the staircase;

- 17.4. The deceased’s Casualty Card dated 11 August 2014 annexed to the claimant’s witness statement indicated the following at 3:40 PM:

“... Pt accompanied by police officers, claimed that he was shot at multiple times ... claims he had no weapon and he was on his way to give his family food.”

This statement, recorded by an unnamed person at the Casualty Department of the Port of Spain General Hospital, is consistent with the claimant’s account in her witness statement with respect to him bringing a box of food with him when she saw him that day. There is obviously the question of weight to be ascribed to this hearsay statement;

- 17.5. Despite the fact that the shooter was at large when the officers held the deceased, all of them insisted in cross examination that they did not ask him anything about the shooter at the time but, instead, sought to take him for medical treatment. One would have expected a question about the identity of a person who was brazen enough to fire shots at police officers in uniform to be asked at the very least. He would obviously pose a threat to the public. To make matters worse, no All-Points Bulletin or other steps were taken to pursue or apprehend the shooter. To me, this failure seemed rather unnatural;

- 17.6. The fact that none of the witnesses for the defendant could say in cross examination if any shells were found on the site seemed rather incredible since they would have been aware of the investigation that took place and were even present when the forensic team attended the site. That ignorance seemed contrived to this court as a matter of convenience;
- 17.7. Officer Billingsy said, for the first time in cross examination, that he asked the deceased about the identity of the shooter while he was at the hospital to which he said the deceased just looked at him and remained silent. That was not recorded anyway – whether in his pocket diary or in the station diary;
- 17.8. Further, officer Billingsy said in cross-examination that he did not even know if any other officers assisted him in looking for the shooter. He must have known who went with him.
18. Counsel for the claimant also pointed out:
 - 18.1. The officers failed to produce the Firearm Register which would have confirmed the contemporaneous record of all of the ammunition used on the exercise;
 - 18.2. The officers failed to make and produce the relevant entries in their pocket diaries contrary to Standing Order 28;
 - 18.3. The defendant's case was that the shooting took place on Pittman Lane whereas the claimant alleged it took place on Blackette Lane. The initial entry in the Station Diary was Blackette Lane but it was later altered to Pittman Lane suggesting an attempt at a cover-up;
 - 18.4. That even though the officers insisted that the deceased was never a suspect and was never arrested and was also not under police guard at the hospital, the contemporaneous records i.e. the medical records, the station diary extract and the cross-examination all pointed to the

fact that the deceased was in handcuffs at the hospital and was under police guard.

19. The evidence on both sides was in a very unhappy state. However, to my mind, having regard to the undisputed fact that the police shot the deceased, the burden shifted to them to justify their actions². They sought to rely on self-defence in that regard but failed to establish that on a balance of probabilities having regard to the several matters raised above along with the inconsistencies and the failure to produce relevant cogent information. Further, the witness statements for the officers were, like the two reports which were exhibited as having been forwarded to ASP Caruth after the incident, remarkably similar to the extent that it seems almost colluded. As a result, based on the evidence before this court, the court cannot conclude that there was any shooter who caused the officers to respond in the way that they did. As a result, the court prefers the account given by the claimant as to how the defendant was shot.
20. There is no doubt that police officers put themselves on the line when they perform their duty and any allegation of a threat to their life, safety and security must be carefully and seriously considered. However, they are permitted by law to be armed and to respond with reasonable force if fired upon. That responsibility comes with the onerous burden of justifying their dangerous action in response. In this case, even though there would have been several corroborative and/or contemporaneous documents available to them, the court was deprived of the opportunity to see them. Instead, the witnesses placed the case as their word against the claimant's.
21. Even further, no attempt was made to justify the deceased's detention after his discharge from the hospital and no cogent evidence was provided as to why he was allegedly detained, what he was detained for and what inquiries were

² See *Romeo Grannum vs. The Attorney General of Trinidad and Tobago* CV2010-04394

being carried out. Bearing in mind the decision of the Privy Council in *Ramsingh vs. The AG*³, the police had a duty to justify that detention and failed to do so.

22. The court therefore finds that the defendant is liable for the injury to the deceased on 11 August 2014 and for his wrongful arrest and false imprisonment. There was no evidence of any malicious prosecution and therefore the defendant cannot be liable for the same.

Damages

23. In the claim the claimant sought damages for the following injuries:
 - 23.1. Damages for wrongful arrest, false imprisonment and malicious prosecution
 - 23.2. Aggravated Damages
 - 23.3. Exemplary Damages
 - 23.4. Interests
 - 23.5. Costs
 - 23.6. Further or other relief as the Honourable Court deems fit.
24. The statement of case, however, sought to establish facts and pleas relating to assault and battery rather than malicious prosecution. Both sides submitted on assault and battery and made no mention of malicious prosecution and there are no facts relating to malicious prosecution whatsoever. As a result, the court sought to inquire from the parties about this anomaly and there was no objection voiced for the court to rule on a claim for assault and battery rather than for malicious prosecution. The court will therefore rule in that manner.

³ [2012] UKPC 16

Claimant's submissions

25. As it relates to damages for assault and battery, the claimant first quoted the law in respect of same from ***Halsbury's Laws of England***⁴ stating:

"Trespass to the person, whether by assault, battery or false imprisonment, is actionable without proof of actual damage. Thus in all cases of trespass nominal damages are recoverable for discomfort and inconvenience, or injury to dignity, even where no physical injury is proved. Where physical injury does not result from the trespass, the damages will be calculated as in any other action for personal injury."

"Damages for emotional or psychiatric damage which does not result in physical illness may be recovered where there is other physical injury, as in the case of an assault without any battery, provided it is substantial and not too remote. An award of aggravated damages may be made in an action for trespass to the person, unlike an action in negligence. The compensatory principle applies to the award of damages to a claimant in respect of injured feelings."

Exemplary damages may be awarded in an action for trespass to the person where the trespass falls within one of the three categories in which such damages are generally available. There may be such an award in an action against the police or other emanations of the state, where the conduct of police officers or other agents has been oppressive or arbitrary. In exceptional cases, exemplary damages may be awarded in relation to criminal acts, with the purpose of preventing the unjust enrichment of the perpetrator...

In addition to general damages for any physical or mental injury which results directly from the trespass, damages for specific pecuniary loss or other consequential damage may be recovered. Provocation does

⁴ Volume 29, 2014 – Under the rubric "Trespass to the person", paragraph 497

not serve to reduce the damages recoverable by way of compensation for physical injury, though it may negative the award of exemplary damages.”

26. In addition, the claimant relied on the authority of **Victor Cornilliac v St Louis**⁵ and the following considerations set out under this authority when assessing the award of damages for personal injuries:
- 26.1. The nature and extent of the injuries;
 - 26.2. The nature and gravity of the resulting physical disability;
 - 26.3. The pain and suffering which had to be endured;
 - 26.4. The loss of amenities suffered; and
 - 26.5. The extent to which the plaintiff’s pecuniary prospects have been materially affected.

[The nature and extent of the injuries](#)

27. It was submitted that the medical report produced by the Port of Spain General Hospital stated that the deceased suffered from bullet entry wound to the right posterolateral thigh; bullet exit wound at the anterolateral aspect of the thigh; injury to first and second digit of the right hand, fracture to the middle phalanx of middle finger of third digit with deformity of the third digit and; laceration to palmar surface of the fourth digit.

[The nature and gravity of the resulting physical disability](#)

28. The deceased was, allegedly, a self-employed landscaper and auto mechanic, was unable to work due to his long recovery and inability to maintain full function of his hand and leg.

⁵ (1965) WIR491

29. The claimant then submitted other authorities in assessing general damages for pain and suffering and loss of amenities for guidance: In particular, the claimant relied on M.A. De la Bastide CJ in *Harinanan v Pariag & Othrs.*⁶ and Lord Carswell in *Seepersad v Theophilus Persad & Capital Insurance Limited*⁷ and where awards were made for similar injuries in the following cases:
- 29.1. **Richard Ramnarace v Vishsam Boodoosingh C.A. Civ. 68/2001** – claimant sustained a gunshot wound to the right side of the face and mouth. He sustained compound fractures of the right mandible, dental avulsion and fractures, loss of several teeth, scarring to the right side of the face, deformity of the angle of the mouth and lower lip, narrowing of the aperture of the mouth, loss of buccal sulcus in the right lower jaw area. Also evidence that the claimant developed microstamia due to the loss of a significant portion of the right mandible and soft tissue in the area of the lips. He was awarded \$150,000.00 in general damages inclusive of aggravated damages; as updated to December 2010 to \$286,211.00
- 29.2. **CV2008-00959 - Fabian Garcia v Attorney General of Trinidad and Tobago** –claimant sustained injuries from a bullet wound to the right leg. Dean Armourer J awarded \$61,500.00 on 24 July 2013.
- 29.3. **CV2014-00542 – Warner v Asst Surpt & the Attorney General** – claimant suffered near fatal injuries from being shot by police in his abdomen, and psychiatric trauma. He was awarded \$300,000.00 inclusive of aggravated damages, \$200,000.00 for false imprisonment and malicious prosecution and exemplary damages of \$90,000.00 by Kokaram J on 12 February, 2016.

⁶ CV. No. 29 No. 239 of 1998

⁷ [2004] UKPC 19

29.4. **CV2007-02297 – Nigel Mayers v The Attorney General** – unchallenged evidence as to the nature and extent of injuries arising from several gunshots, one to his left leg and multiple times in the chest area. Injuries: 2 punctured collapsed lungs, a broken rib and laceration to the thigh. An award of damages for \$250,000.00 was awarded as general damages inclusive of an uplift for aggravated damages.

Aggravated damages relative to assault and battery

30. The claimant then relied on the applicable principles in relation to an award of aggravated damages relative to assault and battery in the case of **Jameson John v The Attorney General of Trinidad and Tobago**⁸.
31. It was thereafter submitted that the aggravated features relative to the assault and battery in the instant case are:
- 31.1. Tiba Thomas was shot in the presence of neighbours in broad daylight unprovoked.
- 31.2. Tiba Thomas was not under arrest or a suspect but was placed in handcuffs and under police guard.
- 31.3. Tiba Thomas' gunshot wounds and the circumstances surrounding same inclusive of how he was treated in custody caused him not only physical pain but embarrassment and shame.
32. It was concluded that the claimant should receive compensation in the amount of \$120,000 for the assault and battery, such sum inclusive of an uplift for aggravated damages.

⁸ CV2017-02467 at pages 43 to 44

The law on damages for false imprisonment

33. As it relates to damages for false imprisonment, the claimant relied on the authority of *Mc Gregor on Damages*⁹ to define the law with regards to the loss in false imprisonment. Further, the case of *Thadeus Clement v the AG of Trinidad and Tobago*¹⁰ set out 3 heads under which damages for false imprisonment were summarised:
- 33.1. Injury to reputation – to character, standing and fame;
 - 33.2. Injury to feelings – for indignity, disgrace and humiliation caused and suffered;
 - 33.3. Deprivation of liberty – by reason of arrest, detention and/or imprisonment
34. As it relates to **Injury to Liberty**, it was stated that the court considers the time lost by the claimant as a result of the detention and considers it from a non-pecuniary perspective. As it relates to **Injury to Feelings** – it was stated that the court assesses mental suffering and social effects that attach to deprivation of liberty.

Comparable awards for false imprisonment

35. The following cases were submitted for guidance to the court in determining an appropriate quantum of damages for false imprisonment:
- 35.1. *Darryl Ramsamooj v The Attorney General of Trinidad and Tobago (H.C. 1961 of 2017)*: The claimant was awarded the sum of \$60,000 for detention for a period of 28 hours after the court held that the claimant was unlawfully and falsely imprisoned for the period of 28 hours.

⁹ 18th Edn, Paragraph 37-01

¹⁰ Civ Appeal 95 of 2010

- 35.2. **CV2014-02841 Ricardo Jack v The Attorney General of Trinidad and Tobago**: the claimants were awarded the sum of \$50,000 for two and a half days detention before Mr. Justice Boodoosingh in 2016.
- 35.3. **Azam Karim v The Attorney General of Trinidad and Tobago and No. 6744 Clp. Edward A. Reyes H.C.A No. S897 of 1985**: The court awarded the claimant, a welder, \$25,000 for general damages and \$5,000 for aggravated damages for false imprisonment for 4 days.
- 35.4. **CV2010-00108 Charlton Dover v The Attorney General of Trinidad and Tobago**: the claimant, a tradesman, was awarded \$60,000 for general damages and \$20,000 for aggravated damages where the claimant was held for a period of 4 days.

Aggravated damages for false imprisonment

36. The claimant relied on **Takitota v The Attorney General and Others**¹¹ where Lord Carswell explained that in awarding compensatory damages, the court will take account of an element of aggravation and the rationale for the inclusion of such an element is that the claimant would not receive sufficient compensation for the wrong sustained if the damages were restricted to a basic award.
37. The following were the aggravating factors relative to the claim for false imprisonment in the instant case:
- 37.1. The treatment was oppressive and harsh – it was submitted that the police station cells the claimant was made to stay in was dirty and smelt foul. There were buckets filled with faeces and stale urine. Further, it was difficult for the claimant to sleep in the cells with his injuries.
- 37.2. The claimant was placed in the cell without food, water or medication for his injury.

¹¹ [2009] UKPC 11, paragraph 11

38. It was submitted that the claimant should receive compensation in the amount of \$100,000 for the false imprisonment such sum inclusive of an uplift for aggravated damages.

Exemplary damages

39. As it relates to exemplary damages, the claimant submitted that the conduct of the police as described attracts such an award. Reliance was placed on the case of ***Shaban Muhammed v The Attorney General of Trinidad and Tobago***¹² which speaks of the unreasonable, unlawful and unjust conduct of police officers and soldiers were such that it caused public humiliation to the claimant therefore warranting an award of aggravated damages. In addition, the assault and battery that were committed against the claimant were oppressive and arbitrary in nature by agents of the state who are entrusted with the responsibility of protecting and serving the public and enforcing the law and order.
40. It was also submitted that the court should adopt the approach of this court in ***Miguel Benoit v The Attorney General and Ors***¹³ where consideration was given to the dicta of the Court of Appeal in the cases of ***Darrell Wade v The Attorney General Civil App No. 172 of 2012*** and ***Jason Superville v The Attorney General Civil Appeal No. 173 of 2012***. In the judgment, Jones JA expressed sentiments that the time has come for police and prison officers to be held personally liable.
41. It was submitted that the court should find it appropriate to make an award on the higher end of the accepted range of exemplary damages in the amount of \$75,000.
42. Lastly, it was concluded that in applying the law to the facts of the instant case, the appropriate award for damages for wrongful arrest, false imprisonment,

¹² CV2010-04804

¹³ CV2017-01506

assault and battery inclusive of aggravated damages and exemplary damages would be \$295,000.

Defendant's submissions

Assault and battery

43. As it relates to the issue of assault and battery, the defendant relied on the authority of *Collin Carrera v The Attorney General*¹⁴ where des Vignes J (as he then was) referenced Pemberton J in *Sedley Skinner v The Attorney General of Trinidad and Tobago*¹⁵ to define assault and battery and the elements necessary to constitute a battery.
44. Further, the defendant quoted Rajkumar J (as he then was) in the case of *Romeo Grannum v The Attorney General*¹⁶ where it was explained that the burden of proof lies on the defendant's agents to establish that – they acted in self-defence, there was a real risk of imminent attack, it was reasonable to take the action they did.
45. In addition, the defendant discussed the importance of the reasonable use of force as per *Clerk and Lindsell on Torts*¹⁷ as well as the differences between self-defence in criminal law and self-defence to claims for the tort of trespass to the person¹⁸.
46. Section 4 of the Criminal Law Act Chap 10:04 also provides that a person may use such force as is reasonable in the circumstances in the prevention of crime,

¹⁴ CV2010-00694

¹⁵ CV2006-03721

¹⁶ CV2010-4394

¹⁷ 20th edn,

¹⁸ As per the case of *Ashley v Chief Constable of Sussex Police* [2008] UKHL 25

or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.

47. It was submitted that the injuries sustained by the claimant were as a result of the defendant's servants/agents acting in self-defence and/or retaliation as a result of being fired upon when giving chase to the deceased and the other individual. It was further submitted that the police officers acted in self-defence and self-preservation as there was a real risk of imminent attack and the risk materialised when the firearm was pointed in their direction and the loud explosion was heard. In addition, at the time, the officers could not ascertain whether the shot was fired by the deceased or the other person and/or whether the deceased was armed with a firearm. Therefore, it was reasonable for the police officers to take the action that they did and the use of force was proportionate in the circumstances.
48. It was therefore submitted that the defendant satisfied the test of ***Romeo Grannum***.
49. The defendant also submitted and relied on the following authority in relation to damages for assault and battery:
 - 49.1. ***Visham Boodoosingh v Richard Ramnarace C.A. Civ. 68/2001***, delivered 6 November 2002, per Warner J.A. – in this case, an off duty police officer shot the respondent in the face. The injuries sustained were: gunshot wounds to the right side of the face and mouth, compound fractures on the right mandible dental avulsion and fractures, loss of several teeth, extensive scarring to the right side of the face, deformity to the angle of the mouth and lower lip, narrowing of the aperture of the mouth, loss of buccal sulcus in the right lower jaw area. An award of \$150,000 made by Bereaux J in an action for assault and battery. Loss of earnings and future medical expenses of \$132,000 and \$40,000 were also awarded.

50. The defendant, in conclusion, stated that the deceased's injuries were not as severe as that of the claimant in the above cited case and as such, suggested that \$120,000 is a reasonable award of compensation in the circumstances.

Damages for false imprisonment

51. The defendant submitted that in the instant case, the claimant was detained from 12 August 2014 to 14 August 2014 at around 4pm for a period of about 48 hours. The following authorities were relied on for awards made in similar cases:

51.1. CV2007-2686 Richardson & Alleyne v The Attorney General of Trinidad and Tobago – the claimants were awarded \$40,000 each inclusive of aggravated damages for false imprisonment for approximately 2 days. (delivered on 8 January 2013)

51.2. CV2014-00608 Indra Samuel and PC Ali v The Attorney General – The claimant was awarded damages for false imprisonment in the sum of \$45,000 inclusive of aggravated damages for the period spent in the cell from around midday on 8 May, 2010 to her release on 10 May, 2010 (delivered on 23 February 2016)

51.3. CV2014-03967 Ricardo Luke Fraser v The Attorney General of Trinidad and Tobago - \$100,000 in general damages inclusive of aggravated damages was awarded after the claimant was detained for 5 days at 2 different police stations.

52. It was submitted that in the instant case, an award of \$50,000 inclusive of aggravated damages would be a fair award to the claimant as general damages for his loss of liberty for 2 days.

Discussion and conclusion

53. The parties are at idem on the issue of the assault and battery and, having regard to the authorities and, in the circumstances of the case, the court is of

the respectful view that the sum of \$120,000, inclusive of an uplift for aggravated damages, is fair.

54. With respect to the issue of false imprisonment, the court bears in mind the shooting incident took place at 3 PM on 11 August 2014 after which the deceased was taken to the Port of Spain General Hospital where he remained under guard until his discharge at 12:30 PM on 12 August 2014¹⁹. From there, he was taken to the Belmont police Station where, according to the claimant, he was placed in a dirty cell and was not given food, water and medication. The claimant said that she was told that the cell smelt badly and, with his injuries, he found it difficult to sleep in the cell. She said that he told her that there were buckets filled with faeces and stale urine which is what caused the foul scent. He was never arrested nor charged for anything. He was discharged, according to the agreed position of both sides, on 14 August 2014 at 12 pm. The claimant did not state that in her witness statement.
55. Having regard to the facts and the submissions on both sides, the court is minded to award the sum of \$75,000, inclusive of an uplift for aggravated damages in light of the actual detention and the unchallenged fact that the deceased was shot and detained thereby giving the impression that he was involved in some sort of illicit activity on the day.
56. The court would also make an award for exemplary damages to express its outrage at the circumstances which the court has accepted in relation to the claimant's account. An award of \$35,000 would be made in that regard.

¹⁹ See the notes from the hospital

The Order

57. There will be judgment for the claimant against the defendant. The defendant shall pay to the claimant the following sums:
- 57.1. Damages for assault and battery in the sum of \$120,000, inclusive of an uplift for aggravated damages together with interest thereon at the rate of 2.5% per annum from 10 August 2016 to date;
 - 57.2. Damages in the sum of \$75,000 for false imprisonment, inclusive of an uplift for aggravated damages, together with interest thereon at the rate of 2.5% per annum from 10th of August 2016 to date;
 - 57.3. Exemplary damages in the sum of \$35,000;
 - 57.4. The prescribed costs of the claim quantified by the court in the sum of \$45,397.24

/s/ D. Rampersad J.