IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV-2016-01997

BETWEEN

DON BRUCE

Claimant

AND

WOMAN POLICE CONSTABLE

JASMINE EDWARDS NO.15710

1st Defendant

THE ATTORNEY GENERAL

OF TRINIDAD AND TOBAGO

2nd Defendant

Before the Honourable Madame Justice Quinlan-Williams

Appearances: Claimant: Mr. Navindra Ramnanan

Defendants: Ms. Sasha Sukhram instructed by Ms. Kadine Matthew

Date of Delivery: Wednesday 23rd May 2018

JUDGMENT

BACKGROUND

1. On the morning of the 26th May, 2006 a woman went to the San Fernando Police Station and made a report. She reported that the previous day, the 25th May, 2006 while she was attending to her three year old daughter, the child said that her vagina was hurting. The woman, Ms. Summer Tyson further probed her daughter who said that the driver touched her on her vagina. The driver, named Don Bruce, was hired by Ms. Summer to take her daughter[1] to and from pre-school. The report was made to WPC Edwards who commenced investigations. These investigations included the child being taken to be medically examined by the District Medical Officer, Dr. Arjoonsingh.

2. The events that unfolded over the six years that followed the making of the report is what has led to this claim currently engaging the court's attention.

3. Don Bruce, the Claimant in these proceeding, claims that on the 15th June, 2006 he was arrested and taken to the San Fernando Police Station. There, WPC Edwards, the First Defendant, placed him in a holding cell with other prisoners. The claimant further claims that he was questioned by the first defendant about the report made against him, and was subsequently charged for the offence of serious indecency. On the 16th June, 2006 the claimant was taken to the San Fernando Magistrates' Court where he entered a plea of not guilty. The magistrate fixed bail in the amount of $35,000.00. The claimant was unable to fulfil the bail requirements, as such he was remanded to the Arouca Prison. The claimant was remanded for fifteen (15) days until he was bailed.

4. The criminal case came up for hearing before the San Fernando Magistrates' Court on at least thirty-five (35) occasions. The case was set for trial at least six (6) times. Finally, six (6) years after the claimant was charged, the criminal charge was dismissed on the 16th July, 2012 for want of prosecution.

[1] The name of Ms. Tyson's daughter is not relevant for the purpose of this judgment. She will not be identified by her name.

5. The claimant by claim form and statement of case filed on the 10th June, 2016, commenced proceedings against the first and second defendants. The claimant claims damages for the first defendant's malicious prosecution and failure to inform him of his right to an attorney. The claimant holds the second defendant liable for the acts of the first defendant pursuant to the **State Liability and Proceedings Act Chapter 8:02**. The defendants filed and served their defence on 31st October, 2016 and the claimant filed a reply to the defence thereafter on 6th February, 2017.

6. The trial into this claim was heard on the 1st March, 2018. The court reserved its judgment. The claimant's and defendants' attorneys filed written closing submissions in compliance with the court's order.

CLAIMANT'S SUBMISSION

7. The claimant's submission is that WPC Edwards did not conduct a proper investigation into the report made by Ms. Tyson's. Had WPC Edwards done so she would have realized that the allegation was vengeful. The claimant alleges that the report was in retaliation of him, the claimant, asking for outstanding transport fees due for taking the child to and from preschool. The charge was therefore preferred without reasonable and proper cause. To support the submission, the claimant claims Ms. Tyson's first reported that the child was crying and told her that her vagina was hurting. The claimant submits that the child's report was illogical and made no sense since putting the claimant's hand on the child's vagina was inconsistent with the child's vagina hurting. The attorney's submission is also based, on what he considers to be deficiencies in the investigation conducted contemporaneous with the report being made. The attorney also submits that the absence, today, of information gathered during the investigation supports the claim that when the charge was laid in 2006, it was laid without reasonable and probable cause.

DEFENDANTS' SUBMISSION

8. The defendants' submission is that on the 26th May, 2006, Ms. Tyson, who is now deceased, visited the San Fernando Police Station and reported to WPC Edwards that the claimant put his hand on her daughter's vagina. Later that day, when Ms. Tyson

and the child returned to the police station, they conveyed the child to the district medical officer. There the child was examined and a medical report was obtained by WPC Edwards on behalf of the child. Statements were taken from Ms. Tyson and the child. WPC Edwards completed her investigations, submitted her report and received instructions to charge the claimant for the offence of serious indecency. A warrant of arrest was sworn to and obtained for the arrest of the claimant.

9. The warrant of arrest was executed on the claimant on the 15th June, 2006. The claimant was cautioned and informed of the allegations, he refused to give a written statement and he was formally charged for the offence of serious indecency.

10. The claimant appeared in court to answer the criminal offence and bail was fixed by a magistrate. WPC Edwards attended court on a few occasions when the matter was called and adjourned.

11. On the 9th October 2006, WPC Edwards suffered a massive stroke, this resulted in her being absent from work and bedridden for a considerable time thereafter. As a result of the stroke WPC Edwards was unable to attend court for some time. In the month of September 2010, WPC Edwards was still suffering from the effects of the stroke. On the 16th September, 2010 WPC Edwards, assisted by police officers, attended the San Fernando Magistrates' Court, the magistrate relieved her from attending court until the court fixed a date for the trial. That was the last she heard about the matter until she was contacted about this claim.

12. The defendants submit that there was reasonable and probable cause to charge the claimant for the offence of serious indecency.

13. The defendants also submit that the claimant's claim is based on malicious prosecution only and not false imprisonment. The claimant's claim form, statement of case and witness statements all detail malicious prosecution as the sole action. Furthermore any claim for false arrest relating to the arrest which occurred in 2006

would have been statue-barred when this claim was filed by the claimant on 31st October, 2016.

14. The court considered the submissions and cases relied on by all the parties.

LAW

Malicious Prosecution

15. The tort of malicious prosecution requires the claimant to prove that[2]

> *in an action for malicious prosecution the claimant must show first that he was prosecuted by the defendant, this is to say that the law was set in motion against him on a criminal charge; secondly, that the prosecution was determined in his favour; thirdly that it was without reasonable and probable cause; fourthly, that it was malicious. The onus of proving ever one of these is on the claimant. Evidence of malice of whatever degree cannot be invoked to dispense with or diminish the need to establish separately each of the first three elements of the tort.*

16. The third and fourth legal elements required to establish the tort of malicious prosecution; without reasonable and probable cause and malice, are the elements that are relevant for the determination of this claim. There is no dispute that the claimant was charged with a criminal offence and that the prosecution of that offence was determined in his favour.

Without Reasonable and Probable Cause

17. In **Glinski and McIver [1962] A.C. 726 at 758 and 759,** Lord Denning described the test saying:

> *My Lords, in Hicks v. Faulkner Hawkins J. put forward a definition of "reasonable and probable cause" which later received the approval of this House. He defined it as an "honest belief in the guilt of the accused" and proceeded to detail its constituent elements. The definition was appropriate enough there. It was, I suspect, tailor-made to fit the measurements of that exceptional case. It may fit other outsize measurements too. But experience has shown that it does not fit the ordinary run of cases. It is a mistake to treat it as a touchstone. It cannot serve as a substitute for the rule of law which says*

[2] Clerk and Lindsell on Tort. 20th Edition, paragraph 16:09

that, in order to succeed in an action for malicious prosecution, the plaintiff must prove to the satisfaction of the judge that, at the time when the charge was made, there was an absence of reasonable and probable cause for the prosecution. Let me give some of the reasons which show how careful the judge must be before he puts to the jury the question: "Did the defendant honestly believe that the accused was guilty?"

In the first place, the word "guilty" is apt to be misleading. It suggests that, in order to have reasonable and probable cause, a man who brings a prosecution, be he a police officer or a private individual, must, at his peril, believe in the guilt of the accused. That he must be sure of it, as a jury must, before they convict. Whereas in truth he has only to be satisfied that there is a proper case to lay before the court, or in the words of Lord Mansfield, that there is a probable cause "to bring the [accused] to a fair and impartial trial": see Johnstone v. Sutton. After all, he cannot judge whether the witnesses are telling the truth. He cannot know what defences the accused may set up. Guilt or innocence is for the tribunal and not for him. Test it this way: Suppose he seeks legal advice before laying the charge. His counsel can only advise him whether the evidence is sufficient to justify a prosecution. He cannot pronounce upon guilt or innocence. Nevertheless, the advice of counsel, if honestly sought and honestly acted upon, affords a good protection: see Ravenga v. Mackintosh by Bayley J. So also with a police officer. He is concerned to bring to trial every man who should be put on trial, but he is not concerned to convict him. He is no more concerned to convict a man than is counsel for the prosecution. He can leave that to the jury. It is for them to believe in his guilt, not for the police officer. Were it otherwise, it would mean that every acquittal would be a rebuff to the police officer. It would be a black mark against him, and a hindrance to promotion. So much so that he might be tempted to "improve" the evidence so as to secure a conviction. No, the truth is that a police officer is only concerned to see that there is a case proper to be laid before the court.

18. Lord Denning's statement of the principles of law related to "reasonable and probable cause" applied the dicta in **Hicks V Faulkner [1898 (8) Q.B.D. 167** that the claimant has to show a negative proposition; the absence of a reasonable and probable cause at the time the charge was laid. This negative proposition is not that the police officer must be satisfied that the person charged is guilty of the crime. The police officer should not be motivated by the outcome of the judicial process, that the person is convicted, but only that the information available from his investigation is sufficient to make a proper case to be placed before the court.

19. In the case of **Trevor Williamson v The Attorney General of Trinidad and Tobago [2014] UKPC 29** at paragraphs 11 and 14, Lord Kerr, applying **Glinski and McIver (supra)** said:

> *In order to make out a claim for malicious prosecution, it must be shown, among other things, that the prosecutor lacked reasonable and probable cause for the prosecution and that he was actuated by malice. These particular elements constitute significant challenge by way of proof. It has to be shown that there was no reasonable or probable cause for the launch of the proceedings. This requires the proof of a negative proposition, normally among the most difficult of evidential requirements…*
>
> *On the question of reasonable and probable cause, or the lack of it, a prosecutor must have 'an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed': Hicks v Faulkner (1878) 8 QBD 167, 171 per Hawkins J, approved by the House of Lords in Herniman v Smith [1938] AC 305, 316 per Lord Atkin. The honest belief required of the prosecutor is a belief not that the accused is guilty as a matter of certainty, but that there is a proper case to lay before the court: Glinski v McIver [1962] AC 726, 758 per Lord Denning.*

20. The claimant is required to prove that the charge was laid without reasonable and probable cause. This does not require the police to be satisfied that the accused is guilty. The police must be satisfied that there is sufficient information for a criminal charge to be placed before the court.

Malice

21. On the question of malice, **Hicks v Faulkner (supra)**, explained that there are circumstances where the want of reasonable and probable cause do not equate to malice. That was the case before them in **Hicks v Faulkner (supra)**. In those circumstances, in **Hicks v Faulkner (supra)** at pages 174 and 175, Hawkins J said:

> *In an action of this description the question of malice is an independent one of fact…the malice necessary to be established is not malice in law such as may be assumed from the intentional doing of a wrongful act (see Bromage v Prosser (1) per Bayler H) but malice in fact-maus animus- indicating that the party was actuated either by spite or ill-will towards an individual, or by indirect*

or improper motives, though these may be wholly unconnected with any uncharitable feelings towards anybody

22. Hawkins J, also said in the judgment, at page 175, malice is a question of fact even where the fact finders:

> *Think there was want of probable cause might nevertheless think that the defendant acted honestly and without ill-will, or any other motive or desire than to do what he bona fide believed to be right in the interest of justice -in which case they ought not, in opinion, to find the existence of malice.*

23. In the case of **Brown v Hawkins [1891] 2 QB 718** Cave J. said at page 722

> *Now malice, in its widest and vaguest sense, has been said to mean any wrong or indirect motive; and malice can be proved, either by shewing what the motive was and that it was wrong, or by shewing that the circumstances were such that the prosecution can only be accounted for by imputing some wrong or indirect motive to the prosecutor. In this case I do not think that any particular wrong or indirect motive was proved. It is said that the defendant was hasty and intemperate. It may, I think, be assumed that, believing, as the jury have found he did, that Brown had stolen his boots, the defendant was angry; but, so far from this being a wrong or indirect motive, it is one of the motives on which the law relies to secure the prosecution of offenders against the criminal law. He may also have been hasty, both in his conclusion that the plaintiff was guilty and in his proceedings; but hastiness in his conclusion as to the plaintiff's guilt, although it may account for his coming to a wrong conclusion, does not shew the presence of any indirect motive.*

24. Also in the case of **Brown v Hawkins (supra)**, Lord Justice Kay said at page 728

> *Now, if he honestly believed the charge which he made against the plaintiff, some distinct evidence is required to prove malice, and the only question before us is, what is relied on as evidence of malice. As I understand the argument for the plaintiff, it was said that the evidence to prove malice was that the defendant did not make proper inquiry as to the facts of the case. If that is all, and if that evidence is sufficient, the result would be that the finding on the first question put to the jury, that the defendant did not take proper care to inquire into the facts of the case, would, without more, determine the action in favour of the plaintiff. That cannot be so, and when I look at the evidence (as I have done with care) to find what evidence there was of sinister motive, I can find none on which the jury could reasonably find that the defendant was actuated by malice.*

25. In the case of **Cecil Kennedy v. Donna Morris W.P.C. 11435 and The A.G. of Trinidad and Tobago Cv. App NO. 87 0f 2004**, Sharma C. J. in delivering the judgment of the

Court of Appeal, on the issue of malice, said at paragraph 28, "that where a lack of reasonable and probable cause is NOT proved, the question of malice does not arise".

26. The judgment of Lord Kerr in **Trevor Williamson v The Attorney General of Trinidad and Tobago (supra)** **states** at paragraphs 13, 16 and 17

> *Malice can be inferred from a lack of reasonable and probable cause – Brown v Hawkes [1891] 2 QB 718, 723. But a finding of malice is always dependent on the facts of the individual case. It is for the tribunal of fact to make the finding according to its assessment of the evidence…*
>
> *This conclusion bears directly on the question whether the prosecution can be inferred to be malicious [that there was no proof of an absence of reasonable and probable cause]. Where there is absolutely no basis for suspicion, especially where that is accompanied by an apparent reluctance to proceed with the charge, one might draw such an inference. But that was not remotely the position here. Of course, the failure of Constable Caldeira to appear on the various occasions that Mr Williamson came before the Magistrates' Court is reprehensible but this is not nearly sufficient, in the Board's view, to allow the inference to be drawn that his intention was to manipulate the legal system or to pursue the prosecution for a wholly extraneous and improper motive.*
>
> *Remembering that it is for the tribunal of fact to make a finding on the question of malice, it is to be noted that Constable Caldeira, in his witness statement of 31 January 2007, prepared for the High Court proceedings, had averred that he had reasonable and probable cause for laying charges against and prosecuting Mr Williamson and had acted throughout in good faith and without malice. He was not challenged on those averments. In those circumstances, the Board finds it unsurprising that both the High Court and the Court of Appeal were not prepared to draw the inference that he had acted with malice in proceeding with the prosecution against Mr Williamson. His appeal against the finding that he had not made out a case of malicious prosecution must be dismissed.*

27. In the case of **Sandra Juman (Appellant) v The Attorney General of Trinidad and Tobago and another [2017] UKPC 3**, the Privy Council was called upon to review the decision of the Court of Appeal that there was no malice. In delivering the judgment of the Privy Council, Lord Toulson said at pages 6 and 7:

> *The question of malice therefore does not arise, but the Board would reject the appellant's attempt to treat the first respondent's alleged failure to carry out sufficient investigation before charging the appellant as amounting or*

equivalent to malice; or similarly the attempt to treat "recklessness" as tantamount to malice. "Reckless" is a word which can bear a variety of meanings in different contexts. It is not a suitable yardstick for the element of malice in malicious prosecution.

18. The essence of malice was described in the leading judgment in Willers v Joyce at para 55:

"As applied to malicious prosecution, it requires the claimant to prove that the defendant deliberately misused the process of the court. The most obvious case is where the claimant can prove that the defendant brought the proceedings in the knowledge that they were without foundation ... But the authorities show that there may be other instances of abuse. A person, for example, may be indifferent whether the allegation is supportable and may bring the proceedings, not for the bona fide purpose of trying that issue, but to secure some extraneous benefit to which he has no colour of a right. The critical feature which has to be proved is that the proceedings instituted by the defendant were not a bona fide use of the court's process."

19. A failure to take steps which it would be elementary for any reasonable person to take before instituting proceedings might in some circumstances serve evidentially as a pointer towards deliberate misuse of the court's process, but sloppiness of itself is very different from malice. In the present case there was no cause to doubt that the first respondent believed, rightly or wrongly, that there were sufficient grounds to prosecute, or that the object of charging the appellant was to place the matter before the magistrate for the court to decide the question of her guilt; and there was no suggestion that he had any ulterior improper motive. Even if the court had decided that objectively the first respondent lacked reasonable and probable cause to prosecute the appellant, there was no basis to hold that he acted with malice.

28. In the case of The **Attorney General of Trinidad and Tobago v. Kevin Stuart Civil Appeal No. P162 of 2015**, Bereaux, J.A., applied the decision of the Privy Council in **Sandra Juman (Appellant) v The Attorney General of Trinidad and Tobago and another (supra).** At paragraph 32, in delivering the judgment of the court, Bereaux J.A. warned of the difficulty in making an inference that malice exists because there is an absence of reasonable and probable cause. In the circumstance of that case, the facts showed

There was nothing in the evidence to justify it, neither did she find or indicate what the improper motive was. The contention that a police officer is actuated by an improper motive is quite a serious allegation. There must be a proper evidential basis upon which to do so, especially when such a finding is made by inference

29. For the court to consider whether there is malice on the part of the WPC Edwards, the claimant must first satisfy the court that the charge was laid without reasonable and probable cause. After overcoming that hurdle, that does not mean that malice exist, ipso facto. Malice is a question of fact, the proof of which is dependent on the peculiar circumstances of each case.

ISSUES

30. The issues raised for determination in this claim are:
    a. Was there an absence of reasonable and honest belief when WPC Edwards charged the claimant with the criminal offence of serious indecency?
    b. Did WPC Edwards act with malice when she laid the charge against the claimant?

EVIDENCE AND ANALYSIS

31. The offence of serious indecency is a statutory offence created by Section 16 (1) of the **Sexual Offences Act Chapter 11:28.** Section 16 (3) of the said act, describes what behaviour constitutes the offence. Section 16 (1) and (3) states:

> *(1) A person who commits an act of serious indecency on or toward another is liable on conviction to imprisonment for five years.*
>
> *(3) An act of "serious indecency" is an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of the genital organ for the purpose of arousing or gratifying sexual desire.*

32. It must be that obvious that anyone who engages in behaviour amounting to the touching of a child's vagina with his hand is engaging in an act, other than sexual intercourse. If the circumstances in which that touching occurs, provides no good or no reason for touching the child's vagina, it must be that the touching was done for the purpose of arousing or gratifying his own sexual desire. Indubitably, a police investigation that unearths evidence suggestive of such behaviour so circumstanced must lead the police to believe that there is reasonable and honest belief that the offence of serious indecency occurred.

33. To prove an absence of reasonable and honest belief on the part of WPC Edwards, the claimant relies on his own evidence. The claimant's evidence is that in 2006 he drove a vehicle transporting children to and from primary and pre-school. Among the children he transported to and from school was a three (3) year old child. The child's mother's name was Summer Tyson. Ms. Tyson paid him $200.00 per month. The claimant claimed that Ms. Tyson had difficulty in paying him the $200.00 per month, however he still provided the transportation for the child with the hope of payment. The claimant's claim is that on the 26th May, 2006 he spoke to Ms. Tyson very sternly about the money she owed him for transportation. The claimant's evidence is that Ms. Tyson became upset and accused him of embarrassing her in public.

34. The claimant's said he later became aware that Ms. Tyson made a reported to the police that he, the claimant, molested her daughter. This knowledge he received when he was arrested. He was arrested on the 15th June, 2006 around 11:00 am, at his home. The claimant's evidence is that he was not told why he was being arrested. He was taken to the San Fernando Police Station and placed in a cell.

35. About 2:00 pm, the claimant says he was taken out of the cell. A female police officer, kept taunting him by saying and repeating "we have an allegation against you"[3]. This female officer was not WPC Edwards. The claimant was taken in the presence of Ms. Tyson and her daughter. The claimant said that this woman police asked the child "Do you know this man? Does this man carry you to school?". The claimant also said that the child seemed confused and unaware that she was in a police station and she was just smiling and did not seem scared or traumatized in anyway. The child did not answer the questions at the time. The claimant's evidence is that the woman police officer told him that there was no truth to the allegation and that they would let him sign a statement and send him home. The claimant said that later that night, WPC Edwards questioned him. She told of the report made against him by Ms. Tyson. He denied the report. The claimant said "I told officer Edwards that I transport children to school and [the child's] mother, Ms. Tyson, was owing me and was not paying me

[3] Claimant's witness statement, paragraph 5.

and when I told her mother that I needed my money and that I would not be able to continue taking the child to school until she paid her outstanding bill she got very angry at me"[4]. The claimant's evidence is that WPC Edwards' response was that she did not want to hear anything he had to say, the child said he touched her. At this point, according to the claimant, WPC Edwards kept repeating the same words the other officer had earlier said to him.

36. The claimant's evidence is that WPC Edwards, by her words, had already judged the claimant to be guilty. The claimant was charged later in the night of the 15th June, 2006 by WPC Edwards for the offence of serious indecency. On the 16th June, 2006 the claimant appeared before a magistrate at the San Fernando Magistrates' Court. The charge against the claimant was dismissed on the 16th July, 2012 for want of prosecution. WPC Edwards did not attend court.

37. The claimant was cross-examined by attorney for the first and second defendants. The claimant said that he was aware that the police were acting based on the report of Ms. Tyson. The claimant also said under cross-examination that his claim is not based on WPC Edwards having fabricated the criminal charge against him. He agreed that WPC Edwards did not have any personal bias against him.

38. WPC Edwards' evidence in chief, is contained in her statement filed on the 3rd May, 2017. She said that she personally took the report from Ms. Tyson. The report was that the child told her mother, Ms. Tyson, that her driver, the Claimant, took her to the park and put his hand on her vagina. The child was three. She recorded the report in the San Fernando CID Diary. WPC Edwards' evidence is that Ms. Tyson had cause to take the child to the Health Center after the child made complaints to her. The child was examined and the health care professionals advice to Ms. Tyson was to make a report to the police. WPC Edwards requested that the child be brought to the police station so that she can be examined by the DMO. This was done, the child was brought

[4] Claimant's witness statement, paragraph 7.

to the station and taken to be examined by the DMO. Dr. Argoonsingh issued a medical report on behalf of the child.

39. WPC Edwards recorded a statement from Ms. Tyson and WP Corporal Mc Dowel recorded a statement from the child. During the course of her investigations, WPC Edwards interviewed the child's preschool teacher. The teacher refused to give a statement to the police. WPC Edwards completed her investigation and submitted her file to her superiors. WPC Edwards had statements from the child, her mother and a medical report on behalf of the child. She received instructions to charge the claimant for the offence of serious indecency.

40. Following this, WPC Edwards suffered a massive stroke in 2006. She resumed work in October 2008. In September 2010, WPC Edwards was assisted by other police officers in physically attending court and the magistrate relieved her from further attending until the court fixed the matter for trial. WPC Edwards passed the file to the court prosecutor. WPC Edwards heard nothing further from the prosecutor about the matter. Her next communication about the matter was when she was contacted by an attorney from the office of the Attorney General about this claim.

41. The Station Diary Day Duty extract for the 26th May, 2006 was exhibited to the statement of WPC Edwards. The extract certifies that Ms. Tyson came to the station at 10:00 am and made the report. Ms. Tyson and her daughter returned to the station at 1:15 pm. They left the station at 1:50 pm on the same day with the child for a medical examination.

42. A Station Diary Day Duty extract for the 15th June, 2006 was also exhibited to the statement of WPC Edwards. The extract certifies that the claimant was arrested at 7:45 am by three officers. The claimant was cautioned and told of the report against him. After the caution, the claimant is alleged to have said "no boss me eh do dat". The claimant was taken to the San Fernando Police station. The extract shows an entry made at 10:40 am. This entry shows that the claimant was interviewed by WPC Edwards. The extract certifies that "I told him of the report made against him and the

information she had cautioned him told him of his legal rights and privileges and he replied 'That allegation is false, she mother owe meh money'". The extract further certifies that the claimant told WPC Edwards that Ms. Tyson owes him money. The claimant was formally charged at 8:00 pm.

43. In resolving the issues in this claim, the court made certain findings. Firstly, there were variances between the parties; the claimant's and WPC Edwards' evidence. These variances were on material issues. The court needed to resolve those variances to resolve this claim:

    a. The claimant's evidence is that he was arrested around 11:00 am. The station diary extract, exhibited by WPC Edwards', certifies that the claimant was arrested at 7:45 am by three officers. On this variance the court accepts the evidence of WPC Edwards, presented in the station diary extract, that the claimant was arrested at 7:45 am. The diary extract is a contemporaneous record of events. The entries are numbered consecutively and the time of entry recorded. There would therefore be no opportunity to go back and manipulate the entry dealing with the time of arrest. The court is therefore satisfied on a balance of probabilities that the claimant was arrested at 7:45 am on the 15th June, 2006.

    b. The claimant's evidence is that he was interviewed by police officers and taunted about the allegation. The claimant's evidence is that he did not see WPC Edwards until late the night of 15th June, 2006. The extract from the station diary for the 15th of June, 2006 exhibited by WPC Edwards, shows an entry made at 10:40 am. The entry certifies what occurred following WPC Edwards' first interviewed of the claimant. For the same reasons given at (a) above, the court is satisfied on a balance of probabilities that the claimant was seen by WPC Edwards on the morning of the 15th June, 2006 and not in the evening as the claimant claims. The court does not therefore, believe the evidence given by the claimant that he was taunted by other officers before he was interviewed by WPC Edwards. The court also does not believe the

claimant's evidence that the interaction with WPC Edwards left the claimant with the opinion that she (WPC Edwards) had already decided that the claimant was guilty of the offence.

44. Secondly, with respect to the Claimant's submissions that the investigation should have put WPC Edwards on notice the court finds the following:

a. The child, the alleged victim, was three (3). One assumes a normal three (3). For a three (3) year old child to say to her mother that her vagina is hurting and saying that her driver put his hand on her vagina are not inconsistent statements. The complaint was made by a three (3) year old child. It would depend on how the hand was placed and where the hand was placed. It would also depend on the child's understanding of vagina as well as the child's understanding of pain. Also a three (3) year old child's ability to express herself must be considered in relation to the language limitations consistent with being three (3).

b. The claimant's evidence is that he denied the allegation from the first opportunity. The diary extract relating to the claimant's arrest also shows that the claimant denied the allegation at the time of his arrest. The denial of an allegation by a person suspected of committing a sexual offence against a three (3) year old child cannot, under any circumstances, cause the police to conclude that such a denial must mean that the offence was not perpetrated upon a child. One can assume that a person committing a sexual offence upon a child will do so in circumstances where there are no witnesses. Therefore a denial would usually mean that a criminal case of this nature will have the word of the victim against the word of the person charged. These are issues for the fact finders, and except in the clearest of circumstances, not for the police to make a determination.

c. The claimant also said that when he was confronted with the three (3) year old child, she seemed normal [the court's word]. She did not seem to know she was in a police station, and she did not say she was indecently assaulted. It is worth repeating and remembering that the child was three (3). What more can one say?

d. The claimant relies, in the submissions made on his behalf, on the fact that the medical report and the statements given during the course of WPC Edwards' investigation, on which the decision was made to charge, are not available today. The fact that these documents are not available today does not mean that they were not available at the time the decision was made to charge the claimant. The claimant does not deny that they were available in 2006. WPC Edwards explained what occurred with her and the file. The court finds as a fact and is satisfied on a balance of probabilities that those documents were available and the contents thereof, informed the decision to charge the claimant with the criminal offence.

45. Thirdly, the claimant submits that WPC Edwards said, under cross-examination, that she did not have enough evidence at the time the first report was made to prefer a charge. He then submits that this must mean that there continued to be insufficient evidence to ever charge the claimant. WPC Edwards' evidence is that Ms. Tyson came to the station without the child and made the initial report. Following this Ms. Tyson returned with the child. The child was medically examined and WPC Edwards received a medical report. WPC Edward's evidence is that statements were recorded from Ms. Tyson and the child. She also said that her enquiries took her to the pre-school where she received information – although the teacher was not prepared to give a statement to the police. The initial report, as one would expect from the police, spurred an investigation. Upon the conclusion of that investigation WPC Edwards did have sufficient evidence to reasonably and probably prefer the charge of serious indecency against the claimant. The court was satisfied on a balance of probabilities that by the end of WPC Edwards' investigation there was sufficient evidence to charge the Claimant.

46. Fourthly, it does not follow that because the criminal case was dismissed against the claimant for want of prosecution, that there was no reason to charge the claimant. The circumstances of the each case must be considered contextually. WPC Edwards explained that based on the intervening events that occurred with her personally, she handed over the criminal case file. WPC Edwards also explained that because of the passage of time she could not account for the criminal case file and documents therein such as the medical report. Nor could she remember the contents of the medical report. Unfortunately, through no fault of WPC Edwards, a serious medical event intervened. The court noted that the effects of the stroke appeared to be still operative on WPC Edwards in 2018 at the time of this trial.

47. Fifthly, the Claimant's evidence was that the allegation against him was made because he confronted Ms. Tyson on the 26th May, 2006 about the monies due and owing to him. WPC Edwards' evidence is that Ms. Tyson came to the station on the 26th May, 2006 and reported to her that the day before (25th May, 2006) she had cause to take her daughter to the health center to be medically examined. The personnel at the health center advised her to make a report to the police. The claimant's evidence about the motivation for the false allegation, does not make any sense when considered in the context of the time the report was made, the day the report was made and the nature of the report. Further after initially making the report without the child being present Ms. Tyson returned to the police station later on the 26th May, 2006 with the child and accompanied her daughter and WPC Edwards to the district medical officer, for the child to be medically examined. The court was satisfied on a balance of probabilities that the report was not made out of spite because Ms. Tyson owed the claimant for transporting the child to and from preschool. Actually, such a suggestion is bordering on ridiculous. In fact, may not be bordering.

48. To be clear, the court agrees with the submissions made by the defendants that the claim pleaded, the evidence and submissions of the Claimant, all relate to malicious prosecution and there was no other claim needing decision by the court.

RESOLUTION OF ISSUES

49. The issues raised in the claim, as stated above, were

a. Was there an absence of reasonable and honest belief when WPC Edwards charged the claimant with the criminal offence of serious indecency?

b. Did WPC Edwards act with malice when she laid the charge against the claimant?

50. The court has resolved these two issues:

a. With respect to whether there was absence of reasonable and honest belief when WPC Edwards charged the claimant. Based on the analysis of the evidence and the findings made, the answer is the claimant has not proven this on a balance of probabilities. The claimant has not discharged the burden of proving the test for malicious prosecution in **GLINSKI AND MCIVER [supra]** as applied in **Trevor Williamson v The Attorney General of Trinidad and Tobago [supra]** among other cases. Applying Lord Denning's dicta to the facts of this case, it appears that WPC Edwards had enough information following her investigation to charge the claimant. The legal and evidential issues arising from the charge were for a court of law to resolve. It was not required by law, that WPC Edwards must have been satisfied of the claimant's guilty before the charge was laid. The claimant submitted that since he denied the allegation it follows that any change laid thereafter must be without reasonable and probable cause. To use the claimant's words, that is illogical. The court is satisfied on a balance of probabilities that the claimant has not discharged the difficult burden of the negative proposition, **Hicks V Faulkner (supra),** of proving that at the time the he was charged, WPC Edwards was without reasonable and probable cause for the prosecution.

b. With respect to the issue of malice, having made the above finding, the issue of malice does not arise for consideration. It is noted however that the claimant in cross-examination, all but admitted that there was no malice involve. Even if the claimant's evidence in cross-examination cannot be said to

amount to that admission, the claimant led no evidence on which the court could making a finding of fact that WPC Edwards was actuated out of malice or any improper motive towards the claimant, **Hicks v Faulkner (supra), Trevor Williamson v The Attorney General of Trinidad and Tobago (supra).** The failure to attend court cannot, by that fact alone, amount to malice, **Trevor Williamson v The Attorney General of Trinidad and Tobago (supra)**. In this case WPC Edwards' failure to attend court was explained by the unfortunate debilitating medical intervention of the stroke she suffered. Even if the court were to find that WPC Edwards could have done more in her investigation, which the court does not, this would not amount to malice as per **Sandra Juman (Appellant) v The Attorney General of Trinidad and Tobago and another (supra).**

DECISION

51. It is hereby ordered that:
    a. There be judgment for the defendants against the claimant.
    b. The claimant is to pay the defendants' costs in the sum of $14,000.00.

Dated this 23rd day of May 2018

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JUSTICE QUINLAN-WILLIAMS
JUDGE

JRC: Romela Rambarran