

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2018-02439

BETWEEN

TEREBETT DEHERE #18434

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

First Defendant

WPC THEROULDE #18138

Second Defendant

CORPORAL MOHAMMED #15818

Third Defendant

SERGEANT HOSEIN #13452

Fourth Defendant

Before the Honourable Madame Justice Quinlan-Williams

Date of Delivery: 8th February 2021

Appearances: Mr. Lemuel Murphy instructed by Ms. Abigail Roach for the
Claimant
Mr. Stefan Jaikaran instructed by Ms. Savitri Maharaj for the
Defendants

JUDGMENT

1. The claimant is a serving member of the Trinidad and Tobago Police Service. She was romantically involved with Anthony Sullivan. Sullivan was himself a member of the Trinidad and Tobago Police Service. Sullivan and another man were detained in a motor vehicle in which items were identified as being stolen from a Customs and Exercise Warehouse. Following his detention, he was charged with criminal offences and was scheduled to make his first court appearance on the 21st December 2015. The claimant was present at the Port of Magistrates' Court to lend support to Sullivan.
2. On that 21st December 2015, the claimant was arrested by the second defendant ("WPC Theroulde") and the third defendant ("Cpl Mohammed") in the precincts of the Port of Spain Magistrates' Court. At the time of her arrest, the claimant was conversing with the Sullivan's mother.
3. The claimant's case is that she was wrongfully arrested and detained for approximately 6 ½ hours without reasonable and probable cause by the first defendant's servants and/or agents. Moreover, the claimant avers that she was forced to endure humiliation, embarrassment, distress, anxiety and injury to her reputation especially due to the fact that at the material time she was not only pregnant, but a serving member of the police service.
4. On the other hand, the defendants' case is that the claimant became a suspect in the report of a warehouse breaking and larceny which occurred on the 17th December 2015 at the Trinidad and Tobago Customs Warehouse. In those circumstances, the defendants maintain that it had reasonable and probable cause to arrest the claimant to facilitate the course of its investigations.

The Issue

5. There is one issue before the court - did the defendants have reasonable and probable cause to arrest and detain the claimant.

Summary of Key Findings

6. While there was reasonable cause to suspect that an arrestable offence occurred (warehouse breaking and larceny), there was no reasonable cause to suspect that the claimant had committed an arrestable offence. The court is satisfied that none of the officers involved in the claimant's arrest and detention had an honest belief or suspicion that the claimant had committed any offence. There were no objective factors, based on the evidence, for the arresting officers to have formed that conclusion.
7. Further, there is no power of arrest for the sole purpose of executing a search warrant or for the purpose of questioning a citizen.
8. Therefore, without reasonable cause to suspect that the claimant committed an offence, the arrest and detention of the claimant was without lawful justification and authority.
9. The relevant law applicable to the claim was agreed between the parties. The court next considered the law raised by the claimant and the defendants in their submissions.

The Law

10. The police's power of arrest took center stage in this case. Police officers possess powers of arrest at common law and by statute. In this claim, the defendants rely¹ on statutory powers of arrest given by virtue of section

¹ Defendants' submission filed on the 20th November 2020. Paragraphs 7 and 8.

3(4) of the Criminal Law Act Chapter 10:04, and section 45(b) of the Police Service Act Chapter 15:01.

11. The statutory power of a police officer to arrest in section 3(4) of the Criminal Law Act Chapter 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.”

12. The second to fourth defendants therefore should have had reasonable cause to suspect that an arrestable offence had been committed by the claimant to have lawfully arrested her. The arresting officers were also required to have had reasonable cause that the claimant was guilty of an arrestable offence.

13. An arrestable offence is defined in section 3 of the Criminal Law Act Chapter 10:04, as an offence punishable with a term of imprisonment for five years. The offence of warehouse breaking fits the definition of an arrestable offence as it carries liability to imprisonment for ten years².

14. Regarding the police power of arrest under section 45(b) of the Police Service Act, the act provides that:

“45. A police officer ... (b) may arrest, charge and bring before a summary Court a person found committing any offence rendering him liable to arrest without warrant, or whom he reasonably suspects of having committed any such offence.”

15. Arrest, without warrant, given to a police officer under section 45 of the Police Service Act, is executed when the suspect is “found committing” any

² Larceny Act Chap. 11:12, section 28.

offence. A list of the situations where a suspect may be arrested without a warrant pursuant to section 45, is outlined in section 46(1) of the Police Service Act³. Section 46 (1)(d) permits arrest without warrant where the suspect is found in possession of items which may reasonably be suspected of being stolen. However, no evidence was adduced that the claimant was found with any items that may reasonably be suspected to have been stolen.

16. Section 3(4) of the Criminal Law Act as well as section 45(b) of the Police Service Act require the arresting officer to have reasonable and probable cause. The test for reasonable and probable cause, was described by Narine JA in *Nigel Lashley v The Attorney General of Trinidad and Tobago*⁴ as having:

“...a subjective as well as an objective element. The arresting officer must have an honest belief or suspicion that the suspect had committed an offence, and this belief or suspicion must be based on the existence of objective circumstances, which can reasonably justify the belief or suspicion. A police officer need not have evidence amounting to a prima facie case. Hearsay information including information from other officers may be sufficient to create reasonable grounds for arrest as long as that information is within the knowledge of the arresting officer: *O’Hara v. Chief Constable* (1977) 2 WLR 1; Clerk and Lindsell on Torts (18th ed.)

³ 46. (1) A police officer may arrest without a warrant—

(a) a person who is charged by another person with committing an aggravated assault in any case in which such police officer believes upon reasonable ground that such assault has been committed although not within his view, and that by reason of the recent commission of the offence a warrant could not have been obtained for the apprehension of the offender;

(b) a person who commits a breach of the peace in his presence;

(c) a person who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;

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

(e) a person whom he finds lying or loitering in any public or private place or building and who does not give a satisfactory account of himself;

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

(g) a person found having in his possession without lawful excuse any implement of housebreaking.

⁴ Civ Appeal No. 267 of 2011 at page 7 of the judgment

para. 13-53. The lawfulness of the arrest is to be judged at the time of the arrest.”

17. The defendants who arrested the claimant, must establish from the evidence before this court both the subjective as well as the objective elements on which they formed reasonable cause to arrest the claimant.

18. With respect to the requirement of the police officer suspecting that the person is guilty of the offence under section 3(4) of the Criminal Law Act, the Court of Appeal in the case of *Alistaire Manzano v The Attorney General of Trinidad and Tobago*⁵ opined on the meaning of “guilty.” Guilty in the context of section 3(4) of the Criminal Law Act, was decided having the same meaning of an honest belief which requires that:

“29. The honest belief must be based on reasonable grounds. This is the objective element. It introduces the test of the reasonable man and asks the question whether viewed objectively there was reasonable and probable cause for the prosecution. In *Dallison v Caffery* [1965] 1 QB 348, 371 Diplock LJ (as he then was) said:

“The test whether there was reasonable and probable cause for the arrest or prosecution is an objective one, namely whether a reasonable man, assumed to know the law and possessed of the information which in fact was possessed by the defendant, would believe there was reasonable and probable cause.”

19. Whatever the source of the power of arrest the defendants say they employed to arrest the claimant, the test of its lawfulness is the same.

20. If the requisite elements are absent to show that there was reasonable cause to arrest the claimant, then the arrest and any detention that followed would be unlawful. What would result from the unlawful arrest and detention is false imprisonment. A false imprisonment is the complete

⁵ Civ App No. 151 of 2011 at paragraph 29

deprivation of liberty for any time, however short, without lawful cause⁶. The tort of false imprisonment is established by proof of the fact of imprisonment and the absence of lawful authority to justify the imprisonment⁷.

21. The Privy Council in *Ramsingh v. The Attorney General of Trinidad and Tobago* [2012] UKPC 16 at para 8, sets out the relevant principles to determine the tort of false imprisonment:

- “(i) The detention of a person is prima facie tortious and an infringement of section 4(a) of the Constitution of Trinidad and Tobago.
- (ii) It is for the arrester to justify the arrest; that is the Defendant in this case.
- (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 the person has committed such an offence; and
- (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.”

22. Accordingly, it is the claimant’s burden to prove the arrest, once proven, the defendant must justify the arrest and prove that it was lawful. Rahim J⁸ recited the learnings from Halsbury’s Laws of England⁹ which sets out the circumstances by which a constable can arrest without a warrant:

- “A constable may arrest without a warrant:
- (1) anyone who is about to commit an offence;
- (2) anyone who is in the act of committing an offence;

⁶ HCA No. S-1753 of 2002 *Marvin Marino Edmond and another v The Attorney General of Trinidad and Tobago* at para 14

⁷ Clerk & Lindsell on Torts 20th Edition at paragraphs 15-23

⁸ In the case CV2017-02395 *Kyle Nero v The Attorney General of Trinidad and Tobago* at paragraph 65

⁹ Volume 84A (2013) at paragraph 487

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

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

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

23. Other legal issues concern the search warrant. The search warrant was issued under the authority of section 41 of the Summary Court’s Act:

“41. (1) Any Magistrate or Justice who is satisfied, by proof upon oath, that there is reasonable ground for believing that there is in any building, vessel, carriage, box, receptacle, or place—

(a) anything upon or in respect of which any summary offence has been or is suspected to have been committed;

(b) anything which there is reasonable ground for believing will afford evidence as to the commission of any such offence; or

(c) anything which there is reasonable ground for believing is intended to be used for the purpose of committing any offence against the person punishable on summary conviction,

may at any time issue a warrant under his hand authorising any constable to search such building, vessel, carriage, box, receptacle, or place for any such thing, and to seize and carry it before the Magistrate or Justice issuing the warrant or some other Magistrate or Justice, to be dealt with by him according to law.”

24. Reasonable grounds are also required for the issuance of a search warrant.

There is no reason to believe the legal interpretation of reasonable grounds for the search of premises pursuant to a search warrant are any different from what is required for the making of an arrest without a warrant under the Criminal Law Act or the Police Service Act.

25. With respect to the execution of police duties, the Trinidad and Tobago Police Service Standing Orders guide police officers. The Standing Orders provide a “blueprint for police operations and functions”¹⁰. In this case, the blueprint for the execution of search warrants require that before the search of the premises named in the warrant is to commence, the warrant must be read to the owner/occupier, or in his absence, any adult present.
26. In the defendants’ submissions, they relied on section 35 of the Larceny Act Chapter 11:12 which states:
- “35.(1) Any person who receives any property knowing the same to have been stolen or obtained in any way whatsoever under circumstances which amount to an indictable offence is liable to imprisonment for ten years.”
27. It is the defendants’ case that there was sufficient information available to the police to believe that the claimant had received stolen property. This is a question of fact.
28. Another area of dispute between the claimant and the defendants was the true reason for the arrest of the claimant. It was suggested that the claimant was arrested for the purpose of questioning her as a suspect in the warehouse breaking. Lord Kerr in *Trevor Williamson v The Attorney General* (2014) UKPC 29 at paragraph 19 makes it clear that officers have no power to detain solely for the purpose of questioning.
29. In *Horace Reid v Dowling Charles and Percival Bain* Privy Council Appeal No. 36 of 1987 their Lordships guided that judges ought not to be guided solely on the demeanor of witnesses but it is important to check that impression against contemporary documents where they exist.

¹⁰ Trinidad and Tobago Police Service Standing Orders. 2001, Introduction page 3

30. The court considered all the evidence adduced. The following is a summary of the pertinent evidence led by the claimant and the defendants.

The Evidence

31. The evidence of the defendants is that both arresting officers, WPC Theroulde¹¹ and Cpl Mohammed¹² were not involved in the investigations of the warehouse breaking. Nevertheless, they were both aware of the circumstances surrounding the breaking at the warehouse on the 17th December 2015.

32. WPC Theroulde was on duty when the officers from the Western Division Task Force arrived at the Barataria Police Station at about 6:00am with the two suspects, Adio Llewellyn and Anthony Sullivan. Her evidence is that one of the officers, namely PC Khan, informed her that the suspects were arrested because it appeared that the white panel van driven by them might have been stolen as it bore the incorrect registration plates. Furthermore, PC Khan explained to WPC Theroulde that the suspects were unable to proffer any plausible account as to how they came into possession of the quantity of alcohol and audio systems contained in the panel van.

33. PC Khan then pointed out the persons arrested and informed that one of them was a police officer (Anthony Sullivan). According to WPC Theroulde Sullivan was wearing a navy blue polo shirt bearing the Customs logo and a pair of jeans. PC Khan also allowed WPC Theroulde to view the contents of the van.

¹¹ Witness statement of Shona Theroulde 18138 at paragraph 8

¹² Witness statement of Fareed Mohammed at paragraph 7 and 8

34. Likewise, Cpl Mohammed was on duty on the 17th December 2015 when the party of officers from the Western Division Task Force arrived at the Barataria Police Station around 6:00am with the two suspects. Cpl Mohammed was also aware of the two suspects who were detained on enquiries as to their possession of a large quantity of alcohol and some audio systems. The two suspects were driving in a panel van which apparently carried false registration plates.
35. Cpl Mohammed further stated that before his duties ended that day, he was aware that Customs Officers attended the station to report a break-in at the Customs and Excise Warehouse located at the Trade Zone Complex, El Socorro Extension wherein a quantity of alcohol and audio systems were stolen from their warehouse.
36. Cpl Mohammed says that the Customs Officers were allowed to inspect the quantity of alcohol contained in the panel van. As such, they were able to confirm that the markings placed on the boxes of alcohol matched the markings placed on their inventory as stolen pursuant to the break-in.
37. Cpl Mohammed confirmed that his involvement in the warehouse break-in apart from the arrest of the claimant and Ms. Sarai Lewis, was limited to leading a party of officers to execute a search warrant at the premises of Anthony Sullivan to seize stolen items listed on the warrant.
38. On the 19th December 2015 at about 10:50am Cpl Mohammed and the party of officers arrived at the address stated on the warrant. Approximately 10 minutes after his arrival, one Andy Llewellyn arrived at the house. Andy Llewellyn informed Cpl Mohammed that he lived at that premises and that Anthony Sullivan moved out about one and a half years

ago. Nevertheless, the search warrant was executed on the premises but no items were found.

39. The fourth defendant (“Sgt Hosein”) upon reporting for duty on the morning of the 17th December 2015, was informed of the report of the warehouse breaking and larceny by WPC Theroulde and Cpl Mohammed. Accordingly, he commenced investigations into the report by questioning the two suspects, who remained silent and refused to provide any information.

40. Thereafter, Sgt Hosein made enquiries into the report by the Customs Officers, arranged for a police photographer to attend the warehouse to photograph the site and made arrangements for the Crime Scene Investigator (CSI) to obtain fingerprints at the site.

41. He then obtained a search warrant to enter, search and seize any of the stolen items from the premises of both suspects. With respect to the warrant obtained for Anthony Sullivan, the address on his file was the subject of the warrant dated the 18th December 2015. As such, Sgt Hosein in his evidence acknowledged that Cpl Mohammed executed the search warrant, which revealed that Anthony Sullivan no longer resided at that premises.

42. After learning about these details, Sgt Hosein avers that Senior Superintendent Boxhill (“Ssp Boxhill”) of the North Eastern Division informed him that the claimant, Anthony Sullivan’s girlfriend, lived obliquely opposite him. Moreover, Senior Superintendent Boxhill was of the view that Anthony Sullivan was residing there with the claimant. As a result, Senior Superintendent Boxhill instructed that a warrant be procured to search the premises of the claimant for the stolen items. Sgt

Hosein obtained the search warrant for the claimant's premises dated 21st December 2015.

43. On the said 21st December 2015 the second defendant, third defendant and fourth defendant were at the Port of Spain Magistrates' Court on court related duties.

44. Sgt Hosein was required to attend the Port of Spain Magistrates' Court as he was the complainant in the matter of Anthony Sullivan being charged with the warehouse break-in. Having known that the second defendant and the third defendant were also at the Magistrates' Court that day, and having received and followed instructions to obtain the search warrant for the claimant's premises, the fourth defendant says that he instructed the second defendant and third defendant to arrest and detain the claimant and one Sarai Lewis as they were both suspects into the report of the warehouse break-in.

45. Cpl Mohammed's evidence was that while at the Port of Spain Magistrates' Court he received a telephone call from Sgt Hosein. Sgt Hosein informed him that the claimant and Ms. Sarai Lewis were suspects in the warehouse break-in and that they were both present at the court. A physical description was provided of both women and Cpl Mohammed was instructed to arrest and convey both of them to the Barataria Police Station.

46. After Cpl Mohammed relayed Sgt Hosein's instructions to the WPC Theroulde, he pointed out the claimant. WPC Theroulde and Cpl Mohammed's evidence is that the claimant was in the company of Ms. Sarai Lewis and another woman who was known to be a practicing Attorney-at-Law.

47. Conversely, the claimant says that, she, Sarai Lewis and Anthony Sullivan's mother Ms. Ingrid Llewellyn, was sitting in the corridors of the tenth Port of Spain Magistrates' Court awaiting the call of the case Sergeant Hosein v Anthony Sullivan. The claimant asserts that at no material time did she have an attorney-at-law present with her.
48. WPC Theroulde and Cpl Mohammed avowed that they approached the claimant and Ms. Sarai Lewis, identifying themselves by stating their names and presenting their respective Trinidad and Tobago Police Service Identification Cards. Cpl Mohammed informed the claimant and Ms. Sarai Lewis that Sgt Mohammed was investigating a report of a warehouse break-in and larceny, which occurred at the Customs Warehouse at Trade Zone, El Socorro Extension, and that they were both suspects into the report. Both women remained silent.
49. According to the defendants, Cpl Mohammed then cautioned the both women and informed them of their legal rights and privileges. Both women requested to speak with the Attorney-at-Law present with them at the time and second defendant and third defendant stepped away permitting them to speak unhindered.
50. The claimant however, denies that she was informed of her legal rights and privileges. Moreover, the claimant insists that she did not have an attorney-at-law present, was not given an opportunity to speak to an attorney-at-law nor anyone else.
51. While being escorted out of the Port of Spain Magistrates' Court in plain view of the public by the second defendant and third defendant, the claimant says that she shouted to Ms. Ingrid Llewellyn to contact her sister.

52. Sometime between 11:30am and 11:45am, WPC Theroulde and Sgt Mohammed arrived at the Barataria Police Station with the claimant and Ms. Sarai Lewis. WPC Theroulde entered the claimant and Ms. Sarai Lewis in the prisoner register. The claimant was escorted to the holding cell area where her personal items were taken including her handbag and cellular phone, which were lodged with the property keeper's room.
53. The claimant contends that at the time she was five months pregnant and a serving police officer. Nevertheless, she was placed in a filthy holding cell until she was taken to the charge room at 3:50pm.
54. The claimant says that although she provided her sister's contact information to inform her of the detention, WPC Theroulde neglected to do so.
55. Later that day, the claimant averred that Sgt Hosein questioned her pertaining to where her boyfriend lived, when was the last time she saw him and the type of car he drives. Yet, she was not asked any questions surrounding her whereabouts, the alleged warehouse break-in, any criminal activity, nor was she informed of the reason for her arrest.
56. Subsequently, Sgt Hosein told the claimant that he had a warrant to search her premises. In so doing, he held up the warrant in his hands, refused to read it or permit the claimant to read the warrant.
57. Contrariwise, Sgt Hosein asserts that after leaving court at around 2:30pm that day, he met with the claimant in his office. He informed the claimant that he was investigating a report of the warehouse break-in and that he was in possession of a warrant to enter and search her premises for the items stated in the warrant.

58. Sgt Hosein contends that although he read the warrant aloud and gave the claimant the opportunity to read the warrant she did not hold it. At no point in time did the claimant object to Sgt Hosein searching her house and was cooperative at all material times.

59. Next, the claimant was taken to her home.

60. The claimant avers that she arrived at her premises accompanied by approximately four to six armed police officers in two marked police vehicles. She was escorted unto her premises and detained in full view of her neighbours for the duration of the search.

61. At around 5:15pm, the search warrant was executed in the presence of the claimant and her father, Terrence Dehere. The search concluded at about 6:00pm exposing nothing illegal on the claimant's premises. As a result, she was allowed to remain at her home.

62. After hearing the evidence, the court set about finding the facts.

Analysis

63. From the account given by the second, third and fourth defendants, there is nothing to connect the claimant to the crime under investigation – warehouse breaking and larceny. The defendants suggest that there is a nexus because the claimant was the girlfriend of one of the suspects, Anthony Sullivan.

64. Sgt Hosein's evidence is that he instructed WPC Theroulde and Sgt Hosein to arrest the claimant as a suspect in a report of warehouse breaking and larceny. According to Sgt Hosein, the information he had at that time was the circumstances surrounding the arrest of Sullivan and the other man,

that not all the items were recovered, that he did not know where Sullivan lived and that the claimant was Sullivan's girlfriend.

65. Sgt Hosein's evidence is that he could not remember if Ssp Boxhill told him Sullivan lived at the same address as the claimant or that he frequented there. That information cannot have caused the fourth defendant to believe he had reasonable cause to suspect the claimant guilty of the offence of warehouse breaking and larceny. It does not appear that either test required in *Nigel Lashley* [supra] and *Alistaire Manzano* [supra] can be satisfied.

66. It is not enough that the officers personally held the view that the claimant committed an offence (the subjective standard). It is imperative that his belief in the guilt of the claimant is grounded in reason (the objective standard).

67. The evidence demonstrates that the arresting officers WPC Theroulde and Cpl Mohammed were aware of the circumstances surrounding the breaking at the warehouse and that two suspects were found in actual possession of some of the items stolen from the warehouse.

68. WPC Theroulde's evidence is that it was Cpl Mohammed and not Sgt Hosein who asked for her assistance in arresting the claimant. WPC Theroulde's answers in cross-examination contradicted her evidence in chief in material ways:

- i. In chief she said Sgt Hosein told her before she assisted in the arrest that the claimant was Anthony Sullivan's girlfriend. In cross-examination WPC Theroulde said that she only knew of the relationship between Sullivan and the claimant after the claimant's arrest.

ii. In chief WPC Theroulde said that Cpl Mohammed told her that Sgt Hosein told him that the claimant was a suspect in the warehouse breaking which occurred on the 17th December 2015 and that she should assist in the arrest of the claimant relative to that offence. In cross-examination, WPC asserted that she now knows that the claimant was arrested for warehouse breaking. All she knew before the arrest was that she was assisting Cpl Mohammed in arresting the claimant. She said that she did not know before she assisted in the claimant's arrest that there was any relationship between the claimant and Anthony Sullivan.

69. Cpl Mohammed's evidence is that his presence at the court was purely coincidental. He left the Barataria Police Station with the purpose of driving WPC Theroulde to court, waiting for her and returning with her to the Barataria Police Station. After taking WPC Theroulde to court, Cpl Mohammed was seated in the police vehicle when Sgt Hosein phoned and instructed him to arrest the claimant. He acted only on those instructions. Cpl Mohammed was in the party that executed a search warrant at an address where they believed Sullivan lived. Apart from that, he had no part of the investigation in the warehouse breaking. He had no knowledge about the reason for the claimant's arrest except that Sgt Hosein told him she was a suspect in the warehouse breaking. Sgt Hosein told him the general area where he could find the claimant.

70. On the 17th December 2015 at about 6:00am when the two suspects, Adio Llewellyn and Anthony Sullivan were brought to the Barataria Police Station, both WPC Theroulde and Cpl Mohammed were present and on duty. Both officers learned that the suspects were arrested because they were driving the panel van bearing false registration plates and that the

suspects could not explain how they came into possession of the quantity of alcohol and audio systems.

71. Apart from that information, none of the defendants gave any evidence about any information that pointed to the claimant being a suspect in the warehouse breaking.
72. With respect to obtaining the search warrants of the suspects, Sgt Hosein realised that there was a search warrant on file for the address of Anthony Sullivan, which he discovered was executed by Cpl Mohammed. Cpl Mohammed in executing the warrant was informed by the resident that Anthony Sullivan no longer resided at that address. The search warrant was executed at the address named in the warrant. However, none of the stolen items named in the warrant were recovered.
73. From the evidence, it appears that Sgt Hosein realised Anthony Sullivan's address was unknown and that stolen items were still unaccounted. After discussions with Ssp Boxhill, there was information of a possible address for Anthony Sullivan. The address was where his girlfriend resided. This information was known before Sullivan was charged, but no warrant was obtained for the claimant's address. If Sgt Hosein had reasonable cause to obtain a search warrant in his investigation of Sullivan he would have obtained a search warrant to search the address where Sullivan lived before he was charged.
74. Instead, Sgt Hosein sought to do two things – make the claimant a suspect in the warehouse breaking and obtain a search warrant to search her home. In so doing, Sgt Hosein instructed the second and third defendants to arrest the claimant.

75. The defendants in its closing submissions asserted that when Sgt Hosein was informed of Ssp Boxhill's view that Anthony Sullivan was living with the claimant, the reasonable suspicion was that the stolen items were being kept at her premises. It was therefore their belief that the claimant was suspected of receiving stolen property and relied on section 35 of the Larceny Act Chapter 11:12. Simply making the assertion is not sufficient. The defendants have led no evidence to show that the claimant received any property knowing the same to have been stolen. In searching the home of the claimant it appears that they were on a fishing exercise.
76. The court cannot agree with the logic preferred in the defendant's closing submission. Sure they had suspects and it was said that all of the items were not recovered. The continued investigation, at that point must have related to the suspect. This is confirmed by the fact that the officers wanted to search where Sullivan resided. If other persons lived at that address, or those addresses, that is not sufficient to reasonably assume that they were also guilty of either offence of warehousing breaking or receiving stolen goods.
77. Assuming that there is reasonable cause on which a search warrant is issued for the search of premises, there is nothing in the law to cause owners or occupiers the named premises to be arrested for the sole purpose of executing search warrants. That is exactly what was done in this case. The claimant was arrested on the 21st December 2015 for the sole purpose of executing a search warrant.
78. Further, the defendants had no power to detain the claimant for questioning regarding the warehouse breaking: *Trevor Williamson* (supra). In any event, court is satisfied that the claimant was not detained for the purpose of questioning (which they were not empowered to do based on

the facts as the court has found them) but rather for the purpose of executing a search warrant. What the defendants sought to do was abrogate unto themselves an additional procedural power of detention to facilitate the execution of a search warrant. The police are not a law unto themselves and they have no such power.

79. The search warrant to search the home of the claimant was obtained pursuant to section 41 of the Summary Court Act Chap 4:20¹³. Section 41 details how the search warrant is obtained and what can be searched for. Section 41(3) details what is to be done with the items seized. Nowhere in section 41 or any other section that the defendants have identified, is there a power to arrest for executing a search warrant.

80. Further, the Trinidad and Tobago Police Service Standing Orders No. 10 provides the blue print for the execution of search warrants. The defendants' have not pointed to any order in the Standing Orders, which suggest that the procedure to execute a search warrant includes the arrest of the owner or occupier of the premises named in the warrant, for the purpose of executing the search warrant.

81. The court notes that at no point in Sgt Hosein's evidence did he indicate that Ssp Boxhill instructed the arrest of the claimant. What Ssp Boxhill told Sgt Hosein to do was obtain a warrant to search the claimant's premises because he believed that Anthony Sullivan resided with the claimant. Ssp Boxhill may have been suggesting that in the investigation of Anthony Sullivan, there was information that he resided at a particular location and therefore they could search what they believed to be the address Anthony Sullivan for the stolen items.

¹³ Agreed Bundle of Documents – Search Warrant dated 21st December 2015

82. Therefore, the arrest of the claimant would only be lawful if executed pursuant to the Criminal Law Act and/or the Police Service Act. Based on the defendants' evidence it was not. The defendants did not have reasonable and probable cause to arrest the claimant on the 21st December 2015. The claimant's subsequent detention for six and one half hours was a false imprisonment.

83. On another note, the claimant evidenced that the arresting officers failed to inform her of her legal rights and privileges, that she did not have an attorney-at-law present with her and she was not given an opportunity to speak to an attorney-at-law nor anyone else. The defendants' evidence on the other hand, was entirely contrary to the claimant's account.

84. As per *Horace Reid* (supra) the court considered the Station Diary Extract for the 21st December 2015¹⁴ which stated:

“Ag/Cpl MOHAMMED and Wpc THEOULDE identified themselves to SARAH LEWIS of LP #61 Chinapoo Superville Heights, Morvant and TERE BETT DEHERE of No 97 MAPLE DRIVE, PINE RIDGE HEIGHTS LOPINOT, ARIMA and told them that NO 13452 Ag/Sgt Hosein is investigating a report of Ware House Breaking and Larceny at the Trinidad and Tobago Customs Warehouse located at El Socorro Extension Road No 1 Trade Zone Compound and that they are suspects into the said report and cautioned them and they remained silent. Also informed them of their legal right and privileges and they requested to speak to their lawyer which was granted to them. They were conveyed to the Barataria Police Station pending further enquiries.”

85. Accordingly, based on the contemporaneous document, the court is satisfied that the claimant was indeed cautioned, informed of her rights and privileges and spoke to her attorney-at-law.

¹⁴ Witness statement of Aslim Hosein at “A.S.5”

86. Having found that the defendants committed a tort on the claimant, she has sought damages. The submissions on damages are considered next.

Damages

87. Damages for false imprisonment were summarised in *Thadeus Clement v The AG of Trinidad & Tobago* Civ. App. 95 of 2010 at paragraph 12, per Jamadar J, under the following three heads:

- (i) Injury to reputation – to character, standing and fame;
- (ii) Injury to feelings – for indignity, disgrace and humiliation caused and suffered; and
- (iii) Deprivation of liberty – by reason of arrest, detention and/or imprisonment.

88. The Court may also consider aggravating factors in arriving at an award for false imprisonment. In *Takitota v The Attorney General and Others* [2009] UKPC 11 at paragraph 11 Lord Carswell explained:

“In awarding compensatory damages the court may take account of an element of aggravation. For example, in a case of unlawful detention it may increase the award to a higher figure than it would have given simply for the deprivation of liberty, to reflect such matters as indignity and humiliation arising from the circumstances of arrest or the conditions in which the Claimant was held. 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.”

89. An award of aggravated damages must be distinguished from exemplary damages. Lord Carswell further opined in *Takitota* [supra] at paragraph 12 that the object of exemplary damages is to punish the defendant for outrageous behaviour and deter him and others from repeating it.

90. Lord Nichols in *Kuddus v Chief Constable of Leicestershire* [2001] UKHL 29 at paragraph 63 guided the court on the circumstance in which an award of exemplary damages may be appropriate:

“The availability of exemplary damages has played a significant role in buttressing civil liberties, in claims for false imprisonment and wrongful arrest. From time to time cases do arise where awards of compensatory damages are perceived as inadequate to achieve a just result between the parties. The nature of the defendant’s conduct calls for a further response from the courts. On occasions conscious wrongdoings by a defendant is so outrageous, his disregard of the plaintiff’s rights so contumelious that something more is needed to show that the law will not tolerate such behaviour. Without an award of exemplary damages justice will not have been done.”

91. The claimant was unlawfully arrested and detained on the 21st December 2015 from about 11:30am to 6:00pm when the search was concluded. The claimant’s liberty was deprived for the period of approximately 6 ½ hours and it was submitted that an award of \$100,000.00 was suitable for general damages inclusive of aggravated damages. The defendants conversely stated that an award in the range of \$30,000.00 to \$50,000.00 was fair.

92. The court considered the following in determining an appropriate award for general damages.

Case	Length of Time Detained	Award
<i>CV2012-04736 Azard Ali v The Attorney General of Trinidad and Tobago</i>	4 hours and 10 minutes	\$80,000.00 inclusive of aggravated damages
<i>CV2008-02218 Wayne Clement v The Attorney General of Trinidad and Tobago</i>	17 hours	\$50,000.00
<i>S-788 of 1998 Adesh Maharaj v The Attorney General of Trinidad and Tobago</i>	2 ½ hours	\$20,000.00
<i>CV2016-03548 Trishuana Scarlett v The Attorney General of Trinidad and Tobago</i>	12 hours	\$65,000.00 inclusive of aggravated damages
<i>CV2008-03385 Ivan Neptune v The Attorney General of Trinidad and Tobago</i>	7 ½ hours	\$25,000.00
<i>HCA S-1971 of 2002 Cliff Persad v The Attorney General of Trinidad and Tobago</i>	8 hours	\$30,000.00
<i>HCA No 518 of 2003 Charran Francis v The Attorney General of Trinidad and Tobago</i>	8 hours	\$35,000.00
<i>CV2011-04213 Harridath Maharaj v The Attorney General of Trinidad and Tobago</i>	6-7 hours where the claimant was a senior police officer	\$185,000.00

CV2015-02781 <i>Calvin Lavende -v- The Attorney General of Trinidad and Tobago</i>	5 hours	\$27,000.00 inclusive of aggravated damages
CV2007-01952 <i>Stephen Lewis -v- The Attorney General of Trinidad and Tobago</i>	18 hours	\$50,000.00 inclusive of aggravated damages

93. The fact that the claimant was a serving member of the Trinidad and Tobago Police Service was also relevant. She was arrested at the Port of Spain Magistrates' Court in the full view of the public. It is likely that some of her colleagues may have been present at the court along with other persons who may have been familiar with her. Consequently, they would have seen the claimant being escorted out of the court and into a marked police vehicle. The claimant as an officer was confined to a holding cell and was then later taken to her home in a marked police vehicle whilst still being detained.

94. Undoubtedly, these events would have caused the claimant to feel embarrassed, humiliated and caused injury to her reputation as she was in full view of her neighbours and persons who knew her.

95. Accordingly, the court finds that the award on the higher end is appropriate. The court finds that an award in the sum of \$75,000.00 for general damaged inclusive of aggravated damages is suitable in these circumstances to compensate the claimant for her suffering.

96. As it relates to the award of exemplary damages, the court is of the view that the compensatory award is adequate in the circumstances. While the defendants had no probable cause to detain the claimant, an officer, the

period of her arrest and the conduct against her was not so outrageous to justify an additional award. The court is satisfied that the award of \$75,000.00 is fair, reasonable and sufficient to achieve justice.

97. Based on the findings of fact and the applicable law, the court was able to dispose of the claimant's claim.

Disposition

98. It is hereby ordered:

- iii. There shall be judgment for the claimant against the defendants.
- iv. The defendants shall pay the claimant damages in the sum of \$75,000.00 this award includes exemplary damages.
- v. The defendants shall pay interest on the sum of \$75,000.00 at the rate of 1 ½ percent from the 21st December 2015 to the date of judgment.
- vi. The defendants shall pay the claimant's costs on the prescribed scale in sum of \$19,000.00.

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Justice Avason Quinlan-William

JRC: Romela Ramberran

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2018-02439

BETWEEN

TEREBETT DEHERE #18434

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Madame Justice Quinlan-Williams

Errata to the written decision delivered on the 8th February 2021 made pursuant to Part 43.10 CPR in respect of fifty two (52) clerical errors:

1. The intituling should read

“THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant”

instead of

“THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

First Defendant

WPC THEROULDE #18138

Second Defendant

CORPORAL MOHAMMED #15818

Third Defendant

SERGEANT HOSEIN #13452

Fourth Defendant”

2. Paragraph 2 line 1 is to read “On the 21st” instead of “On that 21st”

3. Paragraph 2, line 1 and line 2 is to read “WPC Theroulde and Cpl Mohammed” instead of “the second defendant (“WPC Theroulde”) and the third defendant (“Cpl Mohammed”)”.
4. Paragraph 3 line 3 is to read “defendant’s” instead of “first defendant’s”.
5. Paragraph 4 line 1 is to read “defendant’s” instead of “defendants”
6. Paragraph 4 line 4 is to read “defendant maintains” instead of “defendants maintain”
7. Paragraph 5 line 1 is to read “defendant” instead of “defendants”
8. Paragraph 9 line 3 is to read “defendant” instead of “defendants”
9. Paragraph 10 line 3 is to read “defendant relies” instead of “defendants rely”
10. Footnote 1 is to read “Defendant’s” instead of “Defendants”
11. Paragraph 12 line 1 is to read “arresting officers” instead of “second to fourth defendants”
12. Paragraph 17 line 1 is to read “The defendant” instead of “The defendants who arrested the claimant,”
13. Paragraph 17 line 3 is to read “which the arresting officers formed” instead of “which they formed”
14. Paragraph 19 line 1 is to read “arresting officers” instead of “defendants”
15. Paragraph 26 line 1 is to read “defendant’s” instead of “defendants”

16. Paragraph 27 line 1 is to read “defendant’s” instead of “defendants”
17. Paragraph 28 line 1 is to read “defendant” instead of “defendants”
18. Paragraph 30 line 2 is to read “defendant” instead of “defendants”
19. Paragraph 31 line 1 is to read “defendant” instead of “defendants”
20. Paragraph 36 line 1 is to read “said” instead of “says”
21. Paragraph 39 line 1 is to read “Sgt Hosein, the investigating officer,” instead of “The fourth defendant (“Sgt Hosein”)
22. Paragraph 43 line 1 and line 2 is to read “WPC Theroulde, Cpl Mohammed and Sgt Hosein” instead of “the second defendant, third defendant and fourth defendant”
23. Paragraph 44 line 3 and line 4 is to read “WPC Theroulde and Cpl Mohammed” instead of “the second defendant and the third defendant”
24. Paragraph 44 line 6 is to read “Sgt Hosein” instead of “the fourth defendant”
25. Paragraph 44 line 6 and line 7 is to read “WPC Theroulde and Cpl Mohammed” instead of “the second defendant and the third defendant”
26. Paragraph 46 line 1 is to read “instructions to WPC” instead of “instructions to the WPC”
27. Paragraph 48 line 5 is to read “Sgt Hosein” instead of “Sgt Mohammed”
28. Paragraph 49 line 1 is to read “defendant” instead of “defendants”

29. Paragraph 49 line 4 is to read "WPC Theroulde and Cpl Mohammed" instead of "the second defendant and the third defendant"
30. Paragraph 51 line 2 is to read "WPC Theroulde and Cpl Mohammed" instead of "the second defendant and the third defendant"
31. Paragraph 52 line 1 and line 2 is to read "Cpl Mohammed" instead of "Sgt Mohammed"
32. Paragraph 63 line 1 is to read "WPC Theroulde, Cpl Mohammed and Sgt Hosein" instead of "the second, third and fourth defendants"
33. Paragraph 63 line 3 is to read "defendant suggests" instead of "defendants suggest"
34. Paragraph 65 line 3 is to read "Sgt Hosein" instead of "the fourth defendant"
35. Paragraph 66 line 2 is to read "imperative that the" instead of "imperative that his"
36. Paragraph 71 line 1 is to read "officers" instead of "defendants"
37. Paragraph 74 line 3 is to read "WPC Theroulde and Cpl Mohammed" instead of "the second and third defendants"
38. Paragraph 75 line 1 is to read "defendant" instead of "defendants"
39. Paragraph 75 line 7 is to read "defendant has" instead of "defendants have"
40. Paragraph 78 line 1 is to read "defendant" instead of "defendants"
41. Paragraph 78 line 6 is to read "officers of the defendant" instead of "defendants"

42. Paragraph 79 line 5 is to read “defendant has” instead of “defendants have”
43. Paragraph 80 line 3 is to read “defendant has” instead of “defendants’ have”
44. Paragraph 82 line 3 is to read “defendant’s” instead of “defendants’” and “defendant” instead of “defendants”
45. Paragraph 83 line 4 is to read “defendant’s” instead of “defendants’”
46. Paragraph 86 line 1 is to read “defendant” instead of “defendants”
47. Paragraph 91 line 5 is to read “defendant” instead of “defendants”
48. Paragraph 96 line 3 is to read “defendant” instead of “defendants”
49. Paragraph 98 iii. is to read “defendant” instead of “defendants”
50. Paragraph 98 iv. is to read “defendant” instead of “defendants”
51. Paragraph 98 v. is to read “defendant” instead of “defendants”
52. Paragraph 98 vi. is to read “defendant” instead of “defendants”

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Avason Quinlan-Williams

Judge

Romela Ramberran (JRC)