THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2019- 04190

BETWEEN

ANDY TOUSSAINT

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice R. Rahim

Date of Delivery: March 20, 2024.

Appearances:

Claimant: W. Sturge instructed by K. Grant

Defendant: R. Jacob instructed by A. Niles.

JUDGMENT

Introduction

1. The claimant's case is that on the morning of March 17, 2003, sometime between 10:00 a.m. and 10:30 a.m. he was walking with his neighbour on Salvary Terrace, Serraneau Road, Belmont when a police officer called out to him, "aye ras". Thereafter the claimant was assaulted by the police officers who demanded he provide details about a man named "Tootie". He was then arrested and taken to the police station where a bag containing marijuana (which was never in his possession) was produced by the police who charged him for possession of same.

2. The defendant's case is that Constables Wilson and Moses were on patrol with other officers and two soldiers of the Trinidad and Tobago Defence Force ("TTDF") when they saw the claimant showing another man something in a black plastic bag and when the officers called out to the claimant he dropped the said bag, the other man ran away and the claimant continued to walk and he was stopped. The officers conducted a search of the area where the claimant was first seen with the bag and found a black plastic bag with foil wrappers containing what turned out to be marijuana. PC Wilson arrested the claimant for possession of marijuana and he was conveyed to the Central Police Station ("CPS"). The claimant remained in custody until the next day when he was charged and taken to the Magistrate's Court. He was committed to stand trial for the offence on March 8, 2006. At his trial at the Assize in 2015, the indictment was amended to that of trafficking a dangerous substance owing to the allegation that he had been within the prescribed distance of a school at the time he was held.

3. He was acquitted by a jury on October 22, 2015 and now claims damages for malicious prosecution. He alleged that the complainant Moses acted with malice and without reasonable and probable cause for doing so. It must be underscored that there is not a claim for assault and battery, false imprisonment and wrongful arrest. It is one for malicious prosecution only.

Issues

4. It is undisputed that a criminal prosecution was initiated against the claimant and that it was decided in his favour. The issue that remains is whether in initiating the prosecution, the police did so without reasonable and probable cause and if so then whether they were actuated by malice at the time. The burden to satisfy the court of the absence of reasonable and probable cause lies throughout on the claimant in this case.

The Law

Reasonable and probable cause

5. This is one of those cases in which the issue of whether there existed reasonable and probable cause is directly linked to the factual question of whether it is more likely than not that the police found the claimant in possession of the black bag containing marijuana. If the court finds it to be more likely than not then the issue of whether that finding amounted to reasonable and probable must be decided in keeping with the law set out below. If the court finds that it is more likely than not that the claimant did not have the said bag then there simply was no basis upon which to charge him. The issue is therefore highly fact dependent. The court notes that the claimant was found not guilty of the offence at the Assize. Of course, this is a verdict by the jury that says that they are not satisfied beyond reasonable doubt that the

claimant committed the said offence. The question and issue for this court are quite different as the court here is only concerned with the factual finding of whether the claimant was in possession of the bag as part of its remit to determine whether there was sufficient basis in law to lay a charge.

6. Finally, before moving on the court notes that the proceedings at the Assize, namely the transcript of evidence has not been put before the court as an exhibit. However, it was filed by claimant in his disclosure list on June 8, 2021. What has been put before the court as an exhibit is the proceedings at the Magistrate's Court in relation to the preliminary inquiry. The court is of the view that in any event the transcript of the High Court is a public record so that the court can take note of its contents where same were raised in cross examination.

7. In the Privy Council decision of ***Trevor Williamson v The Attorney General of Trinidad and Tobago***[1] Lord Kerr said the following;

> *[11] 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. Secondly, malice must be established. A good working definition of what is required for proof of malice in the criminal context is to be found in A v NSW [2007] HCA 10; 230 CLR 500, at para 91 "What is clear is that, to constitute malice, the dominant purpose of the prosecutor must be a purpose other than the proper invocation of the criminal law – an*

[1] [2014] UKPC 29

'illegitimate or oblique motive'. That improper purpose must be the sole or dominant purpose actuating the prosecutor".

[12] An improper and wrongful motive lies at the heart of the tort, therefore. It must be the driving force behind the prosecution. In other words, it has to be shown that the prosecutor's motives is for a purpose other than bringing a person to justice: Stevens v Midland Counties Railway Company (1854) 18 JP 713, 23 LJ Ex 328, 10 Exch 352, 356 per Alderson B and Gibbs v Rea [1998] AC 786, 797D, [1998] 3 WLR 72, 1 OFLR(ITELR) 719. The wrongful motive involves an intention to manipulate or abuse the legal system Crawford Adjusters Ltd (Cayman) v Sagicor General Insurance (Cayman) Ltd [2013] UKPC 17, [2014] AC 366, [2013] 4 All ER 8; Gregory v Portsmouth City Council [2000] 1 AC 419; 426C, [2000] 1 All ER 560, [2000] LGR 203; Proulx v Quebec [2001] 3 SCR 9. Proving malice is a "high hurdle" for the Claimant to pass: Crawford Adjusters para 72a per Lord Wilson.

8. In the decision in ***Kevin Stuart v Attorney General of Trinidad and Tobago***[2], Lord Burrows said at paragraph 1 that the tort of malicious prosecution contains five elements;

> *"The tort of malicious prosecution has five elements all of which must be proved on the balance of probabilities by a claimant: (1) that the defendant prosecuted the claimant (whether by criminal or civil proceedings); (2) that the prosecution ended in the claimant's favour; (3) that the prosecution lacked reasonable and probable cause; (4) that the defendant acted maliciously; and (5) that the claimant suffered damage. See, eg,*

[2] [2022] UKPC 53

Clerk and Lindsell on Torts (2020, 23rd edition) para 15-13; Winfield and Jolowicz on Tort (2020, 20th edition) para 20-006".

And at paragraph 26;

"Nevertheless, and although nothing turns on it in this case, there is one point on the law which it is helpful to clarify. This concerns the question as to what the police officer's honest (and reasonably held) belief must be about in the context of deciding whether there is a lack of reasonable and probable cause. It has commonly been stated that the honest belief must be as to the accused's guilt in respect of the offence charged: see Hicks v Faulkner (1878) 8 QBD 167, 171, per Hawkins J, which was approved by the House of Lords in Herniman v Smith [1938] AC 305. But in the Board's view, the principled and correct approach was articulated by Lord Denning in the House of Lords in Glinski v McIver [1962] AC 726. He said at pp 758-759:

> *"[T]he 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. … 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 ... 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. ...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.

9. In ***Matadai Roopnarine v Attorney General of Trinidad and Tobago***[3], the matter was dismissed at first instance after hearing a submission of no case to answer and said decision was upheld by a majority in the Court of Appeal. The Board had to decide whether it was wrong to hold that no such case had been made out on the evidence. It was held that the appellant had failed to prove the absence of reasonable and probable cause not because of the weakness of his evidence but because he had not provided any evidence directed at the key issue of the circumstances in which the prosecution had been instituted and the nature of the information on which the prosecutors had acted. Since his case on malice depended on an inference being drawn from absence of reasonable and probable cause, it necessarily followed that malice had also not been established. The following passages are instructive;

   31. A decision as to whether a prosecution has been brought without reasonable and probable cause involves a value judgment. It does not simply involve the making of primary findings of fact. As such it does not fall within the Devi v Roy practice – see Betaudier v Attorney General of Trinidad and Tobago [2021] UKPC 7 at para 16; Water and Sewerage Authority of Trinidad and Tobago v Sahadath [2022] UKPC 56 at paras 19-26.

   34. As made clear in the passages cited above from Clerk & Lindsell, Abrath and Glinksi the claimant "must identify the circumstances in which the prosecution was instituted" and "show the nature of the information on which the defendant acted" – Clerk & Lindsell. This

[3] [2023] UKPC 30

involves giving some evidence as to those circumstances and that information - Abrath. The claimant has to put before the court "the facts and information known to the prosecutor" – Glinski.

36. The appellant's witness statement and oral evidence was similarly focused on his dealings with the police rather than the nature of the information on which they were acting. It described the search of his home, his questioning on three occasions by the police, the taking of samples of his handwriting, the shame and embarrassment caused to him by his arrest at work, his charge despite protestations of innocence, the overcrowded and filthy conditions in which he was held on remand and the discontinuance of the prosecution.

37. Although no one has doubted the truthfulness of this evidence, those matters are not key to establishing his pleaded claim. The appellant knew from the respondent's pleaded defence and the evidence of the police officers at the preliminary inquiry before the Magistrates the nature of the information on which they had acted. At the malicious prosecution trial, however, no evidence was led as to these matters.

44. As both the judge and the majority held, the reason why the appellant failed to prove the absence of reasonable and probable cause was not the weakness of the appellant's evidence but rather the absence of any evidence from him directed at the key issue of the circumstances in which the prosecution was instituted and the nature of the information on which the prosecutors acted. On this issue "that evidence has not been forthcoming", as the judge found, and there was "no prima facie case at all", as the Court of Appeal held.

Malice

10. In ***Brown v Hawkes***[4], a case cited by the defendant, Cave J commented;

> *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 a sinister motive, I can find none on which the jury could reasonably find that the defendant was actuated by malice.*

11. According to Mendonça, JA in ***Alistaire Manzano v The Attorney General of Trinidad and Tobago***[5] at paragraphs 47 to 49:

> *47. The proper motive for a prosecution is a desire to secure the ends of justice. So, in the context of malicious prosecution a defendant would have acted maliciously if he initiated the prosecution through spite or ill-will or for any other motive other than to secure the ends of justice**.** It follows therefore that even if a claimant cannot affirmatively establish spite or ill-will or some other improper motive, he may still succeed in establishing malice if he can show an absence of proper motive.*
>
> *48. Malice may be inferred from the absence of reasonable and probable cause because if there is no reasonable and probable cause for the prosecution it may be inferred that there was an absence of proper motive and hence malice. **In A v State of New***

[4] (1891) 2 QB 719 at page 728
[5] Civil Appeal No. 151 of 2011

South Wales *the Court however interjected this caution when inferring malice from the absence of reasonable and probable cause (at para. 90):*

> *"No little difficulty arises, however, if attempts are made to relate what will suffice to prove malice to what will demonstrate absence of reasonable and probable cause. In particular, attempts to reduce that relationship to an aphorism - like, absence of reasonable cause is evidence of malice (**cf Johnstone v Sutton** (1786) 1 TR 510 at 545 per Lord Mansfield and Lord Loughborough: 'From the want of probable cause, malice may be, and most commonly is, implied'; **Varawa v Howard Smith Co Ltd** (1911) 13 CLR 35 at 100 per Isaacs J: '[T]he want of reasonable and probable cause is always some, though not conclusive, evidence of malice...' but malice is never evidence of want of reasonable cause **(cf Johnstone v Sutton** 91786) 1TR 510 at 545 per Lord Mansfield and Lord Loughborough [99 ER 1225 at 1243]: 'From the most express malice, the want of probable cause cannot be implied...') - may very well mislead. Proof of particular facts may supply evidence of both elements. For example, if the plaintiff demonstrates that a prosecution was launched on obviously insufficient material, the insufficiency of the material may support an inference of malice as well as demonstrate the absence of reasonable and probable cause. No universal rule relating proof of the separate elements can or should be stated."*

It may therefore be a question of degree whether malice should be inferred from the absence of reasonable and probable cause.

If the prosecution was launched on "obviously insufficient material" that may suffice to support the inference of malice.

49. Malice may also be inferred from the absence of honest belief in the merits of the case. Indeed, this can provide strong evidence of malice (see Haddrick v Heslop (1848) 116 ER 869)."

Evidence

12. At the trial the claimant led evidence on behalf of himself and one other witness, and the defendant led evidence from two witnesses.

CASE FOR THE CLAIMANT

Andy Toussaint

13. On the day of the incident, he was employed by the National Housing Authority. He finished work early and took a taxi home. On his way home on St. Francois Valley Road, the claimant noticed a police jeep pulling out of what is called the plannings. When the claimant arrived on Serraneau Road he saw his neighbour Nigel Cooper (now deceased) at a standpipe. The claimant talked to Nigel about DVDs as they walked up Salvary Trace (a hill). The claimant then heard someone shouting "rastaman, rastaman" turned around to see a police officer (PC Wilson) standing by a garage at the side of the road. The claimant approached PC Wilson but Nigel continued to walk slowly up the hill.

14. The claimant saw two members of the Trinidad and Tobago Defence Force standing at the foot of Salvary Terrance as well as Wilson and PC Moses at the garage entrance. Wilson then lifted up the claimant's jersey, searched him and asked him if he knew anyone named Tootie. The claimant informed Wilson that he did. Wilson who was holding a gun then placed the gun around his own neck by means of the strap of grabbed the claimant's belt and trousers, picked him up off the ground

and dragged him towards the garage. The claimant protested but Wilson continued to drag him, eventually pushing him against the corner of a wall. Moses stood by the door of the garage and the two soldiers stood on the other side of the door.

15. Wilson continued asking the claimant questions about Tootie. The claimant claims that Wilson grabbed him by the collar and slapped him across the face. The claimant informed Wilson that Tootie was a 'youth man' who was his neighbour. Wilson attempted to slap the claimant again, and the claimant stated that he would file a complaint with the Police Complaints Authority against Wilson. Wilson then released the claimant, and the soldiers then blocked the other exit of the garage.

16. While the claimant stood in the middle of the garage, Wilson held the claimant by the throat and pushed him back into the corner, he having already started to move away. The claimant again shouted that he was going to file a complaint with the Police Complaints Authority. PC Wilson continued to push him against the wall and told me "you want to complain? ah go show you something." Wilson then grabbed the claimant by the hair and dragged him out of the garage down the hill to Serraneau Road where the police jeep was parked. The claimant had to walk to the vehicle with his hand outstretched to keep from falling. At this point the claimant saw his sister and heard her asking the police officers what the claimant had done and where they were taking him. The claimant was pushed into the back of the police vehicle and sat on the ground[6].

17. On the way to the police station, according to the claimant, he was insulted by the officers because of his hair and appearance. The claimant recalled the route to the police station and a stop at a drug

[6] PDF 11 of trial bundle B is a sketch of the area where the incident occurred.

store. At Central Police Station the claimant overheard Wilson say to another officer that the claimant had a plastic bag containing drugs. Wilson showed the claimant the bag he had taken from his pocket and also weighed its contents.

18. In the charge room Wilson grabbed the claimant by the back of the neck and forced his face onto the desk to sign the book. Wilson then asked the claimant to plead guilty in the Magistrate's Court. The claimant was placed in a cell that was smelly and dirty. He slept on the cold concrete floor and was not given lunch or dinner. The next morning the claimant was offered breakfast, which he refused because he did not eat dairy products. The claimant was not offered an alternative breakfast nor was he allowed to bathe. Later that day, the claimant was brought before the Magistrate who granted bail. While bail was being processed, the claimant spent two hours in the court cells. He was then taken to the Port of Spain prison and remanded in custody for a further three hours before being released.

19. The claimant continued to appear before the Magistrate's Court. On one occasion Wilson pushed the claimant in the presence of his mother, causing him to stumble down the stairs.

20. The claimant stated that Wilson continued to harass him and recounted an incident on April 6, 2006 in which Wilson came to the claimant's house with other officers, used obscene language and twisted the claimant's hair. One week later the claimant filed a complaint with the PCA who warned Wilson[7].

[7] PDF 19 of TB 1 is a letter dated May 6, 2009, from the PCA who informed the claimant that PC Wilson had been warned.

21. The claimant says he spent $30,000.00 in legal fees for representation for the charges against him at the Magistrate and High Court.

22. Although there are no claims for assault and battery, unlawful arrest and false imprisonment the court understands the claimant to be saying that the acts of mistreatment of the police as alleged by him is relevant to their credibility generally and the issue of malice towards him in relation to malicious prosecution. Further, the court understood from the evidence as a whole that Salvary Terrance proceeds uphill from off of Serraneau Road which itself branches off from St. Francois Valley Road, a main road in Belmont. The court also understood that the garage or shed however it is described is situate at the corner of Serraneau Road and Salvary Terrace and can be entered from either side.

Cross-examination

23. The claimant knew the officer who approached him from patrolling the area, but at the time of the incident he did not know his name. Prior to his interaction with the officers there were kids playing basketball in the garage, but they stopped playing and left when they saw the police vehicle. The claimant did not know who owned the garage.

24. The claimant described the location of the two garage exits, one on the left-hand corner that leads upstairs, and the other on the right-hand corner that serves as an entry and exit point to the upstairs. The court understood this to mean that one could enter the garage from Serraneau Road, which is the road that runs at the bottom of the hill and exit on Salvary Road through another entranceway that is higher than the one at Serraneau. There are steps in the building that lead up to the exit to Salvary Terrace. Two soldiers blocked the exit leading to

the steps. The claimant was standing in the centre of the garage in the corner of a partition.

25. When the claimant was held by his head on his way to Salvary Terrace, the police vehicle was about 30 to 40 feet away from the garage. The claimant testified that the entire incident lasted about ten to twelve minutes.

26. He described the police vehicle as a four-door van with a covered tray. The claimant was placed to sit on the floor in the middle of the vehicle facing outward. Thus, he was able to observe the route taken on the way to the police station. PC Wilson who gave evidence for the defence later described the vehicle as an open tray pick up. The claimant testified that he was placed in the tray but the defence witnesses testified that the claimant was placed inside the cab of the vehicle with the police while the soldiers were seated in the open tray.

27. At the police station the claimant maintained that Wilson produced a bag from his own pocket. In other words, Wilson framed him with a bag the origins of which he knew nothing about. After a conversation with his attorney Wilson took the claimant to the charge room. They were the only ones in the room when Wilson allegedly told the claimant he should plead guilty at the Magistrate's Court.

28. According to the claimant, he did not suffer any injuries during three incidents in which he was assaulted, namely when Wilson slapped him, Moses kicked him, and Wilson pushed him. When the claimant was shoved by Wilson at a Magistrate court hearing, the claimant did not make a report of same.

29. The claimant was questioned about the incident on April 6, 2006 when Wilson allegedly entered the claimant's yard. It was denied by him that

Wilson saw him running behind a galvanized fence. According to the claimant Wilson shone a flashlight in the claimant's eyes and grabbed him by the neck while telling him to complain to his attorney. This continued until another officer intervened and told Wilson to leave the premises.

Stacey-Ann Toussaint

30. Stacey-Ann is the claimant's sister. She lives in an apartment on Upper Street, St. Francois Road, Belmont. On the day of the incident around 10:00 a.m. Stacey-Ann was on the back of her veranda which faces Serraneau Road and from which she enjoyed a good view of Serraneau Road. While hanging out clothes, Stacey-Ann saw the claimant and Nigel walking past her house. Stacey-Ann called out to the claimant to see if he was coming by and he replied, "in a little bit".

31. As the claimant continued walking towards Salvary Terrace Stacey-Ann observed a police vehicle parked in front of the garage on the corner. She observed a tall, dark, slim built officer exit the front of the vehicle, two armed soldiers exit the rear of the vehicle and two other police officers exit the side of the vehicle. It is therefore her evidence that there were three police officers and two soldiers.

32. The slim officer shouted something to the claimant but Stacey-Ann did not hear what he said. The claimant walked up to the officer and they had a conversation. The officer grabbed the claimant in a 'police man hold' and led him to the entrance of the garage. The garage was locked. Stacey-Ann left her house and went into the garage. She saw the slim-built officer with his hand wrapped around the claimant's hair. Stacey-Ann inquired why the officers were holding the claimant but she got no response from the officer. Stacey-Ann then asked where the officers were taking the claimant to which a soldier replied to the CID.

33. Stacey-Ann said that from the time the police vehicle stopped at the garage to the time they left Serraneau Road, about eight to ten minutes had passed. She went to the CID and a police officer informed her that the claimant was charged with possession.

Cross-examination

34. Although Stacey-Ann was unable to recall the time she called out to her brother when he was passing her house, she did indicate that Sesame Street was on at the time. From her veranda, the garage is a few metres away. The view from this vantage point allowed Stacey-Ann to observe the claimant walking up Salvary Terrace and the police vehicle pulling up to the garage. Five officers in uniform in total exited the police vehicle.

35. From where she was, Stacey-Ann could not hear the conversation between the claimant and PC Wilson. She described what she meant by a 'policeman hold';

> *Q. You said it's a policeman hold. You could describe what you saw?*
>
> *A. They hold him from behind, kinda like if they going and run away, they hold yuh behind your waist. They wrap their hand and hold you like that. Like when somebody attempting to get away from the police officer they give you a stronghold. And, to me, I know it as the policeman hold*.

36. Stacey-Ann described the layout of the garage such that one could go inside because it is an open space without physical barriers, but there is an upstairs and a downstairs. Salvary Street is the street adjacent to

the garage. It is here that she observed the claimant's interaction with the officers outside the garage. Having left where she was to speak to her mother, Stacey-Ann did not see what took place inside the garage, only the claimant being escorted from Salvary Terrace.

CASE FOR THE DEFENDANT

Sergeant Desmond Wilson

37. Wilson, who was a police officer for thirty years, is now retired. On March 17, 2003 he was on joint mobile patrol with two other officers and two soldiers proceeding along the Serraneau Road in Belmont. They reached an abandoned pan yard with a shed on it when Moses alerted the officers that he had observed the claimant in the company of another man. The claimant was showing the contents of a black plastic bag. Both men were standing on an elevated part of the pan yard. The court understood this to be at the entrance by Salvary Terrace.

38. Moses called out to the claimant and the police vehicle stopped. The claimant and the other man began to walk away from the police vehicle. As the two men began to walk the person accompanying the claimant began to run up the hill. The TTDF soldiers pursued the man but were unable to catch him. Moses and Wilson caught up with the claimant and identified themselves. After identifying himself as a police officer, Moses told the claimant that he was seen holding a black plastic bag and showing its contents to the other man. Moses called out to him and he dropped the bag and ran, thereby arousing suspicion. A search of the area where Moses initially observed the claimant led to the discovery of the bag.

39. Wilson denied asking the claimant if he knew someone by the name of Tootie. Wilson also denied assaulting the claimant. The claimant was arrested and placed in the backseat of the unmarked TTPS vehicle between Wilson and a member of the TTDF. The claimant was not handcuffed.

40. The officers did not stop at Duke and Nelson Street on the way to the police station. At the police station Wilson did not advise the claimant to plead guilty when he went to the Magistrate's Court. Wilson subsequently resumed patrol duties and was unaware of what transpired with the claimant at the police station.

41. On April 6, 2006 during mobile patrol with other police officers and TTDF soldiers near the area where the claimant resides, he was chased and briefly detained. A search was conducted but nothing illegal was found on the claimant. Wilson had no conversation with the claimant during this incident. This was the extent of Wilson's involvement with the claimant.

Cross-examination

42. Wilson did not produce a station diary extract about the incident. He was also questioned about the Police Standing Orders and the importance of making notes in his pocket diary, which he did not have with him on the day of the arrest.

43. Wilson described the area off Serraneau Road and stated that it was not his first patrol in the area. The garage is a former pan yard which was now empty. It appeared to the court that both parties were simply referring to the garage by different names.

44. According to Wilson the claimant was initially observed approximately fifty to sixty feet from the roadway. When the police vehicle stopped, the claimant and another individual were walking south, heading up a hill. Upon exiting the vehicle, the claimant was seen in the garage/pan yard. Wilson further testified that the claimant, accompanied by another person, was at the top of the structure which is accessible by a staircase that had a track.

45. Wilson testified that besides Moses another officer was there who was the driver. Wilson and Moses caught up with the claimant, and approximately fifteen to twenty seconds later, a black plastic bag was discovered on the ground, positioned between some bushes. Wilson explained that the bag was visible and accessible near the track, without the need to venture into the bushes. He could not recall whether Moses informed him that the claimant had thrown the black bag.

46. It was also unclear to Wilson whether he had previously testified that when the claimant was spotted, two men were with him. This evidence is contained in the deposition of Wilson at the Magistrate's Court wherein he testified that when he first saw the claimant he was accompanied by two other men. When cautioned and told of the offence, the claimant uttered "We doh sell weed here". Wilson could not recall if anyone else was present when the claimant was arrested. At the police station Wilson made no arrangements for the claimant to make a phone call.

Sergeant Neil Moses

47. Moses was the officer who charged the claimant with possession of marijuana. Around 10:30 a.m. on March 17, 2003, Moses was part of a patrol with police officers and members of the TTDF. They were in an

unmarked pickup van, patrolling Serraneau Road, Belmont. Moses was with Wilson, the driver, and two TTDF soldiers. They came across an abandoned pan yard along Serraneau Road, Belmont. During this time, Moses observed the claimant in the company of another individual. The claimant showed this individual the contents of a black plastic bag. Moses states that he alerted his fellow officers in the vehicle. The two men were standing in an elevated section of the pan yard.

48. Because Moses stood close to the claimant, he shouted "Hello police." The claimant dropped the plastic bag, arousing Moses' suspicion. The claimant kept walking, so Moses and PC Wilson walked up to the claimant and caught up with him. Moses identified himself and informed the claimant of the observation he had made earlier. The claimant was escorted by the officers back to the original location where he had been standing. A search was conducted and a black plastic bag was recovered. There were no other individuals in the area at the time. The claimant was also searched, and nothing illegal was found on his person. The plastic bag was examined in the presence of the claimant and contained a quantity of foil wrappings containing marijuana. The claimant was then cautioned, and he replied, "Boss, we don't sell weed here" or words to that effect.

49. PC Wilson did not ask the claimant if he knew someone called Tootie, did not slap, threaten, or grab the claimant by his hair. With the assistance of PC Wilson, the claimant was arrested, but was not handcuffed. He was seated in the rear seat of an unmarked police vehicle between a member of the TTDF and PC Moses. Following this, the claimant was transported directly to the Central Police Station. There was no female claiming to be the claimant's sister who asked what was happening or where the officers were taking the claimant.

50. Upon arrival at the Central Police Station, the senior officer on duty was informed of the circumstances of the claimant at the police station. The claimant was then cautioned by an officer who informed him of his rights and privileges.

51. Moses resumed his patrol duties and was unaware of what had happened to the claimant at the police station. Moses processed the claimant upon his return from patrol with the assistance of another police officers present. The marijuana was shown to the claimant and weighed in his presence. Moses could not recall if the claimant made any utterances.

52. Prior to the Criminal High Court hearing Moses was instructed by the prosecution to return to Serraneau Road to measure the distance between the abandoned garage and St. Francois Girls College. So, on September 26, 2015, Moses and Corporal Peters returned to the area. It is those circumstances that the claimant was indicted for a greater offence than that for which he had been committed owing to the proximity of the school.

Cross-examination

53. Moses is also familiar with the Serraneau Road area. There is a vacant lot on the corner that was used as a pan yard. Moses was questioned about his testimony in the Magistrate's Court. He confirmed that he had testified that the incident occurred in an abandoned pan yard with a shed. The shed was located on an upper-level decking within the same pan yard area that was formerly used for steelpan activities.

54. The claimant was approximately forty to forty-five feet away from Moses. He testified that he did not recall saying at the Magistrate's Court that the claimant was in the company of two persons. The

claimant dropped the black plastic bag and Moses called out "Hello police" to him from inside the police vehicle. When Moses caught up with the claimant he was about ten feet from where Moses had initially seen him. Moses maintained that he does not know anyone named Tootie.

55. Moses testified that he recorded the events of that day in the station diary extract, but admitted it was not exhibited before the Magistrate's or the High Court or even produced in this case. He is not aware of any complaints filed by the claimant against Wilson with the PCA.

Reasonable and probable cause

56. In determining the factual issue set out above, the Court has to satisfy itself which version of events is more probable in light of the evidence. To do so, the Court is obliged to check the impression of the evidence of the witnesses on it against the: (1) contemporaneous documents; (2) the pleaded case; and (3) the inherent probability or improbability of the rival contentions[8].

57. The claimant argues in that regard that there were internal inconsistencies between the pleaded case and the witness statements, inconsistencies between the witness statements and evidence given at the Assize, inconsistencies between the witness statement and evidence under cross examination, that the defendant's version of events is less probable and that there was motive on the part of the defendant's agents and /or servants to fabricate evidence against the claimant.

58. In relation to internal inconsistencies, the claimant submitted that it was pleaded in the defence that when the officers arrived in the vicinity

[8] ***Horace Reid v Dowling Charles and Percival Bain,*** 1989 UKPC 24 cited by Rajnauth–Lee J in ***Mc Claren v Daniel Dickey,*** CV2006-01661

of the abandoned pan yard, both men were standing on an elevated section of the pan yard. However, at paragraph 22 of the witness statement of Wilson he stated that he and Corporal Peters returned to the scene sometime after the day of the incident and took measurements of the distance between the abandoned garage and St. Francois Road. The claimant argued therefore that the pleading says the incident occurred by a shed at the pan yard and Wilson testified that it occurred at an abandoned garage. He says this is a material inconsistency.

Internal inconsistency

59. In the view of the court quite simply there is no inconsistency where the claimant seems to think that one exists. It is clear to the court that the both parties referred to the same property by different names. Whether it was an abandoned garage or an abandoned pan yard is firstly irrelevant but secondly and more importantly, the evidence showed clearly that both parties were speaking about a building (which may not have been entirely enclosed but certainly had a roof and stairs) that stood at the corner of Serraneau Road and Salvary Terrace. That building could be entered from Serraneau Road also consisted of stairs that led to an upper part of the structure, whether a covered shed or garage and there was an exit at that upper part on Salvary Terrace. It was obvious on the evidence that all persons were saying that the terrain moved from St. Francois Road and ascended to Serraneau and that Salvary ascended further up from Serraneau. The measurement taken therefore was from the building to St Francois road along Serraneau as that would tell one the distance that the police car had travelled along Serraneau before coming to a stop at the corner of Serraneau and Salvary when the claimant was seen further up on Salvary at the exit of the said building. There is in the court's view absolutely no inconsistency in that evidence. The evidence is in fact in

keeping with the testimony of Wilson as to where the police vehicle proceeded and stopped on that day.

Inconsistency between the witness statement and the evidence given at the High Court

60. Attorney for the claimant appeared to be of the view that the court ought to consider the entirety of the evidence at the Assize and compare same to the evidence in this case and decide on inconsistencies the majority of which were not put to the witnesses for the defence during the trial. This is of course not the appropriate procedure. Applying that method, the submissions set out excerpts from the evidence at the High Court, the defence and the evidence before this court with the hope I suppose that the court will detect inconsistencies. Further, there are references to page numbers in the submissions but no reference to the document that contains the said page number. The court has therefore had to scour all of the lists filed so as to determine where the evidence at the High Court being referred to is found. To the extent that this court has tried to properly consider those submissions it finds as follows;

    a. There was no inconsistency in the reason provided for stopping the police vehicle and even if there was, that issue is immaterial to the issue of having seen the claimant in company with at least one other person at the upper level of the structure close to Salvary Terrace. The reason for being there is coincidental to the fact that the officers were there and while there were able to observe the claimant.

    b. The court accepted that there may have been an inconsistency between what was said at the Assize and in

this case in relation to who was driving. The evidence elsewhere is not evidence before this court although it may be important evidence in relation to the issue of credibility. In that regard the court accepts that in all of the circumstances Wilson would more likely than not have been the one driving, hence the observation was made by Moses and communicated to the driver Wilson to stop the vehicle. As the evidence unfolded it was clear that the Moses was the one who took the lead on the issues that day and eventually charged. This is consistent with the fact that Moses was the witness to the transaction. As a matter of logic, common sense and plausibility it must be that Moses was not driving and if he said that he was that would have been an error of his part. Further there appears to be no logical reason for Moses to make up that he was the driver. That simply makes no sense.

c. There is a clear inconsistency in the evidence of the officers between their evidence before this court and their evidence at the Assize and the Magistrates Court in relation to how many men were in the company of the claimant when they first saw him. The evidence in the lower court and the Assize was that the claimant was accompanied by two men but in this case, the officers have said it was one man. There is no reasonable explanation for this inconsistency in the court's view. Left on its own, it is passing strange that before this court, the officers would say it was only one man whereas elsewhere it was clearly stated that it was two men. The inconsistency is material as it treats with a fact that would not have been difficult to recall. The question then arises as to where the truth lies. Were there one or two men. Further, does it matter how many men were present if the

margin of error is one in the context where the allegation is that the claimant was the one who was holding the bag and was showing the contents to one of the men.

d. The court could see no reason for the officers to lie about this fact. If it was the case that it was being suggested to them that the man who they said in the lower court and in the Assize was present but now denies his presence was the one who was in possession of the bag then of course the court would understand that the officers may have good reason to lie. In other words, they would be lying when they say that the claimant had the bag when in fact it was one of the other men. But the defence of the claimant was not that there was a bag which was in the possession of one of the other men. His defence, which is the case he has maintained in these proceedings is that there was no bag at all and that he had no such bag, not that one of the other men had the bag and dropped it. So, it makes no difference whether the officers said there was one or two other men. Lying on the issue was illogical in the circumstances. Such an inconsistency may have therefore affected their reliability when treating with the issue of how many men they saw but in the court's view it could not and did not impact their credibility.

e. The claimant has made an issue of the evidence as to whether Moses called out to the claimant by saying "Hello", "Hello police" or otherwise. In the court's view this again was not material to the issue and facts this court has to decide. It was the evidence of the claimant that he heard someone calling "rastaman' and on turning he saw a police officer he knew, Wilson calling him. While it would have not

been appropriate and even use of the derogatory to call the claimant by the name “rastaman”, the evidence shows that the claimant was in fact approached by the officers that day and at the time alleged which is admitted by the claimant.

f. The court agreed with the submission of the claimant that there were material inconsistencies in the utterance which the claimant is alleged to have made when first confronted and cautioned. One version is that the claimant stated “Boss ah tell them fellas make sure it have no weed here” and the other is “Boss we don’t sell weed here”. Neither of these statements is incriminating to the claimant in any manner. If the police had made them up, one would have expected that they would make up a statement that would have assisted their case against the claimant. The court therefore does not believe that the officers were telling untruths in relation to the statement. Their evidence on same is however highly unreliable.

g. The court accepts the argument of the claimant that it is highly improbable that the claimant’s sister would be present, see him being arrested and taken away and would not enquire. In fact, the evidence is that when the claimant arrived at the station, he was advised of his rights to make a phone call and speak with a friend or Attorney but he made no request. He was however visited by an Attorney at law at the station so that someone would have more likely than not have known that he had been arrested. This the claimant says supports the fact that Stacey-Ann was present at the scene of the incident. The court is of the view that while it is not the only inference to be drawn from the evidence it certainly is a likely one. The evidence of Stacey-

Ann in that regard remains largely unchallenged so that the court accepted it. It means that the officers were either telling untruths or did not observe Stacey-Ann on that day. It was her evidence that she asked the same officer that was holding the claimant and taking him away as to the reason he was being taken away but there was no answer. Further that she was subsequently given the answer that he was being taken to CID. The court believed her evidence.

h. The claimant also argued that it was improbable that if the claimant had the bag with the marijuana, he would drop the bag where he was standing and walk off as opposed to running off. This proposition is not necessarily correct. Human beings act in different ways when they believe they may have gotten caught in the act of some wrong. The evidence of Wilson in cross examination was that approximately fifteen to twenty seconds later, the black plastic bag was discovered on the ground, positioned between some bushes. Wilson explained that the bag was visible and accessible near the track, without the need to venture into the bushes. It follows that the evidence is that the bag was dropped between some bushes. This would of course be done so as to have it hidden. It may equally have been that the claimant's intention was to deposit it swiftly in the bushes where he was standing by dropping it and moving away from it so as not to attract suspicion by way of walking instead of running. This is an equal probability in the court's view.

i. Finally, the claimant has submitted that the motive for making up the case against him was the fact that while being

assaulted he repeatedly stated that he was going to make a report to the Police Complaints Authority.

61. The court does not accept that the claimant would have been simply asked for a man named Tootie and because he could provide no useful information, the police would have assaulted him and arrested him, found marijuana or stolen it from perhaps another exhibit in relation to another defendant or purchased it even to plant on him because he threatened to report them. The court does not accept that all of this aggression would have been meted out to the claimant when they in fact were looking to locate Tootie, who was the target of enquiry on that day. It is also highly unlikely that the police would then give up their search for Tootie and concentrate on framing the claimant for not providing more information on Tootie. Further, there is no evidence that the claimant was known to the officers as a person of interest so as to cause them to stop him in particular and ask him for Tootie far less to fabricate a case against him, the random fellow that they had stopped asking for the whereabouts of another person. This simply seems very implausible and incredible.

62. Having examined the inconsistencies and juxtaposed them with the evidence as a whole, the court is of the view that the crux of the evidence of the officers remained undiminished by those inconsistencies. It is more likely than not that the bag was found where they say it was, that Moses saw the claimant drop it and that it contained marijuana and the court so finds. These basic elements were all that were needed in this case for the charging officer to be of the honest belief that there was sufficient evidence to lay a charge of possession. The court finds not only that he held such an honest belief but also that it was a reasonable one in all the circumstances.

63. The court finds it necessary to underscore that this is not a case in which the claimant was saying that he was in the company of another man and that the other man appeared to drop a bag or may have dropped a bag the contents of which the claimant knew nothing about. In such a case the claimant may have asked this court to find that the officers may have indeed seen a bag on the ground, did not know who had been in possession but proceeded to charge the claimant as he was the one who did not run. But for the court so to find in this case in light of the version of facts put forward by the claimant would be speculation. In that regard when both versions as pleaded and led in the evidence are considered the case of the officers is more plausible than that of the claimant.

64. The court therefore finds that the claimant has failed to prove the absence of reasonable and probable cause to lay the charge against him.

Malice

65. Having regard to the finding of the court above, this issue does not arise.

Disposition

66. The claim is dismissed and the claimant shall pay to the defendant the prescribed costs of the claim in the sum of $14,000.00.

Ricky Rahim

Judge