

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2014-03967

Between

RICARDO LUKE FRASER

Claimant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Madame Justice Margaret Y. Mohammed

Dated the 24<sup>th</sup> November 2016

APPEARANCES:

Mr. Ronald Dowlath Attorney at law for the Claimant.

Ms. Niquelle N. Granville instructed by Ms. Amrita Ramsook and Ms. Jenna Gajadhar Attorneys at law for the Defendant.

JUDGMENT

1. On Carnival Saturday in February 2013 the Claimant attended Panorama Finals at the Queens Park Savannah. Upon leaving he was offered a lift by Darryl Vincent who was driving a Nissan B 15 Sunny registration number PBW 1841 (“the vehicle”). They were stopped by police officers who were on patrol inside the Queen’s Park Savannah since the officers noticed that the rear identification plate on the vehicle was made out of cardboard bearing registration number PBW 1841 over a blank identification plate. Darryl Vincent was the driver of the vehicle and the Claimant was the front seat passenger. Darryl Vincent driver’s permit was expired and he could not produce a certificate of insurance for the vehicle. The police enquiries from Command Center revealed that there was no vehicle with the registration number on the relevant system. The officers formed the belief that the said vehicle was stolen and the Claimant was arrested along with Darryl Vincent.

2. After the Claimant was arrested he was taken to the Central Police Station and subsequently transferred to the Marabella Police Station. While he was at the Central Police Station the Claimant fainted and fell down in the cell. He was taken to the Port of Spain General Hospital for treatment by Emergency Health Services and later he was returned to the Central Police Station on the same day. He complained that he was handcuffed when he was taken to the Port of Spain General Hospital, that the respective cells he was kept were filthy and while he was detained and he was not given appropriate food since he is a vegetarian and a diabetic.
3. The Defendant has denied these allegations. The Defendant's position was that the Claimant's arrest and detention was lawful and that he was released on the earliest possible day after the investigating officers established that there was not enough evidence to charge the Claimant in connection with larceny of the said motor vehicle. Darryl Vincent was subsequently charged for the said offence.
4. The Claimant instituted the instant proceedings seeking damages for including aggravated damages and/or exemplary damages for his unlawful arrest, detention and/or false imprisonment.
5. There were disputes of facts to be resolved in this matter. In such circumstances, 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. (**Horace Reid v Dowling Charles and Percival Bain**<sup>1</sup> cited by Rajnauth-Lee J (as she then was) in **Mc Claren v Daniel Dickey**<sup>2</sup>).

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<sup>1</sup> Privy Council Appeal No. 36 of 1897

<sup>2</sup> CV 2006-01661

6. At the trial the Claimant gave evidence and the Defendant called PC Kent Charles, PC Kushal Karamthasingh, PC Roger Moses, PC Nicholas Gervais and Acting Corporal Sydney Simon.
7. The issues to be determined by the Court are:
  - (a) Was the Claimant wrongfully arrested?
  - (b) Was the Claimant falsely imprisoned by the servants and or/agents of the Defendant?
  - (c) If the Defendant is found liable for (a) and/or (b) above, what is an appropriate award of damages to compensate the Claimant?

**Was the Claimant wrongfully arrested?**

8. The onus is on the police to establish reasonable and probable cause for the arrest. Narine JA in *Nigel Lashley v The Attorney General of Trinidad and Tobago*<sup>3</sup> described the onus as:

*“It is well settled that the onus is on the police to establish reasonable and probable cause for the arrest: **Dallison v. Caffery** (1964) 2 All ER 610 at 619 D per Diplock LJ. The test for reasonable and probable cause has 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.) para. 13-53. The lawfulness of the arrest is to be judged at the time of the arrest.”*<sup>4</sup>

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<sup>3</sup> Civ Appeal No 267 of 2011

<sup>4</sup> Supra para 14



9. Therefore the test is subjective because the arresting police officer must have formulated a genuine suspicion in his own mind that the accused person has committed an offence. It is partly objective since reasonable grounds for the suspicion is required by the arresting officer which must be judged at the time the power of arrest was exercised.

10. The police officers powers of arrest are set out in **Section 3(4) Criminal Law Act** which states:

*“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.”*

11. **Section 46(1)(d) and (f) Police Service Act<sup>5</sup>**, also empowers a police officer to arrest without a warrant in the following circumstances:

*“46. (1) A police officer may arrest without a warrant-*

*... (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;*

*... (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.”*

12. Under **section 3(1) Criminal Law Act**, an arrestable offence is an offence to which the powers of summary arrest apply where a person may, under or by virtue of any written law be sentenced to imprisonment for a term of five years, and to attempts to commit any such offence. The offence of larceny of a vehicle or of being in possession of a vehicle knowing that it was stolen are both punishable upon summary conviction to imprisonment for 10

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<sup>5</sup> Chap 15:01



years and upon conviction on indictment to imprisonment for 15 years<sup>6</sup>. Therefore, larceny of a motor vehicle or being in possession of a motor vehicle knowing that it was stolen are both arrestable offences.

13. The most likely charge in the circumstances of the detention of this case is that under section 4A (1) (d) i.e. receiving or possession. In **Frankie Boodram (Appellant) and The State (Respondent)**<sup>7</sup> Chief Justice Sharma JA at page 8 paragraph 2 line 4 stated the following on the issue of receiving and possession of a motor vehicle:

*“Possession, in law, requires knowledge of the existence of the stolen goods and some actual power or control over them.”*

14. The Claimant pleaded in paragraph 17(i) of his Statement of Case that he was not informed promptly and with sufficient particularity of the reasons for his arrest and/or detention. In **Jason Khan & Keron Williams v The Attorney General of Trinidad and Tobago**<sup>8</sup>, Rahim J stated that: *“For an arrest to be lawful the person being arrested must be informed of the fact that he is under arrest and the reasons for that arrest albeit not at the same time if not practicable.”*<sup>9</sup>
15. However, in paragraph 3 of the Statement of Case the Claimant also pleaded *“...the vehicle was stopped by police officers and he was arrested. The police officers told the Claimant that the said motor vehicle was a stolen vehicle”* and in paragraph 7 of his witness statement, he stated that *“I was then told by the police officers that the said motor vehicle... was a stolen vehicle and I was **arrested for same**” (emphasis added)* which he confirmed in cross examination. PC Charles in his witness statement and under cross examination confirmed that the Claimant was informed of the reason for his arrest.<sup>10</sup> Therefore based

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<sup>6</sup> Section 4A (1) Larceny Act

<sup>7</sup> CrA. No. 17 of 2003

<sup>8</sup> CV 2014-01187 delivered on the 16<sup>th</sup> October 2015

<sup>9</sup> Supra para 14

<sup>10</sup> This is also confirmed in the Station Diary Extract from the Central Police Station pages 65 and 66 dated the 10<sup>th</sup> February 2013 attached at Tab 8 of the Agreed Bundle of Documents.

on the Claimant's own pleading and evidence he was informed of the reason for his arrest at the time he was arrested.

16. The exact time of the arrest was in dispute but it was not in dispute that the Claimant was arrested by PC Charles for being in possession of a stolen vehicle. The burden was therefore on the Defendant to justify the arrest of the Claimant by demonstrating that the arresting officer PC Charles had reasonable and probable cause to arrest the Claimant for being in possession of a stolen vehicle.
17. Before I deal with the evidence to demonstrate reasonable and probable cause I will address the time of the arrest at this juncture. Although the Claimant pleaded in his Statement of Case and his witness statement that he was arrested on the 8<sup>th</sup> February 2013 he changed his position at the trial and corrected his witness statement to state that he was arrested on the 9<sup>th</sup> February 2013 around 11.30pm. He also stated in his claim that he was arrested on the 8<sup>th</sup> February 2013, that he was attending the Panorama *semi*-finals. However during cross examination, the Claimant admitted that the Panorama finals were going on at the time he was arrested on the Saturday night into the early hours of Sunday morning which was the 10<sup>th</sup> February 2013 on the Carnival weekend.
18. On the other hand, PC Charles evidence was that the Claimant was arrested in the early morning of the 10<sup>th</sup> February 2013 between 1.00-1.33am and this was supported by the Station Diary Extract from the Central Police Station<sup>11</sup>. I accept PC Charles evidence that the Claimant was indeed arrested in early Sunday 10<sup>th</sup> February 2013 since his evidence was consistent and supported by the relevant Station Diary extract while the Claimant's evidence was inconsistent with his pleading.
19. The Claimant also stated in his claim that he was detained at the Central Police Station for 7 days but he admitted in paragraph 8 his Statement of Case and paragraph 19 of his witness statement that he was released from police custody on the night of the 15<sup>th</sup> February 2013. Based on the Station Diary extract of the Central Police Station dated the 13<sup>th</sup>

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<sup>11</sup> Pages 65 and 66 dated the 10<sup>th</sup> February 2013 which is attached at Tab 8 of the Agreed Bundle of Documents

February 2013<sup>12</sup> the Claimant left the Central Police Station to be taken to Marabella Police Station at approximately 8:35 pm and on the Marabella Police Station Prisoner Movement Register<sup>13</sup> the Claimant was allowed to leave the Marabella Police Station before 10.00pm on the 15<sup>th</sup> February 2013 based on the Station Diary extract which I have found no reasons to dispute. Therefore, the Claimant was in police custody for approximately 6 days.

20. Turning now to the evidence of reasonable and probable cause. PC Charles was the officer who arrested the Claimant. According to PC Charles he was first alerted to the vehicle when he noticed that it was bearing a cardboard identification plate. He noted that there were two identification plates, the cardboard identification plate bearing the purported registration number of the vehicle and a blank plate which was covered over by the said cardboard plate and this aroused his suspicion. PC Charles stopped the vehicle and approached the driver's side of the vehicle where he noticed that there was no key in the ignition of the vehicle and that the vehicle was not a key less vehicle. He requested that the driver of the vehicle, Darryl Vincent, switch off and restart the vehicle and he notice that Darryl Vincent stuck something into the ignition to restart it. PC Charles indicated that he believed that something was wrong with the vehicle and he became even more suspicious since the vehicle was not one that could be started without a key.
21. PC Charles then requested Darryl Vincent for his driver's permit. Upon receipt, PC Charles found that it had been expired for approximately one and a half years before the date of the arrest. He confirmed during cross examination that it is an offence to drive with an expired driver's permit. He also requested the insurance certificate for the vehicle from Darryl Vincent but the latter was unable to provide it. According to PC Charles, Darryl Vincent told him that he had borrowed the said vehicle from a friend known as 'Rock'. PC Charles requested a telephone number for the said 'Rock'. PC Charles said he made attempts to contact 'Rock' before the Claimant and Darryl Vincent were arrested between 1-1.33am on the 10<sup>th</sup> February 2013 and also thereafter, but he was unable to reach him.

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<sup>12</sup> Page 252 paragraph 66 of Tab 8 of the Agreed Bundle of Documents

<sup>13</sup> Tab 10 of the Agreed Bundle of Documents,



22. Before arresting the Claimant and Darryl Vincent, PC Charles also stated that he contacted Command Center concerning the vehicle and he requested that checks be done but that he was informed that Command Center could not find a vehicle of that make and model with that registration number on the system. PC Charles was asked during cross examination whether there was some other explanation why the vehicle could not be found on the system by Command Center and whether the vehicle could have been made up of different parts which may account for why it was not on the system at the time the alleged offence of larceny took place. PC Charles indicated that he could not account for such an explanation.
23. During cross examination, PC Charles indicated that there was a Stolen Vehicles Division based at the Central Police Station. He admitted that he did not contact this Division before arresting the Claimant because he had already communicated with Command Center via wireless transmission and Command Center usually has all the relevant information. He also stated that he took the vehicle to the Central Police Station for further enquiries and that he was clear that the driver was in charge of the vehicle but he considered the passenger, the Claimant, and the driver to be in possession of the vehicle since they were both in it.
24. The Claimant stated in his witness statement that at the time of the arrest he told the police officers that he was just offered a drop home, that he did not know the vehicle was a stolen and that he was innocent. However, during cross examination PC Charles was adamant that the only response given by the Claimant at the time that he was informed that the vehicle was believed to be stolen, was that he did not know anything about that. PC Charles further indicated under cross examination that even if the Claimant had provided the explanation which he asserted, he would have still arrested him in light of all the other factors as he suspected the vehicle to be stolen since he would have had to make the relevant checks and to verify whether the Claimant's explanation was true. He also confirmed in his witness statement and during cross examination that as a result of all the aforesaid factors he was suspicious and honestly believed that the vehicle was stolen and that when he arrested both the Claimant and Darryl Vincent he believed that the vehicle was stolen and they were working together.

25. In my opinion PC Charles was a witness of truth since his evidence in his witness statement was consistent with his evidence during cross examination. Further material aspects of his evidence was corroborated by the Claimant's evidence and his statement to the police<sup>14</sup>.
26. During cross examination, the Claimant reiterated that at the time the said vehicle was stopped by police officers, he heard them tell Darryl Vincent that his driver's permit was expired, that the police officers checked the credentials of the vehicle, and that the police officers called the number given by Darryl Vincent for the supposed owner of the vehicle but nobody answered. The Claimant further stated under cross examination that he observed that the vehicle had no proper licence plate, that he did not see a key for it and that it was started from the engine.
27. In the Claimant's statement to the police recorded by PC Gervais at the Marabella Police Station dated the 14<sup>th</sup> February 2013<sup>15</sup> the Claimant confirmed that the police officers asked Darryl Vincent for his driver's permit and certificate of insurance for the vehicle; that Darryl Vincent's driver's permit was expired; he did not have the insurance certificate for the car; the police officers' phone calls to the alleged owner of the vehicle were unanswered; the officers went to check something and came back and told them that the vehicle was stolen. The Claimant when asked if he noticed anything unusual about the vehicle admitted that it did not have a back plate but a piece of cardboard in its place.
28. In determining whether PC Charles had reasonable and probable cause the first enquiry is to ascertain what was in his mind and to determine whether the grounds on which PC Charles relied on as the basis for his suspicion were reasonable.
29. Based on the evidence at the time when the Claimant was arrested, PC Charles was in possession of the following information:

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<sup>14</sup> Tab 3 Agreed Bundle of Documents

<sup>15</sup> Tab 3 of the Agreed Bundle of Documents at page 3 (12 lines from the bottom of the page)

- The vehicle in which the Claimant was travelling had 2 license plate to the back namely a cardboard identification plate with a handwritten registration number of the vehicle and a blank plate which covered the cardboard plate;
- The vehicle had no key in the ignition;
- The driver's permit of the driver was expired;
- There was no certificate of insurance for the vehicle;
- Calls to the contact number for the purported owner of the vehicle as indicated by Darryl Vincent were unanswered;
- Command Center indicated that it did not find any vehicle containing that registration number on the system;<sup>16</sup>
- The Claimant was a front seat passenger.

30. PC Charles evidence was that based on the aforesaid information he honestly believed that the vehicle was stolen and that both the Claimant and Darryl Vincent were working together. In my opinion, any police officer placed in the position of PC Charles and possessed with the aforesaid objective information would have honestly believed that both Darryl Vincent, the driver of the vehicle and the Claimant had stolen the vehicle. In these circumstances, it is difficult to criticize PC Charles for exercising his discretion in favour of arresting at that time and carrying out further investigations afterwards. Narine JA in **Nigel Lashley v The Attorney General of Trinidad and Tobago**<sup>17</sup> stated that there is a discretion the police have when exercising the powers of arrest as:

*“The power to arrest is by its very nature a discretionary one. A police officer may believe that he has reasonable and probable cause to arrest a suspect, but may decide to postpone the arrest, while he pursues further investigations. His exercise of the discretion may be based on the strength or weakness of the case, the necessity to preserve evidence, or the need to ensure that the suspect does not abscond to avoid prosecution. The exercise of the discretion must be considered in the context*

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<sup>16</sup> These details were also recorded in the Station Diary Extract from the Central Police Station pages 65 and 66 dated the 10<sup>th</sup> February 2013 which is attached at Tab 8 of the Agreed Bundle of Documents.

<sup>17</sup> Supra



*of the particular circumstances of the case. The discretion must be exercised in good faith and can only be challenged as unlawful if it can be shown that it was exercised "unreasonably"... Arrest for the purpose of using the period of detention to confirm or dispel reasonable suspicion by questioning the suspect or seeking further evidence with his assistance is an act within the broad discretion of the arrestor... A police officer is not required to test every relevant factor, or to ascertain whether there is a defence, before he decides to arrest... Further, it is not for the police officer to determine whether the suspect is in fact telling the truth. That is a matter for the tribunal of fact."*<sup>18</sup>

31. It was therefore not mandatory for PC Charles to verify all the varying possibilities before arresting the Claimant since it was within his discretion to arrest the Claimant and seek to verify these possibilities afterwards. In my opinion it was open to PC Charles to verify after further investigation if the Claimant was in possession of the vehicle as defined by Sharma CJ in **Frankie Boodram**.
32. For the aforesaid reasons I was satisfied that the Defendant satisfied both the subjective and objective elements of the test for the lawful arrest of the Claimant. I am of the view the arrest of the Claimant was based on reasonable and probable cause and I find that the Claimant was lawfully arrested by the police officers.

**Was the Claimant falsely imprisoned by the servants and or/agents of the Defendant?**

33. The Defendant argued that the Claimant's detention for 6 days after his arrest and without being charged for any offence was justified on the basis that during the period of detention the police were conducting further investigations to determine if to charge the Claimant with the offence he was arrested or any other offence. The Defendant also submitted that the period the Claimant was detained at the Central Police Station was during the Carnival weekend, a period during which the duties and obligations of police officers are increased;

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<sup>18</sup> Paras 18 and 19

the Claimant was given the opportunity to provide a statement almost immediately upon arrival at the Marabella Police Station but he chose not to do so and that the Claimant was released from police custody as soon as possible after the relevant police officers formed the opinion that there was not enough evidence to charge him.

34. On the other hand it was submitted on behalf of the Claimant that his detention was illegal from the 10<sup>th</sup> February 2013 to the 15<sup>th</sup> February 2013.

35. The relevant principles when considering false imprisonment are set out in the Privy Council judgment **Chandrawtee Ramsingh v The Attorney General of Trinidad and Tobago**<sup>19</sup> as:

- a. The detention of a person is *prima facie* tortious and an infringement of section 4(a) of the Constitution of Trinidad and Tobago.
- b. It is for the arrestor to justify the arrest.
- c. A police officer may arrest a person if, with reasonable cause, he suspects that the person concerned has committed an arrestable offence.
- d. Thus the officer must subjectively suspect that that person has committed such an offence.
- e. 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.
- f. Any continued detention after arrest must also be justified by the detainer.

36. In **Dallison v Caffery**<sup>20</sup> described the duty on the police to investigate a matter when someone was taken into custody as:-

*“When a constable has taken into custody a person reasonably suspected of a felony, the constable may, without becoming liable for false imprisonment, do what*

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<sup>19</sup> [2012] UKPC 16 at para 8

<sup>20</sup> [1964] 2 All ER 610

*is reasonable to investigate the matter (for example, he may take a suspect to his house to see whether any of the stolen property is there), and is not bound to take the suspect immediately and directly to the police station or before a magistrate, but the constable will not be protected from liability if the measures that he takes are not reasonable<sup>21</sup>.*

37. I have already found that PC Charles had reasonable and probable cause for arresting the Claimant on the 10<sup>th</sup> February 2013. The onus was on the police to justify the detention of the Claimant minute by minute<sup>22</sup> from the early morning of Sunday 10<sup>th</sup> February 2013, the date of the arrest to Friday the 15<sup>th</sup> February 2013 at approximately 11:30 pm, the date he was released.
38. In my opinion the police has failed to justify the Claimant's period of detention beyond 24 hours from the time of his arrest for the following reasons.
39. Firstly, the demands placed on the police service during the Carnival weekend is not a good reason for the delay in conducting the investigation after the Claimant's arrest for a simple offence. In *Nigel Lashley*<sup>23</sup> Narine JA recognized that police officers are required to conduct further enquiries in an investigation while performing other duties. At paragraphs 22 to 24 he stated:

*"22. It is well settled that a police officer is entitled to arrest a suspect and conduct further enquiries in order to see whether or not his suspicions are supported by further evidence. As long as these enquiries are reasonable they are an important adjunct of the administration of justice: **Dallison v. Caffery** (supra) at 617 B – D per Lord Denning M.R.*

*23. In this case, after the Appellant was arrested and taken to the San Fernando Police Station, further inquiries were conducted. Efforts were made to trace the*

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<sup>21</sup> (see p 617, letter b, p 618, letter h, and p621, letter d, post) and (per Diplock LJ) a question whether the constable acted reasonably is a question for the judge, not the jury (see p 621, letter d, post).

<sup>22</sup> Clayton and Tomlinson- Law of Human Rights 2<sup>nd</sup> Edition (2009) at para 10.56

<sup>23</sup> supra



*vehicle. The investigation revealed that the vehicle was in fact PCA 2196 owned by auto Wreck Japan Limited. The Stolen Vehicle Squad was also contacted. They assisted in locating the current owner.*

*24. In his oral submissions, the Appellant's attorney submitted that the actual investigations that were subsequently effected involved checks on the police data base and telephone calls to other divisions of the police service, which would have taken a matter of minutes in each case. We do not find merit in those submissions. In assessing these matters, one has to take a realistic view of police operations. Police Officers go on operations that involve irregular hours, after which they go off duty. Their duties are not limited to the investigation of one particular offence. Their duties after the arrest may involve other investigations. Their communications with other divisions may not produce instantaneous results. They may need to contact particular sources several times before they obtain the relevant information. Having regard to the results of the post-arrest investigations the Appellant may consider himself fortunate to have escaped prosecution for larceny if not for unlawful possession of the motor vehicle."*

40. It is important to note that the aforesaid comment in **Nigel Lashley** must be taken in the context of the facts of that case where the period of detention was for approximately 36 hours after the arrest and the police officers in **Nigel Lashley** presented evidence of the steps they took in conducting the further enquiries shortly after the arrest. **In the instant case the Claimant was detained for approximately 6 days after his arrest.**
41. During cross examination PC Charles revealed that when he arrived at the Central Police Station following the arrest of the Claimant and Darryl Vincent, a bulletin was sent throughout the various divisions requesting information on whether any vehicles were reported stolen in that district. He also communicated with the Heads of Divisions to obtain information about whether the vehicle was involved in any crime or if there were any reports relative to same, since it could not be ascertained how the Claimant and Darryl Vincent came into possession of the vehicle. I accept the evidence of PC Charles since it was unshaken in cross examination. PC Charles evidence demonstrated that there was a

system in place to ensure the speedy return of information for the offence for which the Claimant was charged.

42. However, according to PC Karamthasingh's witness statement at the time when the Claimant was detained at the Central Police Station it was the Carnival period and a lot of the police officers on duty at the time were on patrol.
43. The detention of a person after arrest without charge is a serious matter in any circumstances since it deprives an individual of his liberty. While I appreciate that the Claimant was arrested on Carnival Sunday and that during the Carnival weekend, the duties and obligations of police officers are increased I do not accept this as a valid reason for the delay in the police investigation of the Claimant's matter. Carnival is celebrated every year in this jurisdiction and the increased demands on the police service in Carnival 2013 when the Claimant was arrested were no different from any previous year. There was no evidence adduced by the Defendant to demonstrate that there were unique matters of national security to be addressed at the time of the Claimant's arrest which required the attention of the entire police service or the suspension of the fundamental rights of citizens. The duty of the police service at all times and even during the Carnival weekend is to actively pursue and investigate matters after a person is arrested to determine if to lay charges. Indeed the police service has an obligation to the public to put systems in place to ensure that simple offences such as what the Claimant was arrested could be investigated in a reasonably timely fashion to ensure that a person is not deprived of his liberty without due process *even* during the Carnival weekend.
44. The police also has an obligation to lay a charge for the offence for which the Claimant was arrested in a timely manner since after the charge is laid due process ensures that the person who is charge must be brought before a magistrate to deal with the issue of bail. The Claimant was arrested for a simple offence. This was not a serious offence such as a rape or homicide. In my opinion for simple offences such as the offence which the Claimant was arrested the onus was on the police to either charge the Claimant with 24 hours of being arrested or release him if there was insufficient evidence to charge him. The police



always had the option releasing the Claimant and re-arresting and charging him when they had sufficient evidence since there was no evidence from the police that the Claimant was a flight risk. The watchwords of the police service is “to protect and serve” but in this society where the lack of public confidence in the police continues to impact negatively on the investigation of crime, the police must be mindful that the unreasonable and unlawful detention of persons will continue the negative image of the entire police service.

45. Secondly, the police did not provide any evidence to indicate when the Central Police Station was informed that the Claimant was linked to the vehicle which was stolen in Marabella. Based on PC Charles evidence on the Sunday the 10<sup>th</sup> February 2013 when he arrived at the Central Police Station following the arrest of the Claimant and Darryl Vincent, a bulletin was sent throughout the various divisions requesting information on whether any vehicles were reported stolen in that district. He stated that he also communicated with the Heads of Divisions to obtain information about whether the vehicle was involved in any crime or if there were any reports relative to same, since it could not be ascertained how the Claimant and Darryl Vincent came into possession of the vehicle.
46. It appears that this was the extent of the further investigations at the Central Police Station. There was no evidence from any of the Defendant’s witnesses if there was any response to the aforesaid request by PC Charles. There was also no evidence if PC Charles or any other officer assigned to Central Police Station followed up the aforesaid requests within the following 24 hours after the request. I have used the period of 24 hours since in my opinion given the nature of the information requested this period is reasonable to ascertain such information especially when this must be balanced with the fact that the Claimant was being detained and deprived of his liberty during this time. In the *Nigel Lashley* case based on the efforts by the police officer in that matter they were able to obtain the relevant information within 36 hours after the arrest was made. In *Emraan Ali v the Attorney General of Trinidad and Tobago*<sup>24</sup> the Claimant was detained and question for 2 days for possession of vehicles on his premises. He was subsequently charged. Rajkumar J found that the continued detention of the Claimant beyond 24 hours was illegal.

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<sup>24</sup> CV2012-02695



47. I formed the view that there was no urgency by the police to investigate this matter since there was no evidence of the steps which were taken by the police to advance the matter after the arrest. There was no evidence if any investigating officers was appointed while the Claimant was at the Central Police Station to take the matter forward. From the evidence it suggested that nothing happened with the investigation until the Claimant was taken to the Marabella Police Station where PC Gervais appeared to have been appointed as the investigator. There was no evidence that anything was done until the interview by PC Gervais on the 14<sup>th</sup> February 2013 which was completed on the same day.
48. The evidence from the Claimant was that he was willing to co-operate with the investigation since he gave a voluntary statement to PC Gervais which was his first opportunity to speak with an investigating officers. The Defendant failed to put forward any evidence that the Claimant was not co-operative of he was flight risk. In my opinion if the police could not advance the investigation within 24 hours after the Claimant was arrested there was nothing stopping them from releasing him and if or when they had advanced their investigation they could have detained him later for questioning.
49. Therefore in the absence of any evidence that the investigation was being actively pursued when the Claimant was at the Central Police Station I find that his detention 24hours after his arrest namely from 11:30 pm on Sunday 10<sup>th</sup> February 2013 to 11:30 pm on Friday 15<sup>th</sup> February 2013 was illegal.
50. Thirdly, there was no also explanation why it took the police three (3) days after the Claimant's arrest to inform Marabella Police Station that the Claimant and Darryl Vincent were in custody at Central Police Station. According to PC Moses on the 13<sup>th</sup> February 2013 a call came into the Marabella Police Station from the Central Police Station that the Claimant and Darryl Vincent were arrested in connection with the larceny of the vehicle which occurred between 8.00 pm on the 5<sup>th</sup> February 2013 and 6.00am on the 6<sup>th</sup> February 2013 at Ruby Lane, Gopaul Lands, Marabella from the victim Ronald Budhooram<sup>25</sup>. At

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<sup>25</sup> This is confirmed by the Marabella Police Station Telephone Message Book for the 13<sup>th</sup> February 2013 which is attached at Tab 11 Agreed Bundle of Documents

that time enquiries were being conducted into the incident by officers of the Marabella Police Station. According to PC Moses, the Marabella Police Station had a report of a stolen vehicle from Ronald Budhooram by least the 6<sup>th</sup> February 2013. Therefore once PC Charles had put out a request for the aforesaid information, there was no reason provided by the police in the instant matter why a response from the Marabella Police Station could not have been provided to Central Police Station within 24 hours of such request. In my opinion the failure by the police to indicate when Central Police Station found out about the link between the Claimant and the stolen vehicle in Marabella is significant since it does not assist the police in justifying the detention of the Claimant for a period after 24 hours of his arrest which was while he was still at Central Police Station.

51. Fourthly, the reasons to account for the further delay in the conduct of the investigation by the Marabella Police Station were unacceptable. PC Moses stated that he and other police officers were instructed to go to Central Police Station to bring the Claimant, Darryl Vincent and the vehicle from Central Police Station to the Marabella Police Station which they did on the 13<sup>th</sup> February 2013<sup>26</sup>. PC Moses confirmed in his witness statement and during cross examination that on the same night the Claimant was transferred to the Marabella Police Station and he asked the Claimant if he was willing to participate in an interview. The Claimant agreed to same but stated “not now”<sup>27</sup>. PC Moses further indicated under cross examination that it was his duty to enquire whether the Claimant was willing to give a statement at that time. I accept this aspect of the evidence of PC Moses since his evidence was not shaken in cross examination.

52. On the 14<sup>th</sup> February 2013 which was the day after the Claimant’s arrival at the Marabella Police Station, he was interviewed by PC Gervais concerning the alleged offence. This was stated in the Claimant’s claim and confirmed by PC Gervais in his witness statement and

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<sup>26</sup> Based on the station diary extract of the Central Police Station dated the 13<sup>th</sup> February 2013, page 252 paragraph 66 attached at Tab 8 of the Agreed Bundle of Documents, the Claimant left the Central Police Station to be transferred to the Marabella Police Station at approximately 8.35pm. In the Station Diary Extract from the Marabella Police Station dated the 13<sup>th</sup> February 2013 paragraph 27, page 188 attached at Tab 1 of the Agreed Bundle of Documents, it was confirmed that the Claimant arrived at the Marabella Police Station at approximately 10.00pm.

<sup>27</sup> This is confirmed by Tab 2 of the Agreed Bundle of Documents, paragraph 30, page 188 of the Station Diary Extract from the Marabella Police Station dated the 13<sup>th</sup> February 2013.



during his cross examination<sup>28</sup>. PC Gervais indicated during cross examination that after interviewing the Claimant he formed the opinion that there was not enough evidence to charge him, however the investigation was not yet completed since, he needed to conduct an interview with Darryl Vincent, verify certain information acquired from Darryl Vincent and compile the relevant documents to submit to the legal officer and his superior for instructions before the Claimant could be released.

53. According to PC Gervais in his witness statement the Claimant could not be released before his interview was authenticated by a Justice of the Peace and the approval of the legal officer in the southern division and his superior was granted. He further stated in his witness statement and confirmed during cross examination that he had made attempts to get a Justice of the Peace to come in the same day of the 14<sup>th</sup> February 2013 to have the interview authenticated but that he experienced some difficulty. He admitted that he did not make a log in the telephone message book of his unsuccessful attempts to contact a Justice of the Peace to authenticate the interview of the Claimant but also indicated that it was not necessary at the time. I accept that it was impractical to expect PC Gervais to record every failed attempt to contact the Justice of the Peace, considering the numerous duties a police officer is faced with daily and that the failure to log unsuccessful attempts to reach the Justice of the Peace did not mean that such attempts were not made by PC Gervais.
54. PC Gervais further explained that there were two Justices of the Peace who provided their services to the entire Southern Division at the time including the Marabella Police Station. He stated that they had other jobs as well and specified that Justice of the Peace Balroop Chandarjeet worked at Petrotrin at the time and that the other Justice of the Peace was a businessman. PC Gervais was eventually able to reach Justice of the Peace Balroop Chandarjeet at approximately 6.00pm on the 15<sup>th</sup> February 2013<sup>29</sup>. The Justice of the Peace met with the Claimant and authenticated the interview of the Claimant sometime between 9.00pm and 9.50pm on the 15<sup>th</sup> February 2016.

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<sup>28</sup> The authenticated interview of the Claimant is attached at Tabs 3 and 12 of the Agreed Bundle of Documents.

<sup>29</sup> This is evident from the copy of the telephone message book of the Marabella Police Station for the 15<sup>th</sup> February 2013 which is attached at Tab 11 of the Agreed Bundle of Documents.



55. PC Gervais revealed during cross examination that he made contact with his superior and the legal officer on the same day the Claimant was interviewed, the 14<sup>th</sup> February 2013 and that he put the relevant documents together and took them to his superior on that same day. Subsequently, he received instructions to release the Claimant but pending authentication of his interview. PC Gervais explained that the procedure of authentication is important to ensure that the police did not use threats, force, promises or ill means during the interview. After the relevant approvals were obtained and the interview of the Claimant was authenticated, the Claimant was released from police custody before 10.00 pm on the night of the said 15<sup>th</sup> February 2013<sup>30</sup>.
56. In my opinion even if there were such a procedure by the police service to be followed it made no sense given the facts of this case. PC Gervais was a police officer with 17 years' experience. In cross-examination PC Gervais was clear that the Claimant's statement was wholly exculpatory. After the Claimant gave his statement which PC Gervais found to be wholly exculpatory he continued to be kept (from 1:30 pm on the 14<sup>th</sup> February, 2013 until his release at 11:30pm on the 15<sup>th</sup> February, 2013) in a holding cell at the Marabella Police Station.
57. No evidence was brought by the Defendant to show that other than the interview on the 14<sup>th</sup> February, 2013 that there was any further questioning of the Claimant. It was confirmed by PC Gervais that after the interview the Claimant was kept for the purpose of authenticating his interview although it was wholly exculpatory (from 1:30p.m. on the 14<sup>th</sup> February, 2013 to 11:30p.m. on the 15<sup>th</sup> February, 2013 for a further 33 hours).
58. In my opinion there was no need to authenticate the Claimant's statement since it was wholly exculpatory. Indeed a statement has to be authenticated where it can prejudice the maker of the statement such as the Claimant. However, in the instant case there was no prejudice to the Claimant and the investigation was not furthered since there were no matters in the statement to be further investigated. Further, there were no rights of the

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<sup>30</sup> See the Marabella Police Station Prisoner Movement Register attached at Tab 10 of the Agreed Bundle of Documents.

Claimant which would be infringed by the lack of authentication. On the contrary, to keep the Claimant incarcerated was a continued infringement of liberty and a further exacerbation of his illegal detention.

**If the Defendant is found liable, what is an appropriate award of damages to compensate the Claimant?**

59. The Claimant was detained for 6 days. I have found that the police only had reasonable and probable cause to detain him for 24 hours after his arrest and that he ought to have been released after 24 hours if the police could not charge him. Therefore the Defendant is liable to pay the Claimant damages for being falsely imprisoned for 5 days. I will now consider an appropriate award of damages.
60. **Mc Gregor on Damages**<sup>31</sup> described the matters which a court should consider in assessing general damages for false imprisonment as:

*“The details of how the damages are worked out in false imprisonment are few: generally it is not a pecuniary loss but a loss of dignity and the like, and is left much to the jury’s or judge’s discretion. The principal heads of damage would appear to be the injury to liberty, i.e. the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings, i.e. the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status and injury to reputation.”*

61. The award of general damages may also include aggravated damages where the circumstances of the case so warrant. In **Thaddeus Bernard v Quashie**<sup>32</sup> de la Bastide C.J. described the approach as:

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<sup>31</sup> 18<sup>th</sup> Edition, paragraph 37-011

<sup>32</sup> CA No 159 of 1992



*“The normal practice is that one figure is awarded as general damages. These damages are intended to be compensatory and include what is referred to as aggravated damages, that is, damages which are meant to provide compensation for the mental suffering inflicted on the plaintiff as opposed to the physical injuries he may have received.*

*Under this head of what I have called ‘mental suffering’ are included such matters as the affront to the person’s dignity, the humiliation he has suffered, the damage to his reputation and standing in the eyes of others and matters of that sort. If the practice has developed of making a separate award of aggravated damages I think that practice should be discontinued.”*

#### Injury to liberty

62. I have already found that the Claimant was arrested early Sunday morning on the 10<sup>th</sup> February 2013 and he was released on Friday the 15<sup>th</sup> February 2013 around 11:30 pm. I have also found that the police were unable to justify the Claimant’s detention after 11:30p.m. on Sunday the 10<sup>th</sup> February 2013 until his release thereby making his period of unlawful detention 5 days and not the entire 6 days of his detention.

#### Injury to feelings

63. The Claimant indicated in his witness statement that he was detained in a cell at the Central Police Station which was small and it had other inmates in it. He stated that the cell was filthy, that the floors were unsanitary and wet, and that he had to sleep on the cold concrete floor of the cell covered with newspapers. He further stated that there were cockroaches in the cell and that there were no toilet facilities but a manmade hole and a bucket which was very embarrassing and uncomfortable for him to use and had a high stench of urine and faeces.
64. PC Karamthasingh stated in his witness statement and confirmed during cross examination, that he was on duty on the 10<sup>th</sup> February 2013 from 8am to approximately 6pm. According to him the Central Police Station has approximately 8 to 10 holding cells and each has a toilet that is flat at the floor level with the ability to be flushed from mechanisms outside



the cell. The cells are cleaned and well maintained by the National Maintenance Training and Security Company Limited (MTS) staff and each cell contains a wooden bench the length of the walls in the cell. On the 10<sup>th</sup> February 2013 to the 13<sup>th</sup> February 2013 when the Claimant was detained at the Central Police Station, it was the Carnival period and there were a lot of persons detained at the said station. He noted that a lot of the officers who were on duty at that time were out on patrol and he was out of the station and on patrol on some of the days but he could not recall exactly which days.

65. During cross examination PC Karamthasingh revealed that he had visited the cell in which the Claimant was kept and denied that the cell was filthy, unsanitary and wet. He further revealed that when all the cells at the Central Police Station are dirty, detainees would not be kept there but they were housed at the Woodbrook or Belmont Police Station until further notice. He denied that the cell contained 13 other inmates at the time and denied that it contained cockroaches. He admitted that the cell did not contain a bed but that it contained a wooden bench running from wall to wall in the cell and he denied that the Claimant had to sleep on the cold, concrete floor covered with newspaper. He also denied the Claimant's assertion that the toilet was a hole in the ground and that there was a bucket in the cell that had to be used which was unsanitary and had a high stench of urine and faeces.
66. I accept the Claimant's evidence over PC Karamthasingh's evidence on the conditions of the cells while the Claimant was at the Central Police Station since the Claimant was there from the 10<sup>th</sup> to the 13<sup>th</sup> February 2013 and PC Karamthasingh admitted during cross examination that he only worked on the 10<sup>th</sup> and 13<sup>th</sup> of February 2013 and that he was not on duty on the 11<sup>th</sup> and 12<sup>th</sup> February 2013 therefore he could not account for the conditions of the cell the Claimant was kept in during that period. Further there was no record produced by the Defendant when the cells were cleaned during the period the Claimant was detained at Central Police Station and there was no evidence that the Claimant was moved to another police station during that period to facilitate the cleaning of the cell he was in.
67. The Claimant averred in his witness statement and during cross examination that on his second day at the Central Police Station, Monday 11<sup>th</sup> February 2013, he fell ill, the police

officers had to contact the Emergency Health Services and he had to be taken to the Port of Spain General Hospital. He claimed that he was handcuffed while he was being attended to by the Emergency Health Services and the whole time he was being treated at the Hospital.

68. According to the station diary extract dated the 10<sup>th</sup> February 2013<sup>33</sup>, the Claimant fell ill when he was at the Central Police Station and the police officers contacted the Emergency Health Services to attend to the Claimant and he was subsequently taken to the Hospital at approximately 3.30pm on the 10<sup>th</sup> February 2013 and not on the 11<sup>th</sup> February 2013 as alleged. The Claimant was later returned to the Central Police Station at approximately 5.30pm on the same day. In light of the contemporaneous note of the station diary extract, I accept the Defendant's position that the Claimant fell ill on his first day in custody which was Sunday the 10<sup>th</sup> February 2013 and not Monday 11<sup>th</sup> February 2013.
69. PC Karamthasingh stated in his witness statement that he was one of the officers who accompanied the Claimant to the Hospital and he confirmed that at no stage the Claimant was handcuffed despite it was the protocol to handcuff prisoners when they are being taken out of the police station. His position remained unchanged during cross examination and he explained that although it is protocol for a prisoner who is still being detained to be handcuffed if leaving the police station for some reason, the Claimant was not handcuffed as he was ill.
70. I accept PC Karamthasingh's evidence that the Claimant was not handcuffed when he was taken to the Hospital nor while he was being treated since his evidence was unshaken in cross-examination and he put forward a reasonable explanation why the protocol for handcuffing was not followed with the Claimant.
71. The Claimant also stated in his witness statement that at the Marabella Police Station, he had to sleep on the floor of the cell. The Claimant made no complaint in his witness statement about the general condition and cleanliness of the cell at the Marabella Police

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<sup>33</sup> Page 68, paragraphs 18-20 attached at Tab 8 of the Agreed Bundle of Documents

Station but only sought to state generally during cross examination when this was brought to his attention that none of the cells were clean. He also stated that due to his arrest he was kept from attending a family wedding but he failed to provide any evidence to substantiate this claim.

72. PC Gervais and Acting Corporal Simon confirmed in their witness statements that the cells at the Marabella Police Station were cleaned every day by MTS staff and that it contained a toilet bowl at the ground level which was capable of being flushed. During cross examination, both PC Gervais and Acting Corporal Simon admitted that there were no beds in the cells at the Marabella Police Station but confirmed during re-examination that they did not see the Claimant sleeping on the floor. PC Gervais went on to state that the cells were fitted with a bench on each side.
73. I accept PC Gervais and Acting Corporal Simon's evidence on the general condition of the cell at the Marabella Police Station since if this was as important a matter for the Claimant he would have ensured that such details was included in his witness statement. In my view his general statement in cross-examination about the general condition of the cell at the Marabella Police Station was an attempt by the Claimant to exaggerate and mislead the Court on this issue.
74. With respect to the Claimant's complaint that at the Marabella Police Station he had to sleep on the floor of the cell, the police have admitted that the Claimant was detained at the Marabella Police Station from the night of the 13<sup>th</sup> February 2013 until he was released on the night of the 15<sup>th</sup> February 2013. Therefore the Claimant would have spent at least 2 nights at the Marabella Police Station. Both Officer Gervais and Acting Corporal Simon admitted that there were no beds in the cell and that it was only fitted with a bench and they both stated that they did not see the Claimant sleeping on the floor. I do not accept the Claimant's assertion that he slept on the floor at the Marabella Police Station since it is reasonable that the Claimant would have slept on the bench instead of the floor. In any event the Claimant did not say that there was a bench in the cell which in my view demonstrated that he sought to exaggerate this aspect of his evidence.



75. The Claimant also stated in his claim and witness statement that he was vegetarian and that upon arrest he had informed the police officers that he was diabetic. His Statement of Case stated that he was only given meagre meals consisting of dry bread and a drink of water only twice daily for the entire period of his detention, and that he lost his appetite and was unable to eat. Notably the Claimant did not repeat this assertion in his witness statement.
76. PC Karamthasingh in his witness statement stated that at the Central Police Station meals are provided to detainees three times a day for breakfast, lunch and dinner and that meals were allocated to the Claimant and when the Claimant indicated that he did not want meat, requests were made for meals without meat for him and that he was eating same. PC Karamthasingh also recalled that on the 10<sup>th</sup> February 2013, lunch allocated to detainees consisted of rice, lentil peas and stewed chicken and that a box of rice and lentil peas was allocated to the Claimant.
77. PC Karamthasingh went on to state that on the evening of the said 10<sup>th</sup> February 2013, he purchased a foot long veggie max from Subway and he offered half of his sandwich and a bottle of water to the Claimant and the latter took it. PC Karamthasingh confirmed during cross examination that the Claimant told him that he was vegetarian but he did not record it and he only told his senior officer. He also confirmed that he offered the Claimant something to eat. The Claimant also admitted during cross examination that one of the police officers at the Central Police Station offered him half of a Subway sandwich which he accepted which based on the evidence the officer who did so was PC Karamthasingh.
78. PC Gervais in his witness statement indicated that the caterer at the Marabella Police Station provided 3 meals a day for breakfast, lunch and dinner and that the caterer keeps a log book recording the meals provided and the prisoners to whom meals are allocated. PC Gervais further confirmed that meals were allocated to the Claimant when he was at the Marabella Police Station<sup>34</sup>. Although he admitted under cross examination that he could not personally recall same, he also indicated that if the Claimant had refused meals, it would

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<sup>34</sup>Tab 13 of the Agreed Bundle of Documents are records evidencing the meals allocated to the Claimant for breakfast, lunch and dinner for the days he was at the Marabella Police Station

have been recorded. Also during the interview of the Claimant by PC Gervais on the 14<sup>th</sup> February 2016<sup>35</sup>, the Claimant was offered something to eat or drink and he indicated that he will eat when the interview was finished. During cross examination the Claimant admitted the police officers at the Marabella Police Station knew him and an officer contacted his daughter to bring him meals that she did so on two occasions. Notably, this was not disclosed in the Claimant's witness statement.

79. I accept that the Claimant was provided with vegetarian meals during the period he was detained by the police save and except for the first day of his detention which was the Sunday 10<sup>th</sup> February 2013 since I do not accept one aspect of PC Karamthasingh's evidence which was that the Claimant was provided with a vegetarian lunch on Sunday 10<sup>th</sup> February 2013. In my view the only reasonable explanation that PC Karamthasingh shared his veggie max sandwich with the Claimant on the Sunday evening was that PC Karamthasingh knew that the Claimant had not eaten lunch since he was not provided a vegetarian lunch and having accompanied the Claimant to the Hospital he knew that it was important for the Claimant to have a meal and that there was no vegetarian meal at Central Police Station for the Claimant. As a vegetarian, PC Karamthasingh would have appreciated the Claimant's concerns and the importance in requesting a vegetarian meal.
80. The Claimant maintained that he informed the officers that he was diabetic upon his arrest. PC Charles also confirmed during cross examination that when the Claimant indicated that he was diabetic, he communicated with someone to come to Central Police Station to drop off his medication.
81. According to PC Karamthasingh's witness statement he was one of the officers who accompanied the Claimant to the Hospital and he believed that the Claimant was given insulin. He also stated that he recalled that when the Claimant left the Hospital he was given a bag with medication with three items resembling an injection or syringe and two vials of what appeared to be insulin. Before leaving the Central Police Station PC Karamthasingh said he informed the officer in charge of the next shift that the medication

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<sup>35</sup> Tab 3 of the Agreed Bundle of Documents

was for the Claimant and he needed to be given it. In cross examination he admitted that he did not make a record of the information he passed on to the officer in charge. Therefore even if the police officers at Central Police Station was unaware that the Claimant was diabetic upon his arrest , at least after the Claimant's return from the Hospital on the evening of Sunday 10<sup>th</sup> February, PC Karamthasingh was aware of the Claimant's special needs as a diabetic and the information was passed on to another officer.

82. However there was no evidence from the Claimant or PC Karamthasingh about what became of the bag of medication from the Hospital. While the Defendant has presented station diary extracts and records of the particulars of the Claimant's arrest, his movement to and from the hospital and from Central Police Station to the Marabella Police Station and the provision of meals to the Claimant there is a notable absence of any record at the Central Police Station that the Claimant was diabetic or that there was medication for the Claimant to take so that the other officers would have been aware of the Claimant's special needs.
83. In my opinion even in the absence of any evidence on the diabetes medication from the Claimant and the police officers, it is reasonable to conclude that the Claimant was permitted to have access to and use the medication he was given at the Hospital to treat with his diabetes since he did not fall ill again during his detention.
84. PC Moses denied that the Claimant told him that he was vegetarian and diabetic. He said if he was told this he would have ensured that the Claimant was provided with a meal and medication. In my opinion if there was a notation of the Claimant's special needs as a diabetic at the Central Police Station PC Moses would have ensured that the Claimant would have been provided with a meal before taking him to the Marabella Police Station.
85. At the Marabella Police Station the treatment of the Claimant's diabetic needs were different. The Claimant admitted under cross examination the officers at the Marabella Police Station knew him and that one of them contacted his family to bring his medication for him and that he was allowed to take it. Acting Corporal Simon confirmed that a relative of the Claimant Jahdanna Fraser attended at the Marabella Police Station around 1pm on



the said 14<sup>th</sup> February 2013 to bring medication for the Claimant which he took.<sup>36</sup>. Acting Corporal Simon confirmed during cross examination that a relative of the Claimant came into the police station to bring his medication and he further admitted that he assisted in securing the medication for the Claimant by storing it in the refrigerator.

86. I considered the absence of any notation or record of the Claimant's diabetic needs to be an important omission. However, when PC Charles, PC Karamathasingh and Acting Corporal Simon became aware that the Claimant was diabetic they took steps to ensure that they contacted his family to bring his medication for him and they permitted him to take his medication which demonstrated that despite the absence of a record they treated with his special needs as a diabetic.

#### Injury to reputation

87. The Claimant stated in his witness statement that he has always been known to be of good character and reputation in his community and that he almost lost his job when people from his work place found out about his arrest. He further claimed that people in the community lost their trust in him. The Claimant did not bring any independent witnesses or other evidence in support of his assertion and I was therefore hesitant to accept it.
88. The Claimant also made a claim in his Statement of Case that he ought to be awarded aggravated damages. The Defendant submitted that the police officers at both the Central and Marabella Police Station were very cooperative with the Claimant by informing his family of his whereabouts, ensuring that he obtained the medical treatment he required, ensuring that he received his medication, by making arrangements for vegetarian meals to be provided to him, offering meals separate from what was available from the police station and allowing his family to bring meals for him. Further, the Claimant has failed to satisfy the court that the conditions of the cells at the police station were in the condition as asserted by him.

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<sup>36</sup> This is confirmed by Tab 4 of the Agreed Bundle of Documents which is the station diary extract of the Marabella Police Station page 193, paragraphs 18-19 dated 14<sup>th</sup> February 2013

89. In assessing the measure of damages I have considered that the Claimant was wrongfully detained for 5 days. In my opinion the aggravating factors of his unlawful detention were: (a) he was not provided with a vegetarian lunch on the first day of his detention; (b) he was hospitalised for a period on the first day of his detention since the police could have done more than just contacting his relative to bring his diabetes medication; (c) even after returning from the Hospital the police did not record that the Claimant was diabetic which accounts for the failure by PC Moses to ensure that the Claimant was provided with a meal before he was transported from the Central Police Station to the Marabella Police Station on the evening of the 13<sup>th</sup> February 2013; and (d) the cell which the Claimant was detained in while at the Central Police Station was not kept in a sanitary condition. I therefore award the Claimant damages in the sum of \$ 100,000.00.
90. I considered the following authorities to arrive at the aforesaid award.
91. In **Stephen Seemungal v AG and Commissioner of Prisons**<sup>37</sup> the claimant was awarded \$100,000.00 general damages after he brought a claim for wrongful imprisonment after being imprisoned for a period of *12 days*. He was detained at the Sangre Grande Police Station, the Golden Grove Prison and the State Prison in Port of Spain. At Sangre Grande, the smell from the toilet in the cell was unbearable. The prison truck had a high smell of urine and the claimant had difficulty breathing. He was also tossed against the sides of the prison truck from time to time as it moved. At Golden Grove, the cell had no bed or toilet facilities. He was placed in the convicted section when taken to the State Prison. He had to sleep on the ground which was dirty and there were rodents which bit him at night in the cell. He got to bathe each day but this was in the open in the yard in the view of other inmates who pointed, made gestures and laughed at him. Food was served on dirty plates.
92. In the instant case, the Claimant the period of detention was one third of the period in **Stephen Seemungal**. He was released after investigations were conducted and it was determined that there was not enough evidence to charge him for an offence. The conditions he complained of were not as bad as in **Stephen Seemungal**.

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<sup>37</sup> CV 2009-00894 delivered on the 18<sup>th</sup> May 2010

93. In **Indra Samuel v PC Ali**<sup>38</sup> Donaldson-Honeywell J gave an award of \$45,000.00 for false imprisonment for *3 days* detention. The Court found that there was no justification for the claimant's custody for 3 days without a charge being made against her and there was no evidence of what matters, if any, were taken into account in determining how long the claimant was kept in custody. In making the award for damages, the court took into account the conditions the claimant endured in the cells. Although the court found that there was no aggressive treatment of the claimant by the defendant, in light of the inhumane conditions she experienced during her detention, the court was of the view that an award of aggravated damages was justified, the conditions in the cell as described by the claimant were sufficient to be considered oppressive.
94. In **Peter Griffith v AG**<sup>39</sup> Boodoosingh J gave an award of \$50,000.00 for *2 and a half days* detention. The claimants therein were kept in filthy cells. In making the award for damages, the court took into account the fact that the claimants gave voluntary statements, they were cooperative and there was nothing to suggest that they could not be found if released. Also the claimants were not afforded an opportunity to have counsel since arrangements were not made by the police nor were they cautioned.
95. In **Emraan Ali v AG**<sup>40</sup> Rajkumar J (as he then was) made an award of \$45,000.00 for a *24 hour* detention period. In this case the Court also found that the Claimant was beaten by the police officers.

#### Exemplary Damages

96. The primary object of an award of damages is to compensate the Claimant for the harm done to him and a possible secondary object is to punish the defendant for his conduct in inflicting that harm. "<sup>41</sup> **Rookes v Barnard**<sup>42</sup> established that exemplary damages can be awarded in 3 types of cases namely:

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<sup>38</sup> CV 2014-00608 delivered on the 23<sup>rd</sup> February 2016

<sup>39</sup> CV 2014-02841 delivered on the 20<sup>th</sup> July 2016

<sup>40</sup> CV 2012-02695 delivered 20<sup>th</sup> March 2014

<sup>41</sup> Mc Gregor on Damages 18<sup>th</sup> Edition at paragraph 11-001

<sup>42</sup> [1964] AC 1129



- a. Cases of oppressive, arbitrary or unconstitutional action by servants of the Government;
- b. Cases where the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff; and
- c. Cases in which exemplary damages are expressly authorized.

97. In **Rookes v Barnard** Lord Devlin stated:

*"In a case in which exemplary damages are appropriate, a jury should be directed that if, but only if, the sum which they have in mind to award as compensation (which may of course be a sum aggravated by the way in which the defendant has behaved to the plaintiff) is inadequate to punish him for his outrageous conduct, to mark their disapproval of such conduct and to deter him from repeating it, then they can award some larger sum."*

98. The Claimant claimed in his Statement of Case, that he ought to be awarded exemplary damages on the basis that he was denied his constitutional right to be (a) informed promptly and with sufficient particularity of reasons for his arrest and/or detention,; (b) the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with such person and; (c) his right to communicate with a friend or relative via telephone. I have already found that the Claimant was informed of the reason for his arrest when he was arrested.

99. Further, while the Claimant was not able to directly contact his relative he admitted at paragraph 8 of his witness statement that he gave one of the police officers at the Central Police Station his daughter's number and that he contacted her and told her where he was. During cross examination, the Claimant sought to paint a different picture by stating that even his children did not know where he was. However, immediately thereafter during his cross examination, the Claimant admitted that he gave his daughter's telephone number to one of the officers and that he contacted her. PC Charles also confirmed during cross

examination that when the Claimant indicated that he was diabetic, he communicated with someone to come to Central Police Station to drop off his medication.

100. The Claimant also admitted at paragraph 14 of his witness statement that he asked one of the police officers at the Marabella Police Station to contact his daughter and let her know that he was no longer at Central Police Station and that he was at Marabella Police Station. The Claimant confirmed under cross examination that the said officers contacted his family which was consistent with the witness statement of PC Moses and his evidence under cross examination in which PC Moses indicated that he contacted the Claimant's family and informed them that he was now at the Marabella Police Station. PC Gervais also confirmed in his witness statement that on the 14<sup>th</sup> February 2013, he contacted one of the relatives of the Claimant to bring medication for him. This was reiterated during his cross examination and he confirmed that the said call would have been made during the interview with the Claimant. Acting Corporal Simon confirmed that a relative of the Claimant Jahdanna Fraser attended at the Marabella Police Station around 1pm on the said 14<sup>th</sup> February 2013 to bring medication for the Claimant which he took. The Claimant under cross examination admitted that the officers contacted his family to bring his medication for him and that he was allowed to take it.
101. The purpose of the right to communicate with a friend or relative via telephone is to ensure that the arrested person's loved ones are aware of his detention. In the instant case the Claimant was not deprived of this right since he admitted that his daughter was informed of his whereabouts on two occasions and she visited him both at the Central Police Station and at the Marabella Police Station.
102. The Claimant also stated that his daughter was only permitted to see him when she came with an attorney at law and it was only at that time he was given some rights.
103. PC Charles stated in his witness statement that upon arresting the Claimant on the 10<sup>th</sup> February 2013, he was cautioned and informed of his rights. During cross examination, PC Charles confirmed that the Claimant was told of his rights and privileges in accordance



with the Judges' Rules. He further specified that he was told of his right to communicate with a relative, friend or Attorney.

104. PC Moses confirmed in his witness statement that at the Marabella Police Station on the 13<sup>th</sup> February 2013, the Claimant was cautioned and informed of his rights and privileges including his right to retain and instruct without delay a legal adviser. During cross examination, PC Moses confirmed that he cautioned the Claimant in accordance with the Judges' Rules and specified that he issued the caution under Rule II and not Rule III.
105. During the interview of the Claimant by PC Gervais on the 14<sup>th</sup> February 2013, he was informed at the start of the interview of his right to legal representation and his right to have a family member present which he refused and indicated that he had nothing to hide. The Claimant was further cautioned and informed of his right to legal representation later in the interview<sup>43</sup>. During cross examination, PC Gervais confirmed that he cautioned the Claimant on several occasions including during the interview under Rule II of the Judges' Rules and never under Rule III.
106. During the interview of the Claimant on the 14<sup>th</sup> February 2013, when asked by PC Gervais if he was comfortable, he responded that he was comfortable. The certificate of Justice of the Peace Chandarjeet<sup>44</sup> stated that the Claimant indicated to him that he was relaxed and comfortable when he gave the statement and that the police were treating him good. He also stated that no force, threats, promises, violence or "mamaguy" was used on him and that he gave the statement voluntarily. The Claimant also confirmed that the statement was true and correct and that there was no need for any changes.
107. I accept the police officers evidence that they informed the Claimant of his rights to retain an attorney at law of his choice and to communicate with his attorney at law. I have also concluded that the Claimant was not deprived of his right to communicate with his attorney at law since by his own admission in cross examination it was after his daughter came with

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<sup>43</sup> This is evidenced in the record of the interview of the Claimant dated 14<sup>th</sup> February 2013 and attached at Tab 3 of the Agreed Bundle of Documents.

<sup>44</sup> Attached to the authenticated interview of the Claimant dated the 14<sup>th</sup> February 2013 and attached as Tab 3 of the Agreed Bundle of Documents



an attorney at law at the Central Police Station "*he got some rights*". In my view, this is an admission that he was not prevented from communicating with his attorney at the Central Police Station. Further, the Claimant did not deny that he was permitted to retain an attorney at law while he was at the Marabella Police Station.

108. In my opinion, it cannot be said that the police officers involved in this matter used any oppressive, arbitrary or unconstitutional action. Therefore I do not make an award for exemplary damages.

### ORDER

109. The Claimant was not wrongfully arrested.
110. The Claimant was wrongfully imprisoned for 5 days.
111. The Defendant to pay the Claimant damages assessed in the sum of \$ 100,000.00 which includes aggravated damages.
112. Interest at the rate of 2.5% per annum<sup>45</sup>.
113. The Defendant to pay the Claimant's costs in the sum of \$24,000.00.

The Honourable Madam Justice Margaret Mohammed  
Supreme Court of Trinidad & Tobago

**Margaret Y Mohammed**  
Judge

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<sup>45</sup> See *The Attorney General of Trinidad and Tobago v Fitzroy Brown & Ors.*<sup>45</sup>, it was ordered that the rate of interest on general damages should be 2.5%. It was further stated that any reference to the prime lending rate ought to be considered in commercial matters, but for damages matters like personal injury cases, the short term investment rate is more appropriate.

