

IN THE SUPREME COURT OF BELIZE, A.D. 2013

CLAIM NO: 611 of 2013

BETWEEN

THOMAS GREENWOOD JR.

CLAIMANT

AND

**ATTORNEY GENERAL
COMMISSIONER OF POLICE
CPL. 391 BRADFORD BERRY
PC. 884 DELROY SANKEY**

**1st DEFENDANT
2nd DEFENDANT
3rd DEFENDANT
4th DEFENDANT**

Keywords: Public Order; Police Powers of Arrest and Detention; Tort of False Imprisonment; Torts of Assault and Battery; Tort of Malicious Prosecution.

Damages; Aggravated and Exemplary Damages.

Before the Honourable Mr. Justice Courtney A Abel

Hearing Dates: 4th November 2014
5th November 2014.

Appearances:

Mr. Mark E. Williams for the Claimant

Ms. Leonia Duncan and with her Ms. Samantha Matute for the Defendants

WRITTEN JUDGMENT
(Of an Oral Judgment Delivered on the 5th day of November 2014)

Introduction

- [1] The Claimant is a tour guide operator, and together with his father, carries on business in Belize city, trading as “Major Tom Private Cave Tubing”
- [2] The 3rd and 4th Defendants were police corporal and constable respectively, under the command of the 2nd Defendant and attached to the tourism Police Unit, Belize City.
- [3] This claim was brought by the Claimant against the Defendants (principally the 3rd and 4th Defendants) in relation to 2 possible incidents on the 14th November 2012 between the hours of 8.00 am and 9.30 am which took place at the Tourist Village, Belize City and in the vicinity of the Marine Parade, Belize, Belize.
- [4] The claim principally involves the Claimant and the 3rd and 4th Defendants as the principle actors or protagonists in the 2nd incident which is the subject of the claim.
- [5] By the present claim, the Claimant claims damages (included aggravated and exemplary damages) for an alleged unlawfully arrest, assault and battery, false imprisonment, and maliciously prosecution of the Claimant.
- [6] The Defendants deny the Claim and as a result the issues of liability and quantum have to be determined by this court.
- [7] The central issue for determination is that of liability and if proved the issue of quantum may be summarily determined.
- [8] On the 5th November 2014, immediately following the hearing of the case, an oral decision was delivered by me and I promised to put in writing a fuller version of the reasons for my decision which I now do in this judgment.

Background

- [9] The background facts of the claim can be summarized briefly and if disputed in any way may be considered summary findings of facts by me.
- [10] Between the hours of 8.00 and 8.30 a.m. on the 14th November, 2012 the Claimant, who is of good character, was travelling as a front seat passenger in a

van driven by the witness, a taxi operator, named Blas Guerra, in the areas of the Tourist Village and the Marine Parade, Belize City, Belize.

- [11] The Claimant, having collected his guest from Terminal 2 at the Tourist Village, Belize City was observed by the 3rd Defendant, a police Corporal at the time dressed in an official police uniform that consisted of a white shirt bearing tourism police to the back in block letters and the police badge on the left badge. I am satisfied that the 3rd Defendant did indeed approach the Claimant.
- [12] The 3rd Defendant alleges, which I accept, that he had an interaction with the Claimant after observing that the Claimant did not have a tour guide licence displayed on his person, in circumstances where apparently it was ‘protocol for a tour guide license to be displayed whilst in the tourism village’; and the Claimant was rude and uncooperative to the 3rd Defendant and indeed did use offensive and obscene language when told by the Corporal that he could not move with the tourist until he produced the tour guide licence. The Claimant instructed the driver to drive off - which he did.
- [13] On an earlier date and occasion there may have been a prior incident involving the Claimant’s father and the Corporal, which the Claimant in his evidence alluded to, which may have created some tension between the Corporal and the Claimant, but I am not satisfied on the evidence that the 3rd Defendant was indeed motivated on the 14th November, 2012, by any such prior incident involving the Claimant’s father; and, in any event, I consider that the Claimant was totally unjustified, whether by such earlier incident or otherwise, in his behavior towards this senior police officer during this 1st interaction on the 14th November 2012.
- [14] Anyway on the 14th November 2012 in preparation for a guided tour to the San Ignacio District, the Claimant and his passengers were, contrary to the instructions of the Corporal, then driven to the area of checkpoint at the Marine Parade (where tour guides are checked and verified by statisticians before leaving the Tourist Village) and the Claimant alighted the said van when shortly afterwards, he was suddenly approached by the 3rd and 4th Defendants who are alleged to have harassed and arrested the Claimant (without warning or caution)

on charges of harm, insulting a Police Officer, resisting lawful arrest and aggravated assault.

- [15] It is undoubtedly the case that the 3rd and 4th Defendants did arrest and detain the Claimant, though this was not admitted by the Defendants, during which it is alleged, the 3rd Defendant alluded to and made derogatory remarks concerning the father of the Claimant, thereby and on this basis suggesting, which I did not find, that the 3rd Defendant was actuated by express malice.
- [16] Subsequently, the Claimant made several appearances at the Magistrates Court No. 6, Belize City Belize. a trial was conducted on the 19th March 2013, at which the 3rd and 4th Defendants gave evidence, and without the Claimant being called upon to testify, the proceedings were terminated in the Claimant's favour and he was acquitted of all charges brought against him.
- [17] On the 11th July 2013 Notice of Intended Action, pursuant to Section 3 of the Public Authorities Protection Act (Chapter 31) and Section 21 of the Police Act (Chapter 138) of the Laws of Belize was duly served on the 1st and 2nd Defendants.
- [18] This is the action to which the said Notice of Intended Action relates.

The Court Proceedings

- [19] On the 11th November 2013 the Claimant filed the Claim form herein together with a Statement of Claim in which the Claimant sought the following reliefs:
- 1) Damages, including aggravated and exemplary damages, for assault and battery;
 - 2) Damages, including aggravated and exemplary damages, for false imprisonment;
 - 3) Damages, including aggravated and exemplary damages, for malicious prosecution;
 - 4) Interest;
 - 5) Costs, and
 - 6) Such further or other relief as this Honourable Court deems just.
- [20] The Defendants filed their Defence on the 6th December 2013 in which they contested the claim and sought dismissal of it.

- [21] A case management conference was held on the 17th February 2014 at which directions for trial was given and a pre-trial review fixed for the 7th April 2014.
- [22] Pursuant to directions given, disclosure took place between the parties on the 11th March 2014 and the parties filed their witness statements.
- [23] On the 7th April there was a pre-trial review at which certain directions were given and the pre-trial review was adjourned to the 16th June 2014.
- [24] At adjourned pre-trial review final directions were given for trial which was fixed for the 4th and 5th November 2014.
- [25] The parties more or less complied with the directions given for trial including by:
- 1) The Claimant filing on the 19th September 2014 a Skeleton Arguments
 - 2) The Defendant filing on the 24th September 2014 Skeleton Submissions.
 - 3) The Claimant filing a Trial Bundle.
- [26] I am very grateful for the general compliance by Counsel with the directions given by me which has made it possible to deal with this case reasonably expeditiously. In particular, I am especially indebted to the fully researched and careful and comprehensive written legal submissions by Counsel for the Defendants. Emulation of the conduct of the Counsel in this case would be very beneficial to the efficient disposal of cases before the courts.
- [27] At the trial the Claimant called 4 witnesses (the Claimant, Ms. Carol McDonald, Mr. Blas Gueera and the expert witness Dr. Daniel Godinez) and the Defendants called 3 witnesses (the 3rd Defendant, the 4th Defendant and Mr. Ruthford Leslie).

The Issues

- [28] There are a large number of issues which arise on the pleadings and on the evidence, principally of fact but also including issues of fact and law.
- [29] The issues of fact included the following:
- 1) What if anything took place in the Tourist Village/ between the Claimant and the 3rd Defendant?
 - 2) Generally what took place near the statistic booth in the Marine Parade area?
 - 3) As between the Claimant and the 3rd Defendant who assaulted whom first?

4) Did the Claimant as a result of any unlawful conduct by the 3rd and 4th Defendant's suffer injury and pain and sustain any loss and damage?

[30] As is usual in incidents of the present kind, which are public order occurrences involving the police and a member of the public, there is much conflicting evidence relating to the events with which the matter is concerned, with each side alleging a different version of events as they relate to the crucial allegations of assault and battery and with self defence being the response of the Defendants. Also the resolution of the present questions have to be determined by answering the question who the court should believe, which, in civil cases such as the present, is on the balance of probabilities: the Claimant's versions of events, as testified by his witnesses, or, the Defendant's version of events, as testified by their witnesses.

[31] Because of the nature of the case I have decided to set out below more fully than is usual in a judgment the evidence in the case.

[32] The issues of fact and law to be resolved include the following:

- 1) Was the arrest of the Claimant lawful and/or justified?
- 2) Did the 3rd Defendant have reasonable suspicion to arrest the Claimant without warrant?
- 3) Was the 3rd Defendant by assaulting the Claimant reasonably acting in defence of his own person?
- 4) Was the assault of the Claimant by the 3rd Defendant reasonable and proportionate or was it excessive?
- 5) As expressed by counsel for the Defendants was there a lawful basis for applying physical force to the Claimant?
- 6) Did the 3rd Defendant, assisted by the 4th Defendant on the 14th November 2012 unlawfully manhandle, assault, beat and humiliate the Claimant?
- 7) Was the Claimant's arrest and detention lawful or was it unlawful and amounted to the tort of unlawful imprisonment?
- 8) If the arrest was unlawful was the Claimant by such unlawful arrest, falsely imprisoned by the 3rd and 4th Defendants for thirty one (31) hours

until the Claimant's release on bail by the Magistrates Court at 5.00 p.m. on the 15th November 2012?

9) Were the charges brought by the 3rd Defendant against the Claimant maliciously and without reasonable or probable cause?

10) Is the Claimant entitled to aggravated and/or exemplary damages, which he claims for the unlawful arrest, false imprisonment, assault and battery and the malicious prosecution?

11) If the Claimant is entitled to damages what is the quantum of damages?

The factual and legal contentions of the parties

[33] The Claimant alleges, which is denied, that during the course of an unjustified arrest, at about 9.30 a.m. on the 14th November 2012, the Claimant was manhandled, assaulted, beaten and humiliated by the 3rd Defendant with the aid and assistance of the 4th Defendant, in full view of his guests, who were utterly shocked and vowed never to return to Belize.

[34] Critically the Claimant alleges that the 3rd Defendant continued hitting the Claimant after he had been handcuffed.

[35] The Claimant also alleges that as a result of the 3rd and 4th Defendant's conduct he suffered injury and sustained loss and damage.

[36] The Claimant also alleges, which is denied, that:

1) By his [unlawful] arrest he was falsely imprisoned by the 3rd and 4th Defendants for thirty one (31) hours until his (the Claimant's) release on bail by the Magistrates Court at 5.00 p.m. on the 15th November 2012.

2) The charges were brought by the 3rd Defendant maliciously and without reasonable or probable cause.

3) By reason of the alleged conduct of the 3rd and 4th Defendants he (the Claimant) has suffered pain and injury and has sustained loss and damage.

4) He (the Claimant) is entitled to aggravated and exemplary damages, which he claims, for the unlawful arrest, false imprisonment, assault and battery and the malicious prosecution.

[37] The Defendants on the other hand allege that at about 8.30 am. the 3rd Defendant was working at the Tourist Village when he stopped a red minivan carrying the

Claimant who was in the front passenger seat, and informed him that he was required to display his tour guide license when the Claimant uttered obscene language and instructed the driver to drive off which he did.

[38] The Defendants also allege that because of the Claimant's language and conduct the 2nd Defendant radioed another police officer and the 4th Defendant for assistance to stop the minivan at the check point and that this was done. That the 3rd Defendant stopped the minivan and informed the Claimant that he would be getting a ticket violation for "failure to Display Tour Guide License" to which the Claimant uttered insulting words to the 3rd Defendant at which point the 3rd Defendant attempted to arrest the Claimant which was resisted, as result of which conduct the Claimant sustained abrasions to his right arm and was finally subdued with the assistance of the 4th Defendant.

[39] The Defendants also allege that the Claimant had insulted a police officer, resisted lawful arrest, assaulted and caused harm to the 3rd Defendant which resulted in the Claimant being arrested and charged as a result of his behavior and obscene language.

[40] In my view a determination of the questions of fact and law will be most easily resolved by the findings of fact in relation to the factual questions.

[41] More specifically in my view the central factual question for determination by this court is the question whether the 3rd Defendant continued hitting the Claimant after he had been handcuffed? Clearly for the 3rd Defendant to continue hitting the Claimant in his face while he was restrained would be unjustified and unlawful.

[42] Also In my view a determination of this latter issue will provide a litmus test to the question of the credibility of the witnesses.

The Evidence

Thomas Greenwood

[43] The Claimant did not give evidence about the 1st encounter between the Claimant and the 3rd Defendant in the Tourist Village.

[44] THOMAS GREENWOOD testified that:

- 1) On the 14th November, 2012 between the hours of 8:30 a.m. – 9:00 a.m. he had picked up 6 guests, who had come off the cruise ship, from the Tourism Village, who had previously been on tour with him on about six occasions, and that as they were approaching the lighthouse in front of the “Chateau Caribe”, he realized that he did not have his tour guide licence around his neck, he therefore asked the driver to stop so that he could get the licence from the back of the vehicle. That having stopped at the side of the road, he got out of the vehicle and while he was getting the licence, he saw the 3rd Defendant walking in front of the said Chateau Caribe, and he got the licence and went back into the vehicle.
- 2) On approaching the statistical booth, they parked the vehicle and the 4th Defendant asked to see his licence which he showed to him and he did not make any fuss. Also that he showed his licence to the person at the desk.
- 3) He (the 4th Defendant) then told him that the 3rd Defendant wanted to see him, as a result of which he came out of the vehicle.
- 4) The 3rd Defendant then walked from behind a bus and said to one Leslie words to the effect “*Give dat man wa ticket. I nuh wa hear nutten*”.
- 5) He then looked at Leslie and at the 3rd Defendant in shock as the 3rd Defendant appeared to be in a very hostile mood.
- 6) He put his hands in the air and said “*frig man just give me my ticket. I have a job to go and do*” and then he proceeded in the direction of the sea wall whereupon the 3rd Defendant grabbed him from behind by the shoulder and neck and squeezed and he felt a sharp pain to which pain he reacted; and the 3rd Defendant exclaimed “*Detained!*”
- 7) He then swung around both in shock and surprise, and the 3rd Defendant again grabbed him by the shoulder and neck, this time from in front, and squeezed him. That the strap for his sunshades broke in the process as the 3rd Defendant continued squeezing him hard in order to hurt him and as a result, the Claimant grabbed his hand and said “*Officer you are hurting me*”, as he pushed away his hand.

- 8) The 3rd Defendant then hit him on the left temple, causing his sunshades to be knocked sideways, which the Claimant then adjusted on his face and said “*Officer, you just assaulted me*”, in response to which the 3rd Defendant hit him again two times to his right temple and left temple again, causing his shades to fall to the ground in pieces.
- 9) He then said to the 3rd Defendant “*Not even my father hits me and you are assaulting me*” to which the 3rd Defendant replied “Shut up – or else I will do it again” and in the same breath, and with his hands down he leaned forward and said “*Go deh strong*” whereupon he again hit him about three times to the same area of his temple.
- 10) All this took place in full view of his guests, Gina and company, the women (employees) at the statistical booth and other police officers.
- 11) He could only look at the officers in complete shock and disbelief. Then the 4th Defendant put him in handcuffs by which time he was very upset and protested in frustration, and that while he was restrained in handcuffs the 3rd Defendant continued hitting him in the face and that he received no less than about twelve or thirteen punches to his head.
- 12) The 4th Defendant then pulled him to the center of the nearby Memorial Park and detained him in that area and that the officer Leslie, who was peeved, placed the ticket for violation in his (the Claimant’s back pocket, after which he (the Claimant) sat and tried to calm down
- 13) Meanwhile his guests walked out of the van and the 3rd Defendant told them that their tour was cancelled because their guide would be going to jail and wanted them to go to the tourist ship or with another tour guide and that the guests were in complete shock with the daughter of his guests not believing the entire incident and saying she never wants to come here again.
- 14) Eventually, a patrol vehicle came and took him away in the pan and then his mother also pulled up and he pointed out the 3rd Defendant to her, and was furious.

- 15) While they were travelling in the pan of the patrol vehicle the Third Defendant threateningly remarked “*Uno Greenwood think uno sick..... you wa see*”.
- 16) He got to the police station at about 10:15 a.m. on the said 14th November, 2012, and was detained overnight. That when the 3rd Defendant had finished processing him, he said again menacingly “*Ah wa kill you*”.
- 17) He was taken to Magistrates’ Court No. 6 on the following day when he was released on bail and that he went straightaway (on the 15th November) to see the Doctor as he was in severe pain (the relevant Medico Legal Form was produced). The medical legal form gave the particulars of injuries observed by Police as: “*Bruises on the left and right eyes, behind earlobe, temples, he complains of pain*”. The particulars of injuries found by the medical officer was as follows: “*Mild inflammation to right side of forehead, pain to the left shoulder*”
- 18) He was charged with the offences of Harm, Insulting a Police Officer, Resisting Arrest and Aggravated Assault. And that after several appearances at the Magistrates’ Court No. 6, the matter was heard by Magistrate Lucas on the 19th March, 2013, when he dismissed all of the said charges at the end of the case for the prosecution¹ and that since the occurrence of this incident on the 14th November, 2012, he has continually been suffering from acute headaches and pains especially on the right side of his head and that he has also been experiencing blurred vision.
- 19) As a result he has had to consult with various doctors, having attended at the K.H.M.H, the B.C.V.I and the Belize Medical Associates Ltd., thereby incurring out-of-pocket expenses for professional treatment, medication and services in the sum of BZ\$².
- 20) During the course of the assault on his person the sunshades that he was wearing was completely destroyed, having been smashed to pieces by the

¹ A copy of the relevant certificate issued by the Magistrates’ Court being produced and exhibited.

² And produced a bundle of invoices and receipts evidencing such expenditure valued at *).

deliberate act of the 3rd Defendant and produced a copy of the receipt for the said item valued at BZ\$480.00.

21) He has had to consult an Attorney-at-Law and incurred certain legal expenses and produced copies of receipts valued at BZ\$1500.00.

22) He has so far undergone CT scans and ultrasound procedures for diagnosis of his current medical condition and produced copies of the findings valued at \$390.00.

23) He was innocently manhandled and taken before the Court, which has caused him much anxiety and distress, even to the present time.

24) On account of medical appointments he has been forced to cancel tours with some of his guests, in addition to which he lost the benefit of the tour which had been arranged for the 14th November, 2012 and produced documentation evidencing this fact which was valued at BZ\$2736.00.

25) Notwithstanding the medical treatment received he still suffers from headaches and blurring of vision, a feature which may very well plague him for the remainder of his natural life.

26) He has since consulted Doctor Daniel Godinez, who has examined him and provided him with a medical report on his condition.

27) He was aware of a prior incident between officer Berry and his father which was an exchange of words which he witnessed but that he did not have an encounter with the 3rd Defendant.

[45] Under Cross-examination the Claimant accepted that he was upset that he was getting a violation ticket and that the 3rd Defendant was within his rights to give him a violation ticket. The Claimant also accepted that he said to SP Leslie “*Shit man just give me my ticket*” and after he was hit by the 3rd Defendant he said that he hit like a bitch.

Carol McDonald

[46] CAROL MCDONALD testified that:

1) She was employed with the Belize Tourist Board as a statistician for the past nine years which job involves checking with the tour guides to get the numbers for every tour that leaves the Tourist Village. She deals with all

ships that come in and taxis and buses going out with tour guides on tours.

- 2) On the 14th November, 2012 at about 9:00 a.m. she was on the job at their checkpoint located at the Marine Parade along with three co-workers, when the tours were just about getting ready to leave, when she saw the Claimant, whom she had known as a tour guide for some time, pulled up in a red mini-van driven by one Blas Guerra.
- 3) The Claimant approached the table at the checkpoint for verification purposes, said good morning and provided the necessary information and particulars and while the Claimant was in the process of producing his tour guide licence she was about to go and deal with the buses, so she left him (the Claimant) with another female co-worker and went ahead to the next bus, but before the driver could get to her, he drew her attention to a policeman beating up on the Claimant while he was in handcuffs.
- 4) She turned around to see what was happening and noticed that the 4th Defendant had the Claimant handcuffed and was holding him by the shoulder while the 3rd Defendant was slapping him mercilessly on both sides of his face.
- 5) She then called out to the 3rd Defendant (whom she had known from since school days) and said to him – “*why you de beat de boy like that?*” but he did not answer her, but instead continued slapping up the Claimant while the 4th Defendant simply stood by looking on.
- 6) The 3rd and 4th Defendants took the Claimant over to the area of the stage at the Memorial Park. That a vehicle pulled up and a lady came out and asked me “*Whe deh di beat up mi son for?*” and then is when she told the officers that their action was uncalled for, and suggested that they never had to that.
- 7) At the same time she heard when the 3rd Defendant remarked to her “*He feel like I de play wid he.....I tell him to go put on his tour guide licence round he neck*”, while in the meanwhile the Claimant was merely asking

why they were blocking him and was protesting that he had done nothing wrong.

- 8) The officers proceeded to charge the Claimant and took him away in a vehicle and that the Claimant came back the next evening to apologize for what had happened.
- 9) While the incident was unfolding she noticed that there were guests/tourists in the red mini-van and in the next bus behind videotaping the entire incident.
- 10) She was aware and knew for a fact that shortly afterwards the 3rd Defendant was involved in another incident of a similar nature with a lady in the area of the Tourist Village.

[47] Under cross-examination the witness testified that the Claimant actually produced his tour guide licence at the checkpoint which was turned around his hand. She also said she did not see the Claimant hit Corporal Berry and she did not hear anything because at the time a bus was coming with passengers and accepted that she did not hear and that probably a lot could have been happening, but confirmed that Corporal Berry was slapping the Claimant and she saw what happened that day. She denied that she was intentionally saying things to assist the Claimant. She also confirmed that she had not seen the Corporal Berry and the Claimant in any dispute before the incident.

Blas Guerra

[48] BLAS GUERRA testified that:

- 1) He is a taxi operator by trade and has been working at the Tourist Village for the past eleven years, three of which have been with the Claimant's business.
- 2) On the 14th November, 2012 he was driving his motor vehicle C-7188, a Ford Winstar, in the area of Marine Parade and accompanying him in the vehicle was the Claimant along with 5 guests (3 adults and 2 kids).
- 3) On the way he saw Cpl. Berry walking towards the checkpoint and that the Claimant told him his Tour Guide licence was in his back pack, so they stopped before reaching the checkpoint in order to get the licence from the

back of his vehicle then they continued on their way to the checkpoint. That the Claimant came out of the vehicle and showed his Tour Guide licence to the Tourism Clerks, and, meanwhile, he was waiting for the Claimant to return to the vehicle when he looked in the rearview mirror and saw Cpl. Berry hitting the Claimant, mainly punching him in the area of his face and head.

- 4) In the process, he saw when the Claimant's sunshades fell to the ground and the said Cpl. Berry took it up, broke it then stamped it on the ground with his foot and then P.C Sankey went over and handcuffed the Claimant.
- 5) He heard when words were exchanged between the Claimant and Cpl. Berry, and then he saw Cpl. Berry start to punch the Claimant again to his face and head while the Claimant was in handcuffs.
- 6) The Claimant did not raise his hands to fight back and the guests had become frightened and said they did not want to do the tour again, but they wanted to return to the Tourist Village.
- 7) P.C Sankey had then handcuffed the Claimant behind his back while Cpl. Berry was punching him from in front and that the entire process lasted about twenty (20) minutes.
- 8) He then left the area with the Claimant being in the custody of the police at Memorial Park and went to take the guests back to the Tourist Village.

[49] Under cross-examination Mr. Guerra testified to having worked for 5 years for the Claimant and is still working for him, but denied that he was trying to help his bosses claim. He accepted that when he looked cack precious seconds had gone by.

Dr. Daniel Godinez

[50] Dr. DANIEL GODINEZ testified that:

- 1) he is a medical practitioner with offices situate at Corner Chancellor Avenue & Blue Marlin Blvd., West Landivar, Belize City, Belize and has been in practice for twenty-four (24) years, specializing in the field of Internal Medicine.

- 2) he had occasion to examine the Claimant at his clinic sometime in March, 2014 when he complained of severe headaches and blurred vision, allegedly caused by blows which he received to the face and head on or about the 14th November, 2012. That after a thorough assessment of the Claimant as aforesaid, he provided him with a Medical Report, a copy of which he produced.

[51] The witness produced a medical report in which the Claimant had reported to being hit in the face on 14th November 2012 and was complaining of headaches but that the x-rays and CT scans were normal. That he treated the Claimant with analgesics for relief of pain and he opined that the Claimant was likely to continue experiencing such pains for an extended period.

Corporal Bradford Berry

[52] BRADFORD BERRY testified that:

- 1) on the day in question he was a Corporal of Police with regulation number 391 attached to the Tourism Police Unit.
- 2) on the 14th November, 2012 at around 8:30 a.m., whilst working at the Tourism village as ground commander, he was dressed in an official police uniform that consisted of a white shirt bearing tourism police to the back in block letters and the police badge on the left chest. That he was walking in the direction heading to the lighthouse when he observed a red in colour minivan. The red van was parked in front of the old Audubon building. He observed what appeared to be tourist boarding the van. There was a coolie descent male person, who he did not know prior to this day, and later learnt his name to be Thomas Greenwood Jr. (the Claimant). That when all of the tourists had entered the van, he noticed that the Claimant did not have any tour guide license displayed on his person. That it is protocol for the tour guide license to be displayed whilst in the tourism village. That he approached the Claimant and informed him that he could not move with the tourist until he produced the tour guide license. He did not answer and jumped into the passenger seat of the said vehicle. He then told the driver to drive. That he was immediately beside

the driver and as such he did not move. The male person then said, “I noh have no fucking time to waste I deh on a job.” Immediately thereafter the driver drove off.

- 3) He immediately started walking in the direction of which the minivan went and radioed Special Constable R. Leslie who was working check point duties at memorial park to stop a red in colour minivan coming his way and informed him that the passenger did not have his tour guide license displayed.
- 4) He then ran from where he was along the seaside heading in the direction of the memorial park and when he arrived at the checkpoint, about five minutes after the van had driven off, he met Police Constable Sankey and Special Constable Leslie. The van had also been detained.
- 5) The driver was behind the steering wheel and the Claimant was by the Belize Tourism Board desk and he went to the back of the van which was parked adjacent to the table. That he I repeated his request for the Claimant to produce his tour guide license. He opened the door to the back of the van, went into a bag and took out his license. At this point he informed Special Constable Leslie, who was standing alongside the driver’s door to issue a ticket for failure to display his license.
- 6) Upon informing the claimant that he will get a ticket he said that he (the Corporal) kept on harassing him and also said “*Bwai you got a fucking problem, give me the fucking ticket mek I go from here asshole.*”
- 7) He immediately informed the Claimant that he had already cursed him at the old Audubon building and that for this second time he was placing him under arrest for the offence of uttering insulting words. At which point his back was to him, and he placed his right hand on his left shoulder, his intention being to search his person to see if he had any item that could be used as a weapon by him.
- 8) Immediately upon placing his hand on his shoulder, he swung around with his left hand hitting him in the mid-section. That the Claimant completely

turned around facing the Corporal and upon him hitting him (the Corporal) he reacted by slapping him twice to his face.

- 9) The Claimant jumped towards him and hit into him. At this time Police Constable Sankey attempted to restrain him. That the Corporal then slapped him a third time after the Claimant jumped at him and hit into him. That Police Constable Sankey then attempted to restrain him with handcuffs after which Police Constable Sankey succeeded in placing the handcuffs on one of the Claimant's hand, and he jumped towards the Corporal again and he put his arms in a defensive block to protect his face.
- 10) At this point, that after the Claimant had been fully restrained, he (the Corporal noticed blood dripping from abrasions to his right arm.
- 11) Upon restraining the Claimant, he continued to shout obscenities at him; he said *"fucking slap me, I like it and I want more, I am use to fucking pain. My pa no fucking slap me, you want slap me like you da my pa so fucking slap me again."* That Police Constable Sankey then grabbed hold of the Claimant while he was handcuffed and with the assistance of Special Constable Leslie, he was escorted to the band stand in the memorial park while he remained at the check point.
- 12) About 30 – 40 minutes later a police mobile arrived. That he along with Police Constable Sankey placed the Claimant in the pan of the mobile. That a white astro van driven by a female, whom he learnt to be the Claimant's mother, arrived prior to the mobile being driven off. That Police Constable Sankey addressed the female person. Thereafter, they drove off heading to the Queen Street Police Station. That it was upon arriving at the police station that he learnt the name of the Claimant.
- 13) At the station he informed Hendricks Williams the EDO that he had a male person detained and the reason for his detention. That he prepared the charge sheet and thereafter cautioned the Claimant. That he was unable to caution the Claimant prior to this because of his disorderly manner. That he informed the Claimant again of the reason for his arrest and his rights. Upon his request, he allowed him to make a phone call

from my cellular phone which he used to dial a number and spoke to someone on the other line addressing them as “Major”.

14) After giving the Claimant the charge sheet and allowing him to make the phone call, he stated that he did not know that he was a corporal and he apologized to him. That he charged him with “insulting words” and “resisting arrest”. That he along with Police Constable Sankey escorted him to the cell block and left him in the custody of the police officer on duty and that he I did not have any further contact with the Claimant.

15) He was issued with a medico legal form and went to the Doctor at the Karl Huesner Memorial Hospital on the same date which was produced.

[53] Under cross-examination Corporal Berry confirmed that he had been working at the Tourist Village 1 ¼ – 1 ½ years, but that he was from March this year. The Corporal denied that had met, or knew the Claimant’s father personally; but admitted he had seen him on TV and denied that he had had an encounter with him.

[54] The 3rd Defendant also accepted that the Claimant could have shown his licence at the desk but stated that the ticket was that he did not have a licence the first time but accepted that once you leave the tourist gate you have to have your licence displayed. The 3rd Defendant testified that the violation was given to the Belize Tourism Board for the case file but that he did not follow up on it and had no knowledge of what happened to the ticket.

[55] The 3rd Defendant also accepted that the Claimant was wearing a pair of shades but stated it fell when the Claimant hit him and that he did not know what happened to it – he denied that he deliberately smashed it on the ground with his boots.

[56] The 3rd Defendant denied that he gave instructions for the Claimant to be handcuffed and denied slapping the Claimant while the Claimant was handcuffed but admitted slapping the Claimant while he was partially handcuffed as he claimed the Claimant was still coming at him.

[57] The 3rd Defendant accepted that there were other occasions when complaints were made against him but stated that these have been investigated and that he has been

cleared. He denied that he had man-handled anyone. He also denied that he took the Claimant to the cell block and denied that he threatened to kill the Claimant.

PC Delroy Sankey

[58] PC DELROY SANKEY, the 4th Defendant, testified that:

- 1) He is a Police Constable with regulation number 884 and was attached to the Tourism Police Unit on the 14th November, 2012 and that around 8:30 a.m., whilst working at the Tourism village on mobile patrol, he heard a radio transmission from the 3rd Defendant, who was the ground Commander at the Tourism Village to S.C. Leslie who instructed via the radio transmission, that S.C. Leslie was to detain at the check point, a red minivan being driven by a Hispanic male person known as Blas Gonzalez.
- 2) He went to the check point to assist and arrived at the checkpoint about two minutes after hearing the transmission.
- 3) At the checkpoint he observed, SC Leslie along with members from the Belize Tourism Board statistics team. That he knew one of the persons to be Ms. McDonald along with two other females. That he parked his motorcycle and waited for the van at the checkpoint.
- 4) The van arrived in less than a minute after he reached the location and upon his arrival there was no traffic there but there were no vehicles immediately behind the van. That upon observing the said minivan described by the 3rd Defendant arriving at the check point, he went to the passenger side of the van and spoke to the Claimant. He informed the driver of the vehicle and the Claimant seated in the front passenger seat that 3rd Defendant wanted to speak to the Claimant. He also informed the Claimant that he could check-in his tourists with the Belize Tourist Board statistics personnel, whilst waiting on 3rd Defendant arrival.
- 5) The Claimant exited the van and went to the check in desk. That he did not see his license displayed on him as is protocol with tour guide operators. That upon him going to the check-in desk, he then addressed the passengers in the van and explained to the tourist that it is a routine checkpoint for tour guides and further assured them that the purpose of

this check point is to ensure that the tour guides have the proper documentation. This took about two minutes. During this, SC Leslie was still on the driver side of the van.

- 6) The 3rd Defendant arrived at the checkpoint, immediately after he had finished addressing the tourist and that he then proceeded to the back of the van which was parked alongside the check in desk. That the 3rd Defendant went to the back of the van and started to speak to the Claimant, who was still at the desk. The Claimant was about two to three feet from the 3rd Defendant. That he heard the 3rd Defendant inform the Claimant that he would be served with a violation notice for not displaying his tour guide licence whilst in the tourist village.
- 7) The 3rd Defendant then began walking towards SC Leslie who was still standing on the driver side of the van. That while the 3rd Defendant was walking away from the Claimant towards SC Leslie, the Claimant responded to the 3rd Defendant by saying, “*Just give me, my fucking ticket fuck.*” At this point the Claimant walked to the immediate back of the van towards where he stood and that at this point the Claimant did not have his tour guide licence on his person and that SC Leslie had commenced with the writing of the violation notice.
- 8) Upon the Claimant uttering those words, the 3rd Defendant immediately turned around and walked towards the Claimant at which point (while the Claimant was merely a foot away from him) the 3rd Defendant upon reaching him placed his right hand on the Claimant’s right shoulder, while the Claimant’s back was to the 3rd Defendant, and the 3rd Defendant then informed the Claimant that he was under arrest for the use of obscene language.
- 9) Upon the 3rd Defendant saying this, the Claimant immediately swung around flinging his left hand and hitting the 3rd Defendant in his upper body area. That upon observing this the 4th Defendant, without delay, attempted to restrain the Claimant. That the Claimant jumped away from him into the 3rd Defendant and the 3rd Defendant then slapped the

Claimant in the face at this point. That the 4th Defendant attempted once more to restrain the Claimant and managed to pull him away from the 3rd Defendant and was instructed by the 3rd Defendant to handcuff him at which point the Claimant was cursing at the 3rd Defendant.

- 10) The 3rd Defendant informed the Claimant that he would be charged for resisting arrest and assaulting a police officer and he (the 4th Defendant) managed to place a handcuff on the Claimant's right hand and that directly after placing the handcuff on his right hand, the Claimant jumped into the 3rd Defendant again shouting at the 3rd Defendant, "*You are not my father, my father no slap me, slap me again if you are my father.*" At which point, S.C. Leslie attempted to assist the 4th Defendant in restraining the Claimant. SC Leslie held the Claimant while the 4th Defendant handcuffed him.
- 11) He was holding the handcuffs in the middle and reached for his radio on his side to radio for police assistance and while he attempted to do this, the Claimant jumped towards the 3rd Defendant again causing his police radio to fall. The Claimant shouted to the 3rd Defendant, "*Slap me again, slap me.*" The 4th Defendant reached to pick up the radio, and throughout this the Claimant was still shouting at the 3rd Defendant, "*Slap me Again, I like it.*" All this time the Claimant was pulling away from the 4th Defendant.
- 12) He, therefore, placed his left hands across his upper chest while holding the cuffs with his right hand and pilling him away from the area to the band stand assisted by SC Leslie and that he then radioed control to get a mobile which arrived about forty five minutes after.
- 13) Throughout this time the Claimant remained there hollering at the 3rd Defendant who remained at the checkpoint whilst they waited for the police mobile to arrive and that upon arrival of the police mobile the 4th Defendant assisted the Claimant into the back of the police mobile. At which time, a Hispanic female drove up to the police vehicle, stating that she was the Claimant's mother and asking what her son had done and the

4th Defendant informed the lady that she could follow them to the station and that he would explain to her what had occurred.

14) He and the 3rd Defendant then escorted the Claimant to the Queen Street police station and upon arrival he informed the Hispanic female of the reason for the Claimant's detention, and asked her if she wanted to collect the personal property of the Claimant, and also went to the Claimant and asked him if he wanted her to collect his property and then escorted the Claimant to the counter where his items were handed over to her.

15) He and the 3rd Defendant escorted him to the cell block and handed him over to Police Constable Ryan Young and he also stated that the Claimant had on a pair of sun glasses prior to the struggle; and that he did not see the sun glasses after the struggle.

[59] Under cross-examination PC Sankey accepted that he has been transferred in June of this year. He also accepted that the Claimant went to checkpoint to produce his licence and his paperwork and that he did what he was told.

[60] The 4th Defendant testified that he handcuffed the Claimant behind his back while SC Leslie held him; but denied that while he was handcuffed Corporal Berry kept hitting the Claimant in his face. He accepted that when the Claimant approached the checkpoint he had on sunglasses but testified that he did not know what happened to it. He denied that the Corporal hit the Claimant more than was necessary.

SP Ruthford Leslie

[61] SP RUTHFORD LESLIE testified that:

- 1) He is a Special Constable attached to the Tourism Police Unit.
- 2) On the 14th November, 2012 at around 8:30 a.m., whilst working checkpoint duties at the memorial park, he received a transmission over the radio sent by the 3rd defendant, to stop a red in colour minivan heading towards my direction.
- 3) Shortly after, he saw the said van coming; it was loaded with persons who appeared to be tourists. He stopped the van and asked the person in the

front passenger seat, whom he have knew as Thomas Greenwood Jr. (the Claimant), for his tour guide license.

- 4) At the time of the van's arrival he was at the check point and a lady Ms. McDonald and two other Belize Tourism Board personnel were working at the check-in booth.
- 5) Shortly after receiving the transmission the 4th Defendant arrived at this location.
- 6) The 4th Defendant spoke to the Claimant and he heard him asking the Claimant what was the problem. The Claimant who appeared to be upset was speaking to the 4th Defendant in a raised voice.
- 7) The 3rd Defendant arrived approximately five (5) minutes after receiving the transmission.
- 8) The 3rd Defendant walked up to the Claimant, whose back was to the 3rd Defendant at this point and placed his right hand on the Claimant's left shoulder.
- 9) When the 3rd Defendant touched the Claimant's arm, the Claimant spun around hitting the 3rd Defendant in his upper body area.
- 10) The witness was not sure what exactly which part of the 3rd Defendant's upper body the Claimant had hit. The 3rd Defendant immediately slapped the Claimant.
- 11) The 4th Defendant then attempted to restrain the Claimant; however the Claimant jumped back at the 3rd Defendant.
- 12) The 4th Defendant was able to place a handcuff on the Claimant, however before he could handcuff both hands, the Claimant jumped at the 3rd Defendant again. At this point the 3rd Defendant slapped the Claimant a third time.
- 13) The witness testified that he then placed himself between the Claimant and the 3rd Defendant and this allowed for the 4th Defendant to fully handcuff the Claimant.
- 14) The witness then assisted the 4th Defendant in taking the Claimant to the bandstand in the memorial park to await the arrival of mobile assistance

that 4th Defendant had called for. At the bandstand in the memorial park he issued a violation ticket to the Claimant and thereafter returned to the checkpoint.

[62] Under cross-examination the witness could not recall if Corporal Berry told him to give the Claimant a violation ticket and did not see the Claimant show the licence. He denied that the Corporal kept hitting the Claimant when he was handcuffed. He stated that there was a struggle between the Claimant and Corporal Berry while the Claimant had one hand handcuffed and that is when he intervened. He also stated that the issuing of the violation ticket had nothing to do with any instruction from the Corporal but that he would have issued a ticket at the end of the day.

The Law

Unlawful Arrest

[63] In relation to the question whether there was reasonable suspicion to justify the detention, arrest and charge of the Claimant:

“A person can be deprived of his liberty if there is reasonable suspicion that he has committed or about to commit a criminal offence under any law as provided by section of the Constitution³”.

Assault and Battery

[64] An assault is the threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact.

[65] Battery is intentional or reckless use of unlawful force on another person, resulting in harmful or offensive contact.

“A person who is sued for an assault or battery may justify the act on the ground that it was committed in the defence of his own person and that he used no more force than was reasonably necessary or at least avoided force that was grossly disproportionate....⁴”.

[66] As has been observed⁵

³ Per Judgment of Hafiz, j Thompson, Tillett and Woodye v. Attorney General, Commissioner of Police and Arnold Suit No. 530 of 2010; 531 of 2010; 532 of 2010, page 3

⁴ Halsbury's Laws of England Volume 97 (2010) 5th Edn. Para 532.

⁵ Halsbury's Laws of England, 10th edition, Volume 10 (at page 743).

“if an assault is threatened, as by raising a hand within a distance capable of the latter being struck, the latter may strike in his own defence to prevent it...”

Self-Defence

[67] It has also been noted that:

“It is lawful for one person to use force towards another in defence of his own person, but this force must not transgress the reasonable limits of the occasion, what is reasonable force being a question of fact in each case.”⁶

Damages for Assault and Battery

[68] In the Trinidad case of **Seegobin v Attorney General**⁷ the court awarded the sum of \$7,500.00 Trinidadian dollars which would equate to approximately \$2,373.42 BZD.

Malicious Prosecution

[69] Malicious Prosecution has been defined as;

“A malicious prosecution is an abuse of the process of the court by wrongfully setting the law in motion on a criminal charge. To be actionable as a tort the process must have been without reasonable and probable cause, must have been instituted or carried on maliciously and must have terminated in the claimant’s favour. The claimant must also prove damage.”

“To succeed in a claim for damages for malicious prosecution a claimant must prove (i) the prosecution by the defendant of a criminal charge against the claimant before a tribunal whose proceedings the criminal courts are competent to inquire, (ii) that the proceedings complained of terminated in the claimant’s favour (iii) that the

⁶ Clerk and Lindsell on Torts 20th edn. para. 30-02.

⁷ TT 2012 HC 201.

*defendant instituted or carried on the proceedings maliciously (iv) that there was an absence of reasonable and probable cause for the proceedings, and (v) that the claimant has suffered damage.”*⁸

[70] Reasonable and probable cause has been defined as follows:

*“Reasonable and probable cause for a prosecution has been said to be an honest belief in the guilt of the accused based on a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of an accuser, to the conclusion that the person charged was probably guilty of the crime imputed.”*⁹

Malice

[71] Malice, in relation to Malicious prosecution, has been characterized as follows:

*“A Claimant in a claim for damages for malicious prosecution or other abuse of legal proceedings has to prove malice in fact indicating that the defendant was actuated either by spite or ill-will against the claimant, or by indirect or improper motives. However, there is no malice merely because the claimant’s conviction was a necessary step towards the defendant’s fulfilment of some ulterior objective. The claimant has the burden of proving malice. A claimant who proves malice but not want of reasonable and probable cause still fails. Malice may be inferred from want of reasonable and probable cause but lack of reasonable and probable cause is not to be inferred from malice.”*¹⁰

Damages for Malicious Prosecution

[72] The Claimant in relation this head of damages relied on the Eastern Caribbean case of **Danny Ambo v Michael Laudat & the Attorney General of Dominica**¹¹, in which Lanns M, in October 2011, reviewed the applicable cases in

⁸ Halsbury’s Laws of England Volume 97 (2010) 5th Edn. Paras. 627 & 636.

⁹ Halsbury’s Laws of England Volume 97 (2010) 5th Edn. Para 641

¹⁰ Halsbury’s Laws of England Volume 97 (2010) 5th Edn. Para 639.

¹¹ Claim No DOMHCV2010/0030.

an action for malicious prosecution and in relation to charges of murder and conspiracy to commit murder assessed damages for malicious prosecution in the sum of EC\$50,000.00. A malicious prosecution Grenada case, **Dexter Smith v The Attorney General of Grenada et al**¹², was also considered in this case involving charges of possession of a controlled drug, importation of a controlled drug and trafficking of a controlled drug, was awarded in 2010, by Price-Findlay J, EC\$40,000.00.

[73] The Defendant in looking for guidance for the assessment of damages referred the Court to the case of **Abu Bakr v Attorney General and the Commissioner of Police**¹³ where the court awarded the sum of \$5,000.00 Trinidadian dollars in nominal damages for malicious prosecution.

False Imprisonment

[74] In relation to the tort of false imprisonment it has been noted that for this to be established it has to be proved:

- (i) The fact of imprisonment; and
- (ii) Absence of lawful authority to justify the imprisonment¹⁴.

[75] To establish this tort then once the Claimant has proved on the balance of probabilities the fact of the imprisonment the burden would then shift to the arresting officer to justify the imprisonment and such officer must do so with evidence that there was lawful authority to justify the imprisonment¹⁵.

Damages for False Imprisonment

[76] The Belize case of **Thompson, Tillett and Woodye v Attorney General, Commissioner of Police and Arnold**¹⁶ is relevant to assessing damages for false imprisonment. In this case Hafiz, in November 2011, involving admittedly more far more serious offences (of conspiracy to commit murder and murder) were awarded \$25,000 as general damages for the loss of their liberty.

¹² Claim No GDAHCV2008/328

¹³ TT 2013 HC 151.

¹⁴ Clerk and Lindsell on Torts 18th Edn. (2003) para. 13-19.

¹⁵ See *Abu Bakr v Attorney General and The Commissioner of Police* (supra) at paragraph 42 Per Seepersad, J

¹⁶ BZ 2011 SC 58

[77] The following passage of the Judgment of Hafiz, J is also pertinent:

“In my view, an award should not only be dependent on the time factor but must be subject to other circumstances such as aggravated circumstances...In my view they are entitled to damages that is reasonable, but damages should not be calculated on a daily or hourly rate by applying awards of other cases. Each case must be determined based on its own facts.¹⁷”

Analysis of Facts and Determination of Issues

[78] Generally in relation to the much disputed question of liability I preferred not to place too much credence on the evidence of the interested witnesses of fact who are parties to the proceedings, as clearly they have their own interest to protect and are not objective witnesses – as borne out by the nature of their testimony in the case.

[79] I preferred, at least initially, to carefully consider the evidence of any disinterested bystander or at least someone who does not obviously have an interest to serve in relation to the parties or more so did not have any obvious interest to serve. In this regard I immediately considered the evidence of the witnesses of fact Carol McDonald, Blas Guerra and Ruthford Leslie.

[80] Of these three witnesses, having seen and heard the witnesses and examined such witnesses’ testimonies alongside what I considered and found to be the uncontested evidence, for consistency (which incidentally, as it turned out also seems to sit very comfortably with the credibility of these witnesses as I have found them), I have determined that the evidence of Carol McDonald is the most reliable and then the evidence of SP Ruthford Leslie and then Blas Guerra in that order of their reliability.

[81] In relation to the evidence of Carol McDonald I found most telling her evidence, which was unshaken in cross-examination, that the driver of the bus drew her attention to:

¹⁷ Ibid at paras. 92 and 93

“a policeman beating up on the Claimant while he was in handcuffs. I turned around to see what was happening and noticed that the fourth Defendant had the Claimant handcuffed and was holding him by the shoulder while the third Defendant was slapping him mercilessly on both sides of his face”.

[82] This evidence was consistent with the evidence given by Blas Guerra (*“I saw Cpl. Berry start to punch the Claimant again to his face and head while he (the Claimant) was in handcuffs”*).

[83] In my view the evidence that the 3rd Defendant was hitting the Claimant while he was in handcuffs goes to the root of the issue in this case, the credibility of the witnesses. This is consistent with the Claim of the Claimant and points to a total lack of justification or legality on the part of the 3rd and 4th Defendants. This was in my view clear use of excessive force and cannot be justified by police officers who are supposed to be acting in the course of their lawful duty.

[84] For the purposes of determining the case in relation to the disputed matters, based on a careful review of the evidence of the witnesses in the case and considering their credibility, I generally find the following facts on the balance of probabilities:

- 1) Based principally on the evidence of SP Ruthford Leslie and Ms. Carol McDonald, the two most independent witnesses in the case, I find that the arrest of the Claimant in the circumstances of the present case could not legally be justified and was therefore unlawful. I am not satisfied that the Claimant during the second incident, did commit or was about to commit a criminal offence even something as minor as the use of indecent or offensive language.
- 2) In particular I find that any failure by the Claimant to display his tour guide licence was contrary to the Belize Tourism Board (Tour Guide) Regulation Cap 277, Laws of Belize, as submitted by Counsel for the Claimant and conceded by Counsel for the Defendants, was not a criminal offence but instead merely a violation carrying a penalty of \$25.00.

- 3) As noted I am not satisfied based on the evidence of the independent witnesses, that the Claimant did use any offensive language during the 2nd and in any event even if he did, contrary to my finding, I am not satisfied that such language, in the circumstances of the case, justified arresting and detaining him but in all the circumstances of the case (including that he was a tour guide who undoubtedly had a tour guide licence and was engaged in his work of guiding tourists) could have, and if thought necessary, ought more appropriately to have been dealt with, by the officer exercising his undoubted discretion, by way of the issuing of a summons.
- 4) I also find that the Claimant, during the course of an unjustified arrest, at about 9.30 a.m. on the 14th November 2012, was manhandled, assaulted, beaten and humiliated by the 3rd Defendant with the aid and assistance of the 4th Defendant, in full view of his guests, and that this should never have happened given all the circumstances of the case.
- 5) I was particularly concerned that Corporal Berry, a senior police officer, indeed the Commander of the specialist Tourist Police Unit would have allowed, even caused, the situation to escalate to the point that it did, in such a sensitive location, and in full view of tourists (who appeared utterly shocked and vowed never to return to Belize), instead of defusing the situation, which could very easily have been done by the Corporal exercising restraint.
- 6) Critically, on the evidence of Ms. Carol McDonald, whose evidence I found credible, as I have already noted, the 3rd Defendant continued hitting the Claimant after he had been handcuffed, and I find that this fact discredits the evidence of any and all the other witnesses who conveniently omitted this evidence from their testimony.
- 7) By the 3rd Defendant's unlawful arrest (as I have found that the Claimant during the second incident did not commit nor was about to commit a criminal offence) the Claimant was falsely imprisoned by the 3rd and 4th Defendants for thirty one (31) hours until his (the Claimant's) release on bail by the Magistrates Court at 5.00 p.m. on the 15th November 2012.

8) In the circumstances of the present case the charges which were brought by the 3rd Defendant was without basis, malicious and without reasonable or probable cause.

9) By reason of the alleged conduct of the 3rd and 4th Defendants the Claimant has suffered pain and injury and has sustained loss and damage.

[85] I do not therefore accept the submission of Counsel for the Defendants that the physical force used on the Claimant was reasonable in all the circumstances and that no more force than necessary was used to subdue and prevent him from further causing harm to the 3rd Defendant. I found the force used against the Claimant was excessive as demonstrated by the fact the 3rd Defendant was hitting the Claimant in his face after he was handcuffed.

[86] I do not accept that the application of force on the Claimant by 3rd Defendant was justified on the ground that such force was committed in the defence of the latter's own person and that he used no more force than was necessary as the Claimant had hit him and continued to advance towards him in an aggressive and threatening manner. I do not believe this version of the Defendants' case. I formed the view that the 3rd Defendant was actuated by anger and malice from the way in which the Claimant had spoken to and treated the 3rd Defendant during the earlier incident.

[87] I do not accept the evidence of the Defendants' witnesses, where they stated that the Claimant hit the 3rd Defendant in his mid-section after the 3rd Defendant attempted to place the Claimant under lawful arrest for "*using insulting words*". As already noted I considered that by the 3rd Defendant placing his hand on the Claimant from behind to arrest him was unjustified and unlawful and that the Claimant's response to someone from behind assaulting him was not an attack by the Claimant but merely a reaction to an unexpected physical assault from an unknown person from behind him.

[88] I do not therefore believe the Defendant's witnesses that the 3rd Defendant was acting in lawful self-defence; as is evidenced by the fact, which I have found, that the 3rd Defendant was hitting the Claimant in circumstances when it was clear that he was not defending himself.

- [89] In relation to the tort of false imprisonment, I do not accept that there was reasonable and lawful justification to arrest and detain the Claimant whether for using insulting words, resisting arrest or assaulting the 3rd Defendant as I do not consider that on the facts of the case there was a legal justification for arresting the Claimant without a warrant and I consider there was no lawful authority to justify the Claimant's imprisonment.
- [90] Finally, for completeness, however, I do not find that the Claimant is entitled to aggravated and exemplary damages, which he claims for the unlawful arrest, false imprisonment, assault and battery and the malicious prosecution, because in my view, the Claimant's conduct, particularly during the first incident, was the trigger of much of the 2nd incident even though the events of the 2nd incident was wholly unjustified and unlawful. Although as it relates to aggravated and exemplary damages, there is a reasonable argument that it was more probable than not that there was malice because there was no honest believe that the Claimant was guilty of a crime as the 1st Defendant did see the Claimant's licence, even if not displayed, on balance, in my view, the Claimant must take some responsibility for the events which happened by reason of his earlier unjustified behavior in the tourism village.
- [91] Specifically I felt that overall the 3rd Defendant's conduct was both unprofessional and unlawful especially as he was working in a very sensitive area, tourism, and was a senior officer. His behavior would have sent a wrong signal to the officers under his command, the community and also presented to the visitors to Belize witnessing the public events then taking place, a very damaging view of this community and of its public servants. It may have been humanly understandable that the 3rd Defendant would have been upset by the Claimant's behavior during the earlier incident, but police officers, particularly in such a public and sensitive position and situation ought to be able to demonstrate restraint and I believe that this court ought to send a clear signal that such behavior will not to be condoned.
- [92] Finally, the Defendants have conceded that charges were preferred against the Claimant and they were subsequently dismissed by the Magistrates Court. I do

not accept that the Defendants acted in good faith and without malice and in the belief that they were discharging a public duty in prosecuting the Claimant; and further, neither do I consider that there was reasonable and probable cause to do so. I have determined that the Claimant ought not to have been prosecuted at all and consider that the case against the Claimant had largely been concocted by the 1st the 2nd Defendants.

Disposition

- [93] For the reasons given above, after carefully considering the evidence supporting the claim for damages, I have come to the conclusion, in a summary way, after reading the submissions of Counsel in the case and after giving careful consideration to their oral submissions, that the award which follows is appropriate.
- [94] The Defendants is ordered to compensate the Claimant and they shall pay the Claimant damages as follows:

For Assault and Battery:

BZ\$5,000.00.

For False Imprisonment:

BZ\$2000.00.

For Malicious Prosecution:

BZ\$30,000.00.

For Special Damages:

BZ\$3,950.00.

Costs

- [95] Costs have been agreed by the parties in the sum of BZ\$3,000.00. and in the circumstances of my findings on the case I find that the Defendants shall pay this sum to the Claimant.

The Hon Mr. Justice Courtney A. Abel

Dated: 2nd December 2014