

IN THE SUPREME COURT OF BELIZE, A. D. 2015

CLAIM NO. 312 OF 2015

BETWEEN:

(EDWARD BROASTER

CLAIMANT

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(AND

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(OSCAR SELGADO

DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Mikhail Arguelles for the Claimant

Mr. Anthony Sylvestre for the Defendant

J U D G M E N T

Facts

1. The Claimant is a Police Officer in the Belize Police Department and he has served in this regard for over 28 years. He currently holds the rank of Senior Superintendent and is the Deputy Officer Commanding Eastern Division in Belize for which he has direct command over approximately 800 officers. The Defendant is an attorney at law. On May 6th, 2015 the Defendant conducted an interview with the media house, Channel 5. The interview was later aired and broadcast on the nightly news twice that evening (one at 6:30 p.m.

and another repeat at 10:00 p.m.) and over the internet via the website: www.channel5belize.com to the public in Belize and the world at large. In the course of the Defendant's interview he spoke and published to the general public words which the Claimant alleges are defamatory and calculated to disparage him in his office as Deputy Officer Commanding Eastern Division in the Belize Police Department, in his profession as a police officer and, generally, as a law abiding citizen. On May 12th, 2015, the Claimant wrote to the Defendant seeking an apology; to date no apology has been issued by the Defendant, who has chosen instead to vigorously defend himself against this claim. The Defendant asserts the defence of justification in answer to this claim, and states that the words which were spoken by him consist of statements of facts and are true in substance and in fact as words uttered and acts done on behalf of the Claimant.

Issues

2. In describing an incident where his client Luis Campos was allegedly beaten by police, Mr. Selgado spoke the following words to the news media which form the basis of this claim:

"...However, a younger brother was seen in the house and Mr. Broaster made the comment to Moses Campos that if that was Luis Campos, I would have shot him in your presence and you would not have been able to do anything about it because he is a murderer and he is wanted by the police for murder."

"My client Luis Campos was eventually found by Mr. Broaster and his team and he was taken to an area north of San Pedro where he was severely beaten by the Police. I am informed that the police took a sponge, a foam, what we call a

mattress, and a piece of a mattress and they wrapped it around him and they beat him on his hands, his chest, his back. He was kicked on his face several times, he wore braces and the braces cut the internal part of his mouth, all under his lips. His eyes were bloodshot red because he was pepper sprayed. His face was severely swollen.”

“As a junior officer Mr. Broaster worked under my command on several operations in the past and never in the past have I condoned this type of beating, use of excessive force while on surgical strikes.”

There is only one issue to be decided by this Court as follows:

Whether the words complained of are defamatory of the Claimant, or whether they consist of statements of facts and are true in substance and fact as words uttered and acts done by the Claimant, as alleged by the Defendant.

Evidence of the Claimant

3. At trial, there were four witnesses called on behalf of the Claimant. Assistant Commissioner of Police Broaster testified that he was posted temporarily in San Pedro Town in March to April 2015 due to increased violence on the island from what appeared to be drug rivalries. On Tuesday, 28th April 2015, he received information of an apparent dead body in the San Juan Area of San Pedro Town. ACP Broaster along with other police officers proceeded to the lagoon directly behind the police station where he met Coast Guard personnel. He observed a Grey Van Toyota Previa with taxi license plates. He then checked inside the van where he saw the lifeless body of a male Hispanic person lying

between the passenger and driver's seats facing down in a pool of blood with an apparent gunshot wound to the back of his head. The feet and hands of the deceased were tied together with duct tape and a blue rag was tied over his face. After receiving a detailed description of the suspects from Coast Guard personnel who had identified one of the suspects to be one Luis Campos, ACP Broaster and his team headed to the residence of Moses Campus where he found Moses Campos along with his wife and two sons. Upon being asked where his son was, Mr. Campos replied that he had not seen him in three weeks. The house was checked and Luis Campos was not found. ACP Broaster states that at no time did he utter the words attributed to him by Mr. Selgado in the newscast:

"I would have shot him in your presence and you would not have been able to do anything about it because he is a murderer and he is wanted by the police for murder."

ACP Broaster goes on to state that after failing to locate Luis Campos at the residence of his parents, he went to another area in San Mateo where Campos found him. By this time ACP Desiree Phillips had joined him. ACP Broaster states Luis Campos had to be pepper sprayed as he resisted lawful arrest; he said that he was the one who applied the pepper spray to Luis Campos and then allowed Campos to wash his face from a nearby neighbor's pipe. Luis Campos was then taken into custody. The Claimant states that he is totally against police brutality and advocated against it in local commercials and videos under the theme *"Not In My City"*. These videos were shown on the local channels at commercial time at the time of the nightly newscasts repeatedly. He states that he was the force behind creating the video; he says that he has been a well-disciplined, no nonsense police

officer from the time he joined the force and that he has never had any disciplinary charges or complaints brought against him. ACP Broaster also states that at no time did he or anyone in his team beat Luis Campos as alleged by the Defendant in the newscast, that *“My client Luis Campos was eventually found by Mr. Broaster and his team and he was taken to an area north of San Pedro where he was severely beaten by the Police. I am informed that the police took a sponge, a foam, what we call a mattress, a piece of a mattress and they wrapped it around him and they beat him on his hands, his chest, his back. He was kicked on his face several times, he wore braces and the braces cut the internal part of his mouth, all under his lips. His eyes were bloodshot red because he was pepper sprayed. His face was severely swollen”*. The Claimant says that the incident described by Mr. Selgado is a total fabrication. He also says that contrary to what Mr. Selgado said on the news, Mr. Selgado has never been in charge of him at any point in his career.

4. In his second Witness Statement, ACP Broaster says that before searching the house where Luis Campos was found, the officers knocked on the door to see if anyone was inside and announced that they were police. No one responded. Upon checking the building, the officers realized that there was only one door on the building and that door was locked from the inside. They then forced their way inside the house and found Luis Campos hiding under a bed. ACP Broaster said that he told Mr. Campos that he was under arrest for the murder of Jose Beltran that occurred that same day. The Claimant says that Luis Campos resisted arrest from the moment that the police found him. He struggled with the officers as he was led outside the house. ACP Broaster said that he told Luis

Campos that he would be pepper sprayed if he continued to resist arrest. Luis Campos refused to heed the warnings and as a result ACP Broaster pepper sprayed him, two officers wrestled him to the ground and handcuffs were placed on him. He was then escorted to the police vehicle where the Claimant states that he personally helped Campos into the back of the police truck. The Claimant also says that he got lots of water for Campos and for himself as the wind blew some of the spray into his face as well. ACP Broaster said that he provided Campos with water until he indicated that he needed no more. They all remained at that location until the house was completely searched, and two hours later the officers took Luis Campos to the police station. ACP Broaster said that there were no GSU officers at that location and Luis Campos was never abused by him or by any of his officers at that location or at the office. He states that he knew that Luis Campos willingly took officers to recover two guns, a bullet proof vest and some ammunition. He further explains that it is standard procedure to issue a Medico Legal form if any injuries are observed on any detained person who is about to go into detention. ACP Broaster states that any injuries Luis Campos may have received would have been from the struggle he had with his officers during the initial arrest and him having been pepper sprayed. ACP Broaster states that the Defendant has not given a witness statement and has offered no explanation as to how he was made aware of the words attributed and uttered by him. He states that the Defendant's comments about him and his officers are false, and he never said the words that the Defendant said he did.

5. ACP Broaster was cross-examined extensively by Anthony Sylvestre on behalf of the Defendant. A portion of Mr. Selgado's statement from the newscast was put to him:

“My client Luis Campos was eventually found by Mr. Broaster and his team and he was taken to an area of San Pedro where he was severely beaten by Police.”

He was then asked whether he agrees that those words do not say Mr. Broaster beat Luis Campos. ACP Broaster said that any normal person would interpret that as stated. When asked again whether the statement says that Edward Broaster beat Luis Campos, the Claimant replied that the statement is clear and it said, *“Mr. Broaster and his team”*. Upon further questioning, the Claimant stated that the statement said *“the Police”*. When asked whether he thought he had been successful in decreasing violent crime in San Pedro from March 2015 to April 2015, ACP Broaster said not really. He agreed with counsel’s suggestion that in an effort to curb the spike in violent crime, one tactic used by the police during this period was to bring in additional police officers from Belize City. There were about ten of those officers brought in, including Broaster himself; there were five officers from the Eastern Division and five officers from the Gang Suppression Unit (GSU). He was shown his witness statement by counsel, where he had said *“There were no GSU officers there and Luis Campos was never abused by me or anyone else.”* He was asked whether at this point in time there were GSU officers on the island; Mr. Broaster said yes they had GSU officers on the island. He was then asked about the portion of the statement where he described checking a van and locating a dead body inside with apparent gunshot wound to the back of the head. Mr. Sylvestre asked if that was the type of violent crime that Mr. Broaster and his team had been called in to address. He agreed. He was asked whether the purpose of the show of police presence in San Pedro was to show the criminal elements that the police meant business. He said they were there to prevent

crime. Mr. Sylvestre asked whether he admitted that he had to become physical with Luis Campos and that he had to pepper spray him. The witness agreed. He further explained that this meant that when the police entered the premises, Luis Campos was under the bed and he ran from under the bed toward the door. ACP Broaster had to hold Luis Campos against the wall behind the door and when the officers came in he struggled and he pepper sprayed him. He said he pepper sprayed Campos after warning him that he would do so if he did not desist. After this Luis Campos was taken into custody. ACP Broaster said there were four other officers along with him, and they had firearms. ASP Dezerie Phillips was also there accidentally but she was at the scene; she was not there when he was being physical with Campos. When asked if he was upset because he did not find Luis Campos at the home of Moses Campos, and upset at the fact that he had to do some more searches in order to find him, ACP Broaster stated that he has been doing this job for over 30 years, and nothing like that would upset him. He stated that Luis Campos was taken to the polyclinic and thereafter he had an interview with a police officer from the Criminal Investigation Branch Woods. He saw Campos leave the station along with CIB Woods to go to the North of San Pedro. He found Luis Campos at around 11:00 am and the last time he saw Campos on that day was around 5:00 pm.

6. The next witness for the Claimant was PC Cashman Munnings. He said that he is a police officer stationed at Quick Response Unit in San Pedro Town. On Tuesday 28th April, 2015, at about 10:40 am he received information about an abandoned vehicle with an apparent dead body in the San Juan Area of San Pedro Town. He along with Superintendent Edward Broaster proceeded to a feeder road beside the lagoon in the said area. They met other

police and Coast Guard personnel. He observed a grey van parked on the road with the motor still running and a deceased male Hispanic person inside the van. Coast Guard personnel gave them the description of suspects seen leaving the area immediately after hearing the gunshot and identified one of the suspects to be Luis Campos. PC Munnings then went with ACP Broaster to the home of Moses Campos who was present along with his wife and two sons. The house was cleared and all occupants gathered inside the living room. When asked about the whereabouts of his son Luis Campos, Moses Campos replied that he had not seen his son for the past three weeks. PC Munnings and ACP Broaster then left the residence of Moses Campos and went to another well-known location for Luis Campos in the San Mateo Area of San Pedro Town. ACP Dezerie Phillips and PC Zayne Palacio joined the team. The officers cleared the yard and cleared the house, where they found Luis Campos hiding behind the door. He states that Luis Campos was informed of their presence as police officers and asked to come out of the house; he refused. PC Munnings said that he and PC Palacio used the necessary force to get Luis Campos from inside the house to the ground where he was handcuffed, placed in the police mobile, cautioned and informed of his constitutional rights. At no time did he hear ACP Broaster utter the words the Defendant claimed he said to Moses Campos on the newscast. That statement was never made and is utterly false. At no time did ACP Broaster nor any one from his team beat Luis Campos. Those allegations made by the Defendant on the newscast are utterly and completely false.

Under cross-examination by Mr. Sylvestre, PC Munnings was asked whether he had to get physical with Luis Campos. He said they did not rough him up, but the used physical

necessary force, justifiable force to subdue him. Mr. Sylvestre asked whether this force included kicking Campos or punching him in the stomach area. PC Munnings replied no. He was also asked if Luis Campos was pepper sprayed; PC Munnings said no Campos was never pepper sprayed. He said ASP Phillips was already with the police team when they were subduing Luis Campos. She did not help to subdue him. She remained outside on the street. When they arrived at the house, only he and Mr. Broaster went inside. He agreed that Mr. Broaster is his superior officer. He disagreed with the suggestion that even if he heard ACP Broaster utter the words complained of, he would not come to court and say so. He said that he would not come to court to tell untruths to protect his superior Mr. Broaster.

7. The next witness for the Claimant was PC Zayne Palacio. This officer testified that he is a police constable attached to the Quick Response Team in San Pedro Town. He recounts that on Tuesday, April 28th, 2015 he and Supt. Broaster went to a feeder road beside the lagoon where they discovered a lifeless body of a male Hispanic person in a pool of blood in a van. He and Supt Broaster then proceeded to look for suspects in the San Mateo area. Upon arriving at the home of Moses Campos, he along with PC Munnings and Sr. Supt. Broaster checked the yard then checked the house. Luis Campos was found hiding behind a door. Luis Campos was informed of their presence as police officers and asked to exit the building. He refused. Sr. Supt. Broaster sprayed him with pepper spray while PC Munnings and PC Palacio used necessary force to get him to the ground where he was handcuffed and thereafter placed in the police mobile. Moses Campos arrived and was shouting at the police over the arrest of his son. PC Palacio states that at no time did he

hear Sr. Supt Broaster utter the words that Mr. Selgado claimed he said on the newscast. He also states that at no time did Sr. Supt Broaster nor any member of his team beat Luis Campos as reported by Mr. Selgado on the newscast, and that the statements made by Mr. Selgado was a complete fabrication.

Under very brief cross examination by Mr. Sylvestre on behalf of the Defendant, PC Palacio admitted that he could not hear what Sr. Supt Broaster may have said inside the house since he never went inside the house. He also agreed that PC Munnings was not stationed in San Pedro; he was a part of a team that came from Belize City with Sr. Supt Broaster.

In the final witness statement submitted by Sr. Supt. Broaster, he responded to the statements made by the witnesses for the Defendant Laura Trapp and Peter Hernandez. He states that both statements are outright misrepresentations of the truth and that as a ranking member of the Belize Police Department, he advocated for professional policing and would in no way support or advocate for any member of the Department to use such language or to use abusive or offensive language to any member of society whether they be law abiding citizens of our society or not. Mr. Sylvestre chose not to cross examine the witness on this third statement.

8. Dr. Ajay Hotchandani was called on behalf of the Claimant. He testified that he is a doctor at Belize Healthcare Partners Ltd in Belize City. He was asked by ACP Broaster to interpret and analyze the Medico-Legal Form issued by Dr. Fatima Oliva and dated April 28th, 2015. In his interpretation of the form, Dr. Hotchandani noted that the chief complaints listed

by Dr. Oliva on the patient Luis Campos were swelling to right side of mouth, pain to both eyes and pain in chest area. Dr. Hotchandani stated that the findings of the doctor who examined Campos indicated that Campos had redness to the whites of his eyes, likely due to exposure to irritants such as smoke and dust; there was also minimal swelling to the eyelids of both eyes from some type of irritant. The doctor also found a swelling on the right side of his mouth, an open wound with no active bleeding which seemed superficial. There was a circular bruise to the right chest with minimal swelling. The doctor said that Campos had good respiration and nothing impeding his ability to breathe. He also found that Campos's heartbeat was regular which meant that his heart was working as it should.

Under cross-examination by Mr. Sylvestre, Dr. Hotchandani admitted that he did not personally examine Luis Campos so he cannot say to what extent his eyelids were swollen. He also stated that the doctor found a circular bruise on Campos's chest and he agreed with counsel's suggestion that smoke and dust could not cause such a bruise.

9. The next witness for the Claimant was ACP Dezerie Phillips. Ms. Phillips states that she is the Officer Commanding Eastern Division North in Belize. On Tuesday April 28th, 2015, she accompanied PC Cashman Munnings, PC Zayne Palacio and Sr. Supt. Broaster in the area of San Mateo in their search for Luis Campos. ACP Phillips said that she waited outside the residence where the team was searching. Luis Campos was brought out of the house by the team and taken into custody. ACP Phillips says that at no time did she witness anyone beating Luis Campos. She also states that the statement made by the Defendant describing the beating of Luis Campos by police on the newscast is untrue.

Mr. Sylvestre cross-examined ACP Phillips. She was asked whether she was wearing her khaki uniform on the day in question and she said yes. She was then asked if she was wearing her tactical uniform. She said no. Ms. Phillips agreed that there was a difference in uniform and that Police would be dressed in tactical or camouflage uniform for operational purposes. She does not recall whether Sr. Supt Broaster was dressed in tactical uniform or in No. 1 dress on that day. She says that she never went into Moses Hernandez house nor was she a part of the tactical operation. ACP Phillips said that Mr. Broaster went to the Northern end of San Pedro with a team. They had just picked her up from the airstrip after she had arrived on the island and that was how she came to be with them in the vehicle at around midday. She saw Luis Campos being taken out of the house and put under arrest, then taken to the police station. She cannot say what took place inside the house where he was found as she never entered the house. She did not observe any injuries on Luis Campos, and she cannot say whether he was beaten or pepper sprayed.

10. The final witness for the Claimant was Cpl. Allan Woods. He testified that he had met Luis Campos at around 1130 am on the 28th April, 2015. After speaking to Luis Campos and informing him of the reason for his detention, Cpl. Woods left the station and went back to the scene where the incident took place. He gave a detailed statement describing how he processed the scene where the deceased body was found along with a Scenes of Crime officer. Under cross-examination, Cpl. Woods stated that he does not know of Luis Campo' whereabouts before 11:00 am on the 28th April, 2015 and cannot say what did or

did not happen to him. He cannot recall if he was the officer who issued Campos with a medico-legal form. He did not observe anything on Campos.

Evidence on behalf of the Defendant

11. The first witness for the Defendant was Luis Campos. He said he was detained at approximately 11:30 am by the police at the home of one of his friends Jovani. He had been visiting his friend to arrange a trip. He was arrested by Sr. Supt. Broaster who pushed him to the ground and began to pepper spray his face. The other men along with Broaster then kicked him in his stomach, chest, back and leg. He has known Broaster for over 5 years and he recognized his voice distinctly. He was blinded by the pepper spray and thrown into the back of a pickup truck. He only knew they had arrived at the police station when he heard other officers talking. At the station, Luis Campos said that he was questioned by several police officers and not given a chance to speak to an attorney or any family member. He heard the voice of his cousin attorney Oscar Selgado while he was in the station. The police put it to him that he knew of drugs, weapons, ammunition and firearm on the island. They also told him that he knew where shallow graves were located. He told them no, and was beaten again. He was issued with a pair of medico legal forms later that night. At the hospital he was issued treatment with painkillers and an antibiotic. The injuries were classified as Wounding by the doctor. He states that it was Sr. Supt Broaster himself who hit him several times in the presence of his subordinates and allowed his subordinates to hit him.

Under cross-examination by Mr. Arguelles, Luis Campos said that he never asked Jovani to testify on his behalf. He was asked whether he could be sure who kicked him since he was blinded by pepper spray. Mr. Campos said he could not be sure. He said he was not lying about being kicked. He agreed that he showed the police where to find drugs, weapons, ammunition and firearms and shallow graves on San Pedro. He was asked why the day after he said he was beaten, there were no visible injuries to his face. Luis Campos replied that he had bruises inside his mouth that did not show on the outside. He agreed that he never filed a complaint with the Professional Standards Board or with the Internal Affairs of Police. He said No because he was always threatened. It was put to Luis Campos that he fabricated the story about being beaten. He said no. Under reexamination, Luis Campos clarified that he never made any complaint because he was threatened by Broaster.

12. The next witness for the Defendant was Peter Moses Hernandez. He said that he is the father of Luis Campos. He was at home sitting beside his residence in the San Juan area at around 10:30 am when he heard people coming into his yard and then into his house. He noticed a police golf cart was parked outside his home, and a male and female officer sat on it. Senior Supt. Broaster and a tall red skinned constable with a gold tooth entered the house where the witness and his family were. He says that Mr. Broaster started walking around the parlour and asked where Luis Campos was. He told him that he was on an errand and was not at home. Mr. Broaster asked who all were in the house and the witness told him it was only himself, his common law wife and his younger son. At the same time, Justin Campos, his younger son came out of the bathroom and entered the

parlour where his parents were. Mr. Broaster then asked "*who this*" referring to Justin. Mr. Hernandez replied that that is Justin, his younger son. Mr. Broaster then said to Mr. Hernandez, his common law wife and Justin, that they are lucky that is not Luis Campos because "*if that was Luis Campos he would shoot him dead in front of them and Hernandez would not be able to do anything because Luis Campos is wanted for murder of a taxi man who was killed on the island recently*". The witness says that his family was surprised by these comments made by Mr. Broaster but they remained silent. He then contacted his attorney Oscar Selgado and gave him a full report of what happened. Upon learning that his son Luis Campos had been arrested by police later that day, Mr. Hernandez along with his attorney Selgado visited the police station. They tried to see Luis Campos but they were denied as police were still questioning him. Mr. Hernandez said he did not see Luis Campos until around 11:00 pm that night when he was returned to the Police Station. He says that his son was crying and in great pain to walk. According to this witness, Luis Campos was bleeding from his mouth and his eyes were red and swollen shut. Mr. Hernandez and his attorney Selgado then went to the police station and Selgado requested medico legal forms so that Campos could be taken to hospital for treatment. Mr. Hernandez says that on June 6th, 2015 he requested that his attorney issue a media release on all that had happened. He says he was convinced that the police had acted with unjustifiable force against his son Luis Campos, and that the comments of Sr. Supt. Broaster must not be left unchallenged since they amount to a threat.

Under cross-examination by Mr. Arguelles, Mr. Hernandez said he has never been charged with keeping a firearm without a gun licence. After being shown a copy of a

newscast describing an incident where he was charged, he changed his answer to yes he has been charged with that offence before. He was then asked the reason why his brother Justin did not testify about the words Mr. Broaster allegedly said because Broaster never said those words; he said that Justin did not testify because he was a minor. He was asked whether he requested Mr. Selgado to make a media release. He said Selgado did that on his own. He was asked if the statement that *"On 6th June, 2015 he requested his attorney to make a media release"* is untrue. The witness said that statement is untrue. He agreed that he was only trying to help Mr. Selgado because he is defending his son in the criminal trial. He disagreed with the suggestion that Mr. Broaster never said those words and he had fabricated the story. Under brief re-examination by Mr. Sylvestre, Mr. Hernandez clarified that he had been charged for the firearm offence, but he was never convicted.

13. The final witness for the Defendant was Ms. Laura Trapp. She described the events of the day in the same terms as her common law husband's statement. She says that she was at home discussing family issues with Mr. Hernandez when she realized police were in her yard and proceeding into her house. She described how Sr. Supt. Broaster and another policeman entered her house. She states that Mr. Broaster asked where Luis Campos was. Her husband told Mr. Broaster that Luis was on an errand and was not at home. Mr. Broaster then sees her younger son and asked about who he is. Her husband replied that that was Justin Campos their younger son. She states that at that point she heard Mr. Broaster say that they were lucky that is not Luis Campos because if that was Luis Campos he would shoot him dead in front of them and that her husband would not be able to do anything about it because Luis Campos is wanted for the murder of a taxi man

who was killed on the island recently. Ms. Trapp then describes how she and her husband went with their attorney to the police station to try to see Luis Campos. She was not able to see him until around 11pm as police were questioning him. She said that Luis Campos was crying and he was in great pain to walk. His eyes were red and swollen shut. After receiving a pair of medico-legal forms from the police, they and the police take Luis Campos to the hospital where he was treated and released back into police custody. On June 6th, 2015, Ms. Trapp says that she and her husband asked their attorney Oscar Selgado to make a media release on all that had transpired since they were convinced that the police had acted with unjustifiable force against their son Luis Campos, and that the comments from Sr. Supt. Broaster should not be left unchallenged since they amounted to a threat.

Ms. Trapp was cross-examined by Mr. Arguelles. She was asked whether her son Justin Campos wanted to come and testify as to the events referred to in her statement. She agreed. It was put to the witness that the reason Justin did not want to testify is because these events never occurred. She said yes. Then upon clarification of the question, she was asked whether the words complained of were actually spoken by Mr. Broaster. She said those words were spoken by Broaster. She said she and her husband requested that Mr. Selgado issue the press release on their behalf; she was not merely saying this in order to help Selgado because he was defending her son in the criminal trial. Ms. Trapp insisted that Mr. Broaster said those words.

Legal Submissions on behalf of the Claimant

14. Mr. Arguelles on behalf of the Claimant contends that the Defendant admitted in his Defence that the words complained of were said by him. He asserts that the Claimant has established proof that the words complained of were said by the Defendant Oscar Selgado about the Claimant Edward Broaster. He cites Section 8 of the Evidence Act, Chapter 95 of the Laws of Belize:

“No fact need be proved in any civil cause or matter which the parties thereto or their agents admit at the hearing, or which they have admitted before the hearing with reference thereto, by their pleadings, express admissions, in answer to interrogatories, agreement between the parties or on notice to admit facts.”

Learned Counsel for the Claimant argues that it has been proven by the Defence filed that the Defendant Oscar Selgado admitted that he said the words complained of about the Claimant Edward Broaster who was expressly identified. He also cites the Statement of Facts and Issues filed by the Defendant where the Defendant agrees with the Facts filed by the Claimant. In addition, the Claimant tendered evidence of the newscast and interview which the court accepted as Exhibit EBA.

The next issue addressed by Mr. Arguelles was whether the words complained of were capable of being defamatory. The Defendant denied that the words were defamatory or calculated to disparage the Claimant, and asserted the defence of justification. The Claimant relies on the definition of “*defamatory*” as enunciated by Sir Thomas Bingham MR in *Skuse v. Granada Television* [1996] EMLR 278 at 286:

“A statement should be taken to be defamatory if it would tend to lower [the claimant] in the estimation of right-thinking members of society generally, or be likely to affect a person adversely in the estimation of reasonable people generally.”

Mr. Arguelles specifically refers to these words from the newscast in the story entitled **“Attorney Says Police Beat Up Murder Suspect”** *“...However a younger brother was seen in the house and Mr. Broaster made the comment to Moses Campos that if that was Luis Campos, I would have shot him in your presence and you would not have been able to do anything about it because he is a murderer and he is wanted by the police for murder.”*

Mr. Arguelles submits that this statement suggests that Sr. Supt. Broaster is a person who would shoot another person without justification and thereby commit an illegal act; that the Claimant is a person who acts with impunity and is above the law; that the Claimant is a person who abuses his authority and is a man of disrepute. He therefore submits that this statement falls within the definition of *“defamatory”* as defined by Sir Thomas Bingham MR. He further argues that the Defendant has not offered any explanation to rebut why this is not defamatory, save to say that he denies they were defamatory. Mr. Arguelles also notes that Mr. Selgado did not testify, and therefore did not subject himself to cross-examination.

15. Learned Counsel for the Claimant then turns to other words spoken by the Defendant in the newscast which he says are defamatory. The Defendant says *“...My client Luis Campos was eventually found by Mr. Broaster and his team and he was taken to an area north of*

San Pedro where he was severely beaten by the Police. I am informed that the police took a sponge, a foam, what we call a mattress and they wrapped it around him and they beat him on his hands, his chest, his back. He was kicked on his face several times, he wore braces and the braces cut the internal part of his mouth, all under his lips. His eyes were bloodshot red because he was pepper sprayed. His face was severely swollen.”

Mr. Arguelles submits that this statement also suggests that Mr. Broaster and his team committed illegal acts by beating Mr. Campos severely and unjustifiably, and that Mr. Broaster is a person who acts with impunity and is above the law; that the Claimant is a person who takes the law into his own hands; and that the Claimant is a person who abuses his authority and is a man of disrepute. Mr. Arguelles contends that these words spoken by Mr. Selgado are also defamatory of Mr. Broaster. He relies on ***Lois Young Barrow v. Andrew Steinhauer Belize Times Press Ltd*** Claim 561 of 2006 SCB where Hon. Chief Justice Conteh (as he then was) said:

*“There is no uniform definition of what is defamatory. But it is now generally accepted that a defamatory imputation is one that tends to make reasonable people think the worse of the claimant - *Sim v Stretch* (1936) 52 TLR 669; *Tolley v JS Fry and Sons Ltd* (1931)AC 333. Therefore in law, any imputation that tends to cause a person to be hated or despised or open to ridicule, or to be shunned or avoided or to lower a person in the estimation of others may be regarded as defamatory.*

The words by themselves may or may not mean much, but the context and circumstances of their publication would often make the critical difference as to whether they are defamatory or not.”

The submission is that the Defendant, Oscar Selgado, is an attorney and people tend to attribute more weight to what he says in the media especially during the evening news.

16. Mr. Arguelles argues that the Defendant has failed to discharge his burden of proof. While Mr. Selgado stated that Mr. Broaster worked under him as a junior officer, Mr. Broaster has rebutted that statement, saying that the Defendant has never been in charge of him at any point in his career, and that Selgado’s statement is a complete fabrication. He argues that this shows a propensity to not speak the truth, and calls into question the credibility of his entire statement. He states that Mr. Broaster has never denied that he pepper sprayed Luis Campos. He refers to the evidence of PC Munnings who said that the only force used on Campos was justifiable force. PC Munnings was present at the home of Moses Campos and he never heard Mr. Broaster use the words complained of. Mr. Arguelles also highlights the evidence of Dr. Ajay Hotchandani, who testified that the medic legal report showed that the whites of Campos’s eyes were red. The doctor explained that that redness could result due to exposure to irritants such as smoke or dust. He also stated that from the medical report, the examining physician noted minimal swelling to the eyes of Luis Campos. Learned Counsel for the Claimant states that the Claimant has never denied that pepper spray was used to subdue Luis Campos who was resisting lawful arrest and the above it is submitted is in line with the type of injury one

would sustain from being pepper sprayed. He further submits that the Defendant did not call Dr. Oliva to testify on his behalf, and has failed to discharge the burden of proof that the injuries (to the extent that they are claiming) were indeed caused by the Claimant. ACP Phillips was present at the time that Luis Campos was arrested, and she did not see any injuries on Luis Campos. PC Allan Woods also testified that he saw no injuries on Luis Campos.

17. Turning to the testimony of Peter Moses Campos, Mr. Arguelles argues that this witness for the Defendant was proven to be lying through cross-examination and through his own admission. He refers to portions of Moses Campos' testimony where he first denied he had been charged with a firearm offence in the past, then changed his story once confronted by counsel with a news item about the charge. He also admitted under cross-examination that he never asked Mr. Selgado to make a media release on his son's case, he admitted that he that statement is untrue and Selgado gave the media story on his own. Mr. Arguelles submits that his testimony about what was said by the Claimant i.e. the words complained of is incredible, unreliable and ought not to be believed because he has a propensity to lie. He further argues that Justin Campos who was present with Peter Moses Campos was not called to testify or to corroborate anything, the fact that Jovani who was present when Luis Campos arrested was not called to testify and most importantly the Defendant Oscar Selgado himself did not testify, all amount to glaring omissions in the evidence of the Defendant.

18. The Claimant also argues that the pleadings of the Defendant are non-compliant with Part 68 of Supreme Court CPR 2005. The Defendant has raised the Defence of justification, asserting that the words complained of consist of statements of facts and are true in substance and in fact. He again relies on the dicta of Conteh CJ in the Lois Young Barrow case cited above at paragraph 27:

*“The defence of justification is of course, a proper defence to a claim for libel. By this plea the defendants admit the libelous nature of the publication but put forth the justification by way of a shield that what is published is truth. However, **because of the importance accorded to reputation under the law there is a presumption that a defamatory statement is false. A defendant can only therefore rebut this presumption by pleading and proving that it is true. The burden of proof of the truth in justification is on the defendant.** He however discharges the burden on a balance of probabilities.”* [emphasis added]

Mr. Arguelles also cites Part 68 of the Supreme Court Rules 2005 which make it mandatory for a defence to be compliant.

“68.3 A defendant ...who alleges that:

(a) in so far as the words complained of consist of statements of facts, they are true in substance and in fact;

...or

*(c) pleads to like effect **must give particulars stating***

***(i) Which of the words complained of he alleges are statement of facts,
and***

***(ii) The facts and matters relied on in support of the allegation that the
words are true.” [emphasis added]***

19. Mr. Arguelles submits that the Defendant has failed to comply with this particular rule.

He argues that the Defendant has failed to discharge the burden of proof required as the witnesses for the Defendant proved to be unreliable and dishonest, and the Defence itself failed to give particulars required by Part 68.3(c)(i) and (ii) of the CPR. He relies on ***Said Musa v. Anne Marie Williams et. al.*** where Conteh CJ commented on the type of evidence that must be presented in order to substantiate a defence of fair comment and justification in answer to a charge of libel. His Lordship opined that generalized particulars were not enough.

“A defendant however must plead with sufficient precision the comment relied upon as constituting the defence of fair comment so that a claimant knows the case he has to meet.”

20. Mr. Arguelles contends that there is no need to prove actual damage suffered by the Claimant. He cites Abel J. in ***Dean Barrow v. Arthur Saldivar*** Claim 651 of 2011 SCB where His Lordship stated at paragraphs 22, 23 and 24 of his judgment:

*“22. Claims relating to the tort of slander (oral or transient defamatory statements) are based upon the common law but with statutory modifications [see ***Gatley on Libel and Slander 11th Edition at paragraph 1.1 page 4***] and are*

*actionable per se, that is **without proof of special damage**, where it is alleged that the Defendant made an oral defamatory statement (i.e. calculated to disparage or is injurious to the Claimant) published by the Defendant of and concerning the Claimant of a particular character or category without lawful justification or excuse.*

23. The character or category of such slanderous defamatory statements, include claims, such as are alleged in the present claim, concerning an allegation of the Respondent published by the Applicant, which were calculated to disparage the Respondent in and in relation to the conduct of any office (such as that of Prime Minister of Belize) or profession [Gatley on Libel and Slander 11 the Ed at paragraph 316 page 92] (such as Attorney-at-law and a Senior Counsel), and which imputes unfitness for or conduct in such office or profession (because , it is alleged, he is a corrupt person or involved in corruption in such office or profession) [See 28 Halsbury's Laws of England (4th Edition) para. 49]

24. The Libel and Defamation Act Chapter 169 Revised Edition 2000 Laws of Belize does not repeal the entire common law rules in relation to the tort of slander, but in relation to such rules, merely seeks to amend or modify such laws in various ways...This position is clear from even a cursory perusal of the Libel and Defamation Act and it nowhere states its intention to repeal the common law rules of slander nor can this be implied from any of its provisions.”

21. Mr. Arguelles submits that the slander in this case was made on May 6th, 2015 when the Defendant conducted an interview with the media house, Channel 5. The interview was later aired and broadcast on the nightly news twice that evening (one at 6:30 p.m. and another repeat at 10:00 p.m.) and over the internet via the website: www.Channel5belize.com to the public in Belize and the world at large. The Channel 5 written newscast articles named ***“Attorney Says Police Beat Up San Pedro Murder Suspect”*** and ***“Claims Statement Was Obtained Under Duress”*** both dated May 6th, 2015 were tendered into evidence as “EBA”. The Claimant was expressly named; no innuendo meaning is relied on. The number of persons likely to identify the Claimant as the person defamed and who understood the words in a defamatory sense was global given the reach of the internet and the repetition of the Channel 5 newscast on May 6th, 2015. The Claimant’s first witness statement dated January 25th, 2016 withstood cross-examination to the effect (at paragraph 8) that the things the Defendant said about him have defamed his character and have caused serious injury to his personal and professional reputation and that he has suffered considerable embarrassment and distress. Moreover, the Defendant admitted in his Defence the words complained of, by and about the Claimant and section 8 of the Evidence Act is reiterated. It is therefore submitted that the Claimant’s facts have been proved as to what was said during the broadcast of the Defendant and based on the extensive authorities invite the court to find those words defamatory of the Claimant, and that the Defendant has so slandered (including libeled) the Claimant; and that the Defendant has failed to discharge the burden of proof for the defence of justification.

Legal Submissions on behalf of the Defendant

21. Mr. Sylvestre on behalf of the Defendant argues that the first issue to be considered before the agreed issues are contemplated is whether the Claimant's claim for slander can succeed in light of the fact that no proof of special damage was lead at trial. He cites ***Gatley on Libel and Slander*** in order to explain the distinction between libel and slander:

"The consequences of the distinction. Libel is committed when defamatory matter is published in a 'permanent' form or in a form which is deemed to be permanent. Defamation published by spoken word or in some other transitory form is slander. In English law libel is always actionable per se, that is to say the plaintiff is not required to show any actual damage, and substantial rather than merely nominal damages may be awarded even in absence of proof, whereas in slander, with four exceptions, the cause of action is not complete unless there is 'special damage', i.e. some actual temporal loss."

Mr. Sylvestre contends that special damage must be proved in order for a claim in slander to succeed as the cause of action is not complete without this; and there are only four exceptions to this rule. "Special Damage" according to ***Gatley on Libel and Slander*** 9th Ed at page 119 para. 5.2 is as follows:

"5.2 Special damage for this purpose is some 'actual temporal loss' –the loss of some 'material' or 'temporal advantage' which is pecuniary or 'capable of being estimated in money'... [F]or example... the loss of a client, or of a dealing. The loss or postponement of marriage...The loss by a husband of the consortium or conjugal

society to his wife... The loss of gratuitous entertainment or the hospitality of friends..."

Mr. Sylvestre argues that no evidence of special damage was proven at trial. On the contrary, the evidence shows that since the publication complained of by the Claimant, the Claimant's professional standing has improved. At the time of giving evidence at trial on 19th December 2016, the Claimant explained that his rank was Assistant Commissioner of Police. At the time of the publication and institution of this claim, the Claimant held the rank of Senior Superintendent of Police. There is therefore no proof of special damage which would enable the Claimant's claim for slander to succeed. He further submits that the Claimant's claim does not fall within any of the four exceptions discussed by **Gatley on Libel and Slander** 9th Ed at page 69 para. 3.6:

"The four exceptional cases are:

- (1) Where the words impute a crime for which the plaintiff can be made to suffer physically by way of punishment;*
- (2) Where the words impute to the plaintiff a contagious or infectious disease;*
- (3) Where the words are capable to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of publication;*
- (4) By the Slander of Women Act 1891, where the words impute adultery or unchastity to a woman or girl."*

Mr. Sylvestre contends that the Claimant's case does not fall into any of these four categories and therefore the Claimant's claim must fail as there is no proof of special damage, and the cause of action was not established.

22. Mr. Sylvestre then makes submissions on each of the issues agreed between the parties in the Agreed Statement of Facts and Issues. He deals with Issues 1 and 2 together.

Issue 1: Whether the words complained of are capable of being defamatory

Issue 2: Whether the words in their natural and ordinary meaning meant and were understood to mean:

- (1) The Claimant is a person who would shoot another person without justification and thereby commit an illegal act;
- (2) The Claimant is a person who acts with impunity and is above the law;
- (3) The Claimant is a person who takes the law into his own hands; and
- (4) The Claimant is a person who abuses his authority and is a man of disrepute.

Mr. Sylvestre cites ***Gatley on Libel and Slander*** 9th Ed at page 22 para. 21 as follows:

"In determining whether words are defamatory there are two stages, first to decide what they mean and then to decide whether that meaning is defamatory."

This approach is confirmed in Action No. 250 of 1981 ***Louis Sylvestre v. Evan Hyde***, where Moe CJ, after examining the words admitted by the Defendant to have the meaning suggested by the Claimant, then commenced to determine whether the words could have the other meanings alleged by the Claimant: *"I think it convenient to determine at this*

point whether the natural and ordinary meaning of the article is that alleged..." In the case at bar, the Defendant in his Defence denied that the words meant, or were understood to mean or capable of meaning what the Claimant particularized at paragraph 5 of his Statement of Case. Mr. Sylvestre sets out the 2 paragraphs that the Claimant takes issue with.

The first paragraph contains the following words:

"...However, a younger brother was seen in the house and Mr. Broaster made the comment to Moses Campos that if that was Luis Campos, I would have shot him in your presence and you would not have been able to do anything about it because he is a murderer and he is wanted by the police for murder."

The second paragraph contains the following words:

"My client Luis Campos was eventually found by Mr. Broaster and his team and he was taken to an area north of San Pedro where he was severely beaten by the Police. I am informed that the police took a sponge, a foam, what we call a mattress, a piece of mattress, and they wrapped it around him and they beat him on his hands, his chest his back. He was kicked on his face several times, he wore braces and the braces cut the internal part of his mouth under his lips. His eyes were bloodshot red because he was pepper sprayed. His face was severely swollen."

In relation to the first paragraph, Mr. Sylvestre submits that the words do not have the meaning that the Claimant suggests they mean and were understood to mean. It is

submitted that right thinking members of society would have understood this statement in the context of when it was alleged to have been said and not conclude that the Claimant is a person who would shoot another person without justification and thereby commit an illegal act or that he acts with impunity and is above the law; or that he takes the law into his own hands or that he is a person who abuses his authority and is a man of disrepute. A grisly murder had occurred in San Pedro. The Claimant and his team had been called out for assistance to arrest the perpetrator. Luis Campos was the main suspect and considered dangerous. Mr. Sylvestre contends that the statement would be considered in this light and right thinking members of society would have understood this statement to mean that all justifiable force would have to be taken to detain the fugitive. In relation to the second statement, he argues that the words cannot have the meaning which the Claimant suggests they mean or were understood to mean as no reference was made to the Claimant doing any of the acts. It therefore follows that as the words do not have the meaning or are understood to mean what the Claimant alleges, it follows that the statement cannot be defamatory.

23. Turning to the third issue of whether the words complained of consist of statement of facts and are true in substance and fact as words uttered and acts done by the Claimant - the defence of justification, Mr. Sylvestre considers the Defendant's defence. He sets out the following paragraphs of the Defence:

“2. ... the words complained of consist of statements of facts and are true in substance and in fact made by the Claimant to Moses Campos in the presence of witnesses,

5. The Defendant further states that there is a medico-legal of the said Luis Campos which verifies and substantiates that injuries sustained were wounding.

8. The Defendant denies that the words meant, or were understood to mean, or were capable of meaning what is set out in paragraph 5 of the Statement of Claim and repeats that the words were statements of facts, and are true in substance and in fact.”

Mr. Sylvestre cites ***Gatley on Libel and Slander*** 9th Ed. At page 233 at para. 11.1:

“It is a defence for the defendant to establish that the imputation in respect of which he is sued is substantially true and the defence is called a plea of justification.”

He concedes that the burden of proof in establishing that the words are substantially true is on the Defendant, but he says that the standard of that proof is on a balance of probabilities. Relying on ***Gatley on Libel and Slander***, Mr. Sylvestre argues that if the defendant proves that the main charge is established he need not justify statements which do not add to the sting of the charge. In addition, a slight inaccuracy in one or more of its details will not prevent a defence of justification from succeeding. He contends that when the evidence at trial is considered, he submits that the Defence of justification has

been made out at the requisite standard of proof in that the words spoken by the Defendant were substantially true.

24. Mr. Sylvestre refers first to the evidence of the Claimant Edward Broaster who gave three witness statements denying that he had uttered the words at the home of Moses Campos, and he denied overseeing the beating of Luis Campos. This evidence is examined by Mr. Sylvestre in light of the evidence of other witnesses. Recounting the evidence of Cashman Munnings, he said he was with the Claimant when they visited the home of Moses Campos and also present when Luis Campos was detained. Mr. Munnings denied that Broaster said those words and denied that Luis was ever beaten by police. Mr. Sylvestre submits that Mr. Munnings is not a credible witness based on his response in cross-examination that the Claimant did not pepper spray Luis Campos. This witness who alleges that he was present with the Claimant at all times states that the Claimant did not pepper spray Luis Campos, when the Claimant has admitted that he did in fact use pepper spray on Campos. His credibility is therefore questionable. His denials that Luis Campos was beaten and that Mr. Broaster said the words complained of can be seen as false. Mr. Sylvestre also submits that Munnings lied about whether Luis Campos was beaten even though he admitted force was used to subdue Campos; he explained that was "*justifiable force*".

25. Looking at the evidence of the next witness Zayne Palacio is similar to that of PC Munnings. He says he accompanied the Claimant to Moses Campos and to the house where Luis Campos was arrested. PC Munnings says that he did not hear Broaster use the

words complained of. In relation to the beatings, PC Munnings states that “*necessary force*” was used to subdue Luis Campos as is set out in the medico-legal form. Mr. Sylvestre argues that the Claimant admitted that Luis Campos was taken to a polyclinic; this admission confirms on a balance of probabilities that Luis Campos suffered injuries while in police custody. Why would there be a need to take him to a polyclinic?

26. Looking at the evidence of Dr. Ajay Hotchandani, Mr. Sylvestre submits that the evidence of this witness was more beneficial to the Defendant’s case than to the Claimant.

Dr. Hotchandani offered an interpretation and analysis of the medical report of Dr. Fatima Oliva dated 28th April, 2015 relating to Luis Campos. He cites the Defence in para. 5 which particularized that there is a medico-legal report of Luis Campos which verifies and substantiates that injuries sustained were wounding. Mr. Sylvestre states that the medico-legal form has a notation of the injuries observed by the police:

- (1) Swelling to the right of the mouth
- (2) Complains of pain to both eyes
- (3) Complains of pains to the chest area

He argued that Dr. Oliva, the doctor who attended to Luis Campos confirmed these injuries which were observed by the police on Luis Campos. Dr. Hotchandani in his analysis and interpretation of Dr. Oliva’s report explained these:

- “2. Minimal swelling to eyelids of both eyes*
- 3. swelling right side of mouth open wound*
- 4. ...legion to right chest*

5. ...swelling to..."

Mr. Sylvestre points out that under cross-examination Dr. Hotchandani was asked whether smoke and dust irritants could have caused the bruises to Luis Campos' chest area as was observed. Dr. Hotchandani said no. Mr. Sylvestre argues that the explanation given by Campos as to how he sustained these injuries to his chest and other parts of his body is more credible than the explanation Claimant and his witnesses. The sheer weight of the independent medical evidence confirming the injuries of Luis Campos, on a balance, trumps the evidence of the Claimant and his witnesses. The evidence of the Claimant and his witnesses must be rejected.

27. Examining the evidence of ACP Phillips, Mr. Sylvestre submits that the evidence of ACP Phillips is that from the time Luis Campos was located she remained outside the house and was in the vehicle which took Luis Campos to the San Pedro police station in direct contradiction with that of the Claimant who testified that Luis Campos was handed over to CIB Woods and was taken to the polyclinic and thereafter had an interview with Mr. Woods.

28. Luis Campos was the first witness for the Defence. In his witness statement Luis Campos sets out how he was beaten and pepper sprayed by the Claimant and other police officers when he's first detained and how later in the day around 4 pm he was taken to the North side of San Pedro and beaten some more by the Claimant and other officers under the Claimant's command. Mr. Sylvestre submits that Luis Campos' evidence remained unblemished under cross examination.

29. The evidence of Moses Campos is not credible, a fact acknowledged by Mr. Sylvestre. However, he submits that Laura Trapp is a witness of the truth based on her demeanor. He submits that this court should give no weight to the evidence of Moses Campos, but should accept the evidence of Laura Trapp, in light of the inconsistencies and untruths in the evidence of the Claimant and his witnesses Munnings and Palacio relating to how the detention of Luis Campos occurred.

Mr. Sylvestre contends that when all the evidence is considered, it is more probable than not that the Claimant uttered the words complained of in the Campos home, and the beating of Luis Campos did occur as related by the Defendant. It is submitted that the Defendant has discharged his burden of proof in establishing his defence of justification.

Mr. Sylvestre submits that the issue whether a medico-legal form exists for Luis Campos is a non-issue, since even on the Claimant's case the form exists as stated in the evidence of Dr. Hotchandani.

30. In answer to the point raised by the Claimant on non-compliance with the requirements of Part 68, Mr. Sylvestre contends that the Claimant has misinterpreted Part 68.3 of the CPR. He argues that when the section is read in full, it is clear that as the Defence is one of justification alone, then Part 68.3 is not applicable to the case at bar.

He relies on the dicta of Conteh CJ in the Said Musa case as follows:

"20. Even though that case and the authorities cited in it were decided before the 1999 Civil Procedure Rules in England, and well before our own Supreme Court (Civil Procedure) Rules 2005, the law and rationale for precision in particulars

where the defences of justification and fair comment are sought to be relied upon find reaffirmation and reinforcement in the provisions of Rule 68.3”

As the sole defence of justification is pleaded in this case, there is no need for particulars. For these reasons, Mr. Sylvestre asks that the Claim be dismissed with costs to the Defendant.

Claimant’s Submissions in Reply to the Defence Submissions

31. Mr. Arguelles states that the Claimant rejects the position advanced by the Defendant that special damages need to be proved for slander. He says that there is no need to prove special damage because slander falls within 2 exceptions discussed in Halsbury.

In Halsbury’s Laws of England, 4th Ed, Vol. 28 at para.1:

*“...[1] If the defamation is oral, or in some other transient form, it constitutes the tort of slander which is not actionable at common law without proof of actual damage, **except where the statement is one of a particular character.** [footnote 5] [emphasis added]*

Footnote 5 reads: *“i.e. words imputing a criminal offence...: or words calculated to disparage a person in any office, profession, calling, trade or business held or carried on by him at the time of the publication...”*

Paragraph 20 of Halsbury’s reads: Oral defamatory statements actionable per se. An oral defamatory statement is actionable per se, that is without proof of special damage, if it is calculated to disparage the plaintiff in any office, profession, calling, trade or business

held or carried on by him at the time of publication; (2) it is published of the plaintiff in the way of his office or calling and in relation to his conduct in it, and imputes unfitness for or misconduct in that office or calling; (3) it imputes that the person of whom the words are published has committed a crime punishable by imprisonment; (4) it imputes that the person of whom the words are published is at the time of publication suffering from certain contagious diseases; or (5) it imputes unchastity or adultery to a woman. [emphasis added]

32. Mr. Arguelles cites passages from the judgment of Abel J. in ***Dean Barrow v. Arthur Saldivar*** Claim 651 of 2011.

*“21. Claims relating to the **tort of slander** (oral or defamatory statements) are based upon the common law but with statutory modifications [see **Gatley on Libel and Slander 11th Ed at para.1.1 page 4**] and are actionable per se, that is without proof of special damage, where it is alleged that the Defendant made an oral defamatory statement(i.e. calculated to disparage or is injurious to the Claimant) published by the Defendant of and concerning the Claimant of a particular character or category without lawful justification or excuse. [See 28 Halsbury’s Laws of England (4th Ed) Para. 1, 12 and 49. See also Gatley on Libel and Slander 11th Ed at para. 1.6 and 3.6. [Emphasis added]*

23. The character or category of such slanderous defamatory statements, include claims, such as are alleged in the present claim, concerning an allegation of an untrue imputation against the reputation of the Respondent published by the

Applicant, which were calculated to disparage the Respondent in and in relation to the conduct of any office (such as that of Prime Minister of Belize), or profession [Gatley on Libel and Slander 11th Ed. At para. 316 page 92] (such as an attorney-at-law and a Senior Counsel), and which imputes unfitness for or conduct in such office or profession (because it is alleged he is a corrupt person or involved in corruption in such office or profession) [See 28 Halsbury's Laws of England (4th Ed.) Para. 49] [Emphasis added]

24. The Libel and Defamation Act, Chapter 169, Revised Edition 2000, Laws of Belize, does not repeal the entire common law rules in relation to the tort of slander, but in relation to such rules, merely seeks to amend or modify such laws in various ways, including by making provision for the admission by way of mitigation of damages of an offer of an apology before the trial of the action; making statements actionable per se imputing unchastity or adultery to any woman or girl; making the broadcasting of words a publication in permanent form; and making provision for statutory defences of a fair and accurate report of certain public meetings and court proceedings etc. This position is clear from even a cursory perusal of the Libel and Defamation Act and it nowhere states its intention to repeal the common law rules of slander nor can this be implied from any of its provisions."

In that case, the Applicant Arthur Saldivar had argued that the Respondent is the Prime Minister of Belize prior to and after the alleged impugned words and no special damages

could be alluded to by the Respondent to substantiate the cause of action in the Claim. Abel J held however, that the tort of slander which is actionable per se had been made out by the evidence. His Lordship stated thus:

“58. I also find that the Applicant’s submission is wholly misconceived that under the laws of Belize, in relation to the law of slander, only women who are accused of unchastity can bring a claim without proof of special damage, and that Section 6 of the Libel and Defamation Act, Chapter 169 Revised Edition 2000, Laws of Belize, establishes this. As I noted above the Libel and Defamation Act does not wholly repeal the common law in relation to defamation and slander but rather merely seeks to amend or modify such laws (which are creatures of common law) in various ways and inter alia, makes statements imputing unchastity or adultery to any woman or a girl, actionable per se.”

33. Applying the reasoning of Abel J. to the case at bar, Mr. Arguelles makes the argument that the Defendant is imputing that the Claimant (along with his team) has committed a crime. He urges this court to take judicial notice of sections 66, 67, 79, 81, 85, 86, 96, 97, 99(b) of the Criminal Code Chapter 101 of the Laws of Belize R. E. 2011 of the various crimes that the Defendant is imputing to the Claimant; at the very least the Defendant has imputed that the Claimant has committed the crime of “*harm*” against his client. Mr. Broaster would have been under a duty to prevent his fellow officers from causing harm to Luis Campos. The submission is that the slander comes within the exception

“(3) It imputes that the person of whom the words are published has committed a crime punishable by imprisonment.” The Defendant said **“My client Luis Campos was eventually found by Mr. Broaster and his team and he was taken to an area north of San Pedro where he was severely beaten by the Police...”**

Mr. Arguelles submits further that the following exception also applies: *“(1) it is calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of publication; (2) it is published of the plaintiff in the way of his office or calling and in relation to his conduct in it and imputes unfitness for or misconduct in that office or calling”*. The Claimant is a police officer and the statement was made by the Defendant that **“As a junior officer Mr. Broaster worked under my command on several operations in the past and never in the past have I condoned this type of beating, use of excessive force while on surgical strikes”**. It is submitted that this statement is calculated to disparage the Claimant in his office as an *“officer”*, his profession, calling and trade, and it was said in the way of his office and in relation to his conduct in it and imputes unfitness for or misconduct in that office.

34. In response to Mr. Sylvestre’s submission that the Claimant has misinterpreted Rule 68.3, Mr. Arguelles contends that the fact of pleading justification alone does not mean it is not a plea of justification and fair comment. He submits that this is a *“rolled up plea”* and according to ***Gatley on Libel and Slander*** at para. 1131, the need for particulars has been said to be the same for both: ***Drake v. Overland*** [1980] 2 W.W. R. at pp 198-199. Learned Counsel further submits that Rule 68.3 exists to capture hybrids of both defences when

either of the two may not have been specifically pleaded. He cites Conteh CJ in the Said Musa case where His Lordship cited **Control Risks v. New Library Ltd.** (1990) 1 W.L.R. 183

“ ... A plaintiff is entitled to know what case he has to meet under a defence of fair comment just as much as he is entitled to know what case he has to meet when faced with a defence of justification. Where justification is pleaded, a defendant is now required to spell out in his pleadings the meaning of the words, which if it is their true meaning, he will seek to justify. These are the so-called “Lucas Box” particulars: see Lucas Box v News Group Newspapers Ltd. (1986) 1 WLR 147, 153 and the observations of Mustill LJ in Viscount De Lisle v Times Newspapers Ltd. (1988) 1 W.L.R. 49,60...by parity of reasoning, when fair comment is pleaded the defendant must spell out, with sufficient precision to enable the plaintiff to know what case he has to meet, what is the comment which the defendant will seek to say attracts the fair comment defence.” [Emphasis added]

Mr. Arguelles also cites the **White Book** Vol.1 2007 Sweet & Maxwell at p 1631 at 53 PD12: *“Justification (proving that the words complained of are true) is a defence to a claim in libel or slander.... But in doing so, the defendant must specify the meaning in which he is justifying, i.e. the meaning in which he says that the words are true (see Lucas-Box v News Group [1986] 1 W.L. R. 147, CA)”. And further at 53 PD 13: “Once the defendant has decided on the meaning in which he intends to prove that libel or slander is true, he must set out, plainly and unambiguously, the material facts which he relies on in support of that case. They are known as ‘Particulars of Justification’”. This need is further implied under the heading “Fair Comment” at 53 PD.15: “As with justification...so with fair comment, the*

defendant is now obliged to set out the meaning that he intends to defend. This rule stems from the decision in Control Risks v. New English Library [1990] 1 W.L.R. 183.”

Mr. Arguelles submits that the Defendant is now attempting to cure these omissions/defects as this is clearly evident at paras. 18, 22 and 26-28 of the Defendant’s closing which ought to have been in the defence; it is too late for that.

35. In closing, Mr. Arguelles argues that the burden of proof on the defendant has still not been discharged. Of the three witnesses called by the Defendant, one of them (Moses Campos) was conceded by the Defence as having no credibility. Luis Campos himself said he could not see who kicked him so he could not prove anything. Laura Trapp contradicts her husband Moses Campos. The burden of proof on the Defendant was not discharged. On the contrary, Mr. Arguelles argues that the Claimant withstood cross-examination. No evidence has been produced to show that the Claimant ever worked under the command of the Defendant and this would lead to the conclusion that the Defendant lied ; this goes to the Defendant’s credibility, propensity to lie and calls into question everything he said about the Claimant in that interview. Mr. Arguelles acknowledges the inconsistency in the evidence of PC Munnings who said that Mr. Broaster never used pepper spray on Luis Campos, when Broaster himself had testified that he did in fact pepper spray Campos. He maintains however that the witness never strayed from the position that only “*justifiable force*” was used to subdue Luis Campos. He rejects the Defence’s position that Luis Campos was beaten. The medico-legal form does not assist the Defendant in proving that

he was beaten by police. Luis Campos testimony was not helpful in proving what the Defendant said about the Claimant.

Decision

36. I am most grateful to both counsel for their extensive submissions which have proven invaluable in assisting this court in determining this matter. Having reviewed all the evidence in this case, and considered legal submissions from both counsel, I am of the view that the Claimant succeeds in his claim. I find on a balance of probabilities that I believe that the witnesses for the Claimant (with the exception of PC Cashman Munnings) were witnesses of the truth. Having found the witnesses for the Claimant to be truthful, I go on to state that I am in full agreement with the legal submissions made by counsel for the Claimant. The words spoken by the Defendant are defamatory in every sense. The description given by the Defendant on that news cast would lead right thinking people to believe that Mr. Broaster (a police officer sworn to uphold the laws of this country) committed several crimes in contravention of the Criminal Code against Mr. Campos on that day. I also find that the comments made by the Defendant were designed to ridicule and disparage the Claimant in his profession or calling as a police officer and clearly falls within the third exception stated by Gatley on ***Libel and Slander*** as “*calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of publication*”. I also agree with Mr. Arguelles’ legal submission that this is a rolled up plea, and as such, it was imperative that the Defence provide particulars as to which of the words complained of he alleges are statements of facts and the facts and matters relied on in support of the allegation that the words are true. Failure

to do so, in my respectful view, is fatal to the Defence, as it is a fundamental principle of fairness that the Claimant knows “*with sufficient precision*”, in the words of Conteh CJ in ***Said Musa v Ann Marie Williams***, the case he has to meet. That is the underlying basis for Rule 68.3 and the Defence in this case failed to comply with that mandatory rule. Let me also state that I on a balance of probabilities find that the injuries observed by the medical practitioner as detailed on the medico-legal form were in my view consistent with the justifiable force meted out by the police in subduing Mr. Campos, and not due to any beating alleged by him. The evidence showed that Mr. Campos was hiding in a house, he was found by police, he resisted arrest despite being warned not to do so, a physical struggle ensued between the arresting officers and Campos during which he sustained some injuries as he was wrestled to the ground by the officers and he was subdued and taken into custody by the police. I note that these injuries on Luis Campos’ body (including the bruise to his chest and the injury to his mouth classified as “*minimal*” by the attending Physician Dr. Oliva). I also note that the minimal swelling to his eyelids and redness of his eyes were most likely caused by the teargas which ACP Broaster admitted using to subdue on Mr. Campos. Let me state that in coming to these findings, I place absolutely no credence in the testimony of PC Munnings whose egregious behaviour in the witness stand was lying under oath by saying ACP Broaster did not pepper spray Campos. I found Mr. Campos’ evidence to be dilatory and unconvincing. I also found it disturbing that the Defendant himself did not testify; that is his right, but I would think that as a trained attorney at law Mr. Oscar Selgado would have welcomed the opportunity to let the court hear from him directly in answer to this serious claim of libel and slander

brought against him, and to have his evidence tested by cross examination. One important question which could have been determined is when and where did ACP Broaster work under Mr. Selgado's command. This question goes to credibility. Mr. Broaster says he was never under Mr. Selgado's command. However, he chose to remain silent and that is his right, so I say no more on that. I find in favor of the Claimant and I award the sum of \$30,000.00 as compensation for defamation to be paid to the Claimant by the Defendant, plus \$12,500.00 in costs to be paid by the Defendant to the Claimant.

Dated this Wednesday, 27th day of February, 2019.

**Michelle Arana
Supreme Court Judge**