

IN THE SUPREME COURT OF BELIZE A.D. 2020
CLAIM NO. 90 OF 2020

BETWEEN

(SHANE HARRIS

CLAIMANT

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(AND

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(ATTORNEY GENERAL OF BELIZE

1ST DEFENDANT

(SGT. EMIL AUGUST

2ND DEFENDANT

(PC ROLLINGTON FULLER

3RD DEFENDANT

(BELIZE POLICE DEPARTMENT

4TH DEFENDANT

Before: The Hon Westmin R.A. James (Ag)

Date of Decision: 1st February 2020

Appearances: Mr Leeroy Banner for the Claimant

Ms Kimberly Wallace for the Defendants

JUDGMENT

1. By Claim Form filed on 17th February 2020 the Claimant seeks damages inclusive of aggravated and exemplary damages for unlawful arrest and false imprisonment. The Claimant alleges that he was wrongfully arrested on 30th November 2019 and unlawfully detained over the weekend for 37 hours and 15 mins without being charged with any offences. He was released on Monday 2nd December 2019. The Claimant is also requesting special damages in the amount of \$1,500.00 for his legal fees incurred as a result of the incident.

EVIDENCE

2. The Claimant testified that on Saturday 30th November 2019 at around 9 pm he was at Armadillo Street, Belize City with several of his friends when the 3rd Defendant along with other police officers came into the yard where they were. He says that the 3rd Defendant came up to him and indicated he was going to be detaining him for breaching his bail conditions as he was not at his house on George Street. The Claimant says that he told the 3rd Defendant that he was not in violation of his bail conditions and that he knew his bail conditions. He indicated that his bail condition was that he was to be off the streets between the hours of 8:30 pm and 6:00 am and that he did not have to be at his George Street

address. He also indicates that he was inside the yard and not on the street. He testifies that after several minutes of discussion between he and the 3rd Defendant, the 3rd Defendant handcuffed him and forcefully removed him from the yard, the Claimant claims that he assaulted by the 3rd Defendant in full view of his friends and felt embarrassed.

3. On his way to the police station, he was allowed by Cpt Ken Aranda to call his Attorney-at-Law. In cross examination he admitted that he did not tell his Attorney that he was assaulted. The Claimant said he was placed in a cell provided with a copy of "Suspect's Rights in Custody Acknowledgment Form which he refused to sign. He said that he was left in the cell without being questioned until Monday morning. He said that on Monday around 10:45 am after the intervention of his Attorney-at-Law it was confirmed that he was not in breach of his bail conditions. The Claimant indicated that he slept on the cold floor as he was not provided with any mattress, sheet or pillows and he was not allowed to shower or brush his teeth. None of which was contested by the Defendants.
4. Providing evidence for the Claimant, was Christian Robateau a friend of the Claimant who was present that night. I accept that as a friend of the Claimant, Mr Robateau would have wanted to assist the Claimant's case and in this regard I examined his evidence with caution in determining the weight I attached to it. It was not surprising however that the sole witness the Claimant called was one of his friends since the Claimant had testified that he was in the yard socializing with friends. Mr Robateau indicated that he taped part of the encounter between the Claimant and the 3rd Defendant. The video which was taken with Mr Robateau's phone showed a scene with a number of men arguing with the police. On the tape you could hear a person saying "*I know what my bail conditions are.*" The video also showed that the persons were getting boisterous. Mr Robateau indicated that he stopped recording because he thought he was going to be seen. He indicated that he left and went inside. He also indicated that he did not see when the Claimant was arrested nor did he see any assault since he was inside.
5. The 3rd Defendant testified that the Gang Suppression Unit (GSU) of which is a part received information that gang members were congregating at #17 Armadillo Street, Belize City and were believed to be in possession of drugs and firearms. He indicated that he was accompanied by four other officers from the GSU and two officers from the Belize Defence Force. The 3rd Defendant did not name these officers and none of them gave evidence at the trial. He said that while heading in the direction of Armadillo Street he saw three persons run off the street into the yard at #17 Armadillo Street. While he described one of the persons and what they were wearing, the 3rd Defendant in cross examination and in his witness statement never said it was the Claimant. He testified that when he entered the yard there were about 15-20 persons congregating and socializing. He indicated that he and three

other police officers conducted the search and found nothing. He testified he knew some of the persons as they had been convicted gang members.

6. He then indicated that he went over to the Claimant who he knew was on bail for the offence of being a member of a gang. He said he informed the Claimant that he was being detained pending investigation of breach of bail conditions, as he was not at his residence on George Street. He said from his knowledge and experience of bail, the usual conditions of bail that you should be at your residence between the hours of 8:30 pm to 6 am. He said it was this knowledge that made him have an honest belief that the Claimant was in breach of this bail conditions. He indicated that he cautioned the Claimant and the reason for the detention. He said that the crowd began getting boisterous and he called for backup. When the backup came, he said that he suspected the Claimant was in violation of his bail conditions and the Claimant refused to comply with his instructions. The Claimant was then detained and left the scene with Corporal Kent Aranda and his team.
7. Sergeant Emil August, the 2nd Defendant was the arresting officer and the investigating officer in the previous case involving the Claimant where he was charged for being a member of a gang. The 2nd Defendant is the Supervisor in charge of the Anti-Gang Task Force Unit. The 2nd Defendant confirmed that the Unit received information that there were gang members of the George Street Gang socializing on the street and inside the residence on Armadillo Street, Belize City. He testified that it was believed that the persons were in possession of drugs and firearms. He testifies that the 3rd Defendant and a team proceeded to the said location. He then indicated that at 9:25 pm he received a call from the 3rd Defendant who said he saw the Claimant amongst the crowd at the residence and that they conducted a search and he was in the process of detaining the Claimant but the crowd was being boisterous and requested further assistance to contain the crowd. On that information the 2nd Defendant dispatched another team to assist the 3rd Defendant. It is important to note that the 3rd Defendant was already in the process of the detaining the Claimant.
8. The 2nd Defendant also testified that he called back the 3rd Defendant to inform him that another team was being deployed and confirmed that the Claimant was out on bail and there is a possibility that he was in breach of his bail conditions and should proceed in detaining the Claimant pending investigation of his bail conditions. When the 2nd Defendant arrived at the police station that night, he testified that he met with the Claimant informed him of the reason for his arrest being in breach of his bail conditions. He testified that the Claimant started to argue that his bail conditions was for him not to be on the street. The 2nd Defendant indicated that he contacted the Officer in charge and informed him of the claim. He testified that Mr Gomez said he would call him back and when he did call back, the Officer in Charge said that he was trying to contact personnel from the DPP office and was unable to get assistance. He also indicated that the Claimant was to be detained

pending the outcome of the investigation with the DPP. He indicated that he went off duty midnight that night when Inspector Novelo took conduct of the matter.

9. In cross examination the 2nd Defendant indicated that not everyone gets the same bail conditions and admitted that there was no law to charge the Claimant with and all they would do is take him before a magistrate as the police do not charge.
10. Inspector Novelo testified that on the Monday 2nd 2019 at about 8:40 am, the 3rd Defendant handed him a report to him concerning the detention of the Claimant, and a copy of the bail with conditions. While this report was not entered into evidence it was disclosed to the Claimant, the 3rd Defendant in his cross examination indicated that this report was a forgery. He indicated that he did not do a report and that was not his signature on the document he was shown. Inspector Novello indicated that he took this report to Senior Crown Counsel Shenieza Smith who determined that the Claimant was not in breach of his bail conditions as he was found in a yard, and not on the street as specified in the bail conditions given by the Court. The Inspector then testified that he contacted the Executive Duty Officer to have the Claimant released immediately. He testified that the Claimant was detained at 9:55 pm on Saturday 30th November 2019 and was released 10:42 am on Monday 2nd December 2019.

LAW

11. The main issues of law for determination are as follows;

- i. *Whether the arrest of the Claimant was lawful;*
- ii. *Whether the claimant was falsely imprisoned from Saturday 30th November to Monday 2nd December 2019; and*
- iii. *If any of the above is yes, whether the Claimant is entitled to damages, including aggravated and exemplary damages.*

Whether the arrest of the Claimant was lawful.

12. Where an arrest is executed without a warrant by a police officer, the police must usually satisfy either the **Police Act Chapter 10:04** or the **Crime Control and Criminal Justice Act Chap 102**. Section 43 of the **Police Act** permits the arrest without a warrant and states:

*“(1) It shall **be lawful for any police officer**, and for all persons whom he may call to his assistance, to apprehend without warrant in the following cases*

(b) any idle and disorderly person whom he finds between sunset and six in the morning lying or loitering in any street or other public place, and not

giving a satisfactory account of himself, or whom he has good cause to suspect of having committed, or being about to commit any felony, misdemeanour or breach of the peace; [emphasis mine]

13. Section 13 of the **Crime Control and Criminal Justice Act Chap 102** also empowers a member of the Security Forces to arrest without a warrant in the following circumstances:

(1) In a special area, any member of the Security Forces may, without warrant, and using such force (if any) as may be reasonably justified in the circumstances:-

....

(c) arrest any person upon reasonable suspicion of his having committed or of being about to commit an offence; [emphasis mine]

14. In order to affect an arrest without warrant the police must have reasonable suspicion of his having committed or of being about to commit an offence against the laws of Belize. The onus of establishing reasonable and probable cause for an arrest is on the police.

15. An opportunity was given to the parties to submit the relevant statute that breaching bail conditions constitutes a criminal offence under the laws of Belize. The Attorney for the Defendants accepted that the breach of bail conditions was not in fact a criminal offence in the strictest sense. She argued that the Bail Order gives the ability to detain the Claimant. The order provided that “*Failure to comply with the above conditions or if the Petitioner is subsequently arrested and charged for any other offence, then the Petitioner is to be brought immediately or as soon as possible before a judge of the Supreme Court.*” Further, the Defendants argued that section 5 of the Constitution provides that a person should not be deprived on their liberty save “*(c) in execution of the order of a court made to secure the fulfillment of any obligation imposed on him by law; (d) or for the purpose of bringing him before a court in execution of the order of a court.*” She therefore argued that the Claimant was detained by the 3rd Defendant on the premise that they were acting on the execution of the Court Order.

16. Unlike other Caribbean countries Belize does not have a specific criminal offence for breaching bail conditions. See for example section 16 of the Jamaican **Bail Act** or section 15 of the Trinidad and Tobago **Bail Act Chap 4:60**. While a person who breaches their bail conditions is subject to having that bail revoked it is not deemed a criminal offence in Belize. The Constitution does not assist the Defendant, the Claimant did not bring a constitutional claim, this arrest was not authorized by law as mandated in 5(1) and there was no warrant or summons issued for the Claimant for the breach upon which the execution of a court order. The Bail Order does not make its breach a criminal offence and at its highest it only allows detention if the person has breached the conditions not a reasonable belief that he has breached it and since the Claimant was not in breach of the bail conditions, the bail order does not permit him being brought before the Court.

17. In fact, Sergeant August in his evidence indicated that there was nothing to charge the Claimant with and all that the police will do is bring him before a magistrate but he would not charge him. There being no criminal offence, the police could not arrest the Claimant without a warrant pursuant to the Police Act or the Crime Control and Criminal Justice Act. Having regard to the fact that there was no criminal offence there could be no lawful authority upon which to arrest the Claimant.

18. Even if I am wrong on this point Narine JA in *Nigel Lashley v The Attorney General of Trinidad and Tobago* Civ Appeal No 267 of 2011 at paragraph 14 stated as follows;

“...The test for reasonable and probable cause has a subjective as well as an objective element. The arresting officer must have an honest belief or suspicion that the suspect had committed an offence, and this belief or suspicion must be based on the existence of objective circumstances, which can reasonably justify the belief or suspicion. A police officer need not have evidence amounting to a prima facie case. Hearsay information including information from other officers may be sufficient to create reasonable grounds for arrest as long as that information is within the knowledge of the arresting officer: O’Hara v. Chief Constable (1977) 2 WLR 1; Clerk and Lindsell on Torts (18th ed.) para. 13-53. The lawfulness of the arrest is to be judged at the time of the arrest.”

19. Therefore, a constable may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of an offence. The 3rd Defendant was not involved in the case in which the Claimant was granted bail. The 3rd Defendant did not know anything about his bail conditions and could not reasonably believe that he was in breach based on the bail conditions on the basis that two other persons who were not charged with the Claimant had that bail condition. The 3rd Defendant’s own evidence was that he searched all the parties and found nothing on anyone at the event and the Claimant specifically told him that he wasn’t in breach and indicated what his bail conditions were. The 3rd Defendant did not make any checks before he arrested the Claimant especially since he did not know what the conditions were.

20. Consequently, the Court finds that PC Fuller did not have reasonable and probable cause to arrest the Claimant and the arrest was wrongful.

Whether the Claimant was falsely imprisoned from 30th November 2019 to 2nd December 2019

21. The essence of a claim of false imprisonment is the mere imprisonment. The Claimant need not prove that the imprisonment was unlawful or malicious, but must establish a prima facie case that he was imprisoned by the defendant; the onus then lies on the Defendant of proving a justification.

22. Having found that the breach of the arrest was unlawful therefore the following detention was therefore false imprisonment.
23. Even if the initial arrest was considered lawful and justified, it doesn't mean that the subsequent detention was also justified. Whether or not the continued detention of a person is justified depended on all the circumstances of the case. The Defendant must show that the whole period of detention was justified.
24. This Court notes the decision of the Board of the Privy Council in ***Ramsingh v The Attorney General*** [2012] UKPC 16 in which Lord Clarke said:

"[10] The position after arrest in England is now to be found in Pt IV of the Police and Criminal Evidence Act 1984 ("PACE"): see s 34. Section 37(2) provides that, where a person is arrested without a warrant and the custody officer does not have sufficient evidence to charge him, the person arrested must be released either with or without bail: "unless the custody officer has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him." As Clayton and Tomlinson put it in their Law of Human Rights, 2nd edition (2009), at para 10.56, the police must justify detention on a minute by minute basis.

[11] Although PACE does not directly apply in Trinidad and Tobago, s 37(2) reflects the correct approach at common law. Thus in the instant case the person who decided to continue the Appellant's detention pending the obtaining of a report upon the medical state of the victim must have had reasonable grounds for believing that the Appellant's detention without being charged was necessary pending the securing of that evidence."

25. As part of the common law therefore, the officer must show that they had reasonable grounds for believing that the Claimant's detention without being charged was necessary to secure evidence as to his bail conditions. That decision has to be justified on a minute by minute basis.
26. In all of the circumstances, the Court is of the respectful view that it is not acceptable that the Claimant would be detained from Saturday night to Monday morning on the basis that they were not able to reach personnel from the DPP office. There were other means by which the officers could get the necessary confirmation. The officers could have asked the Claimant to get family members to bring in the bail conditions or even take the Claimant to his home to get the conditions. The Claimant's liberty was at stake and the officers were not even sure that he breached his bail conditions. The evidence from Officer Novelo was that it was only Monday morning around 8:40 am after receiving information from the 3rd Defendant did, he go to the office to confirm the bail conditions. This suggests that there

was no sense of urgency by the Defendants to get the information and was quite content to have the claimant sit in the cell all weekend.

27. The Claimant was being detained in uncomfortable if not deplorable conditions and there was no reason why he should have been kept there for any longer than would have been reasonably necessary. The deprivation of a person's liberty, is not to be taken lightly and must be scrupulously protected as much as possible. What makes such a thing worst is when it was later found out that the person was innocent of the accusation. This continued failure of the State to treat persons fairly and humanely especially in cases of remand and inquiries such as in this case is a breach of one's human rights and should be condemned.
28. These issues have been the subject of numerous judgments both in Belize and around the Caribbean but there seems to be no accountability for the officers who perpetuate these breaches. There was no reason for the officer to detain the claimant until Monday. The Claimant could have been released the next morning, carried to his residence to get his bail conditions or as stated ask the Claimant to have a family member or attorney bring in the bail conditions.
29. As a result, the Court holds that the Claimant was unlawfully and falsely imprisoned for the period of 37 hours and 15 minutes.

whether the Claimant is entitled to damages, including aggravated and exemplary damages.

30. The evidence of the Claimant was that he was not in breach of his bail conditions and that he was assaulted by the officer in front of his friends and he felt embarrassed. He said he was left in the cell without being questioned until Monday morning around 10:45 am after the intervention of his Attorney-at-Law. The Claimant indicated that he slept on the cold floor as he was not provided with any mattress, sheets or pillows and he was not allowed to shower or brush his teeth. None of which was contested by the Defendants. Further, the fact that the police may have information that was forged or fraudulent upon which they acted is very concerning to the Court.
31. Damages in cases of false imprisonment are awarded under the three following heads;
 - i. Injury to reputation- to character, standing and fame.
 - ii. Injury to feelings- for indignity, disgrace and humiliation caused and suffered.
 - iii. Deprivation of liberty- by reason of arrest, detention and/or imprisonment.
32. In *Thaddeus Bernard v Quashie*, CA No 159 of 1992 de la Bastide C.J. stated the following in relation to aggravated damages;

“The normal practice is that one figure is awarded as general damages. These damages are intended to be compensatory and include what is referred to as aggravated damages, that is, damages which are meant to provide compensation for the mental suffering inflicted on the plaintiff as opposed to the physical injuries he may have received. Under this head of what I have called ‘mental suffering’ are included such matters as the affront to the person’s dignity, the humiliation he has suffered, the damage to his reputation and standing in the eyes of others and matters of that sort. If the practice has developed of making a separate award of aggravated damages I think that practice should be discontinued.”

33. Exemplary damages are awarded in cases of serious abuse of authority. The function of exemplary damages is not to compensate but to punish and deter. The case of ***Rookes v Barnard (1964) AC 1129*** established that exemplary damages can be awarded in the following three types of cases;

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

34. The Court further considered the following cases:

- i. ***Thomas Greenwood Jr v Attorney General et al Claim No 611 of 2013***

The Supreme Court awarded general damages of \$2,000.00 for false imprisonment. The Claimant was falsely imprisoned for a period of 31 hours. No amount for aggravated and exemplary damages.

- ii. ***Alrick Smith et al v Attorney General et al Claim No 389 of 2015***

The Supreme Court awarded general damages \$5,000.00 for false imprisonment for a period of arrest and charge no awards for punitive or aggravated damages was awarded.

- iii. ***Attorney General of Belize v Margaret Bennett Appeals No 48, 49 and 50 of 2011***

The Claimant was awarded \$30,000.00 for false imprisonment for 11 months.

35. Having regard to the evidence before the Court and the awards in similar cases, the court finds that a just award for general damages for wrongful arrest and false imprisonment which sum includes an uplift for aggravation is the sum of \$5,500.00.

36. The Claimant is also entitled to \$1,500.00 for his legal costs as pleaded.
37. I am of the belief that this case is a suitable case for an award of exemplary damages. The actions of the 3rd Defendant in arresting the claimant without reasonable and probable cause and the actions of Defendant in detaining the claimant did not do enough to determine the bail conditions. The Defendants were content with leaving the Claimant in the cell subjecting him to prison conditions for the weekend and so deprivation of his liberty was arbitrary, oppressive and unconstitutional.
38. The court finds that in the circumstances of this case an award of \$2,000.00 in exemplary damages is reasonable.
39. The Claimant should also be awarded assessed costs in the sum of \$5,000.00.

The Order

40. There will be judgment for the claimant against the Defendants.
41. The Defendants do pay to the claimant damages in the sum of \$5,500.00 inclusive of an uplift for aggravated damages;
42. That the Defendants shall pay to the Claimant the sum of \$2,000.00 in exemplary damages
43. That the Defendant shall pay to the Claimant the sum of \$1,500.00 in special damages
44. That the Defendant shall pay interest on the sum at the rate of 6% per annum from the date of filing to the date of judgment and interest of 6% from date of judgment to date of payment.
45. The defendant shall also pay to the claimant costs of the claim quantified by the court in the sum of \$5,000.00.

Westmin R.A. James
Justice of the Supreme Court (Ag)