IN THE COURT OF APPEAL OF BELIZE AD 2014

CIVIL APPEAL NO 48 OF 2011

ATTORNEY GENERAL OF BELIZE Appellant

v

MARGARET BENNETT
EISHA CABRAL
(Intended Administrators of the Estate of Charles Cuthbert Woodeye) Respondents

CIVIL APPEAL NO 49 OF 2011

ATTORNEY GENERAL OF BELIZE Appellant

v

MICAH THOMPSON Respondent

CIVIL APPEAL NO 50 OF 2011

ATTORNEY GENERAL OF BELIZE Appellant

v

SHELDON TILLETT Respondent

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BEFORE

The Hon Mr Justice Sir Manuel Sosa	President
The Hon Mr Justice Dennis Morrison	Justice of Appeal
The Hon Mr Justice Samuel Awich	Justice of Appeal

Nigel Hawke, Solicitor General (Ag) and Miss Iliana Swift for the appellant
Mrs Agnes Segura-Gillett for the respondents

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20 June 2014 and 5 February 2015.

SIR MANUEL SOSA P

[1] I have read the judgment of Morrison JA and concur in the reasons for judgment given, and the orders proposed, in it.

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SIR MANUEL SOSA P

MORRISON JA

Introduction

[2] Before the court are three appeals by the Attorney General ('the appellant'] from a judgment given by Hafiz J (as she then was) on 15 November 2011. The respondents in Civil Appeal No 48 of 2011 are the Intended Administrators of the Estate of Charles Cuthbert Woodeye, who was one of the successful claimants in the court below and who has since died. The named respondents in Civil Appeals Nos 49 and 50 of 2011, Messrs Micah Thompson and Shelton Tillett, were the other two successful claimants.

[3] During the course of the hearing of these appeals, the court was informed that Mr Tillett had also died since the filing of the appeal in his case. While the court was given no information as to what arrangements have been or are being made for the appointment of Mr Tillett's personal representative/s, the appeal proceeded on the basis that Mrs Segura-Gillette, who had represented all three claimants in the court below, was properly instructed.

For ease of reference, I will refer to the claimants in this judgment collectively as 'the claimants' and, individually, by name.

[4] In consolidated actions before Hafiz J, the claimants each claimed damages for malicious prosecution and false imprisonment, but the claim for malicious prosecution was not pursued at the trial. The learned judge found that all three claims, which arose out of the same factual circumstances, succeeded. Awards for special damages in the sum of $10,125.00, $1,666.00 and $6,666.00 were made to Messrs Woodeye, Thompson and Tillett respectively, while each claimant was awarded $25,000.00 for general damages. Interest on the damages was ordered to be paid at 6% per annum, from 29 July 2010 (the date of the claim) to 15 November 2011 (the date of the judgment) and the appellant was ordered to pay prescribed costs to each claimant. In these appeals, the appellant challenges the learned judge's decision in respect of liability, damages and costs, while each claimant contends by way of cross-appeals that the sum awarded by the judge for general damages should be increased.

The facts

[5] In January 2009, Assistant Superintendent Dennis Arnold ('ASP Arnold') was the officer in charge of the San Pedro and Caye Caulker police stations. He had at that time been a member of the Belize Police Department for close to 25 years. The account which follows (in paras [6]-[10] below) is largely based on ASP Arnold's witness statement dated 8 July 2011, which stood as his evidence in chief at the trial, and his further evidence in cross-examination.

[6] At about 5:45 pm on 30 January 2009, ASP Arnold received a report by telephone that gun shots had been heard coming from the Rocky Point area in the north of San Pedro. Accompanied by what he described as "a law enforcement party", ASP Arnold set out by boat along the river from the San Pedro Police Station to the Rocky Point area. Along the way, ASP Arnold and the party encountered a boat coming from the direction of the Rocky Point area. The boat was intercepted and boarded by ASP Arnold and others. Two persons were

observed on the boat. One of these persons attempted to escape, but he was shot by a member of the party and taken to the "poly clinic" for medical attention.

[7] ASP Arnold and party then resumed their journey towards the Rocky Point area. At about 7:30 pm, he saw the claimants, along with some other men, on the San Pedro bridge, which links the north of San Pedro to the south. The claimants were all known to ASP Arnold from the George Street area of Belize City and his evidence was that, on seeing them, "my suspicions were aroused as to their existence [sic] in San Pedro at around 7:15 pm that night". On ASP Arnold's instructions, the claimants were detained for questioning in relation to the gun shots which had been heard in the north of San Pedro. The claimants and others were searched for drugs, firearms and ammunition. US$1,800.00 was found in Mr Tillett's possession, while US$7,800.00 was found in the possession of one of the other men. The explanation offered by the men was that they had travelled to San Pedro to purchase a vehicle. No firearms or drugs were found.

[8] ASP Arnold and party then went back on the river to the Tranquillity Bay area, where he "met with a few witnesses who indicated what they saw and heard". As a result, a police presence was maintained in the area, "to see if any more shots would have been fired but they [sic] were no more gun shots". ASP Arnold's group then returned to the San Pedro Police Station, where the men, including the claimants, were detained and questioned. The claimants were in due course released after 48 hours' detention.

[9] On 31 January 2009, the body of a man, who was identified as John Paul Saldivar ('the deceased'), was found on the beach in the Rocky Point area, close to the water's edge. A firearm was found some 200 yards away from the body.

[10] According to ASP Arnold's account, "[a] witness gave a statement that he saw the Claimants…around the area at the time of the shooting" and, after further investigation, he gave instructions for the claimants to be charged with the offences of conspiracy to murder and the murder of the deceased. Mr Tillett was taken into custody at the San Pedro Police Station on 13 February 2009, while Messrs Woodeye and Thompson were taken into custody

on 16 February 2009. All three claimants were formally arrested and charged (together with two others) with the offences of conspiracy to murder and murder on the latter date. That same day, they were taken before the Belize City Magistrate's Court, where they were arraigned on the charges and remanded to the Belize Central Prison – Kolbe Foundation.

[11] In the aftermath of their arrests and detention, all three claimants retained counsel to represent them. Accompanied by their counsel, they were taken back before the court (initially the Belize City Magistrate's Court, then later the San Pedro Magistrate's Court) on about nine different occasions, all of which resulted in adjournments at the request of the prosecution. Finally, on 13 January 2010, the Director of Public Prosecutions having ruled that there was no evidence to sustain them, the charges against the claimants were withdrawn. The claimants were accordingly released that day, after a month short of a year in custody.

[12] As a result, the claimants filed action on 29 July 2010 against the appellant, the Commissioner of Police and ASP Arnold to recover damages for malicious prosecution and false imprisonment. In the defences filed by the appellant to all three actions, it was contended that the arrest of the claimants was "lawful in accordance with the law", in that ASP Arnold "possessed the power under statute and at common law to arrest [the claimants] if he had reasonable suspicion that [they were] involved in the alleged murder of [the deceased]". Further, the appellant contended that the subsequent detention of the claimants was lawful because the claimants' liberty "was restrained by a lawful Order of a competent court in accordance with section 5(c) of the Constitution of Belize".

[13] The claimants' unchallenged evidence at the trial was to the following effect. At the time of his arrest, Mr Woodye had been employed as a records clerk at the Department of Housing and Planning, at a remuneration of $384.50 per fortnight. However, as a result of his absence from work during his incarceration at Kolbe Foundation, his employment was summarily terminated. Because of the adverse publicity at the time of his arrest and detention, he was unable to find a job immediately after his release from prison in 2010 and it was not until a year later (on 14 March 2011) that he was successful in doing so.

[14] Mr Thompson was incarcerated in the "super-max" section at Kolbe Foundation. He was initially made to sleep on a piece of sponge on the ground, until he and Mr Tillett were eventually put to share a bunk bed. He explained that the super-max section of the prison is reserved for convicted murderers and that his family members were allowed to visit him by appointment only. He was only allowed two half-hour recreation periods per week. Mr Thompson also explained that the experience was very traumatic for him, as he was placed in the same section of the prison as the man who had killed his mother, thus providing him with "a constant reminder of this very painful experience". During his 11 month period of incarceration, he was unable to provide for his children and in fact only saw his eight year old son twice and his three year old daughter about nine times over the entire period.

[15] Mr Tillett was also placed in the super-max section of the person. His one year old marriage suffered greatly during his incarceration and in fact ended shortly after his release, when his wife abandoned the matrimonial home. As a result, he had to become the sole provider and caregiver of his three children, whose ages were 11, eight and four.

[16] The claimants jointly retained Mr Kareem Musa to represent them, at a total cost of $5,000.00. Mr Tillett also retained Mr Ellis Arnold SC to act for him, at a cost to him of $5,000.00.

The judge's findings

[17] Hafiz J conducted a full and careful assessment of all the evidence before the court, during the course of which she identified (at paras 53-59 of the judgment) a number of factors which she considered to be relevant:

> "Location of Claimants
>
> 53. The evidence of all the Claimants is that they were in the Boca Del Rio area of San Pedro Town when they were detained for 48 hours on 30th January, 2011. ASP Arnold was more specific as to location as he testified that the Claimants were on the San Pedro Bridge which links the north of San Pedro to the South.

Location of the shooting

54. The evidence of ASP Arnold is that the murder of Saldivar occurred in the Rocky Point Area which is north of the Island. The only access to this area is by boat or foot.

Distance from San Pedro Bridge to Rocky Point Area

55. According to ASP Arnold if one was to walk from the San Pedro Bridge to the Rocky Point Area where the homicide occurred, they would have to walk about 14 miles.

Time of shooting and arrival of Police

56. ASP Arnold received reports sometime around 5:45 pm whilst at the Police Station that gun shots were fired at the Rocky Point Area. This area is about 18 to 20 miles from the San Pedro Police Station. He and his team went to the Rocky Point Area by boat and arrived there about 6:30 p.m. It took the team one hour and twenty five minutes to arrive at the Rocky Point Area.

Encounter on river on way to Rocky Point Area

57. Whilst ASP Arnold and his team were heading to the Rocky Point Area along the river they encountered a boat coming from the Rocky Point area. He stopped the boat and entered same along with members of his team. Eric Swan was in the boat and another person. The other person was not one of the Claimants. Eric Swan attempted to escape and he was shot by police and thereafter taken for medical attention.

Onward journey to Rocky Point Area

58. It was about 7:30 p.m. when ASP Arnold and his team went back into the river and headed to the Rocky Point Area. It was whilst heading there that he saw the Claimants on the San Pedro Bridge which is about 14 miles away from Rocky Point and the only access is by boat or foot. The Claimants were not seen in any boat and they could not have walked from the Rocky Point Area to the San Pedro Bridge without being seen by the Police who went promptly to the area by boat.

The search and detention

59. The Claimants were searched and detained for drugs and ammunition. The police found US$ 1800.00 on Shelton. There is no link to the money found on Shelton and the murder on Saldivar."

[18] The learned judge accordingly concluded (at paras 65–66) that the detention, arrest and charge of the claimants were not justified by any reasonable suspicion:

> "65. The Claimants were detained for 48 hours for questioning and thereafter released. The only reason for that first detention, as clearly shown by the evidence, was because the Claimants were from the George Street Area in Belize City and seen in San Pedro at 7:15 at night. In my view, this cannot amount to reasonable suspicion. Further, there is no evidence that the Claimants were behaving suspiciously.
>
> 66. The reason for the subsequent arrest and charge based on further investigations has not been proven. ASP Arnold failed to prove there was reasonable suspicion that the Claimants were responsible for the murder of Saldivar. The statements he put into evidence did not implicate the Claimants at all. Accordingly, I find that the Defence has failed to establish that there was reasonable suspicion to justify the detention, arrest and charge of the Claimants."

[19] Turning next to the question of whether the claimant's detention at the Kolbe Foundation was based on an independent judicial act, that is, the order of the magistrate remanding them in custody on 16 February 2009, the judge held that, based on section 56(3) of the Indictable Procedure Act, the magistrate had had no power to admit the men to bail on a charge of murder. Accordingly, she concluded, the question of their continued detention being the result of the magistrate's independent judicial act did not arise in this case.

[20] On the issue of damages, Hafiz J accepted the claimants' evidence. With regard to special damages, her conclusions were as follows (at paras 86-88):

> "<u>Micah Thompson</u>
>
> 86. In the case of Micah, he has proven that he and the other two Claimants jointly paid $5,000.00 for Attorney Fees. He is therefore entitled to $1,666 as special damages being one third of the legal fees paid to Mr. Musa.

Shelton Tillett

87. Shelton has proven that he is entitled to $1,666 being one third of the fees paid to Mr. Musa and $5,000.00 in legal fees paid to Mr. Ellis Arnold S.C. He is therefore entitled to $6,666.00 in special damages.

Charles Woodeye

88. In the case of Woodeye he has proven that he is entitled to one third of the legal fees, being $1,666.00. He has also proven that he lost eleven months earnings because he was summarily terminated as a result of the charge. He was paid $384.50 per fortnight. For eleven months his loss of earnings to which he is entitled is $8,459.00."

[21] As regards general damages, the learned judge expressly declined counsel's invitation to her to apply her own previous decision in **Gilbert Hyde v Attorney General et al (Claim No 88 of 2009**, judgment delivered 22 December 2010), in which she had made an award of $20,000.00 for general damages to the claimant, a police constable, who had been falsely imprisoned for a period of 18 days. She distinguished that case (at para 92) on the basis that the circumstances there were different, in that the claimant was a policeman "who was doing his duties as a law enforcement officer when he reported what he witnessed and was instead slapped with a charge of conspiracy to commit murder". The learned judge therefore determined that an award of $25,000.00 for general damages to each claimant was appropriate.

The appeal

[22] In identical grounds of appeal filed in each appeal on 19 December 2011, the appellant challenged the whole of the judge's decision as follows:

"(a) The Learned Trial Judge erred or was misconceived when she found that the [sic] there was no reasonable suspicion to arrest and charge the Respondents for the charges of Murder and Conspiracy to commit murder.

(b) The Learned Trial Judge erred or was misconceived in law when she found that the Respondents were falsely imprisoned and that their

imprisonment by the learned Magistrate was a direct consequence of the actions of members of the Belize Police Department.

(c) The Learned trial Judge erred in that she disregarded binding Judicial authority and clear law that the actions of the Judicial Officer is [sic] an independent Judicial Act and breaks the chain of causation and as such an Order of a court cannot be the consequence of another's action.

(d) The Learned Trial [sic] misconstrued the law with respect to the Tort of False Imprisonment when she found that [the] Learned Magistrate's decision was a direct consequence of the police actions.

(e) The Learned Trial Judged erred in that she has failed to indicate in her reasons upon what basis she arrived at $25,000.00 dollars in damages for the Respondent.

(f) The Learned Trial Judge erred in that she failed to give any basis upon how she arrived at the award for loss of earnings in relating to special damages.

(g) The Learned Trial Judge erred and was misconceived in that she failed to apply the law with respect to Prescribed Costs.

(h) The Decision was against the weight of the evidence."

[23] And, by respondent's notices filed in each appeal, the claimants sought an upward variation of the amounts for general damages to $200,000.00, on the following grounds:

"(1) That the Learned Trial Judge erred in finding that the Respondent was only entitled to $25,000.00 in respect of his loss of liberty for 11 months.

.(2) That the Learned Trial Judge erred in distinguishing the damages award in the case of **Gilbert Hyde v A.G. et al – Supreme Court Claim No. 88 of 2009 (unreported) Dec. 22nd 2010** from the case of Respondent so as to disentitle him to the kind of general damages award given in the Hyde Case.

(3) That the Learned Trial Judge took improper considerations into account in arriving at the general damages award in respect of the Respondent."

[24] Taking grounds (a)–(d) together, Mr Hawke for the appellant submitted, on the basis of ASP Arnold's evidence, that the learned judge erred in concluding that there was no reasonable suspicion for the claimants' arrest and subsequent detention. Mr Hawke relied on

section 42 of the Police Act and urged on us the observation by Wooding CJ in **Irish v Barry (1965) 8 WIR 177, 180**, that "[t]he decision whether a suspicion is such as will justify effecting an arrest is sometimes a delicate one", given the need for decisive action by the police when necessary. But further, and more fundamentally, Mr Hawke submitted, the order of the magistrate remanding the claimants to the Kolbe Foundation on 16 February 2010 was an independent judicial act, the effect of which was that, on a long line of authority, there was a break in the chain of causation. Even if the claimants were wrongly detained initially, therefore, this ceased to be the operative factor in their continued detention after the magistrate's order. It followed from this, it was submitted on the remaining grounds (e)–(f), that the judge erred in awarding general damages on the basis that the claimants had been detained for 11 months and calculating prescribed costs due to them on the basis of that award. Mr Hawke also questioned the judge's award for damages for loss of earnings to Mr Woodeye.

[25] In detailed written submission on behalf of the claimants, Mrs Segura-Gillett maintained, essentially for the reasons given by the judge, that there was no basis upon which it could be said that the men were detained on reasonable suspicion. The test for reasonable suspicion, Mrs Segura-Gillett pointed out, was an objective one and a "hunch" or a "mere suspicion" was not enough for this purpose. In relation to the contention that the magistrate's order remanding the claimants was an independent judicial act, it was submitted that, section 56(3) of the Indictable Procedure Act, to which Hafiz J had also referred, made it clear that the magistrate had had no option but to remand the claimants to Kolbe Foundation. Accordingly, their continued incarceration was a direct consequence of their wrongful arrest and not the result of any independent judicial act.

[26] On the question of general damages, Mrs Segura-Gillett submitted that the learned judge's awards for both special and general damages were amply justified by the evidence. And in support of the respondent's notices, it was submitted strongly that the judge's award of $25,000.00 for general damages was inordinately low and that the judge had wrongly distinguished her own previous decision in **Gilbert Hyde**, which was in fact on point.

[27] In addition to those which I have already mentioned, both Mr Hawke and Mrs Segura-Gillett made reference to a number of authorities, to which I will come in due course.

[28] The grounds of appeal and counsel's submissions give rise, in my view, to three issues:

(1) Whether the judge was justified in her conclusion that there was no evidence of any reasonable suspicion to justify the arrest and prolonged detention of the claimants ('The reasonable suspicion issue').

(2) Whether the judge was correct in her finding that the action of the magistrate in remanding the claimants in custody on 16 February 2010 was not an independent judicial act which broke the chain of causation ('The independent judicial act issue').

(3) Whether the judge made a correct assessment of the damages to which the claimants were entitled ('The damages issue').

The reasonable suspicion issue

[29] On this issue, I must mention firstly section 42(1)(b) of the Police Act, which provides as follows:

> "It shall be lawful for any police officer, and for all persons whom he may need to 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; ..."

[30] Although both Mr Hawke and Mrs Segura-Gillett appeared to think that this particular provision provided authority to the police to arrest without a warrant on reasonable suspicion in this case, I am bound to say that I rather doubt it. For section 42(1)(b) is, in my view, by its

clear language, directed to the power of a police officer to arrest without warrant any "idle or disorderly person" who (i) he finds between sunset and 6:00 am "lying or loitering in any street or other public place, and not giving a satisfactory account of himself"; or (ii) "he has good cause to suspect of having committed...any felony..." etc. In this case, there was no evidence from which it could be inferred that the claimants, or any of them, were "idle or disorderly persons", nor does it appear that they were found "lying or loitering in any street or other public place' or that any of the other matters mentioned in the subsection were established. It therefore seems clear to me this is not a section 42(1)(b) case.

[31] But in the wider context of this case, this may be no more than a quibble. For it is beyond question that, as Wooding CJ said in **Irish v Barry** (at page 180), "a police officer... has the common law right to arrest without warrant any person whom he reasonably suspects to have committed a felony, whether a felony has in fact been committed or not" (see also the oft-cited judgment of Diplock LJ in **Dallison v Caffery [1964] 2 All ER 610, 619**). The common law rule finds an echo in section 5(1)(e) of the Constitution of Belize ('the Constitution'), which exempts from the general prohibition against depriving a person of his personal liberty those cases in which such deprivation may be authorised by law, such as "upon a reasonable suspicion of his having committed, or being about to commit, a criminal offence under any law". However, it is no doubt in recognition of the fact that this is a wholly exceptional power that section 5(3) of the Constitution provides that any person arrested on a reasonable suspicion of having committed or being about to commit a crime, "and who is not released, **shall be brought before a court without undue delay and in any case not later than forty-eight hours after such arrest and detention**" (my emphasis).

[32] At common law, it is also equally clear that, as Diplock LJ explained in **Dallison v Caffery [1964] 2 All ER 610, 629** -

> "Since arrest involves trespass to the person and any trespass to the person is prima facie tortuous, the onus lies on the arrestor to justify the trespass by establishing reasonable and probable cause for the arrest. The trespass by the arrestor continues so long as he retains custody of the arrested person, and he must justify the continuance of his custody by showing that it was reasonable."

[33] So in the instant case, it was necessary for the appellant to show that ASP Arnold entertained, at the time of arresting the claimants, a reasonable suspicion that they had committed the offences with which they were charged. In **Calliste (Devon) v R (1994) 47 WIR 130**, a decision of the Court of Appeal of the Eastern Caribbean States, the court held that, for the purposes of deciding whether a police officer was required to administer a caution under rule 2 of the Judges' Rules of Grenada, the mere suspicion or a "hunch" by a police officer that might connect a particular person with the commission of a crime did not amount to 'reasonable grounds for suspecting' that person of having committed an offence. Similarly, in **Irish v Barry**, Wooding CJ explained (at page 180) that, in assessing the existence of reasonable suspicion, "it is neither proper nor sufficient if a police officer acts precipitately upon a bare suspicion hastily formed and not carefully examined". Though, on the other hand, the learned Chief Justice added (at page 181), "it is equally manifest that he does not have to delay effecting an arrest merely so that he may make assurance doubly sure".

[34] The question of whether or not a reasonable suspicion existed is therefore essentially an objective one, although it will obviously be relevant in any subsequent consideration of the matter in a particular case to know what the arresting officer had in his mind. Thus in **Dallison v Caffery**, Diplock LJ said this (at page 619):

> "The test whether there was reasonable and probable cause for the arrest or prosecution is an objective one, namely whether a reasonable man, assumed to know the law and possessed of the information which in fact was possessed by the defendant, would believe that there was reasonable and probable cause."

[35] More recently, in **O'Hara v Chief Constable of the Royal Ulster Constabulary [1997] AC 286**, the House of Lords was concerned with the interpretation of section 12(1) of the Prevention of Terrorism (Temporary Provisions) Act 1984, which provided that "a constable may arrest without warrant a person whom he has reasonable grounds for suspecting to be…a person guilty of an offence [of terrorism]". In a speech with which the other members of the House agreed, Lord Hope of Craighead propounded a somewhat more nuanced test (at page 298):

> "My Lords, the test which section 12(1) of the Act of 1984 has laid down is a simple but practical one. It relates entirely to what is in the mind of the arresting officer when the power is exercised. In part it is a subjective test, because he must have formed a genuine suspicion in his own mind that the person has been concerned in acts of terrorism. In part also it is an objective one, because there must also be reasonable grounds for the suspicion which he has formed. But the application of the objective test does not require the court to look beyond what was in the mind of the arresting officer. It is the grounds which were in his mind at the time which must be found to be reasonable grounds for the suspicion which he has formed. All that the objective test requires is that these grounds be examined objectively and that they be judged at the time when the power was exercised.
>
> This means that the point does not depend on whether the arresting officer himself thought at that time that they were reasonable. The question is whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the arresting officer. It is the arresting officer's own account of the information which he had which matters, not what was observed by or known to anyone else. The information acted on by the arresting officer need not be based on his own observations, as he is entitled to form a suspicion based on what he has been told. His reasonable suspicion may be based on information which has been given to him anonymously or it may be based on information, perhaps in the course of an emergency, which turns out later to be wrong. As it is the information which is in his mind alone which is relevant however, it is not necessary to go on to prove what was known to his informant or that any facts on which he based his suspicion were in fact true. The question whether it provided reasonable grounds for the suspicion depends on the source of his information and its context, seen in the light of the whole surrounding circumstances."

[36] In considering whether the claimants' arrest and subsequent detention were justified by a reasonable suspicion in the instant case, therefore, it was necessary for the judge to determine whether the appellant had established that there were reasonable grounds for the suspicion formed by ASP Arnold and his colleagues that they were involved in a conspiracy to murder the deceased and implicated in the actual murder.

[37] In relation to what the judge described as "the initial arrest" of the men, that is, their detention in San Pedro between 30 January 2009 and 1 February 2009, it appears that the single basis upon which ASP Arnold based his decision to detain the claimants was the fact that he recognised them as persons from the George Street area of Belize and therefore

immediately questioned the motives for their presence in San Pedro. The learned judge regarded this (at para 61), perhaps generously, as a "mere suspicion", and so do I. It further seems to me that no basis was shown for the apparent dismissal out of hand by ASP Arnold of the explanation given by the claimants for their presence in San Pedro (that they were there to purchase a vehicle). It is no doubt in acknowledgment of the slender basis for the claimants' initial arrest and detention that the men were released without any charges having been laid against them at the expiration of the 48 hour limit stipulated by section 5(3) of the Constitution. I therefore consider that the judge was absolutely correct in her conclusion (at para 52) that "there was no reasonable suspicion for the initial arrest" of the claimants.

[38] As regards their subsequent arrest on 16 February 2009, the position was, it seems to me, scarcely different. One fully appreciates, of course, that in these matters police officers may often be required to act swiftly pending further investigations. However, this is a case in which neither the immediate circumstances in which the claimants were arrested nor what was revealed by the subsequent investigations by the police produced anything that could possibly advance the case against the claimants. The arrest and charge of the claimants appear to have been based on a statement to the police that they were seen "around the area at the time of the shooting". As would emerge plainly from the cross-examination of ASP Arnold at the trial, and as the judge found, no connection was established between the claimants and the firearm found in the vicinity of the deceased's body. Further, ASP Arnold's evidence of the results of the further investigations revealed that none of the reports made to, or statements taken by, the police implicated the claimants, or any of them, in any way. Indeed, as the judge also pointed out (at para 62), when ASP Arnold was shown the various statements in cross-examination and asked to identify the evidence implicating the claimants in the murder of the deceased, "he was unable to do so because there was not one iota of evidence linking them to the murder".

[39] In these circumstances, I am clearly of the view that the judge's conclusion (at para 63) that "[r]easonable suspicion for the arrest and charge of the Claimants has not been proved by the Defendants", is unassailable. In coming to this view, I have also borne in mind, as I must, what the Privy Council has recently characterised in **Beacon Insurance Company Ltd**

v Maharaj Bookstore Ltd [2014] UKPC 21 (at para 11), as "the proper role of an appellate court in an appeal against findings of facts by a trial judge". In this regard, Lord Hodge reiterated the traditional reluctance of appellate courts to disturb the trial judge's findings of fact, (as to which, see **Thomas v Thomas [1947] AC 484**) and adopted Lord Neuberger's recent restatement of the rule in **In re B (A Child) (Care Proceedings: Threshold Criteria) [2013] 1 WLR 1911**, para 53:

> "This is traditionally and rightly explained by reference to good sense, namely that the trial judge has the benefit of assessing the witnesses and actually hearing and considering their evidence as it emerges. Consequently, where a trial judge has reached a conclusion on the primary facts, it is only in a rare case, such as where that conclusion was one (i) which there was no evidence to support, (ii) which was based on a misunderstanding of the evidence, or (iii) which no reasonable judge could have reached, that an appellate tribunal will interfere with it ..."

The independent judicial act issue

[40] There is no question that, on the authorities, even where a person has been falsely imprisoned, the interposition of an independent judicial act may have the effect of breaking the chain of causation, thus excluding the original tortfeasor from liability for the period subsequent to that act. In the old leading case of **Lock v Ashton (1848) 12 QB 871**, the defendant accused the plaintiff of being responsible for the theft of a sack of oats, as a result of which the plaintiff was given into the custody of the police. He was then taken before a magistrate who, "after hearing witnesses, remanded the plaintiff for further examination" (page 872). Brought up for examination a second time, the plaintiff was again remanded. However, before the third hearing, the missing sack of oats was discovered on the plaintiff's premises and the defendant was accordingly released at the third hearing. In the plaintiff's subsequent action for damages for assault and false imprisonment, it was held that he could not recover damages for the remand, as this was "the act of the magistrate" (per Lord Denman CJ at page 877).

[41] To similar effect is **Diamond v Minter and Others [1941] 1 All ER 290**, where the plaintiff was initially detained at the Bow Street Police Station, but was later that day taken before the chief magistrate, who remanded him in custody for a further six days, Cassels J said this (at page 397–398):

> "I think that the period of detention which I have to consider is that period whilst the plaintiff was in the custody of [the police officer] and whilst the plaintiff was at Bow Street Police Station before he went into the Court. What happened after that with regard to him being remanded in custody was the result of a judicial act by the chief magistrate, and no liability can attach to the police officers for that."

[42] The principle is well expressed in McGregor on Damages (18th edn, para 37-016):

> "Just as an action for false imprisonment will not lie against one who has procured another's imprisonment by obtaining a court judgment against him, even if the judgment is in some way irregular or invalid, so any continuation by a judicial officer of an imprisonment initiated by the defendant setting a ministerial officer in motion is too remote. A court of justice, unlike a ministerial officer of the law such as a constable, cannot be the agent of the defendant since it acts in the exercise of its own independent judicial discretion, and thus by acting introduces a new cause which relieves the defendant of liability for further damage."

[43] These authorities were considered by Hafiz J in her previous decision in **Gilbert Hyde**, where the claimant was detained on 14 February 2008 and charged with conspiracy to commit murder on the following day. On 18 February 2008 he was taken before a magistrate, who remanded him in custody until 6 March 2008, when he was released after the charge against him was withdrawn. He had therefore been detained for a total of 18 days. In the claimant's subsequent action for false imprisonment, the Attorney General submitted that, on the strength of cases like **Lock v Ashton** and **Diamond v Minter and Others**, the claimant could only recover damages for false imprisonment up to the time when the magistrate remanded him in custody on 18 February 2008. The learned judge rejected the submission (at para 69):

> "In each of those cases there was a hearing after which a judicial decision was taken. In the case at hand, there was no hearing by the Magistrate and so no

> decision could have been taken based on evidence. The Magistrate merely adjourned the matter. The detention therefore was a direct consequence of the acts of the Defendants. As such, I find that Mr Hyde was unlawfully detained for 18 days for which he is entitled to damages suffered as a result of his wrongful arrest and imprisonment."

[44] The learned judge therefore distinguished between cases in which the continuation of claimant's imprisonment is a result of an intervening judicial decision and cases in which there is in fact no exercise of an independent judicial discretion. In the instant case, the judge refined this analysis by praying in aid section 56(3) of the Indictable Procedure Act, which provides that, "A magistrate shall not admit to bail any person charged with treason, misprision of treason, treason-felony or murder". Accordingly, the learned judge considered that there was no scope for the exercise by the magistrate in the instant case of an independent judicial discretion so as to break the chain of causation in respect of the wrongful arrest and detention of the claimants.

[45] I cannot fault the learned judge's approach or conclusion. In the decision of the Court of Appeal of England in **Harnett v Bond [1924] 2 KB 517, 565** (subsequently affirmed by the House of Lords in **Harnett v Bond [1925] AC 669**), Scrutton LJ explained the principle of **Lock v Ashton** on the basis that "...when there comes in the chain [of causation] the act of a person who is bound by law to decide a matter judicially and independently, the consequences of his decision are too remote from the original wrong which gave him a chance of deciding". In the instant case, it was the undoubted duty of the magistrate before whom the claimants were arraigned on 16 February 2009 to act judicially and independently. But his authority did not extend to the question whether to remand them in custody or not, since, by virtue of section 56(3) of the Indictable Procedure Act, that was a matter in which he enjoyed no decisional freedom. I would therefore affirm the learned judge's decision on this point. In my view, the claimants having been arrested and detained on 16 February 2009 without any reasonable suspicion having been shown, the chain of causation remained unbroken by the their appearance before the magistrate later that same day. The claim for damages for the 11 month period of their false imprisonment at Kolbe Foundation was therefore not too remote.

The damages issue

[46] As regards the judge's awards for special damages, the appellant complained that the judge erred in failing to give "any basis upon how [sic] she arrived at the award for loss of earnings in relation to special damages". Although this ground of appeal (ground (f)) was filed in respect of all three claimants, it is only relevant to the case of Mr Woodeye, since he was the only person to whom an award for loss of earnings was made (indeed, he was the only claimant who advanced such a claim).

[47] Although Mr Woodeye's statement of claim gave no particulars of his claim for loss of earnings, he did indicate in his witness statement dated 27 April 2011 (at para 13) that, as a result of his "false arrest and imprisonment", he was unable to go to his place of work, and that his employment "was therefore summarily terminated". He also stated his earnings at the date of termination to be $384.50 per fortnight. His pay-slips (from the Ministry of Works), to which reference had been made in the list of documents filed on his behalf on 29 March 2011, were tendered in evidence, without objection, as an exhibit at the trial (see page 31 of the transcript of the evidence). Mr Woodeye's evidence on the point was entirely unchallenged, both as to the date and reason for the termination of his employment and as to the level of his earnings at the time.

[48] In these circumstances, I can find no basis for the appellant's complaint in his skeleton arguments (at page 38) that "there was not sufficient evidence on the face of the pleadings" to allow the judge to conclude, as she did, that Mr Woodeye had established his claim for loss of earnings in the total amount of $8,459.00. As I pointed out in my judgment in **DMV Ltd v Tom L Vidrine** (Civil Appeal No 1 of 2010, judgment delivered 20 October 2010, para [58]), with which Mottley P and Sosa JA (as he then was) agreed –

> "Lord Woolf MR's judgment in **McPhilemy v Times Newspapers Ltd and others [1999] 3 All ER 775]** makes it clear that failure to provide particulars in the statement of claim is not necessarily fatal, since 'In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party's witness statements, will make the detail of the case the other side has to meet obvious (emphasis supplied)."

[49] Turning now to the question of general damages, both the appellant and the claimants complain about the judge's award. The appellant says that Hafiz J "failed to indicate in her reasons upon what basis she arrived at $25,000.00 in damages"; while the claimants maintain that $25,000.00 was simply too low in the circumstances of the case.

[50] In approaching this aspect of the matter, it is relevant to bear in mind, I think, the proper approach to the review of a trial judge's findings of fact, which was recently restated by the Board in **Calix v Attorney General of Trinidad & Tobago [2013] UKPC 15** as follows (at para 28):

> "It is well settled that before an appellate court will interfere with an award of damages it will require to be satisfied that the trial judge erred in principle or made an award so inordinately low or so unwarrantedly high that it cannot be permitted to stand."

[51] Not dissimilarly to the proper approach to a trial judge's findings of fact, therefore, this court will normally defer to the trial judge's assessment of general damages unless, in the view of the court, it is "an entirely erroneous estimate of the damage to which the plaintiff is entitled" (per Greer LJ in **Flint v Lowell [1935] 1 KB 354, 360**).

[52] For the basis on which general damages should be assessed in false imprisonment cases, Mrs Segura-Gillett referred us to the following passage from McGregor on Damages (at para 37-011):

> "The details of how the damages are worked out in false imprisonment are few: generally it is not a pecuniary loss but a loss of dignity and the like, and is left much to the jury's or judge's discretion. The principal heads of damage would appear to be the injury to liberty, i.e. the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings, i.e. the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status and injury to reputation. This will all be included in the general damages which are usually awarded in these cases; generally no breakdown appeared in the cases."

[53] Mrs Segura-Gillett also referred us to the decision of the Court of Appeal of England and Wales in the conjoined appeals of **Thompson v Commissioner of Police of the Metropolis and Hsu v Commissioner of Police of the Metropolis [1997] 2 All ER 763**,

774, in which guidance was given as to the amount to be awarded for "basic damages" (that is, without any element of aggravation and before any pecuniary loss, physical injury or injury to reputation, if there is evidence of any of this) in cases which could be described as "straightforward":

> "In a straightforward case of wrongful arrest and imprisonment the starting point is likely to be about £500 for the first hour during which the plaintiff has been deprived of his or her liberty. After the first hour an additional sum is to be awarded, but the sum should be on a reducing scale so as to keep the damages proportionate with those payable in personal injury cases and because the plaintiff is entitled to have a higher rate of compensation for the initial shock of being arrested. As a guideline we consider, for example, that a plaintiff who has been wrongly kept in custody for 24 hours should for this alone normally be regarded as entitled to an award of about £3,000. For subsequent days the daily rate will be on a progressively reducing scale."

[54] Interesting as this recommended approach is, however, it can in my view provide very little meaningful guidance in the instant case, not least because of the challenges of currency conversion generally and other difficulties of transposing awards made in one economic context to another. No doubt recognising all of this, Mrs Segura-Gillett did not seek to make further use of Lord Woolf MR's approach beyond submitting that, for the initial 48 hour period over which they were detained, the claimants were entitled to "a minimum general damages award of $15,000.00" (apparently based on converting £3,000.00 at a rate of BZ$3.367 to £1.00).

[55] But the greater challenge is, of course, in relation to the 11 month period of detention, in respect of which no ready precedent was cited to us. Mrs Segura-Gillett therefore urged us to apply Hafiz J's decision in **Gilbert Hyde**, in which the claimant was awarded $20,000.00 for 18 days' detention. Extrapolating from this a daily rate of approximately $1,100.00, counsel's calculation was that, using **Gilbert Hyde** as a basis for calculation, the claimants would each be entitled to approximately $366,000.00 for 11 months (or approximately 332 days) of detention. Mrs Segura-Gillett then suggested discounting this figure to $200,000.00, to reflect the fact that, as she put it, "sums awarded for initial shock are higher than those awarded for extended incarceration".

[56] As has been seen, this approach was rejected by the learned judge on the basis that the claimant in **Gilbert Hyde** was a "policeman who was doing his duties as a law enforcement officer", while the claimants were not (see para [22] above). Mrs Segura-Gillett was strongly critical of the judge's approach. In her skeleton submissions, she submitted that there was "no inherent difference" between the claimant in **Gilbert Hyde** and the claimants in this case; further, that the "small award" given to the latter suggested that their "lives and liberties" were not as valuable as the life and liberty of the claimant in **Gilbert Hyde**.

[57] In support of this submission, Mrs Segura-Gillett also referred us to the decision of the Board in **Calix v Attorney General of Trinidad & Tobago**. In that case, the appellant was, as Lord Kerr put it (at para 1), "something of a recluse". According to the trial judge, "[h]e had been living as a homeless person in an abandoned shed, in an environment that was unhygienic and squalid [with] no toilet facilities, running water, or electricity". The appellant, who was wrongfully detained for a period of just under four months (or 115 days), successfully sued the State for damages for malicious prosecution and for the deprivation of his liberty. His general damages were assessed at $38,000.00. The trial judge approached the appellant's claim as it related to damage to his reputation by taking into account his "peculiar character and reputation", concluding that, from the general circumstances of his life, "his reputation and social standing did not amount to much" (see para 4 of Lord Kerr's judgment). And, in assessing the appellant's loss of liberty claim, the trial judge appears to have taken the view that because "the conditions the appellant experienced while in custody did not differ significantly from his living conditions while he was at liberty, any compensation for this aspect of the claim would have to be modest" (per Lord Kerr, para 18).

[58] The Board roundly rejected the trial judge's approach. Lord Kerr pointed out (at para 9) that "[o]ddity of personality, even frank eccentricity, does not itself diminish the value of one's good character". Further (at para 11), and perhaps more to the point for present purposes, the fact that the appellant "might be regarded as occupying a lowly status cannot of itself reduce the compensation to which he might otherwise be entitled". Accordingly, the Board held (at para 30) that the judge (with the endorsement of the Court of Appeal) had erred in his approach to compensating the appellant for damage to his reputation and for his loss of liberty. Exceptionally, therefore, this was a case in which the trial judge's assessment of

damages had to be set aside and the matter remitted to the Court of Appeal for damages to be assessed afresh.

[59] In my respectful view, Hafiz J fell similarly into error in the manner in which she sought to distinguish the circumstances of the claimant in **Gilbert Hyde** from those of the claimants in this case. In both cases, the court was concerned with claims arising out of the wrongful deprivation by the State of the claimants' liberty. The claimants in both cases were therefore fully entitled, as free persons in the free country of Belize, to the same consideration in respect of the intrinsic damage suffered by them by reason of the breach of their constitutionally protected right to the enjoyment of that freedom. It therefore seems to me that, if $20,000.00 was a proper assessment of the compensation to which the claimant in **Gilbert Hyde** was entitled in 2010 for the wrongful deprivation of his liberty for 18 days, then an award of $25,000.00 to the claimants in 2011 (almost exactly a year later) for wrongful deprivation of their liberty for 11 months must inevitably bear the distinct appearance of anomaly.

[60] The first question is therefore whether the judge's award in **Gilbert Hyde** was itself a correct estimate of the damages to which the claimant was entitled. In this regard, it is clearly relevant to note, I think, that there was no appeal by the Attorney General against that decision. Having said that, however, it is nevertheless open to question whether the award in **Gilbert Hyde** may not in fact have been over-generous in all the circumstances, possibly influenced by the learned trial judge's view, as revealed in her judgment in the instant case, that the claimant's status as a police officer warranted some special consideration. At the other end of the scale is **Norman Gill v Tony Anthony et al** (Civil Appeal No 5 of 1989, judgment delivered 27 July 1990), a decision of this court to which the learned President drew attention during the hearing of this appeal, in which the plaintiff was awarded $3,000.00 for general damages arising from his unlawful arrest and false imprisonment for a period described in the judgment (at page 7) as, at most, "a few hours". Although this decision, which stands alone, was over 20 years old by the time of the judge's assessment in the instant case, it certainly does suggest that, before **Gilbert Hyde**, the level of damages awarded for false imprisonment in this jurisdiction tended to be on the modest side.

[61] Therefore, bearing in mind (i) the consideration that the award of $20,000.00 in **Gilbert Hyde** may have been on the high side; and (ii) my clear view that, on the evidence, the claimants in this case were entitled to an award significantly higher than that to which the claimant in **Gilbert Hyde** was entitled, it seems to me that this is a case in which the learned trial judge's assessment of general damages can be revisited by this court. Particularly telling in this regard, in my view, was the judge's plainly mistaken approach to distinguishing the status of the claimants in this case from that of the claimant in **Gilbert Hyde**.

[62] In approaching the question of what, then, would be an appropriate award of damages to the claimants, I bear in mind and accept that, as McGregor suggests, the relevant heads of damage for false imprisonment are "the injury to liberty, i.e. the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings, i.e. the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status and injury to reputation" (see para [52] above). In this case, in addition to the actual period of detention of 11 months, there was the unchallenged evidence of all three claimants of the severe discomfort which they were forced to endure at Kolbe Foundation; their natural anxiety about their families and their inability to play any role in the upbringing of young children; in the case of Mr Woodeye, the loss of his job and his subsequent inability to find employment for over a year after his release; in the case of Mr Tillett, the unravelling of his marriage; and, in the case of Mr Thompson, the trauma of having to share accommodation in close quarters with the person who was responsible for his late mother's death.

[63] But even in the light of this evidence, I do not think that the substitution in this case of an award of $200,000.00 to each claimant, as Mrs Segura-Gillett invited us to do, can be justified. For, as Lord Woolf MR's guidance in **Thompson v Commissioner of Police of the Metropolis** made clear (and as Mrs Segura-Gillett herself acknowledged), after applying a higher rate of compensation for the first 24 hours "for the initial shock of being arrested", the award to which a claimant is entitled should thereafter be "on a progressively reducing scale". A purely arithmetical approach to the assessment of general damages, even after a process of discounting, may not produce a result that is just and proportionate in all the circumstances. Accordingly, taking all factors into account, I would propose, I confess not

without a lingering degree of diffidence, that the judge's award should be set aside and that an award for general damages to each claimant of $30,000.00 should be made instead.

Conclusion

[64] In my judgment, therefore, the appeals must the dismissed. However, I would order the variation of the learned trial judge's judgment in the manner indicated in the previous paragraph, by substituting for the judge's award of general damages of $25,000.00 to each claimant an award of $30,000.00. I would make a provisional order that the appellant should pay the claimants' costs of the appeals and the respondent's notices, such costs to be taxed or agreed. I would also make an order that the provisional order will stand confirmed unless, within 21 days of the decision in this case, any of the parties makes an application to the court for a different order.

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MORRISON JA

AWICH JA

[65] I concur in the judgment of Morrison JA, dismissing this appeal, and substituting damages in the sum of $30,000.00 for damages in the sum of $25,000.00 awarded by the learned trial judge.

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AWICH JA