

IN THE SUPREME COURT OF BELIZE, A.D. 2019

CLAIM NO. 819 of 2019

BETWEEN	(ASHTON MARTIN	CLAIMANT
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	( AND	
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	(ATTORNEY GENERAL OF BELIZE	1 <sup>st</sup> DEFENDANT
	(INSP AARON GAMBOA	2 <sup>rd</sup> DEFENDANT
	(BELIZE POLICE DEPARTMENT	3 <sup>rd</sup> DEFENDANT

Before: The Hon Westmin R.A. James

Date: 18<sup>th</sup> August 2021

Appearance: Mr Leeroy Banner for the Claimant

Mr Kileru Awich and Mr Jorge Matus for the Defendant

**JUDGMENT**

1. This case involves what has become a consistent action in Belize for wrongful arrest, false imprisonment and assault and battery resulting from the abuse of police power.
2. The Claimant's claim is for damages including exemplary, aggravated and special damages, interest and costs for unlawful arrest and false imprisonment and assault and battery.
3. The claim arose out of the Claimant's arrest and detention from 26<sup>th</sup> February 2019 to 1<sup>st</sup> March 2019. The Defendants do not dispute that the Claimant was arrested and detained without charge for more than the constitutionally stipulated period of 48 hours in contravention of section 5(3) of the Constitution but deny that the initial arrest and the detention for the first 48 hours was unlawful. They also deny the assault and battery charge of the Claimant.

**Unlawful Arrest & False Imprisonment**

4. The Defendant having admitted that the time period in excess of 48 hours was unlawful and so it is left for this Court to determine whether the arrest and detention for the first 48 hours or part thereof was lawful.

### *Arrest*

5. In order to affect an arrest without warrant the police must have reasonable suspicion of the Claimant 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.
6. It is accepted by both parties that the test for reasonable and probable cause for the arrest has a subjective as well as an objective element. As was stated in *O'Hara v. Chief Constable (1977) 2 WLR 1* "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. The lawfulness of the arrest is to be judged at the time of the arrest."
7. The Defendant pleaded case was that the Claimant was detained as a result of his suspected involvement in the double murder of Oscar Humes and Kevin Moro which took place on 25<sup>th</sup> February, 2019. Assistant Superintendent of Police Aaron Gamboa who was Commanding the Special Patrol Unit testified that he received information of a double murder that had taken place in Punta Gorda Town and that several persons including the Claimant, were suspected to be involved in the murder and were suspected to be in possession of illegal firearms. He said based on the information, he instructed a team of the SPU headed by Gilbert Martinez to search for unlicensed firearms at the Claimant's and other residences. In his witness statement he said that the information they had was that the persons suspected to be involved in the double murder were provided with firearms by the Claimant and that those persons were said to be in possession of the firearms at the Claimant's residence. He said that upon the search being completed, since he did not enter the premises but remained outside, the Claimant was detained and escorted to the Punta Gorda Town police station for further investigation.
8. The cross examination of ASP Gamboa shook his credibility in many respects before the Court. ASP Gamboa first denied that he detained the Claimant because he had provided a gun to the shooter. When shown his own witness statement he indicated that the Claimant was a suspect involved in the double murder. He said

that he cautioned the Claimant and made note of it but never submitted his diary to the Court. ASP Gamboa admitted that the record showed that the Claimant was detained for 'PI Shooting.'

9. Sergeant Gilbert Martinez in his witness statement stated that he received information that one of the suspects was located at the Claimant's house and that the Claimant had provided firearms, used in the double murder to the suspect. In cross examination he gave evidence that he was briefed by Punta Gorda police that the Claimant issued the firearm with respect to a double murder. He testified that the officers utilized the Firearm Act to search the Claimant's premises on the 26<sup>th</sup> February, 2019 but the Claimant was wanted by investigators with respect to the double murder and wanted to be interviewed by the Punta Gorda police. He said that he cautioned the Claimant but admitted he made no note of it. He admitted that he gave a report about the detention in which he said that the Claimant was believed to have information in regard to the weapon used in the murder and he could have information of the whereabouts of the main suspect in the murder as they are cousins.
10. The Defendants' evidence was inconsistent as to the reason for the detention but all in all there was some evidence that the Claimant was involved in the double murder whether it be providing the illegal firearm that was used in the murder or even aiding and abetting the main suspect in the double murder. While the Defendants witnesses credibility was in doubt the test is not *prima facie* evidence of his guilt and so I find that there was enough objective evidence for there to be reasonable suspicion to arrest the Claimant.

#### *Detention*

11. 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.
12. As I stated in *Claim No 90/2020 Harris v The AG et al* 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.
13. The Defendants have simply argued that the arrest was lawful and so therefore the detention for the first 48 hours was lawful. This is not the state of the law. The

Defendant must show that the whole period of detention was justified. The Defendant must show that they had reasonable grounds for believing that the Claimant's detention without being charged was necessary to secure evidence as to the Claimant's involvement in the offence. That decision has to be justified on a minute by minute basis.

14. The Defendants have not given any evidence as to the reason for the lengthy detention of the Claimant or what investigation was conducted relative to the Claimant involvement within the 48 hours. Despite being detained for more than three days, at no time during the first 48 hours of the detention period was the Claimant questioned or interrogated about his involvement in the double murder, nor was any evidence put to him to suggest his involvement. The first time the Claimant was even remotely to be questioned, it was relative to gang affiliation and this was beyond the constitutional 48 hours. The only other evidence provided was that the police searched another residence the next day.
15. According to Sgt. Martinez after he arrested the Claimant, he was taken to the police station and that was the end of his involvement with him. ASP Gamboa's evidence is similar to Martinez's. Both witnesses admitted during cross examination that they did not interview the Claimant and that was not their job as they were only to do the operational aspect of the investigation. The Defence plead that Officer in Charge Martin Bahadur went to the Claimant's premises the day after his detention to look at the video recording at the Claimant's premises. PC Bahadur's witness statement said nothing about this piece of the investigation and in cross examination denied he visited the Claimant's house to view the surveillance and says that the Defence was incorrect. PC Bahadur did not provide any other investigation or information received during that 48 hours to justify the detention of the Claimant. There seemed to be no sense of urgency by the Defendants to get the information with respect to the involvement of the Claimant and was quite content to have the Claimant sitting there without being questioned or conduct further investigation as it relates to his involvement for at least 48 hours.
16. It is for the State to show that the detention was necessary. The 48 hours provided by the Constitution is an outer limit for detention it is not a minimum. It does not allow police officers to just arrest someone and keep them detained for 48 hours without doing anything or providing the Court with evidence as to what they did to make the further detention reasonable. While the Court is not in the business of doing police work, the Court can assess reasonableness on the facts presented to the Court. I think in this case 24 hours would have been reasonable and sufficient

to make some enquiries relative to the Defendant's involvement in the double murder that would have produced information that would have allowed for further detention. The Defendant having not provided the Court with what enquiries they did relative to the Claimant within those 24 hours which would have made the further detention necessary, made the further detention unreasonable and unlawful. As a result, the Court holds that the Claimant was unlawfully and falsely imprisoned from 6:45 am 28<sup>th</sup> February, 2019 to 11 am 1<sup>st</sup> March, 2019 or 52 hours 15 mins.

17. As I stated in *Harris v AG (supra)* and I would repeat here the deprivation of a person's liberty, is not to be taken lightly and must be scrupulously protected as much as possible. It is made worse when it 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 stop. I am of the belief that this stems from a misguided notion that the police can just detain someone for 48 hours for enquiries simpliciter. This is not the case and the police officers must justify and provide evidence that objectively justifies the continued detention of a detainee every step of the way.
18. This Court and others have consistently in judgments called for the accountability of the officers who perpetuate these breaches otherwise these things will not stop and the State would continuously be liable monetarily to citizens.
19. Having regard to the authorities submitted by the Claimant and Defendants inclusive of *CV2011-04459 Ricardo Youk-Sou v AG of T&T, Claim No 88/2009 Hyde v AG, Claim 389/2015 Smith v AG, Claim 90/2020 Harris v AG* updating to today and the extent of the infringement in this case. I would award the sum of \$10,000.00 inclusive of uplift for aggravated damages for false imprisonment of the Claimant.

#### *Assault and Battery*

20. The Claimant's case is that on the first night in custody at the Punta Gorda Police Station the police officers sprayed pepper spray into the holding cell. The Defendant denied this allegation.
21. The Claimant asserts that on March 1<sup>st</sup>, 2019 he was assaulted at his home. The Claimant pleaded that he was tasered by the police kicked and punched. The Claimant also alleges that he was taken inside his bathroom by the officers, where

they filled his bath tub with water for several seconds at a time. This lasted for several minutes and the Claimant nearly drowned.

22. The Defendants submitted that the Claimant's allegations should be disbelieved as an embellishment of the claim for unlawful arrest and false imprisonment. The Defendant pointed to the fact that the Claimant said that he had cameras in the house but did not provide that video evidence of the assault to the Court. They argued that the Claimant produced no witnesses even though available like his wife or neighbours who heard the ruckus or his previous attorney to corroborate his story. The Claimant in response argued that the Claimant has been consistent with his account of the incident and there is nothing in the evidence to suggest that he was not credible. The Claimant argued that it is the Defendants' case that is inconsistent that would lead the Court to believe the Claimant's account of the incident and that the test for adverse inferences have not been satisfied. The Claimant in his cross examination indicated that his wife was overseas being treated for cancer and was unable to secure any other witness. He explained that his recording device was taped over and he did not have access to it anymore.
23. On a balance of probabilities, I believe the Claimant that the officers did assault him on the 1<sup>st</sup> March and that he was peppered sprayed while in the cell. The fact that tasers are no longer issued to police officer does not mean they are not used by officers. While I agree that the Claimant who had cogent evidence that would have proved his case, the evidence of the Defendants was not believable. The credibility of the Defendants' witnesses were undermined in my view. They varied dramatically from the pleaded case and even different from their witness statements. The presence or the non-presence of ASP Gamboa was particularly troubling and did not make sense. The various reasons for the arrest. The unnecessary length of detention without reason, the failure to note the caution or give the Claimant the Suspect's Right in Custody Acknowledgment Form. Why the Claimant was necessary for a search when the police had a search warrant was also not plausible. No warrant was ever produced to the Court.
24. Looking at the totality of the evidence and judging the credibility of the Claimant and the witnesses for the Defendants, on a balance of probabilities I will hold that the Claimant was assaulted by the police.
25. There is not much evidence as to the extent of the injuries suffered by the Claimant. Having regard to the authorities cited by both parties and looking at the totality of the evidence and the extent of the offence I would award \$7,500.00 inclusive of aggravated damages for assault and battery of the Claimant.

26. Special damages are meant to be specifically pleaded and proven. It was reasonable that the Claimant would have obtained legal counsel. I agree with Madam Justice Young in *Eduardo Magana* that a pro forma invoice is not a receipt but that doesn't prevent the Court from awarding a reasonable sum for legal services. I do find that it was reasonable for the retention of an Attorney and the evidence was that the Claimant had two attorneys. In this regard I would award the sum of \$1,500.00 for legal expenses.

27. I am of the belief that this case is a suitable case for an award of exemplary damages. The actions of the Defendant in detaining the Claimant for more than 3 days without charge. The assault on the Claimant while in custody was especially egregious. The action of the police in this case like so many other was arbitrary, oppressive and unconstitutional. It is time the Court revisits the amounts of damages in these types of cases and impose an amount that is adequate in punishing the Defendant for these types of actions. However, having regard to the current authorities as outlined above I would award the sum of \$7,500.00 in this regard.

### **The Order**

1. There will be judgment for the Claimant against the Defendants;
2. The Defendants do pay to the Claimant general damages in the sum of \$17,500.00 inclusive of an uplift for aggravated damages;
3. That the Defendants shall pay to the Claimant the sum of \$7,500.00 in exemplary damages;
4. That the Defendant shall pay to the Claimant the sum of \$1,500.00 in special damages;
5. 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.
6. The Defendant shall also pay to the Claimant costs of the claim quantified by the Court in the sum of \$12,500.00.

/s/ WJames.

Westmin R.A. James

Justice of the Supreme Court (Ag)