

IN THE HIGH COURT OF BELIZE, A.D. 2023

Claim No. 603 of 2021

BETWEEN

BENJAMIN CANTUN	1ST CLAIMANT
EMELIO CANTUN	2ND CLAIMANT
EDUARDO CANTUN	3RD CLAIMANT
HILBERTO CANTUN	4TH CLAIMANT
VICTOR CANTUN Sr.	5TH CLAIMANT
VICTOR CANTUN Jr.	6TH CLAIMANT
ASAIR CANTUN	7TH CLAIMANT
ANATOLIA CANTUN	8TH CLAIMANT
ARJENY CANTUN	9TH CLAIMANT

AND

PC 1870 ROJE ESPINOSA	1ST DEFENDANT
PC 1968 ADRIAN WILLIAMS	2ND DEFENDANT
PC 1520 GLENDALE RAMOS	3RD DEFENDANT
CPL 1280 DAVID GRAJALEZ	4TH DEFENDANT
SGNT 1309 ZAMIR NOH	5TH DEFENDANT
SUPT JOHN SANCHEZ	6TH DEFENDANT
BELIZE POLICE DEPARTMENT	7TH DEFENDANT
ATTORNEY GENERAL OF BELIZE	8TH DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE PATRICIA FARNESE

Appearances:

Ms. Nazira UC Myles, Counsel for the Claimants.

Mr. Jorge Matus and Ms. Lavinia Cuello, Counsel for the Defendants.

DECISION AFTER TRIAL

Introduction

[1] The Cantuns seek damages, including aggravated, exemplary and special damages after the first four Defendants came onto the Cantuns' property without a search warrant to search for contraband. The Cantuns were forcibly arrested and most were detained for 60 hours at the Police Station in Corozal. The Cantuns were charged with various Covid-related offences and obstruction. Some were also charged with assaulting a Police Officer. The Cantuns allege they suffered various injuries because the 1st to 6th Defendants used excessive and unnecessary force during their arrest. They seek damages for false imprisonment, malicious prosecution, aggravated assault and battery.

[2] The Defendants assert that they acted lawfully throughout their interaction with the Cantuns. No search warrant was required because they had a tip from an informant that a crime was or was about to occur. The 1st to 4th Defendants required rescue because the Cantuns and others surrounded them and prevented them from leaving. When further Police Officers arrived, the Cantuns were arrested with only the force necessary to achieve the arrest. The Defendants allege that the Cantuns were the aggressors during their interaction with the Police. Consequently, the charges and detention were lawful and justified and no damages are owing.

[3] The Court finds that the Cantuns have proven their claims for false imprisonment, malicious prosecution, and assault. The Defendants were required to obtain a search warrant to conduct the search. Having acted without a warrant, the imprisonment is unlawful. The Court also finds that the Cantuns were maliciously prosecuted because the Defendants acted with malice when they laid the charges for assault and Covid-related offences with no reasonable or probable grounds. Finally, the Court finds the Cantuns allegations of assault as credible and supported by the available evidence. The Defendants are ordered to pay \$197,500 in damage. The damage award is split between the Cantuns and the Legal Action and Service Center of Belize.

Background

[4] The Claimants are family who reside in several homes on a single parcel of land in San Victor Village (the Cantun Property). To avoid confusion in this decision, I will refer to each Claimant by their first names or collectively as the Cantuns. Victor Sr. and Anatolia are parents to

the other Claimants. Victor Jr. was the only minor at the time of their arrest. The Cantuns are cane farmers who also sell soil, tamales, and their produce in Belize City. Their farm is approximately 5 minutes by vehicle from their homes. Victor Sr., Anatolia, and Hilberto (who is known as Enrique) were at their cane farm when the 1st to 4th Defendants (the Initial Officers) arrived at the Cantun Property.

[5] The Initial Officers were the first to arrive on the Cantun Property. Supt. Sanchez testified he arrived on the Cantun Property with 8 members of the Corozal Quick Response Team and the Narcotics Composite team. Additional support came from the Orange Walk Police and the Special Branch Unit. The Parties dispute the timing and number of officers who arrived as back-up. I will refer to the Initial Officers and the back-up as the “Arresting Officers” in this decision.

[6] The Cantuns also claim that members of the Belize Defence Force (BDF) and the 6th Defendant were present during their initial arrests. The Defendants deny these claims and explain that many of the Police Officers were wearing camouflage, which could have been confused for BDF. The Defendants explanation is sufficient to persuade me that the Cantuns have not established, on a balance of probabilities, that the BDF were present during their arrest.

[7] Sgt. Noh denies that he was involved in the Cantuns’ initial arrest. Sgt. Noh testified that the first time he encountered the Claimants was at the Corozal Police Station. He was on patrol when Supt. Sanchez ordered him to the Corozal Police Station to receive a group of persons that had been arrested. Benjamin, however, maintained under cross examination that Sgt. Noh was present during the arrests and shot Victor Jr. For reasons discussed further in the judgment, I find that Sgt. Noh was present at the arrests. Sgt. Noh also laid most charges against the Cantuns.

[8] The Parties agree that the Initial Officers informed Emelio that they intended to search the Isuzu Trooper that was parked in front of the house Emelio shares with his parents. That Emelio asked for a warrant and was told by the Initial Officers that one was not necessary is also undisputed. The Parties presented very different evidence about what happened next. Points of agreement, however, include that the Cantuns insisted on a warrant before they would consent to a search and that Victor Sr, Anatolia, Enrique, and Victor Jr. arrived on the Cantun property approximately 10 minutes after the Initial Officers’ arrival.

[9] Although the time Supt. Sanchez and the back-up Officers arrived is disputed, Supt. Sanchez confirmed that he immediately gave the order to arrest the Cantuns upon his arrival. The arrests took no more than 5 minutes to complete and all the Cantuns, except Anatolia, were transported in the pan of Police trucks to the Corozal Police Station. Anatolia was arrested after she went to the Corozal Police Station herself. Except for Benjamin who was granted Bail after the second evening (40 hours) due to his declining health conditions, the Cantuns were held for three nights (60 hours)

[10] The Defendants rely on sections 22 and 23 of the *Firearms Act*¹ and section 25 *Misuse of Drugs Act*² to argue that their attempt to search the Cantuns' vehicle without a warrant was lawful because they had reasonable suspicious that a crime related to contraband, drugs or firearms was committed or being committed. They further assert that the arrest was an appropriate response to being obstructed from doing the search assaulting the Initial Officers.

Issues

[11] Prior to trial, the Parties identified several issues the Court must address to decide whether the Cantuns' claim for false imprisonment, malicious prosecution and assault³ have been proven. A review of the evidence and submissions now narrows those issues to the following questions:

- 1. Was the attempt to search the Cantun Property without a warrant lawful thereby justifying the Cantuns' arrest?**
- 2. Were the Cantuns assaulted during their arrest and detention?**
- 3. Did the Defendants have reasonable and probable cause for prosecuting the Cantuns for the offences charged?**
- 4. Are the Cantuns entitled to damages for false imprisonment, malicious prosecution, and assault?**
- 5. Are the Cantuns are entitled to special damages or exemplary damages?**

¹ Cap. 143 of the Laws of Belize, RE 2011.

² Cap. 103 of the Laws of Belize, RE 2011.

³ Assault and battery are the same tort. For simplicity, I will refer to assault going forward.

Analysis

[12] In a recent decision, Chabot J. outlines the legal frameworks for false imprisonment and malicious prosecution.⁴ I have applied these frameworks to analyze this claim. For their claim of false imprisonment to be successful, the Cantuns must prove that they were detained. Once the fact of detention is established, the burden shifts to the Defendants to prove, on a balance of probabilities, that the detention was justified.⁵ Malicious prosecution can be proven if legal proceedings were initiated by the Defendants without reasonable or probable cause and these proceedings were terminated in the Cantuns favour. In addition, the Cantuns must prove that the prosecution was motivated by malice or for a purpose other than carrying the law into effect.⁶ For both claims, the Cantuns must show that they suffered damage.⁷

Issue One: Was the attempt to search the Cantun Property without a warrant lawful thereby justifying the Cantuns' arrest?

[13] The Defendants bear the onus of proving that the Cantuns' arrests without a warrant were lawful. At common law, an arrest without a warrant is only lawful if the arresting officer had a reasonable suspicion that the person arrested has committed or is about to commit an offence against the laws of Belize.⁸ This common law test has been incorporated into many Belizean statutes which permit searches without a warrant. The Defendants rely on the authority granted to Police Officers under sections 22 and 23 and of the *Firearms Act* and subsection 25(2) of the *Misuse of Drugs Act* to search persons and their property without a warrant.

[14] The *Firearms Act* provides:

22. Any police officer may arrest without warrant any person whom he believes to be in possession of, or to be using or carrying a firearm or ammunition in contravention of any of the provisions of

⁴ *Anthony v. Commissioner of Police & Anors.* Claim No. 73 of 2021; *Chi v. Commissioner of Police & Anors.* Claim 80 of 2021 at paras. 11-29 [*Anthony & Chi*].

⁵ *Anthony & Chi*, at para 11.

⁶ *Anthony & Chi*, at para 24.

⁷ *Anthony & Chi*, at para 25.

⁸ *Harris v. AG of Belize & Anors.*, Supreme Court Claim No. 90 of 2020 at para 14 [*Harris*].

this Act, and may search that person and, whether arresting him or not, may search for and may detain any person who has in his possession, or used or carried by him.

23(1) any police officer may enter in search all premises of persons suspected of possessing or selling firearms or ammunition otherwise than in accordance with this act and may enter in search any place, vessel, boat or conveyance in which there is reasonable cause to suspect that any firearms or ammunition is or are concealed or placed in contravention of this Act.

[emphasis added]

The *Misuse of Drugs Act* provides:

25(2) If a member of the Belize Police Department has reasonable grounds to suspect that any person is in possession of a controlled drug in contravention of this Act, or of any regulations made thereunder, the member of the Belize Police Department may, subject to subsection (3)

- (a) search that person, and detain him for the purpose of searching him.
- (b) search any ship, vessel, boat, aircraft, vehicle or other means of conveyance of any description in which the member of the Belize Police Department suspects that the drug may be found, or which has been used or employed in a Commission or attempted Commission of any such offence, and for the purpose require that person in control of the ship, vessel, boat, aircraft, vehicle or other means of conveyance of any description to stop it;...

Subsection 25(4) of the *Misuse of Drugs Act* outlines the process by which a warrant can be obtained to conduct the search described in subsection 25(2). Section 26 of the *Misuse of Drugs Act* permits searches without a warrant when a person has or is about to commit an offence under the Act. The Defendants have not relied on section 26 in their statement of defence.

[16] The question of whether a reasonable suspicion exists has long been recognized as an objective test.⁹ The test asks “whether a reasonable man, assumed to know the law and possessed of the information which was in fact possessed by the defendant, would believe that there was reasonable and probable cause.”¹⁰ The analysis does not change from an objective test to a subjective test because the *Firearms Act* uses the language of “whom he believes,” to assess whether the search was justified. The power given to the Police to arrest without a warrant cannot override a detainee’s constitutional rights to not have their personal liberty restricted without a

⁹ *AG of Belize v. Bennett & Anor.* Civ. App. No. 48 of 2011 at para 34 [*Bennett*].

¹⁰ *Dallison v. Caffery* [1964] 2 All ER 610 at 619.

reasonable suspicion that crime is or is about to be committed.¹¹ By referring to what the Police Officer believes, the *Firearms Act* merely recognizes the fact that a belief that turns out to be unfounded can still justify a search if the Officer's belief was reasonable in the circumstances.

[17] A reasonable suspicion requires something more than a “mere suspicion or a “hunch” by a Police Officer that might connect a particular person with the commission of a crime.”¹² The Initial Officers assert that reasonable suspicion was caused by a confidential informant's tip that an Isuzu Trooper, that met the description of the vehicle parked on the Cantun Property, was involved in the illegal activity. Citing the need to protect the identity of the informant, little information about the origin of the tip was provided to the Court. Information known to an arresting Officer that may not be admissible in court to establish the *prima facie* case, however, can be considered to decide whether the belief was reasonable.¹³ The Defendants argue that search was lawful because the information received from the informant created a reasonable suspicion that the Cantuns were committing or about to commit a crime.

[18] I accept that the Defendants received a tip that led them to the Cantun Property, but do not find that the tip establishes that they had lawful authority to search without a warrant. Whether there was reason to believe a crime is or is about to be committed is not the only factor the Court considers when deciding if the search was lawful. How the search was conducted is also relevant. In cases where a warrant exists, the Court has held that the search cannot be more intrusive than reasonably necessary to achieve its objectives to prevent the abuse of the authority to search.¹⁴ It would be preposterous to suggest that the Initial Officers, acting without a warrant in this case, are not also required to use the least intrusive methods needed to meet their law enforcement objectives.

[19] At a minimum, the Initial Officers must also prove that proceeding without a warrant was reasonably required for public safety, public order, or in service of protecting the rights of others. To avoid infringing on one's constitutional right not to have their person or home searched without their consent¹⁵ and the right to privacy,¹⁶ this authority to search without a warrant must be

¹¹ *Belize Constitution Act*, Rev. Ed. 2020, Cap. 4 at s.5(1)(c).

¹² *Bennett* at para 33.

¹³ *Hussein v. Chong Fook Kam* [1970] AC 942.

¹⁴ *Titan*, *ibid.* at para 69.

¹⁵ Section 9.

¹⁶ Section 14.

exercised with restraint. A person does not waive their constitutional rights by engaging in criminal activity. As outlined in *Chawla v. AG (Belize)*,¹⁷ a warrant serves an important constitutional purpose:¹⁸

The Law relies upon the independent scrutiny of the judiciary to protect the citizen against the excess which would flow from allowing an executive officer to decide for himself whether the conditions under which he is permitted to enter upon private property have been met.

But the Court has also recognized that a balance must be struck “between the right to be free of state interference and the legitimate needs of law enforcement.”¹⁹ The requirement to only be as intrusive as reasonably necessary when conducting a search, with or without a warrant, also protects the public from abuses of authority.

[20] The Defendants’ conduct demonstrates that they misunderstand when the authority granted to Police Officers to conduct searches without a warrant can be used. Proceeding without a warrant is an exceptional power. While I accept that the informant created a reasonable suspicion that a crime was or had occurred in the minds of the Initial Officers, the existence of a reasonable suspicion does not negate the need for a warrant under the *Misuse of Drugs Act*, the *Firearms Act*, or at common law in every circumstance. The Defendants have failed to establish, on a balance of probabilities, that proceeding without a warrant was necessary in the circumstances.

[21] First, the Defendants have not established that delaying the search until a warrant could be obtained would have impaired their investigation or intervention to prevent criminal activity. The Isuzu Trooper was parked in an open area that was clearly visible from the public road. No one could be seen near the vehicle when the Initial Officers arrived. I find no evidence of the vehicle leaving the property or any of its contents being removed. There is nothing to support a finding that searching without a warrant was necessary to prevent the disappearance of the allegedly illegal goods.

[22] Next, the Defendants have not proven that they suspected that the Isuzu Trooper contained drugs or firearms and not other contraband. I find no evidence of an immediate risk to public safety

¹⁷ Action No. 208 of 2002 [*Chawla*].

¹⁸ *Chawla* at para 29.

¹⁹ *Titan International Securities Inc. v. AG (Belize) & Anor.*, Claim No. 700 of 2014 quoting *Thanh Long Vu v. Her Majesty the Queen and the AG of Ontario et al.* [2013] 3 R.C.S. 657 at para 21 [*Titan*].

that necessitated proceeding with the search before obtaining a warrant. The claim in the Statement of Defence that the search was for “border jumpers, money laundering, drugs and contraband goods” is not supported by the arrest reports or Witness Statements of the Initial Officers, which only refer to contraband goods. While it is the case that any illegal item can fall under a broad definition of contraband, the Initial Officers’ conduct and the conduct of the Officers who later joined them does not support a finding that they held a reasonable suspicion that drugs and firearms were present. In particular, neither the Isuzu Trooper nor the Cantun Property were searched after the arrests took place. Not searching for drugs and firearms is illogical if they were suspected to be present, especially considering the Defendants’ claim that the Initial Officers were under siege by not only the Cantuns, but by villagers.

[23] Finally, I reject any claim that the arrests were necessary to rescue the Initial Officers. I find that after not getting consent to search, nothing prevented the Initial Officers from leaving the Cantun Property had they chosen to do so. The Defendants allege that Anatolia told the Initial Officers to leave their vehicle and weapons and walk away. I accept, however, the Cantuns’ claim that Anatolia only told them to point their weapons down and put them in the vehicle because there were children around.

[24] The Initial Officers’ claim that they were prevented from leaving is not credible. Even if I find that the Initial Officers’ misheard what Anatolia said, I do not find it reasonable to interpret those words as threatening in the circumstances. The Initial Officers were armed with shotguns and AR-15s. As will be explained further below, the Defendants have only proven that the Cantuns had 1 machete. The Police vehicle was parked in an open field. While a truck was parked several feet ahead of the Police vehicle, nothing prevented the Initial Officers from driving around the truck. Instead, I find the Initial Officers followed Supt. Sanchez’s order to wait until he arrived to arrest the Cantuns.

[25] The Defendants also claim that the Initial Officers were “ambushed” and “under siege” by a “mob” of other villagers which necessitated the rescue. I find no evidence that anyone other than the Cantuns, their wives and infant children were present during the arrest. Only the Cantuns are visible in the video presented as evidence of the aggression the Initial Officers were facing. The Parties also do not dispute that the arrests were made within minutes of Supt. Sanchez and his team’s arrival. It is highly improbable that when the order was given to proceed with the arrests

that only members of the Cantun family were arrested if, as the Defendants claim, everyone held their ground and even advanced when a warning shot was fired.

[26] Having engaged in an unlawful search, the Defendants have failed to establish that the imprisonment was justified. I find that the Cantuns have prevailed in their claim for false imprisonment.

Issue Two: Were the Claimants assaulted during their arrest and detention?

[27] The Cantuns claim that they were beaten, kicked, pepper-sprayed, hit with the end of a gun, and shot with rubber bullets during their arrest and transport to the Corozal Police Station. The Arresting Officers do not deny that they used force but assert that the amount of force used was reasonable given the Cantuns were resisting and attempting to flee. They also claim no one was pepper sprayed and only 2 rubber bullets were used. PC Peck testified that he shot one warning shot into the air and then another almost immediately into an advancing crowd.

[28] After reviewing the evidence, I find that Emelio and Eduardo were pepper-sprayed during their initial interaction with the Initial Officers. I also find the Cantuns were assaulted as described during their arrest. The Cantuns have not proven, on a balance of probabilities, that the assaults continued during the transport or at the Police Station. I find the force used to arrest the Cantuns, on Supt. Sanchez's order, was not reasonable in the circumstances.

[29] I find that Eduardo and Emelio were pepper-sprayed. The Initial Officers had a firm, albeit incorrect, belief in their right to search the Isuzu Trooper without a warrant. Eduardo and Emelio testified that they would not consent to the search without a warrant. The subsequent events of that evening support a finding that the brothers' stance was perceived as obstructing the Initial Officers. That pepper-spray was used to force compliance is a credible claim. In the video taken shortly after Victor Sr. arrived from the farm, you can hear Victor Sr. asking "what happened?" If the brothers and the Initial Officers were merely in a 'stand-off' over whether the Initial Officers would search the Isuzu Trooper as the Defendants claim, I would expect Victor Sr. to ask 'what do you want?' not 'what happened?'.

[30] The Cantuns allege that the remaining assaults took place during their arrest and transport to the Corozal Police Station. In support of their claims, the Cantuns have submitted photographs

of their bodies with bruises and abrasions and point to the fact that many needed medical attention after their arrest. They also submitted photographs into evidence of blood stains, rubber bullet shells, and pepper-spray containers that they alleged were used during their arrest. The Defendants suggest that some injuries were self-inflicted and other photographs were staged.

[31] The video shows the Cantuns agitated and shouting but still complying with the Initial Officers orders to stay back. I also accept the Cantuns' evidence that the only machete present arrived from the farm and was kept some distance from the Initial Officers until Eduardo put it in the house. The Defendants led no evidence that Eduardo, or any other Cantun, had to be separated from the machete during arrest.

[32] Even if I were to accept PC Williams' and PC Espinosa's claims that they felt threatened before the remaining Arresting Officers arrived, feeling threatened and being threatened are not the same. The Initial Officers were in control of the situation. Each Officer had their weapon ready if needed. The video also shows Cpl. Grajalez deescalating an incident when the phone recording the video was knocked from his hand and when Enrique grabbed PC Espinoza's uniform. The Defendants failed to present evidence that convinces this Court that the situation worsened from what is seen in the short video. Rather, no use of force prior to the arrests establishes that the Initial Officers were able to maintain the status quo for up to 45 minutes until the remaining Arresting Officers arrived.

[33] I find the Cantuns were not resisting or attempting to flee. The Cantuns reacted instinctively to protect themselves from the unexpected aggression by the Arresting Officers. The Parties agree that the order to move in and arrest was given almost immediately after Supt. Sanchez and his team arrived at the Cantun Property. No one testified that the Cantuns were given an opportunity to submit to arrest. Even if I accept the Defendants' evidence that a warning shot was fired, their evidence is that the second shot was fired seconds thereafter.

[34] Supt. Sanchez's decision to give the order to arrest using rubber bullets and physical force was made in the absence of a real-time assessment of the situation. I do not accept Supt. Sanchez's testimony that he relied on his tactical training and used reasonable force to arrest the Cantuns. If he had relied on his tactical training, he would have assessed the situation when he arrived at the Cantun Property before giving the order to move in and arrest. Moreover, Cpl. Grajalez can be heard on the video cautioning PC Espinosa to wait until the back-up arrived to physically engage

with the Cantuns as they would be arrested upon Supt. Sanchez's arrival. I find the Cantuns were assaulted as they described because the force used by the Arresting Officers was not proportionate to the threat the Officers faced or necessary in the circumstances.

Issue Three: Did the Defendants have reasonable and probable cause for prosecuting the Cantuns for the offences charged?

[35] As quoted in *Smith & Anors. v. AG of Belize & Anor*,²⁰ the elements of the tort of malicious prosecution are derived from *Wills v. Voisin*:²¹

- (1) The law must have been set in motion against the claimant on a charge for a criminal offence;
- (2) there must have been an acquittal or determination otherwise in the claimant's favour;
- (3) the law must have been set in motion without reasonable and probable cause; and
- (4) the prosecutor must have been actuated by malice in setting the law in motion.

Step (2) requires that the prosecution of the matter has come to an end. At their first appearance before the Magistrate, the Magistrate dismissed all the charges related to Covid restrictions and assaulting the Initial Officers. Only the obstruction charges remain active. While I do not wish to create an incentive to delay prosecution, I am mindful of the general caution for civil courts not to decide matters before a related criminal charge has been tried without good reason so as not to prejudice the fairness of the criminal trial.

[36] I do not have good reason to assess whether the charges of obstruction were maliciously prosecuted. While the delay in prosecuting these offences is unfortunate, I have no evidence that the delay has been intentional to avoid a finding of malicious prosecution. The delay has also not been so long as to allow this Court to infer that a decision has been made not to prosecute these charges thereby satisfying the requirement in step (2) that the matter has resolved in the Cantuns' favour. The claim for malicious prosecution for the charges of obstruction must fail. The subsequent analysis will only consider the charges related to Covid and assault.

²⁰ Claim No. 398 of 2015 at para 35.

²¹ (1963) 6 WIR 50 at 57.

[37] The first step of the test for malicious prosecution has been met. Each of the Cantuns was charged with Covid-related offences related to not wearing a mask and not social distancing when the Initial Officers attempted to search their property. Benjamin was also charged under subsections 4(1)(xi) and 4(9) of the *Summary Jurisdiction Offences Act*²² of using threatening words and insulting words. He also faced a charge of common assault under the *Criminal Code*.²³ Enrique was charged with assaulting a Police Officer under subsection 38(1)(a) of the *Police Act*,²⁴ using obscene language contrary to subsection 4(1)(xi) and 4(9) of the *Summary Jurisdiction Offences Act*, and common assault. Eduardo was charged with three counts of aggravated assault under subsection 45(e) of the *Criminal Code*.

[38] The second step of the test for malicious prosecution has also been met. The prosecution was resolved in the Cantuns' favour. The Magistrate dismissed all the charges except those related to obstruction at the first hearing of the matter on October 5th, 2020.

[39] The third step requires an objective analysis of the decision to charge to determine “if, at the time the charge was laid, the person laying the charge had reasonable and probable grounds to believe the crime being charged had been committed.”²⁵ This honest belief in guilt must be arrived at after due inquiry.²⁶ The Court must consider what the Charging Officer knew at the time the charges were laid. Most of the charges, except those related to the Covid public health measures, were laid by the 5th Defendant, Sgt. Zamir Noh, on October 2nd and 3rd, 2020. The Covid-related charges were laid by Cpl. Grajalez on October 4th, 2020. As a result, I will separately consider whether the Cantuns have proven the third step for each category of charges.

Summary Judgment Procedures Act, Police Act, Criminal Code Charges

[40] Sgt. Noh testified that he made the decision to charge after reviewing the arresting reports. All the reports refer to the Cantuns responding in an “aggressive” manner to the Initial Officers' presence and demand to search for contraband. PC Ramos, who did not testify and is no longer

²² Belize, Rev. Ed. 2011 Cap. 98.

²³ Rev. Ed. 2011, cap. 101.

²⁴ Rev. Ed. 2011, cap. 138.

²⁵ *Williamson v. AG of Trinidad and Tobago*, [2014] UKPC 29 at para 14 quoting *Hicks v. Faulkner*, [1881-85] All ER 187.

²⁶ *Halsbury's Laws of England/Tort* Vol. 97A (2019) at para 316.

assigned to this unit, did not provide any further details in his arresting report that would support a finding of the existence of reasonable and probable grounds for charging under the *Summary Judgment Procedures Act*, the *Police Act*, or the *Criminal Code*. The three other Initial Officers reported threats, including waving a hammer and a machete, the use of obscene language, and one incident where Enrique grabbed PC Espinosa's shirt. PC Williams and PC Espinoza also reported feeling afraid for their life.

[41] In the absence of any other information that would question their veracity, the reports of Cpl. Grajalez, PC Williams, and PC Espinosa support a finding of reasonable and probable grounds for Sgt. Noh charging the Cantuns. Sgt. Noh, however, is required to investigate before charges are laid. The Claimants and Defendants have presented very different evidence about what occurred leading up to and during the Cantuns' arrest, which has led me to conclude that had Sgt. Noh investigated, the content of PC Williams, PC Espinosa, and Cpl. Grajalez's reports would have been called into question.

[42] Sgt. Noh provided no evidence that he investigated why PC Ramos' report contained none of the details found in the other reports before reaching his decision that the Cantuns were likely guilty of the offenses he charged. PC Ramos would have understood that the purpose of the report was to assist the Charging Officer in deciding what charges should be laid. Sgt. Noh gave no indication that he questioned any of the Initial Officers about the discrepancies between their reports. In addition, Sgt. Noh testified that he did not speak to the Cantuns before presenting them with the charge sheets and no statements were taken from the Cantuns that he could have considered when deciding to charge.

[43] At a minimum, Sgt. Noh acquiesced to the misrepresentation by Cpl. Sanchez, PC Espinoza, and PC Williams of the events that occurred leading up to and during the Cantuns' arrests. I find that the discrepancies in PC Ramos' report sufficiently raised doubts about whether there was reasonable and probable cause to charge the Cantuns. I find these doubts would have caused any reasonable Charging Officer to further investigate before laying charges. In the absence of that investigation, Sgt. Noh lacked reasonable and probable grounds to lay charges under the *Summary Judgment Procedures Act*, the *Police Act*, or the *Criminal Code*.

Covid-related Charges

[44] Cpl. Grajalez laid all the charges related to the Covid offences on Sunday, October 4, 2020. At the time the charges were laid, the public health restrictions in place provided for face masks to be always worn unless that person was “at a private residence”.²⁷ Social distancing was also required.²⁸ Social distancing was defined under *Statutory Instrument 126 of 2020* as the “practice of staying home, avoiding crowds, refraining from touching one another and maintaining a distance of no less than six feet from other persons.” When read together, these provisions did not require face masks or social distancing at a private residence. Anyone who contravened these rules was liable on summary conviction to a fine of \$5000 or imprisonment for two years.²⁹

[45] The Defendants assert that the charges are justified because the Cantuns were on a public road when they were arrested and cannot avail themselves of the exceptions to Covid restrictions. The Cantuns dispute that the road was public. I find that the road is a private access road as it is located entirely on the Cantun Property. The Cantun Property has multiple homes on the singular parcel. The road provides access to the houses located at the back of the property. Aerial photographs show no evidence that the private access road connects to or is used by any neighbouring properties. I appreciate how the Initial Officers may have mistaken the road as a public road given the multiple homes that appeared to be using the road. A simple investigation, as the Charging Officer is required to do would have revealed that the road was not public. I find it highly unlikely that the fact that the Cantuns were arrested on their property was not readily discoverable as each Cantun was processed. I find that Sgt. Grajalez lacked reasonable and probable grounds to charge the Cantuns with the Covid offences.

[46] To succeed in their claim for malicious prosecution, the Cantuns must prove the Charging Officers acted with malice. Malice has been defined as action motivated “either by spite or ill-will against the claimant, or by indirect or improper motives.”³⁰ The Court may infer malice from a lack of reasonable and probable grounds,³¹ by proving what the motive was, or by establishing that

²⁷ *Quarantine (Prevention of the Spread of Infectious Disease) (COVID 19) Regulations, 2020* [*Quarantine Regulations 2020*] at s.4(1).

²⁸ *Quarantine Regulations 2020, ibid.* at s. 5(1).

²⁹ *Quarantine Regulations 2020, ibid.* at s. 23(1) and (2).

³⁰ *Greenwood Jr. v. AG of Belize et al.* S.C. Claim No. 611 of 2013 at para 71 [*Greenwood*].

³¹ *Greenwood, ibid.*

the no other justification for the prosecution can be found except through inferring some wrongful or improper motive.³²

[47] I find that malice can be inferred from a lack of reasonable and probable grounds. The Defendants' failure to call PC Ramos to testify is suspect. In a recent decision of the United Kingdom Supreme Court, Lord Leggatt commented on when it is appropriate for a court to draw an adverse inference from the failure to present a witness or evidence:³³

Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole.

[48] No explanation was provided for PC Ramos' failure to testify. PC Ramos remains an employee of the Belize Police Department and could have been directed to participate despite being in a different unit. These facts combined with several material inconsistencies and unbelievable claims in the testimonies of the Police Officers who did testify is the context which has led me to draw an adverse inference from PC Ramos' absence from the witness list. These inconsistencies and unbelievable claims include:

- The Initial Officers did not have weapons capable of shooting rubber bullets when the video evidence confirms that at least one of the Initial Officers was armed with a shotgun.
- Residents from San Victor Village were present during the arrests, yet none were arrested with the Cantuns.
- People fled and hid in bushes when the Officers began to shoot, when photographs show the property is open with the only bushes at some distance from where the arrests occurred.
- Only two shots were fired, both of which were rubber bullets (a warning shot fired into the air and another into the advancing crowd) when photographs of the Cantuns' injuries show at least two, possibly three injuries consistent being shot with rubber bullets.

³² *Brown v Hawkes* [1891] 2 QB 718 at 722 [*Brown*].

³³ *Royal Mail Group Ltd v Efofi* [2021] UKSC 33 at para 41.

- Injuries to Bibi Cantun were caused not by the Officers trying to physically separate her from husband, Eduardo, during his arrest, but by Eduardo biting her to force her to let go of him.
- Unlike the Initial Officers, PC Ramos did not report Eduardo threatened him with a machete. Rather, he reported that Eduardo complied with his order to put the machete down by walking away from the Initial Officers.
- Weapons, including a hammer and two machetes were used to threaten the Initial Officers, but none were taken into evidence.
- The Officers were searching for, among other things, weapons and drugs, but no search was undertaken after the Cantuns' arrest. The Defendants' explanation that the Officers focus shifted to the rescue mission, even if accurate, does not explain why the Officers would not search for, at a minimum, weapons.
- An Officer who admits shooting rubber bullets is unaware of the injuries rubber bullets cause because of his lack of training.
- An Officer can tell the difference between a bullet shot in the air as a warning shot and one shot forward into a crowd by the sound the bullet makes.

[49] The decision to not grant the Cantuns Police bail is additional context that lends support for the finding that the charges were motivated by wrongful or improper motive because it reflects a clear intention to disregard the Belizean law and Police procedure. Supt. Sanchez admitted under cross-examination that he stated that the Cantuns would not be granted bail on the night of their arrest. I find that the only reason Benjamin was granted bail was because an Officer, seeing Benjamin's declining health status, chose to challenge Supt. Sanchez's order.

[50] Supt. Sanchez's order was contrary to Section 5(3)(b) of the Constitution which provides that anyone who is arrested and who is not granted bail is to be "brought before a court without undue delay and in any case not later than forty-eight hours after such arrest or detention." The Cantuns, except Benjamin, were held for 60 hours. The order was also contrary to the Belize Police Department's *Standard Operating Procedures for the grant of Police Bail* which outlines only limited circumstances where bail would not be granted. Only Eduardo, who was charged with aggravated assault with a weapon, fell within the circumstances when bail would not be granted.

[51] Not granting bail in contravention of the Cantuns' constitutional rights and Department Procedure is the result of a misunderstanding of the limits of the Officers' authority to search without a warrant. The decision to not grant bail is also indicative of action motivated by an improper or wrongful purpose. That purpose being to "punish" the Cantuns for not acquiescing to their demand to search without a warrant.

[52] I further find that Sgt. Noh had an additional, improper motive to lay the charges. I find the Cantuns' evidence that Sgt. Noh was present during their arrests and that he shot Victor Jr. with a rubber bullet more credible than the evidence presented by the Defendants that he was not at the Cantun Property. The Cantuns testified that they recognized him and remembered seeing his nametag. Having learned that he shot a minor during an arrest, Sgt. Noh would have an incentive to create an impression that the actions of the Arresting Officers were warranted.

[53] Likewise, Cpl. Grajalez's decision to charge the Cantuns with Covid-related offenses on Sunday, a day after Sgt. Noh laid the other charges supports a finding of malice. I find that Cpl. Grajalez charged the Cantuns with these offences to justify their arrest and continued detention without bail. Anyone arrested has a constitutionally protected right to know, within 24 hours, the reasons for his arrest and detention.³⁴ While there are circumstances where the full extent of the relevant charges to be laid may not be known without time to complete an investigation, the Covid charges did not require investigation. These charges also were of an entirely different nature than the earlier charges and the Arresting Reports gave no indication that the Officers were at all concerned with the Cantuns' contravening the public health regulations.

[54] The Cantuns have proven, on a balance of probabilities that, but for the obstruction charges, they were maliciously prosecuted. The final question remaining ask what damages are owed to the Cantuns.

Issue Four: Are the Cantuns entitled to damages for false imprisonment, malicious prosecution, and assault?

[55] The Cantuns are entitled to be compensated for the losses they suffered by being falsely imprisoned, maliciously prosecuted, and assaulted during their arrest. Damages awarded for false

³⁴ *Belize Constitution* at section 5(2)(a).

imprisonment reflect the length of time detained on a declining scale to reflect the initial shock of being arrested.³⁵ They are also awarded to compensate for injuries to feelings and reputation.³⁶ Aggravated damages will be awarded to reflect particularly inhumane or degrading conditions of detention.

[56] With the exception of Benjamin, the Cantuns were held at the Corozal Police Station for 60 hours. Benjamin was held for 40 hours. The Cantuns allege they were not provided with food for most of that time and most were not permitted to bathe. The Defendants deny these claims and under cross-examinations, that some of those arrested bathed and ate was admitted by the Cantuns. The Cantuns have not proven, on a balance of probabilities that they were denied basic hygiene or food. The Cantuns have, likewise, not established that they were denied timely medical treatment of their injuries on Friday night which would justify an aggravated amount of damages. Benjamin, however, is entitled to aggravated damages. Benjamin's release on Sunday reflects that he was not receiving the appropriate care prescribed by the Doctor for his underlying health issues and injuries.

[57] In addition to Benjamin, Victor Jr is entitled to be award aggravated damages. I accept that the Arresting Officers were not aware he was a minor until he was processed at the Corozal Police Station. Once they became aware, however, he ought to have received different treatment on account of his age. That he was held with his family does not change this fact. I see no evidence the Police made any accommodations for his age.

[58] The Cantuns are also entitled to an amount for malicious prosecution. Malicious prosecution is similarly awarded for loss of reputation and injury to feelings for the humiliation caused and indignity suffered. Although the Court recognizes that having to be brought before a Magistrate to answer charges is itself an insult to one's dignity, the charges for which the Cantuns were wrongfully prosecuted were dismissed by the Magistrate on the first hearing. I find the quick action by the Magistrate to dismiss the baseless charges mitigated much of the indignity and humiliation the Cantuns would have suffered. This is not a case where there was delay in proving the Cantuns' innocence. In addition, the Cantuns have not demonstrated that their reputation has suffered any lasting effects.

³⁵ *Magana, ibid.* at para 14.

³⁶ *Harris, ibid.* at para 31.

[59] The Cantuns are entitled to damages for the injuries they suffered from the Arresting Officers' assaults. Damages for physical injury are calculated as they would be in any other action for personal injury, but the tort of assault also attracts damages for any insult, (i.e. injury to feelings, indignity, mental suffering, humiliation) that may accompany the injury.³⁷ As quoted in *Aguillera v. AG of Trinidad and Tobago*,³⁸ the factors the Court should consider when assessing damages for physical injury were outlined in *Cornilliac v. St. Louis*³⁹ as:

- a. The nature and extent of injuries sustained.
- b. The nature and gravity of the resulting physical disability.
- c. The pain and suffering which had to be endured.
- d. The loss of amenities suffered.
- e. The extent to which, consequently, the (claimant's) pecuniary prospects have been materially affected.

[60] The Defendants do not deny that they used rubber bullets and force to arrest the Cantuns. They also do not deny that Benjamin, Victor Jr., Asair, and Eduardo were treated for injuries occasioned during the arrest on Friday evening. I have also found that Emelio and Eduardo were pepper-sprayed before their arrest. Pictures taken shortly after their release and the medical reports from the night of their arrest, support a finding that everyone suffered bruises and abrasions during their arrest. Evidence presented of Bibi Cantun's injury adds credibility to Anatolia's claim that she was left unconscious when she was knocked to the ground. The Arresting Officers did not discriminate between men and women during the arrest.

[61] Damages for assault reflect the actual losses suffered from the injuries occasioned by the assault. The Cantuns have not provided sufficient evidence to prove, on a balance of probabilities, lasting injuries because of the assault. While the Court appreciates that the assault was likely traumatic and may have had a more lasting effect on some members of the Cantun family than others, the burden remains on the Cantuns to prove the full extent of their injuries.

³⁷ *MacGregor on Damages* at para 1260.

³⁸ High Court Claim No. 2018-02121 (Trinidad and Tobago) at para 41 [*Aguillera*].

³⁹ (1965) 7 WIR 491.

[62] The Parties have provided an array of cases for the Court to consider as guide for setting the appropriate amount of damages. I find the decisions in *Magano*, *Harris*, and *Martin* particularly useful comparisons as they are relatively recent and from this jurisdiction.

[63] In *Magana*, the claimant was detained for 25 hours without charge and was awarded \$6000 including an uplift for aggravated factors (not being informed of his constitutional rights upon arrest, not being provided food or refreshment, and being kept in a filthy cell). In *Martin*, the claimant was detained for 52 hours and was awarded \$10,000 including an uplift for the aggravating factor (Police not questioning the claimant about the crime he was suspected of being involved). In *Harris*, the claimant was detained for 37 hours without charge and was awarded \$5,500 including an uplift of aggravating factors (being left to sleep on the floor of a cold cell without blankets, denied access to basic hygiene requirements, the Police's reliance on potentially acted upon fraudulent information).

[64] I award \$10,000 as general damages to each Claimant for false imprisonment. That amount is uplifted by \$2000 for Benjamin and \$2000 for Victor Jr. to reflect the aggravating factors previously discussed.

[65] The *Martin* case is also a helpful comparison for deciding the award of damages for assault. The Claimant in *Martin* was awarded \$7500 in general damages as a consequence of being pepper sprayed and held under water several times to simulate drowning while in police custody. While I do not agree that the force used was reasonable, I do not find the assaults in this case to have the same egregious character as the assault in *Martin*. The Arresting Officers committed these assaults in the process of making arrests. The Cantuns have not convinced this Court that they continued after the arrest.

[66] I award each Claimant \$3000 as general damages for assault.

[67] Finally, I award \$1000 to each Claimant as general damages for malicious prosecution to avoid double compensation for the same loss or injury. I am unconvinced that the humiliation, loss of dignity and insult suffered because of the false imprisonment is significantly distinct from that suffered because of also being prosecuted. General damages \$1000 acknowledges that just being brought before the Magistrate caused some harm, but much of that harm was mitigated by the quick dismissal of the charges.

Issue Five: Are the Claimants are entitled to special damages or exemplary damages?

[68] It is trite law that special damages must be pled.⁴⁰ While the claimants have included special damages in their pleadings for ongoing medical needs and legal expenses, they have not itemized these amounts. Instead, they have outlined a global amount of \$20,000 for these combined losses. I find insufficient evidence to allow an award for special damages. This case is distinguishable from *Harris* where special damages were awarded despite the lack of receipts because the Claimant had claimed an identifiable and reasonable amount for legal fees alone.

[69] Where there has been a serious abuse of authority, the court can award exemplary damages to punish and deter the abuse.⁴¹ I share the frustration expressed by James J in *Martin* where he wrote:

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.

The abuse of authority in this case is compounded by the finding that the arrest originated from an attempt to unlawfully search the Cantun Property without a warrant.

[70] I also share a similar concern expressed by the High Court of Trinidad and Tobago in *Aguillera*, that the purpose of exemplary damages is to deter unlawful actions and to promote a change in behaviour.⁴² The High Court questioned the wisdom of awarding exemplary damages that only serve as a windfall for the recipient who has already been compensated for their injuries

⁴⁰ *Magana* at 26.

⁴¹ *Harris* at para 33.

⁴² *Aguillera*, at para 68.

and losses and do not result in the intended behaviour change.⁴³ The High Court cited two approaches Courts have taken with exemplary damages to bring about their intend effect – increasing the quantum of the award until it reaches a level where action will be taken and directing that the award be paid towards a fund or programme to bring about change.⁴⁴

[71] The former approach has yet to prove effective in Belize. I will try the latter. Guided by the review of precedents provided to me by the Parties, exemplary damages of \$67,500 (representing \$7500 per Claimant) is awarded to the Legal Advice and Service Center of Belize to fund litigation on behalf of the very poor or indigent who wish to bring an action for false imprisonment, malicious prosecution, or assault by a member of the Belize Police Department. The segment of the Belize population eligible for assistance from the Center are some of the most vulnerable to Police abuse as they do not have the means to prosecute. If repeated awards of exemplary damages will not deter wrongful conduct, the awards can be used to hold individual actors accountable for their actions.

Disposition

1. Judgment is entered for the Claimants against the Defendants;
2. The Defendants pay each Claimant \$14,000 in general damages;
3. The Defendants pay Benjamin and Victor Jr. an additional \$2000 each to reflect aggravating factors;
4. The Defendants pay \$67,500 to the Legal Advice and Service Center of Belize for exemplary damages;
5. The 8th Defendant report to the High Court on the status of the allocation and use of the award by the Legal Advice and Service Center of Belize by June 1, 2023 and every year thereafter until the funds have been exhausted.
6. The Defendants shall pay interest on the sum, including the amount owed for exemplary damages, at the rate of 6% pursuant to section 176 of the *Senior Courts Act, 2022*.

⁴³ *Aguillera*, at para 68.

⁴⁴ *Aguillera*, at para 69.

7. The Defendants shall pay prescribed costs.

Delivery Date:

7th February, 2023

Patricia Farnese
Justice of the High Court