

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 685 of 2021

BETWEEN:

[1] WPC 1561 CARLA MARIXSA AYUSO

Claimant

and

[1] CPL 695 MARION CHOCO
[2] WPC 1842 KADIZHA JONES
[3] PC PAUL JUCHIM
[4] CPL 1230 LUIS AGUILAR
[5] BELIZE POLICE DEPARTMENT
[6] ATTORNEY GENERAL OF BELIZE

Defendants

Appearances:

Nazira Myles, for the Claimant

Samatha Matute, Assistant Solicitor General and Alea Gomez for Defendants

2023: 14 June
18 August
13 December

DECISION

- [1] **FARNESE, J:** At the center of this claim is a dispute over a scooter. WPC Ayuso's former common law spouse, Sgt Abel Mendez, obtained the assistance of their Police colleagues to recover a scooter from WPC Ayuso's home before an agreement was reached or a court order issued with respect to matrimonial property division. When WPC Ayuso refused to hand over the scooter, a physical altercation between WPC Ayuso and WPC Jones broke out which resulted in injuries to both officers. WPC Ayuso was arrested, imprisoned, and she appeared in Magistrate's Court on Harm and Assault of a Police Officer charges. She seeks damages, including aggravated and exemplary damages, for malicious prosecution. She also claims \$5,165 in special damages for attorney's fees related to her arrest and charge in the Magistrate's Court, damage and loss of her property, and taxi fare for the time she was without a vehicle.
- [2] The Defendants admit that the 1st, 2nd, 3rd, and 4th Defendants went to WPC Ayuso's residence and seized the scooter and another vehicle at Sgt Mendez's request. They say they assisted because Sgt Mendez produced proof of ownership of the scooter and another vehicle. The vehicle was seized without incident before WPC arrived on the scooter. The Defendants assert that the physical altercation occurred after WPC Ayuso refused to hand over the scooter and attempted to drive away. WPC Jones removed the keys to prevent WPC Ayuso from leaving and was attacked. WPC Jones was defending herself when Cpl Choco and PC Juchim intervened and subdued, handcuffed, and placed WPC Ayuso under arrest. The Defendants argue that they had reasonable and probable cause to prosecute WPC Ayuso for the assault and harm caused to WPC Jones and did not act with malice.
- [3] For the reasons that follow, I find that WPC Ayuso has not proven that she was maliciously prosecuted. Despite agreeing with WPC Ayuso that the Officers ought not have gotten assisted with the recovery of contested matrimonial property, the evidence sufficiently demonstrates that WPC Jones was harmed and assaulted during a physical altercation with WPC Ayuso after WPC Ayuso refused to comply with instructions of Officers to hand over the scooter.

Issues:

- [4] WPC Ayuso initially claimed damages for false imprisonment and assault and battery but agreed to not proceed on those grounds in response to the Defendants' application to strike out those

claims because they were commenced after the prescribed time limit in the Limitation Act.¹ Therefore, the only issues to be decided are:

- a) Was WPC Ayuso maliciously prosecuted?
- b) What remedy, if any, is WPC Ayuso entitled to?

Analysis

Was WPC Ayuso maliciously prosecuted?

[5] The High Court has twice considered the tort of malicious prosecution in the last year. I endorse the legal reasoning adopted in **Benjamin Cantun et al v PC 1870 Roje Espinosa et al.**² and **Gabriel Pou et al v PC 2061 Mario Leal et al.**³ The elements of malicious prosecution are derived from **Wills v Voisin**:⁴

- (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.

WPC Ayuso has the burden to prove each of these elements on a balance of probabilities where any of these elements are not admitted by the Defendants. In their submission, the Defendants concede that the first two elements are not in dispute. WPC Ayuso was charged with Harm and Assaulting a Police Officer and those charges were withdrawn before the Magistrate's Court and the matter discontinued.

[6] As explained in **Cantun**:⁵

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

¹ The Substantive Laws of Belize, Cap 170 (Rev. Ed. 2020).

² Claim No. 603 of 2021 [Cantun]

³ Claim No. 640 of 2021.

⁴ (1963) 6 WIR 50 at 57.

⁵ Cantun at para 39.

to believe the crime being charged had been committed.” This honest belief in guilt must be arrived at after due inquiry. [Footnotes removed]

To be clear, the third element also requires WPC Ayuso to prove that not only were the charges reasonable, but that Cpl Choco, the person who laid the criminal charges, believed they were warranted.

- [7] I find that WPC Ayuso is justified in being frustrated, disappointed, and vexed that Sgt Mendez was able to convince members of the Belize Police Department to assist in his attempt to pre-empt the established legal process to deal with the division of property when a common law relationship ends. I am unable to find, however, that the defendants’ conduct entitles her to a remedy for malicious prosecution.
- [8] When considered objectively, there are few discrepancies between the evidence presented by the Parties in support of their cases. The discrepancies that exist can often be explained as different perceptions as to why actions occurred, not disagreements as to what occurred. I found Sgt Mendez and WPC Ayuso’s daughter, Ms. Yencey Mendez, the most reliable witness. Her witness statement, although made in support of her mother’s claim, recalled some facts that do not favour her mother thereby eliminating any question of bias or influence. She was also composed and forthright under cross-examination.
- [9] The Parties agree that WPC Jones approached WPC Ayuso after she refused to turn over custody of the scooter when requested to do so by Cpl Choco. WPC Jones demanded that WPC Ayuso comply. The evidence of both Parties confirms that WPC Ayuso explained that she and Sgt Mendez were involved in court proceedings because of their separation, so she would not give up the scooter without a court order. Given the context, and the fact that Ms. Yencey Mendez heard what her mom said from inside the house, I accept that WPC Ayuso spoke with a raised voice and appeared to be acting belligerently. Ms. Yencey Mendez’s evidence also supports a finding that WPC Jones matched WPC Ayuso’s tone and demeanour when she began demanding custody of the scooter. I find WPC Jones’ aggressive tone unnecessarily aggravated the situation.
- [10] After WPC Ayuso continued to refuse to surrender the scooter, I find that WPC Jones grabbed the keys from the scooter and tossed them to Sgt Mendez. WPC Ayuso unintentionally struck WPC Jones when she attempted to intercept the keys before they reached Sgt Mendez. This action

caused Ms. Ayuso to lose balance so she placed both hands on the handlebars, moved the scooter forward to avoid WPC Jones while dismounting. I accept WPC Ayuso's explanation that she moved forward because WPC Jones was reacting as if WPC Ayuso had intentionally assaulted her.

[11] I also accept that WPC Jones believed that WPC Ayuso was trying to leave and grabbed WPC Ayuso's arm from the handlebar to stop her. Ms. Yencey Mendez's evidence that WPC Jones angrily yanked her mother's arm supports a finding that WPC Ayuso was again thrown off-balance. To steady herself, WPC Ayuso grabbed WPC Jones' shirt, which resulted in the shirt tearing and WPC Jones' chest being scratched. WPC Jones admits to hitting WPC Ayuso as she freed herself from WPC Ayuso's grasp. At the same time, the scooter fell to the ground. The momentum caused WPC Ayuso to move towards WPC Jones. WPC Ayuso admits pushing WPC Jones causing her to lose her footing. Both women admit to exchanging blows until WPC Ayuso was restrained. Ms. Yencey Mendez also testified to the women hitting each other. I do not, however, find the evidence that WPC Ayuso reached for PC Juchim's firearm during this altercation credible. This allegation was first raised in cross-examination and was not in PC Juchim's witness statement. WPC Ayuso is a Police Officer and would be aware what consequences such action would likely attract.

[12] Section 96 of the Criminal Code⁶ defines harm as "any bodily hurt, disease or disorder, whether permanent or temporary" and section 97 states that "[h]arm is unlawful which is intentionally or negligently caused without any of the justifications mentioned in Title VI." Title VI includes the defence of person and property. Subsection 45(a) also makes it an offence to assault a police officer.

[13] WPC Jones submitted a medico-legal form into evidence that documented the injuries she suffered because of this altercation. The form states that she sustained scratches on her face, chest, and hand. The use of the terms "any" and "temporary" in section 96 supports an interpretation that harm includes minor injuries like those sustained by WPC Jones. I also find that a reasonable person may conclude that WPC Ayuso was not acting in self-defence because she was yelling,

⁶ Criminal Code Act, the Substantive Laws of Belize, Cap 101 (Rev. Ed. 2020).

acting belligerently, and struck WPC Jones first. Therefore, WPC Ayuso has failed to prove that there was no reasonable and probable ground to charge her for harm.

[14] Several factors also support a finding that there were reasonable and probable grounds to charge WPC Ayuso with the Assault of a Police Officer. It is important to emphasize that the test is not whether the charges are likely to be proven, but whether there were reasonable and probable grounds to charge. WPC Ayuso may very well have had a strong defence to these charges on the grounds that her conduct was involuntary, unintentional, or necessary to defend herself from WPC Jones. WPC Ayuso, nonetheless, makes several admissions that she struck or otherwise touched WPC Jones. She admits tearing WPC Jones' shirt, striking the set of keys at her waist, pushing her, and causing her to stumble. Ms. Yencey Mendez also testified that her mother kicked WPC Jones until she fell.

[15] Cpl Choco was the charging officer. He was present and witnessed the altercation. For the reasons already stated, it is also not unreasonable for him to have believed that these charges were warranted. WPC Ayuso has failed to prove the third element of malicious prosecution.

[16] In the event my finding on the third element is incorrect, I will address the final element of malice. As outlined in **Cantun**:⁷

Malice has been defined as action motivated “either by spite or ill-will against the claimant, or by indirect or improper motives.” The Court may infer malice from a lack of reasonable and probable grounds, by proving what the motive was, or by establishing that the no other justification for the prosecution can be found except through inferring some wrongful or improper motive. [footnotes removed]

WPC Ayuso's submissions on malice are fourfold. First, malice is evident by the lack of reasonable and probable cause to initiate the prosecution. Given my finding on the third element, this argument is unconvincing. Second, Cpl Choco, together with the complainant, WPC Jones, had an improper motive for laying the charges. WPC Ayuso argues that they were motivated by a desire to hide the fact that they had no lawful authority to trespass on her property and seize the scooter. Third, malice is also evident in the fact that only WPC Ayuso was charged and her complaints against WPC Jones were not properly investigated but directed to the Professional Standards Branch.

⁷ Cantun at para 46.

Finally, WPC Jones asks that I infer malice from the fact that there was delay in her charges being withdrawn.

- [17] That the Police should avoid involving themselves in property disputes involving former spouses before the matter is resolved by the court, is evident by the Commissioner of Police's response upon learning about the incident. He ordered WPC Jones and WPC Ayuso to apologize and to drop all disciplinary, criminal, and internal complaints against one another. He ordered Sgt Mendez to return the scooter to WPC Ayuso and disciplined him for involving other Officers in this matter. The burden, however, is on WPC Ayuso to show that the Officers' conduct amounts to malice.
- [18] Malice requires knowingly acting with an unlawful purpose. WPC Ayuso has not convinced me that the Officers were aware that they should not intervene in disputes of this kind. WPC Ayuso has not presented evidence to counter Cpl Aguilar's testimony that anyone can come to the Police for assistance to recover their property. In fact, WPC Ayuso admitted under cross-examination that the Police provide this assistance. She also does not deny that title to the scooter was in Sgt Mendez's name. I also have no evidence to challenge Cpl Aguilar's assertion that he saw the certificates of title before he agreed to assist Sgt Mendez.
- [19] Furthermore, I have not been provided with authorities to show that entering the property without a warrant and removing Property from the yard on behalf of a person who holds legal title amounts to either a trespass or an unlawful use of the Officers' authority. The Officers attempted to notify persons of their presence and did not go into the house. Ms. Yencey Mendez confirmed her father's account that they knocked on the door of the house upon arrival and before they began to remove the first vehicle, and no one answered. She testified her mother said she was on her way home and not to answer the door.
- [20] Unlike many charging officers, Cpl Choco witnessed the event that led to charges being laid and decided that their actions were justified. He testified that WPC Ayuso was non-compliant and resisted arrest in a manner that involved a physical altercation with WPC Jones. In circumstances where Cpl Choco believes the actions of WPC Jones were warranted, I fail to see how not investigating or pursuing charging WPC Jones is evidence of malice.

[21] Finally, I do not find the delay in withdrawing the criminal and disciplinary charges are evidence of malice. All witnesses who attended a meeting held with the Commissioner of Police, including the Commissioner himself, testified that he ordered WPC Ayuso and WPC Jones to apologize to one another and to withdraw the various proceedings they had against one another. I was not provided with minutes of the meeting and the Commissioner's directions were not put into writing. If either woman apologized to the other, the other either did not hear the apology or did not recognize what was said as an apology. WPC Jones testified that she understood that she was entitled to an apology and did not have to withdraw the charges she made against WPC Ayuso until she received that apology. I find her explanation credible because when, many months later, the Commissioner of Police corrected her misunderstanding, she complied.

[22] WPC Ayuso has not met the burden to prove that she was maliciously prosecuted by the defendants. I find that there were reasonable and probable grounds to charge her with Harm and Assault of a Police Officer. I also have not found that the charges are the result of malice. Consequently, it is not necessary for the second issue to be considered.

Disposition

[23] IT IS HEREBY ORDERED THAT:

1. The claim is dismissed;
2. The Defendants are entitled to costs from the Claimant as agreed or assessed.

**Patricia Farnese
High Court Judge**