

IN THE SUPREME COURT OF BELIZE A.D. 2009

CLAIM NO: 88 OF 2009

(GILBERT HYDE	CLAIMANT
(
(AND	
(
(THE ATTORNEY GENERAL	DEFENDANTS
(ALLEN WHYLIE	
(AARON GUZMAN	
(GERALD WESTBY	
(GLADIMIR CU	

BEFORE: Hon. Madam Justice Minnet Hafiz

Appearances:

Tricia Pitts-Anderson for Claimant
Ms. Magalie Perdomo for Defendants

J U D G M E N T

Introduction

1. This is a claim for Damages for loss of liberty, mental anguish, indignity suffered as a result of the Claimant's wrongful arrest and imprisonment. The Claimant is a Police Constable with the Police Department of the Government of Belize. The first Defendant is sued as representative of the Government of Belize. The second through fifth Defendants are officers of the Belize Police Department.

Statement of Case

2. The Claimant's case is that on 14th February, 2008 he was riding on Central American Boulevard along with Ryan Felix with the intention of going to see his brother and to direct Ryan Felix to the residence of a person named Brown

who to his knowledge lived on Curl Thompson Street, Belize City, Belize. While on the way he heard what sounded like two sets of gunshots with a pause in between the two shots. At the time, Ryan Felix was still riding next to him on Central American Blvd going in the direction of Curl Thompson Street.

3. At paragraph 4 and 5 of his statement of case he said that he learnt that the Police at the scene of the alleged shooting was alleging that Ryan Felix was involved in the shooting which resulted in the death of two persons and a third person was injured. Upon learning of the allegations against Ryan Felix, he went to the Queen Street Police Station, Belize City, to inform the police there that Ryan Felix was riding along side him at the time he heard the gunshots. There he informed Inspector Anderson that he wanted to make a statement concerning the shooting for which he learnt Ryan Felix was detained as Felix was riding along side him at the time of the shooting.
4. He was allowed to give a statement which was taken down in writing and consisted of two pages but he was not allowed to sign the statement. He was informed by Detective Cobb that the boss, Aaron Guzman, the third Defendant, would first have to read over his statement before he signed it. Detective Cobb then took the statement into another room of the same Criminal Investigation Branch office.
5. At paragraph 8 of his statement of claim he said that he was then taken to a room where the following officers were present: Superintendent Aaron Guzman, Woman Sgt Petillio, Inspector Romero, Assistant Commissioner of Police Allen Whyllie. There he was told by Allen Whyllie, the second Defendant, that he was covering up for Felix and that he was being given the opportunity at that time to tell the truth and that he had something to do with the shooting because he was not called upon but went there to give a statement voluntarily. Further, that he was told that if he wanted to be treated like a criminal he would be put in the cell block and charged.

6. At paragraph 12 of his statement of claim the Claimant said that the second Defendant then instructed Detective Cobb to take him down to the cell block to be locked down. First Detective Cobb took him to scenes of crimes office where his picture and finger prints were taken, and his fingers swabbed for the presence of gun powder residue. He was then taken back to Criminal Investigation Branch office where his particulars were taken and then he was locked down in the cell block.

7. At paragraph 13 he stated that he was detained on the instructions of ACP Whyllie on 14th February, 2008 and subsequently charged on 15th February, 2008 by CPL #767 Gladimir Cu with the offence of Conspiracy to Commit Murder. He appeared before the Magistrate on 18th February, 2008 where the charge was read to him and on the said date he was remanded to custody at the Hattieville Prison until the next scheduled court hearing which was set for 26th February, 2008.

8. At paragraph 16 of his Claim, Mr. Hyde states that on or about 5th March, 2008 the Director of Public Prosecutions forwarded a correspondence to the Claimant's attorney stating that there is not an iota of evidence to substantiate the charge of conspiracy to commit murder against the Claimant and he directed that the charge against him be withdrawn.

9. On March 6th, 2008 Mr. Hyde was released from prison after spending 18 days in prison. For these reasons he brought this claim stating at paragraph 16 of his statement of claim that he was deprived of his liberty by unlawful detention and he has suffered indignity and mental anguish arising from his wrongful arrest and imprisonment without reasonable and probable cause as a result of which he said he suffered damages.

10. The Defendants in their statement of Case say at paragraph 5 that based on discrepancies in the Claimant's accounts in addition to intelligence received, the Claimant was cautioned and later questioned by Superintendent Aaron Guzman, Assistant Commissioner of Police Allen Whyllie and Inspector Romero.
11. At paragraph 7 of the Defence, the Defendants say that following further inquiry and based on a reasonable suspicion of the Claimant's involvement in conspiracy to commit murder, the Defendants detained the Claimant on February 14th, 2008 and he was later taken to the Crime Investigation Unit by Corporal Gladimir Cu where he was swabbed.
12. The Defendants say that based on the information available they honestly believed their suspicion that the Claimant was involved in conspiracy to commit murder was reasonable and justifiable. Further, that given the circumstances of the investigation and based on information received by the Police Department, there was reasonable and probable cause for the expeditious detention and arrest of the Claimant.

Evidence

13. The Claimant, Gilbert Hyde filed a witness statement and he was cross-examined. The Defendant filed witness statements from Allen Whyllie, former Assistant Commissioner in the Belize Police Department, Gladimir Cu, Corporal in the Belize Police Department, Orlando Cab, Detective Constable, Nicolas Palomo, Sergeant in the Belize Police Department and Anaceli Petillo, Sergeant in the Belize Police Department. All the witnesses were cross-examined.

Submissions by the Claimant

14. Mrs. Anderson for Mr. Hyde, the Claimant submitted that at common law a police officer, who arrests a person without a warrant on reasonable suspicion of having committed an offence, has the burden of proving that he had reasonable suspicion for believing that the arrestee was guilty of the offence. That it is for the police officer to justify the reasons for depriving the arrestee of his liberty. Learned Counsel relied on the Privy Council judgment of **Hussien v Chong Fook Kam [1970] AC 942** where the threshold of “reasonable suspicion” is defined.
15. Learned Counsel submitted that this threshold is limited to the suspicion that operates on the mind of the arresting officer if an arrest is to be justified as lawful. See **Raissi and Another v The Commissioner of Police of the Metropole [2007] EWHC 2842** where Mr. Justice Mc Combe adopted the speech of Lord Hope of Craighead in **O’Hara v Chief Constable of the RUC [1997] AC 286**.
16. Mrs. Anderson further submitted that whether an officer has a reasonable suspicion is dependent on the information known to him at the time of the arrest which also must be examined objectively by the standards of the ordinary reasonable man. If at the time of the arrest the arresting officer is following orders given to him by a superior officer, that directive without some further information being given to him, is insufficient to afford the arresting officer reasonable suspicion to justify the arrest.
17. Mrs. Anderson submitted that the Claimant’s evidence is credible. There was nothing strange in the Claimant giving information material to a crime as was

agreed by Corporal Cu. Further, the Claimant did not change his story at any time, not when he was questioned by the arresting officer or when he was questioned by his most superior officer, Commissioner Allen Whyllie or when he was humiliated and remanded to prison. Throughout his ordeal there were no reports that the Claimant behaved in any manner inconsistent with his duty as an officer of the law.

18. Learned Counsel submitted that the testimony of CPL Gladimir Cu is crucial since he was the arresting officer at the time of the arrest. In examining his evidence two questions must be determined: (1) on what information did he rely as the basis of suspicion for arrest and (2) whether a reasonable man would have formed the same opinion given the information that the arresting officer possessed at the time of the arrest.
19. Learned Counsel referred to the evidence of CPL Cu who deposed to discrepancies as to the accounts of witnesses. Further, he took into account that Sgt. Petillio stated that she had visited Eugene Flores, the deceased, at the hospital emergency room, where he stated that it is Ryan Felix known as "Cash" shot him. At paragraph 10 and in his oral testimony Cpl. Cu stated that it was for these reasons that he believed that it was reasonable to suspect Mr. Hyde's involvement in the conspiracy to commit murder at the time of the alleged incident.
20. Learned Counsel further submitted that those were not the only factors that were operating on the mind of Corporal Cu because at the time he charged the Claimant he had a confession from Gyang Staine.
21. Mrs. Anderson submitted that the existence of the confession was never stated by any of the defence witnesses in their witness statements or evidence in chief, even though it was known to the arresting officer Corporal Cu, Sgt. Nicolas Palomo and Commissioner Allen Whyllie. That it was by the evidence

of the Claimant that the confession was brought out in trial. This was corroborated by the Defence witness Sgt. Palomo who gave account of how the confession statement was taken. Learned Counsel submitted that with all this information, especially the confession of Gyang Staine, the question is whether a reasonable man would be of the opinion that the Claimant was involved in the shooting. What the reasonable man would think was demonstrated by the evidence of Sgt. Palomo, who was equipped with the same information as Cpl Cu. Sgt Palomo under cross examination stated that based on the confession of Gyang Staine there was no evidence to suggest that the Claimant had anything to do with the shooting. Sgt Palomo further admitted that he did say to the Claimant that they did not have any evidence on the Claimant. This statement Sgt Palomo said was based on his knowledge of the entire investigation. Learned Counsel submitted that any reasonable person other than a police officer equipped with the same information as CPL Cu would have reached the same conclusion as Sgt. Palomo.

22. Mrs Anderson submitted that Cpl. Cu, Nicolas Paloma and former Commissioner Allan Whyllie knew of the confession given by the Accused Gyang Staine prior to the charge of the Claimant. That CPL Cu gave evidence that he learnt of the confession on the morning of February 15th, 2008 and the Claimant was charged for conspiracy to commit murder on the evening of February 15th, 2008 before the expiration of 48 hours. Learned Counsel submitted that the wrongful imprisonment of the Claimant commenced the minute the arresting officer became aware of the confession given by Gyang Staine and continued up until he was released from the Kolbe Foundation on March 6th, 2008.
23. On the issue of damages, Learned Counsel submitted that there are few established rules in the cases of false imprisonment and the quantum is left very much to the Judge's discretion. The main heads of damages appear to be the following:

- (1) *Loss of Liberty*
- (2) *Injury to feeling that is the indignity, disgrace, humiliation and mental suffering from detention*
- (3) *Physical injury, illness or discomfort resulting from detention*
- (4) *Injury to reputation*
- (5) *Any pecuniary loss which is not too remote a consequence of the imprisonment (for example, loss of business, employment or property).*

See Gilbert Kodilyne, *Commonwealth Caribbean Tort Law* 2nd Edition pp 55- 56.

24. In addition to these general heads of damages, Mrs. Anderson submitted that an award is appropriate for the initial shock of arrest and the length of detention. The Court of Appeal addressed this issue in **Millette v McNicolls** [2000] 60 WIR 362 and concluded thus:

“ There is an element of initial shock when a person is first arrested and imprisoned which must be taken into account and compensated in the assessment of damages for wrongful arrest and false imprisonment, regardless of whether the term of imprisonment is long or short. The extent of the compensation for the initial shock will depend on the facts of the case (and not the length of the

imprisonment) and factors which may be relevant include: the way in which the arrest and initial imprisonment are effected, any publicity attendant thereon, and any affront to the dignity of the person. While any normal person will adjust to some extent to the circumstances of imprisonment, the longer the imprisonment lasts the more burdensome it becomes; and the length of the imprisonment is to be taken into account in this context. Damages in such cases should not, however, be assessed by dividing the award strictly into compartments (initial shock, length of imprisonment, etc) but by taking all such factors into account and then approaching figure in the round.”

25. Learned Counsel relied on the case of **Dean Lindo v Commissioner of Police, The Commandant, Belize Defence Force, Supreme Court Action No. 291 of 1981**. The question for determination was whether there was reasonable suspicion that the Appellant had committed or was committing offences contrary to Firearm Ordinance and the Public Safety Ordinance. The court did find on the evidence that there was reasonable suspicion for the arrest of the plaintiff. However, the lawful arrest was subsequently vitiated by the police's failure to inform the Plaintiff of the reason for his arrest. The unlawful arrest subsisted for one and a half hour. Taking into account the intolerable situation in which the Plaintiff found himself, the distress which he was caused and the brief period over which the situation lasted, the court compensated the Plaintiff with an award of \$750.00 together with costs.

26. Further, Learned Counsel relied on the decision of **Gilbert Lomont v Attorney General Supreme Court Action No. 158 of 1978** where the court found that there was no justification for the assault by Supreme Court Marshall on the Plaintiff during the execution of a writ of Possession. The Plaintiff's arrest for obstruction and subsequent detention for some 29 hours was found to be unlawful and the Plaintiff was compensated by an award of \$750.00 in damages and costs.
27. Mrs. Anderson further submitted that since these judgments, the decrease in the purchasing power of the dollar and inflation would invariably increase an award for damages for false imprisonment. Counsel referred to the case **Louis Leslie v Attorney General Supreme Court Action No. 9 of 2000** which was an action for false imprisonment that was settled out of court for \$16,000.00.
28. Learned Counsel submitted that in the absence of any reasonable suspicion, the detention of the Claimant was unlawful. The Claimant was remanded for 18 days, February 14th, 2008 until March 6th, 2008 but his detention became unlawful on February 15th, 2008 the minute the arresting officer was apprised of the confession which excluded the Claimant as a participant to the shooting. That for this loss of his liberty the Claimant should be compensated. Also, that consideration must be given to the shock the Claimant must have experienced when he was arrested for doing what he obviously felt he was duty bound to do as an officer of the law. Further, for his humiliation and mental anguish the Claimant ought to be compensated.

Submissions by the Defendant

29. Learned Counsel, Ms. Perdoma relied on **Blackstone's Criminal Practice [2008]** at **D1.2** for guidance on what is required to establish 'reasonable

suspicion' and submitted that in deciding reasonable suspicion the court should consider what the police knew and perceived on 14th -15th February 2008. That in this case the Claimants rely on a Memorandum by the then Director of Public Prosecutions in which he states that “.. *there is not an iota of evidence to substantiate the charge of Conspiracy to Commit Murder against Gilbert Hyde Jr...*”

30. Ms. Perdoma submitted that reasonable suspicion is not concerned with securing a conviction beyond reasonable doubt. At the time of the arrest the Police would have had the benefit of interviewing the suspects and the claimant immediately after the incident. This would not have been afforded to the DPP who merely reads the recorded statements some two weeks later. Learned Counsel, Ms. Perdoma relied on the case of **McArdle v Egan [1933] All ER Rep 611** where Lord Wright states:

“ It has to be remembered that police officers, in determining whether or not to arrest, are not finally to decide the guilt or innocence of the person arrested.....”

31. Learned Counsel submitted that in the case at bar the officers at the time of the incident, on February 14th -15th would not have been required to prove the case against the Claimant before arresting and charging him. All that was required by the officers was that they formed an honest belief, and that anyone with knowledge of such facts would also take the view that the Claimant was involved in the conspiracy to commit murder at the time. Learned Counsel relied on **Herniman v Smith (1938) 1 All ER 1** where Lord Atkin, in addressing what is required of the prosecutor stated the following:

“..... It is not required of any prosecutor that he must have tested every possible relevant fact before he takes action. His duty is not to ascertain whether there is a defence, but to ascertain whether there is reasonable and probable cause for a prosecution..”

32. Learned Counsel submitted that the officers in this case acted on information received because they had no personal knowledge of the relevant facts. It is therefore necessary to enquire whether the information they had justified them in giving credit to it, and whether the suspicion which it aroused was a reasonable suspicion. Ms. Perdoma referred to information gathered by the Defendants. That, Sgt. Paloma having attended the hospital after the incident and having perceived that the victim shortly before his death identified Ryan "Cash" Felix as the shooter, he began his inquires and attended Gill Street where the incident occurred. He detained the main suspect, Mr. Felix among other men in the area.
33. He then conducted 'preliminary inquires' to assure himself that the men could provide information relevant to the murder. While questioning these individuals he immediately identified discrepancies in their accounts. Ryan Felix claimed to be with the Claimant on the boulevard at the time of the shooting, and Alberto Allen stating that Ryan Felix, Gyang Stain, Earl Hamilton and the Claimant were leaving Mr. Felix's yard shortly before the incident.
34. Learned Counsel submitted that at the time of the arrest, Ryan Felix was the main suspect in the case. That, Mr. Allen having stated to Sergeant Palomo that he saw the Claimant in Mr. Felix's yard and later providing a statement alluding to Felix's involvement in the incident, that is, possession of a gun in the same yard, would cause any reasonable person to become suspicious as to the Claimant's involvement in the murder.
35. Ms. Perdoma submitted that while the Claimant provided an alibi stating that he was with Mr. Felix at the time, his accounts of where he and Mr. Felix were at the time of the incident conflicts with that of other suspects. That on February

15th after the statements were compiled the arresting officer took account of the relevant information and proceeded to formally charge the Claimant.

36. Ms. Perdoma submitted that having made inquiries from persons who were present and accessible, there is no indication that the Defendants acted hastily. Learned Counsel referred to **Sibbons v Sandy [Carilaw TT 1983 HC 87]** which can be distinguished from the case at hand. In Sibbons the Plaintiff was accused of stealing oranges. The officers made no inquiries even though the plaintiff was insisting he had bought the oranges. Eboo J found that the Defendants acted precipitately in failing to make any inquiries, particularly from individuals present and easily accessible.
37. Ms. Perdoma submitted that the facts of the instant case including the victim's declaration that Mr. Felix shot him, the Claimant's alibi statement as being with Mr. Felix at the time of the incident, the discrepancies in their accounts, the other suspects having identified the Claimant at Mr. Felix's house just before the shooting, and Mr. Allen's statement implicating Mr. Felix would put a reasonable person in possession of these facts on suspicion as to the Claimant's involvement and possibly conspiring to commit the murder.
38. Learned Counsel further submitted that on February 14th -15th when the Claimant was arrested and charged, given the information available at the time and based on further inquiries by the police, it was reasonable to suspect that the claimant was involved in conspiring to commit the murder. As such the Defendants have discharged their duty to prove reasonable suspicion and the Claimant has failed to prove that the arrest was indeed unlawful.
39. Further, the Defendants submitted that Mr. Hyde was detained sometime after 7:00 pm on the February 14, 2008, and formally charged on the February 15th 2008 after which he was remanded by the Magistrate on Monday 18th

February, 2008 until 26th February, 2008. That the Claimant was remanded in police custody for a total of 3 ½ days, the period of February 15th to February 18th.

40. Further, Learned Counsel submitted that the Claimant's subsequent remand to the Kolbe Foundation on February 18th, 2008 until February 26th, 2008 by the Magistrate constituted a 'continuation of imprisonment by judicial order.

41. Learned Counsel relied on **Mc Gregor on Damages, Thirteenth Edition at page 1266.**

'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 this by acting introduces a new cause which relieves the defendant of liability for further damage.'

42. Ms. Perdona submitted that the case of **Lock v Ashton (1848) 12 QB 871** referenced in **McGregor on Damages** is similar to the case at bar. The plaintiff was wrongly arrested by the defendant's authority and was brought before a magistrate who remanded him in custody. It was held that the plaintiff could recover damages in the action for false imprisonment only up to the time of the remand.

43. Learned Counsel further relied on **Diamond v Minter and Others All ER 1941** Vol 1 where Cassells J stated the following

I do not award him damages for his subsequent detention in Brixton Prison, for that, as I have said, was the result of a judicial decision. The

*breaking of the chain of causation was dealt with by Scrutton LJ, in **Harnett v Bond**, at p 565:*

‘But it appears to me that when there comes in the chain 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.’

44. Ms. Perdoma submitted that the time for which any liability in false imprisonment can arise is limited to the period of remand prior to the Magistrates order. In this case late in the evening on February 14th to February 18th, a period of 3 ½ days.
45. On the issue of damages, Learned Counsel relied on the cases of **White v Cammock and Attorney General JM 2009 SC 32** and **Russel v Attorney General et al JM 2008 SC 5**, the Supreme Court of Jamaica dealt with the issue of damages for false imprisonment. In both cases the Court considered the range of awards for false imprisonment by the Court as updated by the Consumer Price Index.
46. Learned Counsel submitted that the case of **Herwin Fearon v AG- C.L. 1990/F-046** (unreported) was referenced in both cases. That the damages awarded in **Herwin** provides an appropriate starting point for assessment of damages in the case at bar where the award for damages was also based on a period of 3 ½ days. In **Herwin** the Court awarded \$280,000.00 Jamaican dollars to a minibus operator.
47. Learned Counsel referring to the Consumer Price Index submitted that the sum of 280,000.00 Jamaican dollars would have been worth \$9,088.00 Belize

dollars. Taking a mean of the CPI for March 2005, today the 280,000 Jamaican currency would equate to \$10, 575 BZD.

48. Ms. Perdoma submitted that for detention for a period of 3 ½ days by the police department if it is that the Court should find no reasonable suspicion to detain the Claimant, according the relevant authorities, would equate to approximately \$10, 575 BZD. Further that based on the statement of claim and witness statements the Claimant has not properly pleaded or made out his case for damages relating to mental anguish and indignity suffered.

Determination

Issue: Whether there was reasonable suspicion to justify the detention, arrest and charge of the Claimant.

49. The court in deciding this issue will have to look at what is required to establish reasonable suspicion and what facts the arresting officer had at the time of the arrest. In the Privy Council case of **Hussien v Chong Fook Kam [1970] AC 942** relied on by Mrs. Anderson, the threshold of “reasonable suspicion” is defined as:

Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: “I suspect but I cannot prove.” Suspicion arises at or near the starting point of an investigation which the obtaining of prima facie proof is the end. When such proof has been obtained, the police case is complete; it is ready for trial and passes on to its next stage. It is indeed as a general rule that an arrest should not be made until the case is complete. But if arrest before that were

forbidden, it could seriously hamper the police. To give power to arrest on reasonable suspicion does not mean that it is always or even ordinarily to be exercised...

50. In **Blackstone's Criminal Practice [2008] at D1.2** cited by Ms Perdoma it is stated that

*“ In relation to arrest it has been held that reasonable suspicion requires both that the constable carrying out the arrest actually suspects (a subjective test) and that a reasonable person in possession of the same facts as the constable would also suspect (an objective test). In addition the arrest must be **Wednesbury** reasonable .. Whether the constable had reasonable suspicion must be determined according to what he knew and perceived at the time; reasonableness is to be evaluated without reference to hindsight (Redmond-Bate v DPP (1999) 163 JP 789). Information required to form a reasonable suspicion is of a lower standard than that required to establish a prima face case. Prima face proof must be based on admissible evidence whereas reasonable suspicion may take into account matters which are not admissible in evidence or which, while admissible, could not form part of a prima face case. (Hussein v Choong Fook Kan [1970] AC 942. Whilst it is not necessary for the constable to have identified the specific offence of which he is suspicious (Coudrat v Commissioners of Her Majesty's Revenue and Customs [2005] EWCA Civ 616), he must reasonably suspect the existence of facts amounting to an offence of a kind that he has in mind. (Chapman v DPP (1988) 89 Cr App R 190).*

51. I do agree with Ms. Perdoma that the court in deciding reasonable suspicion should consider what the police knew and perceived on 14th – 15th February,

2008. Also that there should not be any reliance on the Memorandum by the then Director of Public Prosecutions where he stated that there is no evidence to substantiate the charge.

52. The evidence before the court from the Defendants show that the Police Officers acted on information received from Sergeant Petillo who stated that when she was at the hospital she heard the victim said that Ryan "Cash" Felix shot him, and also on information from several persons who were interviewed including the Claimant. There were discrepancies as to the location of the persons interviewed and this led the Defendants to the belief that the Claimant was involved in conspiracy to commit murder.

53. The evidence of Corporal Gladimir Cu who was the arresting officer is that on February 14, 2008, after 5pm information came in via Police radio transmission of a shooting on Gill street. He along with PC Cab responded to the shooting. That upon arriving on the scene he was informed that three persons were shot and transported to the Karl Huesner Memorial Hospital ("KMH"). He remained at the scene to ensure that the scene was properly processed by the Scenes Of Crime technicians. He later proceeded to KMH emergency ward where he observed the victims.

54. At paragraphs 5 and 6 of his witness statement, Corp. Cu stated that on February 15, 2008, he was provided with the statements of witnesses and officers involved in the investigation. He carefully perused the information compiled and allegations against the suspects being held at the time and he immediately noticed discrepancies as to accounts of the witnesses including the Claimant's whereabouts at the time of the incident. The statements on the file revealed differing accounts of Mr. Felix, Mr. Earl Hamilton, and the Claimant as to his location at the time of the incident.

55. Corp. Cu's evidence is that Mr. Felix stated that he met the Claimant at the corner of Nurse Findley Crescent and Fabers Road. The Claimant stated he saw Mr. Felix riding from the direction of Gill Street. Mr. Hamilton stated he met both the Claimant and Felix around the same time, leaving out of Felix's yard on Gill Street. That based on the findings of the investigation and after consultation with the Officer Commanding the Easter Division, Mr. Allen Whyllie, Assistant Commissioner of Police at the time, he proceeded to arrest and charge the Claimant, along with others, for conspiracy to commit murder.
56. There was no evidence given in chief by the Defendants about the accused Gyang Staine who admitted to the shooting as rightly pointed out by Mrs. Anderson in her submission. It was under cross-examination that Corp. Cu testified that he charged P.C. Hyde on the 15th at about 7:30 p.m. and earlier on the said day the accused Gyang Staine was handed over to him and at the time he was aware that Staine had given a confession statement in the shooting incident. He said that he was aware that Staine in his confession statement said that he got the gun from one Berto, he threw the gun away and that his motive for committing the shooting is that he had a beef with Flores over a football game.
57. Corp. Cu further testified that before he laid the charge he consulted with the then Assistant Commissioner in charge of Eastern Division, Mr. Allen Whyllie, Supt. Aaron Guzman, and Insp. Romero. That all statements taken in the investigation including the caution statement of Gyang Staine were put to Assistant Commissioner of Police Whyllie and the other officers. He testified that the statement from Gyang Staine was also in the file.
58. The evidence clearly shows that there was a confession from Staine and the charging officer had knowledge of same before the conspiracy charge was laid on the Claimant. There is no evidence that Staine implicated the Claimant in

the shooting incident. Corp. Cu said that he consulted with Mr. Whylie before laying the charge. Mr. Allen Whylie, former Assistant Commissioner stated at paragraph 4 of his witness statement that Sergeant Nicolas Palomo discussed his findings with him and they concluded that there were discrepancies in the accounts of the suspects being questioned, particularly concerning their location at the time of the incident. That based on the discrepancies in information provided by all the suspects and the identification of Ryan "Cash" Felix by the victim, he believed that there was probable cause at that time for arresting the Claimant.

59. In cross-examination Mr. Whylie testified that his conclusion on the matter was based on briefings and evidence obtained by other persons. He said that he did not recall that Sgt. Palomo indicated to him that they had taken a caution statement from Gyang Staine but he recalled that Staine and other persons were detained. He further testified that he was not aware that Staine had confessed to the shooting and that neither Sgt. Palomo or Cpl. Gladimir Cu in their briefings to him ever indicated the contents of that caution statement to him. He said that he would have done further investigation if he was aware of Gyang Staine's statement.

60. The evidence of Sgt. Nicolas Palomo who discussed his findings with Mr. Whylie shows that there were discrepancies in location of the persons interviewed. At paragraph 9 of his witness statement he said that he held a preliminary interview with each of the men during which Mr. Alberto Allen, now deceased, indicated to him that when he arrived at the yard of Mr. Ryan Felix at about 4:30 on the date of the incident, he met Mr. Felix (aka Cash), Gyang Stain (aka Man), Earl Hamilton (aka, Bird) and Police Constable Gilbert Hyde (aka Pinas'). Mr. Hamilton declined to speak and Mr. Felix stated that he was with PC Hyde on the boulevard when he heard the shots. That he immediately identified discrepancies in the men's accounts which were borne

out in recorded statements made by the men. That based on the findings of his investigation, and what he perceived at the time of the incident, including the fact that Mr. Hyde was with Ryan Felix at the time, he honestly suspected that Mr. Hyde was involved with the planning of the murder.

61. However, the discrepancies of location was not the only information available to Sergeant Palomo as he also gave evidence about the caution statement taken from Staine and that he was aware of the confession statement from him. He testified that Corp. McLaughlin took a caution statement from Mr. Gyang Staine on 15th during the day. Further, that he interviewed Gyang Staine on 15th at his house and was aware that he was confessing to doing the shooting on the 14th of February. He further stated that when he interviewed the Claimant there was nothing in his statement that suggested that PC Hyde had anything to do with the shooting.

62. The other information the Defendants relied on came from Sergeant Anaceli Petillo who stated at paragraph 6 of her witness statement that Sergeant Polomo proceeded to question Mr. Flores as to the identity of who shot him. That she heard him reply "Shaba brother, CASH, Ryan Felix". She then told Sergeant Polomo, what she heard. However, it is the evidence of Sgt. Palomo that he did not hear what Flores mumbled when he was at the foot of the victim's bed at the hospital. In cross-examination, Sgt. Petillo testified that Sgt. Palomo did hear what Flores said because he was standing right next to her and that Flores spoke clearly.

63. I find Sgt. Paloma to be a credible witness and I believe his evidence that he did not hear the victim say that "Shaba brother, CASH, Ryan Felix" shot him. In any event, the Defendants acted on the information received from Sgt. Petillo and also on the discrepancies in location of the witnesses interviewed which included the Claimant. The question to be asked however, is whether it was

reasonable to act on the said information when there was a confession from Staine. I have carefully considered all the information that was before the Defendants, in particular the charging officer, who laid the charge on the Claimant before 48 hours and it is my view that it was not reasonable to suspect that the Claimant was involved in conspiracy to commit murder.

64. Mr. Whyllie's evidence is that it was on his direction that the charges were laid by Cpl. Cu. I do not find Mr. Whyllie's evidence credible that he was not aware that Staine had confessed to the shooting and that neither Sgt. Palomo or Cpl. Gladimir Cu in their briefings to him ever indicated the contents of that caution statement to him. His evidence is contradicted by Corp. Cu who said that all statements taken in the investigation were put to Mr. Whyllie and other officers and that Staine statement was on the file. I find that Mr. Whyllie was aware of Staine statement and it was unreasonable for him to give directions to lay the conspiracy charge on the Claimant. He should have done further investigation having a confession statement which did not implicate the Claimant.

65. There is no doubt that the confession statement from Staine was on file as is borne out by the evidence of the Defendants themselves. Further, the charging officer knew of this confession statement from Staine. I find that on the totality of the information that was before the Defendants, it was unreasonable to suspect the Claimant was involved in conspiracy to commit murder. As such, the detention arrest and charge of the Claimant was unlawful.

Issue 2: Whether the Claimant suffered damages.

66. The evidence of Mr. Hyde is that he was detained on 14th February, 2008 sometime after 7:00 p.m. and on 15th February, 2008 he was charged by Cpl. Cu on the offence of conspiracy to commit murder. He was arraigned on

Monday February 18th, 2008. He was remanded to custody at the Hattieville Prison until the next scheduled court hearing which was set for 26th February, 2008.

67. By correspondence dated 5th March, 2008, the Director of Public Prosecutions advised that there was not an iota of evidence to substantiate the charge of conspiracy to commit murder against him and directed that the charge against him be withdrawn. On March 6th, 2008 he was released from prison after spending 18 days in prison during which time he was deprived of his liberty as a result of which he suffered indignity and mental anguish arising from his wrongful arrest and imprisonment without reasonable and probable cause.
68. The Claimant has not shown by his evidence the mental anguish and indignity suffered. However, he was wrongfully deprived of his liberty and as such is entitled to damages. The question to be asked is whether Mr. Hyde was wrongfully detained for 18 days as claimed or three and half days as claimed by the Defendants.
69. The cases of ***Lock v Ashton*** supra and ***Diamond v Minter and Others*** supra relied on by Ms. Perdoma can be distinguished from the case at hand. In each of these 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 as 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.
70. Damages for the loss of liberty itself should reflect the length of the unlawful detention, but should be awarded on a progressively reducing scale, as the

claimant is entitled to a higher rate of compensation for the initial shock of being arrested. In the case of **Thompson v Metropolitan Police Comr (1998) QB 498 at 512, (1997) 2 All ER 762 at 774, CA** Lord Woolf MR, suggested a guideline figure in straightforward cases of £500 for the first hour and £3,000 for 24 hours. These figures must be adjusted for the effects of inflation. See **Halsbury's Laws of England, Volume 12(1) (Reissue) para 812.**

71. I have also considered the cases cited by both Learned Counsel, Mrs Anderson and Ms. Perdoma on the issue of damages. Taking into consideration the initial shock suffered by Mr. Hyde and his length of imprisonment, I award the sum of \$20,000.00 for his loss of liberty.

72. Conclusion

I find that the Claimant was wrongfully arrested and imprisoned for 18 days.

The sum of \$20,000.00 is awarded to the Claimant for loss of his liberty.

Cost of \$5,000. is awarded to the Claimant.

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Minnet Hafiz
Supreme Court Judge

Dated this 2nd day of December, 2010