

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

CLAIM NO. 833 OF 2019

| | | |
|----------------|------------------------------------|---------------------------------|
| | (EDUARDO MAGANA | CLAIMANT |
| | (| |
| BETWEEN | (AND | |
| | (| |
| | (ATTORNEY GENERAL OF BELIZE | 1st DEFENDANT |
| | (SR. SUPT. DANIEL ARZU | 2nd DEFENDANT |
| | (BELIZE POLICE DEPARTMENT | 3rd DEFENDANT |

BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG

Decision Date:

13th April, 2021

Appearances:

Mr. Leeroy Banner, Counsel for the Claimant.

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

KEYWORDS: Tort - Unlawful Arrest - False Imprisonment - Reasonable and Probable Cause - Damages - Aggravated - Exemplary

JUDGMENT

1. This is a Claim for damages including aggravated and exemplary damages for unlawful arrest and false imprisonment.

2. The Claimant, a police officer, says he was detained from about 1:00 pm on the 18th March, 2019 by Sr. Superintendent Dawson who had no reasonable and probable cause to do so. He says further, that while in custody Sr. Superintendent Dawson never interrogated him nor did any police officer put any evidence to him that he was involved in drug trafficking. He was not informed of his constitutional rights or the reason for his arrest and detention. His cellphone and firearm were taken away and he was not allowed a phone call. He was kept in a filthy cell and was made to sleep on the cold concrete floor. He was not fed or offered refreshment of any kind. Around 3:30 pm on the 19th March, 2019 he was released without charge.

3. In their Defence, the Defendants say they had received information that the Claimant had contacted an Advanced Crime Scene Technician with the Scenes of Crime Unit about the possibility of replacing five (5) packs of drugs with fake packs. They, therefore, had reasonable cause to make the arrest and detention. He was detained at 2:05pm on 18th March. Assistant Superintendent Chan cautioned and informed the Claimant of the reason for his arrest pending investigation for drug trafficking and attempting to corrupt a member of the Belize Police Department. He was informed of his constitutional rights.

The Issues:

1. Whether the Claimant was falsely imprisoned by the 2nd Defendant or was his arrest justified and his detention reasonable in the circumstances?
2. Whether the Claimant is entitled to damages for unlawful detention and/or false imprisonment and, if he is, in what quantum?

Whether the Claimant was falsely imprisoned by the 2nd Defendant or was his arrest justified and his detention reasonable in the circumstances:

4. At trial, Sr. Superintendent Arzu denied being the arresting officer. However, this had already been admitted in the pleaded Defence and he could not resile for that. The Claimant was also adamant that he had been arrested by Sr. Superintendent Arzu and that the station diary also revealed this. This Court found that Sr. Superintendent Arzu was in fact the arresting officer.

5. It remains for the arrestor to show that he had reasonable and probable cause to arrest the Claimant. In *O'Hara v Chief Constable of the Royal Ulster Constabulary [1997] 1 All ER 129*, at 139 states the test as follows:

“My Lords, the test which section 12 (1) of the Act of 1984 has laid down is a simple but practical one. It relates entirely to what is in the mind of the arresting officer when the power is exercised. In part it is a subjective test, because he must have formed a genuine suspicion in his own mind that the person has been concerned in acts of terrorism. In part of also it is an objective one, because there must also be reasonable grounds for the suspicion which he has formed. But the application of the objective test does not require the court to look beyond what was in the mind of the arresting officer. It is the grounds which were in his mind at the time which must be found to be reasonable grounds for the suspicion which he has formed. All that the objective test requires is that these grounds be examined objectively and that they be judged at the time when the power was exercised.

This means that the point does not depend on what whether the arresting officer himself thought at that time that they were reasonable. The question is whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the arresting officer. It is the arresting officer's own account of the information which he had which matters, not what was observed by or known to anyone else. The information acted on by the arresting officer need not be based on his own observations as he is entitled to form a suspicion based on what he has been told. His reasonable suspicion may be based

on information, which has been given to him anonymously or it may be based on information, perhaps in the course of an emergency, which turns out later to be wrong. As it is the information which is in his mind alone which is relevant however, it is not necessary to go on to prove what was known to his informant or that any facts on which he based his suspicion were in fact true. The question where it provided reasonable grounds for the suspicion depends on the source of his information and its context, seen in the light of the whole surrounding circumstances. ”

*“In **Hicks v Faulkner** [1881-85] All ER 187 [TAB 3] and cited recently in **Lennox Gayle v R** [2017] JMSC Crim 1 [TAB 4] the Court said at paragraph 11:*

‘This case provides the meaning of reasonable and probable cause/ reasonable suspicion. Three elements must be present:

- i. An honest belief that the arrestee is probably guilty;*
- ii. Such belief is based on honest conviction of circumstances showing guilt, and*
- iii. Said belief is based on reasonable grounds.’”*

6. This Court finds it unnecessary at this point to consider the evidence which was not contemplated by the Sr. Superintendent before he arrested the Claimant. This is because he admits that he had simply been advised by the Assistant Commissioner of Police *“that the Claimant was the subject of an investigation regarding some drugs found in San Pedro Town and directed that the Claimant be detained pending investigation.*

.....I informed the Claimant that he was the subject of an investigation and therefore he was being detained.....

I only interacted with the Claimant at the time he was in my office. I did not conduct any investigation of the matter. I merely instructed a member within my region to detain the Claimant on the instructions of the Commissioner of Police”

7. There was therefore nothing other than the directive given by the Deputy or the Commissioner (the witness’s witness statement of only seven (7) paragraphs is contradictory) which could have aroused the Sr. Superintendent’s suspicion. The very **O’Hara** case on which the Defendants sought to rely informs that it is for the arresting officer to decide to arrest not

his superior officers. In *O'Hara*, the arresting officer had been briefed that the plaintiff had been involved in a murder and he was told to arrest him. This seems quite similar but not the same to what had occurred in the case at bar. Lord Steyn explained that the arresting officer's evidence did go a little further than what was provided by Sr. Superintendent Arzu.

He stated at page 358:

"My Lord, it is important to observe that the position of the arresting officer was not simply that he had been told to arrest the plaintiff. Nor was it that he has simply been told that the plaintiff had been concerned in the commission, preparation or instigation of acts of terrorism. His position, as stated by him in evidence, was that he suspected the plaintiff of having been concerned in such acts, and that his suspicion was based on the briefing which had been given to him by his superior officer. The trial judge accepted the arresting officer's evidence on both points. The question is whether he was entitled also to hold that the arresting officer had reasonable grounds for this suspicion, as the only evidence about these grounds was what the arresting officer himself said about them in the witness box."

8. The trial judge, in *O'Hara*, himself felt that on such "scanty evidence" he was "just satisfied of the legality of the arrest." Counsel for the Defendants tried to bolster the arrestor's evidence by asking the Court to consider what was known by his informant but Lord Steyn dismissed this approach at page 360:

"As it is the information which is in his mind alone which is relevant however, it is not necessary to go on to prove what was known to his informant or that any facts on which he based his suspicions were in fact true. The question whether it provided reasonable grounds for the suspicion depends on the source of his information and its context, seen in the light of the whole surrounding circumstances."

He concluded at page 365:

"My Lords, in this case the evidence about the matters which were disclosed at the briefing session to the arresting officer was indeed scanty. But, as Mr Coghlin QC

pointed out, the trial judge was entitled to weigh up that evidence in the light of the surrounding circumstances and, having regard to the source of that information, to draw inferences as to what a reasonable man, in the position of the independent observer, would make of it. I do not think that either the trial judge or the Court of Appeal misdirected themselves as to the test to be applied. I would dismiss this appeal.”

9. This Court considers all that was stated by the arresting officer. It was also admittedly extremely scanty. Scantier than what had been presented in *O’Hara*. There had been no briefing simply a single statement from the Deputy Commissioner. The arresting officer has never admitted even being suspicious of the Claimant in any way. He seemed simply to have relied on the instructions given and that is insufficient to satisfy this Court that he indeed held a reasonable suspicion or had probable cause to detain the Claimant.
10. For this reason the Court finds the arrest of the Claimant to have been unlawful.

Whether the continued detention of the Claimant can be justified?

11. As to his continued detention, there was no evidence whatsoever as to why this was done because Sr. Superintendent Arzu said he handed the Claimant over to an Assistant Superintendent Chan who gave no testimony whatsoever. In fact, no witness gave evidence to justify the detention. There was, therefore, nothing for the Court to consider as to whether the continued detention was in fact legal.
12. The Defence presented evidence from two (2) other witnesses who spoke to the Claimant's alleged involvement in some criminal activity but whether or not this was known and contemplated by the officer who kept the Claimant

in detention remains unknown. That gap is fatal to the Defence.

13. For these reasons this Court finds that the Claimant was wrongfully arrested and falsely imprisoned.

Assessment of Damages:

14. The Claimant offered nothing in his written submissions on damages. When he addressed the Court orally he asked that the Defence's assessment at \$5,500.00 as a reflection of the length of time unlawfully detained at a reducing rate be accepted.
15. This figure had been calculated using a detention period of 21 hours and 25 minutes and the guideline provided in *Thompson v Commissioner of Police of the Metropolis (1998) QB 498*. Lord Woolf MR suggested that in straightforward cases the figure of £500.00 for the first hour and £3,000.00 for 24 hours should be used with adjustment for inflation. Counsel for the Defendants also urged that there should be no award of aggravated or exemplary damages.
16. The Defendants presented and the Court also considered *Gilbert Hyde v the Attorney General et al Claim No. 88 of 2009* which awarded \$20,000.00 for 18 days, *Thompson and Woodye v the Attorney General Claim No. 530 of 2010* where the Court awarded \$25,000.00 for 11 months and *Shane Harris v the Attorney General et al Claim No. 90 of 2020* which for 37 hours and 15 minutes ordered an award of \$5,500.00 for wrongful arrest and false imprisonment which included an uplift for aggravation.

17. The Court finds the sum of \$4,500.00 to be more than reasonable in all of the circumstances.

Aggravated Damages

18. For this award the behavior of the Defendant is called into question and there must be something found about this behavior which would demand an award beyond what he has received for the unlawful arrest and false imprisonment. *Richardson v Howie [2004] EWCA 1127* quoting from *Rookes v Barnard [1964] AC 1129* explains that “*the manner in which the wrong was committed was such as to injure the plaintiff’s proper feelings of pride and dignity or gave rise to humiliation, distress, insult or pain.... It would therefore seem that there are two elements relevant to the availability of an aggravated award, first exceptional or contumelious conduct or motive on the part of the defendant in committing the wrong and second, intangible loss suffered as a result by the plaintiff, this is injury to personality.*”
19. In the case at bar the Claimant says he was not informed of his constitutional rights and privileges, he was not afforded a phone call, he was not provided with a Suspect's Right in Custody acknowledgement form as required by law, he was not provided with food or refreshment and he was kept alone in a filthy cell. He felt he had been treated worse than a convict.
20. Consequently, his name and reputation as a police officer were greatly injured. His name appeared in the Police Department Precinct Two Sitrep under the heading ‘Prisoner (s) detained at Precinct 2 Police Station’. It also stated that he was detained for PI Drug Trafficking. The arrest and detention placed him under considerable stress and mental anguish all this caused him anxiety.

21. He also asked the Court to consider that he was immediately reported for duty on release and has had to suffer the loss of some monthly allowances totaling \$480.00 per month. He also lost his home at the police barracks and was left homeless with his wife and seven week old baby who lived there with him. He had to incur additional expense to rent a home. He had worked there in San Pedro for more than four years. Since then he has been transferred four times. He had had an unblemished record all his life.
22. The Court finds that there was a certain high handedness about the way in which this Claimant had been treated. One senior officer simply instructed another senior officer to arrest him and he was not even then properly informed why he was being detained. He was not informed of nor afforded his constitutional rights. He was not even fed or refreshed.
23. Beyond the humiliation he must have experienced as a police officer being detained in this manner, he then had to suffer further by being transferred four (4) times in rapid succession. While this could be considered par de course in a field such as policing it has not gone unnoticed that he had been stationed for four years unmoved prior to his arrest. His loss of home and allowances is of no moment in this assessment since it was not an entitlement but merely incidental to his posting and could not have been expected to last forever. Its sudden loss can only be viewed as unfortunate.
24. The Court finds an award of \$1,500.00 to be quite reasonable in the circumstances.

Exemplary Damages:

25. Although claimed, there were no submissions made on this type of damages by Counsel. In any event, this Court is of the view that the circumstances do not attract an award in this regard. There was certainly not sufficient presented to demonstrate that the Defendant's behavior was so egregious that the Court must show its disapproval in this way. The award of general damages including aggravated damages would more than suffice.

Specials Damages;

26. The Claimant presented a proforma invoice which he said evidenced that he had paid for the services of an attorney during the time he was falsely imprisoned. While he did present evidence that Counsel Oscar Selgado had attended at the station, a proforma invoice is certainly no proof of payment. The sum of \$1,700.00 claimed as special damages is, therefore, rejected.

Disposition:

It is ordered:

1. Judgment for the Claimant
2. General damages inclusive of aggravated damages are awarded in the sum of \$6,000.00
3. Interest is awarded on this sum at the assessed rate of 6% per annum from the date of filing of the claim to the date of judgment herein and thereafter at the statutory rate of 6% until payment in full.
4. Costs in the sum of \$5,000.00 as agreed.

SONYA YOUNG
SUPREME COURT JUDGE