

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 662 of 2021

BETWEEN:

[1] RONALD HERNANDEZ

Claimant

and

[1] SGT 969 FREDDIE HEREDIA
[2] PC 1705 GASPAR CAMARA
[3] BELIZE POLICE DEPARTMENT
[4] ATTORNEY GENERAL OF BELIZE

Defendants

Appearances:

Nazira Myes, for the Claimant

Imani Burgess and Alea Gomez for the Defendants

2023: 29 May
20 July
22 December
2024: 9 January

DECISION

[1] **FARNESE, J:** Mr. Hernandez alleges that he was falsely imprisoned, maliciously prosecuted, and assaulted and battered while in police custody. He seeks damages, including aggravated, exemplary, and special damages. Mr. Hernandez alleges he has suffered injury to his reputation and his person, financial loss because of having to pay lawyers to represent him in the Magistrate

and Supreme Court, the loss of his vehicle, and lost income as a consequence of being detained and charged by the 1st and 2nd defendants.

- [2] The defendants deny all claims. They say that every time Mr. Hernandez was detained and arrested, the police reasonably suspected that he committed the crimes in question. They further say that each subsequent prosecution was the result of an honest belief and/or suspicion formed after due inquiry. The defendants argue that Mr. Hernandez is responsible for any damage to his reputation and deny that the officers visited his workplace or made statements to any employer.¹ Finally, the defendants deny that they assaulted or battered Mr. Hernandez. They argue that any force used was reasonably necessary to arrest and detain Mr. Hernandez after he escaped custody.
- [3] For the reasons outlined below, I dismiss the claim in its entirety. The weight of evidence does not support a finding that Mr. Hernandez was falsely imprisoned, maliciously prosecuted, or assaulted while in police custody.

Issues

- [4] This dispute arises from two instances where the Belize Police Department in Orange Walk arrested, charged, and prosecuted Mr. Hernandez - a burglary at Circle R Products Limited (Circle R Burglary) and an aggravated burglary at a residence in Orange Walk (OW Aggravated Burglary). This claim raises the following issues:
- a) Was Mr. Hernandez falsely imprisoned for the Circle R Burglary and the OW Aggravated Burglary?
 - b) Was Mr. Hernandez maliciously prosecuted for the Circle R Burglary, the OW Aggravated Burglary, and bribery?
 - c) Was Mr. Hernandez assaulted and battered while in police custody?

¹ I note that the defendants frame their defence and submissions on this point under the heading 'defamation'. Defamation was not pled. Rather, injury to reputation is pled as a head of damage. Therefore, I will not address defamation in this decision.

- d) If Mr. Hernandez was falsely imprisoned, maliciously prosecuted, and/or assaulted and battered what remedy is he entitled to?

Analysis

- [5] The facts surrounding Mr. Hernandez's arrest, charges, and prosecutions are largely undisputed. After the legal framework for each cause of action is provided, each incident will be considered separately to decide if Mr. Hernandez's claims have been proven with respect to that incident.
- [6] Chabot J. outlines the legal frameworks for false imprisonment in **Anthony v. Commissioner of Police & Anors; Chi v. Commissioner of Police & Anors**.² For his claim of false imprisonment to be successful, Mr. Hernandez must prove that he was 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.³ In this case, the issue of Mr. Hernandez's detention is undisputed. Therefore, I must decide if there was reasonable justification for the detention.
- [7] In the recent decision of **Ayuso v Choco et al.**,⁴ I summarized the law related to malicious prosecution as follows:

[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.** and **Gabriel Pou et al v PC 2061 Mario Leal et al.** The elements of malicious prosecution are derived from **Wills v Voisin**:

- (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

² *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*].

³ *Anthony & Chi*, at para 11.

⁴ Claim No. 685 of 2021.

Assaulting a Police Officer and those charges were withdrawn before the Magistrate's Court and the matter discontinued.

[6] As explained in **Cantun**:

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." 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.

[Footnotes removed]

Mr. Hernandez was charged but never convicted of burglary, aggravated burglary, and bribery. Thus, Mr. Hernandez has established the first two elements of malicious prosecution. I must, therefore, only turn my mind to whether there was reasonable and probable cause to lay each charge. If the charge was unjustified, a claim for malicious prosecution will only be successful if Mr. Hernandez proves the charging officer acted with malice.

[8] Although assault and battery have, at times, been defined as separate,⁵ they are regularly treated as synonymous when they are pled as a claim in tort.⁶ At issue is the unlawful use of force. Police are permitted to use force that is reasonably necessary to carry out their duties. This authority comes from the Criminal Code which exempts force from criminal liability when a police officer uses force to execute a sentence or court order, to keep the peace, to arrest, search and detain for a crime, and to prevent or defend against crime.⁷ The use of force will not be justified if it "extends beyond the amount and kind of force reasonably necessary for the purpose for which the force is permitted."⁸

Circle R Burglary

[9] CPL Gaspar Camara, as he is now referred to, testified that SGT Heredia arrived at Circle R Products Limited (Circle R) in Blue Creek Village on 18th June 2019 at 8:00am in response to an

⁵ See e.g. *Greenwood Jr. v The Attorney General*, Claim no. 611 of 2013 at paras 64 and 65.

⁶ See e.g. *Cantun et al. v Espinosa et al.* Claim No. 603 of 2021 [Cantun] at para 11 and *Fagan v Metropolitan Police Commissioner* [1968] 3 All ER 442.

⁷ Criminal Code, *The Substantive Laws of Belize*, (Rev. Ed. 2020) at subsection 31.

⁸ Criminal Code at subsection 32(b).

alleged burglary that occurred overnight.⁹ Two persons broke into the property and stole several items including a gun and approximately \$43,000. Security camera footage revealed that the burglary was committed by two individuals who were masked and wearing dark clothes. The video was not entered into evidence, but the parties do not dispute the content of the video. CPL Camara received a screenshot of the individuals in the video via WhatsApp from SGT Heredia. He testified that, based on other burglaries in the area he had investigated where Mr. Hernandez was the primary suspect, and the build of the person in the video, he suspected Mr. Hernandez was involved in the burglary at Circle R. At 10:45am, SGT Heredia alerted mobile and foot patrols to be on the lookout for Mr. Hernandez.

[10] CPL Camara testified that he saw Mr. Hernandez in a red Ford Escape earlier in the day with a dollar sign in the window and America license plate, which led him to believe that Mr. Hernandez may have recently purchased the vehicle. CPL Camara located and spoke with the vendor of the vehicle at approximately 2:16pm who confirmed that he sold a red Ford Escape to Mr. Hernandez. In his police statement, the vendor indicated that Mr. Hernandez approached him at around 10am that morning to buy the vehicle and they agreed to the price of \$7300. The vendor then followed Mr. Hernandez to a home where he retrieved a container “with a large amount of money which included hundreds and fifties.” Mr. Hernandez paid for the vehicle with 146 \$50 bills. The vendor delivered the cash to the police station.

[11] CPL Camara returned to the business where he saw Mr. Hernandez in the red Ford Escape. The vehicle was still there. CPL Camara learned that Mr. Hernandez left the vehicle to have its windows tinted and was expected to return later that afternoon. While waiting for Mr. Hernandez’s return, CPL Camara testified that Mr. Hernandez drove past in a dark grey Mazda Tribute but sped off. CPL Camara tried unsuccessfully to intercept Mr. Hernandez. He returned to where the Ford Escape was being tinted and detained the vehicle.

[12] At approximately 4pm, Mr. Hernandez arrived at the Orange Walk Police Station looking for his vehicle. CPL Camara informed Mr. Hernandez that he was being detained for questioning in the Circle R burglary. I find that CPL Camara had reasonable justification for Mr. Hernandez’s

⁹ SGT Heredia did not appear to testify. His Investigation diary, police statement, and investigation report, however, were included as attachments to Mr. Hernandez’s witness statement. Copies of the Information and Complaint and Arrest Warrant completed by SGT Heredia in the Circle R Burglary were also entered into evidence by Mr. Hernandez.

detention. Mr. Hernandez was known to CPL Camara. Therefore, CPL Camara would have been able to look at the photo of the two burglars captured from the surveillance video and identify that Mr. Hernandez was a possible suspect from his build and height. I also find that the purchase of a vehicle in cash the morning after the burglary, combined with the vehicle vendor's report that Mr. Hernandez had more cash, were sufficient to raise reasonable suspicion that Mr. Hernandez was involved in the burglary.

[13] Mr. Hernandez has failed to meet his burden to prove that he was falsely imprisoned on 18th June 2019.¹⁰ He offers a letter demanding payment from a credit union for a loan in which he was in default as evidence of the source of the funds for the car. The letter is dated April 2019, two months before the Circle R Burglary and was already in default. I do not find Mr. Hernandez's explanation that the loan allowed him to use funds that would otherwise been for his housing to be used for the vehicle convincing. Moreover, there is no evidence that CPL Camara was privy to this letter. The court can only consider the information available to CPL Camara when he made the arrest when evaluating the reasonableness of his decision to imprison Mr. Hernandez.

[14] I further find that Mr. Hernandez's continued detention before being charged was justified based on the results of that investigation. Likewise, I find that CPL Camara formed a reasonable belief that Mr. Hernandez committed the Circle R Burglary after due inquiry. What occurred during Mr. Hernandez's questioning is disputed, but there is no dispute that he was appropriately cautioned and informed of his rights. Mr. Hernandez also admits he signed a rights in custody form, was charged with burglary on 20th June 2019, and brought to the Magistrate Court the next day where his bail was denied. He was remanded to prison for about three weeks until he was granted bail by the Supreme Court. Mr. Hernandez's charge was dismissed in the Magistrate Court after the video from Circle R was not produced.

[15] While Mr. Hernandez was being held at the Orange Walk Police Station, CPL Camara continued his investigation. CPL Camara testified that on the 19th June 2019, SGT Heredia showed him a second video obtained from the entrance of Blue Creek Village. The video was not entered into evidence, but allegedly shows a dark coloured Mazda Tribute with an elephant decal in the back window entering the village from the direction of Orange Walk at approximately 6pm and leaving

¹⁰ Mr. Hernandez did not provide the court with closing submissions.

the village and driving towards Orange Walk around midnight. CPL Camara said he found the vehicle suspicious because Blue Creek Village is a small, predominantly Mennonite, farming community with little late-night traffic. He stated in his experience late night traffic in the area is normally attributable to “nefarious actors.”

- [16] CPL Camara spoke with Mr. Hernandez’s common law wife who provided a statement to the police at 8am on 19th June 2019. She confirmed that Mr. Hernandez was not with her during the time of the Circle R burglary because her father has a restraining order against Mr. Hernandez and he is not allowed at her home. Her police statement also confirmed that Mr. Hernandez was driving a grey Mazda Tribute the morning of 18th June 2019 because she accompanied him in the Mazda to get the Ford Escape. She then drove the Mazda to the tinting business where Mr. Hernandez left the Ford Escape.
- [17] Relying on his experience that criminals often rent cars to avoid detection while committing crimes, CPL Camara began speaking with persons who rent cars and found the dark grey Mazda with the elephant decal. The proprietor of the rental car business confirmed in a statement she gave to the police at 8:54am on 19th June 2019 that she rented the vehicle to Mr. Hernandez two days prior at about 3:30pm. She also provided the police with the rental contract Mr. Hernandez signed. In a statement given to the police on 19th June 2019 at 8:02am, the proprietor’s daughter confirmed that the vehicle was returned on 18th June 2019 at around 1pm.
- [18] Where the parties disagree is what occurred during Mr. Hernandez’s questioning and detention. Mr. Hernandez says he was shown the video obtained from Circle R, which CPL Camara disputes was shared. CPL Camara testified that Mr. Hernandez asked him what the video showed and when he responded that he was a suspect in an ongoing burglary investigation, Mr. Hernandez confessed that he and a person name Chino committed the burglary. CPL Camara testified that Mr. Hernandez refused to say anything more when CPL Camara offered to get a Justice of the Peace to take his sworn statement. Mr. Hernandez denies making the confession. I do not find it necessary to decide if Mr. Hernandez confessed or if he was shown the video to determine the question of whether Mr. Hernandez was maliciously prosecuted. There is more than sufficient evidence for CPL Camara to find that the charge of burglary was justified without the confession.

[19] I do not find, however, that the bribery charge was laid after due inquiry led the charging officer to form a reasonable belief that the charge was warranted. As a preliminary matter, I note that the Information and Complaint form for the bribery charge was not entered into evidence and the defendants have not made submissions regarding this charge. I also note that the defendants do not admit in their defence that Mr. Hernandez was charged with bribery. I find, however, that Mr. Hernandez was charged with bribery around the same time he was charged with burglary. Mr. Hernandez provides a letter from the Orange Walk Magistrate Court which indicates that he was found not guilty of a bribery charge on the same date he was found not guilty of the other charges related to these proceedings. I also note that he was cross-examined about the bribery charge by the defendants' counsel. Mr. Hernandez's bribery charge was similarly dismissed after the video evidence was not provided to the Magistrate Court.

[20] The charging officer for the bribery charge was SGT Heredia who failed to appear for cross-examination, so his evidence was not admitted. CPL Camara alleges that Mr. Hernandez offered him \$2000 if he helped Mr. Hernandez avoid jail. CPL Camara stated that he reported the bribery attempt to SGT Heredia who investigated the matter before laying the charge. Mr. Hernandez denies attempting to bribe CPL Camara. Without SGT Heredia's evidence, I have no basis to assess what investigation was undertaken in respect to the alleged bribery. The defendants have failed to show that SGT Heredia believed they were warranted.

[21] Mr. Hernandez, however, has failed to prove that SGT Heredia acted with malice. As outlined in **Cantun**:¹¹

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]

Malice requires knowingly acting with an unlawful purpose. The burden of proof rests with Mr. Hernandez to show that SGT Heredia acted with malice. Even if I were to find that CPL Camara falsely reported the bribery attempt, it is not his conduct that is relevant. While I find SGT Heredia's failure to appear for cross-examination without an explanation inexcusable, I am unable to draw an

¹¹ Cantun at para 46.

adverse inference or impute malice from his non-appearance absent any other evidence that suggests a reason for that malice.

OW Aggravate Burglary

[22] At 3:41am on 28th November 2019, CPL Camara became aware of a burglary at a private residence and attended at the scene. The two victims, a husband and wife, provided statements to the police that were submitted into evidence. CPL Camara, who was the lead investigator, took the husband's statement at 5:41am. He said that two masked men broke into their home and stole jewellery, cell phones, and some cash. The jewellery stolen included a ring with a missing stone and a bracelet with a broken clasp. The victim reported that he and his wife were tied up, duct tape placed over their mouths, and assaulted. He described one man, who did not speak, as being quite tall. He also had a grey hat with an orange letter T embroidered on it. CPL Camara testified that the husband told him that he knew Mr. Hernandez and believed the man with the hat was Mr. Hernandez. Although CPL Camara reported the victim's statement in his police report made in relation to the OW Aggravated Burglary, the victim did not identify Mr. Hernandez in his police statement. Mr. Hernandez was, nonetheless, identified as a suspect, and the police patrols were notified.

[23] Mr. Hernandez learned that the police were looking for him and asked his mother, Ms. Teresitia Higinio, who was, at the time, a police officer stationed at Orange Walk, to confirm if that was true. She testified that she confirmed that the police wished to speak with him. Mr. Hernandez went to the Orange Walk Police Station on 3rd December 2019 where he was detained for the Orange Walk Aggravated Burglary. Mr. Hernandez agrees that he was appropriately cautioned and informed of his rights. I find CPL Camara had reasonable grounds to detain Mr. Hernandez to question him for the Orange Walk Aggravated Burglary based on the description of the burglar and Mr. Hernandez's alleged past involvement in burglaries in the area, including the Circle R Burglary.

[24] I also find Mr. Hernandez's continued detention was justified because the evidence gathered during CPL Camara's ongoing investigation supported his suspicion that Mr. Hernandez was involved in the Orange Walk Aggravated Burglary. In addition, evidence gathered in the course of his investigation supports a finding that CPL Camara formed a reasonable belief that the charge of aggravated burglary was warranted in the circumstances.

- [25] On 3rd December 2019, CPL Camara obtained a warrant to search Mr. Hernandez's home in Belize City. Mr. Hernandez was taken to Belize City and was present during the search. During the search, a grey hat with an orange embroidered "T" was found and taken into evidence.
- [26] The next day CPL Camara began to contact pawn shops looking for jewellery that may have been recently pawned by Mr. Hernandez. Three pawn shop employees gave statements that Mr. Hernandez pawned and retrieved three items between 28th November and 3rd December 2019. CPL Camara also received pawn tickets in Mr. Hernandez's name for a gold chain, a bracelet with a broken clasp, and a ring with a missing stone.
- [27] On the 4th December, after completing the interviews with the pawn shop employees, CPL Camara interviewed Mr. Hernandez in the presence of a Justice of the Peace. The interview was also recorded, but not submitted into evidence. The parties do not dispute what occurred during the interview. Mr. Hernandez and the Justice of the Peace signed the Notes of the Interview. Mr. Hernandez denied any involvement in the Orange Walk Aggravated Burglary. Mr. Hernandez said he had the gold chain with him when he went to the police station and said that it was his. He stated the engagement ring belonged to his common law wife. Mr. Hernandez's common law wife, however, gave a statement later that evening saying her rings were not pawned. He stated his brother took the bracelet, which Mr. Hernandez denied was broken, to the United States. Mr. Hernandez says he could not verify these claims because he was left in his cell without being able to speak to anyone.
- [28] At 8:30am on the 5th December 2019, Mr. Hernandez was formally charged with aggravated burglary. CPL Camara's evidence is compelling even without the hearsay evidence of the victim. A distinctive hat worn by the burglar was found in his home and a ring and bracelet matching the description of a stolen jewellery were pawned by Mr. Hernandez. The police report of his common law wife contradicted Mr. Hernandez's testimony that the ring belonged to her. Consequently, Mr. Hernandez has failed to prove that he was maliciously prosecuted for the Orange Walk Aggravated Burglary.
- [29] Finally, I find that the weight of evidence does not support a finding that Mr. Hernandez was assaulted while in police custody for the Orange Walk Aggravated Burglary. Mr. Hernandez was taken to the Magistrate Court on the 5th December 2019 and was arraigned and remanded to

custody because his bail was revoked. He returned to the Orange Walk Police Station to await transport to the Belize Central Prison, but escaped from custody while he was being taken from his cell to the shower room at approximately 2:40pm. He jumped over the fence surrounding the police station and fell to the ground. He quickly got to his feet and ran towards the New River where he jumped in and began to make his way across. Mr. Hernandez was pursued by CPL Cob and RPC Abner Tuyu and RPC Calles in a police mobile. Mr. Hernandez surrendered after CPL Cob fired his gun at least 3 times.

[30] The parties do not dispute that Mr. Hernandez was injured during his escape or that he was taken to the hospital within 30 minutes of returning to the Orange Walk Police Station where he received an injection. Witnesses for both Mr. Hernandez and the defendants confirmed that he had a large scrape on his arm, another on his forehead, and his lip was split open. Mr. Hernandez also dislocated his shoulder which he admits occurred when he jumped into the river.

[31] Mr. Hernandez returned to the Orange Walk Police Station from the hospital and spent the night before being transported to the Belize Central Prison. He was charged with Escaping from Lawful Custody on 10th December 2019, convicted on 16th March 2021, and sentenced to two years imprisonment.

[32] Mr. Hernandez testified that he escaped because he was beat, tortured, pepper-sprayed and threatened by SGT Heredia, PC Shamir Rancharan, CPL Eliazar Cob, and SC Leonard Bol after he returned from the Magistrate's court. He also alleges that he was pepper-sprayed and his body and head were beat, kicked, and stomped by two police recruits while he was handcuffed and in the pan of the truck being driven back to the Orange Walk Police Station after his re-capture.

[33] Ms. Higinio testified that she arrived for her shift at the Orange Walk Police Station at 3:45pm on 5th December 2019 and learned that her son had escaped. Ms. Higinio testified that she did not see Mr. Hernandez until he returned from the hospital at approximately 5:30pm. She met with him in his cell and observed that he was bleeding from his nose and mouth and in a lot of pain. She phoned her supervisor to get permission to take him to the hospital after she learned that he was not sent back from the hospital with pain medication. Ms. Higinio, however, was subsequently sent home before her shift ended. A week later she made a complaint to the Professional Standards

Branch about her son's treatment while in police custody. No evidence about the outcome of that complaint has been provided to the court.

- [34] The defendants deny that Mr. Hernandez was assaulted by the police. They argue that Mr. Hernandez's injuries were the result of him scraping himself on the razor wire on the top of the fence and when he fell to the ground going over the fence, and again while running along the riverbank. Mr. Hernandez denies there was razor wire where he went over the fence. This fact was confirmed by SC Bol and Ms. Higinio under cross-examination. SC Bol., who removed Mr. Hernandez from his cell before he escaped, testified that he saw Mr. Hernandez holding his side after he got up from falling and began running to the river. CPL Cob and PC Tuyo, as he is now known, also testified that Mr. Hernandez was walked back to the police station and not placed into the pan of the police mobile until he went to the hospital.
- [35] Photographs of Mr. Hernandez's injuries allegedly taken by his common law wife after he returned from the hospital were not provided to the court. The defendants only entered a photo of the scrape on his arm and another photo, which was taken from a perspective that did not show any of the known injuries, into evidence. Mr. Hernandez's Medical Legal Form was also not included in the record although Mr. Hernandez testified that the form listed "Harm" as the cause of his injuries.
- [36] Mr. Hernandez bears the burden of proof. Without photograph or medical documentation attesting to the extent of his injuries, his injuries can equally be attributed to an unlawful assault or the result of Mr. Hernandez scraping himself on the zinc fence and falling twice during his escape.
- [37] Mr. Hernandez's rationale for the escape is that he feared for his safety after being threatened and abused by police officers, including SGT Heredia. I have no corroborating evidence that SGT Heredia was present at the Orange Walk Police Station on the day Mr. Hernandez states SGT Heredia threatened him. SGT Heredia's presence is not mentioned in any of the statements given by the officers to the police or their witness statements. Police statements given by SGT Heredia also do not reference his presence on the day Mr. Hernandez escaped. The Justice of the Peace who witnessed CPL Camara's interview also does not reference SGT Heredia in her police report. Therefore, I cannot draw an adverse inference from his failure to appear for cross-examination because it is not clear that he was a witness to the events in question.

- [38] Mr. Hernandez, however, just had his bail revoked and was heading to the Belize Central Prison to await his trial. Mr. Hernandez likely understood that he was facing a long period of remand given that his trial for the Circle R Burglary had yet to convene even though he was arraigned 6 months prior. The prospect of a lengthy prison stay is an equally plausible, reasonable explanation for his escape attempt.
- [39] Mr. Hernandez also failed to provide an explanation for the scrape on his arm. I found his lack of forthrightness harmed his credibility. I accept that the scrape could not have come from razor wire as none was present where Mr. Hernandez went over the fence. The scrape, however, is a large, relatively straight line that is located along the middle of the outside of his forearm. The scrape is consistent with someone who places his forearm on the top of a zinc fence to leverage himself over.
- [40] I also do not believe Mr. Hernandez when he denies falling and hitting his head. He admits that he dislocated his shoulder when he went into the river. I am unaware of how his shoulder would have become dislocated when entering the river unless he hit his shoulder against some hard surface. If Mr. Hernandez hit his shoulder, he equally could have hit his head, nose, and lip.
- [41] While I have no doubt that Mr. Hernandez was in pain when he was returned to the Orange Walk Police Station, especially if he was not provided medication as Ms. Higinio testified, I cannot infer that his degree of pain was the result of injuries sustained in an assault and not consistent with the injuries he sustained because of falling during his escape. Mr. Hernandez suffered a dislocated shoulder and I have not been provided with any evidence as to whether his shoulder was put back in place at the hospital. Mr. Hernandez was placed in handcuffs in that condition when he was recaptured, and perhaps when he returned to his cell, which certainly would have exacerbated the pain.
- [42] Finally, I draw no inference from the fact that Mr. Hernandez was not charged with Escaping from Lawful Custody until 10th December 2019, 5 days after the escape. It was suggested during CPL Camara's cross-examination that the delay was intentional to avoid Mr. Hernandez appearing in court looking beat-up. CPL Camara denied this allegation. Mr. Hernandez was lawfully in custody at the Belize Central Prison after having his bail revoked. I find the delay may equally be attributable

to other matters taking priority because there was no immediate need to justify Mr. Hernandez's detention.

[43] Having not proven his claim, Mr. Hernandez is not entitled to a remedy.

Disposition

[44] It is hereby ordered and declared that:

- a) The claim is dismissed.
- b) Prescribed costs with 6% interest per annum on any unpaid sums are awarded to the defendants.

**Patricia Farnese
High Court Judge**