

**IN THE SUPREME COURT OF BELIZE A.D. 2015
(CIVIL)**

CLAIM NO. 389 of 2015

BETWEEN

ALRICK SMITH	1st Claimant
SANDRA CASEY	2nd Claimant
LEON SMITH	3rd Claimant
TAMIEKA SMITH	4th Claimant
ISHAIDA BROOKS	5th Claimant

AND

THE ATTORNEY GENERAL	1st Defendant
PC 551 ANIBAL CASTELLANOS	2nd Defendant

Before: The Honourable Madame Justice Griffith

Date of Hearing: 19th & 20th April, 2016; 3rd May, 2016 and 2nd June, 2016 (on written submissions)

Appearances: Mr. Anthony Sylvestre, Musa & Balderamos, Counsel for the Claimants and Ms. Leonia Duncan, Crown Counsel and Ms. Trenia Young, Senior Crown Counsel for the Defendants.

DECISION

False Imprisonment and Malicious Prosecution – Elements and Proof – Police Powers of Arrest – Section 6A Firearms Act Cap. 143 of the Laws of Belize (as amended) – Damages for False Imprisonment.

Introduction

1. This is a claim for damages for false imprisonment and malicious prosecution arising out of the arrest, detention and subsequent charge of the claimants, for unlawful possession of a firearm, contrary to section 3(1) of the Firearms Act, Cap. 143 of the Laws of Belize. The first to fourth named Claimants – Alrick Smith, Sandra Casey, Leon Smith and Tamika Smith - are all members of a family who reside at their family home in Belize City. The 5th named claimant Ms. Ishaida Brooks is a family friend and neighbor.

The Defendants are the Attorney-General as representative for the Government of Belize and Cpl. Castellanos is the police officer who effected the arrests and charged the claimants.

2. The claimants were all arrested at the Smiths' home on the 7th July, 2014 and thereafter taken to the police station where they were detained and charged on the 8th July, 2014, for unlawful possession of a firearm. As is usually the case, the claimants were not granted bail upon their arraignment in the Magistrate's Court but were remanded to prison for one week until they were released pursuant to a directive of the Director of Public Prosecutions that the charges against them be withdrawn. The claims for damages for false imprisonment are made on the basis that the Claimants' arrest, detention and subsequent charge were unjustified, having regard to the circumstances surrounding the discovery of the firearm. The Defendants' answer to the claim is that the arrest, detention and charge were properly executed based upon application of section 6A of the Firearms Act of Belize which deems certain categories of persons within a residence where a firearm is found, to be in possession of the said firearm.

The Issues

3. The following issues arise for determination in this case:-
 - (i) Were the claimants wrongfully arrested and detained?
 - (ii) Were the claimants wrongfully charged?
 - (iii) If yes to (i) or (ii), what quantum of damages is payable to the claimants?

Background

4. We commence with a background of the circumstances which gave rise to the claim. The first four claimants are – Alrick Smith, who is husband to Sandra Casey and father to Leon and Tamika Smith; Sandra Casey who is wife to Alrick and mother to Leon and Tamika. Ishaida Brooks is a niece to Alrick and neighbor. On July 7th, 2014 the first four claimants along with other family members and friends were gathered at the Smith home in Belize City, for the somber occasion of a repast following a family bereavement.

Sometime after 5pm, police officers pursued two young men who were fleeing from them (subsequently identified as one Ferguson and one Flowers), into the Smith house. The first four claimants, later joined by Ms. Brooks, followed the police inside the house and encountered a scene whereupon Ferguson had been apprehended by Cpl. Castellanos in the bathroom; and Flowers, had been apprehended by another officer in the hall. Cpl. Castellanos demanded a search of the premises and consent was given by Mr. Alrick Smith for the police to do so.

5. During the search, in the presence of Mr. Alrick Smith, Cpl. Castellanos found a firearm underneath a mattress in a bedroom in the house. Claimant Tamika Smith had been seen in that bedroom, before the firearm was found. Cpl. Castellanos retrieved the firearm from under the mattress and took it out displayed in his hand, into the hall where the balance of the claimants and the young men had remained. Cpl. Castellanos says he asked who the firearm belonged to and whether any of the claimants had a gun licence. None of the claimants had a gun licence and according to the Cpl., no one answered his inquiry as to whom the firearm belonged, thus all of the claimants along with Ferguson and Flowers were arrested and taken to the police station. The claimants were detained overnight at the station and charged the following morning.
6. After charge the Claimants and the young men were taken to the Magistrate's Court where they were arraigned on the charge of possession of unlicensed firearm and pleaded not guilty. According to the Claimants, at the Magistrate's Court, the young man Ferguson attempted to plead guilty for the firearm but the plea was not accepted by the Magistrate thus they were all remanded at the Kolbe Foundation. Approximately one week after they were remanded, the charges were withdrawn by the police upon the directive of the Director of Public Prosecutions. The claimants recounted an experience of horror at the physical conditions to which they were subjected whilst in custody both at the police station upon their initial detention, and thereafter at the Kolbe Foundation where they were remanded. The issues of the lawfulness of the arrest, detention and charge of the claimants now arise for discussion.

The Court's Consideration

7. The circumstances above represent a generic account of events, uncomplicated by the various conflicting allegations not only of exactly what transpired from the time the police pursued the two young men into the Smith home, but also with respect to who was present and what was said in the immediate aftermath of the discovery of the firearm. The significance of these details is that they are to inform the determination of whether or not the claimants were properly arrested and detained as well as subsequently charged. Given the importance of these details, the Court specifically identifies the facts found upon the evidence, both before the gun was found and thereafter. In some instances the evidence of a single witness established the fact, and in other instances facts have been found from the totality of evidence from multiple witnesses.
8. Findings of fact before the gun was found:-
 - (i) Alrick Smith and Sandra Casey were downstairs in the yard at the time Ferguson and Flowers ran up the stairs followed by police officers. They then followed the police into their house;
 - (ii) According to his evidence, when Cpl. Castellanos entered the house in his pursuit of the young men, there was a male person inside the house seated on a sofa (there was no cross examination on this point, thus it was taken as accepted). Further, according to the evidence, when Cpl. Castellanos entered the house he was faced with two doorways both covered with a blanket - one on the left and one on the right. He looked into the first doorway which was a bedroom and there was a female lying on top a bed inside that bedroom. From the evidence of Leon Smith, he (Leon) was inside the house in the hall when the police came in and according to Tamika Smith she was also in the house when the police came in, albeit she alleged that she was first in the hall. Cpl. Castellanos was not cross examined disputing his account of seeing a male on the sofa and female lying on the bed in the room where the gun was eventually found and by their own words, Leon Smith and Tamika Smith placed themselves in the house at the time the young men entered followed by the police.

The facts found therefore are that when Cpl. Castellanos entered the house pursuing the young men, it was Leon Smith who was inside on the sofa and Tamika Smith who was lying on the bed in the bedroom in which he first looked.

- (iii) Ishaida Brooks was not on the premises along with the other claimants at the time the police ran after the young men but she ran from where she was, which was presumably very close by and entered the house after the police-men. Ms. Brooks did enter however before the gun was found, as she observed Ferguson on his knees in the bathroom and Flowers in the hall.
- (iv) The length of time which elapsed from the entry of the young men into the house, the pursuit of them and entry into the house by the police was alleged to be 'immediate'. The length of time found by the Court is deduced from the eventual fact (not in dispute) that the young man apprehended in the bathroom pleaded guilty to the possession of the firearm. This deduction is that as Ferguson was found in the bathroom and not in the bedroom where the gun was found, there must have been sufficient time for him to either have secreted the gun in the bedroom himself or to have caused it to be secreted. A generous estimate of the time elapsed between the young men entering the house and the police entering after them is found to be between one to two minutes.

9. Findings of fact after the gun was found:-

- (i) Although it has been found Tamika Smith was the female seen laying on the bed in the bedroom in which the gun was found by Cpl. Castellanos, it is accepted that Tamika was already out of the room when the gun was found.
- (ii) All of the claimants were inside the house when the gun was found;
- (iii) Leon Smith and Ishaida Brooks admitted to cursing at the officers after the young men were apprehended. It is inferred from this admission and the occasion of the bereavement, that the general attitude towards the police was one of verbal hostility
- (iv) The alleged admission of ownership of the firearm at the scene by Ferguson is viewed as improbable but in considering the case for the Claimant, the Court will take the claim at its highest and assume that it was made.

- (v) It is common ground that none of the claimants had a gun licence.
- (vi) It is believed that Cpl. Castellanos did invite persons not belonging to the house to leave, but for purposes of consideration the Court again takes the claim at its highest and assumes that no such invitation to leave was given to the Claimants.

Issue (i) – The arrest and detention of the Claimants

Submissions

10. The tort of false imprisonment requires no profound exposition of legal principles, but it suffices to state that it is rooted in the fundamental right of any person not to be deprived of his or her liberty, except in accordance with due process of the law. In support of principles of general application, learned counsel for the Claimants refers to the Privy Council decision from Trinidad and Tobago - **Ramsingh v Attorney-General of Trinidad**¹ and extracts from the judgment of Lord Clarke, principles to be considered in the determination of a claim of false imprisonment. Those principles are therein referenced to section 4 of the Constitution of Trinidad and Tobago, which entrenches the fundamental right of non-deprivation of liberty except by due process of law. The principles stated in Ramsingh were as follows:-

- (i) *“The detention of a person is prima facie tortious and an infringement of section 4(a) of the Constitution of Trinidad and Tobago;*
- (ii) *It is for the arrestor to justify the arrest*
- (iii) *A police officer may arrest a person if, with reasonable cause, he suspects that the person concerned has committed an arrestable offence.*
- (iv) *Thus the officer must subjectively suspect that that person has committed such an offence.*
- (v) *The officer’s belief must have been on reasonable grounds or, as some of the cases put it, there must have be reasonable and probable cause to make the arrest.*
- (vi) *Any continued detention after arrest must also be justified by the detainer”*

¹ [2012] UKPC 16

11. Learned Counsel for the Claimant then juxtaposed Trinidad's section 4 against section 3 of the Belize Constitution, which prescribes the protection of personal liberty in what Counsel submitted are far more extensive terms, thus rendering the principles stated in **Ramsingh** generally applicable to Belize. Additionally, counsel referred to Belize Supreme Court decision of **Thomas Greenwood Jr v The Attorney-General of Belize**² which grounded the arrest and detention for any crime, in the requirement for reasonable suspicion as to commission of an offence under any law, and also to **O'Hara v Chief Constable of the Royal Ulster Constabulary**³ which discussed and applied cases decided on section 5(1)(e) of the European Convention⁴. Section 5(1)(e) has been interpreted to require a minimum standard of reasonableness of suspicion of crime in order to give rise to arrest and detention. On the issue of reasonable suspicion, learned counsel further referred to **Inspector Shaaban bin Hussein et al v Chong Fook Kam et al**⁵ where the test of reasonable suspicion to justify an arrest without warrant is expressed to be that which existed from earliest times at common law, and that from which no statute found in English authority has departed.
12. On the basis of these authorities, counsel for the Claimant submits that the overall principle in justifying an arrest was that the arresting officer shall have satisfied himself that there were objectively reasonable grounds for suspicion of guilt. In applying this law to the instant case, learned counsel for the claimants submits that quite apart from reliance on the Firearm Act, the defendant must nonetheless be shown to have held a reasonable belief as to guilt of the Claimants but such a reasonable belief was not made out on the evidence. In particular, learned counsel submitted that the evidence of Cpl. Castellanos was that he chased the young men because he suspected one of them to be in possession of a firearm. His belief therefore would have existed in relation to the guilt of the young man and not the Claimants.

² Belize Supreme Court No. 611 of 2013.

³ [1996] UKHL 6

⁴ In particular, **Fox v United Kingdom** (1990) 13 ECHR 157

⁵ [1969] 3 All ER 1626.

Additionally, the evidence was that the Claimants testified that Ferguson (the young man found in the bathroom), confessed in the presence of all in the house that the firearm was his. Further, it was a fact that the Director of Public Prosecutions directed the charges against the Claimants to be withdrawn, thereby confirming that there was no case against the Claimants. All of these facts, it is submitted, establish that Cpl. Castellanos had, and could have held, no reasonable suspicion upon which to arrest and charge the Claimants.

13. On the other hand, the Defendants' submit by their counsel, that the provisions of section 6A of the Firearm Act provided the statutory basis for the arrest and detention. This was insofar as the statute authorized the arrest (inter alia), of persons found on any premises in which an unlicensed firearm is found, where it cannot be determined with any certainty to whom the firearm belongs. It was submitted that in the instant case there was indeed no certainty as to whom the firearm belonged, given the evidence that there was no response, to Cpl. Castellanos' enquiry as to who owned the firearm. Additionally, the evidence was that the gun was not found on the person of either of the young men whom the police were pursuing and it was instead found in a bedroom of the house in which one of the Claimants was seen immediately prior to its discovery. Further, at the police station, none of the Claimants gave any response to questions as to ownership of the firearm, thus it was submitted that given the authority of the Act as to presumption of guilt where a firearm is found on premises, the Claimants, as persons found on the premises at the time, were properly arrested and detained on suspicion of having committed the offence of unlawful possession of the firearm.

Analysis

(a) The initial Arrest

14. As recognized by both counsel, the question of whether or not the Claimants were falsely imprisoned on the 7th July, 2014, is merely a question of the end result of the initial determination of whether or not they were properly arrested and detained for the offence of unlawful possession of the firearm found in the premises. The principle which requires reasonable suspicion to be held by an arresting officer along with the objective reasonableness of that suspicion is accepted as appropriate general principles in

considering a claim for false imprisonment. However, the general principles must still be considered with reference to the provisions of relevant statutes as those provisions can have an impact on the application of the general principles.

15. It was firstly correctly pointed out by learned counsel for the Claimants, that the Belize Constitution provides in very comprehensive terms, the circumstances in which it is lawful for a person to be deprived of his or her liberty. Specifically with respect to arrest and detention however, the Constitution provides without much expansion, at section 5(1)(e), that a person may be deprived of his or her liberty, upon a reasonable suspicion of having committed an offence under any law. This is such a broad statement that it is possible for this reasonable suspicion to be expanded or constricted by statute in specifically prescribed circumstances.
16. In *Ramsingh*, the principles laid down and advanced as a starting point for the Court's consideration by Counsel for the Claimants, were formulated with reference to section 3(4) of the Criminal Law Act, 1936 Cap. 10:04 of the Laws of Trinidad and Tobago. This section provides:-

"Where a police officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence."

The terms of this statute contain both subjective and objective elements of reasonable cause or suspicion and the existence of both these elements can make a difference in the interpretation and application of powers of arrest and detention. In *O'Hara v Chief Constable of the Royal Ulster Constabulary*⁶, the Privy Council illustrates why one must be careful from where or from what one extracts relevant legal principles to be applied. In *O'Hara*, the question of what suffices as reasonable grounds for suspicion was examined by the Board.

17. The power of arrest in *O' Hara* was statutory – section 12(1) of the Prevention of Terrorism (Temporary Provisions) Act, 1984, which admittedly does not concern us in the case at bar.

⁶ Supra fn 3.

What is relevant however, is the approach of the Court, in particular, Lord Mustill⁷ as he examined the submissions of counsel for the respondent therein in relation to an authority cited on the powers of arrest in another case dealing with an offence of terrorism⁸. After citing the words of Lord Roskill in the latter case on the state of mind of the arresting officer upon the true construction of the statute in question, Lord Mustill made the observation⁹ that:-

“ The statutory provision under consideration in McKee did not require that an arresting officer must have reasonable grounds for suspicion. Moreover, the legislation was in much wider terms inasmuch as it authorized arrest for the purpose of internment. That statute was repealed in 1987 and your Lordships are concerned with quite a different statutory provision. In these circumstances, Lord Roskill’s observations throw no light on the proper construction of section 12(1) of the Act of 1984...”

Lord Mustill further went on to state:-

“I would hold that it is misuse of precedent to transpose Lord Roskill’s observations made in the context of the subjective requirement of a genuine belief to the objective requirement of the existence of reasonable grounds. McKee is irrelevant on the point of principle under consideration in this case.”

18. Further in **O’Hara**, reference was made by Lord Mustill to Lord Diplock in **Mohammed-Holgate v Duke**¹⁰ where the same section 12(1) was under consideration. Section 12(1) was examined and found to require an honest belief on the part of the officer in the reasonableness of the grounds of suspicion. This provision was then contrasted with article 5(1) of the European Convention, the latter being an example of a different effect achieved by deliberate drafting, whereby the satisfaction of a reasonable suspicion was found to be predicated on a broader test and not restricted to matters present within the mind of the arresting officer. In section 5(1)(e) of the Belize Constitution, there is not a subjective belief of suspicion imposed on the police officer.

⁷ O’Hara, supra @ pg. 3

⁸ McKee v Chief Constable for Northern Ireland [1984] 1 WLR 1358, considering section 11(1) of the Northern Ireland (Emergency Provisions) Act 1978.

⁹ O’Hara, pg. 3

¹⁰ [1984] AC 437

This is also the case under section 44(2)(b) of the Police Act, Cap. 138, which empowers a police officer to stop, search and detain any person who may be reasonably suspected of possessing anything unlawfully obtained. As a starting point for the applicable law therefore, it must be recognized that given the differences in legislation, the principles in **Ramsingh** cannot be wholly adopted and applied without reference to the particular statutory provisions which are applicable to this case.

19. That being said, one now refers to the particular statute against which the general principles must be considered. By amendment No. 28 of 2010, section 6A¹¹ of the Firearms Act, Cap. 143 provides:-

(1) “Where any unlicensed firearm or ammunition is found in or on any premises owned or occupied by more than one person, any of the following persons shall be presumed to be in possession of that unlicensed firearm or ammunition;

(a) The person in control of the premises

(b) The person ordinarily resident in or on the premises;

(c) The person ordinarily employed in or on the premises; or

(d) The person in control of any cupboard, locker or other container or thing in which the firearm was found....

(2)...

(3)...”

Thereafter, sub-section 4 provides that

(a) The presumptions made under subsections (1) to (3) shall be made where the Crown can show that it was unable to link, with certainty, the possession of the firearm or ammunition to any other person.

(b) It shall be for the person presumed to be in possession of the unlicensed firearm or ammunition to adduce evidence to rebut the presumption.”

20. In this section, the presumption in sub-section (1) utilizes the legal fiction of ‘deeming’ the offence of possession in respect of the persons falling within the specified categories in sub-paragraphs (1a-d). The deeming of the offence of possession however is subject to the prescribed condition of the Crown being able to show that they were unable with certainty, to link the firearm to any other person.

¹¹ This provision was itself repealed and replaced by the Firearms (Amendment) Act, No. 18 of 2014.

In circumstances where a firearm is discovered in premises with multiple occupants, the offence of possession would be proved once the condition of being unable to link the firearm to any other person with certainty is satisfied, absent a rebuttal by any of the persons statutorily deemed in possession of the firearm.

21. Aside from proof however - how does section 6A operate with respect to an arrest? The Firearm Act actually contains provisions which speak directly to powers of arrest, which being part of the law under consideration, must be examined, although not referred to by either counsel in their submissions. Sections 22 and 23 of the Firearms Act provide as follows:-

“22. Any police officer may arrest without warrant any person whom he believes to be in possession of, or to be using or carrying a firearm or ammunition in contravention of any of the provisions of this Act, and may search that person and, whether arresting him or not, may seize and detain any firearm or ammunition in his possession, or used or carried by him.

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

22. In section 22, the police officer may arrest without warrant, any person ‘*whom he believes to be in possession of...a firearm.*’ It is noted, that unlike the requirement for reasonable cause for suspicion in order to enter and search for a firearm which immediately follows in section 23, the belief of the officer as to possession is not qualified by ‘reasonable’. However, according to the approach to construction espoused by Lord Mustill in ***Ohara v Chief Constable***¹², it is considered that the standard against which that belief is to be judged must still be reasonable. This is so also given the views expressed by Lord Diplock in ***Mohammed-Holgate v Duke***¹³, with respect to the continued application of common law principles even where powers of arrest are provided in statute. Given the terms of section 22 however, the standard applicable in this case would be much broader than that which arose out of the statute under consideration in ***Ramsingh***.

¹² Supra, paras. 16-17 herein.

¹³ Supra fn 10

That standard, upon which counsel for the claimant rested his arguments, was that the arresting officer must hold an honest belief of guilt, according to objectively regarded reasonable grounds.

23. With respect to section 22, the belief of an officer can be grounded in any number of facts or circumstances but can also be informed by section 6A insofar as it provides for the presumptions in respect of the stated categories of persons connected to the premises. However, the operation of section 6A is not automatic so as to entitle a police officer to remove all persons found at the premises who fall into the categories provided by the statute. Section 6A (albeit now amended)¹⁴, was not meant to remove an onus of investigation or duty to make inquiries prior to an arrest, but rather, to address an obvious challenge to proof of possession, in circumstances of discovery of a firearm where multiple possibilities of possession exist to the detriment of establishing proof of the offence. On the way to applying the presumptions, which requires satisfying the condition precedent of not being able to link the firearm to any person with certainty – the condition itself, must still be satisfied with reference to due consideration of the circumstances at hand. In assessing the lawfulness or otherwise of the Claimant's arrest and detention, the law to be applied, is section 22 of the Firearms Act, so that Cpl. Castellanos must have believed that the Claimants were in possession of the firearm found in the house and he is entitled to be assisted, as far as permissible within the circumstances of the case, by the application of the presumptions provided in section 6A - subject of course to satisfaction of its condition precedent.
24. Cpl. Castellanos under cross-examination stated that he believed that he was entitled to arrest all of the persons from the house and charge them because the statute gave him that authority. If his belief in that regard were the end of the matter then the claim of false imprisonment could not succeed. However, what the statute did or did not authorize him to do is a matter of law thus in that regard his belief is irrelevant. Additionally, there is the accepted element of reasonableness relevant to the circumstances which must underscore his belief, thus one must consider what circumstances Cpl. Castellanos was

¹⁴ Supra para 19.

faced with which led to the arrest of the Claimants. The evidence is that the police chased two persons, one of whom was suspected of having a firearm in his possession, into the Claimants' house. The police entered the house behind both young men in hot pursuit and upon entry, one officer observed a male person sitting in the hall and a female inside a bedroom, laying on one of two beds. The person who was suspected of having the firearm, had nothing on his person when searched and was found in the bathroom of the house, whilst the firearm was found in a bedroom beneath a mattress. The bedroom in which the firearm was found, was that in which the female had been initially seen by the officer, laying on one of two beds. The other young man who had been chased by the police also had nothing illegal on his person. It was confirmed upon enquiry by the officer, that none of the Claimants possessed a firearm licence but there were alleged disavowals by the Claimants of its ownership and alleged acceptance thereof by one of the young men.

25. With these primary circumstances in mind, there were clearly several inferences available to the officer regarding possession of the firearm. One such inference was that if the gun had been in the possession of the young man whom he had chased, the young man had to have either hidden or caused the firearm to be hidden underneath the mattress. Given the time of the pursuit, this first possibility could reasonably have given rise to the inference of collusion in securing the firearm, with persons inside the house. Alternatively, as counsel for the Crown rightly submitted, given the location where the firearm was found, i.e. - in a bedroom in the house, underneath the mattress of the bed of which had shortly before been occupied by someone from inside the house, neither of the young men chased having been found in that bedroom; and there being insufficient time between the pursuit of the men into the house and discovery of the firearm – another inference was that an occupant of the house was responsible for its presence.
26. In the latter circumstance, regardless of whether the young man made an admission as to ownership of the firearm (which is not believed, but the case is taken at its highest), the possibility of the firearm belonging to some person from within the house was still properly within the contemplation of any prudent officer.

An initial admission of ownership of the firearm could later be retracted and possession (as distinct from ownership), on the part of any or more of the Claimants, was not ruled out by the alleged admission of ownership. In these circumstances, it could reasonably be said that there was no certainty of ownership or possession of the firearm at the material time, thus there were reasonable grounds for suspicion of any or all of the occupants. It is thus found that the officer was entitled, assisted by the presumptions of section 6A, to hold a belief that any or all of the Claimants had committed the offence of unlawful possession.

27. Notwithstanding that entitlement as found, it must also be considered, as submitted by counsel for the Claimants, whether the officer was obliged to make enquiries to ascertain who resided at the premises before arresting and detaining all of the claimants. Had he done so, it was submitted, certainly Ms. Brooks would not have been arrested, as she did not reside at the premises. In this regard, counsel for the Crown submits that the officer did make that basic enquiry insofar as he invited persons who were not of the premises to take their leave prior to commencing the search. All of the Claimants deny that the officer made such a statement. The officer's evidence that he did invite persons to leave but all remained has been accepted by the Court, but even if it was not, the point is applicable only to Ms. Brooks, as the other claimants did in fact reside at the premises. With respect to Ms. Brooks, the evidence is that she placed herself in that house after the officers ran inside (having come from her own yard) and that she participated in expressions of displeasure towards the officers' presence and actions, thus absent the officer's invitation to leave, it was not unreasonable for her to have been presumed to be an occupant of the premises.
28. Whether there should have been further inquiries made at the house, to attempt to discover ownership or possession of the firearm is a question of what was reasonable in the circumstances. Albeit denied by at least two of the claimants (Alrick Smith and Sandra Casey), there was acceptance by Leon Smith and Tamika Smith, that there was vocal displeasure and hostility directed towards the officers by some of the claimants.

It is therefore not unreasonable to say that the environment was not one in which a police officer faced with reasonable suspicion of the commission of a serious offence by multiple occupants of premises, ought to have there and then been obliged to commence a more detailed investigatory process.

29. This would remain the Court's view, even if taking the case of the claimants at its highest and accepting that there was an admission of guilt from the young man Ferguson. As stated before any reasonable police officer would be familiar with a subsequent disavowal of an earlier admission of guilt and is well entitled to take into account all possibilities regarding the commission of an offence which are presented on the circumstances before him. It is therefore found that further to the power under section 22 of the Firearm Act, to arrest and detain any person the officer believes to be in possession of a firearm, together with the assistance in the grounds of such belief facilitated by section 6A as it relates to multiple occupants of premises in which a firearm is found, it was open to Cpl. Castellanos to arrest and detain all of the persons present at the time of the search, including Ms. Ishaida Brooks.

(b) The Continued Detention

30. Learned Counsel for the claimants has added on to his argument, the question of the lawfulness of the continued detention as a separate component from the initial arrest. Learned counsel suggests that the failure of the police to make enquiries at the police station which would have led to ruling out at least one or more of the claimants, renders the continued detention unlawful. This submission based on the authority of **Ramsingh**,¹⁵ is to the effect that every step of the continued detention must be lawful and accounted for. This position is accepted by the Court as correct and long recognized, as was clearly stated in the well-known authority **Dallison v Caffery**¹⁶. As illustrated in **Ramsingh** however, the question of continued detention need not be judged strictly by what the police did or failed to do regarding further inquiries or investigations.

¹⁵ *supra*

¹⁶ [1965] 1 QB 348 per Lord Diplock @ 369.

31. *Ramsingh* was a case of arrest on suspicion of assault which according to the information received was a serious assault. The claimant therein was detained for five hours at the police station during which time the police neither made further inquiries nor conducted investigations. After a medical report on the complainant's injuries was received, it was determined that the assault was not a serious one and the claimant was released without charge. The claimant was however charged several weeks later and upon failure to prosecute, the charges were ultimately dismissed. The claimant sued for false arrest and malicious prosecution and whilst the initial arrest was found lawful, the lawfulness of the continued detention remained an issue before the Board. Upon due consideration of the actions of the police and the circumstances of the alleged offence, the Board determined that it was reasonable for the police to await the medical information in order to determine what charge to lay against the claimant and that given there having been some indication that the assault was a serious one, it was not prudent to release the claimant until the medical condition of the complainant was ascertained.
32. Each case will of course turn on its own facts, but the approach of the Board in determining the issue of the continued detention is certainly to be noted and adopted. In the instant case, the Claimants were held overnight and charged the following morning, so that the period for assessment of the continued detention concluded at the time of charge. (This is so as from the time of the charge, the action open to the claimants became that of malicious prosecution and no longer false imprisonment.) With respect to their continued detention, counsel for the Claimants submitted that the further inquiries the police ought to have made should have included for example, ascertaining the personal particulars of the persons detained – this would at least have resulted in the release of Ishaida Brooks as she did not reside at the premises. Additionally it was submitted, the police could have ascertained whether the firearm was used in the commission of any crime and so be able to determine whether there was any connection to the claimants.
33. In *Dallison v Caffery*, the arresting constable was found to have acted reasonably when instead of taking the plaintiff therein directly to the police station after arrest, he instead took the plaintiff to several places to verify information which had been given by the

plaintiff at the time of arrest and that period lasted several hours. The court upheld the constable's actions in making those inquiries with the plaintiff in his custody as opposed to conveying him to the nearest police station, as honest and reasonable. Further, Lord Diplock, made the observation that what is reasonable, changes '*as society and the organization for the enforcement of the criminal law evolves.*' The advances of law enforcement would have to include the terms of statute, thus consideration of section 6A again arises in the context of what was reasonable in the continued detention of the Claimants. Whilst it is admittedly the case herein that there were no inquiries made by Cpl. Castellanos, the extent of what learned counsel for the claimant suggests ought to have been done – ascertaining whether the gun was used in the commission of a crime - launches us into a realm of speculation that exceeds what is to have been considered reasonable inquiries. At the very least, it is found that reasonable inquiries in the context of the circumstances of the arrest, ought to have included ascertaining (at the police station) the relationship of the claimants to the premises and any possible explanations from the occupants of their knowledge of the presence of the firearm.

34. Nonetheless, any further inquiry along such lines, in the Court's view, would still have to have been interpreted within the context of the reasonable inferences capable of being drawn by the officer given the circumstances of discovery and location of the firearm when discovered. Also, as stated in **Dallison v Caffery**¹⁷, a prosecutor is not bound to make a defence or disprove facts alleged on behalf of persons apprehended. With this in mind, save for Ms. Brooks, any further inquiries which ought to have been made by the police after arrest and prior to charge (in effect overnight), could not in the Court's view, have made a difference having regard to the circumstances of this case. With respect to claimant Ishaida Brooks, it is found that her initial arrest was lawful in the circumstances, however her continued detention was unlawful, given that the police failed to make any enquiries at all and not being an occupant of the house and having entered the house after the police did, she most probably would have been excluded from the class of persons falling within the application of the statute and could appropriately have been

¹⁷ Supra per Lord Diplock @ 374-376

released without charge. The first four claimants however, are all found to have been properly arrested and detained and the issue of malicious prosecution now falls to be examined.

Issue (ii) - malicious prosecution.

35. Counsel for both Claimants and Defendants are ad idem with the principles applicable to the tort of malicious prosecution. As extracted from **Wills v Voisin**¹⁸ by Counsel for the Defendants, there are four elements, all of which must be found by the Court in order for a claim to be successful. These are – (i) the law must have been set in motion against the claimant on a charge for a criminal offence; (ii) there must have been an acquittal or determination otherwise in the claimant’s favour; (iii) the law must have been set in motion without reasonable and probable cause; and (iv) the prosecutor must have been actuated by malice in setting the law in motion. Both Counsel are also ad idem with the fact that in the case at bar, only the third and fourth elements arise for determination. It is the case of the Claimants that given that their arrest, or alternatively their continued detention, was effected without reasonable and probable cause, the tort of malicious prosecution is ipso facto established. Learned Counsel for the Claimants takes this position on the basis that a want of reasonable and probable may imply malice, and thereby establish the tort. As authority for this point learned counsel referred to Abel J in **Thomas Greenwood Jr. v Attorney-General et al**¹⁹, where (referring to Halsbury’s Laws of England)²⁰, it was stated that malice may be inferred from a want of reasonable and probable cause (albeit not vice versa).
36. Counsel for the Claimant also referred to a statement made by Counsel for the Defendants in her written submissions as being indicative of want of reasonable and probable cause (hence malice). This statement was to the effect that it was Counsel’s belief that Cpl. Castellanos charged the Claimants with the belief that after doing so, someone would take ownership of the firearm, so that the charges against the remaining

¹⁸ (1963) 6 WIR 50 @ 57.

¹⁹ Belize Supreme Court Claim No. 611 of 2013 @ paras 69-71.

²⁰ 5th Ed. Vol. 97 paras 627 through 641

persons would be dismissed. The absence of reasonable and probable cause was also submitted as established given the fact that the charges against the Claimants were directed to be withdrawn by the Director of Public Prosecutions a short time after they were laid.

37. The Defendant's answer to the claim of malicious prosecution firstly pointed out that according to the authority of **Barcoo v Attorney-General of Trinidad and Tobago**,²¹ the finding of reasonable and probable cause for prosecution likewise the case for arrest, involves both subjective and objective questions.²² It was submitted, that for the same reasons reasonable cause was to be found in relation to the arrest, it should also be inferred in relation to the prosecution. Particularly, the place of discovery of the firearm being under the mattress of a bed in a bedroom in the premises, in circumstances where it could not readily be inferred that there was sufficient time for the young men pursued to have hidden it there – was such to be sufficient to objectively ground a conclusion of reasonable cause and probable cause of the guilt of the claimants.
38. Additionally, the submission on behalf of the Defendants was that Cpl. Castellanos need only have satisfied himself that there was a proper case be laid before the Court in order to charge the Claimants. For this proposition, reliance was placed upon **Herniman v Smith** in which it was stated that a prosecutor is not required to test every possible relevant fact before taking action and that a prosecutor's duty is not to ascertain whether there is a defence, but whether there is reasonable and probable cause for prosecution²³. This authority was further supplemented by counsel for the Defendants by reference to **Glinski v McIver**²⁴ per Lord Denning who explained that the 'guilt' of which the honest belief was required, was not that of being 'sure' as in the manner of a jury, but of being 'satisfied, that there is a proper case to lay before the court'. This was the case for the Defendants on the issue of reasonable and probable cause.

²¹ TT 2001 HC 67

²² Ibid

²³ [1938] AC 305 @ 306 per Lord Atkin (extracted from pg. 8 – written submissions for Defendants).

²⁴ [1962] AC 726 @ 758 (extracted from pg. 8 – written submissions for Defendants).

39. With respect to the fourth element of malice, the Defendants submit firstly and correctly so, that the burden of proving malice rests on the Claimants. Based on the authority of **Brown v Hawkes**²⁵, malice was explained to mean ‘any wrong or indirect motive’ and that proof of malice could be established either by showing what the motive actually was or by showing that the prosecution could only be accounted for by imputing some wrong or improper motive to the prosecutor. Additional principles extracted from this authority were submitted to be that hastiness of a conclusion of a plaintiff’s guilt whilst leading to a wrong conclusion would not amount to an improper motive and along with the rationale that a prosecutor’s honest belief as to guilt should not lead to damages for acting on that belief, except on clear proof of malice.

The Court’s Consideration

40. The principles of law regarding the constituent elements of the tort of malicious prosecution have been properly stated and are accepted by the Court. Also accepted, is that the first two elements are established, viz – (i) the law having been set in motion on a charge of a criminal offence and (ii) there being an acquittal or other disposal favourable to the claimant. The final two elements of want of reasonable and probable cause for prosecution and malice are then to be examined. Firstly, in relation to claimant Ms. Brooks, the third element of lack of reasonable and probable cause has already been established in relation to her continued detention. In such case, the remaining issue in relation to her claim is whether malice is to be inferred. Want of reasonable and probable cause must also be examined in relation to the other remaining 4 claimants and unlike the inference applied in relation to claimant Brooks, the reverse in application does not necessarily follow.

Reasonable and Probable Cause

41. Counsel for the Defendants has urged upon the court that the same factors which were applied in finding reasonable cause for suspicion in relation to the claimants’ arrest, are to be applied in relation to the question of reasonable and probable cause for

²⁵ (1981) 2 QB 719 @ 722 (extracted from pg 9 of submissions on behalf of Defendants).

prosecution. In this instance the Court agrees with the submission on behalf of the Defendants and does so on the basis that an honest belief in the existence of a proper case to lay before the court was capable of being held in the circumstances presented upon discovery of the firearm in the claimants' home. These circumstances are again stated as (i) the gun was found under the mattress in a bedroom in a house of multiple occupants; (ii) a member of the household had been seen immediately prior to the discovery of the gun, atop the very bed under which it was found; (iii) there were reasonable inferences capable of being drawn that the gun belonged to an occupant of the house or was concealed with the collusion of an occupant of the house; and (iv) (taking the claimants' case at its highest) the alleged admission of guilt by one of the young men was entitled to be regarded by any prudent police officer with reserve if not suspicion, as such admission could always be retracted, to the detriment of the successful prosecution of the offence. It is also the case with respect to the question of want of reasonable and probable cause, that even if there had been further enquiries regarding the possession of the firearm, there remained the basis for reasonable suspicion as to commission of the offence, so that whilst it may be true to find that a discretion to prosecute could have been exercised differently, it certainly was not wrongly exercised, in the circumstances.

42. With respect to the subsequent directive from the Director of Public Prosecutions to withdraw the charges against all other persons except the young man Ferguson who attempted to plead guilty on arraignment (and did ultimately plead guilty), this is certainly a factor to be considered in ascertaining want of reasonable and proper cause, but it is not regarded as conclusive. Accepting the authorities cited by counsel for the Defendant (*Herniman v Smith; Glinski v McIver*),²⁶ the duty of a police officer (qua prosecutor) is to initiate prosecution where there is a reasonable prospect of a conviction. The advertence of the Director of Public Prosecutions to the charge, both in the capacity as an attorney-at-law and the person constitutionally charged with the responsibility for initiating and prosecuting criminal offences, would afford the exercise of a far greater

²⁶, supra para 41

discretion to affect that prosecution, even where there is a reasonable prospect of a conviction. In all of the circumstances, it is therefore not found that there was absence of reasonable and probable cause to charge the remaining four claimants.

Malice

43. The finding of reasonable and probable cause of course means that the claim of malicious prosecution cannot be established as all four elements of the tort must be proven. In spite of this finding, the Court will nonetheless examine the issue of malice with respect to all of the claimants, including Ms. Brooks. As correctly submitted by both counsel, the absence of reasonable and proper cause may serve as the basis from which to infer malice - this is stated in **Dallison v Caffery**²⁷ and also **Brown v Hawkes**.²⁸ As did Counsel for the Defendants, the Court extracts from the latter of the two cases as follows:-

“Now malice, in its widest and vaguest sense, has been said to mean any wrong or indirect motive; and malice can be proved, either by shewing what the motive was and that it was wrong, or by shewing that the circumstances were such that the prosecution can only be accounted for by imputing some wrong or indirect motive to the prosecutor.”

It is clear from the above passage, that malice is either actual or inferred from the apparent motive for prosecution. With respect to what would be an improper motive, as stated in Clerk & Lindsell on Torts²⁹ *“the proper motive for a prosecution is of course a desire to secure the ends of justice.”* Any motive other than securing the ends of justice would therefore be an improper motive to which malice can then be imputed. The true case of actual malice is usually rare, and any imputation of a wrong or indirect motive can be inferred from a want of reasonable and probable cause for prosecution. The appropriateness of such an inference however, is always dependent upon an assessment of the facts of each individual case.

44. In **Barcoo v Attorney-General et al**³⁰ (cited by Counsel for the Defendants), the claimant therein had been arrested for unlawful possession of ammunition which was found missing from the police force armory.

²⁷ Supra fn 16

²⁸ [1891] 2 QB 718 at 723

²⁹ 18th Ed. para. 16-37

³⁰ TT 2001 HC 167 High Court of Trinidad & Tobago

The sole basis of his arrest was the information of two officers that they had seen the claimant handing ammunition to another person some seven months prior to his arrest. No ammunition was found at the time of arrest on the claimant's person or home and the claimant was a special constable entitled to certain exemptions in respect of licencing. No attempts were made to investigate beyond the information of the two officers, the claimant was held for two days, subjected to hostile questioning, called racial names and threatened with violence to his family. The claimant was charged on the third day of his detention after arrest, the case heard some 4 months after and was dismissed. The trial judge in this case found that on the circumstances of the case, it was clear that there was no reasonable and probable cause for the prosecution, and given the treatment of the claimant, the motive for the prosecution must have been improper.

45. In contrast to *Barcoo* and for further illustration of the inference of malice from want of reasonable and probable cause, reference is made to the case of **Williamson v Attorney-General for Trinidad & Tobago**.³¹In this case the claimant was a taxi driver who was arrested and charged with larceny, having been seen by a neighbor, assisting a thief in removing items from a house and placing them into his car then driving away. The claimant's case to the police from the inception was that he was a taxi driver, who had been asked to assist a passenger who said they were moving out from the house to another residence. The claimant was indeed a taxi driver but when the police accompanied him to the house he moved the items to and dropped off his passenger, no such person resided at nor was known at that house and the passenger was never found. The matter was called at the Magistrate's court sixteen times before it was dismissed for want of prosecution and of those sixteen times, for all except three, the arresting officer never appeared nor was there any account given for his failure to appear. Upon its dismissal the claimant brought his action for false imprisonment and malicious prosecution. The claims were dismissed at first instance and on appeal. The claimant appealed to the Privy Council.

³¹ [2014] UKPC 29; (2014) 85 WIR 452

46. In dismissing the appeal, the Privy Council found that the Courts below were correct to hold that even though the claimant's explanation for his actions in assisting in removing the items was plausible - from the standpoint of any astute police officer, the explanation was equally consistent with guilt and so was capable of establishing reasonable and probable cause for the prosecution of the offence. It was further held, that the failure of the police to attend court to prosecute the matter on so many occasions, whilst reprehensible, did not negate the existence of the reasonable and probable cause. In expressing the conclusions of the Board as to the finding of malice and reasonable and probable cause as a general rule, Lord Kerr stated as follows (emphasis mine)³²:-

“To constitute malice, the dominant purpose of the prosecutor had to be a purpose other than the proper invocation of the criminal law—an ‘illegitimate or oblique motive’—and that improper purpose had to be the sole or dominant purpose actuating the prosecutor. It had to be shown that the prosecutor's motive was for a purpose other than bringing a person to justice and involved an intention to manipulate or abuse the legal system. Proving malice was a ‘high hurdle’ for a claimant to pass. Further, the honest belief required of a prosecutor was a belief not that the accused was guilty as a matter of certainty, but that there was a proper case to lay before the court. Where there was absolutely no basis for suspicion, especially where that was accompanied by an apparent reluctance to proceed with the charge, one might draw such an inference.”

With all of the above principles in mind, particularly the recognition that proving malice is a ‘high hurdle’ for a claimant, the question of malice is now considered with respect to the circumstances of the instant case.

47. It was never the claim that there was any actual malice on the part of the prosecution of the Claimants. Whilst reasonable and probable cause has already been found in relation to the first four claimants, the Court continues the discussion for the avoidance of doubt, so that an imputation of malice is now what must be found in respect of claimant Ishaida Brooks, and for the sake of argument, in relation to the other claimants. Per **Williamson** above, an improper motive must be the dominant or sole motive for the prosecution. As evidence of such improper motive, Counsel for the Claimants pounced upon a statement made by counsel for the Defendants in her written closing submissions.

³² Ibid [UKPC] paras 11-14.

At paragraph 20 of those submissions, Counsel for the Defendants offered her own conclusion that the claimants were charged with the belief that upon arraignment someone would accept responsibility for the firearm, thereby allowing the charges against those remaining to be withdrawn. Absent reasonable and probable cause to prosecute all claimants, to do so would be a manipulation or abuse of the legal system referred to by Lord Kerr in *Williamson*, above, from which malice could be properly inferred.

48. As foolhardy as the Court finds that such an utterance was, no such motive by the prosecuting officer was raised on the evidence, as it was not part of the Defendants' evidence in chief, nor was there any such suggestion put to any defence witness on cross examination. Counsel would generally do well to avoid imputing from the bar table, conclusions as to the evidence which are not supported by facts, in an attempt to explain or offer the most favourable view of one's case. In this case, no such inference arises nor was any fact proven from which to draw such an inference thus the Court declines to accept in any way the submission as to improper motive, as put forward by counsel for the Claimants. In further consideration of the question of improper motive, reference is made to *Miazga v Kvello Estates*,^{33a} a decision of the Supreme Court of Canada. The Supreme Court in this case, (the facts are really not relevant), referred to the 'very high threshold' required to establish a claim for malicious prosecution, for reason that:-

"...the tort of malicious prosecution was not an after-the-fact judicial review of a Crown's exercise of prosecutorial discretion;... malicious prosecution was only made out where there was proof of malice in the form of improper purpose or motive involving an abuse of prosecutorial power or the perpetration of a fraud on the system of criminal justice, perverting it for ends it was not designed to serve."

It was further stated³⁴, that 'malice' did not include 'recklessness, gross negligence or poor judgment' and that such reasons were not actionable.

³³ [2010] 2 LRC 418

³⁴ Ibid paras 7-8

49. An additional point from *Kvello* from which the Court takes persuasive guidance, is the historical common law perspective of the tort of malicious prosecution. At common law, it was indeed the case that criminal prosecutions were originally instituted by private citizens and there was crown immunity from suit. The third and fourth elements of the tort reflect that initial role of private prosecutors, who in pursuing their own interests, could be viewed as more susceptible to abusing the legal system for their own personal objectives. Within the context of public prosecutions having overtaken the system of private prosecutions, findings of an absence of reasonable and probable cause and an imputation of malice must now legitimately be viewed as more difficult to prove, given that the primary purpose of criminal prosecutions, are in themselves concerned in the furtherance of the public as opposed to private interest.
50. In the circumstances even given the absence of reasonable and probable cause for prosecution found in relation to claimant Ishaida Brooks and even if for argument's sake presuming an absence of reasonable and probable cause in respect of the remaining claimants, on the authorities of *Williamson v Attorney-General of Trinidad & Tobago* and *Miazga v Kvello Estates et al*, there has not been any motive raised on the evidence other than a desire to bring all persons charged to justice. Even if one were to find some other motive – for example a mistaken understanding of the application of then section 6A of the Firearms Act or negligence due to failure to make further inquiries, the dominant motive still remains the desire to bring the claimants to justice, so that no imputation of malice is considered warranted. The claim of malicious prosecution in relation to all claimants therefore fails.

Issue (iii) - Damages for False Imprisonment – Ishaida Brooks.

51. The claim of false imprisonment having been successful in favour of Ms. Brooks, damages now fall to be quantified. In view of the findings of the Court however, no awards for punitive or aggravated damages arise. As commended by Counsel for the Defendants, the Court finds favour with the words of Hafiz J in *Thompson, Tillett and Woodeye v*

Attorney-General et al³⁵ to the extent that the damages to be awarded should not be calculated on the basis of a daily or hourly comparison with other awards. In this case it must be recalled that the quantification for false imprisonment is for the period of continued detention between arrest and charge and not for the extended period on remand, given that the claim for malicious prosecution failed. The award will be on the lower side, but in no way a nominal award as suggested by the Defendants. The amount of \$5000 is considered appropriate. There also can be no award for the special damages claimed of legal fees, given the dismissal of the claim for malicious prosecution. Ms. Brooks is awarded prescribed costs on the sum of \$5000 and the Court exercises its discretion and declines to award costs against the remaining claimants upon the dismissal of their claims.

Final Disposition

52. The claim is disposed of in the following manner:-

- (i) Save for the claimant Ishaida Brooks, the claims for false imprisonment are dismissed;
- (ii) The claims for malicious prosecution are all dismissed;
- (iii) Damages for false imprisonment are awarded to Ishaida Brooks in the sum of \$5,000.00 with prescribed costs thereon. Statutory interest at the rate of 6% is awarded with effect from the 4th July, 2016 until satisfaction of the judgment; and
- (iv) There is no order as to costs against the claimants upon the dismissals of their claims.

Dated the 30th day of September, 2016.

Shona O. Griffith
Supreme Court Judge.

³⁵ Claim No. 530 of 2010 Belize Supreme Court