

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2010 – 04508

BETWEEN

GABRIEL JOSEPH

Claimant

AND

**THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO**

Defendant

Claim No. CV 2010 – 4093

BETWEEN

ANTONIO SOBERS

Claimant

AND

**THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO**

Defendant

Claim No. CV 2010 – 04649

BETWEEN

CLINT WILSON

Claimant

AND

**THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO**

Defendant

BEFORE THE HONOURABLE MADAM JUSTICE JUDITH JONES

APPEARANCES:

Mr. G. Ramdeen instructed by Mr. K. Samlal and Mr. V. Debideen for the Claimants.

Mr. D. Byam instructed by Mr. C. Sieuchand and Ms. K. Oliverie for the Defendant.

JUDGMENT

1. The Claimants, Clint Wilson (“Wilson”); Gabriel Joseph (“Joseph”) and Antonio Sobers (“Sobers”) collectively represent 57 Claimants who seek damages against the Defendant for assault and battery committed by its servants on the 11th November 2006. For the purpose of determining liability it was ordered by consent that all 57 cases would be heard together. To that end the cases were divided into three categories with each category represented by one of three cases: those in which the claimants have no record of injuries by CV 2010- 04649 Clint Wilson v The AG; those in which the claimants received treatment at the prison by CV 2010-04508 Gabriel Joseph v The AG and those in which the claimants received treatment at the hospital by CV 2010-04093 Antonio Sobers v The AG.

2. It was further agreed that the cases in each category would be bound by my findings in the action representing their category. There is attached to this judgement as an appendix a list of the various actions and the categories into which they fall. As can be seen from the schedule by far the largest category is that of claimants with no record of injuries.

The Pleadings

3. The Claimants were on the 11th November 2006 all inmates of the north wing of the remand prison situated at Golden Grove, Arouca. They allege that they were the victims of unprovoked attacks by armed and masked officers of the protective services: the Emergency Response Unit of the Prison Service; the Guard and Emergency Response of the Police Service

and the Special Anti-Crime Unit of Trinidad and Tobago, all of whom were engaged in an operation at the prison that night.

4. With respect to Wilson he pleads that, while in the corridor of the prison, he was ordered to lie on the ground and beaten by officers with batons and a bolt cutter while being kicked, cuffed and slapped. The officers also stamped and stood on his legs until he crawled back into his cell. He did not receive any medical treatment for his injuries.

5. Joseph pleads that armed and masked officers came to his cell, fired a shot into the cell and ordered him to lie down. A soldier also fired a shot into the cell. The officers opened the cell and called out to him by name. He and the other occupants of the cell were handcuffed and ordered to lie on the ground outside of the cell. The officers again called out his name and, when he identified himself, hit him on his back with a baton. The officers then pushed a baton against his neck and slapped, cuffed and kicked him about his body and stamped upon him until he became unconscious. Upon his retaining consciousness he was beaten with a baton and then dragged along the ground and thrown back into his cell. He was later taken to the infirmary for medical treatment.

6. With respect to Sobers, according to his pleading, on the said date he was in his cell when officers came to the front of his cell and identified him by way of his Muslim wear. He was then shot in the face by one of the officers. He fell unconscious and when he regained consciousness he was being dragged out of the cell by the officers. He was then assaulted and kicked about his body. When he tried to defend himself he was shot again by the officers. He fell to the ground but continued to be beaten by them. He was taken to the infirmary but not treated

there. He was subsequently placed in a cage for three hours. Two hours later he was taken to the hospital where he received medical treatment.

7. The Defendant admits the presence of officers of the Defence Force and the Police Service together with prison officers in the remand prison that day but denies that any of the officers present were beating inmates in all sections of the prison as alleged. Rather the Defendant pleads a history of subversive and disorderly behaviour by a group of inmates incarcerated in the north wing of the prison. According to the defences this behaviour began in the month of May 2006 and continued with intermittent flares of insurrection up until 11th November 2006.

8. According to the defence in Sobers during that period, that is May to November 2006, prison officials never regained control of the north wing of the prison. According to the defences in Wilson and Joseph the prison officials were able to regain control of the north wing at various times during that period but on or about 11th November 2006, a group of inmates incarcerated in north wing of the remand prison once again seized control of the north wing and committed acts of violence, vandalism and subversion which threatened and directly violated the safety and well-being of prisons officers and other inmates. With respect to Wilson and Joseph the Defendant admits that it is not in a position to ascertain whether or to what extent they were involved in these activities. While no such admission is made with respect to Sobers no particular reference is made to Sobers in this regard in the defence.

9. As a result of the activities of the inmates the Commissioner of Prisons sought the assistance of the Minister of National Security who approved a course of action which would allow personnel from the various arms of the protective services to assemble at the remand prison and conduct an exercise designed to restore order in the north wing of the prison and a search of the inmates. Pursuant to this approved course of action, the Defendant pleads, that a contingent of officers from the Defence Force, the Police Service and the Prison Service, armed with both lethal and nonlethal weapons, entered the north wing of the prison with the intention of restoring order. Some of these officers were masked and others unmasked. The group of officers who entered the north wing were armed with non-lethal weapons only.

10. The Defendant pleads that this group of officers first ordered the inmates to re-enter their cells some complied but the majority, including Wilson by his admission, did not. The inmates who refused to comply, including Wilson, began using obscene and offensive language towards and hurling missiles at the officers as well as breaking the lights. The officers, in order to quell the disturbance, then engaged in anti-riot measures which included the discharge of gas canisters containing nonlethal powder and the discharge of nonlethal rubber bullets in the direction of the mob of inmates.

11. Some inmates then complied with the instructions to return to their cells but others, including Wilson by his admission, did not. Those inmates were then placed in cells. Sometime later each inmate was removed from their cells and thoroughly searched. Some inmates resisted the search and in the circumstances force was used to subdue those inmates. Wilson was not one of these inmates.

12. The Defendant admits that Wilson was not taken to the infirmary but alleges that this was because he did not receive any injuries during the exercise and denies that Wilson was attacked in the manner alleged. The Defendant admits that Joseph was observed by the prison officers to be suffering from injuries to his upper body, but pleads that it is unknown at what point in time Joseph would have received these injuries or which officer or inmate would have inflicted these injuries. The Defendant denies that Joseph was singled out by name or that he was beaten in the manner claimed.

13. With respect to Sobers the Defendant denies that he was specifically sought out and identified in a particular capacity or intentionally shot in his face or assaulted. While admitting that Sobers was taken to the infirmary, rather than being placed in a cage as alleged, the Defendant states that Sobers was placed in a holding bay prior to being medically examined. Insofar as Joseph and Sobers are concerned the Defendant pleads that any force used against them was necessary for the purpose of suppressing the mutinous activities of the inmates and was reasonable, appropriate and proportionate in the circumstances.

14. The issues for my determination are in the main factual. Insofar as Wilson is concerned I am called upon to determine whether Wilson was injured at all on that date as he alleges, and if so, whether such injury was suffered at the hands of the servants of the Defendant. With respect to Joseph and Sobers it is not in dispute that they suffered injury the issue here is whether either or both of them were injured by the servants of the Defendant. If, however, I conclude that any or all of the Claimants were injured as a result of the actions of the officers

that night then I am required to determine whether the use of such force was reasonable in the circumstances. Insofar as this latter question is concerned it is a mixed question of fact and law.

The evidence

15. In the main the evidence of the Defendant speaks to the general situation that obtained in the prison at the time. No specific evidence was led with respect to any of the three Claimants who gave evidence nor, indeed, with respect to any of the Claimants at all. The Defendant's evidence was geared towards establishing that there was in existence in the prison at the time an unusual and critical state of affairs and that the actions of the officers were not excessive but commensurate with the gravity of the situation. With respect to the manner of treatment of the Claimants and the injuries suffered by them the Defendant relies on my assessment of the credibility of the Claimants.

16. At the end of the day therefore the credibility of the Claimants is of utmost importance both with respect to their individual cases as well as to the other claims in the categories they represent. With respect to Wilson I am required to determine whether he was in fact injured and if so the circumstances under which he received these injuries. With respect to Sobers and Joseph, while it was not in dispute that they were injured, a determination of the manner in which their injuries were inflicted is critical. In all three cases I am required to make this determination without any assistance by way of evidence from the Defendant with respect to the specific allegations.

17. Medical records confirming injury were provided for both Sobers and Joseph. No medical records or reports were provided for Wilson. The records from the hospital showed that upon admission on 12th November 2006 Sobers was diagnosed as having gunshot wounds to left face (rubber pellets) and a comminuted displaced fracture of left maxillary sinus and upper left dento-alveolar segment. With respect to Joseph the records provided from the prison infirmary show no endorsement for 11th November 2006 but on the 13th November 2006 there is the following endorsement “allegedly beaten by officers on 11th November 2006 in joint exercise O/C swelling R deltoid (soft tissue injury). No other injuries seen.” However the Outpatients’ Log Book for the prison for 11th November 2006 records swelling and tenderness to left upper back; a laceration of approximately 1 cm to left temple in proximity to left eye, and swelling and tenderness.

18. Each of the Claimants gave evidence on their own behalf. No other evidence was led on behalf of the Claimants. None of the three Claimants accept that there was rioting by prisoners on that date. According to all three Claimants the officers were engaged in “an operation”.

Sobers

19. According to Sobers his witness statement is in support of his claim for personal injuries suffered at the hands of prison officers on 11th November 2006. In his witness statement he says that he was in his cell, in the upper shallow, at 7:00 p.m. that night with three other persons. He says at that time the cell was locked and he was studying Arabic and Islamic studies. After hearing what sounded like gunshots coming from downstairs he came to the gate of his cell

and stood there. An armed officer came and stood in front of his cell. He says he moved back a little into the cell. The officer stood in front of the cell for a few seconds and then pointed the gun at him and shot him on the left side of his face just under his nose and above his lip. He fainted and was awoken sometime later by the smell of teargas. As a result of the gun shot he was in extreme pain. There was blood all over him including on the clothing that he was wearing. He could hardly move any part of his jaw and was not able to talk.

20. Thereafter five officers came into the cell pulled him out and started to beat him. He was dragged out of the cell by the officers and placed in the corridor. The officers then started beating and kicking him. He tried to block lashes to his head with his hands. After a few minutes he managed to get up and run for a short distance. He was then shot again, this time on the left side of his waist, and fell to the ground. The officers approached him again and started to beat and kick him as before. Some of these officers were masked and some were not. He tried to defend himself and was pushed against the railing and fell off one level, about 8 feet. As a result of that his left arm was sprained. The officers then came downstairs and started to beat him again. He was subsequently taken to the infirmary but was not treated. After a long while he was taken and placed into a cage with three other inmates. By this time, both his eyes closed up and he could not see. He remained in the cage for three hours before being taken to the hospital.

21. The medical records produced with respect to Sobers reveal that he was admitted to hospital on the 12th November 2006 and discharged on the 20th November 2006. On admission he was diagnosed as having gunshot wounds to the left face and a comminuted displaced fracture of left maxillary sinus and upper left dento alveolar segment. The progress notes for the 12th

record bleeding from his mouth and difficulty in opening his mouth and left eye; lacerations to his upper lip; a tender area over left cheek; soft tissue swelling to left cheek; ????? one finger breath and blurred vision in left eye. According to the observations made at the time there was extensive laceration of the alveolar with the area appearing to be shattered and a loss of teeth. His medical records note that upon admission to hospital instructions were given for him to have both a CT scan and a chest x-ray. The records also reveal that on the 24th November he was admitted to the Sangre Grande Hospital, administered painkillers and discharged the same day.

22. There is annexed to his witness statement a written statement given by him to the prison authorities dated 24th November 2006. From the contents of the statement it would seem that it was made on his return to the prison from the Sangre Grande Hospital on the evening of 24th November, and forms a part of a report made by him with respect to occurrences on the 11th November. In that statement Sobers states that he was shot by a soldier in the remand prison and suffered injuries to his mouth and eye. The statement contains no allegation of any beating or further injuries. Although the statement is annexed to his witness statement no explanation is proffered by Sobers with respect to the inconsistencies between this statement and his evidence before me.

23. Apart from pointing out the inconsistencies between his witness statement, the medical report and the contents of his statement of 24th November, nothing much turns on his cross-examination.

Joseph

24. According to Joseph he was in his cell that night together with other inmates. He says a number of prison officers entered into the prison with members of the Emergency Response Unit of the prison service, the police force and defence force. He says that as far as he could see the prison officers were armed with batons and other officers with firearms. He heard loud noises sounding like gunshots. There was a lot of noise and commotion and some of the inmates who were outside of their cells scampered for safety. He says soon afterwards some of the officers came to his cell and fired a shot into it and he was ordered to lie on the ground. Another shot was fired by one of the soldiers. The cell gate was opened and the officers called out his name as well as the names of his other cellmates. They were handcuffed and made to lie on the ground.

25. While lying on the ground some of the officers called out his name and he identified himself. The officers then began to beat him with batons first on his back and then all over his body. He was slapped and cuffed in his face when he fell to the ground. They started kicking him in his face and head as well as his ribs, stomach, arms, legs and his neck. He says officers were also stamping on him. He received another blow to the left side of his head. He put his hand to the spot and saw blood on the palm of his hands. He tried to kick the officers off to prevent them hitting him but he could not as his legs were too weak. He eventually fell unconscious. When he regained consciousness the beating continued despite his pleas. He was then returned to his cell. He says his vision was blurred and he could not see properly. A few days later he was taken to the infirmary.

26. Under cross-examination, Joseph accepts that he was handcuffed when he came out of the cell. The cross-examination establishes that in those circumstances he could not have put his hand to his head in the manner he alleged. Nothing else turns on Joseph's cross-examination.

Wilson

27. According to Wilson that night he was outside of his cell in the upper floor of the prison together with other inmates when the officers entered the prison. He says the prison officers were armed with batons and the other officers with firearms. According to him the officers entered the prison from the lower level and started beating inmates as they walked deeper into the prison. There was a lot of noise and commotion coupled with screams of the inmates that were being beaten. There were also loud explosions coming from the gunshots the officers were firing upstairs.

28. He says shortly after some of the other officers came upstairs to his section. He was told to lie on the ground. The officers started stamping on him and kicking him all over his body. The blows became more severe. He was being beaten with batons and from a bolt cutter. He tried to avoid the blows by twisting and turning but it was of no use. He says he saw some blood on the ground next to him and passed his hands over his head and realised that blood coming from him. According to him the beating continued. He was then told to go to his cell and beaten and kicked until he got there. He was never taken to the infirmary or treated for his injuries. As a result of the beating he says his body was black and blue all over and he had an open wound to his head.

29. Under cross-examination Wilson admits that he was handcuffed at the time. Except to point out inconsistencies between his Statement of Case and his evidence and demonstrate the impossibility of his passing his hands over his head while being handcuffed nothing much turns on his cross-examination.

The Defendant's evidence

30. Evidence on behalf of the Defendant was given by the Commissioner of Prisons, John Rougier ("Rougier"); a member of the Defence Force and the person in charge of the contingent of soldiers, Arden Williams ("Williams"); and a retired police officer then attached to the Guard and Emergency Branch of the Police Service and the senior police officer present at the time, Ameer Mohammed("Mohammed").

31. In his evidence in chief Rougier lays the background to what led up to the incident of 11th November. He recites a history of insubordination and incidents of insurrection by a group of inmates in the north wing of the remand prison and his attempts to resolve the situation culminating with the events of 11th November. According to him on that date as a result of reports received from his officers at the prison, and given the limited capacity of the specialist Emergency Response Unit within the prison ("the ERU") he sought the assistance of the other arms of the protective services. He says that he spoke to a contingent of officers from the various arms of the protective services as well as his ERU unit at around 1:00 p.m. that day. He gave them all the information he had about what was happening in the north wing and told them that he had information that there were particular individuals who were largely responsible for these activities.

32. During the course of the afternoon he continued with his efforts to resolve the impasse with the inmates. These attempts were futile. As a result he contacted the prison infirmary and put them on alert in case any person, officer or inmate, was injured during the course of the evening. He says that the contingent of officers, both masked and unmasked, breached the north wing at around 6:00 p.m.

33. According to him he was at that time concerned that there was an organised attempt to mutiny against the prison and commit violent assault. He says, as well, that he was cognisant of the fact that there were some inmates in the north wing who were not directly involved in riotous activities and were essentially hostages and was concerned for their safety. According to him sometime later when the violence had subsided to a suitable degree he ordered the prison officers to remove each prisoner from his cell and conduct a thorough search of their cell and their person.

34. With permission this witness amplified the contents of his witness statement with respect to the clothing that the inmates of the prison were allowed to wear. According to him, Muslims were given permission to wear their religious clothing on a Friday only. On all other days they were supposed to be in normal clothing. This evidence was with particular reference to the evidence of Sobers.

35. Documents put into evidence through this witness include two handwritten lists, dated Saturday, 11th November 2006 and Sunday 12th November 2006, containing the names of some 50 inmates and a brief description of their injuries. Wilson's name does not appear on

either list. Neither does Sobers. Except to introduce these lists into evidence in a bundle together with other documents, including the medical records of Sobers, described as “all statements and records concerning the events of November 11th, 2006, which is in the custody of the Trinidad and Tobago Prisons Service” no assistance is given by this witness, whether by way of cross-examination or otherwise, with respect to these lists.

36. Noticeably absent are any records or statements concerning the actions of the officers of the protective services on that date. Of particular note is the absence of any record made prior to the intervention by the other arms of the protective services as to the planned incursion into the prison, the reason for it or any record made after the incursion as to the manner in which the action plan was implemented.

37. With respect to the specific issues for my determination not much turns on the cross-examination of this witness. It was clear however that he could give no specific evidence of what occurred in the north wing on 11th November, since he was not present in the north wing at the time. From his evidence it was however painfully obvious that proper procedure with respect to the reporting and documentation of events were not adhered to. Neither was there compliance or adherence to the disciplinary procedures established by the Prisons Rules.

38. Indeed there were times in the cross-examination of the witness when it was not quite clear whether he was in fact saying that some of the provisions of these rules had been replaced by general orders issued by various Commissioners of Prisons over the years. Nor, despite the submissions of attorneys for the Defendant, was there in my opinion full disclosure by this

witness of all the documents directly relevant to the events of 11th November 2006. It was also apparent from his evidence that the effective command of the attempt to get the prisoners back into their cells had been handed over to the police.

39. The evidence of Williams in chief is that he and his soldiers entered the prison at around 6:00 p.m. that night. He says when he entered he observed a number of inmates outside of their cells, shouting, making threatening remarks and acting in an aggressive manner. He says a party of officers went up the stairs and entered the gate leading to the upper cells. He and his officers remained downstairs. Thereafter he heard an explosion and some activity which he says led to a scampering of the prisoners into the available cells.

40. A short while after, he says, he saw prison officers accompanied by other members of the protective services conducting searches throughout the cells extracting personnel, cell phones and improvised weapons. Contraband items were recovered from prisoners in a number of ways including having the inmates strip naked and stoop to the floor while holding their knees to force the contents of their bowels to be released. He says these excretions included cell phones, chargers and improvised weapons wrapped in plastic.

41. In some instances, he says, he noticed the use of force against inmates during the searches. He gives as an example of this an incident where what appeared to be a riot control weapon was fired at close range into a cell. He says he cannot recall whether it was a prison officer or police officer who discharged the weapon. According to him immediately thereafter a prisoner was removed from the said cell carrying an injury to the location where one of his eyes

was previously located. I understand this to mean that the prisoner had an injury in the area of one of his eyes causing, what seemed to him, to be the loss of that eye.

42. He also saw prisoners who were resisting the searches being forcibly removed from their cells forced to lie prostrate on the floor and aggressively searched. In some cases batons were used to probe the inmates. Some inmates were forced to loosen their bowels to reveal the contents. He says some of the inmates who resisted the searches or being moved were hit. According to him in his witness statement he did not experience any effects of the use of tear gas or pepper spray. Neither did he see any officer use gun butts to hit anyone or bolt cutters inside the facility.

43. According to Williams prior to entering the prison he briefed the soldiers on their role and instructed them that they were not to engage in direct communication or contact with the inmates. According to him they were there for the purpose of providing assistance and protection to the paramilitary officers. He says from his observations he was satisfied that the soldiers were adhering to his instructions. By way of amplification of the evidence contained in his witness statement, with particular reference to the evidence of Joseph and Wilson, he says that he only saw plexi-glass handcuffs being used during the period. This, he says, is routine in riot control and have to be cut off to be removed.

44. According to Williams under cross-examination he understood the operation that was being carried out to be one aimed at putting inmates who were out of their cells back into their cells and then to carry out a search of the inmates. According to the witness under cross-

examination when he first went on site he was held back after the initial entry. He says he stood downstairs for a bit until he was taken upstairs by the ERU. While downstairs, he says, he was unable to see what went on in the upper wing but from the upper wing he could see what was going on downstairs. He accepts, however, that given the size of the area it was impossible for him to see all that was happening. With respect to the lighting he says that the lighting in the upper level was appreciably better than the lower level.

45. With respect to the incident concerning the weapon fired at close range he says that he was about 75m away at the time. In that particular instance what he heard was the sound of a shot gun type round using what is called a bean bag. According to him, this is a sort of hybrid type ammunition used for riot control. He says the only shots that he heard being fired on that date were indicative of the use of riot control ammunition as opposed to live ammunition.

46. The evidence of Mohammed is that he was at that time attached to the Guard and Emergency Branch of the Police Service and was the senior police officer in charge of the operations of this branch in the prison on that date. According to his witness statement their instructions were to bring some order to the prisoners and get them back into their cells so that the prison officers could conduct a roll call and a thorough search of all the prisoners and the prison.

47. In preparation for entering the prison he requested that they be issued with nonlethal ammunition, pepper gas and bean bag bullets also referred to as rubber bullets. He says that he and his team, who were all unmasked, armed with a combination of lethal and nonlethal

arms and ammunition entered the upper level of the north wing. They were followed by the ERU officers who were masked and armed only with batons. According to him he wanted the ERU members right behind his unit because they were familiar with the wing layout and he wanted them to be able to lock down the cells after they got the inmates into their cells.

48. From the upper level he could see what was going on in the lower level. He says he instructed all inmates to get into a cell and remain quiet or else they would use force. Some prisoners complied, but the majority, about 75, remained outside the cells and began to throw missiles and curse and threaten them. According to him in his evidence in chief at this stage he gave instructions to throw one canister containing coloured powder towards the mob of inmates and one skat shell containing pepper gas.

49. The inmates continued throwing missiles at them many of which hit him and his men. He then ordered some stinger grenades containing rubber bullets to be fired at a lower area in the vicinity of the inmates' legs. According to him the assault by the inmates continued with the inmates advancing towards his men. He then ordered his team to open fire on the advancing mob using rubber bullets.

50. After the smoke cleared he noticed that there were far there were fewer inmates outside the cells as some had sought refuge in the cells. He says the wing was littered with missiles which had been thrown by the inmates. These missiles included bags of what appeared to be human faeces, bottles filled with water and other improvised weapons. The inmates who remained outside then submitted to them and he instructed them to enter into any cell. He says

some of them appeared to be injured. He says at that time he called in the ERU officers who were behind them and instructed them to lock all the cells. By this time, he says, the inmates in the lower-level were also inside their cells. At that point in time the other members of the contingent began coming into the upper level of the north wing.

51. According to Mohammed he then heard a member of the ERU telling the inmates to throw all contraband items out into the corridor. Some of the inmates, he says, began throwing out cell phones, bits of marijuana, sharpened instruments and water bottles among other things. After that was done each inmate was taken out of this cell and placed on the floor in the corridor and thoroughly searched by the ERU officers. Force was used on those inmates who resisted the searches. According to him, this force included manhandling of the inmates. Each cell was also searched. He says that the searches were done in the presence of his team and the other officers who had by that time, entered the north wing and who remained on guard. He says that during the searching process persons who were identified by prison officers as the ring leaders in the riots were separated and placed in a different area in the prison.

52. According to him there were multiple searches going on at the same time. He could not therefore be aware of the circumstances of each and every search. He and his officers remained inside the prison until about 11:00 p.m. Later that night he was informed by the Commissioner of Prisons that some inmates had been injured and that one inmate had received severe injuries to one of his eyes. In support of his evidence Mohammed produces a copy of the station diary for Saturday 11th November 2006 which he says was a record made by him of the day's events after returning to the station.

53. Under cross-examination, however, it transpires that the first thing that he did when entering the prison was to order shots to be fired to maintain what he refers to as “an element of surprise”. According to him 16 shots of nonlethal 12 gauge cartridges were used for this purpose. He says, “we ambushed the area with those shots”. With respect to the injuries to the inmates seen by him that night he says he only observed them rubbing their eyes and scratching their skins. He saw no serious injuries, no loss of an eye, no bleeding, no “buss” head. After the searches were completed, he says, some prisoners were taken away from the remand prison but he did not know their destination. According to him, with respect to injuries to the prisoners, the prison officers would be in a position to give a better account of that. With respect to the searches, he says, he did not see any prisoners being dragged out of their cells or batons being used to beat anyone.

54. Of some interest however, is the copy of the station diary produced by him. The entry, recorded as being made at 11:50 pm, notes the return to base of Mohammed and his officers. According to the entry the exercise was carried out as a result of lawlessness over a period by inmates who “actually” disobeyed prison officers and failed to occupy their cells causing officers difficulties in locating inmates “hence a solution was formulated to locate leaders of certain gangs and have them placed in strategic places, which is safe to the officers.” The entry further recites that “as a result of this process several minor incidents of retaliation were noticed and encountered and it became absolutely necessary to exercise force by us and in our presence by other officers of the prison service”.

55. According to the entry during this process Mohammed “gave permission to members of the GEB to use one? Skat shell; four stingers and 16 nonlethal 12 gauge cartridges..... The use of these ammunition had a psychological effect on the inmates where their behaviour was contained to conduct the exercise which several cell phones, knives made and adapted and the quantity of marijuana was found and seized. No inmate was arrested or charged and the mission of separating the ringleaders was accomplished all otherwise correct and no personnel was hurt, injured or physically assaulted only that they were all threatened to be marked or implied to be otherwise serious by several inmates, no other reports.” Mohammed accepts in cross-examination that the station diary represents an accurate but skeletal account of what occurred on that night.

56. Insofar as the conditions that obtained in the remand prison on that evening is concerned, we have therefore two diametrically opposed versions. According to the Claimants the officers were engaged in an operation on that date. The effect of their evidence is that save as to the operation being conducted by the officers there were no unusual circumstances occurring in the prison on that date. Under cross-examination there was however a noticeable reluctance on the part of the Claimants to elaborate with respect to what the operation entailed.

57. The effect of the evidence led on behalf of Defendant was that the prisoners were rioting. They had congregated in the corridors and were refusing to follow lawful instructions to return to their cells. As well they had had their possession contraband items, including makeshift weapons and retaliated to the officers’ attempts to control them by throwing missiles. It must be noted however that, consistent with the defences pleaded, except with respect to the medical

records there is no specific reference in the evidence led on behalf of the Defendant to the particular Claimants or indeed to any specific inmate, save perhaps insofar as Williams' account of the injury to the eye of one of the inmates. Neither is there any evidence of prisoners fighting among themselves or of the lighting being bad. Indeed the evidence from Williams under cross examination is that the lighting on the upper level was appreciably better than on the lower level.

58. I accept the evidence led by Rougier with respect to the history of rebellion and insubordination by prisoners in the north wing of the prison over the period May 2006 to November 2006. With respect to the general conditions that obtained in the prison that night I accept the evidence of Williams. To my mind his evidence was consistent and credible. That said, it is clear that Williams was very guarded in his evidence and not prepared to give information away easily. An example of this is his evidence with respect to the use of pepper spray. Mohammed admits that pepper spray was used by the police officers to control the inmates. Williams, however, does not admit the use of pepper spray. His evidence in chief is merely that he did not experience any of the accompanying effects of the use of tear gas or pepper spray. Under cross-examination his evidence with respect to this statement is suitably vague and avoids any confirmation of the use of either.

59. With respect to Mohammed, there were clearly some inconsistencies between his evidence in chief, his cross-examination and the contents of the station diary. This is particularly so with regard to the use of the ammunition that night. According his witness statement his first attempt to control the inmates was by the use of pepper gas. In cross-examination, however, he admits to first ambushing the area with 16 shots of nonlethal 12 gauge cartridges. The failure to

produce an extract of the station diary confirming the amount and type of ammunition issued to the police officers at the beginning of the exercise does not assist in instilling any confidence in his credibility with respect to the ammunition actually used in the exercise. In addition the undisputed evidence of the number of inmates who were injured in the exercise and the nature of some of the injuries renders his evidence as to his not observing injuries to any of the inmates, except with respect to the use of the pepper gas, somewhat suspect.

60. Williams confirms the evidence of Mohammed with respect to the refusal of the inmates to return to their cells despite being instructed to do so; their possession of contraband items and their generally aggressive behaviour. I accept this evidence. Williams however does not confirm the use of missiles by the inmates. While it is clear that he and his men were only allowed on to the upper floor after the inmates had been returned to their cells and, if Mohammed is to be believed, after the officers were attacked with the missiles. It would seem to me that if Mohammed is correct with respect to the use of these missiles, and in particular bags of faeces and bottles of water, the presence of these items would have been evident to Williams when he was given access to the upper floor. Indeed, Mohammed states that the floor was littered with these missiles.

61. The only evidence with respect to the use of missiles by the inmates comes from Mohammed. According to him it was only after the prisoners began to throw missiles at them that the pepper gas was used. When this behaviour continued he then ordered the stinger grenades containing rubber bullets to be fired at a lower area in the vicinity of the prisoner's legs. According to the record made by him in the station diary, however, no personnel was hurt,

injured or physically assaulted. I take the use of the word personnel to refer to his police officers. This does not accord with his evidence in chief that many of the missiles hit him and his men. I do not accept the evidence of Mohammed with respect to the throwing of missiles by the inmates.

62. At the end of the day therefore I accept the Defendant's evidence that there was an unusual situation in the north wing of the prison on that date. I accept that on that night inmates were congregated in the corridors and were refusing to obey instructions to return to their cells. This was the culmination of various episodes of insubordination by inmates of the north wing over a period of months. Members of the Police Service and the Defence Force were recruited to assist in an exercise which would return some element of control to the prison officers and allow for the recovery and removal of all contraband items from inmates. As well the exercise was also aimed at identifying the ring leaders and removing them from the general prison population.

63. On that date there was an initial foray into the upper level of the north wing headed by the police officers of the Guard and Emergency Branch under the command of Mohammed. These officers were unmasked and armed with lethal and nonlethal ammunition. They were accompanied by prison officers attached to the ERU who were masked and armed with batons. At that time the members of the Defence Force led by Williams were on the lower-level of the north wing but were prevented from entering the upper level of the north wing.

64. Immediately upon the entry of the police officers a round of ammunition was fired: 16 shots of nonlethal ammunition. This caused some of the inmates to scamper into the cells.

Thereafter coloured powder and pepper gas were discharged into the crowd of inmates. At some point in time other rounds of nonlethal ammunition was discharged by the police officers. The inmates were aggressive but did not physically assault any of the officers. Neither do I accept that missiles were thrown by the inmates. Up to this time the operation was being conducted by police officers under the command of Mohammed.

65. After the situation in the upper level was brought under some control and the inmates returned to their cells with the assistance of the prison officers the members of the defence force led by Williams were allowed onto the upper level. It was at this time that the searches of the cells and inmates began. These searches were conducted primarily by prison officers. It was during this period that Williams observed a riot control weapon being fired at close range into a cell and immediately thereafter a prisoner with injury to one of his eyes being removed from that cell.

66. Force was used on some of the inmates who refused to exit the cells or resisted being searched. This force included prisoners being hit and being forcibly pulled out of the cells and fingers pried from the bars. It also included inmates being “aggressively searched” in the words of Williams or “manhandled” in the words of Mohammed. The method of search incorporated the use of batons to probe the inmates internally causing them to evacuate their bowels.

67. Given the other objective of the exercise it must be during this part of the exercise that those inmates identified as being ring leaders would have been singled out by the prison

officers present for special attention. Over 50 inmates suffered injury of one type or another on that date. The majority of those who received medical treatment were treated at the infirmary but others were referred to the hospital.

68. Despite the conditions that obtained in the north wing on that date if I accept the evidence of the Claimants then it is clear that there is evidence to support a finding that a prima facie case in assault has been made out against the Defendants. There is no evidence from the Defendant specifically contradicting the evidence given by the Claimants as to the treatment meted out to them by the officers.

69. There is however some evidence from the Defendant which corroborates the Claimants' evidence. This evidence includes, with respect to Sobers and Joseph, the medical evidence; the evidence of Williams with respect to his seeing an officer discharge a riot control weapon at close range into a cell and the removal of a prisoner with an injury to his eye from that cell immediately thereafter; and the identification of certain inmates, the ring leaders, by the prison officers. With respect to all three Claimants there is the evidence of physical attacks on the inmates: of Williams as to the manner by which some inmates were removed from their cells and of both Williams and Mohammed with respect to the aggressive nature of the individual searches. As well from the chronology of events described by the Defendant's witnesses it is possible to put the evidence of the Claimants into some context.

70. While I accept that by merely referring to the events that occurred that night as an operation being conducted by the officers the Claimants are not speaking the truth, the real

question is whether, insofar as they speak of the beatings and other damage inflicted on them, they are to be believed. The Defendant submits that if I accept that the Claimants are not telling the truth with respect to the conditions that obtained in the prison at the time then I must find that they are not credible witnesses and reject the whole of their evidence.

71. I do not accept the submission. In my experience it is not unheard of for a party to be found to be lying with respect to certain facts, but telling the truth with respect to others. Indeed facts in dispute are hardly ever black or white. If that was the position the role of the trial judge as the arbiter of the facts would be made much simpler by the application of a “one strike and you're out” rule. The problem faced by the trial judge is that in the majority of cases there is generally an element of truth in both versions of the facts.

72. The fact that a party may be found to be incorrect or untruthful about a particular fact or set of facts is, in my opinion, only one of the circumstances to take into consideration in coming to a decision on credibility in general. In this regard the Claimants’ position with respect to the insurrection is not surprising particularly if the reason for them being singled out for special attention is the fact that they were identified by prison officers as being ring leaders. In similar vein the fact that I accept the Defendant’s claim that there was insubordination by inmates that night and during the period May to November does not mean that I must accept every bit of evidence given by the Defendant.

73. The Defendant further submits that in assessing the balance of probability I must recognise that the more serious the allegation the less likely it is that the event occurred. The

more serious the allegation therefore the stronger the evidence required to prove it. I accept that the burden of proof is on the Claimants and to discharge that burden each Claimant must satisfy me, on a balance of probability, that they were assaulted in the manner they allege. And I accept that this requires me to consider whether it is more likely than not that the facts occurred in the manner claimed by them. While I accept that these are serious allegations and strong evidence is required to prove them, my dilemma arises from the fact that the Defendant presents no evidence from any of the prison officers and in particular, any member of the ERU present on that date.

74. Given the allegations made by the Claimants and the evidence of both Williams and Mohammed to the effect that any individual interaction with the inmates was done by the prison officers this, to my mind, is a telling omission. From the size and geography of the north wing and the events that were taking place on that date it is clear that neither Williams nor Mohammed could have seen everything that was happening at the time. Further it is clear that it is the prison officers who would have been in a position to identify those inmates marked for special treatment. Yet not one prison officer, whether a member of the ERU or not, present in the remand prison on that date is on hand to give evidence.

75. What then is a court to do in these circumstances? In the case of **Ian Sieunarine v Doc's Engineering Works (1992) Limited HCA No. 2387 of 2000**, relied on by the Defendant, Rajnauth-Lee J. when faced with a similar situation drew assistance from the case of **Winiewski v Central Manchester Health Authority [1998] P.I.Q.R. Volume 7 at page 324**.

76. In dealing with that case, in the case of **Benham Limited v Kythira Investments Ltd [2003] EWCA Civ. 794**, Simon Brown LJ at paragraph 26 summarised the applicable principles as follows:

“(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.(2) if a court is willing to draw such inferences they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness. (3) there must however have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue. (4) if the reason for the witness’s absence or silence satisfies the court then no such adverse inference may be drawn. If, on the other hand, there is credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified.”

77. In the Australian case of **O’Donnell v Reichard [1975] VR 916** referred to and adopted in Wisniewski’s case, after considering a number of authorities Newton and Noris, JJ were of the opinion that:

“the law may be stated to be that where a party without explanation fails to call as a witness a person or man he might reasonably be expected to call if that person's evidence would be favourable to him, then, although the jury may not

treat as evidence what they may as a matter of speculation think that person would have said if he had been called as a witness, nevertheless it is open to the jury to infer that that person's evidence would not have helped that party's case; if the jury draw that inference, then they may properly take it into account against the party in question for two purposes, namely(a) in deciding whether to accept any particular evidence which has in fact been given, either for or against that party, and which relates to the matter with respect to which the person not called as a witness could have spoken; and (b) in deciding whether to draw inferences of fact which are open to them upon evidence which has been given, again, in relation to matters with respect to which the person not called as a witness could have spoken.” : **page 929**.

78. The position in both cases, to my mind, accords with common sense and I accept it. In answer therefore to the question why would the party not present such a witness to give evidence it is open to a court, sitting without a jury, to infer that it was not done because the evidence would not have helped that party's case. Such an inference must not however be made in a vacuum but rather only in support of already existing evidence.

79. It is clear that there is evidence adduced by the Claimants with respect to the individual assaults but no evidence adduced by the Defendant in this regard. While it is understandable that in circumstances such as these there would be an element of mass confusion in my opinion the evidence of a prison officer present in the north wing that night, member of the ERU or otherwise, would have assisted in identifying the specific duties of the prison officer in

the exercise and the manner in which they discharges those duties. This to my mind was particularly important given that: (i) one of the objectives of the exercise was to identify and separate the ringleaders and only the prison officers would have been in a position to do so; (ii) two of the Claimants allege that they were specifically singled out for attention and (iii) according to Mohammed and Williams the removal of the prisoners from their cells and the manhandling or aggressive searches were done by the prison officers.

80. No reason has been given for the absence of evidence from a prison officer present in the north wing on that night. It would seem to me that in these circumstances it is open to me to infer that such evidence was not adduced because it would not have been helpful to the Defendant's case. In the circumstances it seems to me that should I make such an inference this inference can be used to strengthen the cases presented by the Claimants.

81. In this regard the Defendant submits that I should apply the same principle in law to the failure of the Claimants to produce witnesses to their assault. In particular the Defendant submits that both Sobers and Joseph could have produced their other cellmates to support their case. Although no excuse is given in evidence by the Claimants with respect to such failure the fact is that on the pleadings it would have been evident that the Defendant had no specific evidence with respect to the Claimants. In this regard therefore the evidence of the Claimants with respect to what occurred in each particular case could not have been challenged by evidence to the contrary led by the Defendant at the trial. In those circumstances, it would seem to me that this is not an instance where the Claimants would necessarily have been expected to call any supporting witnesses.

82. Further it is clear, at least with respect to Joseph, that if I accept his evidence his other cellmates were also simultaneously subjected to the same or similar treatment. It is hardly likely that in those circumstances they would have been in a position to observe the treatment meted out to him. With respect to Sobers, if he is to be believed, he was dragged out of the cell after being shot. At best his cellmates would only be in a position to confirm that he was shot. In this regard however there is the unchallenged medical evidence. In these circumstances, it seems to me, that there would be no need for Sobers to call one of his cellmates to give evidence.

83. In addition with respect to all three Claimants common sense dictates that I must bear in mind the fact that they were inmates of a remand prison, that is, a prison housing persons awaiting trial. In the circumstances of a transient population it is not implausible that the Claimants would either: not know their cellmates, not know them by their proper names or not be in a position, some four years afterwards, to find or trace them. The prison authorities on the other hand would be presumed to have records of the prison officers who participated in the exercise and, even if they are no longer employed, be in a position to find them. In these circumstances it seems to me that no similar inferences can be made with respect to the failure of the Claimants to provide supporting witnesses to their assault.

84. The Defendant submits that in assessing the credibility of the Claimants I must also take into consideration that (i) no action was taken by any of the Claimants until almost 4 years after the incident; (ii) all 57 actions were filed at or around the same time; (iv) differences exist, in my opinion relatively minor, between the evidence and the facts pleaded in the statements of case and (iii) in some instances the exact same words are used to describe events by the

Claimants in their witness statements. While I accept that these are all facts which are relevant to my assessment of credibility, in my view, they are not determinative of credibility.

85. Against these facts I must weigh the failure of the Defendant to adduce any evidence to deal with the specific claim. Indeed if this were a situation where I was called upon to determine which of two versions of the facts were true, then these three facts would assume greater importance and may in some instances resolve the question of credibility. Unfortunately for the Defendant this is not the case. More importantly, however, is the fact that there is some evidence presented by the Defendant which corroborates some of the evidence of the Claimants.

86. At the end of the day therefore it all comes down to a question of how much of the evidence of each of the Claimants I accept. If I accept their evidence in its totality then, even given the conditions that obtained in the prison at the time, it will be difficult for the Defendant to justify the actions of the officers. On the other hand if I reject the evidence of any of the Claimants then that Claimant has not proved his case and there is no need for the Defendant to justify the actions of the officers with respect to that Claimant. If however I accept that assaults occurred but not necessarily in the manner described by the Claimant then the question is whether the injuries suffered were inflicted as a result of the use of reasonable force by the officers to quell the disturbance.

87. Insofar as Sobers is concerned the Defendant submits that in assessing his credibility I must also bear in mind his evidence that he was identified by his Muslim wear and the evidence of Rougier that Muslims were only given permission to wear religious garb on a

Friday. To my mind even if I accept the evidence of Rougier in this regard, and I have no reason to disbelieve him, this does not necessarily affect Sobers' credibility. Rougier does not affirmatively state that no inmate was wearing Muslim wear that night. The most obvious inference to be drawn is that this could have been another example of insubordination by an inmate. Indeed, this may have been the very reason why Sobers was singled out for special attention.

88. I accept Sober's evidence that he was specifically singled out and identified by way of his Muslim garb. I also accept his evidence that he was in his cell at the time and that he was shot at close range in the face by an officer. That such actions were occurring on that date is confirmed by Williams' evidence. This is also consistent with the medical evidence led on behalf of Sobers. I have no doubt however that there is an element of exaggeration by Sobers with respect to the beating he suffered at the hands of the officers. For example there is no medical evidence confirming the sprain to his left hand as he alleges. This, coupled with the contents of his statement made on 24th November, suggests to me that he has greatly exaggerated the assault received at the hands of the servants of the Defendant. To my mind the fact that the written statement claims that the gunshot injury was inflicted by a soldier is of no great import given the fact that it is not in dispute that he suffered a gunshot wound to his face and on the evidence it is clear that this could only have come as a result of the actions of one of the officers present.

89. With respect to Sobers therefore I accept that he was shot with nonlethal ammunition at relatively close range by one of the officers and that as a result of the gunshot wound he suffered serious injury to his face and injury to his eye as confirmed by his medical records. I

accept his evidence that after he regained consciousness he was dragged out of his cell and that, while trying to defend himself, he was beaten by officers. This, in my view, is consistent with William's evidence that inmates who resisted being removed from their cells were hit. I do not however accept his evidence of being shot a second time or falling over the railing onto the lower level and spraining his hand. If this were the position in my opinion there would have been some medical evidence in support of this claim.

90. With respect to Joseph it is not in dispute that he was injured. It is clear however that information recorded in Joseph's medical history record is different from what is recorded against his name in the outpatients' log book. Both these documents emanate from the prison. No attempt is made to give a reason for these differences. With respect to the differences while it is possible to credit the failure of the prison doctor on the 13th November to record as extensive soft tissue injuries as was noted on the night of the 11th there seems to be no excuse, and indeed none has been proffered, for the failure by the doctor to note the laceration to his left temple in the vicinity of his eye.

91. According to Joseph he was not given medical treatment immediately but was taken to the infirmary a few days later. This evidence is confirmed by the fact that the endorsement on his medical history record is dated 13th November, two days after the incident. I accept his evidence. In the absence of any explanation by the Defendant I can only assume that with respect to Joseph while his injuries were noted that night for some reason, not disclosed by the Defendant, he was not taken to the infirmary until two days afterwards.

92. The Defendant suggests that it is possible that Joseph's injury could have been inflicted by another inmate. There is no evidence which would lead me to this conclusion. Indeed from the evidence in this case, including that led by the Defendant, it is more likely than not that the injuries were inflicted by the officers. I accept Joseph's evidence in this regard.

93. I also accept his evidence that he was identified by name. While it is reasonable to accept that there may have been some exaggeration by Joseph as to the manner by which his injuries were inflicted I accept his evidence in this regard. The contents of the outpatient's log, to my mind, confirms that Joseph received injuries to his upper back and head, while the observations of the prison doctor confirms injury to his right deltoid.

94. The Defendant suggests that Joseph is not to be believed because he gives evidence of putting his hand to the left side of his head in circumstances where it is clear that he could not have done so because he was in fact handcuffed. I accept that Joseph could not have put his hand to his head in the circumstances, however, it cannot be disputed that he had a laceration to his left temple. I accept therefore that he was bleeding from a wound to the left side of his head. The fact that he may not have been speaking the truth when he says he put his hand to his head to my mind, while it suggests some embellishment on his part does not, in my opinion, totally discredit his evidence. It would seem to me that at the end of the day Joseph's evidence as to the circumstances of his assault is credible and I accept it.

95. With respect to Wilson, unlike Sobers and Joseph, there is no medical evidence to support the case presented by him. Wilson admits however that he was outside of his cell. From

this I can infer that he was one of the approximately 75 inmates who were refusing to follow the instructions to return to their cells. While there an admission by the witnesses for the Defendant of the use of force with respect to the employment of rubber bullets in removing inmates from their cells and searching inmates Wilson does not claim to be injured as a result of any of these activities. According to him he was outside of his cell and it was while there that he was beaten with batons and a bolt cutter. He gives no evidence of being searched or dragged from his cell. No one else gives evidence of the use of the bolt cutter. I do not accept his evidence with respect to the bolt cutter.

96. He says that he had an open wound to his head and he was black and blue all over his body. If Wilson is to be believed his injuries were serious. It would seem to me that if that was the position, given the fact that there is a record of some 50 persons who suffered injury of one sort or the other that night, there would be some record of Wilson's injuries. It cannot be doubted that injuries, even minor injuries, of other inmates were recorded. If he did suffer the injuries he claims why were his injuries not recorded as were those of the other inmates. It seems to me that it is more likely than not that Wilson did not suffer the injuries as he claims. In the circumstances I do not accept Wilson's evidence with respect to his injuries.

97. At the end of the day therefore I find that there is evidence that both Sobers and Joseph were assaulted by the officers and I accept that evidence. I do not however accept the evidence of Wilson as to his assault by the officers. In my opinion, on the evidence, even if Wilson suffered injury on that night, and I do not accept that he did, it could only have been as a

result of the use of the rubber bullets and pepper spray by the officers in their attempts to get the inmates back into their cell but Wilson does not complain of injury as a result of those actions.

98. In these circumstances the final question to be answered therefore is whether the use of force by the officers on Sobers and Joseph was reasonable. In its submissions the Defendant accepts that force was used by the police officers and the prison officers but says that the use of force was reasonable and commensurate with the situation. According to the Defendant force was employed during the operation for the prevention of crime and preventing and stopping a breach of the peace. Further the Defendant submits that the officers acted lawfully in self defence and the defence of third parties.

99. It cannot be disputed that these reasons all present a justification for assault and battery. To succeed in this defence however the Defendant will not only have to show that at least one of these factors was present but will also have to satisfy me that the degree of force used was commensurate with the situation. The force used must be reasonable and proportionate to both the particular circumstances and for the purpose used: **Halsbury's Laws of England Volume 36(2) 4th Edition (Reissue) page 330 paragraph 589 page 330**. The Defendant must satisfy me therefore that the use of force was strictly necessary for the purpose for which it was engaged, that is the prevention of a crime; to prevent a breach of the peace and or in self defence or defence of others; and that it was not employed for other reasons as, for example, punitive purposes.

100. The following statement made by Circuit Judge Friendly in the American case of **Australia Johnson v A. Glick, warden of Manhattan house of detention for men and others. Number 845, docket 72 – 2428 reported in 481 Federal Reporter 2nd Series at paragraphs 5-8** is in my opinion is particularly apt:

“ The management by a few guards of large numbers of prisoners, not usually the most gentle or tractable of men and women, may require or justify the occasional use of a degree of intentional force. Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers, violates a prisoner’s constitutional rights. In determining whether the constitutional line has been crossed, a court must look to such factors as the need for the application of force, the relationship between the need and the amount of force that was used, the extent of the injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.”

101. On the evidence of the Defendant it is admitted that force was applied for two different purposes: (i) in an attempt to get the inmates back into the cells and (ii) in order to retrieve contraband items from the prisoners. Once I accept the evidence of the Defendant with respect to the circumstances that obtained in the prison that night prior to the entry of the officers and the futile attempts made earlier to resolve the situation, as I do, it is clear that the decision to use an element of force to ensure that the prisoners returned to their cells was a sound one and cannot be faulted.

102. The question remains whether the force used was excessive. It is clear that the use of 16 shots of nonlethal 12 gauge cartridges “to ambush” the area was of limited success. Some 75 prisoners remained outside of their cells. These prisoners responded by cursing and threatening the officers. The next step was to discharge one canister containing coloured powder and one skat shell containing pepper gas into the crowd of inmates. When this did not work stinger grenades containing rubber bullets were fired into the crowd of prisoners directed in the vicinity of the prisoner’s legs. I accept that rather than disburse and return to their cells the inmates continued their threats and began advancing towards the officers. It was at this time that the officers opened fire on the advancing mob using rubber bullets. This, it seems, achieved the desired result in that, according to Mohammed, after the smoke cleared he noticed far fewer inmates out of their cells and those inmates then submitted to them.

103. Mohammed seeks to justify the second phase of this attack, that is the use of the rubber bullets directed at the inmates, as being a response to the threats and the missiles being thrown by the inmates at them. At the end of the day while I reject Mohammed’s evidence with respect to the use of missiles by the inmates, on the evidence presented by the Claimants, there is no need to consider whether the use of rubber bullets directed at the inmates constituted the use of excessive force since there is no allegation by any of the Claimants that they were injured by the use of rubber bullets in this manner.

104. Indeed in the context of the cases presented by the three Claimants the evidence is that of the three only Wilson was outside of his cell at the time. Wilson himself gives no evidence of being injured by the use of rubber bullets. While both Sobers and Joseph give

evidence of shots being fired at them at the time that those shots were fired both of these Claimants were in their cells. Further, according to them both, these were not shots randomly discharged in their direction but were deliberately fired into the cell, with respect to Joseph, or at him, with respect to Sobers. In the circumstances, and in the absence of any evidence of prisoners being injured by the use of rubber bullets discharged in this manner, there is no need for me to consider whether the use of rubber bullets after the initial “ambush” to force the inmates to return to their cells was reasonable in the circumstances.

105. With respect to the retrieving of contraband from the prisoners the Defendant concedes that the searches were conducted aggressively and/or the prisoners were manhandled. Again none of the Claimants, and in particular, Sobers and Joseph whose evidence is, by and large accepted by me, complain about being searched. In the circumstances no issue arises here as to the use of excessive force by the officers to search the prisoners.

106. The evidence of both Sobers and Joseph is that they were identified by the officers for special attention. It is here that the inferences to be drawn from the failure of the Defendant to produce evidence from any prison officer present on that evening become relevant. It is clear from the evidence that the officers had a third objective that night and that objective was identifying and removing the inmates who were thought to be the ringleaders. Given this admitted objective it would seem to me that on the evidence it may be open to me from the evidence of Sobers and Joseph and the failure of the Defendant to lead any evidence as to how this objective was achieved to infer that it is in the furtherance of this objective that Sobers and Joseph suffered their injuries.

107. Whatever inferences may be open to me if Joseph and Sobers are to be believed, and I accept their evidence, the Defendant has not adduced any evidence which would justify the assaults on them. There is no allegation that they were in the mob of inmates who refused to return to their cells or that they were among the inmates who were searched for contraband items. Indeed according to Rougier's evidence there were inmates present that night who were not participants in the insurrection.

108. While the Defendant has adduced evidence in an attempt to justify the use of force to ensure that the inmates returned to their cells and to some extent the use of force for the purpose of retrieving contraband items there is noticeably no evidence from the Defendant with respect to the treatment of those prisoners identified by the prison officers as ringleaders. The only reference to the treatment of these inmates is Mohammed's evidence in chief that they were, "separated and placed in a different area of the prison". Under cross-examination he qualifies this by saying that inmates were taken away but he does not know where.

109. Looking at the evidence as a whole therefore, in the absence of any evidence from the Defendant justifying the use of force against both Sobers and Joseph, even if I were to infer that the purpose of the attack on them was because they had been identified by prison officers as being ring leaders, the question as to whether the assaults were justifiable in the circumstances must be answered in the negative. It would seem to me that if Sobers and Joseph had been among the inmates identified by prison officers as being ringleaders the only inference to be drawn from the evidence is that force was used on them for the purpose of punishment and not

by way of a good faith effort to maintain or restore discipline. This, to my mind, is impermissible and improper. The use of force for such a purpose is in my opinion only permissible pursuant to disciplinary procedure. If, on the other hand, this was not the reason for the assaults then, to adopt the phraseology of Circuit Court Judge Friendly, I can only conclude that it was done “maliciously and sadistically for the very purpose of causing harm.”

110. In the circumstances, whatever the reason for the attacks, both Sobers and Joseph have satisfied me that they were the victims of unjustified and unreasonable attacks by the servants of the State at the remand prison on 11th November 2006. In my opinion, in these circumstances, they are entitled to damages for assault and battery, including exemplary damages. Wilson, on the other hand, is not entitled to such an order.

111. The issues of law raised by these cases apart these cases raise serious security concerns which, to my mind, need to be urgently addressed. In this regard I share the disquiet voiced by the Commissioner of Prisons in these proceedings. While it is true that this incident occurred in 2006 and, as far as I am aware, there has been no other similar incident of orchestrated rebellion by inmates of the Golden Grove Prison the evidence in these proceedings brings home the fact that our prison authorities do not have the wherewithal to deal with such incidents. In my opinion what is required is not merely the ability to present a show of force or employ such force when absolutely necessary but it is also a question of training personnel in the appropriate use of force.

112. But that is only the tip of the iceberg what is required is preventative action, not aggressive reaction. Force must be used as a last resort. In this regard let me say here that I do not for one moment discount the efforts of the Commissioner of Prisons to resolve the situation that obtained in November 2006. It is more likely than not that given the parameters within which he had to operate he did the best that he could. The question that has to be answered is however: how was the situation allowed to get to this critical state?

113. As a society we require the prison authorities and the prison officers employed in our prisons to protect us from persons convicted of or suspected to have committed crimes. In this regard we demand that they exercise on our behalf the responsibility for the care and conduct of these persons. As a society committed to the maintenance of the rule of law and the protection of human rights, however, there is also a responsibility on us to ensure that these persons incarcerated at our behest and for our protection are afforded at the very least basic human rights and adequate living conditions. In order to do so the prison authorities must be given the necessary resources, physical and human.

114. The question of the physical conditions in the prisons has been the subject of many comments by judges over the years. In particular the appalling conditions that obtained in the Port-of-Spain Remand Prison were extensively dealt with by Gobin J. in the case of **Colin Edghill v the Commissioner of Prisons and the Attorney General HCA No. 3178 of 2004**, a decision delivered in 2008. In that case Gobin J. stated:

“The executive needs to be reminded that the treatment at the Remand Yard Port of Spain cannot continue, not only because it is treatment which is

debasing and dehumanizing to prisoners and to prison officers who are duty bound to participate in the process, but because it is treatment which, if after having been exposed, is allowed to continue, threatens to redefine us as a people.”: **page 36 paragraph 50 of the judgement.**

115. While it is not my intention to deal with this aspect of prison conditions, by way of some confirmation that the situation remains the same, I cannot help but refer to statements made by me in January 2011 in the cases of **Frankie Bartholomew and Others v the Attorney General of Trinidad and Tobago CV Nos 2009 -04755; 2010-00513; 2009-004756 and 2009 – 04757**. In those cases I dealt with the resort to force by police officers as a means of dealing with recalcitrant prisoners in the holding cells of the Port-of-Spain Magistrate's Court. There the situation was described as a time bomb and I called on the authorities to provide not only adequate training for both police officers and prison officers but to address the conditions under which prisoners were kept.

116. I repeat this call here. Unless we address the physical conditions under which prisoners reside and prison officers operate and provide prison officers with training which will properly equip them to appreciate and discharge the responsibility we have placed on them it would seem to me that the institution of adequate preventative measures is beyond the capability of the prison authorities.

117. But there is another reform which, if we are to ensure that there is not a repeat of incidents such as these, is also urgently required. Insofar as there is any legislative regulation of

the conduct of life within our prison system it is the Prisons Rules. These rules, made pursuant to the West Indian Prisons Act 1838, provide for “the government of the prisons in her Majesty's colonies, in the West Indies, and for the care and superintendence of the prisoners, and for the duties of the keepers and officers of such prisons”. While there have been some amendments to these rules the last amendment was made in June 1961. It is not my intention to examine these rules in any detail however it would seem to me to go without saying that rules created in the 19th century by a colonial government for its dependants would not necessarily be an effective tool in maintaining good governance in the 21st century.

118. That said, from the perspective of a trial judge, these rules are honoured more in the breach than in actual practice. In the instant cases, for example, the Commissioner of Prisons could not point to one disciplinary action brought against any of the inmates with regard to the incidents of the 11th November or the circumstances that led up to the decision to regain control of the prison by the use of force. It cannot be disputed that in order to avoid that or a similar situation the ability to maintain effective discipline within our prisons is obligatory.

119. It would seem to me that a revision of the existing prison rules is another element required to ensure continued security in our prisons. That said I am not for one moment advocating the removal of those safeguards which ensure that the power placed in the hands of the jailer is not abused. I am advocating however that the rules be revisited to ensure that they reflect the changes wrought by time and to guarantee that their use becomes one of the main tools in ensuring effective governance within our prison system.

120. My other concern lies in the area of the training of the persons upon whom we place the onerous task of our protection. In recent years there has been brought before the Court an increasing number of cases alleging brutality by servants of the State and, in particular, police and prison officers. Statistics provided by the Court reveal that of a total of 427 cases of assault and battery filed in the High Court during the period 16th of September 2005 to 31st May 2012 302 matters were alleging assault and/or battery by persons employed by the State.

121. To put it another way 71% of the cases alleging assault and/ or battery filed in the High Court of Justice between 16th September 2005 to 31st May 2012 are cases alleging abuse by way of physical assault by servants of the State. These figures do not include claims which were brought under the Constitution. Nor do they include cases brought in the Magistrates Court or wrongful death claims. The number of such cases filed against the State jumped from 11 in the year 2006 to 97 in the year 2010. While it is fair to say that of those 97 cases filed in 2010 57 of them arose out of 11th November incident in the year 2011 there were 64 such cases filed.

122. The cost of these actions to the reputation of the Police and Prison Services cannot be measured. Nor am I qualified to assess the effect of this “institutionalised” violence on our increasingly violent society. I can however compute the cost so far in terms of money to the State and ultimately to tax payers. Of the 302 matters filed to date 157 have been determined; of these 120 have resulted in damages being paid to the claimant. From this it is reasonable to conclude that of the 157 matters completed 37 matters were found to be without merit. Of those 120 actions damages have only been assessed in 100 so far. Awards with respect to interest apart the State has paid or is liable to pay some \$10,265,776.14 in compensation to litigants with

respect to these actions. These figures do not include those persons who would be entitled to damages pursuant to this judgement.

123. Many conclusions can be drawn from these statistics. It seems to me however that it is clear that in order to move forward we need to recognise that as a Society we have an obligation to ensure that persons employed in the protective services are psychologically suited and equipped to properly discharge the responsibility that we have placed on their shoulders. This obligation, to my mind, not only requires constant psychological assessment and support and adequate training but requires us to ensure that these officers operate under conditions which allow them to discharge of their functions in a manner consistent with the values we hold as a Society committed to the rule of law.

124. By our Constitution we, the people of Trinidad and Tobago, have affirmed our belief and faith in the rule of law; the fundamental human rights and freedoms of all our citizens and the dignity of the human person. The question that we have to ask ourselves is: can we, as a responsible society committed to these aims and ideals, afford not to address these concerns as a matter of urgency.

Dated this 9th day of July 2012.

Judith Jones
Judge

APPENDIX

REPRESENTATIVE CATEGORIES OF CASES

NO RECORD OF INJURIES AT ALL (REPRESENTED BY CLINT WILSON CV 2010-04649)	PERSONS RECEIVING TREATMENT AT PRISON (REPRESENTED BY GABRIEL JOSEPH CV 2010- 04508)	PERSONS RECEIVING TREATMENT IN HOSPITAL (REPRESENTED BY ANTONIO SOBERS CV2010- 04093)
CV2010-04505 DWAYNE SWAN	CV2010-04507 DANIEL AGARD	CV2010-04673 SHALEEM MOHAMMED
CV2010-04648 RYAN STEPHEN	CV2010-04646 JOEL SHAH	CV2010-04670 LYNDON RAMAH
CV 2010-04504 SHELDON REID	CV 2010-04680 VAUGHN SMITH	CV2010-04389 GARVIN SOOKRAM
CV2010-04599 MARLON HOPE	CV2010-04503 CANUTE DOUGLAS	CV2010-04682 RUDY NELSON
CV2010-04589 NICHOLAS ALEXANDER	CV2010-04655 JOHN JOSEPH	CV2010-04665 SHAWN MARCELLINE
CV2010-04706 ANDRE PRINCE	CV2010-04596 JEROME MURRAY	CV2010-04664 PERNEL MARTIN
CV2010-04678 CODY NICKIE	CV2010-04591 WINSTON FRANCIS JOHN	CV2010-04093 ANTONIO SOBERS
CV2010-04588 ANTHONY COHEN	CV2010-04597 SHAWN LAWRENCE	CV2010-04566 SHIFFIE ROBERTS
CV2010-04686 ANTHONY SAMUEL	CV2010-04399 STEVEN MC GILLVERY	
CV2010-04667 PETER RODRIGUEZ		
CV2010-04683 EDWIN SMITH		
CV2010-04506 DWAYNE LYNCH		
CV 2010-04592 GREGORY TAN		
CV 2010-04598 KESLEY TOWNIE		
CV 2010-04676 MARVIN NEDD		
CV 2010 -04600 WENDEL JEROMY		
CV2010-04594 GEWAN PARDASSIE		
CVCO10-04684 DEAN VICTOR PATRICK		
CV2010-04674 DARYL BISSOON		
CV2010—04595 RAJEE ALI		
CV2010-04685 JOHN PHILLIP		

APPENDIX

REPRESENTATIVE CATEGORIES OF CASES

CV2010-04651 KERVIN WILLAIMS		
CV2010-04652 DEODATH MOHAMMED		
CV2010-04400 MENSAH BAPTISTE		
CV2010-04653 DAVID ALLEN		
CV2010-04704 MARTIN ROGERS		
CV2010-04650 CHRISTOPHER FABRES		
CV2010-04593 COLIN SKINNER		
CV2010-04647 MARIO AARON GRAPPIE		
CV2010-04645 VISHWANATH SHARMA		
CV2010-04391 STEPHEN LOPEZ		
CV2010-04654 JUDE JOHN ARJOON		
CV2010-04587 MARCUS MARHSALL		
CV2010-04677 CHRIS MARAJ		
CV2010-04590 OREN LEWIS		