

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No CV2011-01151

BETWEEN

DARRELL WADE

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

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Before: Master Alexander

Appearances:

For the claimant: Mr Gerald Ramdeen

For the defendant: Mr Neil Byam

REASONS

1. This was a claim for damages for **assault and battery** suffered by the claimant as a result of the actions of servants and/or agents of the State on 17<sup>th</sup> December 2009. His claim for damages included aggravated and exemplary damages, interest and costs. Permission was granted by Pemberton J on 11<sup>th</sup> July, 2011 to enter judgment against the defendant in default of defence, which was done by order dated 18<sup>th</sup> July, 2011. Subsequently, the assessment took place and the result, by order dated 17<sup>th</sup> July 2012, was as follows:

*The defendant do pay to the claimant -*

- (a) *General damages inclusive of an uplift for aggravation assessed in the sum of \$60,000.00 with interest at 6% per annum from 31<sup>st</sup> March, 2011 to 17<sup>th</sup> July, 2012;*
- (b) *Exemplary damages assessed in the sum of \$15,000.00;*
- (c) *Costs assessed in the sum of \$11,961.60*

The claimant has since appealed the order of this court and these reasons are provided in response thereto.

#### *Facts*

2. The Claimant was a prisoner incarcerated at the State Prison and at the time of assessment remained so. On 17<sup>th</sup> December 2009 the claimant was taken to the Port of Spain Magistrate's Court (POS) and placed in a holding cell. On that afternoon, he was assaulted and battered on three separate occasions, initially by a single police officer then at the hands of a group of officers and suffered injuries.

#### *Damages*

3. From the outset, it is emphasized that this is a claim for assault and battery only, leading to physical injuries for which compensation is now being sought. In assessing the award of damages, I was guided by the decision of Wooding CJ in *Cornilliac v St Louis* (1965) 7 WIR 491, with the relevant factors being: the nature and extent of the injuries suffered; the nature and gravity of the resulting physical disability; and the pain and suffering endured.

#### *Injuries*

4. The injuries sustained by the claimant and the pain and suffering endured during and after the beating are listed below:
  - Severe swelling of the left hand, left arm and left foot
  - Severe pain in the ears and watering from the eyes
  - Black and blue bruises all over the body
  - Tenderness and swelling of the left hand and left foot
  - Multiple large welts over arms, neck, back, chest, legs, and about the body
  - Haematomas about the body
  - Swollen ribs

### *The Evidence*

5. The only evidence before this court was that of the claimant; in the form of his witness statement. There was no medical evidence or report and this witness was not subject to any cross examination, given the nature of the judgment entered against the defendant. The assessment proceeded on his witness statement only. It was the claimant's evidence that on 17<sup>th</sup> December, 2009 he was taken from the Golden Grove Prison in Port of Spain to the POS Magistrates Court in a police vehicle. Upon arrival, he was searched by the police officers in a corridor and placed in a holding cell with about 20 other persons. In the afternoon, "Officer Danny" who was in the holding cell area instructed him to "fix a plastic bag that was in the cell." The claimant said he could not fix it as it was empty and "it would blow around with the breeze." The officer left for a while. The claimant put the bag in a corner and it blew away again. Officer Danny returned and shouted at the claimant about the bag. He then entered the holding cell and repeatedly slapped and cuffed the claimant on his face. "While I was being beaten I told the officer that he could not hit me for an empty plastic bag but this seemed to get the officer more vex because he started to beat me worse." For this, the claimant received two kicks, which threw him to the ground and the officer left the cell.
  
6. Officer Danny soon returned with 6-7 other officers. Three of the officers entered the cell and beat the claimant with their batons all over his body: "I could not believe that I was getting more licks just for a plastic bag. I was begging the officers to stop and at the same time trying to brakes the lash from the officers. Each lash from the officers felt harder than the one before." The claimant's evidence is that he fell to the ground and was hit again every time he tried to get up. The officers then dragged the claimant to the toilet area at the back of the holding cells where the beating continued. He claims that one of the officers held his hands behind his back while the others slapped and cuffed his face and head, also hitting him in his chest and rib area a number of times. He testified that throughout the beating, he was, "bawling out in pain and begging the officers to stop and telling them how I didn't do anything to deserve this but the officers continued their assault on me, increasing the intensity of their attack by kicking me as well, especially on my left foot and my ribs, until I slumped to the floor, where I was kicked on my hands and legs and to the side of my head."

7. The claimant was then directed to return to the vehicle to be taken back to the prison. He states, "I could hardly walk to get back to the prison van, I had to limp back to the van and each time that I stopped the officers would push me with their baton. Each time the baton touched my skin I would remember the licks I just received and I would push myself to go along. I was frightened that if I did not do as the officers had said they would start their attack on me again. I was in plenty pain from the licks I had received and the ride back to the prison was very uncomfortable. I was frightened that I would lose my life when the officers were beating me, they were like men possessed. My body was trembling in pain. I passed my hands over my body and felt the bruises that I received and I could feel my skin swelling from the beating I had received."
  
8. Upon arrival at the prison, the claimant was informed that he would not be received with injuries sustained outside the prison unless he had a medical report. The vehicle then took him along with other inmates back to the Magistrate's Court, where they were again placed in a holding cell. The third bout of beatings occurred on his return to the court. He testified that he was taken to the bathroom area where there were police officers armed with riot staves and iron batons who assaulted him mercilessly. According to him, "I tried my best not to allow the officers to take me to the toilet because I knew that they were going to assault and beat me. I was already in pain from the beating [sic] I had received earlier and now I was being taken to these officers again. I did not know what they were going to do with me this time. The police officers were armed with riot staves. Some of the staves were wooden and some were metal. I was pushed into the toilet area and the officers started to attack me. When the officers were approaching me I was telling them [sic] that I had already been beaten and I could not take any more licks but this did not stop them."
  
9. The officers took turns beating the claimant all over his body, especially his legs, arms and hand, "I was trying to brakes the lashed while the officers were beating me but this only made me get more licks on my hands and arms. I tried to brakes the blows of the officers to my head and face by using my hands. The beating came from all directions. The officers were like men possessed. It was too much of them I could not defend myself because of the number of officers that were attacking me at the same time. They were swinging the batons wild in all directions and when I fell to the ground they would kick me all over. The officers would fake firing a lash and then hit

me after I tried to brakes the lashes. ... I begged the officers over and over to stop the beating but they would not stop. Some of the officers held on to my arms while I was being beaten. The officers would tell me to get up when I fell to the ground and as I tried to get up it was more licks. I tried to turn my back towards the officers while they were hitting me to brakes the lash but this did not stop the beating it just made me get more licks on my back and legs. The officers hit me some lashes to my head and to the side of it leaving my ears in plenty pain. My ears began ringing and I could not hear anything else but this constant ringing. I began to get dizzy. I could feel the skin on my back, legs and arms swelling while the officers were beating me.”

10. When the officers stopped beating him, he fell to the ground in pain. He claims that his entire body was swollen and in pain and he was getting a ringing sound in his ears, but his ordeal did not end at this point. It is his evidence that, after a while an officer told him to stand with his hands against the wall, “I could not believe that when I placed my hands against the wall the officers started to beat me again. I was begging the officers to stop. Some of the officers came up to me and hit me and slap me across my face, neck and chest. The beating was real bad and I fell to the ground. When I fell to the ground the officers started to kick me again on the ground.”
11. When the officers stopped again, the claimant was instructed to go back to the vehicle and was then taken to the accident and emergency department of the Port of Spain General Hospital, where his injuries were attended to. Following an X-ray of his hands and feet, he was given painkillers and a prescription to be filled at the prison and taken back to the prison and placed in his cell. He gave evidence of continuing pain and suffering that night and several days after, “I could not sleep for the entire night and I was in real pain. My body was swollen all over and even though I asked the prison officers for something for the pain I was not given any medication. I did not know how to lie down because my entire body was paining from the beating and my ears were paining me severely and water was coming out of them. When I passed my hands on my body I could feel the swollen areas raised (sic).” The days following the incident, the claimant was still in pain. He claims, “There were large wail marks all over my body especially my back, arms, feet, head and ribs. You could have seen the baton print out on my hands and back. I was in severe pain and I did not get any medication from the prison for my injuries. I could not walk properly for a couple of days. My legs were in real pain and I was getting pain in my back, belly

and ears.” He also gave evidence of emotional and mental pain and suffering in that the incident has left him confused as to why he was beaten and fearful of what could happen whenever he is taken to court.

12. To determine an award for the battery, guidance was sought from the following cases:

- ***Braithwaite v AG***<sup>1</sup> where the sum of \$90,000 was awarded to the claimant inclusive of aggravated damages for injuries alleged suffered at the hands of the prison officers, which included: severe swelling on right side of head; haematomas about the body; contusions and tenderness about the body; soft tissue injury about the body; lacerations to the head and legs; broken ribs; contusions and haematomas to the face; and severe swelling about the body.
- ***Garcia v The Attorney General of Trinidad and Tobago***<sup>2</sup> where the sum of \$45,000.00 was awarded for damages for assault and battery and exemplary damages in the sum of \$20,000.00. Here the claimant had particularized in his statement of case that he suffered the following injuries: welt marks about the body; severe swelling around the right eye; haematomas, contusions and tenderness about the body; soft tissue injury about the body; passing of blood in the claimant’s urine and stool; loss of sight in the right eye for one week subsequent to the beating; contusions and haematomas to the face; and large bruises and severe swelling about the body.
- ***Sean Wallace v AG***<sup>3</sup>, delivered 2<sup>nd</sup> October 2009 – Des Vignes J awarded the sum of \$160,000.00 as general damages inclusive of aggravated damages and \$ 70,000.00 exemplary damages. Here the claimant was beaten and kicked by three prison officers in connection with a bag that was thrown over the prison wall. He was then taken upstairs by another officer and mercilessly beaten with a staff all over his body in like manner to the instant case. He experienced severe pains and was warded at the hospital for four days.

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<sup>1</sup> *Braithwaite v AG* CV2010-04502

<sup>2</sup> *Garcia v The Attorney General of Trinidad and Tobago* HCA3273/2009 and CV2009-03273

<sup>3</sup> *Sean Wallace v AG* CV 2008 – 04009

13. I found the injuries sustained in all three cases above to be more severe than in the one at bar. The present claimant did not sustain any broken ribs and his sight was not affected, but he has given evidence of a “ringing in his ears” consequent on the beatings. I note in particular that the claimant in **Sean Wallace** was also subjected to a form of torture by being forced to use filthy, smelly, faeces contaminated water taken from the prisoners’ slop pail to wash his bleeding mouth and, on being unable to lift his hand to do so, had the water poured over his head. The evidence pointed to the claimant in **Sean Wallace** defecating on himself consequent on this beating. In my view, the instant claimant was not subjected to that type of torture and debasement. Based on the evidence, however, I concluded that in the instant case, the nature and manner in which this claimant at bar was assaulted must have surely resulted in mental anguish and suffering necessitating an additional award of aggravated damages. Having considered the past awards made and taking into account the particular circumstances of this case, I found the claimant was entitled to the sum of \$60,000.00 general damages inclusive of an uplift for aggravated damages.

*Exemplary damages*

14. Exemplary damages are awarded to mark the court’s disapproval where the offender’s behaviour amounted to oppressive, arbitrary and unconstitutional action. These terms must be read disjunctively. Exemplary damages are usually only awarded if compensatory damages are inadequate to punish the defendant or deter others. In the case of **Cliff Persad v AG**<sup>4</sup> as well as **Maurice Koon Koon v AG**<sup>5</sup> the plaintiffs were not awarded exemplary damages since, although the courts found the officers acted improperly, their actions were not deemed to be highhanded, arbitrary, reckless, oppressive or irresponsible nor were they motivated by malice or bad faith. In the present factual context, I applied the rationality test to both the questions of whether an award of punitive damages should be made and its quantum. I concluded that this was an appropriate case for exemplary damages as the evidence points to a satisfaction of the **Rookes v Barnard**<sup>6</sup> criteria. To my mind, the manner of the attack and the nature of the injuries suffered evidenced a degree of viciousness and malice towards the claimant. This was an unprovoked and unjustified attack that led to this claimant getting three sets of licks, in one day, from police

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<sup>4</sup> *Cliff Persad v AG* HCA S-1971 of 2007

<sup>5</sup> *Maurice Koon Koon v AG* CV2009-01530

<sup>6</sup> *Rookes v Barnard* [1964] AC 1129

officers armed in riot gears, for being unable to stop a bag from blowing around in a cell. This type of conduct is unacceptable and is condemned in the strongest of terms.

15. Counsel for the claimant, laying heavy reliance upon the case of *Owen Goring*<sup>7</sup> suggested an award of exemplary damages in the sum of \$100,000.00. I felt that to make a punitive award of that magnitude in the context of the present factual scenario would be out of all proportion to just compensation. Whilst I appreciate that in this jurisdiction, awards of exemplary damages range along a continuum, with the highest end award being the *Goring* award, I did not find it necessary to satisfy the justice of this case to overreach to that extent. An award of exemplary damages must be proportionate to a defendant's conduct. To my mind, *Goring* is an anomaly and to be distinguished from the present case. In arriving at an appropriate award in the case at bar, I bore in mind the need for **moderation and restraint** in making an award of exemplary damages; that **proportionality must be the key** to the quantum; and that I must be cognizant of the compensatory award already made above, which included an element of aggravated damages. I felt that the compensatory damages already given adequately met the justice of the case and served to punish the defendant but not fully. Thus, I wanted to signal by means of a further sum my disapproval of the actions of these particular officers whose thuggish and outrageous conduct must not be allowed to reoccur. I concluded that to achieve this, I did not need to replicate the *Goring* quantum and so tailored my punishment to fit the present wrong by giving a sum that was rational and proportionate to the present facts<sup>8</sup>. Upon consideration of the wider scope of the case law, in particular those referred to above, I considered it appropriate to signal this court's continued disapproval of this reprehensible type of conduct of certain police officers, by awarding the claimant exemplary damages in the amount of \$15,000.00.

Dated 20<sup>th</sup> May, 2013

**Martha Alexander**

**Master**

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<sup>7</sup> *Owen Goring* CV2010-03643

<sup>8</sup> *Whiten v Pilot Insurance Company* [2002] 5 LRC the court stated, "Retribution, denunciation and deterrence are the recognised justification for punitive damages and the means must be rationally proportionate to the end sought to be achieved. A disproportionate award overshoots its purpose and becomes irrational. A less than proportionate award fails to achieve its purpose."