

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2012-00144

BETWEEN

KERRON WELCOME

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

First Defendant

POLICE CONSTABLE QUINTON CUPID REGIMENTAL NO 17721

Second Defendant

Before: Master Alexander

Appearances:

For the claimant: Mr Rennie Gosine

For the defendants: Mrs Tinuke Gibbons-Glenn instructed by Ms Kendra Mark

DECISION

Background

1. By claim filed on 13th January, 2012 Kerron Welcome (hereinafter “Kerron”) sought damages for trespass to the person, assault and battery including exemplary and/or aggravated damages. The facts in brief are that on 20th March, 2010 Kerron was in the vicinity of La Pique Mall at Pointe-a-Pierre Road, San Fernando in the island of Trinidad when PC Quinton Cupid registration number 17721 approached and searched him and then assaulted and battered him. As a result of this beating, Kerron sustained injuries which led to this claim. By order dated 10th October, 2013 of Gobin J judgment was entered against both defendants.

The evidence

2. There were 2 witnesses who gave evidence on behalf of Kerron – Dr Kassam and Kerron, on his own behalf. Both witnesses filed a statement or summary and were subjected to cross-

examination. Below is the evidence of these witnesses. There were several medical reports that also went into evidence and which are treated with below.

Kerron's evidence

3. Kerron is a 31 year old man of No 123 Corinth Hill, Ste Madeleine, Trinidad, in the Republic of Trinidad and Tobago. He testified that he is a painter and steel fixer but is currently unemployed. He usually takes jobs on his own but sometimes he would work for contractors. He is also a Reggae Artiste who composes and sings music on a part-time basis. On 20th March, 2010 at about 7:00 am he was at Pointe-a-Pierre Road, San Fernando standing in the vicinity of the La Pique Mall waiting on Kentucky Fried Chicken (KFC) restaurant to open to purchase breakfast. He walked inside the said mall towards the games place and on observing it was closed, turned and walked out of the mall towards the entrance. As he approached the entrance, he noticed a police vehicle parked in front of the entrance to the mall and saw PC Cupid and 2 other officers alight and walk in his direction. PC Cupid asked him a few questions then began to search him, found nothing but arrested him, placing handcuffs on his hands. Kerron questioned being handcuffed but got no response from the officer and at this point was assaulted by PC Cupid. He described it thus:

... without any warning, the officer hit me a blow to my face with a hard object hitting my mouth and nose. I saw blood oozing from my mouth onto my clothing. I lost my balance and was about to fall backwards when two police officers who were standing behind me, held me and pushed me forward. I fell to the ground hitting my face. The police officers subdued me on the ground. The officer together with the two other police officers threw me into the back of the police vehicle. I did not understand why I was beaten by the officer.

He was taken to the San Fernando General Hospital in handcuffs and whilst there waiting to be attended to, the assault continued, *“the officer kicked me on my legs, bit my stomach and he held the waist line of my pants and started jerking me back and forth until my pants burst and fell to the ground.”*

4. Kerron testified further that whilst at the hospital, he endured a burning feeling and pain in his face and received stitches to the wound on his lips. He claimed that he informed the doctor that his nose was injured and was sent to ward 8 for another doctor to examine and treat that injury but the police did not take him, instead they put him in the police vehicle and took him to the police station. He was never informed of the reason for his arrest or his right to retain an

attorney. At the station, he was handcuffed to a chair and at some point another police officer came and grabbed the foot of the chair on which he was sitting and pulled him towards the cell area. In front the cell area, he was cuffed and slapped about his face causing him to fall to the ground, whereby the officer kicked him in his stomach and then threw him into the cell. He was locked up from 12:41 pm to 9:30 pm. After he was released, he left the station in pain all over his body. After the incident, he continued having pain in his mouth; could not eat properly because of pain; could not chew hard foodstuff such as apple or meats and was unable to sing. He has experienced continuing pains in his mouth and teeth since and so sought private treatment. To treat his injuries, surgery was recommended. He stated further that his arrest and assault took place in the presence of many onlookers who were standing around observing the incident and consequently, he felt humiliated and embarrassed.

5. As a result of the battery, he received injuries, which he pleaded as:
 - a. cut over his lip;
 - b. bruises on nose and all over his face;
 - c. some teeth at the top, bottom and front were broken;
 - d. an installation on the crown of one of his tooth had fallen out;
 - e. bruises on wrists, knees and legs; and
 - f. stomach and chest areas were swollen and bruised.

Dr Kassam's evidence

6. Dr Hanif Kassam is a dentist registered with the Medical Association of Trinidad and Tobago. He operates and manages a dental clinic at La Pique Plaza, 6-8 Coffee Street, San Fernando. He testified that he first examined Kerron on 26th October, 2010, which was approximately 7 months after the incident. He prepared a report dated 27th October, 2010 reflecting his observations and findings as follows:
 - a. a fractured lower left incisor with retained root in the mandible;
 - b. a 3 unit gold bridge present from upper right central incisor to upper left lateral incisor;
 - c. a "hole" in the middle of the pontic replacing the upper left incisor where presumably where "the diamond" had been inserted;
 - d. tenderness to percussion on the bridge and the units are slightly mobile;

- e. widening of the periodontal ligament in the abutment teeth especially of the upper right central incisor. Damage is difficult to determine at the time and the teeth would have to be constantly reviewed;
- f. broken lower right 1st molar which is also carious;
- g. broken tooth in the upper left premolar region.

7. Dr Kassam suggested medical treatment as follows:

- a. surgical extraction of lower left central incisor;
- b. provision of dental implant including super structure of crown and abutment;
- c. provision of temporary Snap It to replace lower left incisor while implant integration takes place;
- d. surgical extraction of retained lower first molar;
- e. provision of two dental implants including superstructure of crown and abutment to replace large two rooted molar;
- f. restoration to repair broken upper left first molar.

Dr Kassam estimated the cost of this surgical treatment as \$50,400.00 but recommended that Kerron be examined by an oral surgeon for assessment

Medical report dated 29th June, 2013 Dr AK Ashraph

8. Dr Ashraph is a consultant dental surgeon, oral and maxilla-facial surgeon registered with the Medical Association of Trinidad and Tobago. He stated in his report that he examined Kerron on 5th December, 2010, approximately 8 months and 15 days after the incident, and prepared a report in June, 2013 reflecting his findings as follows:
- a. healed scar on the lower lip;
 - b. central incisors were crowned with gold crowns and “bridged” to close a diastema;
 - c. a cut depression for a fake “diamond” to be inlayed in the pontic of the bridge;
 - d. incisors were minimally mobile in their sockets;
 - e. mandibular left central incisor (teeth number 24) was decoronated;
 - f. mandibular left premolar (teeth number 21) is partially decoronated with caries;
 - g. mandibular right first molar (teeth number 30) is decoronated with carious destruction of the coronal tissue;
 - h. nose appeared to be normal facial morphology;

- i. radiograph was exposed and showed bony areas associated with the decoronated dentition and left central incisor.

9. Dr Ashraph recommended:

- a. surgical extraction of teeth numbers 21, 24 and 30;
- b. alloplastic bone graft 21, 24 and 30;
- c. 3x implants and abutments 21, 24 and 30;
- d. root canal therapy and post and core tooth number 9;
- e. crowns to 21, 24 and 30.

The estimated cost of the treatment was \$76,250.00.

Earlier medical reports

10. Apart from the reports from the dentists, Dr Kassam and Dr Ashraph, there were several medical reports from the South West Regional Health Authority (“SWRHA”) where Kerron initially was taken for treatment. First, there was the report dated 28th April, 2010 issued at the hands of Dr K Boodoo from SWRHA which certified that Kerron was seen on 21st March, 2010 (sic) at the Emergency Department for injuries to the face. It reads further, “*Patient claimed his face hit the floor after being subdued during arrest. Patient and police absconded without being admitted to Ward 8 as advised. Now complains of haemoptysis¹ and epistaxis².*” On examination, Kerron was found to be in mild distress with normal vital signs but tenderness over the nose and a lip laceration. He was diagnosed with “traumatic epistaxis” and “lip laceration” and referred to the Out-Patient Clinic. An x-ray recorded as 20th March, 2010 of his nasal and facial bones showed that there was a fracture of his nasal bone with slight angulation and that there was no other injury to his facial bones. Counsel for the defendant, Mrs Gibbons-Glenn, has asked this court to note that there was no mention of any broken teeth in this initial report and no other injuries to his facial bones.
11. Some months later, on 16th November, 2010 another report³ from SWRHA recorded that Kerron was reviewed at the Out-Patient Clinic on 2nd July, 2010 for the March injury, which was approximately 4 months after the injury. At that review, Kerron complained of “shaking upper

¹ Coughing up of blood

² Bleeding from the nose

³ Prepared from the patient’s notes and signed by Dr Anand Chatoorgoon

front teeth” and an examination showed slightly mobile bridge over upper incisors and a missing crown on the left upper incisor.

12. Mrs Gibbons-Glenn has contended that the 2 earlier reports of SWRHA differ substantially from the latter 2 in terms of the injuries sustained and that the injuries to the teeth are “new” and unrelated to the incident. The court was referred to the Case Notes taken by the nurses on the date that Kerron was injured and the Triage Records dated 21st, 24th and 25th March, 2010, 24th and 29th June, 2010. The Triage Records recorded that Kerron’s chief complaints were of spitting blood, a swollen nose, sneezing blood, headaches and general body pain (Triage Record dated 21st March, 2010). In the days following, the headaches continued (24th March, 2010); he had ear-pain and failing hearing loss (25th March, 2010) and by June the chief complaints were nasal stiffness (24th June, 2010) and difficulty breathing with headaches (29th June, 2010). Counsel submitted that there was no mention in the records from SWRHA where Kerron was first treated that he had suffered broken teeth and that the first time this was mentioned was at the visit to Dr Kassam. She argued that whilst under cross examination, Kerron had insisted that he had mentioned to the doctors at SWRHA that he had suffered broken teeth and was kicked in the stomach by the police. This was not reflected in the reports save that mention was made of his complaint of “shaking teeth” and that he presented with a mobile bridge over the upper incisors and a missing crown over the left upper incisor. These injuries were different to those listed in the October, 2010 Dental Centre Report which included injuries such as a hole in the middle of the pontic replacing the upper left incisor (representing a missing diamond); fractured incisors and various broken and carious teeth, with an estimated treatment sum of \$50,400.00.
13. This court was also asked by counsel to put little weight on the recent medical report of Dr Ashraph as it was not agreed by parties and he was not brought for cross-examination. The updated report, therefore, represented nothing more than inadmissible hearsay evidence. This court was asked to accept the earlier reports as representing the injuries caused by Kerron’s interaction with the police and that the injuries to the teeth be deemed unrelated *“for the simple reason that these injuries were not seen nor recorded at that initial time. Had the claimant presented with broken teeth, fractured incisors, lost diamond, and a hole in the pontic at the time of his injury, these would have certainly been recorded by the early medical reports. In any event, there is no known case showing that an assault or battery will cause teeth to become carious”*

14. The arguments presented by Mrs Gibbons-Glenn were indeed persuasive and ingenious but there were several concerns of this court that stood in the way of accepting them wholesale. First, it is accepted that battery cannot cause teeth to become carious. Secondly, there was no evidence that Kerron was given any dental x-ray when he was initially treated by the SWRHA; the evidence spoke only to a facial x-ray, which showed a fracture to his nasal bone. Kerron, from the dental evidence, presented, however, with several broken teeth and a fracture of the lower left incisor, which has “a retained root in the mandible”. Mrs Gibbons-Glenn submitted that this was clearly a tooth in an advanced stage of decay and not linked to the injury caused by the defendants. I turned to the evidence of Dr Kassam who sought to explain the difference between a broken and fractured tooth. According to him, a fractured tooth is caused usually by a single event, such as something traumatic (battery). On the other hand, a broken tooth can be caused by a variety of reasons including eating or decay. Dr Kassam could not say definitively that the broken teeth presented by Kerron were in fact caused by the fall or battery. Given the evidence, I was unable to conclusively hold that all the dental injuries presented in the dental report dated 27th October, 2010 were totally independent of the assault/battery incident. For instance, the missing crown of the left upper incisor and the mobile bridge which Kerron presented with at the ENT review in July, 2010 could be linked to his injuries sustained at the hands of PC Cupid. So also are the other injuries including: traumatic epistaxis (bleeding from the nose), lip laceration, fractured nasal bone and the attendant complications of difficulty breathing, nasal stiffness, headaches and initial hearing loss. These injuries were, therefore, delinked from those that were clearly due to age such as decaying tooth.

Law

15. It is trite law that awards of damages in assault and battery cases resulting in bodily injuries are arrived at by the same channel as in any claim for personal injury⁴. Kerron is entitled to both pecuniary and non-pecuniary damages; his claim for special damages is discussed below. With respect to the claim for non-pecuniary damages, the usual principles in assessing damages for personal injuries would apply as set out in ***Cornilliac v St Louis (1965) 7 WIR 491*** including: (a) The nature and extent of the injuries sustained; (b) The nature and gravity of the resulting physical disability; (c) The pain and suffering which had to be endured; (d) The loss of amenities suffered; and (e) The extent to which the plaintiff's pecuniary prospects have been materially affected. These limbs have been considered against the backdrop of the evidence presented

⁴ *Mahadeo Sookhai v The Attorney General CV2006-00986*

above to determine the appropriate award as well as other guiding principles on assessments. This court also considered similar decided cases for guidance as follows:

Cases

16. The instant case at bar involves assault and battery leading to minor bodily injuries but counsel for Kerron has suggested cases specifically dealing with injury to teeth including:

- ***Mc Namara & Stephen v Seymour 2nd Plaintiff***⁵ in a judgment delivered on 30th July 1974 for serious damage to teeth the sum of \$3,000.00; as adjusted to December, 2010 to **\$62,615.00**.
- ***Dennis Harrinanan v Vidya Pariag & others***⁶ delivered on 2nd October, 2000 for loss of 5 teeth, to be fitted with dentures and facial injuries where the Court of Appeal upheld an award of general damages made in the sum of **\$65,000.00**.
- ***Debbie Mohammed v Archibold Bellamy & others***⁷ delivered on 25th May, 2009 for severe eye injury with diminished vision, multiple facial lacerations, 3 chipped left upper incisors leading to 2 root canals, pain to teeth, underwent 2 root canal, fractured ribs, dislocated knee, permanent scarring and facial disfigurement was awarded general damages of \$150,000.00; as adjusted to December, 2010 to **\$171,293.00**.
- ***Randy Baksh Jnr v Basdai Bagaloo & Dilraj Bagaloo***⁸ delivered on 14th May, 1998 involving injury to mouth, pain in mouth after eating a full meal, injury to stomach and left arm where an award of \$130,000.00 was made for general damages; as adjusted to December, 2010 to **\$273,156.00**.

17. On the other hand, Mrs Gibbons-Glenn suggested the following cases:

- ***Carter v Nandlal HCA No 2363 of 1995*** delivered in January, 1998 where the plaintiff suffered multiple abrasions and severe bodily fractures including damage to mouth and teeth. He was cycling when he was struck by a motor vehicle and at the time of the impact, he lost both his upper front teeth and 2 other teeth were shaking. He could not

⁵ *Mc Namara & Stephen v Seymour 2nd Plaintiff* HCA 2036 of 1973

⁶ *Dennis Harrinanan v Vidya Pariag & others* CA No 239 of 1998

⁷ *Debbie Mohammed v Archibold Bellamy & others* HCA 11 of 2002/No 66 of 2002 (POS)

⁸ *Randy Baksh Jnr v Basdai Bagaloo & Dilraj Bagaloo* HCA No 168 of 1997

eat solid food for 3 weeks and was awarded \$8,716.00 in general damages; adjusted to December, 2010 to **\$55,841.00**.

- ***Kawal v Ghoura HCA 1213 of 1977*** delivered in July, 1985 where the plaintiff suffered head injuries including a perforated ear drum, headaches and sensitivity to sunlight and was awarded \$7,500.00; as adjusted to December, 2010 to **\$40,610.00**.
- ***Lenny Cyprien v Ralph Doogar HCA No 86 of 1991*** delivered in October, 1992 where the plaintiff suffered multiple abrasions about his body from a vehicular accident including laceration and haematoma of the left upper lip. He also suffered loss of consciousness for 30 minutes. Due to the laceration of his right nostril from the philtrum of the nose and left angle of the mouth, he developed a deviated septum of the nose which caused nasal obstruction and affected his breathing. Surgery was recommended. He was awarded \$12,000.00 as general damages; as adjusted to December, 2010 to **\$36,636.00**.

18. On the present facts, it would appear that the injuries suffered by Kerron were not as severe or extensive as some of the cases above. Whilst I was not satisfied on the facts that all the dental injuries were linked conclusively to the beating he received, I bore in mind that PC Cupid used a level of force that was unprovoked and disproportionate to the conduct of Kerron. I also accepted that the licks did impact on his teeth, causing it to shake and may have dislodged the crown. The defendants may not be responsible for decaying teeth but PC Cupid's beating of Kerron did have the effect of loosening his teeth as well as causing him to lose his crown and must bare full responsibility for the resulting pain and suffering. I was minded in this case to award an uplift of the general damages for aggravation, which is done in the sum of **\$50,000.00**.

Special Damages

19. In his amended statement of case, he claimed \$34,000.00 as special damages, which was broken down as follows:

- Loss of earnings at \$150.00 per day for 7 months \$29,400.00
- Medical expenses \$1,200.00
- Domestic assistance for 2 months at \$1,500 per month \$3,000.00
- Transportation costs \$ 900.00

Loss of earnings

20. At the time of the incident, he was employed with Mijares Construction Co Ltd as a labourer raking grass and loading trucks earning \$150.00 per day. He worked on average 24 days per month earning a monthly gross salary of approximately \$3,600.00. After the incident, he was unable to work for 7 months and he produced a letter from Mijares confirming his employment with that company. It does not state that Kerron was absent from work for 7 months. He also produced a TD4 form, salary slip and other documents but failed to provide the documents that would corroborate or support his claim of a 7 month incapacitation. Further, his medical evidence is silent as to any need for Kerron to be on bed-rest or sick leave nor does it speak to an inability on his part to work for 7 months consequent on his injuries. Under cross examination, he insisted that he could not work for 7 months because he was no longer able to get contracts. The court was left to surmise how performing the job of a labourer, raking grass, loading trucks or painting would have been affected for the extended period of 7 months because of his injuries.
21. He testified that his injuries have affected his concentration so he has not been able to compose and perform music or sing. He has lost money as a result. He has provided copies of a letter from Tradewinds Hotel dated 13th October, 2010 and from Copyright Music Organisation of Trinidad and Tobago (COTT) dated 20th July, 2010. The Tradewinds letter confirmed it has invested \$20,000.00 into 3 songs made by Kerron. The COTT letter spoke to Royalties distributed to Kerron of \$140.00 into a Republic Bank Account in 2010. There is no evidence of such payments prior to this or after or as to how regularly he would have received such sums. Assessing such loss in the face of such threadbare and illusive evidence was a daunting task and one that to my mind could not be performed without more concrete evidence. I was not convinced on the evidence that Kerron was rendered incapable of performing any of his duties for the period of 7 months or any part thereof. This is a claim that was required to be proved and Kerron has failed to do so. I was constrained to deny him this claim.

Medical expenses

22. He claimed he bought painkillers in the sum of approximately \$1,200.00 but had no receipts and could not recall the name of the painkiller he had used. This claim is disallowed for lack of proof.

Housekeeping expenses

23. He testified that he needed someone to help him take care of himself so he paid his sister, Tenisha Welcome, to do so for 2 months in the total sum of \$3,000.00. He has provided no evidence of this and has not even called Tenisha to corroborate his story. Under cross examination, he admitted that this domestic assistance/housekeeping services involved Tenisha helping him, *“here and there, financially, to give me food, tend to my wounds, buy my food and medication. ...”* The medical evidence does not point to how a cut on the lip, bruises and alleged broken teeth rendered Kerron incapable of looking after himself and/or why he needed such help for the extended period of 2 months. His evidence was not accepted and this claim is disallowed for lack of proof.

Transportation

24. He claimed transportation of \$900.00 but had no receipts or other evidence to support this claim. This claim is disallowed.

Future Surgery

25. I was not convinced on the evidence that the restorative dental works required by Kerron were all linked conclusively to the battery. I accepted that the beating did do some damage to Kerron’s teeth as he presented with a “shaking tooth” and missing crown and may have caused both or in any case aggravated the situation. There was some measure of evidentiary uncertainty as to the licks being responsible for his broken teeth (decay or eating related) but it would appear that it could at least have caused some fracturing, which were described as trauma related by Dr Kassam. He claimed \$50,400.00 for future surgery (updated to \$76,250.00) for extensive dental works related also to decaying teeth for which the defendants are not to bear the full responsibility. Given that some injury was done to his tooth and mouth by the battery and my inability to find the defendants responsible for the full extent of the damage or to separate what was the extent of the damage done by the defendants, I proposed to award a lump sum. He is awarded the lump sum of \$30,000.00 to cover any damage caused to his teeth for which restorative work is required.

Exemplary Damages

26. It is accepted that exemplary damages can be awarded where the offender’s behaviour amounted to oppressive, arbitrary and unconstitutional action and a court wants to show its displeasure.

These terms must be read disjunctively⁹. The offending act must have been done by one exercising government power and the award would only be given if compensatory damages are inadequate to punish the defendant or deter others and mark the court's disapproval (the "if but only if" test)¹⁰ and where it is clear that the defendant has not acted in good faith and the claimant has not caused or contributed to the behaviour complained of¹¹.

27. The conduct of the officer at bar in beating Kerron is inexcusable, arbitrary and highhanded and to my mind motivated by bad faith. Officers such as PC Cupid, who for no reason can approach a citizen and administer licks, continue to abuse their power. This incident was done in the full glare of the public and whilst Kerron has been compensated for this I felt that a further response to mark this court's condemnation of such acts must be made. To this end, I considered that an appropriate award, bearing in mind the need for moderation and restraint and taking account of the awards that I have already made by way of compensation, which included an element of aggravated damages, would be \$20,000.00.

Order

28. It is ordered that the defendants do pay the claimant -

- (i) General damages for assault and battery in the sum of **\$50,000.00** inclusive of an uplift for aggravated damages with interest at the rate of 9% per annum from 19th January, 2012 to 12th May, 2014.
- (j) Future surgery in the lump sum of **\$30,000.00**.
- (ii) Exemplary damages in the sum of **\$20,000.00**.
- (iii) Costs prescribed in the sum of **\$14,035.32**.

Dated 12th May, 2014

Martha Alexander

Master

⁹ *Rookes v Barnard* [1964] AC 1129 as well as *Holden v Chief Constable of Lancashire* [1987] QB 380 at 388

¹⁰ *Broome v Cassell* [1972] AC 1126 *Broome v Cassell* [1972] AC 1126 per Lord Diplock

¹¹ *Thompson v Commissioner of Police of the Metropolis* [1998]QB 498