

**REPUBLIC OF TRINIDAD AND TOBAGO**

IN THE HIGH COURT OF JUSTICE

Claim No. CV: 2010-03644

BETWEEN

**NATHAN STRAKER**

Claimant

AND

**THE ATTORNEY GENERAL OF  
TRINIDAD AND TOBAGO**

Defendant

**Before the Honourable Mr. Justice R. Rahim**

**Appearances:**

Mr. G. Ramdeen instructed by Mr. V. Debideen for the Claimant.

Mr. S. Lalla instructed by Ms. K. Oliverie for the Defendant

## Judgment

1. This is an action for damages for assault and battery allegedly suffered by the Claimant. The Claimant was at all material times a prisoner at the State Prison, 103A Fredrick Street, Port-of-Spain.
  
2. The Claimant claims that on the 26<sup>th</sup> April 2010, he was involved in an altercation with two other prisoners in his cell. According to the Claimant, prison officers responding to the ruckus, pulled the three inmates out the cell (he included) and proceeded to beat them about their bodies. Following the alleged beating, the Claimant claims he was placed in the cell block with no medical attention and he was taken to the Port-of-Spain General Hospital and treated for a broken right jaw on the next day. The Claimant avers that although he was told to return to the hospital in 6 weeks for surgery, he was taken back on the 13<sup>th</sup> May 2010 and corrective surgery was performed.
  
3. The Claimant avers that as a result of the beating by the Prison Officers he suffered the following injuries:
  - i. Right mandible fractured in two places;
  - ii. Severe welt marks about his body;
  - iii. Tender swelling about his entire body;
  - iv. Tender haematomas about the Claimants body;
  - v. Soft tissue injury about the body;
  - vi. Severe pain about the entire body;

- vii. Lacerations about the body;
  - viii. Headaches and blackouts.
4. The Claimant further avers that because of the manner he was treated, he is also entitled to aggravated and exemplary damages.
  5. The Defendant denies that the Claimant was beaten by the prison officers. Instead, the Defendant avers that on the 26<sup>th</sup> April 2010 the Claimant was involved in an altercation with two of his cellmates, Shurvonne Ryan and Miguel McLean. It is the case for the Defendant that the court can infer that it was as a result of this altercation that the Claimant suffered injuries.
  6. The Defendant avers that when the prison officers responded to the incident, they observed Shurvonne Ryan motionless in the cell; the three inmates were then removed and taken to the supervisor's office and seen by the infirmary officer. The infirmary officer advised that Ryan be taken to the hospital and evaluated the Claimant as suffering from mild tenderness to the right side of his face and was treated with painkillers and icepacks. The Claimant was seen by the prisons medical officer the following day and was referred to the Port-of-Spain General Hospital for further treatment and examination. An x-ray performed at the hospital revealed a fractured mandible and surgery was recommended.
  7. The issue for determination by the court is in the main factual. The Defendant admits the Claimant suffered injuries but denies that it was at the hands of the Defendant's servants, thus the court is called upon to determine whether such injuries were suffered at the hands of the servants of the Defendant.

## The evidence

8. Evidence on behalf of the Claimant's case was given solely by the Claimant. The Claimant's evidence was that on the 26<sup>th</sup> April 2010 he was involved **in an argument** with cellmate Ryan. During the argument another cellmate, McLean attempted to stop the argument which resulted in Ryan and McLean fighting. The Claimant testified that after a while they stopped fighting. When they had stopped fighting, prison officers came to the cell and pulled them out and the officers, armed with riot staves, began beating the three of them.
  
9. It is the Claimant's evidence that he was hit all about his body repeatedly by a number of officers. When the officers stopped the beating he was taken, along with the other two inmates to the office of the Chief and was then placed in the cell block. He gave evidence that he was not given any medication for the pain and was only taken to the infirmary the next day. After being seen at the infirmary it was ordered that he be taken to the hospital where he was examined and told that he had to have surgery done on his jaw. The surgery was performed on the 13<sup>th</sup> May 2010.
  
10. In cross examination, the Claimant testified that he had had an argument and not a fight with Ryan. He admitted to giving a statement to the prison authorities on what had happened during the incident. When shown the statement in cross examination the Claimant admitted that it was the statement he had given to the prison authority. In the statement given the Claimant stated that "*An argument arose in the cell between Miguel McLean, Shevon Ryan and myself. The argument soon became a fight...*". The Claimant admitted in cross examination to his signature appearing on the statement but denied that the statement said that the argument became a fight. No other explanation was given for the inconsistency between his testimony and the written statement.

11. The Claimant has therefore given three versions of what took place prior to the arrival of the prison officers. The evidence that he gives in his witness statement seems to be on par with what he said in cross examination. But there is a material inconsistency between those versions and the version he gave to the prison authorities in his written statement shortly after the incident. The inference to be drawn from what he says in his written statement is that the argument which arose between the three prisoners including himself soon became a fight. At that stage he did not exclude himself from the fight but has in the court's view attempted to do so subsequently. What is even more telling is the explanation provided by the Claimant for the inconsistency. In those circumstances the court draws the conclusion arising out of the testimony of the Claimant himself that he was involved in a fight prior to the arrival of the officers.

12. The Claimant also testified that they were pulled out of the cell and “*the officers started to beat all three of us*”. The Claimant’s evidence in chief makes no reference of a fourth prisoner, but in cross examination he admits that there was a fourth prisoner, Carlos Gomez who was not involved in the altercation. In cross examination, the Claimant testified that when the prison officers came to the cell and inquired what had occurred, the Claimant and the other inmates agreed that Gomez was not involved, thus it was only the Claimant, Ryan and McLean who were pulled out and beaten.

13. However there is conflicting evidence from the Defendant that Ryan had been beaten in the altercation with the other prison inmates and was motionless in the cell when the officers arrived. On this issue, the Claimant however testified in cross examination that:

*“Ryan was not lying on the floor at all. He was not lying on the floor when the prison officers came to the cell.*

...

*When they came to the cell Ryan was standing*

...

*All four of us came out the cell*

...

*I am not saying that Gomez was taken out of the cell with me. When we came out the prison officers started to beat the three of us. The beating took about fifteen to twenty minutes outside the cell. I wasn't aware of what was going on with Gomez when the beating was taking place."*

14. The inconsistency in the Claimant's evidence is clear. The Claimant is on the one hand saying that three persons came out the cell but then he is saying that four came out. The first time any mention of a fourth inmate was made was in cross examination. Notwithstanding the evidence that all four came out, the Claimant then says that he isn't saying that Gomez was taken out and that he did not know what was happening with Gomez when he was being beaten.
15. Additionally the court ought to make it clear for the avoidance of doubt that it has not used the statements given by Ryan, McLean as evidence of the truth of their contents in support of the case for the Defendant. No hearsay notice has been served by the Defence in relation to these statements so that the Defence cannot rely on the untested statements for the truth of their contents.
16. What is more, despite the list of injuries particularized in the Statement of Case, the Claimant testified in cross examination that the only injury he was treated for was to his jaw because that was the only injury he suffered, except for other minor injury. It is of note that the Claimant lists lacerations to the body in his Statement of case as one of the

injuries he sustained. While the hematomas and soft tissue injuries could not doubt be considered as minor, certainly lacerations about his body would be considered more than mere minor injury. There is therefore in the court's view an irreconcilable inconsistency in the claim as regards the injuries sustained.

17. Further and even more telling is the fact that no injury other than the fractured jaw was noted on the Claimant's medical report of the 17<sup>th</sup> May 2010. It is reasonable to conclude that should there have been lacerations, a medical examination would have discovered same and would have been at the least mentioned in the report. The absence of the injuries claimed by the Claimant save and except for the injury to the jaw appears inconsistent with the evidence of the Claimant that a number of officers beat him all over his body especially in his waist and belly area for 15 to 20 minutes (see cross-examination). Additionally, the Claimant makes a distinction in his witness statement between being beaten on his head and to his face. It is clear from his evidence that he alleges that he was beaten several times on his head. However, there appears to be no supporting injury to his head which one might have reasonably expected having regard to the severity of the alleged beating. In light of the foregoing this court is not satisfied that the Claimant did in fact suffer all the injuries as alleged. By extension this finding of lack of credibility affects the evidence of the Claimant in a material manner in that the court is also not satisfied that he is speaking the truth when he says that the officers set upon and beat him.

18. Giving evidence for the Defendant were prison officers Jason Winter and Garth Guada. Both officers were on duty the night of the incident. They gave evidence that they were made aware of the incident because they heard a row in a cell block. When prison officer Winter went to investigate he discovered it was coming from the Claimant's cell. He immediately went to prison officer Guada and informed him. Prison officer Guada testified that when prison officer Winter came to him he sent some other officers to

accompany Winter back to the cell. Prison officer Winter gave evidence that upon returning to the cell he instructed the prisoners to exit the cell but Ryan was laying on the floor. The other prisoners, McLean, Gomez and the Claimant came out. According to prison officer Winter, Ryan was taken out the cell and carried to prison officer Guada's office, the other inmates were also brought to the office. Ryan was then taken to the infirmary and the Claimant, McLean and Gomez were taken to the supervisor's office. According to officer Guada, who was present at the Supervisor's office, when the supervisor enquired what had happened the Claimant and McLean admitted that there was a fight among them including Ryan but that Gomez had not been involved. This evidence of the admission was not challenged in cross examination of Guada.

19. Further, Counsel for the Claimant submitted that the Defendant's failure to produce a report given by officer Guada, a report by the supervisor on duty that day, and a medical report signed by officer Guada required the court to draw adverse inferences against the Defendant. While the court agrees with the proposition of law, the court does not believe that such a failure weighs against the Defendant's case.

20. Where there is a failure to produce documents which he might reasonably be expected to produce, the court may infer that had the documents been produced it would not have helped the party and the court is entitled to take that into account against the party in question: **Shairoon Abdool (Administratrix of the estate of Nazrudeen Abdool deceased) v B and L Insurance Company Limited** H.C.434/2001. Thus, the failure to produce this evidence, when a party was able to produce evidence can have the effect that this failure weighs heavily against that party. See **Blatch v Archer** (1774) 98 ER 969 at 970; **Payne v Parker** (1976) 1 NSWLR 191 at p.200; **O'Donnell v Reichard** (1975) VR 916 at 921:



21. The reasoning which is permissible involves the treatment of a failure to adduce evidence as a reason for increasing the weight of the proofs of the opposite party or reducing the weight of the proofs of the party in default: ***O'Donnell v Reichard (1975) VR 916 at 921***. However, before the court is entitled to draw the desired inference the party seeking to rely on such an inference must establish a *prima facie* case on the matter in question
22. In this regard, if the Claimant is asking the court to draw adverse inferences from the fact that the Defendant has not brought the alleged reports, he must establish a *prima facie* case of the assault and battery. In the court's view, the Claimant has failed to do so on the evidence and the court will consequently not draw any adverse inferences.
23. The burden is that of the Claimant to prove his allegations and the court considers that the evidence as proffered by the Claimant was insufficient to sway the balance of probability in his favour.
24. In the circumstances the order of the court is as follows:
- i. The Claim is dismissed.
  - ii. The Claimant is to pay the prescribed costs of the Defendant in the sum of \$14,000.00.

Dated this 16<sup>th</sup> day of May 2013

Ricky Rahim  
Judge