

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2010-4394

BETWEEN

ROMEO GRANNUM

Claimant

AND

ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES

Mr. Gerald Ramdeen, instructed by Mr. V. Debibeen for the claimant

Mr. Christopher Sieuchand instructed by Ms. K. Oliverie for the defendant

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JUDGMENT

Background

1. The Claimant claims against the State, inter alia, damages for assault and battery on or about 19th August 2010. He alleges that he was attacked without provocation after he was requested to remove a bandana from his wrist and questioned why. The defendant avers that in fact the claimant first attacked Prison Officer Barrow who sought to defend himself, and other officers restrained the claimant using reasonable and appropriate force which was not excessive. The extent of the claimant's alleged injuries is disputed, and the alleged excessive and brutal use of force by the defendant's agents is denied. In fact such injury as the claimant sustained is alleged to have occurred when he fell over a bench.

2. There is clearly a great disparity between the claimant's and defendant's versions of the same event. These contradictory versions raise disputed issues of fact, and therefore critical analysis and scrutiny of every aspect of the evidence is required, despite the risk of burdening this judgment with excessive detail.

3. At issue is whether the defendant's agents assaulted or beat the claimant, or whether they acted in self defence, or whether even in perceived self defence used excessive force in responding to any actions of the claimant.

The claimant's pleaded version

4. **The Claimant** alleges that he was in the exercise yard of the Golden Grove State Prison when he was instructed to remove a red bandana he had tied on his right hand. Before he had a chance to remove it himself he was called by Prison Officer Barrow **who took away the bandana from him**. The Claimant **proceeded to ask Prison Officer Barrow why he had taken away the bandana** whereupon Prison Officer Barrow slapped the Claimant twice¹.

¹ Paragraph 3 of the Statement of Case

5. The Claimant then proceeded to ask Officer Barrow why he had slapped him and upon so doing he was cuffed twice in his nose.

6. **Two other prison officers** whose identities are unknown to the claimant came towards him and started to beat him. **One** of the officers was armed with a baton with which he beat the claimant. He received blows to his **neck, back, feet, chest** and his **skull**. The claimant was then thrown on a **table**, and Officer Barrow took his baton and pressed it downwards against the claimant's **neck**. The other officers pulled him off and took his baton.

7. Officer Barrow returned and **choked the claimant with his bare hands**. Officers Barrow, Pilgrim and Alexander then carried the claimant back to his cell. The claimant was then **hit** by one of the named officers, to his **chin**, resulting in his **head** bending backwards and **hitting the wall** behind. The claimant was then taken to the chief officer and sent to the infirmary where he was treated for his injuries.

8. The claimant says those injuries were:

- **Bruises** about the body/**Welt marks** all over his body
- **Extensive scars** over the claimant's body
- **Tender swelling to head/Tender swelling to face**
- Extensive **tenderness to right side of his chest** /Tenderness to the **chest wall**
- **Laceration** to **left shin**

The Defendant's Pleaded Case

9. The Claimant was detained in the top security division at the Golden Grove Prison. On August 19th 2010, the Claimant was in the exercise yard of the prison. The Claimant was wearing a red bandana around his right wrist and he was ordered to remove the same by Prisons Officer Basdeo. He refused to comply.

10. Prison Officer Barrow then instructed the Claimant several times to remove the said bandana and the Claimant refused.

11. Prison Officer Barrow informed the Claimant that if he didn't remove the bandana he would be taken to the Prisons Supervisor's office but the Claimant still didn't comply with Prisons Officer Barrow's instructions.

12. Prison Officer Barrow then held on to the Claimant's arm for the purpose of escorting him to the Prisons Supervisor's Office. The Claimant then swung his clenched fists at Prisons Officer Barrow and struck him on the chin.

13. Prison Officer Barrow attempted to defend himself by pushing the Claimant away, causing the Claimant to **fall over a bench which was behind him** at the time.

14. Prison Officers Barrow and Prison Officer Pilgrim then **held down the Claimant until he calmed** down. Prison Officer Basdeo then asked Prison Officer Barrow and Pilgrim to stand back and he instructed Prison Officer Alexander to escort the Claimant out of the exercise yard to the Prison Supervisor's Office. While he was being escorted out of the airing yard by Prison Officer Alexander, the Claimant used obscene language and made threatening remarks directed at Prison Officers Barrow and Pilgrim.

15. After the incident, the Claimant complained that he was experiencing pain and, as a result, the Claimant was escorted to the Infirmary on August 19th 2010. On examination, the Claimant was observed to have minor injuries in respect of which he received treatment from the Infirmary Officer.

16. P.O. Barrow was also seen by the Infirmary Officer in respect of the injuries which he allegedly suffered at the hands of the Claimant and he too received treatment. The following day on August 20th 2010, the Claimant was seen by the Prisons Medical Officer who observed no major injuries.

17. The Defendant claims that any force used against the Claimant was reasonable, necessary and justified in the circumstances.

Issues

Undisputed Facts

18. **Whether the claimant was wearing a red bandana**

This is admitted by both sides.

19. **Whether the claimant was asked to remove the bandana**

Again this is admitted.

20. **Whether the claimant complied with that request**

Again it is common to each that he did not. The claimant says in cross examination that he intended to, but he first had to put down some clothes which he had in his hand. He walked over to a table to do so. (In his witness statement he states that he was walking to that table to place the bandana on it.) Prison Officer Barrow called him back and then took away the bandana from him. In his witness statement he says that he questioned the officer as to **why he had taken the Bandana away from him**. The clothes were not referred to in his witness statement. He alleges that it was after he questioned the officer that the officer slapped him twice in the face. When he asked Prison Officer Barrow why he had hit him another officer Brown came up to him and cuffed him twice on the nose.

21. The portrayal in cross examination of unquestioning submission to authority and of an unprovoked attack by the officer(s), before he had the opportunity to first put down the clothes to enable him to comply, must be contrasted with his own witness statement. That statement, in his own words, makes clear that he did not in fact unquestioningly submit to the request/demand that he remove the bandana. In any event he did not tell anyone that before complying, he was first going to put down the alleged clothes he claims he was carrying.

22. The request was not as trivial as might first appear. The bandana was, or was capable of being construed as, a gang symbol, a challenge to prison authority, with a potential to generate rivalry among inmates, and division along gang lines, and was so perceived by the Prison Officers. Its presence could not be ignored, and its immediate removal was called for in the view

of the officers, especially as there was another inmate who wore a red bandana on that day. (See witness statement of Barrow at paragraph 3).

23. It would not be surprising in that context for the officer to attempt to remove it himself, as he admits. What happened thereafter must be considered in that context.

Whether the officers attacked the claimant without cause or whether they responded to an attack by the claimant?

The Evidence

24. In considering the evidence the approach indicated is to be found in **Reid v. Charles P.C. Appeal No. 86** dated 13th July, 1989 at page 6, where it was stated:

*“...However, in such a situation, where the **wrong impression** can be gained by the most experienced of judges if he relies **solely** on the **demeanour** of witnesses, it is important for him to **check that impression against contemporary documents**, where they exist, against **the pleaded case** and against the **inherent probability** or improbability of the rival contentions, **in the light of the particular facts and matters which are common ground** or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard witnesses.”*

Versions of the use of force - The evidence

25. The witness statement of Romeo Grannum states as follows:

1. *On the morning of the 19th August 2010 at approximately 11:30 am I was in the exercise yard. At the time **I had a red bandana** tied around my right hand. **I was ordered by a prison officer to remove the red bandana** that I had tied to my right hand. There was a **table** in the airing yard and I walked over to the table **with the intention of placing the bandana on the table** when I was called back to where I was by Officer Barrow. Officer Barrow then took away the bandana from me. I asked Officer Barrow **why he took away the bandana from me**. When I asked the officer **this he slapped me twice in my face**. I was shocked when the officer hit me in my face because I did not think I had done anything that deserved such a response from the officer.*

2. I tired (sic) to brakes the second lash that the officer hit me by pulling away from the officer when I was hit. I brakes the second lash because I did not want the officer to hit me again. The lash that the officer had hit my (sic) in my face was very painful and unexpected. I asked the officer why he had hit me. When I asked the officer this I was approached by another officer who I know by the name of Officer Brown. **This officer came up to me and cuffed me twice in my face on my nose.** This was even more unexpected than the first time that I was hit. This officer hit me in my nose and this was very painful. When the officer hit me I felt like my nose bridge was broken. I was holding on to my nose because of the **pain** I was in after the officer had hit me. I felt like my head was swelling first from the slaps to my face and then the two cuffs to my nose.

3. While I was holding on to my nose another two officers came up to me and started to beat me all over my body. One of the officers was **armed with a riot stave and he began to beat me all over my body.** This officer who was **armed with the stave hit me on my legs** and one of the lashes that he hit me **cut me on my shin.** I was trying all the time while the officers were beating me to brakes from the lashes but this did not prevent much of the lashes because there were too much officers hitting me at the same time. The officer with the stave hit me **a number of lashes to my head** and while I was turning to try and prevent the officer from hitting me the officer hit me a lash **to the back of my ears** that was very painful. When I received this lash I held on the back of my left ears with my hands and I looked at my hands and I saw **blood.** I then realised that **the lash from the officer had cut me to the back of my head.**

4. The officer continued beating me all over my body. While the officers were beating me **I could feel my head swelling** from the lashes I had received. It was very painful and each lash that the officers hit me seemed like it was harder than the one before. The officer who was unarmed hit me a **number of cuffs to my face and forehead.** This was very painful. The lashes that I received to my head were the most painful. The officer with the stave hit me **a good few times to my back** and this was very painful. I remember one of the lashes that this officer hit me was so painful that I urinated on myself in pain. This was extremely humiliating.

5. I was feeling weak and my body was paining all over. After some time enduring the beating of the officers the officers held on to me by my hands and feet **and threw me on a table that was close** to where I was being beaten. This was extremely painful and when the officers threw me on the table **I hit my back hard** on the table. When I was thrown on the table I was in real pain, my body was hurting all over. After I was thrown on the table Officer Barrow **took his baton** and placed it against my neck and **started choking me** on the table. When the officer did this I tried to push him off but I was so weak by this time I could not stop him. I was choking and was gasping for breath. I was kicking up on the table because I was stifling from the actions of the officer when he was choking me. I felt like I was going to faint because I was beginning to black out on the table. I began to see blurry on the table while the officer was choking me. After a

short while the other officers who were around pulled the officer off of me. I was coughing and gasping for breath when the officer was pulled off of me. My neck was in extreme pain from the way that the officer was choking me.

6. *When I passed my hands on my **neck** I could feel it warm and **swelling** from the choking of the officer. When the officers had pulled Barrow away from me and I was trying to get off of the table Officer Barrow returned before I had a chance to get up off the table and **started to choke me again this time with his bare hands**. I could not believe what was going (sic) **I felt like Officer Barrow wanted to kill me**. I was kicking up on the table again when the officer was choking me on the table with his hands. After a short while the officer stopped and I was taken from the table by the officers back to my cell. When I was placed in the cell I was pushed by one of the officers and another hit me **a cuff to my chin** causing me to fall backwards and **hit my head** on the wall in the cell. I was feeling very weak and **could hardly move** any part of my body because of the pain that I was in.*

7. *I was then taken by the officers to the chief and from the office of the chief I was taken to the infirmary. By the time that I had arrived at the infirmary I was in extreme pain. **There was blood running down the side of my head** to the back of my left ears and down to **my foot from the cut I had received on my shin**. When I reached the infirmary I was treated by an orderly at the infirmary. The cuts that I had received at the back of head behind my left ear and on my shin were cleaned and dressed. This was very painful. **The officer asked me where I had the most pain and I told him**. I was give pain killers for the pain I was experiencing. I took the pain killers but this did not stop the pain. A true copy of the infirmary daily outpatient's book is now produced, shown to me and marked **"RG 1"**.*

8. *I was then taken back to my cell. For the entire night I could not sleep. My body was **paining all over**. I could not even lie down properly to try and rest because of the pain I was in at the time. **The cuts I had received pained the most** and I had a severe headache for the entire night. I felt weak and at times I thought I was going to faint. The painkillers did not do anything for the pain I was in. My body was **swollen all over** and as I passed my hands over my body I would **feel the swollen areas** where I had been beaten. I had great difficulty moving my neck from side to side. I was getting a pulling feeling each time I moved my neck and this was very painful.*

9. *I was taken from my cell to be **examined** by the **Prison medical doctor** on the 20th August 2010. I was examined by the prison medical doctor who again prescribed pain killers for the pain. Again I took the pain killers and again it did not reduce the pain I was experiencing. A true copy of the indorsement from my prison file of the examination by the prison medical doctor together with the accident report is now produced in a bundle, shown to me and marked **"RG 2"**.*

10. *Over the few days following the incident my **entire body was blue black**. And I could see clearly the marks on my body from the incident. ...*

11. *Since this incident I have continued to suffer sudden pains to the back of my head behind my left ears where I received the **cut**. This was something that I had not experienced before this incident. I also have **sudden blackouts** which I never had before this incident. Sometimes when I get these sudden pains to my head I would have to hold on to my head until the pain stops.*

26. The incident that the claimant describes is horrific. Indiscriminate use of force applied by a riot stave to the head had the potential to cause serious, possibly fatal injury. An attack which resulted in the pain and blood loss described is one which could not possibly be justified by self defence. Rather it would be an excessive overreaction and use of force which clearly transgressed the limits of the occasion. The evidence as to whether the claimant sustained those injuries, or any injuries consistent with such a brutal attack, must therefore be examined.

The Claimant's Injuries

27. No injuries to hand, nose, back, or hip were reflected in the daily outpatients book. In fact the endorsement on the claimant's current illness and progress notes after examination by the Prison Doctor records '***no major injuries seen.***' This is explored in greater detail below.

Evidence of Joel Barrow

28. The witness statement of Joel Barrow is as follows:

My name is Joel Barrow. I am a Prisons Officer I attached to the Remand Prison located on Golden Grove in Arouca.

I know the Claimant. He is incarcerated at the Remand Prison ... The Claimant was detained in the top security division of the Remand Prison. The top security division houses inmates who are considered to be high risk ... The Claimant was considered a high risk inmate....

On August 19th 2010, I was working the main shift at the Prison which runs from 8:00 a.m. to 4:30 p.m. At approximately 1:15 p.m. on that day, I was in the exercise yard. I

was supervising inmates from the infirmary and top security division who were being brought out for their daily airing. There were other prisons officers around. Some were in the yard and some were supervising the inmates as they were coming out into the yard. I don't recall any prisons officer by the name of Brown being present in the area on that day.

Around that time, I heard P.O. Basdeo, who was standing in the booth in the exercise yard, call AT inmate Bissoon and the Claimant and he asked them to remove red bandanas which they had tied on their wrists. I was not very far away from the Claimant and I saw the red bandanas tied on his wrist and AT inmate Bissoon's wrist. In my experience as a prisons officer, I am aware that inmates sometimes wear coloured bandanas to signify affiliation with gangs. For this reason, prisons officers are very strict and cautious about allowing inmates to wear these bandanas as they could encourage prison indiscipline.

Both AT inmate Bissoon and the Claimant refused to comply with the instruction given to them by P.O. Basdeo. I then called both of them told them to remove the bandanas. AT inmate Bissoon reluctantly came to me and the bandana was removed from his wrist. The Claimant refused to comply with my instruction to him. In a very disrespectful manner he steupsed at me and said "Why allyuh coming around my jail?"

I repeated the instruction to the Claimant and he then asked in a loud tone of voice "Why allyuh only coming around the red, **it have men wearing blue and brown." I told the Claimant that if he refused I would take him to the Prisons Supervisor. The Claimant then asked me in loud and aggressive tone of voice "Why I have to go by the chief for?"**

At that point in time, I decided to remove the bandana from the Claimant's wrist and carry the Claimant to the Prison Supervisor's office to report his disobedience. I held on to the Claimant's arm just above his elbow. When I held on to the Claimant, he cuffed me on my chin.

I pushed the Claimant away and he fell back over a bench which was just behind him at the time. I pushed him away to prevent him from striking me again. At that point in time, P.O. Pilgrim, another prisons officer who was nearby, came and together we held the Claimant down on the ground. While we were doing this, the Claimant was struggling and behaving aggressively and throwing words. P.O. Basdeo then called upon us to break and P.O. Pilgrim and I brought the Claimant to his feet.

P.O. Basdeo asked P.O. Pilgrim and I (sic) to go and report the incident and he then instructed P.O. Alexander who was nearby to escort the Claimant out of the exercise yard to the Prisons Supervisor's office. While he was being escorted out of the yard by

P.O. Alexander, the Claimant used obscene language and he then turned towards P.O. Pilgrim and I and said

*P.O. Pilgrim and I then went to the Prisons Supervisor's office and we told him briefly what had happened. The Prisons Supervisor Mr. Seyjagat instructed me to go to the infirmary to see about my injuries and I did. **My face and my hand were hurting and the infirmary officer gave me an ice pack and Divon for the pain.** While I was there, I was informed by the infirmary officer that the Claimant had come and complained of injuries. I filled out an accident report form in respect of the Claimant, a true copy of which is hereto annexed and marked "A". **A true copy of the out-patient's log book showing where I and the Claimant received treatment is hereto annexed and marked "B".** I then returned to the Mr. Seyjagat's office. The Claimant and P.O. Pilgrim were also in Mr. Seyjagat's office at that time.*

The only force that I used against the Claimant on August 19th 2010 was when I pushed him away to prevent him from hitting me and when I held him down on the ground. I used that force to prevent the Claimant from hitting me and being a threat to others. I never cuffed, slapped, choked or otherwise beat the Claimant, either with or without a baton. At no point in time on August 19th 2010 did I see any other prisons officer cuff, slap, choke or otherwise beat the Claimant, either with or without batons. At no point in time do I recall the Claimant losing consciousness or urinating on himself. After the incident, I did not observe the Claimant to have any serious injuries. I don't recall seeing bruises or welt marks or scars all over his body.

29. This witness exhibited to his witness statement a statement dated 19th August 2010, which is a statement that he claimed was produced by him on the day of the incident. Nowhere in that statement did he say that Grannum fell over a bench. He considered this detail, though material, unnecessary at the time as it was just a brief account of what transpired.

30. He was aware that by General order when force is used a **detailed** statement of what transpired had to be given. He was asked:

Q: *Did you do a **detailed** report?*

A: *Yes*

Q: *So the report that you just indicated is a brief account of what took place is your **detailed** account?*

A: *Apparently sir.*

31. This is representative of the curiously vague nature of his evidence . He sought to suggest that a more detailed report would be required when use of force amounting to abuse had occurred, which was not the case.

The Bench

32. According to Officer Barrow the bench that the Claimant fell over was approximately 8 feet long one and a half to feet to 2 feet high. According to Officer Pilgrim it was approximately 10 feet long by 3 feet high. Officer Alexander didn't notice any bench or table.

33. It was submitted that there could be no clearer evidence of the Defendant's case being fabricated and that the evidence that there was a bench and that the injuries of the Claimant were sustained by him falling over that bench was clearly manufactured to meet the case of the Claimant.

34. I find however that there was clearly a **table**. The claimant himself says so. As there was clearly a table that Officer Alexander did not observe, it is equally conceivable that there was a bench that he did not observe.

35. Further the approximate dimensions given by the officers did not include the width of the bench. At one stage when Officer Pilgrim was attempting to recall the length and height of the bench he said 4 feet before adjusting his answer to 3 feet. It is conceivable that the bench described by the officers was the same as the table described by the claimant, (though Pilgrim suggests otherwise). Without the width of that object being elicited in cross examination, it is difficult to determine whether the alleged bench and the admitted table are the same.

36. The fact that Alexander did not notice any table does not mean that there was no table. His evidence makes clear that there quite a few other things that he did not observe, for example injury to the claimant's leg, and any discomfort that the claimant might have been in. Similarly

his failure to recollect the alleged bench cannot mean that there was no bench, and that therefore the other officers were being untruthful.

37. I find that it makes little difference whether or not there was a bench or a table. The claimant's injuries speak for themselves. Even if the claimant fell over a bench he could not have injured opposite sides of his head at the same time in the same fall. A cause other than the fall over the alleged bench, even if it existed, must be sought.

38. The incident according to Officer Barrow's witness statement at paragraph 8 - "*P.O. Basdeo then called upon us to break and P.O. Pilgrim and I brought the Claimant to his feet*".

Officer Pilgrim at paragraph 5 of his witness statement stated, "*..... P.O. Barrow and I lifted the Claimant to his feet*".

Barrow responded in cross examination when shown paragraph 8 of his witness statement as follows:

A: *can't really recall but I didn't attempt to bring him to his feet*

39. This witness claimed he observed no injuries at all on the claimant, that the claimant was making threats, and that he could not recall the claimant telling the Supervisor in his office that Barrow or other officers had hit him. While it is conceivable that the injuries as detailed in the medical records were so minor that Barrow did not observe them, I find that the claimant did in fact, whether truthfully or otherwise, complain in the supervisor's office of being hit by officers, and Barrow's failure to recollect this, especially when Pilgrim does, is suspicious.

40. The evidence that **Barrow** did not hear the Claimant inform the Supervisor that he was beaten by officers is **clearly in conflict with the evidence of Officer Pilgrim**. The major reason for being in the Supervisor's office was for the Supervisor to hear from the claimant and the

officers what had happened. It is inconceivable that the claimant's complaint of being hit would not be recalled by Barrow.

41. When this lack of recollection is considered in connection with the claimant's injuries as recorded, one is constrained to conclude that more happened than this witness was prepared to divulge, and that a sanitized version of this incident was being presented to the court.

The Injuries of the Claimant

42. Barrow was shown endorsement on RG 1 '*soft tissue injury to the neck*' and asked the question "you see anything on that day that could result in Grannum having '*soft tissue injury to his neck*'". His answer was "*possibly the fall sir*". When he was asked "*you witnessed anything on that day that would account for injuries to the claimant*" his answer was "*no*". He could offer no explanation of how even those injuries admitted by the Defendant, and reflected in the records, were caused to the Claimant.

43. Despite the injuries in the undisputed documents it was clear that the evidence of this witness was that he witnessed no injuries to the Claimant. It is clear that this witness was not even prepared to acknowledge seeing injuries that are not disputed and appear on the medical records, including soft tissue injuries and abrasion on the left shin.

Kirk Pilgrim

44. The witness statement of **Kirk Pilgrim** is as follows:

On August 19th 2010, I was working the main shift at the Prison which runs from 8:00 a.m. to 4:30 p.m. At about 1:15 p.m. on that day, I and some other prisons officers were in the process of escorting inmates from the infirmary and the top security division downstairs into the exercise yard for their daily airing. I was behind the last prisoner who was entering the exercise yard.

As I was coming down the stairs, I saw the Claimant strike P.O. Barrow with his fist. I began running towards the both of them in order to assist P.O. Barrow. I saw P.O.

*Barrow push the Claimant back and **the Claimant fell over a bench which was behind him.** When I reached the men, the **Claimant was on the ground trying to get up.** P.O. Barrow and **I held the Claimant down on the ground.** While we were holding down the Claimant, he continued acting up but after a little while, he calmed down, but he continued using some obscene and abusive language.*

*P.O. Basdeo then came to us and P.O. Barrow and I **lifted the Claimant to his feet.** P.O. Basdeo instructed another prisons officer, P.O. Alexander to carry the Claimant to the Prison Supervisor's office. P.O. Basdeo also asked P.O. Barrow and I (sic) to go and report the incident. While he was being escorted out of the yard, the Claimant turned towards P.O. Barrow and I and said*

*P.O. Barrow and I then went to the Prisons Supervisor's office. When he saw P.O. Barrow, **the Prisons Supervisor Mr. Seyjagat sent him to the infirmary.** The Claimant and P.O. Barrow came to Mr. Seyjagat's office after a short while.*

The Claimant told the Prison Supervisor his version of the story. He said that P.O. Barrow told him to take off the bandana and that he was going to take it off and then prisons officers just started to beat him...

***The only time on August 19th 2010 when I touched the Claimant was when I held him down on the ground after P.O. Barrow had pushed him.** I did this to prevent him from fighting P.O. Barrow. **I never cuffed, slapped, choked or otherwise beat the Claimant, either with or without a baton. At no point in time on August 19th 2010 did I see any other prisons officer cuff, slap, choke or otherwise beat the Claimant, either with or without batons.** I did see P.O. Barrow push the Claimant after the Claimant had struck him. At no point in time do I recall the Claimant losing consciousness or urinating on himself. After the incident, **I did not observe the Claimant to have any serious injuries. I don't recall seeing bruises or welt marks or scars all over his body.** I am aware that after the incident, the Claimant was taken to the infirmary.*

Jerome Alexander

45. The witness statement of **Jerome Alexander** is as follows:-

*On August 19th 2010, I was working the main shift at the Prison which runs from 8:00 a.m. to 4:30 p.m. At approximately 1:15 p.m. on that day, I was in the exercise yard. I was supervising inmates from the infirmary and top security division who were being brought out for their daily airing. About that time, I heard a commotion in the yard and when I looked in the direction of the commotion, **I saw the Claimant swinging at P.O. Barrow. The inmate hit P.O. Barrow and then P.O. Barrow pushed the inmate back. I immediately looked around me to make sure that the rest of the inmates in the exercise yard were not taking advantage of the opportunity to escape or engage in fights or do any other mischief. I was a little distance away and I ran toward P.O. Barrow and the***

*inmate. **By that time, P.O. Pilgrim was already with P.O. Barrow and he and P.O. Barrow were holding down the Claimant on the ground.***

*P.O. Basdeo then instructed me to take the Claimant to the Chief. The Chief is a term we use to refer to the Prisons Supervisor, Mr. Seyjagat. While I was taking the Claimant out of the yard he shouted obscenities toward P.O. Barrow and P.O. Pilgrim and he also threatened them.... I escorted the Claimant to Mr. Seyjagat's office and **left him outside** with another officer who was at the office. I then returned to my duties in the yard.*

*At no point in time did I use any force against the Claimant. I held him to escort him to the Chief's office and that was the only time I touched him. **I never cuffed, slapped, choked or otherwise beat the Claimant, either with or without a baton.** At no point in time on August 19th 2010 did I see any other prisons officer cuff, slap, choke or otherwise beat the Claimant, either with or without batons. At no point in time do I recall the Claimant losing consciousness or urinating on himself. When I was carrying the Claimant to the Chief's office, **I didn't notice any injuries on him. I didn't see any cut on his leg at that time.** He didn't complain to me about any injuries.*

The Evidence of Prison Officer Pilgrim- cross examination

Supervisor's Office

46. Officer Barrow had denied that the Claimant made any complaint about being beaten by the officers. Officer Pilgrim was asked about what transpired in the Supervisor's office. This witness testified that the Claimant was complaining about pain in the Supervisor's office, telling the Supervisor that he was beaten by officers and that his back and head was hurting. The office was a small office. Barrow was present as he had returned from the infirmary. (Paragraph 6 witness statement).

47. He further testified as follows: *"I cannot recall the exact details. Remember he said head hurting him, back of head hurting him and thing"*. He claimed however that he did not see any injury on the claimant and the claimant did not appear to be in any discomfort. He also did not recall anything happening to cause the claimant to get all the injuries he complained of, though he testified that the claimant fell over the bench, and opined that could have accounted for the injury to the neck or the back of his head.

48. His contemporaneous statement given to the supervisor did not mention the claimant hitting Barrow or the claimant falling over a bench. He explained that it did not because his main concern was the threats allegedly made by the claimant. He denied the involvement of other officers, save that P.O. Basdeo came and told them to raise the claimant up.

49. He claimed that with fifty (50) inmates and around seven (7) prison officers present an incident such as that described by the claimant with such use of force would have caused a riot. The fact that neither of these witnesses, who were both present from the time that the Claimant entered the exercise yard and were there at the time that the Claimant was escorted out of the exercise yard, could give any explanation of how the injuries to the Claimant were sustained suggests that the explanation about the fall over the bench is either not the truth or not the whole truth. There is clearly a gap in the evidence. That does not necessarily lead to the inexorable conclusion that the claimant's explanation for his injuries is entirely truthful. That explanation too suffers from its lack of consistency with the medical records.

Evidence of Jerome Alexander- cross examination

50. In his witness statement Officer Alexander stated, *"When I was carrying the Claimant to the Chief's office, I didn't notice any injuries on him. I didn't see any cut on his leg at that time"*. Yet in cross examination when directed to that statement he said that he didn't observe the claimant's legs. His answers in cross examination were curious.

Q: if you didn't observe his legs how are you able to make a positive statement about his legs.

A: I didn't see any injury

Q: But you couldn't see any if you didn't observe them?

A: Correct

Q: You said you didn't observe any injuries on him but you didn't observe him to see if there were any injuries, correct?

A: Yes sir

51. He didn't see the claimant fall at all.

Q: *So is there anything you can tell us how Grannam reach on the ground?*

A: *No*

This witness, like Barrow, was extremely vague in his answers, to the point where some of his evidence made no sense.

The Claimant's Injuries - The Documentary Evidence

52. According to the Daily Outpatients Register for August 19th 2010, which was annexed to the Claimant's witness statement, the Claimant's injuries were outlined as follows:

“Soft tissue injuries on (R) side forehead, behind (L) ear behind head (L) side + 1cm abrasion on (L) shin”

53. The Daily Outpatients Register further outlines that the Claimant was given “**C+D eusol and flavin**” as treatment for the injuries sustained.

54. In the Accident Report annexed to the Claimant's witness statement and marked “RG2”, it is outlined that on August 20th 2010, the Claimant was seen by the Prison Medical Officer who noted “*no major injury seen*”.

55. During cross examination, the Claimant was asked where on his body he was hit and he replied that he was hit “*on face, head, back of head , left side head, forehead, nose, chin, throat, shoulder, back hip, left shin,*”. In response to enquiries by the Court, the Claimant stated that he was hit over **8 to 10 times** at the **back of his head** and left side of ear with a wooden stave by Officer Alexander. The Claimant further stated that as a result of the blows to his head he had a “**gash**” at the back of his head and **there was a lot of blood**. The Claimant further stated that he received treatment at the infirmary but **did not receive stitches**.

56. Upon further enquiries from the Court, the Claimant testified that he **did not black out**, that he **did not undergo an x-ray examination after the incident**, and he did not receive **any stitches for the wound**. This is curious considering **the number of blows described by the Claimant and the presence of “a lot of blood”**.

57. It was submitted that there is a reasonable basis for this Court to **doubt the veracity of the Claimant's account of the severity of the blows he received.** Further this was a matter which goes **to the Defendant's case as it relates to self defence.**

58. It was submitted that "**Major**" is a relative term and the Court did not have the opportunity to have an explanation of the term, solely because of the actions of the Defendant in omitting to seek to call the prison medical officer as a witness in this matter.

59. However there is no property in a witness. The claimant could have sought to bring the makers of these records to testify. An explanation of these records would have assisted in ascertaining what was the precise nature of the injuries observed, why treatment was for minor injuries , why no stitches were considered necessary, and what was the meaning of the note – "*no major injuries seen*".

60. In the absence of such an explanation a court has to make what it can of what is in the records, as these are the only possibly objective evidence of the injuries, apart from that given by the claimant. One is driven to ask,

1. If the claimant's version of events is correct, and there was the extensive amount of blood that he described, resulting from the alleged brutal assault involving several strikes to his head with a stave, and resulting in a laceration to his head, and to his shin, would the contemporaneous medical records reflect a. *no major injuries seen*, b. *1 cm abrasion on left shin*, c. *soft tissue injury neck*, d. *Soft tissue injuries on (R) side forehead, behind (L) ear behind head (L) side?*

2. Would the claimant not have required stitches if his blood loss was as great as that described? Even if he did not, would not such significant blood loss have been recorded in the notes?

3. Wouldn't the extent of incapacity and discomfort described by the claimant have been noted, and possibly referred for further investigation, especially as the claimant complained that he had nearly lost consciousness, had sustained several blows to the

head, and feared that his nose had been fractured from one of the blows to the face?

4. If he had scars to show from that day as he indicated to counsel in cross examination wouldn't a medical report be able to attest to those scars? No such report was produced.

The burden of proof is on the claimant. He alleges serious and significant injuries. Those injuries allegedly resulted from a brutal and unprovoked attack. At face value the medical records do not support his testimony as to the resulting injuries. They in fact reflect an exaggeration by him of his injuries.

According to his testimony the degree of blood loss would have called for an assessment by the examining officer, and at least consideration as to how to staunch the flow of blood, whether by stitches or otherwise. In fact the treatment recorded was (cleaned and dressed with?) flavene and eusol.

5. If those records were not accurate, and in fact were grossly inaccurate, would the claimant not have sought to have the makers of those documents attend court to explain how the records could be so distorted as to reflect no major injuries seen, if in fact the claimant presented after such an incident in pain, and covered in blood with wounds from the head and shin?

61. The evidential burden rested upon the Claimant to provide evidence to the Court to explain in the circumstances that the phrase "no *major injuries*" was yet consistent with the injuries he described.

62. Prison Officer Barrow also sustained injuries. The Daily Outpatients Register for August 19th 2010 outlines the injuries sustained by Prison Officer Joel Barrow as "Pain on (L) cheek and **swelling on (R) hand**". The treatment administered to him was "Ice pack and Divon"

Did the claimant fall over a bench?

63. Clearly therefore a lot more happened than simply P.O. Barrow being struck on the chin. If the document occurrence report is to be believed, then Barrow also had a swelling on his right hand which, in all probability, was the result of the same incident.

64. The injuries described by the claimant are serious. They allegedly resulted from the application of a considerable amount of indiscriminate force, including that applied to his head, and resulted in, inter alia, a gash and “a lot of blood”. Yet the injury to the claimant’s head recorded was soft tissue injury. The only injury recorded which could have drawn blood was a one centimeter abrasion to the shin.

65. If such an apparently minor injury was recorded in relation to the shin it is reasonable to infer that a similar injury to the head would have been recorded. No bleeding injury to the head was recorded. The possibilities are:

- a. the records are inaccurate or false, or
- b. the claimant has significantly exaggerated the injuries he received.

66. If he merely fell over a bench it is difficult to see how he could have injured both the right front of his head (forehead) AND the opposite left side behind his ears in the same fall.

67. I find that the claimant’s injuries as established by his own evidence are not consistent with the great degree of force he describes.

68. While I find that a lot more must have happened than Barrow describes to account for Barrow’s own alleged injuries, I also find that a lot less must have happened than the claimant describes, in order to account for the claimant’s alleged injuries.

Findings

69. I find that -

- a. The claimant’s injuries are not consistent with the minimal use of force that the officers describe. The head injury is to two distinct and opposite sides of the head, and, especially when considered in light of the claimant’s evidence, on a balance of probabilities is unlikely to have resulted from a single fall.

- b. I reject the evidence of the witnesses for the defendant that the claimant's injuries were all caused by a fall over a bench.
- c. I reject the evidence of the officers that they did nothing further to restrain the claimant other than what they described in their witness statements.
- d. The method used to subdue the claimant was one which resulted in the injuries which he were recorded. I have no doubt that those injuries were not sustained in the sanitized manner described by the defendants, as they are not entirely consistent with falling over a bench.
- e. **I conclude that greater force was used by the officers in subduing the claimant than they were prepared to admit.**
- f. **I find that less force was used on the claimant than he claims.** I have no doubt that the claimant has significantly exaggerated the extent of his alleged injuries, which are not corroborated by the documentary evidence, or by any evidence whatsoever.
- g. I am constrained to accept the documentary evidence in this regard relied on by the claimant himself to support his claim to have sustained injury.

Whether the issue of self defence arises

Law - Self-defence

70. **Clerk & Lindsell on Torts, 20th Edition, Paragraphs 30 – 02 to 30 - 03, pages 2017-2018** are set out hereunder.

*It is lawful for one person to use force towards another in the defence of his own person , but this force **must not transgress the reasonable limits of the occasion** , what is reasonable force being a question of fact in each case. But **the law does not require that a person** when laboring under a natural feeling of resentment consequent on gross **provocation** should *very nicely measure the weight of his blows*.*

*In **Ashley v Chief Constable of Sussex Police** ([2008] UKHL 25) the House of Lords clarified two important differences between self-defence in criminal law and self-defence to claims for the tort of trespass to the person. First, in contrast to criminal law, **the burden of proof with regard to self-defence in civil law is on the defendant**. Secondly,*

*in criminal law an honest but mistaken belief – even if unreasonable – that it is necessary to defend oneself is a defence to a criminal assault. In contrast, in civil law the defendant must show that, where he is being attacked or in imminent danger of attack, he honestly and reasonably believed that it was necessary to defend himself (as well as that the force used was reasonable in all the circumstances). Indeed, the majority of their Lordship left open whether there is any defence of self defence at all in civil law where the defendant cannot show that there was **actually an attack** or an imminent danger of attack. In other words, it may be irrelevant that the defendant mistakenly and reasonably believed that there an actual or imminent attack: what may be needed is **proof** that there was in fact an attack or imminent attack.*

71. *In Ashley v Chief Constable of Sussex Police [2008] UKHL 25 the 3 possible tests were set out as follows and analysed in several judgments in particular at paragraphs 3,16,18,20,44,50-55,76, 85,86, 91.*

Issue 1. The self-defence criteria

16. *In para 37 of his judgment the Master of the Rolls identified three possible approaches to the criteria requisite for a successful plea of self-defence, namely, (1) the necessity to take action in response to an attack, or imminent attack, must be judged on the assumption that the facts were as the defendant honestly believed them to be, whether or not he was mistaken and, if he made a mistake of fact, whether or not it was reasonable for him to have done so (solution 1); (2) **the necessity to take action in response to an attack or imminent attack must be judged on the facts as the defendant honestly believed them to be, whether or not he was mistaken, but, if he made a mistake of fact, he can rely on that fact only if the mistake was a reasonable one for him to have made (solution 2);** (3) in order to establish the relevant necessity the defendant must establish **that there was in fact an imminent and real risk of attack (solution 3).** It was common ground that, in addition, based on whatever belief the defendant is entitled to rely on, **the defendant must, in a civil action, satisfy the court that it was reasonable for him to have taken the action he did.** Of the three solutions the Court of Appeal held that solution 2 was the correct one. On this appeal the Chief Constable has contended, as*

he did below, that solution 1 is the correct one. The respondents have not cross-appealed in order to contend that solution 3 should be preferred.

73. Though solution 2 was accepted as there was no argument heard on solution 3, some of their Lordships clearly preferred solution 3.

Conclusion

74. The burden of proof lies on the defendant's agents to establish that -

- a. they acted in self defence
- b. there was a real risk of imminent attack.
- c. it was reasonable to take the action they did – and I consider this to include demonstrating that the use of force did not transgress the limits of the occasion, and was in the circumstances proportionate.

75. The “occasion” was

- a. the situation in the prison yard where there were seven (7) officers and fifty (50) inmates.
- b. the facility was a maximum security facility with high risk inmates.
- c. the officers were of the view that a bandana worn by the claimant was a gang related symbol demonstrating affinity to a particular gang, and there were other persons also wearing bandanas, possibly also showing gang affinity.
- d. the officers were in an environment where the potential for violence existed ,and the challenge to their authority, especially with regard to such an issue, could have consequences for prison discipline.
- e. the claimant did not remove the bandana when asked. He questioned why he should remove it. He has not explained why he was wearing it in prison in the first place.

76. I find in those circumstances it is more likely than not that the claimant was intending to make a show of defiance by wearing the bandana. I find that his failure to immediately remove it, and his admitted response when the bandana was taken away from him by P.O. Barrow, suggests that it is more likely than not that he did resist when Officer Barrow removed it. In those circumstances the response of the officers was to subdue the claimant. If the use of force to do so was proportionate to the need to defend Officer Barrow and to subdue the claimant then they would have acted in self defence.

77. I find that the claimant must have significantly exaggerated the use of force upon him, as it is not corroborated by the medical records. His credibility is in issue as a result.

78. I find that the prison officers did not tell the whole truth and did not accurately describe the use of force on the claimant.

79. The contemporaneous record of the injuries however reveals “no major injuries”. I find that this means exactly what it says. Soft tissue injury, and a one centimeter abrasion on the shin treated with flavene, for which no stitches were required, cannot be said to be major injuries.

80. If the claimant wished to contend otherwise, the burden of proof was upon him. In those circumstances I find

- a. the use of force was not excessive,
- b. that such force as used did not transgress the reasonable limits of the occasion,
and

c. that on a balance of probabilities, the defendant's agents acted in self defence.

Disposition and Orders

81. **The claimant's claim is dismissed.**

82. It should be noted that I have found that all parties in this matter attempted to mislead the court. In those circumstances I make **no orders as to costs**.

Dated this 14th day of December 2012

Peter A. Rajkumar
Judge