



[2022] JMSC Civ.152

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. 2016HCV02036**

**BETWEEN**

**FITZROY FRAY**

**CLAIMANT**

**AND**

**THE ATTORNEY GENERAL OF JAMAICA**

**DEFENDANT**

**IN CHAMBERS**

**Ms. Andrea Lannaman and Ms. Sara-Lee Scott instructed by Marion Rose Green and Company for the Claimant**

**Mr. Ricardo Maddan instructed by the Director of State Proceedings for the Defendant**

**Heard: June 6, 2022 and September 23, 2022**

**Assault and Battery – Section 14 of the Corrections Act – Section 33 of the Constabulary Force Act**

**Carr, J**

**Introduction**

**[1]** Fitzroy Fray was an inmate at the Richmond Farm Correctional Centre on the 18<sup>th</sup> of July 2012. He was in a physical altercation with a fellow inmate when he heard a guard's whistle. He and the inmate got up off the ground and were standing. He avers that a Correctional Officer (Devon Tennant) approached him and started to

beat him. He has filed suit to recover an award in damages as a result of injuries he received during that beating.

## The Law

- [2] Mr. Fray's claim is based on the tort of assault and battery. Battery can be defined as the intentional and direct application of physical force to another person. In this case Mr. Tennant's status as a Correctional Officer provides him with a defence similar to that of a Constable of Police. **Section 14** of the **Corrections Act** provides as follows:

*"Every Correctional Officer while acting as such shall have, by virtue of his office, all the powers, authorities, protection and privileges of a constable for the purpose of his duty as such correctional officer."*

- [3] In cases involving the police, statute provides protection to the officer in claims of tort. It is for the Claimant to prove that the action of the officer was malicious or without reasonable cause. This principle is encapsulated in **Section 33** of the **Constabulary Force Act** which provides:

*"Every action to be brought against any Constable for any act done by him in the execution of his office, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such act was done either maliciously or without reasonable or probable cause - and if at the trial of any such action the plaintiff shall fail to prove such allegation he shall be non-suited or a verdict shall be given for the defendant."*

## Decision

- [4] The case turned on the credibility of the parties. I did not find that Mr. Fray was credible, his evidence was not supported by any independent witness or any independent medical reports. In the circumstances judgment is entered on behalf of the Defendant.

## Analysis and Discussion

- [5] The sole issue before the court is whether Mr. Fray's injuries were as a result of the unlawful conduct of Mr. Tennant.
- [6] Mr. Fray filed a witness statement on the 24<sup>th</sup> of September 2021. He contends that he and another inmate got into a verbal argument which became physical. The two men were wrestling but as soon as they heard the guard's whistle they stopped fighting. A correctional officer (Mr. Gordon) grabbed him in his shirt and held on to him. Mr. Tennant grabbed him from Mr. Gordon and started to hit him, using his fists, all over his body. He was hit in his back and his left hip, and he fell to the ground as a result of a hard blow to his back. He was kicked all over his body while he was on the ground. He was then taken to the Overseer's office and while on his way there Mr. Tennant punched him in his left ear temple and he passed out from the blow.
- [7] Upon regaining consciousness, he realized that he was in the overseer's office. He said that he was feeling severe pain all over his body and that he complained about the pain but no one paid him any attention. The following morning, he continued to experience severe pain in his back, head, spine area, left leg and his left ankle. He was not taken to the doctor despite making a request to the officer for the prison. He received medication however, he continued to feel pain in his head, the left side of his face and his lower back.
- [8] It was a week later that he was able to finally see a Doctor. He was examined by Dr. Jones. Four months later he was taken to a Psychiatrist in St. Mary. In November 2012 he received medication for blood pressure as well as painkillers.
- [9] Mr. Tennant denied the allegations put forward by Mr. Fray. He averred that on the day in question, while he was in the tailor shop, he heard a commotion outside. As he stepped out he saw Mr. Fray on top of another inmate in a gutter. Mr. Fray had a stone in his hand hitting the other inmate in his face. He blew his whistle and ordered Mr. Fray to stop. As he approached the men he observed that Mr. Fray

was still on top of the inmate who appeared to be motionless. He attempted to pull Mr. Fray off of the inmate however he was unsuccessful. He eventually was able to do so by pulling at his shirt collar. He noticed that the inmate's face was covered with blood.

- [10] Mr. Fray was taken to the overseer's office and a report was made. He denied punching, kicking, slapping or assaulting him.
- [11] Apart from the evidence contained in the medical report of Doctor Jones, which was admitted as Exhibit 1, there is no independent evidence before this court in support of either case.
- [12] The information contained in the medical report was inconsistent with the evidence of Mr. Fray. Doctor Jones reported that he examined Mr. Fray on the 19<sup>th</sup> of July 2012. He commenced his report with the following:

*"This is to verify that I examined this patient on July 19, 2012, when he complained that he was beaten by a warder on the premises of Richmond Farm Adult Correctional Centre. He told me that the Officer used his fist on the previous day to punch him on the right side of his head, his back and chest."*

- [13] Mr. Fray in his witness statement gave the impression that he was not seen by a Doctor until a week after the incident. His statement seemed to suggest that he was denied the opportunity of medical care. This clearly was not the case.
- [14] Further the injuries he outlined in his witness statement are far more severe than those found by the doctor. Doctor Jones in his findings on examination indicated that Mr. Fray was suffering from slight tenderness to his upper back and superficial abrasions to both knees. His condition was not considered serious and he was given analgesics. The history recounted by Mr. Fray to the doctor was inconsistent with that which he outlined in his statement. He reported to Doctor Jones that he was punched to the right side of his head. In his witness statement he stated that

Mr. Tennant punched him on his left ear temple. Mr. Fray also failed to mention to the Doctor that he lost consciousness at the time, since this was not included in the medical report it is fair to infer that such an important piece of information was not relayed to the doctor upon examination.

- [15] Subsequent to that initial visit Mr. Fray returned on another eight occasions to see the Doctor. He complained of back strain, headaches, nerves, poor sleep, muscle and joint pain, anxiety, numbness to the right side of his head, sadness and depression. He was discharged on the 28<sup>th</sup> of February 2013.
- [16] Given the medical report provided it is clear that the injuries as described there, are inconsistent with the grave beating that Mr. Fray indicated he received at the hands of Mr. Tennant. I therefore find that he is not a credible witness and I reject his evidence.
- [17] The evidence of Mr. Tennant is far more credible. I accept and find that Mr. Fray was in an altercation with a fellow inmate. Mr. Tennant attempted to stop that altercation and in doing so pulled Mr. Fray by his shirt collar. I do not accept that Mr. Tennant was excessive in his response to what he observed and I also do not find that he used any physical force which caused injury to Mr. Fray on the day in question.
- [18] Having regard to the reasons outlined above the orders are as follows:

**Order**

1. Judgment for the Defendant.
2. Costs to the Defendant to be agreed or taxed.