

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. W116/79

BETWEEN	ANSFORD WILLIAMS	PLAINTIFF
AND	THE ATTORNEY GENERAL	1ST DEFENDANT
AND	CHRISTOPHER FOSTER	2ND DEFENDANT
AND	LLOYD JOHNSON	3RD DEFENDANT
AND	DESMOND WILLIAMS	4TH DEFENDANT
AND	LYNTON ADAMS	5TH DEFENDANT
	ALBERT CUNNINGHAM	6TH DEFENDANT

W.B. Frankson Q.C. instructed by Gaynair and Fraser for the Plaintiff

R. Lopez and Ernel Johnson instructed by the Director of State Proceedings for the Defendants.

Heard on: 7th, 8th and 9th June, 1982.

Delivered: 1st November, 1982.

J U D G M E N T

Bingham J:

On 16th September, 1977 around 8.30 p.m. in a district called Jane Marks in Westmoreland there was enacted an incident which can only be described from the evidence as to what in fact took place as a common brawl. The two main combatants were one Ansford Williams the Plaintiff and of all persons a regular member of the Constabulary Force and the first named defendant Christopher Foster. It is also alleged by the plaintiff that the other four named defendants who were then Special District Constables then known by name Home Guards played supporting roles in the incident.

As a sequel to the matter there was another incident involving a civilian one Everton Reid and the third named defendant Lloyd Johnson. Arising out of this incident Johnson received a cut on his back as a result of which he made a report to Constable Foster. Accompanied by third named to the sixth named defendants, Foster had gone to Jane Marks, not to investigate the incident between Johnson

and Reid, as one may have expected, but to arrest Everton Reid. His mind was already made up before he had set out for Jane Marks. The plaintiff who is a cousin of Everton Reid having heard of the earlier incident made a complaint to Foster. It was this complaint which triggered off the incident which now forms the subject matter of this present claim which is now before me for determination.

In his Claim the plaintiff sought relief against all the defendants for:-

1. Damages for an Assault and Battery committed by the 2nd, 3rd, 4th, 5th and 6th defendants.
2. Malicious Prosecution in relation to certain false charges instituted against him by the second named defendant.

The Claims are made by virtue of the Crown Proceedings Act. In paragraphs 3, 4, and 5 of his Claim the plaintiff alleged that the second named defendant a Police Constable and the 3rd, 4th, 5th and 6th defendants as Home Guards on the night in question "unlawfully and maliciously and without reasonable and probable cause unlawfully assaulted and severely beat and shot the plaintiff at Jane Marks as a consequence whereof the plaintiff received serious injuries and suffered loss and damages."

The particulars of the injuries which it is alleged the plaintiff received are then set out followed by the particulars of special damages claimed.

At paragraph 6 the second head of the claim is set out. It is there alleged that "the second named defendant unlawfully and maliciously and without reasonable and probable cause prosecuted the plaintiff on false charges to wit:-

"assault and assault occasionally actual bodily harm."

Paragraphs 8 and 9 deals with the criminal proceedings brought against the plaintiff and the result of these proceedings.

The particulars of Special Damages claimed under this head of the Claim are then set out and the Claim ends with a prayer

for Damages.

The Defences relating to all the defendants were not filed together but were split into two separate Defences. This fact may have been due to the unavailability of instructions to the Attorney responsible for drafting the Defence. The result was that the Defence of the first and second named defendants were filed first and later followed by that of the third, fourth, fifth and sixth named defendants.

The Defence in each instance makes very interesting reading in the light of the evidence which subsequently emerged during the hearing.

The Defence of the first and second named defendants read in part:-

"The second defendant will say that the plaintiff first assaulted the second defendant and urged on and assisted by an hostile crowd the plaintiff relieved the second defendant of his baton and service revolver and using the said baton continued his assaults on the second defendant until the second defendant fell to the ground. The second defendant will also say that while the second defendant was lying on the ground the plaintiff continued to assault the second defendant with great force and the second defendant in necessary self defence fired his service revolver using no more force than was necessary in the circumstances."

It is also denied by the second defendant that he acted maliciously or without reasonable and probable cause.

It is further denied by the second defendant that he prosecuted the plaintiff on false charges.

In the Defence filed on their behalf the third, fourth, fifth and sixth defendants alleged in part that on the day in question while patrolling the district of Jane Marks in Westmoreland with the second named defendant the plaintiff suddenly attacked the second named defendant viscously and simultaneously removed his service revolver and pointed it at his throat, at which time they assisted the second named defendant in

8246

recovering the service revolver.

They also deny^{having} assaulted the plaintiff.

These two Defences were filed on 28th January, 1980, and 17th March, 1980 respectively. Having regard to the fact that the version of the incident as related by the plaintiff is to a very large extent diametrically opposite to that of the defendants the pleadings as framed when examined against the evidence elicited from both sides at the trial provided the first clue as to just how frank and truthful were the versions as related by the parties. It is of no little significance that although the second defendant has not alleged in his defence that the plaintiff disarmed him of his service revolver and held it at his throat or that he needed the assistance of the third, fourth, fifth and sixth defendants in recovering the service revolver.

There is therefore a clear conflict which emerges from the Defences with respect to this allegation. One would find it difficult to believe that had such an incident taken place in which the second named defendant had been disarmed of his service revolver and, more importantly, the revolver had been used to be pointed at his throat, that such a material allegation could have been omitted from the Defence filed on behalf of the second named defendant. The question therefore arises as to whether such an allegation as contained in the Defence of the third, fourth, fifth and sixth defendants was introduced in their pleadings in order to give some colour in support of their case and to give a reason to explain away the very serious allegations contained in the plaintiff's Claim.

As the evidence has emerged the plaintiff is not denying that he disarmed the second named defendant of his service revolver and his baton

847

during what was mainly a fist fight between the second named defendant and himself. He admits that this was done after several blows had been exchanged between them at which stage the second named defendant who was at the receiving end of the encounter made an attempt to pull his service revolver and for his own safety the plaintiff who is a sturdily built person took away the revolver and kept it for a short time eventually handing it back to the second named defendant. He admits again disarming the second named defendant of his baton towards the end of the contest after having received several blows to his body inflicted by the second named defendant with the baton. In doing so he acted to prevent the second named defendant from causing further harm to him with that weapon.

Although all the defendants gave evidence that the plaintiff was shot while bending over and attacking the second named defendant with the baton while he lay helpless on the ground the injuries which the plaintiff received from this gun shot does not support their version, but rather the account given by the plaintiff. According to the plaintiff, he had his hands at his sides at the time of the shooting and the bullet penetrated his left hand just above the wrist and lodged into his left leg in the region of his thigh. Had the plaintiff been in the position in which the defendants have placed at the time of the shooting bending over the second named defendant who was lying on his back on the ground, one would have expected the plaintiff to have an injury to the upper section of his body. Further as it is common ground that it was only one shot which caught the plaintiff, the other being discharged according to the second named defendant in the air, it is inconceivable having regard to the position of the plaintiff that this bullet could have penetrated the

8748

plaintiff's left wrist and lodged into his left thigh.

Having regard to the conflicting nature of the evidence, one would certainly in coming to a conclusion as to which account was the more probable of the two have derived no little assistance from some kind of medical evidence called in support of the case for both sides. This was not to be and in the end one was left to have resort to the bare ipse dixit of the parties who from their demeanour were clearly bent on presenting a case as convincing as the obvious concoctions which they hatched up could seem to appear impressive. This was particularly true of the five defendants who gave evidence as apart from the accounts given by the second and third named defendants whose versions were not entirely dissimilar, the other three defendants seems to have embarked on a course bent on seeking to see just which one could out do the other in inventing and falsifying their evidence. This spectacle reached such a proportion when one had the sixth named defendant, Albert Cunningham, giving evidence that his role on the night in question during the incident was that of "the keeper of the second named defendant's hat." This was so says he, despite the allegation contained in paragraph 3 of the Defence of the third, fourth, fifth and sixth named defendants that "they assisted the second named defendant in recovering his revolver from the plaintiff." As on his evidence he never got to within an arms reach of the plaintiff, it would be most interesting to know just how he rendered this assistance.

What does the plaintiff have to say about the respective roles which these Home Guards played in the incident? He stated that one stage during the contest between the second named defendant and himself what may be conveniently referred to as the second round, the second named defendant

was again at the receiving end of some fist blows when the second named defendant told the plaintiff that he was arresting him for assault and the plaintiff placed his two hands in front of him by way of submitting to the arrest. The second named defendant then took a pair of handcuffs which he obtained from one of the other defendants and while two held onto one of his hand, and the other two defendants held the other hand, the second named defendant instead of handcuffing the plaintiff use the handcuffs to hit him over the left side of his head wounding him in the process and also over the left shoulder. While this was taking place the other four defendants were punching the plaintiff into the region of his back. At this stage the plaintiff for his own safety on realising their true intent, flashed off the four defendants who were holding him. The second named defendant then called for a baton and this was furnished to him by one of the other four defendants and he now proceeded to use the baton to inflict further blows to the plaintiff who in turn was forced to take steps to disarm the second named defendant of the baton.

It is not denied by the defendants that the second named defendant was at the receiving end of the fist fight. It is also not denied that the second named defendant at various stages of this contest called for and obtained a pair of handcuffs and a baton. Finally it is not denied by the defendants that when all else failed to bring the plaintiff to a state of complete submission the second named defendant shot the plaintiff. What is the critical question to be determined, however, is when the evidence is combed from begining to end, in what circumstances did the plaintiff and second named defendant received their injuries, and more importantly in just what manner was the plaintiff shot?

As far as the injuries received by the second named defendant are concerned, the plaintiff has been most frank in admitting to having on more than one occasion during the incident punched the second named defendant on several parts of his body. If the second named defendant received injuries and there is no doubt that he did, then it is quite probable that he received them during this fist fight with the plaintiff.

It seemed from the evidence that the blows which the second named defendant were able to deliver to the plaintiff had little or no effect upon him. The question needs to be asked therefore as to what justification could the second named defendant have had for resorting to the use of a handcuff, then a baton and finally his service revolver in attempting to subdue the plaintiff? According to the second named defendant the plaintiff had used indecent language and when spoken to by him, instead of ceasing, he continued and became more aggressive. He attempted to arrest the plaintiff who resisted his attempt and a fist fight started between them.

The plaintiff on the other hand gives a more plausible account as to how the incident started. He was complaining to the second named defendant and made use of the term "police brutality" to which the second named defendant took offence and boxed him and he retaliated. Although four of the defendants including the second named defendant denied that the fight started after a boxing incident the fifth named defendant, Lynton Adams, testified to the fact that both men held unto each other shirt and boxed each other at the commencement of the fight.

CONCLUSION AND FINDING OF FACTS

On the evidence adduced I conclude that it is more probable than not that:-

1. The plaintiff was incensed over what had taken place earlier between his relative and the Home Guards.
2. The plaintiff later saw the same Home Guard, Johnson, with the second named defendant.
3. The plaintiff complained to the second named defendant and in so doing used the words "Police Brutality." I do not accept that the plaintiff used any indecent language, as had he done so this fact being most material to their case would certainly have been alluded to by the defendants in the pleadings.
4. That the second named defendant took offence to these words used by the plaintiff and held unto the plaintiff's shirt and plaintiff in turn held him also in his shirt and they boxed each other and a fight ensued.
5. That the second named defendant was getting the worst of that encounter and attempted to draw his gun from the holster and the plaintiff acting for his own safety, disarmed him.
6. That after a short interval the plaintiff returned the gun to the second named defendant who not being satisfied commenced once again to fight the plaintiff who retaliated. The second named defendant again was at the receiving end of the encounter and now called upon the assistance of the other four defendants to arrest the plaintiff for assault.
7. The plaintiff was then assaulted by the second named defendant, first with handcuffs while he was being held by the other four defendants and afterwards by the second named defendant with a baton.

8. During the incident with the baton the plaintiff having received several blows with the baton succeeded in disarming the second named defendant of the baton. The second named defendant seized upon this opportunity and acting more out of desperation, drew his gun and fire two shots in quick succession at the plaintiff injuring him to his left wrist and left thigh.
9. That the second named defendant was the aggressor throughout the incident and that his actions including that of shooting the plaintiff was totally unjustified.
10. That the injuries inflicted on the plaintiff with the handcuff, baton and by the gun shot were out of proportion to any attack being made upon the second named defendant and were not reasonable in the circumstances.
11. That the role played by the other four named defendants were of minimal nature and that they acted more out of obedience to the orders of second named defendant their superior in rank in coming to his assistance during the incident and did not in the Court's view acted by way of malice or without reasonable and probable cause and the claim against them for assault therefore fails.

DAMAGES

Based upon the principles as enunciated in *Rookes vs Barnard* [1964] A.E.R. 367 and on the evidence that I have accepted it may seem from the outset that an award of heavy damages ought to be fair and reasonable in the circumstances having regards to the facts as I found.

The evidence establishes that it was the second named defendant who was the aggressor throughout the entire incident and who acted under

the cover of his authority as a Peace Officer while harbouring in his mind the malicious intent to do serious bodily harm to the plaintiff.

By way of mitigating the serious and high handed attack upon the plaintiff, however, one has to bear in mind that up to the moment of intervention on the part of the other four named defendants, the plaintiff by way of retaliation gave as good, certainly more, than he was receiving by way of blows received from the second named defendant.

In assessing damages under the head of Assault therefore, his conduct has to be looked at against that background.

The matter when looked at against that background in my view it clearly removes the issue of the quantum of damages from the arena of exemplary damages or aggravated damages to one of compensatory damages, which ought therefore to be the appropriate measure of damages.

Taking into consideration therefore the injuries which the plaintiff received and in particular the blows struck by the second named defendant with the handcuff, baton and the gun shot which he received a fair and reasonable award for general damages ought to be assessed at \$3,000.

On the head of Malicious Prosecution, although the charges of Assault and Assault Occasioning Actual Bodily Harm for which the plaintiff was tried and acquitted were not brought by the plaintiff himself, they were nevertheless preferred based on the report which the second named defendant made. The second named defendant was therefore properly sued under this head as it was his report which put into motion the chain of circumstances which lead up to the preferring of the charges. He cannot therefore say that he was not responsible for the charges laid against the plaintiff being brought.

As I have found that the second named defendant was the aggressor throughout the incident, it follows that any blow or blows which he received from the plaintiff were effected in retaliation and were totally justified in the circumstances. The charges brought against the plaintiff as a result of the second named defendant's report were therefore baseless, and a total abuse of authority.

On the evidence adduced by the plaintiff all the ingredients necessary to establish this claim have been proven. The measure of damages is the plaintiff's out of pocket expenses incurred in defending himself against these false charges. The amount claimed was \$2,500 but the evidence adduced on the plaintiff's behalf proved that the total sum which plaintiff expended was \$2,900. The plaintiff will accordingly recover under this head \$2,500. The Judgment of the Court is therefore:-

Judgment for the plaintiff against the first and second named defendants for \$5,500 with costs to be agreed or taxed.

Judgment for the third, fourth, fifth and sixth named defendants against the plaintiff with costs to be agreed or taxed.

D.O. Bingham
Puisne Judge