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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN CIVIL DIVISION  
CLAIM NO. 2003 HCV 1823

BETWEEN	ASTON DENNIS	CLAIMANT
AND	THE ATTORNEY GENERAL OF JAMAICA	1 <sup>ST</sup> DEFENDANT
AND	SERGEANT MANTLE McBEAN	2 <sup>ND</sup> DEFENDANT

Mr. Charles Campbell for Claimant

Mr. Brian Moodie instructed by the Director of State Proceedings for the Defendants

**BROOKS, J.**

**CLAIM FOR DAMAGES FOR ASSAULT**

**JANUARY 18 and 30, 2006**

In recent years there has been a proliferation of the number of persons operating illegal taxis along our island's roadways. The Transport Authority which has supervision of the transportation sector has deployed inspectors in an attempt to stem the spread of this illegal activity. In carrying out their mandate there have been instances of confrontation between these inspectors and drivers of motor vehicles. The claim by Mr. Aston Dennis in this case has its genesis in one such confrontation.

Mr. Dennis claims that on July 4, 2001, the Transport Authority inspectors wrongly accused him of operating an illegal taxi in Ocho Rios,

Saint Ann. He says that he denied the accusation and that he and they went to the Ocho Rios Police Station where he sought to have the matter resolved. He alleges that instead of the police providing him with reassurance and protection, he was handcuffed and beaten by one of the officers at the station, whom he names as Special Sergeant McBean. This was after he refused to deliver up the keys to his vehicle to that officer. That beating, he says, was inflicted with a baton and caused him to sustain injury. He now seeks damages in compensation for that assault.

The defendants refute Mr. Dennis' account of the events. They allege that Mr. Dennis, although accepting that he had committed a breach, refused to deliver up the keys to his vehicle in order for it to be impounded. They say that he was persuaded to attend, with the inspectors, at the police station and he did so. At the station however he still refused to deliver up the keys to the vehicle and behaved in a boisterous and aggressive, if not obnoxious manner. The police officer accused, who has since retired, says that his rank then, was that of corporal. I will refer to him as Officer McBean. Officer McBean stated that because of Mr. Dennis' abusive behaviour he placed him in the holding area of the station. The holding area, it proved, was in fact a cell. Officer McBean also testified that persons are not allowed to be placed in the holding area with keys, a gun, or fingernail clip. He says that he saw

Mr. Dennis with the keys and asked him to deliver them up for compliance with those restrictions but that Mr. Dennis refused. He says he took the keys from Mr. Dennis but denied hitting him, placing handcuffs on him or injuring him.

It is therefore for the court to decide, firstly, what, if any injury did Mr. Dennis sustain at the police station, secondly in what circumstances he did so, and thirdly whether it was justifiable in those circumstances.

#### **WHAT, IF ANY INJURY WAS SUSTAINED?**

Mr. Dennis, in his witness statement, stated that he was hit on the chest, shoulders, side, belly and hand with the baton. As a result of the incident he said that his clothes were torn and his hand and fingers were swollen. The statement also contained the following paragraphs:

“17. After the incident my face and ears were hurting me from the two (2) blows when I was boxed. I also had severe pain in my side, chest and belly bottom. These areas were tender, swollen and there was some bruising to my chest. There was also great pain in my waistline and back. I received these injuries from Sergeant McBean when he beat me with the baton and kicked me to the ground. I was unable to walk properly for several days.

18. My right hand and fingers became black and blue after I left the station. The right hand was numb, and the right ring finger would not move and had burning pain.”

Mr. Dennis went on to say that he made a complaint to a Sgt. Watson at the same police station. Sgt. Watson first scolded Officer McBean and then gave Mr. Dennis a letter to seek medical treatment at the Saint Ann’s Bay Hospital. After leaving the police station Mr. Dennis went to the office of the Superintendent of Police in Saint Ann’s Bay and there lodged a complaint. He also went to the Saint Ann’s Bay Hospital but was not treated there. He however spoke to a Dr. McDowell who was the doctor on duty at the hospital at the time, and in the afternoon of that day attended at the doctor’s private surgery. He was treated at about 8:00 p.m.

This area of the evidence provoked much comment by Mr. Moodie who appeared for the Defendants. The reason for the comments is that Dr. McDowell’s report (dated April 5, 2005) on Mr. Dennis’s injury and treatment, included, the following statements:

#### “HISTORY

A police (sic) allegedly beat this patient on July 4, 2001. He suffered injuries to his right ring finger. When seen he was experiencing pain, swelling and loss of function in the digit. There was no associated deformity in the finger.

There was no report of injury to any other organ system. There was nothing else of significance in the remainder of the history.

### EXAMINATION

...His significant clinical findings were confined to his right ring finger....

### MANAGEMENT

The finger was splinted...The patient was given a two-week appointment for review.

The patient was seen on two subsequent visits...On his final visit the fracture was healed and the patient fully rehabilitated.”

In cross-examination Mr. Dennis confirmed the reason for the doctor’s restrictive findings. He testified as follows:

“I told Dr. McDowell that I got beaten.  
When I went there I just show him my hand and tell him I got beaten.”

The distinction between the doctor’s findings and Mr. Dennis’s witness statement in respect of the injuries is striking. Based on those areas of conflicting evidence Mr. Moodie suggested to him and Mr. Dennis denied, that Mr. Dennis:

- a. had no other injuries apart from that to his hand;
- b. was not bruised
- c. was not swollen
- d. was not having difficulty walking

Mr. Dennis testified that he went to see a Dr. Phillip Henry. His explanation for going to see Dr. Henry was that “(o) n the third day after the incident I saw blood in my urine and went to see Dr. Henry about it. He also said earlier in cross-examination that “I never feel all those pain until the third day. The most pain I was feeling (on the day of the incident) was on my hand.”

A medical report by Dr. Henry was put in evidence. It is dated 20<sup>th</sup> April, 2005, and included the following statements:

“I saw Mr. Aston Dennis ...on the 7<sup>th</sup> of July 2001, when he complained of being allegedly beaten by the police on the 4<sup>th</sup> of July 2001 resulting in pain and injury to his Right 4<sup>th</sup> finger, lower back, Left hip and his waist.

X-Rays subsequently revealed a fracture of his Right 4<sup>th</sup> finger and tenderness was elicited on examination of his chest and lower back. The range of motion in his Left hip was significantly reduced as was the range of movement of the lumbar spine.

I treated him...and splinted his finger.

He was totally laid-up for one week, and it took the better part of six (6) weeks for his finger to heal to being relatively pain free.

He continued to experience pain in his lower back and hip for six (6) months following the incident; and even now has intermittent episodes of pain in his back with difficulty in performing customary domestic duties during those times.”

Against the background of the total medical evidence, I find that Mr. Dennis's testimony that he was beaten with a baton and thereby injured is to be preferred to the officer's testimony to the contrary. There is also uncontested evidence that Mr. Dennis's clothes were torn, that he made a complaint about the beating to Sgt. Watson, and that Sgt. Watson gave him a letter to go to the hospital concerning his injury. It is to be noted that although Officer McBean remembers seeing Sgt. Watson on the day in question and remembers Sgt. Watson speaking to him, he denied that Sgt. Watson spoke with him in an office as Mr. Dennis stated. Officer McBean, when asked what the discussion was about, said; "(h) e pass and talk to me but I wouldn't remember what he said to me because of the long period". I find it remarkable that Officer McBean remembers seeing Sgt. Watson at all on that date and I find that he does so because Sgt. Watson scolded him as Mr. Dennis has alleged.

I accept Mr. Dennis' testimony that he began feeling the other effects of his injuries two or three days after the actual beating, hence Dr. McDowell only receiving a limited complaint. It is true that there is some overlapping between the evidence of the two doctors as to the medication prescribed and the splinting carried out, but I find that Mr. Dennis did

sustain the injuries referred to in the medical reports and also that this treatment was given to Mr. Dennis.

Having so found I move to the next issue.

### **IN WHAT CIRCUMSTANCES WERE THE INJURIES SUSTAINED?**

It is not difficult to find that the injuries which Mr. Dennis sustained could not have been inflicted without there having been a beating. Officer McBean in his witness statement said that Mr. Dennis refused to give up the car keys or to go into the cell, by holding on to the grilled gate. At paragraph 10 of the statement Officer McBean said, "I then used my hand to remove his (sic) from the finger (sic) from the grill and finally take the key from him". Under cross-examination Officer McBean made it seem as if it was not a particularly difficult endeavour. He said, "I took the key from him. I was trained to hold a man".

The court notes that Officer McBean is a larger man than Mr. Dennis. It seems though, that Mr. Dennis was in a particularly trenchant and militant mood that morning. He had refused to give up his keys to the inspectors along the roadway and his resistance continued at the police station. He testified as follows:

"When I was taken to the holding area I was still have the car keys in my hand.

At no time Sgt. McBean take the keys from me.



Although he beat me up I still have my keys.

I did not give up my keys because I didn't do nothing wrong.”

As an aside, it should be noted that Mr. Dennis was subsequently acquitted in the Resident Magistrate's Court in Ocho Rios of the charges of breaching the Road Traffic Act which were laid against him. That development does not affect the issues which this court has to resolve but it perhaps does assist in understanding Mr. Dennis' resistant mood that fateful morning, and why physical means were used in an attempt to enforce his compliance.

I find that the injuries that Mr. Dennis sustained were as a result of his being kicked and beaten with a baton at the Ocho Rios Police Station by Officer McBean. I find that the beating was administered to compel Mr. Dennis to surrender his car keys. I also find that the demand for the keys was not so that Mr. Dennis could be placed in the holding cell. The evidence is that the keys were the main focus of the authorities that morning. They were the reason why the parties went to the police station in the first place and I find that that reason was communicated to the police by the inspectors. A Transport Authority inspector, Ms. Millicent Ennis gave evidence. She testified that on arriving at the station she informed Officer McBean of Mr. Dennis' refusal. She testified that Officer McBean then

ordered Mr. Dennis to hand over the keys. This testimony confirms that the keys were the initial cause of the issue. This is what led the police officer to demand them. It was therefore an initial demand and not one subsequent to the decision to place Mr. Dennis in the cell.

### **WAS THE BEATING JUSTIFIABLE IN THE CIRCUMSTANCES?**

Officer McBean testified that it was part of his duty to take the keys from Mr. Dennis, and he did just that. I have already found that the taking was not in the context that the officer described. The question remaining is what options were open to the officer when Mr. Dennis disobeyed his order. In answer to that question when it was posed to him by the court, Mr. Campbell for Mr. Dennis submitted that in the face of Mr. Dennis' refusal to obey an ostensibly lawful order of a police officer, the officer is entitled to use "reasonable force to get the key". Mr. Moodie's submissions on the point were very similar, though he did provide some learning from the cases of *R. v. Waterford*, *R. v. Lyn* [1963] 3 All E.R. 659 and *Rice v. Connolly* [1966] 2 All E.R. 649. He quoted from Lord Parker C.J's judgment in the latter case to the effect that it was part of a police constable's duty "to take all steps which appear to him necessary for keeping the peace, for preventing crime or for protecting property from criminal injury". Mr. Moodie submitted that Officer McBean was doing no more than that when he took

the keys from Mr. Dennis. I find that submission untenable in light of my findings as to the injuries which Mr. Dennis sustained. That beating was not reasonable in the circumstances. I find that Officer McBean was furious at Mr. Dennis' refusal and embarked on a severe beating of this citizen. Mr. Moodie's submission that Mr. Dennis has failed to prove that Officer McBean was actuated by malice also rings hollow in the face of the injuries inflicted and words ascribed to him, which I accept he used, such as "give up the keys or else I will kill yu (expletive used)". I also reject that submission.

I therefore find the Defendants liable to compensate Mr. Dennis for the injuries inflicted on him. As a result I now turn to the question of damages.

## **QUANTUM OF DAMAGES**

### Special Damages

The parties agreed to the following items of special damages:

a. Costs of Medical Reports	\$6,500.00
b. Costs of Hospital Fees	150.00
c. Costs of Professional Services	5,650.00
d. Costs of X-ray	600.00
e. Costs of Travelling for Medical Treatment from Lime Hall to Saint Ann's Bay	300.00
f. Costs of Travelling for Medical Treatment from Lime Hall to Ocho Rios	<u>480.00</u>
	\$13,680.00

In addition to the abovementioned expenses Mr. Dennis also gave evidence of spending \$480.00 at Central Medical Laboratories Limited for a test connected with his urethra. In light of his testimony concerning seeing blood in his urine I find that the expense was reasonably incurred and the cost reasonable. It is therefore allowed.

One contested area of special damages was Mr. Dennis' alleged loss of earnings. He claimed that he was unable to do his job as a carpenter for 21 days at the rate of \$2,000.00 per day and therefore he lost that income. He says that he was then working for a Mrs. Brigham and that although she lives in the United States he still does work for her, from time to time. His explanation for failing to provide any documentary evidence of that employment and income was that he was ignorant of the requirement. That however is why he has legal representation.

The authorities are clear that claimants have a responsibility to strictly prove their claimed losses. The courts assess this requirement in accordance with the circumstances of each claimant, being less stringent with casual workers than with organized corporations (see *Walters v. Mitchell* (1992) 29 J.L.R. 173 at p. 176 C). In this case I find that Mr. Dennis can reasonably be expected to provide some proof other than his say-so about his employment to Mrs. Brigham and his income therefrom. I therefore find that he has not

proved his loss of earnings to the required standard and that aspect of the claim is therefore refused.

### General Damages

Although Mr. Dennis was beaten in this manner, it appears that he has made a fairly swift and full recovery. He was completely incapacitated for one week and his fractured finger was fully healed within six weeks. I note however, Dr. Henry's report that up to April 2005 Mr. Dennis was still experiencing intermittent episodes of back pain. Mr. Dennis has not testified to this continuing and therefore the court will treat him as being completely healed with no continuing disability.

Mr. Moodie cited the following cases for consideration:

*Paula Yee v. Leroy Grant and Anor.* and *Aaron Lawrence v. Tanya Duggan* both reported in Harrison's Assessment of Damages for Personal Damages at pages 204 and 295 respectively.

Mr. Campbell for his part cited the cases of:

- a. *Hugh Douglas v. Morris Warp and Ors.* Vol. 4 Khan p 210
- b. *Eric Ward v Lester Barcoo* Harrison's Casenotes issue 2 p. 72
- c. *Phillip Kongal v. The Attorney General* Harrison's Casenotes issue 2 p. 73
- d. *Stanley Campbell v. Innswood Estate Ltd and Anor.* Vol. 3 Khan p. 126

Of these cases I found those of *Hugh Douglas* and *Eric Ward* most helpful. Although in *Aaron Lawrence*, the injuries were somewhat similar to Mr. Dennis', the award was a consent award and thus is of limited assistance. Those of us looking retrospectively are hampered by our ignorance of the motivations behind such agreed awards.

In *Douglas v. Warp* the plaintiff Mr. Douglas suffered bruises to his upper limbs and swelling and tenderness to the left arm, left forearm, left thigh and over the area of the humerus, when he was beaten by a policeman with a baton and a piece of rubber. The policeman also kicked and hit Mr. Douglas with his fists. The award of \$140,000.00 for personal injuries made then (April, 1994) is now valued \$528,000.00 using the Consumer Price Index (CPI) for November 2005 (2292.3). On the face of it Mr. Dennis's injuries are more severe than Mr. Douglas'.

Mr. Eric Ward was awarded \$16,000.00 in May, 1991 for pain and suffering for blows to his right foot and the right side of his chest resulting in tenderness and pain in the lower back. That sum converts to \$192,576.00 using the November 2005 CPI.

Two other cases also provide some perspective. They are more recent than those previously mentioned, and were both decided by Sykes J. The first is *Leeman Anderson v. The Attorney General and Anor.* C.L. A 17 of

2002 (delivered July 16, 2004) in which the sum of \$400,000.00 was awarded to the claimant who was beaten on his head and body with a crutch by a police officer. The beating caused an undisplaced fracture of Mr. Anderson's right ulna. There was also swelling, deformity and tenderness of the forearm. Mr. Anderson suffered pain to his head and body and his treatment required him to wear a plaster of Paris cast for over two months. Fortunately however there was no permanent disability. When updated using the November CPI, this award would be approximately \$490,000.00 today. Though there were a number of similarities in these cases it would seem that Mr. Anderson's injuries were slightly more severe than Mr. Dennis'.

The second case was also a case of a beating by the police. It is *Owen Thomas v. Constable Foster and Anor.* (C.L. T 095 of 1999, delivered January 6, 2006) There Mr. Thomas was found to have been kicked and beaten by the officer. The beating caused Mr. Thomas to suffer headaches, injury to his eyes, mandibular joint, shoulder, cervical muscle, finger, kidney area, right knee and left leg. After regular visits to the doctor Mr. Thomas fully recovered from his pains and bruises. The court awarded Mr. Thomas \$600,000.00 for pain and suffering for the assault and battery. It would seem that Mr. Thomas' injuries were also more severe than those of Mr. Dennis.

Taking all these cases into account, I am of the view that an award of \$450,000.00 for pain and suffering is appropriate in the circumstances

### **CONCLUSION**

The injuries which Mr. Dennis sustained are consistent with a beating being inflicted on him by a baton. The evidence of his torn clothing and his almost contemporaneous complaint to another police officer at the Ocho Rios police station convinces me that Mr. Dennis suffered his injuries at the said police station. His only altercation there was with Officer McBean. I find that it was Officer McBean who beat Mr. Dennis, and that he did so without justification and with malice.

Judgment is therefore awarded to the Claimant against both Defendants with damages assessed as follows:

Special Damages \$ 14,160.00

With interest thereon at 6% p.a. from 4/7/2001 to 27/1/2006

General Damages (Pain and Suffering) \$450,000.00

With interest thereon at 6% p.a. from 2/10/2003 (the date of service of the Claim Form) to 27/1/2006.

Costs to the Claimant to be taxed if not agreed.