

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SUIT NO.: SLUHCV 2001/0093

BETWEEN

PETER DELAIRE

Claimant

and

(1) LUCIUS SMALL
(2) SHAWN DENNIS

Defendants

Appearances:

Mrs. L. Faisal for Claimant
Mr. Alvin St. Clair for 1st Defendant
Mr. Stephen Julien for 2nd Defendant

2003: December 15
December 16

ORAL JUDGMENT

Introduction

EDWARDS J: This is a claim brought by a young man Mr. Peter Delaire to recover Special Damages \$14, 800.00 and General Damages 2 Police Officers Constable Lucius Small and Shawn Dennis for assault and battery committed on the 13th November 1999.

Issue

The issue arising from the evidence in determining liability, concerns the correctness of Mr. Delair's identification of these 2 Police Officers as the officers who assaulted and beat him.

The Facts

[1] Mr. Peter Delaire went to the Bois Den Day festivities at Anse-La-Raye at about 11:00 p.m. on the 13th November 1999 to enjoy himself.

[2] His timing of arrival was bad. On parking his motor vehicle and alighting from it, he began walking in a crowded and troubled area where police officers were not welcomed.

[3] The 2 rear tyres of a police pick-up parked in that area had been deflated and the Police Officers were not amused.

[4] There were 4 Police Officers present. The Defendant Lucius Small was the driver of the pick-up. Defendant Shawn Dennis, and other Police Officers Trevor Brais and Constable 608 Hippolyte were passengers in the pick-up.

[5] The Police Officer had arrested Fimberty Elethere and another man in connection with this vandalism. They were in the process of driving through a hostile crowd when a missile was thrown at them.

[6] In the cab of the pick-up were the 2 Defendants and the 2 arrested persons.

[7] In the tray of the pick-up were the other 2 Police Officers.

[8] The missile hit Constable Brais and he responded by firing a shot from his firearm. The pick-up stopped.

[9] One word there-after, the Police Officers in the tray of the pick-up and the Defendant Dennis pursued someone persons in the crowd had identified as the missile thrower.

[10] Mr. Peter Delaire who unfortunately was in the area, was chased and apprehended by the Police while he was running away from the area for his own safety.

[11] His hands were handcuffed. He was severely beaten in his head with a gun butt. The Police tossed him in the tray of the police pick-up despite his protests and explanation that he was innocent and the Police were mistaken.

[12] It is not disputed that on their way to the Police Station at Anse-La-Rayé the Police in the pick-up further brutalized Mr. Delaire while he was lying or seated on the floor of the tray.

[13] Mr. Delaire was kicked by the Police Officers in his chest and abdomen and further gun butted. One of the Police Officers shoved the spare tyre of the pick-up on his right side and shoulder.

- [14] What is in dispute is the identification of the police Officers who assaulted and beat Mr. Delaire.
- [15] Mr. Delaire has given conflicting evidence concerning the number of Police Officers who arrested and beat him before he arrived at the Police Station and the role they played in the assault and battery.
- [16] Mr. Delaire's testimony is that it was Constable Dennis who beat him in his head with the gun after he was handcuffed from behind.
- [17] Constable Dennis while admitting that he had assisted his colleagues Brais and Hippolyte in giving chase to the missile thrower, has denied that he had a gun. He has denied beating Mr. Delaire. Constable Dennis has admitted that his colleague Brais hit Mr. Delaire with his gun several times in his head after apprehending him along with Constable Hippolyte.
- [18] Then there is the evidence from Mr. Delaire that at the entrance of the Police Station Constable Lucius Small pulled a folding knife from his pocket and menacingly pointed it in his face, when he appealed to him to release him as the Police were mistaken.
- [19] Further, that in the Station Constable Small took a 12" x 12" flat board, hit him on his shoulder with it, then kicked him several times in his mouth and face after he fell to the floor.

[20] Constable Small and Mr. Fimbert Elethere have denied that this happened.

Conclusion

[21] The material conflicts in the evidence of Mr. Delaire confirm the view of Counsel Mr.

St. Clair, that Mr. Delaire may have been confused about who inflicted his injuries, as a result of the severe gun butting to his head.

[22] I agree with the submission of Counsel Mr. Julien, that the particulars of injuries pleaded do not disclose that he had injuries to his face and mouth, despite Mr. Delaire's evidence of being kicked several times in his face by the Police Officers in the pick-up tray, and at the Station.

[23] I accept the evidence of Mr. Fimbert Elethere, an independent Witness, that Constable Lucien Small never assaulted or beat Mr. Delaire at the Police Station. I find his account of the events credible. Particularly bearing in mind that he had every reason to be prejudiced against the Police and in particular the 2 Defendants, I have given great weight to his evidence.

[24] The evidence of Mr. Delaire concerning how he arrived at the names of the Police Officers who beat him cast further doubt on the correctness of Mr. Delaire's identification.

[25] In the circumstances therefore I find that Mr. Delaire has failed to prove on a balance of probability that the 2 Defendants Constable Small and Dennis assaulted and beat him on the 13th November 1999, thereby inflicting the injuries he sustained.

[26] I therefore dismiss the Claim with Costs to the 2 Defendants.

[27] Regarding the costs to be awarded, in light of Counsel Mr. Julien's submissions that they are no longer requesting costs in all the circumstances, the Order of the Court is that there will be no Order as to costs.

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OLA MAE EDWARDS
High Court Judge

Dated this 2nd day of February, 2004