

Northern Ireland Unreported Judgments

## **Scullion v Chief Constable of the Royal Ulster Constabulary**

**QUEEN'S BENCH DIVISION**

**NICHOLSON J**

**10 JUNE 1988**

**10 June 1988**

**NICHOLSON J**

In this case Diarmuid Scullion claims damages from the Chief Constable of the Royal Ulster Constabulary for, amongst other things, a number of physical assaults alleged to have been made on him by police officers at Ballygawley Housing Estate, Dungannon, Co Tyrone, on 12 July 1986. The Chief Constable is liable at law for unlawful assaults carried out by police officers acting in the course of their duty. That is why he is the defendant.

On 12th July 1986 an Orange procession made its way from Dungannon to a Field outside the town.

The only practicable route from Dungannon to the Field lay along the Ballygawley Road past the Housing Estate which is predominantly, if not exclusively, a Roman Catholic estate. When such processions have passed along this route in other years, there has been trouble. Various bands taking part in the procession take pleasure in stopping at the entrance and taunting the residents. Some supporters are keen to make their way into the estate in order to cause trouble or throw stones and bottles into the estate. Some of the residents take pleasure in shouting abuse and in throwing stones and bottles at the procession. These are a regular feature of processions on 12th July and other days.

Superintendent Johnston of the Royal Ulster Constabulary and a number of other police officers went at about 9 am to the front of the estate in order to keep the peace. As the day wore on a crowd of 25 to 30 youths gathered in the estate armed with stones and bottles and intending to attack the procession. A tricolour was produced by them and waved provocatively as the procession passed. Supporters of the procession had stopped at the entrance to the estate and stones and bottles were exchanged. Superintendent Johnston did everything in his power to prevent a disturbance and acted even handedly as between those connected with the procession and the residents of the housing estate.

Mr Scullion is thirty-three years of age and is a free lance press photographer. He was commissioned by Mr Logan, editor of the Tyrone Democrat, to take photographs of the procession and of events at the housing estate, as Mr Logan reckoned it to be a likely flash point.

Mr Scullion took a number of photographs of the procession as it left Dungannon and a number of photographs from the housing estate. He saw missiles being thrown from the direction of the procession at the residents and missiles being thrown at the procession by youths in the estate. He witnessed for the first time a baton charge by police to disperse the gang of youths in the housing estate who were throwing missiles and took a photograph of that baton charge. He saw a person being grabbed by the police and taken into the

bushes in Braeside in the estate and apparently set upon by the police. I am satisfied that this was a middle aged man called Eugene Faloon who subsequently brought a claim against the police and that it was not a youth whom Sergeant Wilson of the Royal Ulster Constabulary observed as involved in the disturbance and arrested. This youth was subsequently convicted of disorderly behaviour and assault.

Mr Scullion moved forward from his position behind the baton charge to observe the incident involving Mr Faloon, intending to take further photographs. I am satisfied that a police officer struck him with two blows of his fist on the right side of the face as Mr Scullion moved forward, that at this time Mr Scullion had two cameras around his neck and a camera bag on his shoulder and was known to the police as a press photographer. He had already produced his press card on occasions to police officers at the estate.

I am satisfied that Mr Scullion was knocked off balance by the blows; that another police officer grabbed his coat and kned him in the testicles or area of the groin; that three or four police officers gathered round him, pushing and shoving and punching and one of them said: "Get that fucker out of here"; that he was seized and forced away from the area where Mr Faloon was in fact being unlawfully assaulted; that a police officer with a riot gun put the gun to Mr Scullion's face and said: "If you lift those cameras again, I will fucking kill you". I am satisfied as I have said that all these assaults were made by police on a person whom they knew to be a press photographer.

He managed to make his way down to Superintendent Johnston to make a complaint about his ill-treatment but as he was doing so a stone or bottle hit a police landrover behind Mr Johnston who turned away to see what was happening. I am satisfied that as he did so Mr Scullion was hit over the head by another police officer and forcibly taken away up the hill. I am satisfied that the Superintendent did not see this incident and may have been under the impression that Mr Scullion had come to complain about police control of the residents. A number of residents had made this kind of complaint instead of trying to restrain the youths in the estate.

I am satisfied that the police officer who struck Mr Scullion with the baton knew that he was a press photographer. Mr Scullion was shortly afterwards released and managed to make his way up Windmill Drive to find a telephone and ring up his editor. His head and groin area were very painful and he was very frightened.

He met a lady, Mrs Lyttle, who was standing at her front door. She allowed him into her house to telephone to his editor. I am satisfied that as he and she described in evidence, he was in a very distressed state. She gave him a glass of water at his request and made him a cup of tea. He was in her house for about an hour until Mr Logan picked him up.

Mr Scullion had parked his car further up Windmill Drive. I am satisfied that he felt too sick and sore and frightened to go to it. Mr Logan came and took him in Mr Logan's car to Mr Logan's home in Dungannon. I accept Mr Logan's evidence that when he saw Mr Scullion, the latter looked very pale and wan and scared, that Mr Logan asked him if he wanted to go to a doctor but Mr Scullion declined, asking instead to be taken home immediately to Cookstown where he went to bed.

Mr Longan rang up Armagh police press office on 12th July after he had had a description of what had taken place from Mr Scullion and made a complaint about the assaults. He made a further complaint by telephone to Dungannon police the next day. But as he was going away on holiday he did not go to the police station until 24th July. He brought Mr Scullion with him and the latter made a detailed statement in writing on that date. No suggestion was made to Mr Scullion in the witness box that any of the details of his account of events was wrong. In a general way it was put that he had not been assaulted at all.

Mr Logan made arrangements to have Mr Scullion's car collected and taken to Mr Scullion's home in Cookstown on the following day. Mr Scullion had a lump on his head, which Mr Logan had felt and noticed, and his

head was very sore for several months. His groin area was sore for a couple of weeks. He took pain killers to alleviate his pains and aches. He did not seek medical attention. He stayed in his own house and rested for at least ten days.

Mr Scullion made it clear to the Court that the police efforts to combat the trouble in the Housing Estate had been by and large sensible and that it was reasonable to carry out a baton charge in order to scatter the stone and bottle throwing youths in the estate. He received a letter from the Police Complaints Board informing him that his complaint of ill-treatment had been investigated and that no action was being taken on foot of it.

Mr Faloon who is 38 years of age gave evidence of being attacked without provocation by police in and about Braeside where Mr Scullion took a photograph of the baton charge. His version of events was not challenged in cross-examination. It confirmed Mr Scullion's account that an innocent civilian was beaten up by police in the bushes. His claim against the Chief Constable was settled. I was not told the terms of settlement. Mr Logan was, understandably, very angry about the attack on a press photographer whom he, as editor of the Tyrone Democrat, had commissioned to take photographs of the 12th July procession.

There was an account in the Tyrone Democrat of 24th July 1986 about the assaults on Mr Scullion. Mr Scullion had told Mr Logan what had happened to him. Mr Logan in turn relayed that account to a reporter of his newspaper whose article appeared in the Tyrone Democrat of 24th July. There are discrepancies between the newspaper account and the account given in the witness box by Mr Scullion. I attach no significance to these discrepancies. I bear in mind that Mr Logan relied on his memory of what Mr Scullion told him and I am satisfied that any discrepancies were due to faulty recollection on Mr Logan's part.

I was not impressed by the evidence of an inspector who ordered the baton charge. He did not claim to have seen Mr Scullion at Braeside. Nor did he expressly allege that Mr Scullion was not assaulted. He must have known that Mr Scullion and Mr Faloon were assaulted by police near him even if, as he claims, he did not actually see the assaults. He knew that Mr Scullion was a press photographer. I reject his evidence that Mr Scullion spoke to him later. Other police officers who were in Braeside, leaving aside those who took part in the assaults on Mr Faloon and Mr Scullion, must have been aware of what was going on and did nothing to stop the assaults.

This series of assaults on Mr Scullion has been denied. The defendant has defended the case to the end. It was suggested to Mr Scullion in the witness-box that he was not assaulted, as I have stated. Implicit in that allegation was a further allegation that Mr Scullion has made a claim which he knew to be fraudulent and false. I do not mean to imply that Counsel on behalf of the defendant behaved other than in a professional manner. The conduct of Mr Keenan on behalf of the plaintiff and of Mr Brian Fee on behalf of the defendant could not be faulted. Mr Fee was acting on instructions.

Whilst Mr Scullion did not require medical treatment, he received painful and unpleasant injuries. His groin injury recovered within two weeks but his head injuries troubled him for months. He had a humiliating and frightening experience. To have a riot gun pointed close to your face and to be threatened, as he was, is bound to terrify a person. I am not surprised that Mrs Lyttle and Mr Logan observed a very frightened man on that afternoon. To this day he is apprehensive as a press photographer about getting close to the scene of an incident. He was unable to act in a professional capacity for 3 to 4 weeks though he has made no claim for financial loss. He is entitled to general damages and to aggravated damages. Apart from the pain and suffering which he experienced, he has suffered indignity and humiliation. He has run the risk of being discredited in court. Police officers have given evidence, the tendency of which was to suggest that these assaults did not take place. Mr Scullion has had anxiety and stress until the end of this case in vindicating his claims and in obtaining redress for these disgraceful assaults.

I take all these matters into account in awarding compensation for general damages, including aggravated damages. I do not isolate pain and suffering on the one hand from "aggravated" damages on the other. I think that this is artificial as I said in *Hughes v Chief Constable of the Royal Ulster Constabulary*. Aggravated damages are intended to be and must be compensatory. I have considered what has been said in *Lavery v Ministry of Defence* by Kelly LJ and in *Walsh v Ministry of Defence* by Lord Lowry the Lord Chief Justice. I have read the judgment of Higgins J and the judgment of the Court of Appeal in *Davey v Chief Constable*. I have also read *Hamilton v Chief Constable* and *McVeigh v The Chief Constable*, which are decisions of Hutton J, and *Fox v Chief Constable*, a decision of Higgins J. I have looked at some of the English authorities on the various heads of damages, including exemplary damages as well as the relevant paragraphs of *McGregor on Damages* (15th ed).

I am satisfied that this is an appropriate case to award exemplary damages. The award of a punitive element in damages is discretionary - per Lord Hailsham in *Broome v Cassells & Co Ltd* [1972] AC 1027, [1972] 1 All ER 801.

In *Rookes v Barnard* [1964] AC 1129, [1964] 1 All ER 367, the House of Lords reviewed the principles to be applied and they were further considered in *Broome*. The first category of case in which it was felt appropriate to retain an award of exemplary damages was oppressive, arbitrary or unconstitutional action by the servants of the government. In this context police officers are treated as "government servants" as Lord Hailsham pointed out in *Broome* at [1972] AC p 1077 and Lord Reid said at p 1088. The actions of the police officers on this occasion were oppressive, arbitrary and unconstitutional. The defendant is answerable at law for their conduct. They have not been punished in the courts or by disciplinary action.

It is right to remember that a great many police officers have been murdered and many more have been maimed or seriously injured in the struggle to defeat terrorism in Northern Ireland over the past 18 years. In recent years police officers have been intimidated out of their homes, attacked by so-called Loyalists and self-styled Nationalists and Republicans and jeered at and abused by extremists on both sides of our divided society. It is, of course, part of the strategy of terrorists and those who speak on their behalf to seek to discredit the police in so far as they can. The terrorists' idea of policing is to put bullets in the kneecaps of youths suspected of petty theft and bullets in the heads of those suspected of giving information about terrorism.

We live in a divided country in which the two communities, Protestant and Roman Catholic, are deeply distrustful of each other. The police have a difficult task to obtain the trust of people in this society. But if they fail there will never be a decent society.

The good work of Superintendent Johnston and other police officers on 12th July 1986 was marred by a handful of police officers. They were entrusted with power and they abused their power on that day. The Courts in Northern Ireland will not tolerate such abuse of power.

Not merely was an innocent citizen set upon by a number of police officers. He was known to be a press photographer and police officers were determined that he should not photograph discreditable conduct which other police officers were engaged in. Freedom of the press must be protected by the Courts within the limits of the rule of law. I have no doubt that the police officers who were seeking to restrain that freedom unlawfully were seen by a superior acting in the way I have described and were unchecked and so remain anonymous.

Exemplary damages should only be awarded if the sum awarded for compensation by way of general and aggravated damages is inadequate to constitute sufficient punishment. The sum which would be adequate as compensation is not in my view adequate to punish, to mark the Court's disapproval and to deter repetition by these police officers or others.

I have regard to the direction of Lord Devlin that exemplary damages should be moderate. Damages under any heading should be moderate and reasonable. I consider that a judge sitting alone should disclose the amounts which he awards as compensatory and exemplary damages so that they may be capable of review. I am of course aware that there are differing views on this topic.

In *Rookes*' case Lord Devlin indicated that he considered it desirable for the judge to invite the jury to say what sum they would fix as compensation and what additional sum, if any, they would award if they were entitled to give exemplary damages in a case in which it was difficult for the judge to say whether or not he ought to leave to the jury a claim for exemplary damages; two awards were not obligatory in other cases.

In *Broome*'s case Lord Hailsham LC said at p 1072:

"In cases where the award of general damages contains a subjective element, I do not believe it is desirable or even possible to add separate sums together for different parts of the subjective element . . . the dangers of double counting by a jury or a judge are so great that, even to avoid a new trial I would have thought the dangers usually outweighed the advantages . . ."

At p 1089 Lord Reid indicated that the tribunal will fix in their minds what sum would be proper as compensatory damages and, if the case is a proper one for punitive damages, the Tribunal must ask itself whether the sum which it has already fixed as compensatory damages is or is not adequate to serve the second purpose of punishment or deterrence.

At p 1094 Lord Morris expressed his opposition to the practice becoming general of having a separate award of exemplary damages. At p 1116 Lord Wilberforce said: "To segregate the punitive element is to split the indivisible." At p 1022 Lord Diplock appears to have considered that a judge would articulate his findings and his reasoning. At p 1026 he said as to separate awards ". . . no doubt a judge sitting alone should do so."

Lord Kilbrandon addressed the problem at p 1034 and implicitly appears to have been in favour of separate awards in respect of the compensatory and punitive elements, if a judge was sitting alone. Lord Salmon, speaking for the Judicial Committee of the Privy Council in *Attorney-General v Reynolds* [1980] AC 637, [1979] 3 All ER 129 at p 662 of the former report said:

"Their Lordships are satisfied that obviously that judgment [in *Rookes v Barnard*] does not cast any such obligation upon a trial judge sitting alone or upon the Court of Appeal."

It seems to me that no tribunal should necessarily be required to split up its award. But if one is to pay more than lip-service to the direction of Lord Reid then one must ask oneself the question - is it necessary to give any additional sum as exemplary damages over and above the sum given as compensation. One must first decide how much one is going to award as compensation for general and aggravated damages. To decline to state what that sum is may reduce the number of appeals, and that may be a laudable objective especially when the litigation is costly. In a trial by judge alone, I believe that the judge should show how he has arrived at the result even though it may be that his decision is more likely to be appealed. But other judges may well take the opposite point of view. The topic is discussed in *McGregor on Damages* (15th edition) at paragraphs 1797 and 1798.

On the issue of exemplary damages I emphasise three features in the present case but they are not intended to be exhaustive. Firstly, though separated by comparatively short intervals of time there were three separate incidents in which the plaintiff was assaulted - when he was moving towards the man who had been attacked by police in order to take a photograph or photographs; when he was threatened by the police officer with a riot gun and when he was on the point of making a complaint to the Superintendent and in order to prevent such a complaint being made. Secondly, the plaintiff was a press photographer and known to be one on

these three occasions. Thirdly, the police involved were covered by a cloak of anonymity by at least one superior officer who cannot be identified but must have permitted the assaults, knew of the identities of some who carried them out and chose to conceal them.

I have taken into account the monetary penalties or fines which I would have imposed on the police officers for whom the defendant is answerable if they had been brought before me in a criminal court and convicted of the offences which in a civil case I have held them to have committed - if I had considered that fines were appropriate. There would have been matters put before me in mitigation. I am satisfied that fines significantly in excess of the total damages which I propose to award for compensation and exemplary damages would have been imposed by me in such circumstances. Incidentally in my view these offences would or should have been dealt with by a Crown Court judge rather than a magistrate. I have also considered what 'fine' I would have imposed on the defendant if he had been vicariously liable for these police officers in a criminal court, though I do not consider this to be the right test as it is artificial.

Lord Hailsham said in *Broome's* case at p 1082:

"I would also deprecate, as did Lord Atkin in *Ley v Hamilton* 153 LT 384 the use of the word "fine" in connection with the punitive or exemplary element in damages, where it is appropriate. Damages remain a civil, not a criminal remedy, even where an exemplary award is appropriate . . . juries . . . are putting money into a plaintiff's pocket, and not contributing to the rates, or to the revenues of central government."

But Lord Reid said at p 1086:

"Some objection has been taken to the use of the word 'fine' to denote the amount by which punitive or exemplary damages exceed anything justly due to the plaintiff. In my view the word 'fine' is an entirely accurate description of that part of any award which goes beyond anything justly due to the plaintiff and purely punitive."

Lawton J, the trial judge in *Broome* told the jury that they were "really in the position of a judge or magistrate trying a criminal case, per Viscount Dilhorne at p 1106 who referred to the award of exemplary damages "as a fine".

Lord Wilberforce said at p 1114 of *Broome*:

"It cannot lightly be taken for granted, even as a matter of theory, that the purpose of the law of tort is compensation, still less that it ought to be, an issue of large social import, or that there is something inappropriate or illogical or anomalous (a question-begging word) in including a punitive element in civil damages or, conversely, that the criminal law, rather than the civil law, is in these cases, the better instrument for conveying social disapproval, or for redressing a wrong to the social fabric . . ."

I appreciate that he followed this by saying that one could not segregate the punitive element. But I have dealt with this topic separately. I respectfully agree with the passage I have just cited at p 1114 of *Broome*. The criminal law makes no contribution in the present case. Thus I respectfully disagree with what Lord Diplock said at p 1130 on the same topic. Lord Kilbrandon shared the view of Lord Wilberforce - see p 1134.

The issue as to how one ought to fix exemplary damages is a separate topic.

Lord Wilberforce at p 1117 of *Broome* indicated that Lawton J gave examples of reasonable and unreasonable fines in his direction to the jury. Their Lordships do not appear to have disapproved this course.

Lord Diplock said at p 1122 of Broome:

"I would approach it [the total award] in the same way as I should approach a fine . . . imposed by a judge in a criminal prosecution."

I agree with that approach subject to the comment that there may be occasions where the extent of the injuries leads to an award of compensation in excess of the 'fine' which one would have imposed.

Lord Devlin in *Rookes* and Lord Diplock in *Broome* remind us that the defendant's means are relevant to any assessment of punitive damages. In this context it is necessary to remember that the defendant in this case is not sued personally. Regard should be had to the means of those who might have been fined. As the defendant is responsible at law for all those who might have been fined no such difficulty arises, as arose in the appeal in *Broome v Cassels & Co Ltd and Irving* where the punitive damages were awarded equally against both defendants.

In making a total award of damages for compensation and exemplary damages I have thought it right to stop short of what I consider to have been the appropriate amount of the fines which would have been likely to be imposed, partly because the money is going into the plaintiff's pocket and to make allowance for the fact that judges vary in the imposition of financial penalties and as any mitigating matters are not before me. But the sum for compensation which I have awarded is substantially lower than the lowest 'fines' which would have been imposed by me, making all allowances.

I have awarded £3,000 for compensation (general and aggravated damages) and £1,500 for exemplary damages making a total of £4,500. I have had regard to the totality of the damages. That is to say, the defendant has to pay compensation as well as exemplary damages and the payment of compensation is part of the punishment and the total award of damages is significantly less than the 'fines' which I would have imposed.

I state again what Lord Reid said in *Broome* at p 1098.

". . . the tribunal will fix in their minds what sum would be proper as compensatory damages. Then if it has been determined that the case is a proper one for punitive damages the tribunal must turn its attention to the defendant and ask itself whether the sum it has already fixed as compensatory damages is or is not adequate to serve the second purpose of punishment or deterrence. If they think that that sum is adequate for the second purpose as well as for the first they must not add anything to it. It is sufficient both as compensatory and as punitive damages. But if they think that sum is insufficient as a punishment then they must add to it enough to bring it up to a sum sufficient as punishment. The one thing they must not do is to fix sums as compensatory and as punitive damages and add them together. They must realise that the compensatory damages are always part of the total punishment."

I am aware that those who speak for the terrorists seek to make propaganda out of cases such as this. But the public demands from the RUC conduct beyond reproach and the Courts will not tolerate misconduct.

I give judgment for £4,500.

*Judgment accordingly*