

NON-REMOVABLE MILLE LACS BAND OF CHIPPEWA INDIANS

IN THE COURT OF CENTRAL JURISDICTION

DISTRICT OF NAY AH SHING

In the Matter of:

Cody St. John,)
))
Plaintiff,)
))
vs.)
))
Keith Wayne Reynolds)
))
Defendant.)

Case No. 09 CV 702

Mille Lac Court of
Central Jurisdiction
2011 JUN -7 PM 4:26
MP

ORDER

The above-captioned matter came before the Court.

Based upon the pleadings and papers on file herein, and having heard the argument of counsel, and being fully advised on the premise, **IT IS HEREBY ORDERED:**

FINDINGS OF FACT

On April 26, 2011, Plaintiff Cody St. John presented the Court with evidence to support his request for damages.

Cody St. John testified at the hearing. Mr. St. John testified that he was a member of the Mille Lacs Band of Ojibewa. He also testified that during the evening of February 13, 2006, he came into contact with Defendant Keith Reynolds and others while at the house of his relatives. During that contact, Defendant Reynolds demanded that Mr. St. John join the Vice Lord criminal gang that had a presence on the Mille Lacs reservation. Mr. St. John testified that he refused to join the Vice Lords. Mr. St. John testified that he made this refusal in front of other people who were also members of the Mille Lacs Band of Ojibewa and who lived on the Mille Lacs

reservation. Later that evening, Mr. St. John left his relatives home and began walking home. Mr. St. John was assaulted on his way home.

Mr. St. John identified pictures that portrayed cut marks on his arm, back and jaw with the letters VL which he believes stand for "Vice Lords". He still has the VL scars on his back and arm. He also identified Exhibit 3D as burn marks on his leg from a muffler of a car, scratches, and a line at the bottom of his ankle that is consistent with being tied up. He identified Exhibit 3F as his left forearm with frostbite and his elbow that shows injuries consistent with being dragged or road rash. He indicated he also had road rash on his back identifying gravel in his skin (Exhibit 3H). Exhibit 3I shows the letters VL carved into his lower back. Exhibit 3L shows the injuries to his neck and head from which he believes to be sustained from being dragged behind a vehicle. Exhibit 3N shows his left arm with frostbite and a scar above his elbow. 3O shows his swollen face.

Mr. St. John also presented the security video from Chiminising Community Center, which showed Mr. St. John being chased by a person in a black hooded jacket identified as Defendant Keith Reynolds. In the video, Defendant Reynolds chased Mr. St. John and appeared to threaten him in front of the Community Center. The video also showed Mr. St. John attempting to flee and running to the door of the Community Center and frantically attempting to open the front doors.

Mr. St. John also presented medical records from North Memorial Hospital in Robbinsdale, Minnesota. According to those records, on February 14, 2006, Cody St. John was brought by Air Care to the North Memorial Hospital Emergency Room. At that time, the doctors and nurses recorded that Cody St. John "had obvious injuries in the extremities, face and torso suggestive of having been assaulted." Cody St. John also presented with "Closed head injury

with altered mental status,” a very swollen face, “multiple lacerations in the extremities, including some slash-type marks in the right arm and right flank,” and hypothermia. According to the medical bills that are part of the exhibit, the cost of treatment at North Memorial Hospital was \$48,937.32. There was no insurance coverage for these medical charges.

Mr. St. John further testified that it has been a very lengthy and painful recovery. Initially after the assault, Mr. St. John’s arms and legs were bandaged. These bandages were changed four times per day and the changing process caused skin and portions of the wounds to peel off. This process was extremely painful to Mr. St. John. In addition, Mr. St. John has permanent scars and frostbite on his legs and arms as a result of the assault. The letters “VL” have left scars on his right arm and back. He has scars from the road rash from being drug on the roadway. He continues to this day removing gravel from his back.

According to evidence presented, the assault took place in front of the Chiminising Community Center located on the Mille Lacs reservation. During the hearing, Rubin James St. John testified that he is Cody St. John’s cousin and that he went looking for Cody St. John in the early morning hours of February 14, 2006. He recalls going to Chiminising Community Center looking for him. As he was leaving the Community Center he saw something lying across the street and thought they may be some clothes. As he checked closer, he realized it was a body. He got out of the car and didn’t recognize the person but saw that whoever it was as badly beaten, face was pale white, eyes were swollen shut, no shoes, pants or shirt. As he got closer, he recognized the tattoos and realized it was Cody St. John. He immediately called the cops and moved the body to get him off the ice. It was hard to tell if Cody was breathing. Rubin St. John indicated it was at least 13 degrees below zero. He believes the people who assaulted him left him for dead.

In addition, Cody St. John presented the testimony of Mille Lacs Band Tribal Police Patrol Sergeant Jeff Schafer who testified he was dispatched in the early morning hours of February 14, 2006 to a semi-conscious or un-conscious party in the road in front of the Chiminising Community Center. When he arrived, the EMS crew was already rendering aid. Sgt. Schafer identified the male as wearing basketball shorts, a thin tank top, with no shoes, coat or pants. The male had a swollen face, lacerations and his eyes were swollen shut. The temperatures were well below zero degrees and the EMC crew had put blankets on him. He also noticed a bloody area with scuff marks in the snow. An airlift helicopter was called based upon signs of a significant head trauma. Sgt. Schafer identified the male as Cody St. John and believed that whoever assaulted him left intentionally him there in the subzero temperatures.

Finally, Antoinette Walsh testified that she has been Cody St. John's foster mother since 2001. She testified she had received a call that Cody had been assaulted and had been flown to North Memorial Hospital in Minneapolis. She tried to determine what had happened to him and what the status was but because she was not his biological mother, the hospital staff would not give her much information. She finally spoke to a nurse who told her he was in intensive care. She immediately pick up her other foster children and drove to North Memorial. She indicated that she got to the hospital and walked past his room several times and was finally told by a nurse that the man in the room was her son. She did not recognize him because he was so badly beaten. She further testified that she took photographs of his injuries at approximately 10 a.m. on February 14, 2006. In addition to his physical injuries, it had been determined he had suffered a closed head injury. She has come to notice that his long term memory is gone and doesn't remember some family times. She testified that he has had behavioral changes as well. In the past, she was able to de-escalate his anger. He now has fits of anger and doesn't

remember them. He was very emotional having to live in a group home for awhile and has been labeled a vulnerable adult because of his head injury. These things have made it very difficult for him to lead a normal life in the last three years. He has been unable to work since the assault.

The mortality tables submitted to the Court indicated that Mr. St. John is expected to live another 54 more years.

CONCLUSIONS OF LAW

Previously, this Court has granted summary judgment to Cody St. John on Cody St. John's assault and battery claim against Defendant Keith Reynolds based upon the fact that Defendant Reynolds has been convicted of assaulting Cody St. John and based on the fact that Defendant Reynolds failed to respond to the Plaintiff's Motion for Partial Summary Judgment.

The civil cause of action for assault and battery is found in 24 MLBSA § 251. According to 24 MLSBA § 251 (c)(1) "The damages recoverable for assault are those for the plaintiff's mental or physical injury, or both. . ." In this case, Plaintiff Cody St. John suffered both physical and mental damage for which he should be compensated.

During the hearing before this Court, Cody St. John introduced testimony and a number of exhibits that described the injury to Cody St. John's body as a result of the assault and battery in this case. Initially, Patrol Sergeant Jeff Schafer testified that when he responded to the scene where Cody St. John was found on that February 2006, -30°F, night, the Plaintiff had a head injury, a swollen face, lacerations and his eyes were swollen shut. P.O. Schafer also noted that there was an area in the snow that contained Cody St. John's blood.

In addition, this Court heard the testimony of Reuben St. John, Plaintiff's cousin, who revealed that he was the person who found the Cody St. John at around 1:15 a.m. on February 14, 2006 near the Chiminising Community Center. According to Reuben St. John, Plaintiff had

been beaten so bad that he could not even recognize Plaintiff as his cousin. Reuben St. John also testified that Cody St. John had been left unconscious on a night where the temperature was well below zero with no shoes, pants or a shirt.

Further, Cody St. John introduced medical records from the hospital where Plaintiff was airlifted after being discovered. Exhibit No. 2 included the medical records from North Memorial Hospital. According to the records, Cody St. John presented with traumatic brain injury, hypothermia, road rash and slash marks.

Similarly, Cody St. John introduced photographs of his injuries that revealed abrasions and severe swelling to Plaintiff's face, cuts in the letters "VL" in the right side of his face, injuries to Plaintiff's right arm where the Defendant carved "VL" into his arm as well as abrasions to Plaintiff's hands, legs back and lip. This Court finds that Cody St. John experienced significant physical injuries as a result of the assault by Defendant Reynolds. These physical injuries were so severe that two people testified that they could not recognize Cody St. John when they saw him after the assault. These physical injuries also resulted in permanent disfigurement and scarring. The most prominent scar is the "VL" carved on his right arm. Cody St. John also has scarring on his back from the abrasions caused by the assault.

In addition, Cody St. John introduced medical records that proved that Cody St. John experienced a traumatic brain injury as a result of the assault. In addition, Cody St. John's foster mother, Antoinette Walsh, testified that Plaintiff experienced long-term memory problems and has experienced significant behavioral changes as a result of the assault and the head injury. Now, Cody St. John experiences fits of anger for which there is no de-escalation. Ms. Walsh testified that Plaintiff had to live in a group home for awhile after the assault due to the head injury. She also testified that things have been very difficult for Cody St. John since the assault.

All of the evidence in the current case indicates that Cody St. John will suffer consequences of traumatic brain injury for the rest of his life. According to the Mortality Tables, Cody St. John is expected to live for 54 more years.

Cody St. John also introduced medical bills totaling \$48,937.32. Despite there being testimony about other medical bills, counsel has been unable to obtain and produce these records. Accordingly, Cody St. John waives his right to collect the amount of these medical bills and, for the purposes of this Order, the amount of damages for unpaid medical bills is \$48,937.32.

Based upon the evidence before this Court, this Court finds and awards to Cody St. John, actual damages for physical injury in the amount of \$450,000.00 for past consequences from physical injury, \$540,000.00 for future injuries and the related pain and suffering that he will experience, and \$48,937.32 in past medical bills for a total of \$1,038,937.30 for past and future physical injury.

Further, this Court finds that Cody St. John also suffered mental injury from the assault and battery. This Court finds that Cody St. John experienced terror at the time of the assault. This is proven through the security video that was offered as Exhibit No. 4. The video showed footage of Cody St. John frantically running away from Defendant Keith Reynolds, cowering away from Reynolds and unsuccessfully trying to open the doors to the Community Center in order to get away from Reynolds. It was clear by Cody St. John's frantic movements that he was extremely fearful of Reynolds and fearful of what Reynolds might do to him. In addition, Cody St. John also experiences emotional distress relating to the fact that his brain is not functioning the way it is supposed to due to the head injury that he received as a result of the assault. This Court finds that Cody St. John experienced mental injury caused by the assault and battery and this Court awards Cody St. John compensatory damages in the amount of \$150,000.00 in past

damages for mental injury and \$100,000.00 for future mental injury for a total of \$250,000.00 for mental injury.

Regarding punitive damages. If ever there was a case that warranted punitive damages, this case is it. Even though there is no specific Mille Lacs Band statute that provides for punitive damages, there also is no statute that prohibits punitive damages. The Mille Lacs Band Statutes are silent on the issue of punitive damages. When the Mille Lacs Band Statutes are silent on an area of law, the pertinent laws of the United States of America apply. 24 MLBSA § 2007. If the laws of the United States of America do not contain the area of law applicable, then the law of the State of Minnesota apply. *Id.* In this case, Minnesota law would apply because there is no United States statute that provides for punitive damages in cases of civil assault and battery under the circumstances presented here.

In Minnesota, Minn. Stat. § 549.20 establishes the basic punitive damages standards. Specifically, Minn. Stat. § 549.20 provides:

Subdivision 1. (a) Punitive damages shall be allowed in civil actions only upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others

(b) A defendant has acted with deliberate disregard for the rights and safety of others if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the rights of safety of others and:

- (1) deliberately proceeds to act in conscious or intentional disregard of the high degree of probability of injury to the rights or safety of others; or
- (2) deliberately proceeds to act with indifference to the high probability of injury to the rights or safety of others.

As discussed below, Cody St. John meets these criteria for the award of punitive damages.

Other courts have upheld an award of punitive damages in tribal court cases. For example, in Fredericks v. Eide-Kirschmann Ford, Mercury, Lincoln, Inc., 462 N.W.2d 164, 170 (N.D. 1990), the Supreme Court of North Dakota upheld a punitive damages award from the Mandan Hidatsa Arikara Nation Tribal Court despite the fact that there was no tribal statute

providing for punitive damages. See also Halwood v. Cowboy Auto Sales, Inc., 946 P.2d 1088 (N.M. Ct. App. 1997) (New Mexico Court upheld punitive damages award from Navajo Tribal Court and gave the award full faith and credit in New Mexico state court.) Thus, an award of punitive damages in the current case would be legally appropriate.

Cody St. John in the current matter clearly established the requirements for an award of punitive damages. By assaulting Cody St. John, severely injuring Cody St. John and leaving Cody St. John unconscious without shoes, coat, pants or a shirt on a -30°F night in February, Defendant Reynolds clearly showed a deliberate disregard for the rights and safety of Cody St. John. Further, Defendant Reynolds also acted with intentional disregard for the high degree of probability of injury to Cody St. John when Defendant assaulted Cody St. John and left him for dead.

There are a number of factors that can be considered when awarding punitive damages. In BMW of North America, Inc. v. Gore, 517 U.S. 559, 575 (1996), the United States Supreme Court ruled that the most important factor for the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct. According to the Court, “. . . some wrongs are more blameworthy than others. Thus, we have said that ‘nonviolent crimes are less serious than crimes marked by violence or the threat of violence.’” Id. at 575–576 citing to Solem v. Helm, 463 U.S. 277, 292–293 (1983).

Finally, punitive damages “are imposed to punish the defendant and to deter him, and others like him, from intentional wrongs and deliberate disregard of the safety or rights of others.” Rosenbloom v. Flygare, 501 N.W.2d 597, 601–602 (Minn. 1993) quoting Melina v. Chaplin, 327 N.W.2d 19, 20 n. 1 (Minn. 1982). The focus lies on the defendant's wrongful

conduct that must be deterred, not the specific outcome of the conduct. Rosenbloom, 501 N.W.2d at 602.

In this case, \$3,000,000.00 is a reasonable amount for punitive damages. The evening prior to the assault of Cody St. John, Defendant Keith Reynolds, in front of a number of other tribal members, attempted to force the vulnerable Plaintiff to join the criminal gang, the Vice Lords. When Cody St. John refused, Defendant Reynolds assaulted Cody St. John, carved “VL” in his face, arm and back, took his clothing and then left him for dead in -30°F temperatures. Significantly, Defendant Reynolds left Cody St. John on the roadway in front of the Chiminising Community Center for the entire community to see. It is reasonable to infer that Defendant Reynolds wished to send a message of violence to the entire Mille Lacs reservation community. This was a reprehensible act against Cody St. John and against the Mille Lacs Tribal Community as a whole. This circumstance warrants a significant punitive damage award to not only punish Defendant Reynolds, but to also deter others from attempting to intimidate the Mille Lacs reservation community into compliance with criminal gang activity. \$3,000,000.00 is appropriate.

Therefore, this Court awards the following damages in this matter:

	<u>Past</u>	<u>Future</u>	<u>Medical Bills</u>	<u>Total</u>
Physical Injury	\$450,000.00	\$540,000.00	\$48,937.32	\$1,038,937.30
Mental Injury	\$150,000.00	\$100,000.00		\$ 250,000.00
Punitive Damages				<u>\$3,000,000.00</u>
Total				\$4,288,937.30

IT IS SO ORDERED

Dated: June 7, 2011



Richard D. Osburn, District Judge
Court of Central Jurisdiction

RECEIVED JUN 10 2011