



**THE COURT OF APPEAL**

Neutral Citation Number: [2016] IECA 310

**Appeal Nos. 2014, No. 868**

**Irvine J.  
Hogan J.  
Hedigan J.**

**BETWEEN/**

**DARIUS SAVICKIS**

**PLAINTIFF / APPELLANT**

**- AND -**

**GOVERNOR OF CASTLEREA PRISON, MINISTER FOR JUSTICE AND EQUALITY, THE IRISH PRISON SERVICE, IRELAND AND THE ATTORNEY GENERAL**

**DEFENDANTS / RESPONDENTS**

**JUDGMENT of Ms. Justice Irvine delivered on the 27th day of October 2016**

1. I have read in draft the judgment which my colleague, Hogan J., intends to deliver in relation to this appeal. Having done so, I fully endorse the conclusions which he has reached and the orders which he proposes. This brief judgment is intended solely to address Mr. Savickis's appeal concerning the answer of the jury to question 3(C) on the issue paper.

2. It follows from my agreement with the conclusions of Hogan J. that I too would propose:-

(i) An award of damages in favour of Mr. Savickis in the sum of €10,000 with no reduction for contributory negligence for the reasons advised by Hogan J. in the course of his judgment regarding the jury's answer to Question 2.

(ii) An award of €5,000 for exemplary damages for breach of constitutional rights in respect of the assault.

(iii) An award of damages of €4,500 in respect of negligence in respect of Question 3(B) subject to a discount of 50% in respect of contributory negligence for the reasons advised by Hogan J.

**General observations**

3. Mr. Savickis decided to invoke his rights pursuant to s. 94 of the Courts of Justice Act 1924 to set down his action for damages for assault and his other causes of action arising out of the same facts for hearing before a judge sitting with a jury. As a result, following a hearing that lasted six days, the jury gave their answers to the questions put to them for their determination.

4. It goes without saying that in such circumstances the jury had the opportunity to carefully assess the presentation of the evidence by both parties and the credibility of each witness. Further, for the purposes of arriving at their conclusions, the members of the jury had the opportunity of discussing the significance of that evidence with each other and also had the benefit of guidance from the trial judge as to how they should approach the issues for their determination.

5. The value to the decision maker of seeing witnesses give their evidence viva voce cannot be overstated, particularly when facts are disputed and where two differing accounts of a particular event are advanced by the parties, as in the present case in relation to whether or not Mr. Savickis was given a poncho to wear before he was moved to another cell on a different floor of the prison. The credibility of a witness may often be undermined by the manner in which they give their evidence or indeed their conduct observable in the courtroom while not giving evidence. When under examination or cross examination, they may leave long gaps before answering certain questions. They may blush, stammer or fidget. There are a thousand ways in which a witness, by the manner in which they give their evidence or by their demeanour, may assist a jury in deciding upon the truth or otherwise of particular evidence. Further, the jury in the present case had six days to discuss and mull over the evidence crucial to their decision as to which party had more likely given the accurate account of what had occurred in the padded cell into which Mr. Savickis had been put before his later transfer to a different cell.

6. By way of complete contrast to the manner in which a jury will determine an issue, an appellate court acts in a somewhat sterile environment. It has no opportunity of hearing or assessing witnesses. It often must make its decision based upon a transcript of the original hearing. Regrettably in this case the Court does not even have the benefit of a professional transcript. It has no more than a detailed note upon which to make its decision. Further, the conduct or mannerisms of witnesses are not captured by a transcript or a note of the evidence. While this court had the benefit of some CCTV footage which clearly captured the not insignificant assault perpetrated upon Mr. Savickis, the remainder of the CCTV footage is of no assistance to the issue that fell to be determined by the jury when faced with Question 3(C). There was no coverage of what had transpired before the prisoner was taken naked from the padded cell onto the corridor.

7. The last general observation which I would wish to make concerns the jurisdiction and role of the appellate court which is completely different to that of a judge or a jury hearing a case at first instance. Its role is not to consider all of the evidence presented on the appeal afresh and reach its own conclusion as to how it would have answered the questions which were put to the jury. As Denham J. stated in *O'Connor v. Bus Atha Cliath* [2003] 4 I.R. 459, "it is quintessentially a matter for a jury (or a trial judge acting in place of a jury) to hear and determine the credibility and reliability of that person and to determine the consequent facts of the case. It is only in exceptional circumstances that an appellate court would intervene in such a determination." Accordingly, the role of this court when considering Mr Savickis's appeal from the answer of the jury to question 3(C) is one which is confined to an assessment as to whether or not there was credible evidence to support its conclusion.

### **Question 3(C)**

8. The following question was put to the jury:-

3(C)

"Did the defendants fail to discharge their duty to provide safe and secure custody to the plaintiff and to treat the plaintiff with the appropriate dignity to which he was entitled in allowing the plaintiff to be removed from one section of the prison to another in a state of undress?"

9. It is clear that this question was destined to address the circumstances in which Mr. Savickis was allowed or required to be moved from one section of the prison to another in a state of undress. The question does not seek to address whether or not there was any justification for Mr. Savickis having been placed in the padded cell in the first place. It is material in this respect to note that there was no challenge to the evidence to the effect that once a prisoner was put into the padded cell that the relevant regulations required the removal of their clothing.

10. Accordingly, the question for this court on the appeal in relation to the jury's answer to Question 3(C) is whether there was credible evidence to support its conclusion that the defendants had not failed in their obligation to treat Mr. Savickis with appropriate dignity in allowing him to be transferred from one cell to another in a state of undress?

11. Key to the jury's decision on this issue was the evidence of Mr. Savickis and that of prison officers Shally, Condon and Dunne. I will briefly summarise the relevant evidence as fairly as I can from the somewhat disjointed note of the hearing.

12. Mr. Savickis in the course of his evidence accepted that when his clothes were taken from him he was given a blanket. He denied, however, that anyone had offered him a poncho or what was described in evidence as a Jesus blanket. While under cross examination he accepted as fact that when he was on the floor of the padded cell that a prison officer had tried to cover him up with a blanket.

13. Prison Officer Shally gave evidence that when Mr. Savickis's clothing was taken from him on arrival in the padded cell that he was given refractory garments. He does not appear to have been challenged in relation to this evidence. I should also say that I can find no reference in the agreed note to suggest that the evidence of the prison officers to the effect that Mr. Savickis had been given a blanket which he later displaced and a poncho which he refused to wear was ever challenged.

14. Officer Dunne, who was in charge of the prisoner's transfer from the padded cell to the second cell, gave evidence that Mr. Savickis was given a blanket and a poncho when his clothes were taken from him but that he refused to put on the poncho and that he displaced the blanket which was put over him to cover him.

15. It is also important to note that it was never advanced on Mr. Savickis's behalf that even if he had refused the poncho that there were other steps that ought to have been taken by the defendants to protect his dignity and that they had been culpable in this regard. It was never, for example, suggested that the prison officers who escorted him to the second cell should have tried to hold a blanket over him in such a manner as might better have protected his dignity as he walked along the corridor. Relevant to any such challenge would have been the evidence of Officer Dunne who gave uncontroverted evidence that Mr. Savickis was still not compliant at the point at which he had to be moved and that it would have been difficult and indeed unsafe to have tried to put a Jesus blanket on him in the face of his objections.

16. It is clear to me that Question 3(C) was to be resolved by the jury by reference to the conflicting evidence concerning whether or not Mr. Savickis was given a poncho which he was asked to put on before he left his cell, there having been no other challenge to the manner in which the prisoner's dignity was breached when being moved between the two cells.

17. While it is extremely concerning that any prisoner should be moved naked through public areas of the prison, save in exceptional circumstances, it should for the record be noted that this is not a case in which the defendants made no effort to protect the prisoner's dignity as he was moved between cells. Prisoner officer Dunne gave evidence that in circumstances where Mr. Savickis would not disport the poncho which was offered to him and where the cell was urgently required for a suicidal prisoner, he took steps to ensure that the prisoner would not meet any members of the female prison staff, or indeed any other prisoners while moving between the two cells. It would appear, at least from that section of CCTV footage as covered his movements between the two cells, that he was successful to this extent.

18. Having regard to the evidence and to the matters to which I have earlier referred, it simply cannot be said that there was not credible evidence upon which the jury was entitled to conclude that the defendants had not failed in their duty to treat Mr. Savickis with the dignity to which he was entitled when being moved between the two cells. It is clear from their answer that they must have been satisfied as a matter of fact that Mr. Savickis had indeed been provided with and encouraged to put on the poncho but had rejected the garment with the effect that he left the cell naked, an answer that in my view was clearly sustainable on the evidence.

### **Conclusion**

19. While it is worrying and disturbing that any prisoner should be moved or have to be moved through any area in a prison in a state of undress - circumstances that might well in another case justify findings of a breach of the prisoner's constitutional rights - on the particular facts of this case there was ample evidence upon which the jury was entitled to reach that finding which it did. Accordingly I would dismiss the appeal in relation to the finding of the jury concerning Question 3(C).

20. As I have already indicated, I would otherwise allow the appeal in part and vary the order of the jury in the High Court by increasing the award for damages from €225 to a total award of €17,225.