

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE  
MIDDLE DIVISION

FILED  
IN THE CLAIMS COMMISSION  
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RYAN DAVENPORT #370379, )  
 )  
 Claimant, ) Claim No. T20090735  
 )  
 vs. )  
 )  
 STATE OF TENNESSEE, )  
 ) Regular Docket  
 Defendant. )

**JUDGMENT FOR THE STATE AND DISMISSAL OF CLAIM**

This claim came on for trial before Robert N. Hibbett, Commissioner and trial judge of the facts and the law, on April 10, 2014 by videoconference in the Rachel Jackson Building in Nashville, Tennessee. Senior Counsel and Assistant Attorney General Arthur Crownover, III, represented the State of Tennessee. The Claimant, Ryan Davenport, was self-represented. The transcript of the trial was filed on April 28, 2014.

**Jurisdiction of Claims Commission**

The authority of the Claims Commission to render damages is set forth by statute. If a claim falls outside of the categories specified in Tenn. Code Ann. § 9-8-307(a), then the State retains its immunity from suit, and a claimant may not seek relief from the State. *Stewart v. State*, 33 S.W.3d 785, 790 (Tenn. 2000). The

only statute that gives the Tribunal authority to rule on is this claim is Tenn. Code Ann. § 9-8-307(a)(1)(E), relative to negligent care, custody and control of persons.

### **Findings of Fact**

The Claimant was an inmate of the Tennessee Department of Correction (TDOC) at Turney Center Industrial Prison (TCIP). On January 9, 2008, Mr. Davenport was attacked by another inmate, Kenneth Miller. He received several blows to the head with a blunt object. During the attack, no correctional officer or state employee was present. Mr. Davenport went back to his cell after being seriously injured. He did not notify any authority of the assault. The prison conducted three headcounts before any official noticed that the Claimant needed medical treatment. The day after the assault the Claimant was transported to Vanderbilt Medical Center where he had surgery on his injured eye. Regretfully, they could not save his eyesight in the injured eye. He is presently blind in one eye because of the assault.

The reason for the assault appeared to concern the return of a contraband cell telephone. It is apparent the Claimant was assaulted by Miller at the instruction of another inmate, Gerald Gregory, also known as "Little Jay."

Gregory had threatened the Claimant concerning the cell phone before the assault. However, the Claimant failed to inform the authorities of the threat. In fact, the Claimant testified that he did not feel threatened before the assault.

I didn't feel threatened at all. I mean, we talked, me and "J", we talked and everything. Like I said, we talked, we played chess, doing the job. And even back at the time, the date of the incident, we played chess together. I mean, I didn't feel threatened or anything.

Trial Transcript page 19.

The evidence from the testimony of the Claimant and Special Agent Nicky Jordan of TDOC shows that prison officials did not have notice of the impending threat and assault on the Claimant.

### **Conclusions of Law**

To prevail under § 9-8-307(a)(1)(E), Mr. Davenport must prove that the State or its employees were negligent. A claim for negligence requires proof of the following elements: (1) a duty of care owed by defendant to a claimant; (2) conduct by the defendant falling below the standard of care to amount to a breach of the duty; (3) an injury or loss; (4) causation in fact; and (5) proximate causation. *Rice v. Sabir*, 979 S.W.2d 305, 308 (Tenn. 1998). Failure to establish any one of these elements results in the dismissal of the case.

Duty is the legal obligation owed by the defendant to a claimant to conform to a reasonable person standard of care for the protection against unreasonable risk of harm. *McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn. 1995). A risk is unreasonable and gives rise to a duty to act with due care if the foreseeable probability and gravity of harm posed by defendant's conduct outweigh the burden upon defendant to engage in alternative conduct that would have prevented the harm. *Id.* To determine whether a risk is unreasonable, one must consider: (1) the foreseeable probability of the harm of injury occurring; (2) the possible magnitude of the potential harm or injury; (3) the importance or social value of the activity engaged in by the defendant; (4) the usefulness of the conduct to defendant; (5) the feasibility of alternative, safer conduct and the relative costs and burdens associated with that conduct; the relative usefulness of the safer conduct; and (6) the relative safety of alternative conduct. *Id.* Establishing duty and breach of that duty alone does not entitle a claimant to recovery for injuries and damages. The mere occurrence of an injury does not prove negligence and a negligent act does not entail liability. *Doe v. Linder Const. Co.*, 845 S.W.2d 173, 181 (Tenn. 1992). The claimant must still

establish the requisite causal connection between the defendant's conduct and the claimant's injury. *Id.*

In *Kinningham v. State of Tenn.*, 2001 WL 1089501 (Tenn. Ct. App. Sept. 18, 2001), a prisoner sued the State for alleged negligent custody or control of his person after he was attacked by another inmate. The Court of Appeals stated as follows:

In this case, there has been no showing that the State breached its duty to exercise ordinary and reasonable care. As established in *Cockrum v. State*, 843 S.W.2d 433, 436 (Tenn. App. 1992), prison officials are not insurers of a prisoner's safety. In a case such as this, the conduct of the prison officials must be commensurate with the prisoner's known condition.

In *Gillespie v. Metropolitan Govt.*, 1992 WL 9441 (Tenn. Ct. App. Jan. 24, 1992), facts relevant to this case were presented. Inmate Charles Stevens assaulted inmate Wesley Gillespie after a fight over the alleged theft of socks. Another inmate apparently accused Gillespie of stealing his socks. Upon hearing this accusation, Gillespie had an altercation with inmate Stevens. Inmate Stevens left the area after being subdued by other inmates, but returned later, picked up a milk crate and struck inmate Gillespie in the face with it. *Id.* at \*1.

Inmate Gillespie sued the Metropolitan Government for his injuries. Metro filed a motion for summary judgment, which was granted, and inmate Gillespie appealed to the Court of Appeal of Tennessee, Middle Section. Inmate Gillespie alleged that he told guards that he was having trouble with an inmate and wanted to be moved away from him. *Id.* at \*2. The Court acknowledged a dispute as to this testimony but nevertheless, held that merely asking to be moved for vague and unspecified reasons was not sufficient to put Metro on notice that Mr. Stevens was a physical threat to inmate Gillespie. *Gillespie* at \*3. In the instant case, unlike in *Gillespie*, there is no allegation that prison staff was forewarned of the attack against Davenport.

The Court in *Gillespie* further held that penal institutions are not insurers of an inmate's safety in regard to inmate-on-inmate assaults.

The general rule is that penal institutions have a duty to use reasonable and ordinary care to prevent foreseeable attacks on inmates by other inmates. A breach occurs when the institution's authorities knew of or had reason to anticipate an attack and did not use reasonable care to prevent it.  
*Gillespie* at \*1.

In the present case, prison correctional officers or officials did not know nor have reason to know of the impending threat or attack upon the Claimant. Therefore, there was no breach of duty to prevent an attack by another inmate.

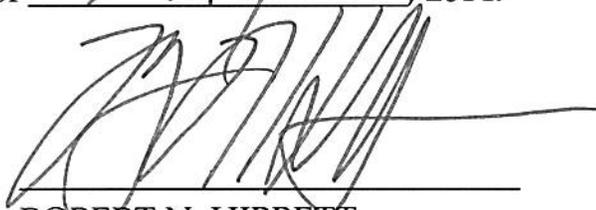
Summary

To prevail in this case, the Claimant must prove that State prison officials breached their duty of care to keep the Claimant safe from attack. Because of the reasons stated above and because prison officers and officials had no notice of the impending threat or attack on the Claimant, the Claimant has failed to prove negligence on the part of the State of Tennessee. Based on the evidence and the law, the Tribunal must find for the State and dismiss the claim.

**IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED:**

1. That judgment is rendered on behalf of the State of Tennessee.
2. That the claim is dismissed with prejudice.
3. That the court costs are taxed to the Claimant, Ryan Davenport.
4. That this is a final judgment.

ENTERED this 30 day of MAY, 2014.



ROBERT N. HIBBETT  
Claims Commissioner  
Sitting as the Trial Judge of Record

**CERTIFICATE OF SERVICE**

This is to certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

ART CROWNOVER  
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RYAN DAVENPORT #370379  
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7475 Cockrill Bend Blvd  
Nashville, TN 37243-0741

This 2<sup>nd</sup> day of June, 2014.



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PAULA SWANSON  
Administrative Clerk  
Tennessee Claims Commission