TYLER S. SHAMBRO : NUMBER: 557,217-B

VERSUS : FIRST JUDICIAL DISTRICT COURT

BOBBY RAY JOHNSON, III : CADDO PARISH, LOUISIANA

 **REASONS FOR JUDGMENT**

 **ON LIABILITY AND COMPARATIVE FAULT**

As a result of a violent event during the early morning hours of June 19, 2011, Tyler Shambro filed suit against Bobby Ray Johnson, III asserting causes of action for assault, battery, intentional infliction of emotional distress and seeking monetary damages for injuries. Denying the allegations in his answer, Johnson claimed (1) that Shambro was the aggressor and that any of his actions were in self-defense; and (2) alternatively, in the event fault is found, any resulting award should be apportioned in accordance with law.

Trial was held March 25, 2014. The Court heard testimony from Tyler Shambro, Keith Emanuel, Don Emanuel, Don Shambro, Sandy Shambro, Ladd Custer, Shreveport Police Officer Shonda Holmes and William Spencer Smith and received numerous exhibits, including video of the conflict, the arrest report, and photographs.[[1]](#footnote-1)  Of significance, although present throughout the trial proceedings, Johnson was not called to provide testimony by either counsel.[[2]](#footnote-2)

After thorough consideration of the evidence, applicable law, and written post-trial argument by counsel—and for reasons that follow—the Court concludes that Tyler Shambro has proven by a preponderance of evidence that Bobby Ray Johnson, III committed battery upon him by stabbing him at least six times, that Johnson is 75% at fault with Shambro being 25% at fault. Because the evidence is so overwhelming as to the battery determination, the Court need not address the two other tort claims.

 **FINDINGS OF FACT**

1. At about 4:00 a.m. on June 19, 2011 Shambro and his friend, Keith Emanuel, were outside the front doors of the Larry Flynt’s Deja Vu Hustler Club. Johnson and his cousin, William Spencer Smith, were 10 or so feet away from Shambro and Emanuel and they (Johnson and Smith) appeared to be arguing with each other.

2. Shambro approached Smith and punched Smith in the back, a maneuver he characterized as “horseplay” with the intent that they (Johnson and Smith) “touch noses” in which event “they’d fight”.

3. Notwithstanding their conflict, Johnson and Smith immediately turned on Shambro, advancing on him. Shambro backed up towards the building, lifting both hands as if to sign a truce or convey an apology, as Shambro testified, “My bad, I apologize”.

4. Johnson and Smith, on one side, and Shambro and Emanuel on the other, became entangled in a fist fight with Smith being knocked unconscious by Emanuel and Shambro being stabbed at least six times, including two puncture wounds to the back.

5. Johnson fled the scene; Shambro was treated by paramedics and rushed to LSUHSC, where he underwent surgery and treatment for the following eight days.

6. All men were impaired due to alcohol consumption.

7. Following investigation by the Shreveport Police Department, Shambro was issued a summons for the misdemeanor crime of simple battery, apparently for the initial blow to Smith’s back, and an arrest warrant was issued charging Johnson with the felony crime of aggravated second degree battery.

8. On or about August 30, 2011, Shambro, Emanuel and Johnson appeared for criminal proceedings before Judge John Mosely. Johnson incriminated himself in the courtroom in two respects: (1) he smiled at Shambro, blew a kiss and rubbed his abdomen, all as described by Don Emanuel (Keith’s 69 year old grandfather), who the Court deems highly credible; and at another point (2) he said to Shambro and Emanuel “I got you once”, as described by credible testimony.[[3]](#footnote-3)

 **APPLICATION OF LAW**

In a suit for damages resulting from an intentional tort, the claimant must carry the burden of proving all prima facie elements of the tort, including lack of consent to the invasive conduct, and in turn, the defendant may seek to prove that he is without fault because his actions were privileged or justified, such as self-defense.[[4]](#footnote-4) The evidence shows that Shambro was the initial aggressor and committed a battery against both Smith and Johnson.[[5]](#footnote-5) The fact that Shambro, the plaintiff in this case, was the initial aggressor gives rise to a legal principle known as the “aggressor doctrine,” which as the Louisiana Supreme Court has explained, is that the plaintiff’s recovery for damages resulting from an assault or battery is precluded if the plaintiff’s own actions were sufficient to provoke the physical retaliation; in other words, the plaintiff’s recovery is precluded if the evidence establishes he was at fault in provoking the difficulty in which he was injured, unless the person retaliating has used excessive force to repel the aggression.[[6]](#footnote-6)

In this case, Johnson was the retaliating person and used excessive and totally unreasonable force to repel Shambro’s initial aggression. In order to succeed on a claim of self-defense as a privilege to committing the intentional tort, there must have been an actual or reasonably apparent threat to his safety and the force employed must not have been excessive in degree or kind.[[7]](#footnote-7) Johnson’s retaliation was excessive in both degree and in kind. As such, employing Louisiana’s pure comparative fault system, whereby the fault of all persons causing or contributing to the injury is to be compared, the Court has incorporated Shambro’s aggressive conduct into the allocation of fault, but Shambro is not precluded from recovery altogether due to Johnson’s use of excessive force in retaliation to the initial battery.

The medical records reveal that Shambro was stabbed at least six times, including two stabbings in Shambro’s back.[[8]](#footnote-8) This is far beyond the scope of what was reasonable, considering that Shambro immediately retreated after pushing Smith and that Shambro never produced a weapon.

 **CONCLUSIONS ON LIABILITY AND COMPARATIVE FAULT**

1. Shambro is at fault for his aggressive and intentional battery on Smith as that event directly led to retaliatory aggression by Johnson and Smith.

2. By backing up, moving in toward the building and raising his hands, Shambro was in effect withdrawing from the conflict; however, due to their level of impairment that may not have been evident and clear to Johnson and Smith.

3. The circumstantial evidence overwhelmingly establishes that Johnson elected not to engage in what would otherwise have been a regular fist fight but, rather, he chose to stab Shambro multiple times all over his upper body, including twice in the back.

4. Even if the act of withdrawal from the conflict by Shambro was insufficient, the act of Johnson pulling and violently using a knife was totally unreasonable, excessive in degree and in kind, and illegal.

Apply the Louisiana Supreme Court’s analysis of Landry v. Bellanger, 851 So. 2d 943 (La. 5/20/03) as well as the principles of Griffith v. Young, 62 So.3d 856 (La. Ct. App. 2d. Cir. 2011), the Court concludes that the culpability of Johnson is vast, and therefore at least 75% fault should be allocated against him. The culpability of Shambro in his provocative and aggressive punch or shove to Smith’s back – which precipitated, in part, events which followed – is such that 25% fault should be allocated to him.

 **NO CONTACT ORDER**

**Neither party shall have any contact whatsoever with the other, the penalty for which will result in a contempt finding and suitable punishment, in accordance with law.**

Counsel shall submit memoranda on all quantum issues, the length of which shall not exceed three pages and the filing of which shall be on or before April 18, 2014.

Signed this 31st day of March, 2014, in Shreveport, Caddo Parish, Louisiana.

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 SCOTT J. CRICHTON

 DISTRICT JUDGE

DISTRIBUTION:

Benjamin J. Bleich, Counsel for Tyler S. Shambro

Vicki C. Warner, Counsel for Bobby Ray Johnson, III

1. Regarding defense witness Smith, it is significant that in open court on March 25, 2014, he seemed to recall the Déjà Vu events until he was knocked out, yet in his deposition taken on December 18, 2012 (P-9) he seems to have no memory as evidenced by the following questions and answers: “I don’t remember not one bit of it” (Smith Depo. p.9); Q. “Do you remember an incident that happened in Déja Vu night club? A. Nope” (Smith Depo. p.13); Q. “Do you remember where you were the night before? A. I don’t remember what I had for lunch yesterday.” (Smith Depo.p.14); “…I don’t remember nothing” (Smith Depo. p.15); Q. “So you don’t remember anything about you being in a fight or Bobby Ray Johnson, III, being in a fight. Is that correct? A. Nope. I do not physically remember swinging at anybody, ever even touching anybody. I do not remember that whatsoever.” (Smith Depo. p. 19). [↑](#footnote-ref-1)
2. Of course, the Court always honors the Fifth Amendment of the United States Constitution, as all other provisions of our constitution. In this case, the district attorney has declined to prosecute Johnson for the felony charge of aggravated second degree battery; however, pursuant to R.S. 14:34.7 and La. C. Cr. P. art. 572(A)(2), the prescription period is four years (from June 19, 2011). Presumably Johnson would have exercised his Fifth Amendment right to remain silent—at least as to the events of June 19, 2011; yet from a practical standpoint, he was not called to the witness stand by either side and he thus was not called upon to assert his constitutional right. Irrespectively, the Court does not make any adverse or negative inference as to his choice to not testify. [↑](#footnote-ref-2)
3. There was apparently another court-related incident which occurred March 25, 2014, in which Caddo Deputy Jeff Brown admonished William Spencer Smith to stop staring at Don and Sandy Shambro, the parents of Tyler Shambro. This troubling event coupled with the August 30, 2011 events in Judge Mosely’s courtroom causes the Court concern. [↑](#footnote-ref-3)
4. *Landry v. Bellanger*, 851 So.2d 943, 2002-1443 (La. 5/20/03) [↑](#footnote-ref-4)
5. It’s clear in this case that Shambro, entirely unprovoked, committed a battery against Johnson and Smith when he shoved Smith in the back, causing Smith to knock into Johnson. Battery is an intentional contact that is harmful or offensive. The elements are as follows: 1. Intent, which is purpose or substantial certainty of contact which is harmful or offensive, 2. Contact, which is a touching of the person or contact with something closely connected to the person, and 3. Harm or Offense, which requires that the contact be harmful or offensive to a person of ordinary sensibilities. Intent may be transferred, such that while Shambro actually made contact with Smith, he committed a battery against Mr. Johnson as well. [↑](#footnote-ref-5)
6. *Id*. See also 18 La. Civ. L. Treatise, Civil Jury Instructions § 14:20 (3d ed.); 12 La. Civ. L. Treatise, Tort Law § 7:4 (2d ed.) [↑](#footnote-ref-6)
7. See *Griffith v. Young*, 62 So.3d 856 (La. Ct. App. 2d Cir. 2011) [↑](#footnote-ref-7)
8. Per illustration on p. 10 of medical records, Shambro had “KSWS”, or knife stab wounds, in the following areas: 1. Right side of abdomen, 2. Middle of abdomen, 3. Left side of abdomen, 4. Left pectoral area, 5. Upper left back area, 6. Middle back area. The records also note bowel extrusion from one of the wounds, which corroborates Shambro and Keith Emmanuel’s testimony. [↑](#footnote-ref-8)