

RUGBY FOOTBALL UNION

DISCIPLINARY HEARING

At: Holiday Inn, Filton, Bristol

On: Tuesday 9 November 2010

JUDGMENT

Player: Gary Sposito

Club: Southmead RFC

Match: Frampton Cotterell RFC v Southmead RFC

Venue: Frampton Cotterell

Date of Match: 2 October 2010

Panel: Rick Charles (Chairman), Mike Curling and Nigel Gillingham.

Secretary: Bruce Reece-Russel

Attending: The Player.
Geoffrey Williams (President Southmead RFC)

Dave Ashwin (Frampton Cotterell RFC)

Charges and Pleas

1. The Player was sent off for an offence of striking contrary to Law 10(4)(a), in that on 2 October 2010 he struck an opponent during the 27th minute of the second half of the match between Frampton Cotterell v Southmead. He admitted the charge.

2. The Player was also cited by Frampton Cotterell RFC for an act contrary to good sportsmanship contrary to Law 10(4)(m) in that on 2 October 2010 he made contact with the eye, or eye area of an opponent during the 27th minute of the second half during the same match. He denied the charge.

3. The Panel was in possession of a bundle containing following documents: -

John Stewart dated 5 October 2010

Mark Chaplin dated 5 October 2010

John Hughes dated 7 October 2010

Report of Ian Hillier (referee) dated 3 October 2010

2 photographs of injury to John Stewart

Medical Report by Miss Brinda Muthasamy, Specialist Registrar

Statement of Trevor Sealey

Prepared Statement of Gary Sposito

Statement of Tony Knight

Character Reference by Barry Jakes

The Citing

4. Dave Ashwin presented the case on behalf of Frampton Cotterell RFC, the citing club. He explained that the decision to cite the Player had not been taken lightly but suggested that the act complained of was serious and had resulted in a serious eye injury to John Stewart, the Frampton Cotterell (FC) player No 4.

5. John Stewart (JS) gave evidence in person. He stated that he was playing for FC at No 4. A line out took place near the Southmead 5 metre line following a penalty kick to the corner. He was the number 2 jumper. He caught the ball and was brought to ground. He presented the ball to his forwards who drove him towards the try line, moving the ball to the back of the maul. He was facing towards his own try line and had a good view of the back of the maul. He saw the Southmead No 16 who he recognises as Gary Sposito (GS) enter the maul at the rear on his left hand side, pulling the player with the ball to the ground. The maul collapsed around the Southmead try line.

6. JS stated that he found himself lying on his back on the ground and saw the referee moving towards the Southmead posts awarding a penalty try. He got up and went over to GS who was getting up and said something like "we deserved that" and pointed to the referee. GS replied but he cannot remember what was said. It was just a bit of verbals. JS stated that he turned away and took 4 or 5 paces in the direction of the half way line. As he reached the Southmead 5 metre line he felt punches on the back of his scrum cap and the back of his neck. There were approximately 4 or 5 blows. He described them as forceful but absorbed to a degree by his scrum cap. He heard a voice say "you won't fucking say that again". He recognised the voice as that of the Southmead No 16, GS.

7. JS said that he put his head forward and put both his arms out to his side with open palms and looked to his left in the direction of the referee who appeared to be looking directly at him from about 20 metres away. He shouted "ref" a couple of times. He then felt an arm come over his right

shoulder and felt 2 fingers in the inside corner of his right eye. He heard the same voice say the same words as before. This happened almost immediately after the punches had stopped. He felt his upper inner eyelid being pulled back and felt severe pain there. He knew there was a problem and leaned further forwards, putting his hands to his face. He immediately saw blood on his right hand. He dropped to his knees, still facing his own posts. He heard a melee behind him but did not see anything.

8. JS explained that another FP Player, Mark Smith, came to assist him and he was then taken from the field. He was standing by the corner flag and saw GS being given a red card. JS said that the photographs were taken after his face had been cleaned up. These show no bruising or abrasions around above or below the eye area, but bloodied droplets emanating from the corner of the eye socket. He was then taken to Southmead Accident and Emergency Department where he was seen by a nurse. He had sustained a cut across the corner of his right eye across the tear duct and along the upper eye lid. The wound was cleaned and paper stitches applied but in view of the location and nature of his injury an appointment was made for him the following morning at the Bristol Eye Hospital.

9. At the Bristol Eye Hospital his injury was assessed by a variety of doctors and he underwent a CT scan to assess possible damage behind the eye. There was no such damage and he underwent an operation that day under local anaesthetic to repair the tear in the corner of his eye and to inset a silicone tube into a tear duct to keep it open as it heals. Three stitches were put in the cut above the eye that were removed a week later. Other dissolvable stitches were used in the corner of his eye. The tear duct repair is due to be assessed at a hospital appointment on 23 November 2010. JS explained that he was advised to avoid playing for a couple of weeks but he has now started playing. His right eye waters more than usual that can cause his vision to become blurred but it is hoped that this will be resolved when the silicone tube is removed.

10. In cross examination of behalf of GS and by GS JS denied that he had pushed GS's head into the ground when the maul collapsed or that he had punched GS then or subsequently. He did not turn round and retaliate when punched by GS. JS accepted that in his statement he mentioned speaking to GS before he got up from the collapsed maul but he said that this was a mistake on his part. He had spoken to GS after getting up. JS said he was sure that it was GS who had put fingers in his right eye.

11. Mark Chaplin (MC) gave evidence in person. He is Director of Rugby at Frampton Cotterell RFC and at the time of the incident was watching the game from behind the Southmead dead ball area. MC stated that he was in line with the middle of the line out on the Southmead 5 metre line. He saw John Stewart catch the throw in. A maul formed and was driven towards the Southmead try line. As the maul reached the line it was illegally taken down by a Southmead Player wearing No 16. MC stated that JS was at the front of the maul facing back towards the other end of the pitch. He saw JS get up from the maul and walk in the direction of the halfway line. The No 16 got up and quickly moved after JS who was about 2 or 3 yards away with his back

to the No 16. MC saw the No 16 punch JS a number of times on his scrum cap/ neck area. The No 16 was swinging with both hands but he could not see if the fists were clenched. MC saw JS put both of his hands out to his sides and heard him shout "ref" a couple of times.

12. MC stated that there was a very short pause of a couple of seconds after which the No16 continued to rain blows from behind on the head/neck area of JS, again with both hands. He could not see where the blows landed. No one else was within 2 or 3 metres and he had a clear view. He saw JS drop to his knees and a melee involving 5 or 6 other players from both sides started to the right side of JS. MC stated that no one other than the No 16 could have been responsible for the injury sustained by JS.

13. John Hughes (JH) gave evidence in person. He was at the game as a supporter of Frampton Cotterell and at the time of the incident was standing just outside the 22 metre line at the end of the pitch defended by Southmead. He saw a clean catch at the line out and the maul form. It made steady progress toward the Southmead try line before it went down in a jumble of players. He saw a bit of pushing and shoving going on between both sets of forwards as they got up but he did not see who was involved. He saw JS walking towards the half way line and while he was watching he saw a Southmead player approaching JS rapidly from behind and strike JS a couple of round arm blows to the rear of the head. JS bent forward and as he did so JH saw both hands of the Southmead player appear on either side of JS's head and go into his eyes, remaining there for 2 or 3 seconds. These were not blows but something different. He could not see the Southmead player or his number as from where he was standing the Southmead player was immediately behind JS and was shorter than JS, but nobody else was involved. He saw JS bent forward more but at that stage his attention was attracted by rapid movement not far away from JS involving other players from both sides. When he looked back JS was being helped from the field.

14. In cross examination of behalf of GS and by GS John Hughes stated that he had not seen JS punch the Southmead player and he did not see anyone break up the incident.

15. Ian Hillier (IH) gave evidence in person. He was the referee and referred to his report dated the day after the game in which he states the following: -

"I saw Blue 16 come straight in at the side of the maul trying to stop a try being scored. I instantly awarded a penalty try and made my way under the posts. As I got to the posts I became aware that something was going on behind my back where the penalty infringement was so turned round to see Blue 16 reigning punches on Green 4. A number of other players from both sides had by now joined in, some to restrain players, others to join the fight".

IH stated that he called over Blue 16 and his captain and showed a red card to the Southmead No 16. He then saw that the Green 4 had blood on the

right side of his face around the eye area. He did not see what had caused this but he did not see anyone else hit the Green No 4. He did not see the No 4 hit anyone or anyone pull the No 16 off the No 4.

Finding of Case to Answer

16. The Panel considered the documentary evidence and the evidence given at the hearing and were satisfied to the required standard that the Citing Club had made out a case for the Player to answer. The Player elected to give evidence himself and call witnesses.

The Cited Player's case

17. GS gave evidence in person. He stated that he was playing as blindside flanker for Southmead wearing the No 16 shirt. He became detached from the maul as it approached the Southmead try line and latched on to the ball carrier for the side, collapsing the maul. He ended up on the ground, face down with his head over the try line. He heard someone say "we deserved that you fat bastard". Almost immediately he was hit on the right side of his head and he felt pressure at the back of his head pushing his face into the ground. He did not see who did this but considered that the Frampton Cotterell No 4 was the only person who could have as he was the nearest. GS said that he did not see the funny side of this. He saw the No 4 walking away and went after him, punching him on the sides of his head. He may have said something. The No 4 knew he was coming and turned to face him. They exchanged punches until pulled apart. GS stated that he did not at any time gouge the right eye of the No 4 with his fingers. He did not make any contact with the No 4's eyes. Eye gouging is something that he would not do.

18. In cross examination by Mr Ashwin GS said that he saw JS receiving attention. GS accepted that he had lost his temper but maintained that he was still in control of himself. He accepted that he had punched JS on both sides of the head leading with his left hand as he is left handed. He described what happened after JS turned to face him as "windmilling stuff" and stated that JS had got in at least one good hit before they were separated after a matter of seconds.

19. Trevor Sealey (TS) gave evidence in person. He is the Director of Rugby for Southmead RFC. At the time of the incident he was standing behind the Southmead try line about 10-15 metres from where the maul collapsed. He saw the referee moved towards the posts. He then saw a Frampton Player push GS on the back of his head when he was on his hands and knees. He did not see which Frampton player it was but GS stood up and threw 3 or 4 punches at the player concerned. A large free for all then took place involving many players from both sides. There was a lot going on but he did not see GS make any contact with the eyes of the Frampton Cotterell No 4.

20. In cross examination by Mr Ashwin TS agreed that GS went after the Frampton Player and landed a couple of punches on him from behind. He could not see where the blows landed and could not recall which hand was

used. He thought it was the left hand. The Frampton player turned to face GS who landed 2 more blows, probably on the left side of the head.

21. Tony Knight (TK) gave evidence in person. He is the coach at Southmead RFC and explained that at the time of the incident he had been standing on the 5 metre line on the far side of the field from the line out, approximately 30/40 metres away. He saw GS collapse the resulting driving maul. The referee blew his whistle and awarded a penalty try. TK said that he saw GS on his hands and knees being slapped on the back of the head by the Frampton No 4. It was not a punch, more of a "well done" pat on the back of the head. He saw GS get up and hit the Frampton No 4 two or 3 times then a free for all broke out. GS used his left hand and the Frampton No 4 starting swinging back. TK stated that he did not see any eye gouging by GS or see him make any contact with the eyes of the Frampton No 4.

22. In cross examination by Mr Ashwin TK stated that he had an unobstructed view of the incident but accepted that he had not been looking specifically at GS all the time as there was a lot going on. He saw GS and the Frampton No 4 being separated. He did not see anyone else hit the Frampton No 4.

Submissions

23. Mr Ashwin submitted that the evidence established that an act of foul play had occurred and that the nature of the injury was consistent with a charge of contrary to good sportsmanship by making contact with the eye resulting in a serious injury to the eye, a more serious offence of striking for which Gary Sposito was sent from the field of play. The evidence of John Stewart was credible and consistent with the injury he had sustained.

24. Mr Williams stated that the evidence did not establish that Gary Sposito had caused the injury which may have been an accident when the players were separated. There had been a lot going on and Gary Sposito has consistently denied any contact with the eyes of John Stewart. Gary Sposito restated that he never touched the eyes of John Stewart and he was sorry that he had sustained injury. He did not feel that he could have done it with a punch.

Finding

25. The Panel considered all the available documentary evidence and the evidence given during the hearing. It is common ground that John Stewart sustained a serious eye injury shortly after the award of the penalty try. The Panel had to decide whether on the balance of probabilities the injury to the eye was caused by an act of foul play by Gary Sposito and, therefore, a more serious offence than for which he was sent off.

26. We are satisfied to the required standard that the cited act of foul play

occurred. In coming to this conclusion we took into the following: -

- No one else was seen to use any force on John Stewart. He was uninjured before the attack on him by Gary Sposito. The incident took only a few seconds and by the end of it John Stewart had sustained a serious injury consistent with his description of what had happened.
- The referee saw part of the incident and his account is consistent with John Stewart's evidence.
- We found John Stewart to be a reliable witness and we accepted his account.
- There was no commonality in the evidence of other witnesses on how the injury was actually sustained, except that Gary Sposito's hands had been used illegally in the vicinity of John Stewart's face.

27. It was also clear that Gary Sposito and his supporting witnesses thought they were defending a charge of eye gouging; this is not the actual issue. The charge is one of contrary to good sportsmanship making contact with eye or eye area. A finger entering the eye when throwing punches would satisfy the charge.

Mitigation

28. Mr Williams drew the Panel's attention to the character reference given by Mr Jakes. Gary Sposito has played at all levels for Southmead RFC for 25 years since he was 9 years old. He was a founder member. He has trained the juniors and was Vice Captain of the Club for 3 years and Captain for 2 years. He is an excellent Club man and also puts a lot into the Club off the field, for example by arranging functions and decorating the Club. He has never before been sanctioned for foul play of any kind and has not played for the club following a temporary suspension prior to the assumption by the RFU of jurisdiction. Mr Williams asked the Panel to deal leniently with Gary Sposito.

Sanction

29. The Panel first reviewed the seriousness of the conduct of the Player in order to determine the entry point for sanction. The appropriate reaction to offences involving injury to eyes has been the subject of IRB and RFU consideration in recent years and we referred to the recent RFU judgement in the case of Scott Murphy of Upminster RFC given by His Honour Judge Blackett where general comment on the sanctioning regime was given in the following terms: -

19. We first made an assessment of the seriousness of the conduct of the Player and in so doing referred to the judgment in the RFU case of Dylan Hartley 24 April 2007 (imposing a sanction of 26 weeks suspension). The following statement of principle has been adopted by the IRB in a letter to all Judicial Personnel dated 10 July 2009:

Contact with an opponent's eye or eye area is a serious offence because of the vulnerability of an eye and the risk of permanent injury. It is often the result of an

insidious act and is one of the offences most abhorred by rugby players. Serious offences of this sort – and particularly those known colloquially as “eye gouging” must be dealt with severely to protect players, to deter others from such activity and to remove offenders from the game to ensure that they learn the appropriate lesson. Clearly “contact” encompasses a wide range of activity from applying pressure with an open hand to a finger intentionally inserted into the eye socket intending to cause injury. Offences which would properly be classified as at the Lower End of the scale of seriousness would include, but not be limited to, wiping with an open palm or fist without any real force or intent and causing no injury. In certain circumstances it might also include reckless contact with a finger into the eye area. Offences which would properly be classified as at the Top End of the scale of seriousness would include, but not be limited to, an intentional act designed to cause serious discomfort or injury to the eye or area around the eye of an opponent. The most serious offences in this category would be where permanent damage is caused.

Entry Point

30. In assessing the seriousness of the Player’s conduct we took account of the following features of his offending:

- The offending was deliberate. John Stewart gave very clear evidence that immediately after the blows to the back of his head 2 fingers were inserted into the corner of his right eye and pulled back. The Panel concluded this was neither accidental nor reckless and was part of an attack on John Stewart following a loss of temper and control by the Player.
- The actions were serious. The Player used sufficient force and moved his fingers in such a way as to tear the corner of John Stewart’s right eyelid and tear duct.
- John Stewart sustained a painful and significant eye injury which has required a number of visits to hospital and associated days off work and will require further treatment.
- John Stewart was in a vulnerable position and the attack came from behind and he did not have the opportunity to prepare himself for it.
- We find that this act was the result of a moment of madness on the part of the Player involving a loss of temper and control and that there was no premeditation.
- The conduct was completed.

31. In our view the Player reacted badly to conceding a penalty try and deliberately targeted John Stewart (removed word “eye” from here) intending to cause serious discomfort to his victim. He must have realised that there was a risk of causing a serious injury and he had no concern for the welfare of his victim. In these circumstances we find that this offending is at the Top End of the scale of seriousness.

32. In cases where the offending is classified as being at the Top End of the scale of seriousness, a Disciplinary Panel must assess the appropriate entry point within a given range. The Top End range for offences of contact with the eye or eye area is 24 – 156 weeks.

33. In assessing the entry point within that range we referred to RFU

Disciplinary Regulations, Appendix 5, Guidance Note 3 that gives practical guidance by the RFU Disciplinary Officer in relation to the application of Regulation 19.8.2.6. We have taken account of:

- The offending player's intent. We had concluded that this was a deliberate act;
- The effect on the victim. John Stewart sustained a significant injury to his eye that required ongoing hospital treatment;
- The IRB's directive that this sort of offending should be dealt with severely.

34. In the above circumstances the Panel concluded that the appropriate entry point is a suspension of 62 weeks. This entry point reflects the factors already mentioned: the Games abhorrence for this sort of offending and the need for offenders to be dealt with severely.

35. The Panel did not identify any aggravating factors in this case under Regulation 19.8.2.7 as the need for deterrence had already been taken into account by the Panel in the context of the IRB's directive.

36. Having considered the aggravating features in this case we considered the mitigating factors listed in RFU Disciplinary Regulation 19.8.2.8:

- The presence and timing of an acknowledgement of culpability/guilt by the player – since he contested the allegation he is not entitled to any credit for this factor.
- A good record and/or good character – the Player is 34 years old and has no disciplinary matters recorded against him. He is clearly highly respected by his colleagues at Southmead RFC and we accept that this incident is completely out of character. The age and experience of the player.
- He is not entitled to any reduction based on youthful impetuosity.
- The player's conduct prior to and at the hearing. The player was polite and respectful throughout the proceedings.
- The player has shown no remorse as he still does not accept responsibility, although he was sorry that John Stewart had sustained such a serious injury.

The Panel concluded that these mitigating factors allowed a reduction of the period of suspension of 10 weeks. The Panel did not consider that a separate sanction in relation to the admitted act of punching is required. Any sanction for the admitted act of punching would be less than that for this more serious offence and would in any event be concurrent with the sanction set out below.

37. In all the circumstances the appropriate sanction is a suspension from playing rugby for 52 weeks. The Player had not played since the incident and is therefore suspended from playing all rugby from 2 October 2010 – 1 October 2011. He may play again on 2 October 2011.

Costs

38. The Player/Southmead RFC are ordered to pay costs of £100.

Appeal

39. The Player is reminded of his right of appeal.

Rick Charles (Chairman)

17th November 2010