



[2026] JMSC Civ 12

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2015HCV04574

BETWEEN **LETECIA LEE** **CLAIMANT**
(Administratrix of the Estate of Jerome Lee,
deceased; intestate)

AND **THE ATTORNEY GENERAL OF JAMAICA** **DEFENDANT**

IN OPEN COURT

Mrs Marion Rose-Green instructed by Marion Rose-Green & Company for the Claimant

Mrs Kristina Jones instructed by the Director of State Proceedings for the Defendant

HEARD **March 17, 2025 & February 5, 2026**

NEGLIGENCE - POLICE FATAL SHOOTING - CIRCUMSTANTIAL EVIDENCE - CUMULATIVE ASSESSMENT - GUNSHOT RESIDUE - MEDICAL TRAJECTORY EVIDENCE - POSITION OF WOUND - CREDIBILITY- INCONSISTENCIES AND DISCREPANCIES - SELF DEFENCE -EXECUTION OF DUTY

SECTIONS 13 & 33 CONSTABULARY FORCE ACT

WINT-BLAIR J

THE CLAIM

[1] By way of Claim Form filed September 24, 2015, the claimant and Administratrix of the estate of Jerome Lee (deceased), seeks the following relief:

- i. Damages under the Fatal Accidents Act for the benefit of dependants.

- ii. Damages under the Law Reform (Miscellaneous Provisions) Act for the estate, including loss of expectation of life and lost years; and
- iii. Constitutional redress and vindictory damages for alleged breach of the right to life under sections 13–14 of the Constitution, arising from a fatal shooting on 11 August 2004 on Ramsay Road, St Andrew, by a member of the Jamaica Constabulary Force (“JCF”).

THE BACKGROUND

[2] This claim arises from the fatal shooting of Jerome Lee on 11 August 2004 on Ramsay Road, St Andrew, during a police operation involving members of the Jamaica Constabulary Force (“JCF”). The claimant, his mother and administratrix of his estate, seeks damages in tort under the Fatal Accidents Act and the Law Reform (Miscellaneous Provisions) Act, as well as constitutional redress for alleged breach of the right to life protected by sections 13 and 14 of the Constitution.

[3] The claimant contends that Jerome Lee was an unarmed bystander who was unlawfully shot by a police officer acting outside the bounds of lawful self-defence and the execution of duty. The defendant denies liability and maintains that the fatal injury was sustained during an armed confrontation between police officers and gunmen, in circumstances where the officers were lawfully entitled to use force in defence of themselves and in the execution of their statutory duties.

EVIDENCE

Ms Letecia Lee

[4] Ms Lee is the mother of the deceased, Jerome Lee, who was born on January 24, 1986. Jerome Lee died on August 11, 2004, after being shot on Ramsay Road. She testified that around 5:00 p.m. she was at home at 2D Raphael Avenue, Kingston 13, washing dishes in the backyard when she heard multiple explosions like gunshots for about twenty minutes.

- [5] Jerome had earlier left the yard to bathe at the standpipe; she saw him with soap and a washrag. When the shooting subsided, she ran to the “lane mouth” and then towards Ramsay Road, where a crowd had gathered. She saw her son lying on the ground in a blood-soaked shirt and a pool of blood. No police were there then. With a friend’s help, she placed him in a car and took him to the Kingston Public Hospital (“KPH”), where nurses cleaned him and took him to the operating theatre. Jerome Lee was later pronounced dead.
- [6] The witness said that at KPH, she saw three male police officers in the accident and emergency area, to whom she protested that her son was innocent. She recalled one officer saying to another in her presence: “Look how you kill off the woman innocent pickney.”
- [7] She testified that Jerome had never been arrested or linked to wrongdoing; he had recently graduated from Vauxhall High School and was working as a security guard, earning \$3,500.00 weekly. He contributed \$1,500.00 per week for her support: \$1,000.00 for groceries and a \$500.00 personal allowance. Jerome had aspired to become a soldier. She described paying funeral-related expenses of \$30,000.00 for the Dovecot vault; \$30,000.00 for refreshments and groceries for the set-up; and \$180,000.00 in administration costs for the Grant of Administration, which remains owing to her attorney. She claims total funeral/administration expenses of \$240,000.00.
- [8] In cross-examination, the claimant confirmed hearing gunshots for about twenty minutes while she was outside washing dishes, but she did not see who was firing. After the gunfire stopped, it took her about a minute to reach the lane mouth; she went to Ramsay Road, where she saw Jerome on the ground, and immediately arranged transport to KPH.
- [9] She spoke with police at the hospital’s admissions area but did not recall their names; she knew one as “Butterbean”. She did not recognise Sgt Dorman Whyte nor name him by that alias in court. She agreed that Jerome had been living with

her cousin from Grade 7 until graduation, though both the Grant of Administration and the death certificate in evidence listed his address as 2D Raphael Ave.

- [10] Ms Lee accepted that she did not know precisely who paid Jerome for his security work or how often he was paid, but she knew he was given cash. She also accepted that he was not formally employed by the Trench Town High School. She maintained her testimony about his weekly contributions and his ambition to return to school and to join the Jamaica Defence Force.
- [11] In re-examination, she explained that her home and her cousin's were only separated by a zinc fence in the same lane. The standpipe was at the back of Ramsay Road. She maintained that she had seen Jerome with a washrag and soap before the explosions, and that after they subsided, she found her son on the ground without the washrag and soap.

Mr Silbert Hamilton

- [12] Mr Hamilton, witness for the claimant, grew up in Rose Town and knew Jerome ("Fowl Pill"/ "Papa") and Ms Lee ("Maemae") for many years. He is their neighbour. On August 11, 2004, around 5:00 p.m., he was in his yard at 11 Raphael Avenue when he heard loud gunshots and sounds of running. After the gunfire died down (after 4–5 minutes, by his account), he went out to Raphael Avenue toward the corner of Ramsay Road and Hope Street, where a crowd of about thirty men, women, and children had gathered. He saw a police jeep near the gate at 27 Ramsay Road, approximately sixty feet from his position. He could see Jerome in the middle of the crowd near a concrete fence wall on the left of Ramsay Road with a rag on his shoulder and a soap dish in his hand.
- [13] Mr Silbert Hamilton gave evidence that he was in his yard when he heard the sound of people running and gunshots being fired. When the gunshots died down, he went to the area where the noise was coming from, Ramsay Road. He saw a police jeep parked in front of 27 Ramsay Road and a crowd gathered at the corner of Ramsay Road and Hope Street. In the middle of that crowd was Jerome Lee. He

then saw Sergeant Whyte exit 27 Ramsay Road with two long guns in his hand who shouted to the crowd and pointed the gun towards them. The crowd was arguing with the police and the police officers were arguing back. Sergeant Whyte who held the guns fired wildly into the crowd. The police officers then jumped in their jeep and drove away. People started to run and scream and some even dropped and lay flat. No one else was firing shots. No one attacked the police. Mr Hamilton also laid flat on the ground. He heard people crying that "Fowl Pill got shot, Fowl Pill got shot! And him have a big hole in him".

- [14] Community members transported Jerome to KPH. Mr Hamilton later learned Jerome Lee died that night. He maintained that Jerome was pleasant, respectful, and not involved in wrongdoing.
- [15] In cross-examination, he estimated arriving at Ramsay Road roughly five minutes after the shooting had subsided and placed himself at the corner, some 60 feet from 27 Ramsay Road. He did not see who fired during the initial shooting while he was still in his yard. He insisted that "Butterbean" fired into the crowd and that no one else fired a gun at that time. He accepted that his identification of "Butterbean" was based on a nickname and a description. In court, he described the officer as a tall, strapping, brown-skinned man and said the person in court looked similar to him.
- [16] Re-examination clarified that Mr Hamilton had heard an initial series of explosions that sounded like "running gunfire" from Maxfield Avenue toward Ramsay Road, which he did not witness, and that the only shooting he actually saw was the later event when the officer fired toward the crowd.

Sergeant Dorman Whyte

- [17] Sergeant Whyte testified that around 5:00 p.m. on August 11, 2004, he and three other policemen - Constables Devon Thomas, Edson Francis, and Special Constable Omar Peart left Denham Town Police Station in a marked service

vehicle (Toyota Corolla, reg. 20 2033). They were all wearing denim, vests, and helmets, and each was armed with an M16 rifle.

- [18] He sat in the front passenger seat armed with M16 #A0044788, Cst. Peart drove; Cst. Thomas sat behind Peart and Cst. Francis behind Whyte. They proceeded along Ramsay Road to assist a mobile patrol reportedly under gunfire. After radioing to locate that patrol (without response), he observed three men about twenty feet away, each with what appeared to be rifles, running near 27 Ramsay Road. He shouted, "Police, stop!" and heard Cst. Peart shout "Don't move." The three men pointed their rifles at the officers, and several explosions followed. He and Cst. Peart returned fire. The men ran through a partially open gate at 27 Ramsay Road.
- [19] The officers exited their vehicle. Sgt. Whyte and Cst Peart entered 27 Ramsay Road and conducted a preliminary search. Sgt Whyte saw a rifle lying in a pool of mud and water near the gate. He took possession of it and noticed that the breech block was partially open with a spent casing jammed in the breach. He left the yard and secured it in the service vehicle, where Constables Thomas and Francis were located.
- [20] Another police patrol arrived, and his team left the area for the Trench Town Police Station. There, they received information and proceeded to the University Hospital of the West Indies ("UHWI"), where Sgt Whyte saw a man being treated for a gunshot wound to the lower body. The witness said he identified this man as one of the three armed men, and the man gave his name as Ricardo "Ricky" Smith. The police team then went to KPH, where Sgt Whyte identified another of the three armed men, suffering from an apparent gunshot wound to the chest, whom he learnt was Jerome Lee. He later reported the incident at Denham Town CIB and handed over the recovered rifle, a black Sporter Carbine M1 serial SERST109351, a magazine and 15 rounds. The hands of the officers and Jerome Lee were swabbed, and the firearms and swabs were sent to the Government Forensic Laboratory.

- [21] During cross-examination, he admitted that in 2004 he was a constable at Denham Town and is now stationed at Darling Street. He first claimed that three officers, including himself, entered 27 Ramsay Road through the front gate. However, when confronted with his witness statement, which said the entry into 27 Ramsay Road was "from the back" and that only Cst Peart and he used that entrance, he admitted the statement was incorrect regarding the entry point and the officers involved.
- [22] He also admitted that the description in the statement, that "three men were running from Dove/Sunlight Street area towards the service vehicle," was inaccurate because, at first sight, the men were at 27 Ramsay Road, looking behind them. He maintained that he and Cst Peart returned fire while still in the vehicle, and then the men ran away. He did not see them again after exiting. He said that he did not personally search the houses within the yard, spending less than five minutes inside, and that the gun was lying openly near the gate in the daylight. He saw no blood in the yard. He confirmed that all officers were swabbed and that his right hand showed trace levels of gunshot residue ("GSR").
- [23] Sgt Whyte rejected suggestions that he fired into a crowd or that Jerome Lee was an unarmed bystander. He agreed that he identified Jerome Lee at KPH about 1 hour and 40 minutes later. He could not recall whether Ricardo Smith had been taken into custody or whether any subsequent criminal case had been pursued; nor had he been required to attend the Coroner's Court. The witness said he was not aware of any internal disciplinary proceedings. He maintained that at all material times he acted in self-defence and in the lawful execution of his duties.

Questions from the Court

- [24] Sgt Whyte explained that a partially open breech block, with a spent casing jammed in it, may result from heat or from incomplete cycling of the round after discharge. He stated that, upon exiting 27 Ramsay Road, he carried two long guns (his own and the recovered rifle) to the service vehicle, which was about twenty feet away. He recalled seeing Ricardo Smith alive with a gunshot wound to the

buttocks and was unsure of any criminal proceedings against Ricardo Smith. He did not recall any protest the following day but did not deny the possibility.

AGREED EVIDENCE

- [25] The Post-mortem report disclosed that Jerome Lee suffered from an entry wound to the posterior left chest with an anterior through-and-through exit wound. No projectile was recovered.
- [26] The Ballistics Certificate FL #36019 stated that the firearm submitted was a 5.56mm Colt Model Sporter-Target Carbine, serial 019351, in good working condition, with one expended cartridge case that matched the test-fired weapon on firing pin and breech face impressions. The analyst concluded that the weapon could have been fired on August 11, 2004.
- [27] The Forensics Certificate FL #1978/2004 showed elevated gunshot residue detected on the back of Jermaine Lee's right hand. The name "Jermaine Lee" was explained by counsel as an error, as the documentary reference to "Jermaine Lee" corresponds by date/location and FL#1978/2004 to Jerome Lee. The trace GSR on the back of Sergeant Whyte's right hand is stated on the Forensic Certificate FL #1973/2004. No corrected certificate was placed before the Court.

SUBMISSIONS

Claimant

- [28] The claimant argues that Jerome Lee was an unarmed bystander within a crowd when Sergeant Whyte, provoked by jeers, fired into that crowd without reasonable or probable cause, after which the police departed, leaving Jerome gravely wounded on the ground. The claimant contends that Sgt Whyte's credibility is undermined by material inconsistencies between his witness statement and oral evidence (men running along Ramsay Road vs standing; entry through the front

vs back gate; two vs three officers entering; whether a “preliminary search” was done), and the absence of a forensic match between the recovered rifle and the deceased (no fingerprints; no ballistic match to a police weapon). The claimant points to the implausibility that three alleged gunmen fired from twenty feet without injuring any officer, and the absence of spent casings is consistent with that account.

[29] On damages, the claimant submits that the court ought to make the following awards:

- i. a conventional award for loss of expectation of life—J\$300,000 (see **Elizabeth Morgan v Enid Foreman**);¹
- ii. lost years using an averaged net income method (see **Godfrey Dyer v Gloria Stone**²), adopting a 15-year multiplier and a 43% dependency ratio to yield approximately J\$3,831,945;
- iii. aggravated damages (see **John Crossfield v AG & Halliman**);³
- iv. constitutional and vindictory damages for breach of sections 13–14 of the Constitution (see **Administrator General (Estate Eric David Black) v AG**).⁴

[30] The claimant also seeks recovery of funeral and administration expenses totalling J\$240,000.00, broken down into: Dovecot \$30,000, refreshments \$30,000, and administration \$180,000.

Defendant

[31] The defendant submits that the claimant was not an eyewitness and that Mr Hamilton’s vantage point was 60 ft away. His observation was limited because

¹ Claim No. 0427/2003

² SCCA, 9 July 1990

³ [2016] JMCA Civ 40

⁴ Suit No. CL 2001/A073

there was a crowd, and his reliance on exclamations from the crowd about what happened is not only hearsay but also reduced the probative value of his evidence.

- [32] By contrast, Sgt. Whyte's account of coming under fire from three armed men at close range is supported by objective forensic material, such as the recovery of a rifle capable of being fired on the day in question and elevated GSR on the back of the deceased's right hand. The defendant contends that the officers acted in self-defence in the execution of their duties, which negates negligence and any constitutional breach.
- [33] If liability is found, the defendant argues that the claimant has failed to strictly prove dependency as claimed (see **Davies v Powell Duffryn Associated Collieries Ltd**).⁵ She has also failed to prove Jerome Lee's actual employment or earnings, as the "security guard" arrangement was informal and speculative (see **Johnson v Graham**).⁶
- [34] The prospects for promotion or JDF enlistment are equally unparticularised and speculative (see **Gammell v Wilson**).⁷ Only a moderate conventional sum is appropriate for loss of expectation of life (see **Brenda Hill v Administrator General**;⁸ **Angela Brooks-Grant v WRHA**).⁹ The authorities caution against mechanical updating with the CPI (see **AG v Devon Bryan**)¹⁰ and exemplary damages are excluded from being applied to estate claims under section 2(2)(a) of the LRMPA. Lastly, vindictory damages are not automatic and require egregious facts which are absent from this case. (see **R (Lumba) v SSHD**;¹¹ and **Denese Keane-Madden v AG & Anor**).¹²

⁵ [1942] AC 601

⁶ J011 of 1981, 15 July 1983

⁷ [1981] 2 WLR 248

⁸ (1998) 56 WIR 337

⁹ [2016] JMSC Civ 240

¹⁰ [2013] JMCA Civ 3

¹¹ [2011] 4 All ER 1

¹² [2014] JMSC Civ 23

LAW

- [35] Section 13 of the Constabulary Force Act sets out the duties of members of the Jamaica Constabulary Force, including keeping the peace, detecting crime and apprehending suspects.
- [36] Section 33 provides that an action against a constable for acts done in the execution of his duty must prove malice or the absence of reasonable or probable cause; otherwise, the claim fails at trial. The police can employ force that is reasonable in the circumstances and based on the officer's honest belief, as is the law laid down in **Beckford v R**.¹³ An individual subjected to an armed attack is not obliged to await being struck and may respond proactively, provided that the force employed does not exceed that which is reasonably necessary.
- [37] Negligence is not established when officers are actively engaged in crime suppression and do not act impulsively or recklessly (see **Namishy Clarke v AG**).¹⁴ Likewise, actions in the execution of duty with reasonable force attract immunity under the common law and statute (see **Hyacinth Lawrence v Constable Richard Davis & Ors**).¹⁵
- [38] In assessing conflicting testimony, the Court considers demeanour, consistency, objective or other independent evidence (see **Moore v D'Aguilar & Anor**).¹⁶
- [39] Under Section 4(4) of the Fatal Accidents Act, damages are awarded to reflect actual or reasonably foreseen pecuniary loss to near relations whose dependency must be established (see **Davies v Powell Duffryn Associated Collieries Ltd**).¹⁷ According to the LRMPA, conventional awards may be granted for loss of expectation of life (see **Brenda Hill v Administrator General**;¹⁸ **Angela**

¹³ [1988] AC 130

¹⁴ CLAIM NO. 2007/HCV-00031 unreported delivered December 11, 2009,

¹⁵ Sup Ct, 30 Mar 2007

¹⁶ [2017] JMSC Civ 118

¹⁷ [1942] AC 601

¹⁸ (1998) 56 WIR 337

Brooks-Grant v WRHA).¹⁹ The loss of future earnings (lost years) necessitates substantial evidence regarding earnings and prospects and should not be based on speculation (see **Gammell v Wilson**;²⁰ **Johnson v Graham**).²¹

ISSUES

[40] The issues for determination are:

- i. Whether the fatal shooting of Jerome Lee was caused by the negligent, reckless or unlawful discharge of a firearm by a JCF officer.
- ii. Whether that officer acted in lawful self-defence in the execution of his duty.
- iii. Whether the Attorney General is liable in tort and/or for constitutional breach.
- iv. Whether damages are recoverable under the Fatal Accidents Act and the Law Reform (Miscellaneous Provisions) Act.
- v. Whether aggravated, exemplary and/or vindictory damages are available; and quantum, if liability is established.

DISCUSSION

Approach to the Evidence

[41] The incident occurred more than twenty years before the trial. The passage of time necessarily requires caution in assessing recollection, particularly when the case turns largely on circumstantial rather than direct evidence such as this one.

[42] The proper approach is to assess whether the proved facts, taken cumulatively and not in isolation, render one explanation of events more probable than the competing account on a balance of probabilities. The Court must draw reasonable inferences where the evidence permits but must avoid speculation or draw conclusions unsupported by the evidence.

¹⁹ [2016] JMSC Civ 240

²⁰ [1981] 2 WLR 248

²¹ J011 of 1981, 15 July 1983

The Claimant's Evidence

- [43] Ms Lee was not an eyewitness to the shooting. Her evidence relates to events before and after the incident and does not directly address the circumstances in which the fatal injury was sustained.
- [44] She testified that she was outside washing dishes when she heard gunfire for approximately twenty minutes. That evidence must be considered in light of the weapons used by the police in their activities in the community, for it is Ms Lee's case that there was no pursuit of gunmen in that community on that day, and that Jerome Lee was killed unlawfully. There was no evidence of police training in the area that day or of any inter-gang conflict.
- [45] The firing of M16 rifles involves rapid and sustained gunshots accompanied by extreme noise and danger. The assertion that gunfire from any type of weapon continued for that length of time without her going inside raises questions as to the reliability of her recollection of the sequence and duration of events.
- [46] She was unaware of Jerome Lee's whereabouts or activities during that twenty-minute window. Her only knowledge was that he left the cousin's yard earlier with a washrag and soap. It appears that Ms Lee minimised the evidence of Jerome Lee's departure from her view by not providing the time he left her cousin's yard, particularly considering the gunfire in the area. In other words, the exact time he left is unknown. She maximised the lack of a weapon in his possession by stating that he only took a washrag and soap from the yard, inviting the inference that he was not in possession of a weapon, as she would have seen it. Additionally, she used the possession of the washrag and soap to suggest that the Court should not accept this evidence but infer from it that he was heading to the standpipe, not to any other location, and that his heading to the standpipe was for the innocuous purpose of bathing, and none other.
- [47] Ms Lee sought to convey that Jerome Lee was bathing immediately before he was shot. However, her evidence does not establish when Jerome Lee left her view,

nor does it account for his movements over the twenty minutes of gunfire. The Court is therefore unable, based on her testimony, to conclude that he remained unarmed or disengaged from police activity up to the next time she saw him, which was on the ground. She cannot pinpoint when Jerome received the gunshot wound, as when she saw him lying on the ground, he was bleeding. The Court is not entitled to exclude the possibility that other events intervened between the time he left her presence and the moment he was shot.

- [48] There were discrepancies in Ms Lee's evidence concerning Jerome Lee's living arrangements. While her evidence is that he lived with her cousin, Mr Hamilton's evidence was that he resided at her address. While not decisive on its own, this discrepancy impacts the overall credibility of the claimant's account.
- [49] Ms Lee also testified that no police officers were present when she arrived at the scene. That evidence is inconsistent with the testimony of her witness, Mr Hamilton, who placed police officers at the location immediately before and during the shooting, and who left shortly thereafter.
- [50] According to Ms Lee, there were twenty minutes of shooting, whereas Mr Hamilton said there were two separate episodes of shooting: the first lasted approximately five minutes. The second involved the police.
- [51] She did not hear the sounds of running gunfire, as Mr Hamilton did, despite being outdoors, nor did she hear two separate episodes of gunfire, as he did. Her evidence, therefore, provides limited assistance in recreating the events leading to the fatal injury.

Mr Hamilton's Evidence

- [52] Mr Hamilton provided the only civilian account purporting to describe police conduct that day. His evidence was candid but undermined by significant limitations. He admitted he was approximately sixty feet away from Jerome Lee and that a crowd partially obstructed his view. He further accepted that he did not

see the shooting and acknowledged his reliance on hearsay as the source of his knowledge.

- [53] Mr Hamilton described two episodes of gunfire. The first, which he did not witness, sounded like running gunfire and lasted several minutes. The second involved police officers at 27 Ramsay Road. He later clarified that the only shooting he actually observed was the latter incident. This change in his account lessens its probative weight and value.
- [54] At what was described as the second shooting, Mr Hamilton asserted that a police officer fired into a crowd. That assertion is not borne out by the medical evidence, which establishes a single posterior-to-anterior gunshot wound to the deceased, indicating that Jerome Lee was turned away from the shooter at the moment he was struck. Given the evidence that an M16 was fired into the crowd and the alleged density of the crowd, the absence of multiple casualties is a significant objective factor for this Court to consider. There was also no spent casing from the officer's rifle in evidence, nor was one said to have been recovered from the scene by any of the bystanders, which would have provided some evidence of the firing of the police service weapon.
- [55] Mr Hamilton also stated that Jerome Lee retained a washrag and soap immediately before the shooting. This conflicts with Ms Lee's evidence that neither item was present when she found her son lying on the ground.

The Defendant's Evidence

- [56] Sergeant Dorman Whyte's evidence was not without difficulty. There were material inconsistencies between his written statement and oral testimony concerning the movement of the alleged gunmen, the point of entry into 27 Ramsay Road, the number of officers who entered the premises, and references to a preliminary search.

- [57] Sergeant Whyte testified that Jerome Lee was one of three gunmen who fired at police, seen standing in front of 27 Ramsay Road with rifles, not running but looking behind them about 20 feet from officers. He confirmed in cross-examination that the men were standing, not running, and agreed that his previous statement that they were running toward the service vehicle was untrue. Sergeant Whyte and Constable Peart shouted when three men pointed rifles at them, firing shots. Whyte returned fire from his car, and the three men then ran into 27 Ramsay Road. The officer said he was in the car when they shot at him and never saw them again after they ran off.
- [58] When confronted with paragraph 7 of his witness statement, stating, "*Constable Peart and I entered the premises from the back,*" Sergeant Whyte claimed they entered through the front gate at 27 Ramsay Rd. However, he later admitted they did not enter "*from the back*", despite mentioning a back gate in his statement. At trial, he testified he used the front gate and saw no back gate. He exited through the front with both weapons. Mr Hamilton confirmed the police exited 27 Ramsay Road with two long guns.
- [59] He admitted it was incorrect to say, "*I then took same in my possession and went out of the yard to the service vehicle where I saw Constable Thomas and Constable Francis by the vehicle.*" When shown paragraph 7, he agreed it was untrue.
- [60] He stated that three officers entered 27 Ramsay Road, not two, and that he entered through the front gate, not the back, correcting his previous claim. He insisted he had not searched the area and that his earlier statement about a preliminary search was incorrect. Sgt Whyte's evidence was that he never searched the yard and agreed that, in his witness statement, when he said "we" did a preliminary search, that was incorrect.

- [61] He testified that the gun was in plain sight, right in front of the three officers during daylight, and he picked it up. Despite claims of a shootout and wounded suspects, no blood was seen.
- [62] While these inconsistencies require careful scrutiny, they relate primarily to matters of movement and the sequence of events following what the witness said was an exchange of gunfire and do not undermine the existence of an armed confrontation between gunmen and the police. The length of gunfire heard by the claimant and Mr Hamilton is suggestive of this and corroborates the officer's account that they were in the community to provide support to another police team operating in the area. The Court is entitled to accept parts of a witness's evidence while rejecting others, particularly where the substance of his account is supported by independent evidence.
- [63] Sergeant Whyte maintained that officers encountered armed men who fired upon them, prompting a return of fire. That account is supported by the recovery of a rifle at 27 Ramsay Road, with a spent casing stuck in the breech indicating that it had recently discharged a bullet, and the undisputed evidence of sustained gunfire in the area. Taken together, these items of evidence constitute circumstantial evidence pointing to the conclusion, on the balance of probabilities, that an armed confrontation with gunmen occurred and that the police returned fire. The evidence below taken together supports this conclusion as:
 - a) The prolonged evidence of gunfire described by the witnesses for the claimant, as the length of the shooting could not have been by the police at each other. There is no evidence indicating that the police were engaged in a training exercise, nor that gunmen were firing weapons wantonly and indiscriminately in the area over that period.
 - b) Sgt Whyte's unchallenged evidence that his team went to back up another police team in the area, supports the inference that there was an active

police operation and pursuit underway, rather than a random search of premises at 27 Ramsay Road.

- c) The exchange of fire with the men going into 27 Ramsay Road, the premises from which a rifle was recovered near the front gate.
- d) The recovered rifle was capable of being fired that day and, in fact, had been fired, as a spent casing was jammed in the breech.
- e) The elevated levels of GSR on the back of the deceased's right hand.
- f) The absence of evidence of the transfer of GSR from anyone to the deceased.

[64] The absence of any police injuries does not disprove the confrontation

The Agreed Scientific Evidence

[65] The scientific evidence is central to the discussion. Elevated levels of gunshot residue ("GSR") were detected on the back of the deceased's right hand. The unmitigated fact is that on the claimant's statement of case, Jerome Lee was handled only by civilians and transported directly to the hospital. No evidential basis was laid for a secondary transfer of GSR on the totality of the evidence established at trial.

[66] While the forensic findings cannot determine who fired the fatal shot, they are probative of recent handling of, firing of, and, at a minimum, contact with, a firearm. This evidence materially undermines the claimant's portrayal of Jerome Lee as a wholly unarmed bystander.

[67] The post-mortem examination disclosed a single gunshot wound with a posterior-to-anterior trajectory. That finding is inconsistent with indiscriminate firing into a close crowd, particularly given the nature of the weapon allegedly used and the absence of multiple casualties.

Assessment of the Circumstantial Evidence

[68] When the evidence is considered cumulatively, the following matters are established:

1. Sustained gunfire occurred in the area.
2. Police officers were engaged in an operation involving armed suspects.
3. A rifle capable of being fired, and which was fired, was recovered at 27 Ramsay Road.
4. Another individual sustained gunshot injuries during the same incident.
5. Elevated GSR was detected on the hand of the deceased; and
6. The medical evidence is consistent with an armed confrontation rather than indiscriminate firing into a crowd.

[69] Although Sergeant Whyte's evidence contained inaccuracies, the objective forensic and medical evidence provides material, objective, independent support for the defendant's account.

[70] By contrast, the claimant's case relies heavily on inferences drawn from incomplete observation, internal discrepancies, and speculation not borne out by the physical evidence. Having weighed the competing accounts presented by the parties, the Court is satisfied that the defendant's account is the more probable on the totality of the evidence.

Legal Analysis

[71] Police officers are entitled to use reasonable force when confronted with an immediate armed threat in the execution of their duties. The question is not whether harm occurred, but whether the force used was honestly and reasonably believed to be necessary in the circumstances confronting the officers at the time.

- [72] In the present case, Jerome Lee sustained a posterior-to-anterior gunshot wound that proved fatal. The claimant's statement of case of indiscriminate firing into a crowd resulting in a single fatality is less probable when weighed in the balance and is less probable than the defendant's account, which weighs more heavily as it is supported by other independent evidence, namely, the post mortem, the ballistic analysis, and the forensic evidence. This reduces the probability of the claimant's account. The totality of the evidence supports the existence of an armed conflict during which the deceased sustained his fatal wound.
- [73] It is trite that police officers are legally entitled to use reasonable force when preventing crime or making lawful arrests. In **Namishy Clarke v Attorney General of Jamaica**²² which involved police firing at fleeing suspects, the Court concluded that the officers acted in self-defence and to protect each other when facing heavily armed attackers' intent on causing serious harm or death. Sadly, during the pursuit, a bystander was shot in the leg. However, the Court determined that such circumstances warranted an immediate and proportionate response, acknowledging that officers cannot always fine-tune their actions in moments of crisis. The key question is whether the circumstances reasonably required that conduct.
- [74] The Court finds that when the three men fired at the police, it was reasonable for the police to respond with deadly force, given that they were in immediate danger. Sergeant Whyte was performing his duties under section 13 of the Constabulary Force Act when he responded to the men who fired first. Furthermore, as the officer was engaged in suppressing a crime, he is immune from liability in negligence (see **Hyacinth Lawrence v Constable Richard Davis and Others**).²³
- [75] Applying **Beckford v R**,²⁴ the Court is satisfied that the officers used the degree of force they honestly and reasonably believed was necessary to repel an armed

²² CLAIM NO. 2007/HCV-00031 unreported delivered December 11, 2009,

²³ Suit No. C.L.1996 L-00103 unreported delivered March 30, 2007

²⁴ [1988] AC 130

attack. They were acting in the execution of their duty under section 13 of the Constabulary Force Act. There is no proof of malice or lack of reasonable/probable cause as required by section 33 of the Act.

[76] On a balance of probabilities, the Court finds that an armed confrontation occurred between gunmen and the police. That Jerome Lee was present in proximity to that confrontation; and that the fatal injury was sustained during the exchange of fire. Given these findings, an assessment is unnecessary as the claim has not been made out.

[77] Orders

1. Judgment for the Defendant.
2. Costs to the Defendant, to be agreed or taxed.

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Wint-Blair, J