

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT C.L. 1992/L027

BETWEEN	PETER LEWIS	PLAINTIFF
A N D	THE ATTORNEY GENERAL	1 st DEFENDANT
	CONS. PHILLIP DODD	2 nd DEFENDANT

Mr. Arthur Kitchen for the Plaintiff

Miss C. Francis instructed by the DSP for the 1st Defendant

**HEARD: 12th, 13th, 14th, 18th June, 2001
and 15th November, 2002**

M. MCINTOSH, J

This is an action brought by the Plaintiff Peter Lewis against the Defendants the Attorney General and Special Constable Phillip Dodd to recover damages for assault and battery and/or malicious prosecution for that the second defendant on or about the 6th day of April, 1991 at Old Harbour, St. Catherine, unlawfully and maliciously and without reasonable and/or probable cause assaulted beat and falsely imprisoned and maliciously prosecuted the Plaintiff on false charges

as a consequence whereof the plaintiff received personal injuries and suffered loss and damages.

The plaintiff's case is that he was a shopkeeper who lived in the Sydenham area in Spanish Town, St. Catherine.

On the 6th April 1991, he had a dispute with one Sophia Masters, the sister of his child's mother. He states that some liquid which he claims was "acid" was sprayed on him by Masters. It burnt him and he ran, Masters chased him and when he reached the vicinity of the Ministry of Housing building in front of Valdez Road he took up 2 stones to fling at Masters who was still chasing him. He held the stones in his hand and he saw the 2nd defendant Phillip Dodd ride up on a bicycle. He had known Dodd before, as Dodd attended Horizon Park School while he, the plaintiff was a student there – although the plaintiff was older than Dodd. He also used to see him visiting Masters. The plaintiff further explained that his (plaintiff's) baby mother and Masters were sisters and lived in the same yard, the plaintiff used to go there to "check" his baby's mother and would see Dodd – they never spoke to each other.

The plaintiff's narrative continued and he said after Dodd rode up on the bicycle he jumped off it and pulled his firearm, the plaintiff dropped the 2 stones he had in his hands and Dodd discharged 3 rounds. It is the plaintiff's evidence that a bullet caught him in his right upper thigh and one in his right knee. The plaintiff fell to the ground, Dodd came over him with gun in hand and it was one Mr. Henry also called "Tattoo" who said to Dodd "don't kill him".

The plaintiff also stated that a constable named Desmond McKenzie came over him took a stick and hit him, another kicked him and he was taken in a jeep to the Spanish Hospital – he said by Dodd and about 5 police officers. The following day he was transferred to Kingston Public Hospital where he was admitted from 7/4/91 to 20/5/91. At the hospital he was in traction, a pin was put in his foot and weight attached to it. He was handcuffed to the bed and two District Constables from Denham Town guarded him. He further stated that he experienced difficulty and discomfort in performing his normal body functions as he was unable to move around and go to the bathroom – in short he felt helpless.

When he left hospital on 28th May, 1991 he was taken to Central Village Police Station and there he remained until 19th July, 1991 when he was bailed to attend court on the 4th December, 1991.

On 4th December, 1991 he was tried in the Gun Court for Illegal Possession of Firearm and Shooting with Intent at Special Constable Dodd. At the Gun Court Dodd and two other persons, a security guard named Conroy and a police constable, Desmond McKenzie gave evidence. At the end of the Crown's case Peter Lewis was discharged. The plaintiff testified that while he was in hospital and in custody he suffered loss - his shop from which he earned an average of \$500 a day was locked – this was for about 40 weeks and he claims the following special damages:

Forty (40) weeks – 280 days @ \$500 per day	\$140,000
Registration fee at KPH was	\$ 30
Crutches	\$ 150
Lawyers fee for Gun Court Case	\$ 25,000
Doctor's Certificate	\$ 350
Transportation to and from KPH	
\$600 per week for 8 weeks	\$ 4,800
Total	\$170,330

Under cross examination the plaintiff was asked about Sophia Masters' stall and he admitted that her stall had fallen into a gully and she accused him (the plaintiff) of turning over the stall. He insisted that Phillip Dodd came in the jeep with him when he was being taken to the hospital.

The defendant's case is that on 6/4/91 he was on enquiries in Homestead area of St. Catherine. He was not in uniform and he was on foot. Between 7:00 a.m. and 10:00 a.m. one Sophia Masters came to him and made a report, he went in search of the plaintiff and did not find him. He continued his enquiries. Later on Sophia Masters again came to him, made another report and he went to where the plaintiff was. When the defendant was about 30 yards from the plaintiff he (defendant) called to him (plaintiff). The plaintiff at the time had his hands in his pocket and as the defendant approached him, he pulled an object which resembled a firearm from his pocket, pointed the object in the direction of the defendant and according to the defendant he heard two explosions. He took

cover, returned fire, the plaintiff spun around and ran. The defendant in his evidence went on to tell the court that he chased the plaintiff and the plaintiff was found a short distance away at the back of a premises, a residence. It was other police who found the plaintiff not the defendant.

The defendant stated that he assisted plaintiff in a police jeep but did not accompany him. The defendant then went to the Spanish Town Police Station where he made a report in respect of Shooting with Intent and Illegal Possession of Firearm. After making the report he wrote a statement relating to the incident.

He denied that he was alone, and that he was riding a bicycle. In addition to this defendant denied that he went to Horizon Park All Age School, that he knew the plaintiff and attended school with him and that he had a relationship with Sophia Masters. He maintained that he did not charge the plaintiff with any criminal offence nor did he without reasonable and or probable cause shoot the plaintiff or cause the plaintiff to be taken in to custody .

Phillip Dodd was cross examined and during cross examination he admitted that he had in his original statement and in his evidence at the Gun Court trial of Peter Lewis said many things that were quite different from his testimony in the instant case. These differences included that he had said "I saw the accused in an open lot with a firearm in his hand" that "the accused ran a distance of about 10 chains and fell", and ".....after which his friend went over him and took up the weapon and ran". Also "I gave chase and later found the accused in a nearby yard suffering from gunshot wounds".

The witness Dodd also admitted that he had told this court that he never saw when the accused man fell and that in his written statement he said he actually saw the accused with a firearm in his hand but the truth is that he saw the accused with his hands in his pocket.

His explanation for these material inconsistencies between his statement and his evidence in the Gun Court and his evidence this court was this:

"The reason for giving another version in my statement I was pretty young and it was my first experience of a shooting and I had no experience in writing a statement of this magnitude".

This explanation is totally unsatisfactory to this Court. The Court rejects this explanation and finds that this witness is most unreliable to put it at its lowest, and it is not surprising that at the trial in the Gun Court Peter Lewis was not even called upon to answer the charges.

Sergeant Carlito Porter was called as a witness for the defendant his testimony relates to what transpired after the incident between the plaintiff and the defendant. He stated that he received a report, collected statements from persons – including Phillip Dodd as result of which he commenced investigations into a case of Illegal Possession of Firearm and Shooting with Intent and arrested and charged the plaintiff for these offences.

This witness denied under cross examination that it was as a result of Constable Dodd's report that he went to Spanish Town Hospital and saw Peter Lewis but when confronted with his written statement he agreed that what was in the statement and it was in fact true.

The medical reports which were exhibited in this case reveal that Peter Lewis had 2 compound fractures, one of the right knee and one of the right thigh and the bullet is still lodged in the knee. The second defendant, Phillip Dodd states in his evidence that he was armed with and discharged a 9mm firearm and it was this firearm that inflicted the injury to the plaintiff Lewis.

Looking at these facts this Court infers that the possibility of an individual who was injured in the knee and leg by such a weapon being able to run 10 chains or 5 chains or at all is extremely unlikely and finds that the plaintiff's evidence that he fell where he stood is the truth.

There is evidence on the medical report that the plaintiff had burns from a corrosive agent and it supports his evidence that Sophia Masters had thrown some liquid on him which burnt him.

This Court accepts Peter Lewis as a witness of truth. In respect of the Special Damages claimed, this Court is of the view that although no receipts were presented in court or produced by the plaintiff the evidence which he gave in respect of these expenses is truthful, the amounts being claimed are reasonable and the court accepts these figures as accurate.

The defendant Dodd did not impress the Court – he admitted that he had given other versions of the incident and sought to explain away the massive inconsistencies between what he wrote in his statement, what he said in evidence at the Gun Court trial and what he said at this trial by saying that they were errors which resulted from his inexperience. Truth cannot change with experience and the Court finds this explanation unacceptable.

The defendant had submitted that the plaintiff has not proven the first three elements of malicious prosecution and cited in support the case of BENNETT vs BERNARD 8 JLR 227 and referred to the head note as well as page 230 at letter C.

"Now the gist of the action for malicious prosecution is that criminal proceedings were instituted falsely, maliciously and without reasonable and probable cause. That is done either personally making a charge or by being instrumental in having a charge made as a result of which a summons or a warrant is issued".

The case of ATKINSON V. REYNOLDS and ATTORNEY GENERAL OF JAMAICA (1990) 27 JLR 463 at 467 letter A was also cited:

"Reasonable and probable cause means an honest belief in the guilt of the accused based on a full conviction founded on reasonable grounds of the existence of a state of circumstances which assessing them to be true, would lead any ordinary, prudent and cautious man placed in the position of an accuser, to the conclusion that the person charged was probably guilty of the crime".

The court has to consider several factors - whether in fact the plaintiff was arrested as a result of the report made by Constable Dodd, that is whether Constable Dodd caused him to be arrested, whether there was absence of reasonable and probable cause for the prosecution, whether the 2nd defendant acted maliciously with improper motives and not to further the ends of justice and finally whether the plaintiff suffered damage as a result. Although the witness Sergeant Porter said he had collected four statements in the matter when

confronted by his statement he admitted that he first saw the plaintiff at the Spanish Town Hospital as a consequence of the report made to him by Constable Dodd. The Court is satisfied on a balance of probabilities that Constable Dodd caused the plaintiff to be arrested, that Constable Dodd was untruthful in his evidence as to the circumstances in which the shooting of the plaintiff occurred and accepts the plaintiff's evidence as to what transpired.

As a consequence of this the court finds that Constable Dodd without reasonable and probable cause set the law in motion, that he was motivated by spite or ill will against the plaintiff and his main objective was to conceal his impropriety in shooting the plaintiff and was not based on any desire to further the ends of justice.

HALSBURY'S LAWS OF ENGLAND 4th EDITION
Vol. 45 page 616 para 1351 refers:

"A plaintiff in an action for damages for malicious prosecution or other abuse of legal proceedings has to prove malice in fact indicating that the defendant was activated either by spite or ill will against the plaintiff, or by indirect or improper motives. If the defendant had any purpose other than that of bringing a person to justice, that is malice".

There is evidence that the plaintiff suffered pecuniary and physical damage as a result of this incident. The medical report of Dr. A. Mena revealed that the plaintiff when examined had acid burns to posterior aspect along right forearm and injuries to the right thigh and right knee. An X-ray examination of the right thigh showed a compound spiral fracture at the junction of middle third thigh and distal third, right knee had a compound fracture over lateral condyle with intra-

articular involvement with bullet lodged over latero – position aspect of knee. The plaintiff's treatment involved among other things the insertion steimman pin to his right tibia for skeletal traction. He was hospitalized from 7th April, 1991 to 20th May, 1991, and he would continue treatment as an outpatient.

The follow-up medical report on the plaintiff revealed that:

“On examination of right thigh both fractures were solid, non-tender to touch, his knee joint is significantly restricted on flexion extension, muscle waist at thigh level, he walks with a moderate limp”.

It was the doctor's opinion that the plaintiff suffers a permanent functional impairment of 40% to 45% to his right lower limb.

The plaintiff asks for special damages and an award of \$3m for Assault and Battery, False Imprisonment and Malicious Prosecution. In addition an award of \$2m for aggravated damages is being sought by the plaintiff. This Court is of the opinion that the plaintiff can be adequately compensated for any embarrassment, humiliation or mental distress in this case by an award of an appropriate sum and is not disposed to making an award for aggravated damages in these circumstances.

In assessing the appropriate sum I have carefully considered the submissions made and authorities cited by the Attorneys-at-law and the decision of the Court is Judgment for the plaintiff. Damages awarded as follows:

Special Damages - \$170,330.00 with interest at
6% from 6th April, 1991 to 15th
November, 2002.

General Damages - \$2,000,000 with interest at 6% from
13th October, 1992 to 15th
November, 2002.

Costs to the Plaintiff to be agreed or taxed.