



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON

SUIT C/L W 369/93

BEWTEEN HOPETON WAUCHOPE PLAINTIFF
A N D ATTORNEY GENERAL DEFENDANT

Mr. Dennis Daly, Q.C. for the plaintiff instructed by Messrs. Daly Thwaites and Company.

Miss Yolande Alexander and Miss Kesha Fisher for the defendant instructed by The Director of State Proceedings.

**HEARD: 15TH AND 16TH February, 2000
AND 27TH OCTOBER, 2000**

RECKORD, J.

The plaintiff in this action has complained against a vicious and violent attack upon him by a corporal of police in the Guys Hill Police Station on the 8th of January, 1993. He was then a farmer 46 year of age and lived at a district known as Weeping Stairs which is at the border of the parishes of St. Mary and St. Catherine.

He testified that on that morning as he walled along the Guys Hill main road, not far from the Police Station, he met upon on Bobsy Hurlock and his sister; Bobsy used a stick and assaulted him. He saw Corporal Carty who ordered him into the Station. He went to a shop apposite the station where he had left his machete and some banana trash earlier. He picked them up and went into the station yard and dropped the trash in the yard. He saw Bobsy sitting in the station. On seeing him Bobsy ran out of the

station shouting "see the boy with the machete". He bent down to pick up a stone. As he did so he heard a voice which he recognised as that of Corporal Carthy whom he had known before, saying "Drop it". He dropped both his machete and the stone. The corporal told him to go inside the station. He walked to the door. Corporal with his revolver in his hand pointed to a room. It appeared to be a wash room.

The plaintiff asked the officer why he locking him up and he did nothing. He never went in the room as he felt the corporal was going to injure him. Special Constable Lewis joined the corporal. Then corporal pointed the gun at him and shot him twice, the first hitting him in his belly, to the left side of his navel, the second hitting him to the left side of his chest. (Witness lifts his shirt and points to scars where shots hit him). He had nothing in his hands and the officer said nothing to him before shooting him. He was not attacking neither the corporal nor the special constable.

The plaintiff fell on the floor at the doorway into the wash room. He heard Cpl. Cearthy speaking on the phone saying he had just shot a man who had attacked him and that I was critical. Someone then threw some trash on him saying "see your trash here". He lost conciousness. Later someone was telling him to get up. He saw 4 men over him, he could not move. They lifted him and put him in a police jeep which took him to the Linstead Hospital and he was later transferred in an ambulance to the Spanish Town Hospital same day.

During the night he was taken to the operating theater. He woke up next morning in a bed with tubes in his nose, stomach and penis; plaster was on his chest. He remained in the hospital for six months. He underwent a second operation in June affecting his naval . When he was leaving he was given a paper directing him to attend a psychiatric clinic in Guys Hill. He subsequently obtained a medical report from Dr. Buchignoni dated march 2, 1994. (Admitted in evidence as exhibit I.) One Sgt.

Broderick took a statement from him while he was in the hospital. he has never been charged by the police for any offence arising out of this incident.

He cannot now lift up a gallon of paint with his left hand. He gets cramps in his shoulder. His lower stomach where he got the first shot is puffed up at all times – there is no feeling there. He can't bend down and come up back straight – his belly burn him. The injury under his left arm hurts him continuously. He never had these problems before.

At the time of the incident he was doing farming. He had a contract to clean a nursery in Mount View every end of month \$700.00 for the job. He picked coffee at Mr. Broderick's property 4 days per week at \$50.00 per box earning \$400.00 per week between September and December. He earns about \$70.00 per week from his cultivation right through the year. Since then injury he washes about 2 cars per day. He can't hold down a steady job because of pains in his chest.

While in the hospital his father's house in which he lived was demolished. He lost his bed valued \$10,000.00, his shoes valued \$500.00, clothes \$800.00, table and 4 chairs valued \$10,000.00 and a stove valued \$5000.00.

The injuries have affected him socially. He can't reason with anyone; can't approach any woman; he tried to have sexual intercourse once and "it burn me". He never had this problem before. He can't manage any work.

Under cross-examination, the plaintiff said that before his injuries he was not receiving psychiatric treatment. However, he has been an outpatient at the orthopedic clinic at the University Hospital since 1960. On the day of the incident he never attacked Hurlock at the station. The distance between Cpl. Carthy and himself when he was shot was estimated at between 15 – 20 feet. He never saw his machete in Spl. Cons. Lewis hand. He denied grabbing his machete from Lewis; he never chopped at Lewis' head.

He denied it was then that Cpl. Carthy drew his revolver and shot him. It was as a result of a fall why he visited the orthopedic clinic.

Keith Carthy, now a Sergeant of Police, testified he was stationed at Guy's Hill on 8th January, 1993. He was on duty at the station on that morning along with Spl. Cons. Daniel Lewis. Someone called to him and he saw from the station that there was a fight in the Guys Hill Square. He walked toward the square and met the plaintiff coming from that direction. He saw blood spot on his hand. He instructed him to go to the station. He also saw Mr. Hurlock in the square and took him to the station. He never saw the plaintiff. Shortly after he heard Spl. Cons. Lewis shouting "Mr. Carthy see the man a run down the other one with the machete". He went out on the verandah and saw the plaintiff chasing Hurlock with a long machete. He also had a bundle of trash under his arm. He ran toward the plaintiff, shouted to him to drop the machete. He refused. With assistance of Spl. Cons. Lewis they cornered the plaintiff. He subsequently walked back to the station and put down the machete which Lewis picked up. Carthy said he took the plaintiff inside the station and placed him to stand on the inner side of the guardroom.

Sgt. Cearthy said he sat around a desk in the guardroom and saw Spl. Cons. Lewis came in with the machete. He came on the inner side opened a cupboard. "As he did so Mr. Wauchope sprang on him, grabbed away the machete, chopped at Lewis' head. I saw Spl. Cons. Lewis jumped back. As he did so I drew my firearm and fired at Wauchope to prevent his attack on Spl. Cons. Lewis. I was very frightened; fearful when I saw Wauchope with the machete." Lewis to the plaintiff was not more than 1 ½ yards.

Sgt. Cons. Carthy told the court that on the 1st of January, 1993 he had received a report of threats from one Retinella Roberts and on the 2nd January, 1993, he went in search of the plaintiff. He warned him against threatening the lady.

The plaintiff had fallen in the guardroom after shot. He took the machete and the bundle of trash from him. He was bleeding in the mid section and in the chest. He

called Linstead Police who took him to the Hospital. The Sergeant testified that he arrested and charged the plaintiff with 2 counts of assault at common law and one count of being armed with an offensive weapon. The following week he went to both the Linstead and the Spanish Town Hospitals but never saw the plaintiff. He got information that he had escaped from the hospital. He had not seen the plaintiff since then until yesterday at court. The cases against the plaintiff had been prepared and left at the Guys Hill Police Station with instructions. The charges were not put before the court. He was transferred to Spanish Town in 1994. He made several checks at Guys Hill and at Weeping Stairs but the plaintiff was never seen.

Neither Spl. Cons. Lewis nor himself threw any trash on the plaintiff after he was shot. Spl. Cons. Lewis is now deceased.

When cross-examined Sgt. Carthy said the plaintiff had walked into the station after leaving the machete outside. He had taken the plaintiff into custody but never told him to leave the trash outside. He never checked the trash. When he taking him to the guardroom he told him he was charging him for the offence he committed. However, he never told him what the offence was. When the plaintiff was being taken from the guardroom to go to the hospital that he told him he was arresting him "I told him I arrested and charged him. When I arrest a man I know I am to tell him so. At no time at all did I ever tell the plaintiff I was arresting and charging him."

The plaintiff had the trash under his arm when he chopped at the Spl. Cons. Lewis who had jumped back to avoid the machete. "As he raised the machete and chopped I got up as I was sitting, then drew revolver from pants waist, then pointed it to him and fired. Before he could raise machete again I fired 3 shots in quick succession. I don't know which one missed. I fired at mid section". He denied that the plaintiff was unarmed. He did not recall if plaintiff took up a stone outside. "He was placed in custody but not by me. Police was supposed to go from Spanish Town to guard him.

When I went there I never saw plaintiff' He would be surprised that the plaintiff was in the Spanish Town Hospital for 6 months. The case was prepared. Information was drawn up and signed by a J.P. but it was never taken to court. He denied a suggestion that he had taken the plaintiff into the building so that the public did not see him shooting the plaintiff.

In answer to the court the sergeant said that the plaintiff was aggressive when he went to caution him. However he never regarded the plaintiff as a madman.

ADDRESSES

Miss. Alexander on behalf of the defendant submitted that the real issue was whether Sgt. Carthy and Spl. Cons. Lewis were in fear of their lives and as a result Sgt. Carthy acted in defense of himself and Spl. Cons. Lewis. If so, then it would be reasonable to discharge his firearm in those circumstances.

There is a statutory duty on a policeman under section 15 of the Constabulary Force Act.

Sergeant Carthy saw that the plaintiff was engaged in a fight in the square. The plaintiff acknowledges he chased Hurlock while being armed with a machete and stone in the station yard.

The plaintiff's case that without any risk to his life that Sgt. Carthy shot him is highly improbable and possible explanation for the plaintiff's behaviour that morning can be seen in the medical report of Dr. Buchigoni that he 'was a known psychiatric patient'. The plaintiff also admitted going to Bellevue and obtaining treatment in the 1980s.

The plaintiff behaviour in the guardroom is similar to his behaviour in the station yard. The sergeant had no alternative but to act as he did. He ought not be held liable.

On behalf of the plaintiff, Mr. Daly submitted that the issue was one of credit. The plaintiff has demonstrated that he is a witness of truth. He admitted having the

machete and stone. He has not sought to run away from the issues that are against him.

Is sergeant Carthy's evidence credible. It was unlikely that an experience police officer would take a man into custody into the station with a bundle of trash under his arm and leave him there. Then with bundle still under his arm he disarms the Special Constable and chops at him. This evidence counsel suggested cannot be believed.

The court has seen the plaintiff and should note that he has shown not one act of irrational behaviour.

With the position of the parties as described by Sgt. Carthy, it was unlikely the plaintiff could received injury to his left side. He asked for judgment for the plaintiff. On the question of special damages Mr. Daly submitted that for seven years up to the year 2000 the plaintiff lost earnings as a gardener at \$700.00 per month. $7 \times 12 \times 700 = \$58,800.00$. His loss for picking coffee 4 days per week for 16 weeks at \$200 per week for 3 years, $16 \times 200 \times 3 = \$9,600.00$.

On general damages, counsel referred to the case of Owen Francis vs. Cpl. Baker And Attorney General Volume 4 Page 129 of Khans. This was an more serious injury than the instant case. In 1992 award \$500,00 was made. This equivalent to \$1.5m today. (Both Attorneys agree an award of \$1.m would be appropriate if plaintiff claim succeeds).

Mr. Daly submitted that an award of \$750,000 should be made for handicap on the labour market also an award of \$100,000 for exemplary damages.

FINDINGS

In every civil case the plaintiff must prove his case on a balance of probabilities in order to succeed. In this case only the plaintiff and the defendant testified. In whose favour does the balance of probabilities lies. Mr. Daly Q.C. submits that the plaintiff is a witness of truth and ought to be visited on. Miss Alexander on the other hand urged the

court to reject the plaintiff's case that the officer, without any cause, shot the unarmed plaintiff who was attacking no one.

From the evidence, it is not disputed that officer Carthy used his service revolver and shot the plaintiff twice in the guardroom of the Guys Hill Police Station on the 8th of January 1993. Further, that as a result of his injuries that the plaintiff was hospitalized in the Spanish Town Hospital for some six months when he was discharged.

If the court accepts the defendant's case that the plaintiff suddenly disarmed Spl. Cons. Lewis of his machete and then chopped at him and was continuing the attack when he was shot, then the defence of shooting would clearly be justified and no liability could be attached to the defendant.

Counsel for the defence stressed that the behaviour of the plaintiff in the guardroom that day was consistent with his behaviour in the station yard shortly before that morning. It was highly unlikely that a senior officer like Sgt. Carthy would act in the manner described by the plaintiff.

Mr. Daly questioned the credit of Sgt. Carthy. In his examination in chief Mr. Carthy said that after he was shot he had arrested and charged the plaintiff for 2 counts of assault at common law and one count of being armed with an offensive weapon. Under cross-examination he said, "At no time at all did I ever tell the plaintiff I was arresting and charging. Mr. Carthy also said the week following he went to the Spanish Town Hospital and never saw the plaintiff there-he was told he had escaped. However, the Medical Report supports the plaintiff's evidence that he was a patient at the Hospital for 6 months. He also said that the plaintiff was placed in custody "but not by me". The case was prepared, information down up and signed by J.P. but were never taken to court. The plaintiff was never charged for any offence arising out of this incident.

These responses by Mr. Carthy have caused me to have serious doubts about the case for the defence. It is obvious he is lying about what took place after the

shooting. What was the motive? This has not been directly disclosed. However, it may be inferred from the circumstances. The plaintiff, known as a person suffering from mental condition, had allegedly threatened a lady on the 1st of January, 2000 which was reported to Sgt. Carthy. He had gone and warned the plaintiff on the 2nd of January. On the 8th of January, the officer saw the plaintiff involved in an altercation in the Guys Hill Square. He told him to go to the station. He received a complaint from Mr. Hurlock concerning the plaintiff. Later he saw the plaintiff chasing Mr. Hurlock in the station yard while armed with a machete. With the assistance of the Special Constable he was able to corner the plaintiff after shouting to him several times to drop the machete. The plaintiff then went into the guardroom leaving his machete outside.

It is obvious that the plaintiff was causing Sgt. Carthy some concern. Sgt. Carthy denied a suggestion put to him by counsel for the plaintiff that the reason he took the plaintiff into the building was not to let members of the public see him shooting the plaintiff. It is more than probable that Sgt. Carthy had to discipline the plaintiff who was causing too much trouble. I cannot rely on his evidence as to the circumstances leading up to the shooting. The evidence of the plaintiff is without these blemishes.

Accordingly, there shall be judgment for the plaintiff against the defendant.

The medical report from the Spanish Town Hospital which was admitted in evidence by consent, discloses that the plaintiff was shot in the left chest and abdomen. He had a prolonged and difficult post-operate course due to empema of left chest and sepsis. He was discharged on the 8th July 1993 after he had completely recuperated from his injuries.

The plaintiff's claim for special damages amounting to \$68,400.00 has not been challenged.

For general damages counsel for the plaintiff referred the court to the case of Owen Francis vs. Cpl. Baker and the Attorney General heard on the 16.11.92 an

award of \$500,000.00 was made which is equivalent today to \$1.5m. Both attorneys in the instant case agreed that an amount of \$1m would be appropriate. However, the claims for handicap on the labour market and for exemplary damages were objected by crown counsel on the ground that they were not supported by the evidence with which I agree.

Special damages is therefore assessed at \$68,400.00 with interest at 6% per annum from 8.1.93 to today. General Damages for pain and suffering and loss of amenities is assessed at \$1m with interest at 6% per annum from the date of the service of the writ 24.5.94 to today.

Costs to the plaintiff to be agreed or taxed.