

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(Civil)**

SLUHCv2014/0065

BETWEEN:

**SOPHIA LOUISY
as Administratrix of the Estate of Mandy Louisy**

Claimant

and

THE ATTORNEY GENERAL

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Ms. Mary Francis with Mr. Sandy John for the Claimant

Ms. Kozel Creese for the Defendant

2018: March 14, 15, 19;
2019: May 3.

JUDGMENT

- [1] **CENAC-PHULGENCE J:** This claim for damages is filed by the claimant, Ms. Sophia Louisy (“Ms. Louisy”) in her capacity as administratrix of the estate of her deceased son, Mandy Louisy (“Mandy”) who died on 9th August 2013 after being shot by police. The Attorney General is being sued as legal representative of the Crown, as the police officers involved in the matter were acting as servants or agents of the Crown at the time of the incident. Ms. Louisy claims that the death of Mandy was caused by trespass to the person of Mandy and/or the unlawful, wrongful, negligent and/or reckless acts of PC 448 Ternis Mc Vane (“PC Mc Vane”) and PC 233 Ain Polius (“PC Polius”) which were done in bad faith.

- [2] Ms. Louisy has brought this claim on behalf of the estate of Mandy pursuant to article 609 of the **Civil Code**¹ (“the Code”) and for the benefit of the dependants of Mandy pursuant to article 988 of the Code. Ms. Louisy is empowered to bring this claim having been duly appointed as the administratrix of the estate of Mandy Louisy by grant of Letters of Administration dated 7th January 2014.

Background

- [3] The claim was filed on 31st January 2014 and subsequently amended and further amended claims were filed on 28th April 2014 and 3rd March 2016 respectively. The defendant filed a further amended defence on 5th April 2016. The claimant’s claim is for damages for trespass to the person and/or alternatively for negligence.

Claimant’s Case

- [4] On the morning of 9th August 2013, Ms. Louisy was met with the news that any parent would dread. Her son had been shot by police and was in critical condition at the hospital. Ms. Louisy’s case is that on 9th August 2013 in the early hours of the morning between midnight and 12:30 a.m., Mandy was walking on the road in Chassin, Babonneau when he was stopped by PC Mc Vane and PC Polius (together referred to as “the Police”) for no reason and who demanded that he remove his hands from his pockets. In the process, Mandy was hit several times with a baton by the Police. In order to escape the hitting, Mandy attempted to move into a nearby potato patch below the level of the road when he was shot at close range in the chest by PC Mc Vane causing him to fall into the drain below the road. Mandy was taken to the Victoria Hospital where he succumbed to his injuries later on the morning of 9th August 2013.
- [5] Ms. Louisy alleges that the Police, trained in the law and sworn to protect had a duty to protect Mandy’s life and not take action which would cause him grievous bodily harm or death. Alternatively, Ms. Louisy alleges that the Police owed a duty of care to Mandy to exercise caution in handling and discharging a firearm.

¹ Cap. 4.01, Revised Laws of Saint Lucia, 2008.

[6] The particulars of negligence and/or recklessness as alleged and pleaded are as follows:

- (a) Pursuing Mandy without any reasonable cause;
- (b) Using excessive force in carrying out duties;
- (c) Shooting Mandy without any good cause;
- (d) Failing to take other reasonable steps to apprehend Mandy;
- (e) Failing to conduct themselves as proper officers.

Defendant's Case

[7] The defendant's case is that the Police lawfully executed their duties when they approached Mandy and asked him to show his hands. They allege however that Mandy attacked them with a knife. In an attempt to avoid injury, PC Mc Vane jumped back and then was tackled swiftly and aggressively by Mandy who overpowered him with his superior strength and size. The defendant alleges that Mandy, who was now on top of PC Mc Vane, choked him, causing him to fear for his life. They allege that Mandy also attempted to stab PC Polius while remaining on PC Mc Vane, attempting to strangle him. PC Mc Vane, in self defence, then discharged one bullet in the direction of Mandy who was still on top of him, hitting him in the chest area.

[8] The defendant avers that Mandy was neither shot negligently or recklessly but in self-defense by PC Mc Vane in fear for his life and in response to an unprovoked and aggressive attack. The defendant denies the allegations of bad faith and avers that at all material times the police officers used the necessary force to protect themselves against the attacks of Mandy.

[9] The defendant denies targeting Mandy as they were on mobile patrol at the time. The defendant avers that Ms. Louisy is therefore not entitled to any of the relief claimed and that the claim ought to be dismissed.

Issues

- [10] The issues to be decided are:
- (a) Whether battery was committed in relation to Mandy;
 - (b) Whether the shooting of Mandy was unlawful or without justification or whether the Police acted in self-defense when they shot Mandy;
 - (c) Whether the death of Mandy was caused by the negligent and/or reckless acts of the Police;
 - (d) Whether the Police acted in bad faith;
 - (e) Whether Ms. Louisy is entitled to damages as claimed (special, general, aggravated and exemplary) and if so, the measure of such damages.

The Claimants' Evidence

Ms. Sophia Louisy

- [11] Ms. Louisy says that Mandy was her eldest child and was 30 years old at the time of the shooting having been born on 7th September 1982. She says Mandy lived at her home except that he slept in a small room next to her house. Other than sleeping, Mandy did everything else at her home. The last time Ms. Louisy saw Mandy alive was on Thursday, 8th August 2013 after he had dinner and said he was going by the road. She says on that night he was wearing a plain black short waist coat with small shallow pockets at the front. It was his favourite jacket and he always wore it.
- [12] Ms. Louisy learnt of the shooting of Mandy at about 7 a.m. the following day, 9th August 2013 when three police officers came to her house. She says Inspector Ronald Phillip informed her of the shooting which he said was as a result of a tussle with the Police for resisting a search by the Police and that Mandy was in critical condition at Victoria Hospital. Ms. Louisy says she was shocked because she knew Mandy to be a peaceful person who never had trouble with anyone and surely not police. He was always about his business walking by himself with his hands in his pocket.

[13] Ms. Louisy made her way to Victoria Hospital where she was advised that Mandy was being operated on and a little while after her arrival, she was informed that he had died. Ms. Louisy said she made her way to the Criminal Investigations Department ("CID") and requested to see the knife that Mandy reportedly had on the night of the shooting and his clothes. She says she was never allowed, despite being promised by an officer that she would have been able to. Ms. Louisy says she never knew Mandy to be a person to carry a knife. She also says that she finds it hard to believe that Mandy attacked PC Mc Vane with a knife and that Mandy was aggressively choking him and that PC Mc Vane suffered no injury from the knife despite the allegation that the officer was overpowered, and that Mandy was on top of him with the knife in his hand. She says Winston Dosithe who lives about 20 yards away from where the shooting happened saw everything and told her what he saw that night and that he never saw Mandy attack the Police with a knife.

[14] Ms. Louisy in cross-examination said that Mandy was peaceful. He never looked for trouble. However, in her statement to the police she speaks of knowing that something was wrong with Mandy because of one instance where he just, as she put it, 'stayed there and started destroying things in his house'. When she asked him why he was doing that, Ms. Louisy in her statement said 'he said he would not tell her'. She also said in that statement that Mandy had never been to a doctor, Golden Hope or the Wellness Center. Ms. Louisy's description of Mandy was that he was generally of a peaceful nature except maybe for the one time when he was destroying things in his house and that he did not look for trouble with people.

Mr. Winston Dosithe

[15] Mr. Dosithe's evidence is that he knew Mandy for a very long time. He recalls Thursday, 8th August 2013 at about midnight. He was at his home which was situated at the top of a little hill facing the road. He says from his window he had a good view of the road below as there is a lamp post on the left side of the road if walking up towards his house. He says he heard quarreling on the road just below his home and he looked out to see what was taking place.

[16] Mr. Dosithe says he saw a white open back 4 door Nissan police van with flashing lights. He also saw Mandy walking down on the left side of the road. He says Mandy was wearing a black or dark grey short waistline coat and had his hands in his pockets at the front of the coat.

[17] Mr. Dosithe's description of what he saw is as follows:
He saw a police officer in plain clothes on the left side of the police van. Mandy was stopped by the police who was forcing him to remove his hands from his pockets. The police officer had a big stick in his hand and was knocking Mandy on his body and cursing him saying 'move your hands from your pockets'. Mandy did not stop and continued walking straight down the road on the left side of the police van. The van was following him on his side driving close to him. When Mandy reached the bridge the police van stopped.

All this time he was looking through his window. There were two police officers in the van. The same police who had been knocking Mandy came out of the passenger side of the police van. He was hitting Mandy and asking him to remove his hands from his pocket and asked him to put his hands on the van. The police officer was striking him at the front of his body to get him to move his hands. Each time the police hit Mandy, Mandy was moving back to avoid the blows until he reached the back of the police vehicle.

Mandy was close to the right side of the road where there is a big drain about 4 to 5 feet deep below the level of the road. Mandy was trying to escape the police blows and to run into the potato patch which was nearby next to the drain. The police officer rushed at Mandy and less than five seconds later, he heard a gunshot. The area below the level of the road by the drain and the potato patch is a little dark but there is a lamp post on the other side of the road where the police van was parked. The police officer ran to the police van and got a torchlight. It seemed like he was searching around, shining the light in the drain and the potato patch close to the drain.

Soon after, another white police vehicle arrived with three police officers and they were searching in the drain. Two police officers lifted Mandy, one holding him from his top and another by his feet and put him to lie on the road. The police were all talking. Then they put Mandy in the cargo bed of the first police vehicle and left. Everything lasted about fifteen to twenty minutes.

On the afternoon of 9th August 2013, a lot of police officers came taking measurements. One police officer from Serious Crime Unit came to his house and took a statement from him.

[18] Mr. Dosithe says he knows Mandy to be a quiet man always by himself and about his business. He says he never saw Mandy pull any knife on the police officers who stopped and beat him. He did not hear Mandy say anything to the officers or get aggressive whilst he was being beaten.

[19] In cross-examination, Mr. Dosithe was very clear and insisted that he wanted to ensure that he told the truth because what happened was in his words 'not right'. He was very clear that he could have heard and seen clearly what was happening that night from his home. In cross-examination, Mr. Dosithe was asked in reference to his statement to the police that 'after a while he started getting sick and he had mental problems, how long was it since Mandy started getting sick to which he replied, 'he was by himself'. In relation to the mental problems, he answered that 'the way he used to speak to us before, he just hold himself on a side'.

[20] In cross-examination, Mr. Dosithe said that the police did not go into the potato patch; they stayed on the road. They did not run after Mandy. He says they went into the potato patch after the gunshot. When it was suggested to Mr. Dosithe that he could not have seen or heard what went on that night and that he had only come to give evidence because he was Mandy's friend, Mr. Dosithe was visibly disturbed

by that suggestion and categorically denied this and said he was giving evidence because he did not like what had been done to Mandy.

Dr. Stephen King

- [21] Dr. King is the pathologist who conducted the post-mortem on the body of Mandy on 12th August 2013. He was summoned to give evidence in the matter and gave evidence of his findings. He confirmed that Mandy measured six feet one inch and was of average size. He spoke of the entry wound being to the upper abdomen and the exit wound to the lower right back. Mandy also had a contusion to the left back of the head measuring 6 cm. He had an abrasion to the right lower abdomen at the front measuring 1 cm and an abrasion to the lower right leg measuring 3 cm.
- [22] The cause of death according to Dr. King was hemorrhagic shock (bleeding to death) as a result of single gunshot wound to the front upper abdomen. He says it was a close range wound which he explained meant in general, discharge of a firearm three feet or less from the body. There was also evidence of multiple blunt force injuries.
- [23] Dr. King was asked what in his opinion could have been the reason for the downward trajectory of the bullet, he responded that the trajectory downwards and to the right correlates with the relative position of the trunk of the body with the firearm when it was discharged suggesting an anatomical position. He agreed that it was safe to say that the nozzle of the firearm was higher than the entry wound. The contusion he said would have been caused by a blunt object which was harder than the flesh. Dr. King also agreed that the trajectory of the bullet in this case could possibly be the same if the body was bending over as opposed to in an anatomical position.

The Defendant's Evidence

Ternis Mc Vane, PC 448 ("PC Mc Vane")

- [24] PC Mc Vane was attached to the Babonneau Police Station at the time of the incident. He had been a police officer for about five years at the time of the incident. He started a two-day shift on 7th August 2013. He and his colleagues were briefed by the station supervisor Sergeant of Police 440 Ernesto Emmanuel (then Corporal) on their responsibilities for the tour of their duty, the use of force and firearms in keeping with standard procedures.
- [25] PC Mc Vane says that on 8th August 2013 at about 8:00 a.m., he was issued with a firearm and ammunition by Police Constable 547 Nerius Lambert ("PC Lambert") who was the most senior officer at the time. At about 10:48 p.m. that same day, he along with PC Lambert and PC Polius left the station on mobile patrol on board a marked police vehicle. At the time he says he was wearing a green t-shirt and blue jeans trousers with a police reflector vest over his t-shirt. He says PC Polius was also wearing a reflector vest.
- [26] He says based on information received, they proceeded to Fond Assau, Chassin in Babonneau. PC Lambert disembarked the vehicle at the Fond Assau bus stop to continue on foot patrol and PC Mc Vane and PC Polius continued on mobile patrol. This is what PC Mc Vane says transpired thereafter.
- [27] Whilst patrolling, at about 12:10 a.m., PC Mc Vane noticed a tall, dark-skinned, muscular male (Mandy) wearing a black bubble coat and a pair of black trousers. He slowed down beside Mandy and noticed that his hands were hidden under his coat. He confirms that there was a functional street lamp in the area where Mandy was walking which provided sufficient lighting.
- [28] PC Polius introduced himself to Mandy as a police officer dressed in plain clothes, showed him his identification card and asked him to stop. Mandy he says looked in his direction, sucked his teeth and continued walking. PC Mc Vane says he then

drove a few feet away towards the bridge and stopped about fifteen (15) feet away to get in front of Mandy who continued walking towards the vehicle. He says there were two functional street lamps alongside the road, each about 50 feet away from the bridge on either side.

[29] He says he left the vehicle running and both he and PC Polius disembarked the vehicle and walked to the back and approached Mandy. PC Polius identified both of them as plain clothes officers and showed him their identification cards. He says PC Polius then told Mandy that he had reason to believe that he was carrying a weapon and would like to conduct a search on his person. He says Mandy replied "police" and started laughing. PC Polius asked Mandy to place his hands on the vehicle and he refused. He was asked again and said "Y'all want to see blood." That is when PC Mc Vane says Mandy pulled both hands from under his jacket and was holding what appeared to be a knife in his right hand. He says he saw a shiny silver blade.

[30] Mandy stretched himself forward and swung the knife at PC Polius' abdomen who hopped backwards to avoid the knife. He says Mandy then swung the knife towards his abdomen and he turned to his left side to avoid the knife which got stuck in the front of his t-shirt. Then immediately Mandy advanced towards him aggressively and gave a thrust to his throat with his left hand. PC Mc Vane says he stumbled backwards and fell on his back off the road over the drain with his feet facing the drain. He says PC Polius was on the road at that time. Then Mandy jumped on top of him whilst he was still lying on the ground and placed his left knee in his chest. At that point Mandy was still holding the knife in his right hand and said several times, "I must kill a Police." PC Mc Vane says he was scared. PC Mc Vane says he held Mandy's right wrist up with his left hand to keep the knife away from him.

[31] He says PC Polius swung his baton at Mandy to try to get him off. Mandy was squeezing his throat with his left hand, his knee was still in PC Mc Vane's chest and his body was bent over him so his heavy body weight could be felt. PC Mc Vane

says he thought Mandy was going to kill him. He says Mandy bit him on the left side of his head. He then released the bite and dropped his throat. He then pulled his right hand from PC Mc Vane's grip and swung his right hand backwards towards PC Polius who was to Mandy's right attempting to get him off PC Mc Vane. He then turned back and attempted to thrust the knife at PC Mc Vane. PC Mc Vane says Mandy raised his right hand and brought the knife down towards him. All this time Mandy was still on top of PC Mc Vane. PC Mc Vane says he was fearful for his life. He says he drew his firearm from his waist using his right hand and pointed it in front of him in Mandy's direction and discharged a single round of ammunition whilst Mandy was still on top of him.

[32] Mandy's body went backwards and he fell on his back in the nearby drain. Whilst falling he held onto PC Mc Vane's right arm and eventually knocked the firearm out of PC Mc Vane's grip. PC Mc Vane says he attempted to stand up but could not because he was very weak. Eventually he was able to slowly stand to his feet. That is when he says he saw Mandy in the drain holding his chest and he heard him moaning. He says he then asked PC Polius to get a flashlight from the vehicle to search for his firearm because he did not know where it was.

[33] PC Mc Vane says he then stooped on the left of Mandy and held onto his forearms as he was not sure whether he had anything in his hand. When PC Polius brought the flashlight, PC Mc Vane says he observed what appeared to be blood on Mandy's chest and realized that Mandy had been shot.

[34] The firearm and knife were under Mandy's upper thigh area when PC Polius raised the left side of Mandy's body. PC Mc Vane says he retrieved his firearm from the drain whilst PC Polius took the knife. He says the knife was about 11 inches long and the tip looked as if it had broken off. He says it was the same knife that Mandy had thrust at him. PC Mc Vane says the side of the drain facing the road is about four feet tall whilst the side facing where his legs were is lower.

[35] PC Mc Vane says after the knife and firearm were retrieved, Mandy got up and climbed the four foot wall from the drain and sat at the side of the road. He says he told Mandy he was going to get help and he just said 'ok'. About that time three additional police officers (Charlie, Harrow and Rosemond) attached to the Criminal Investigations Department arrived on the scene and parked next to their police vehicle and inquired what had transpired. The officers assisted PC Mc Vane and PC Polius to put Mandy into the police vehicle and he was transported to Victoria Hospital. The three officers then left. When PC Mc Vane and PC Polius got to the bus stop, PC Lambert took over the driving.

[36] PC Mc Vane says apart from his t-shirt having a tear in the front where the knife got stuck, his trousers and shoes were dirty. He had bruises and swelling on either side of his arms and an open wound on his right leg. There was mud on both his arms and his silver bracelet and one side of his dog tag were missing.

[37] PC Mc Vane says his t-shirt, the knife and Mandy's jacket were handed over to PC Ed Emmanuel and these items were packaged and sealed. The firearm was packaged and sealed. PC Mc Vane says he and PC Polius returned to the scene with various officers throughout the day to take photographs, measurements and to collect samples from the scene.

[38] PC Mc Vane says he and PC Polius were acting in the course of their duties and used necessary force to counter the threats of Mandy and they acted lawfully in the execution of their duties.

Ain Polius PC 233 ("PC Polius)

[39] PC Polius' evidence is in the main similar to that of PC Mc Vane so I highlight the elements of his evidence which supplement or are contradictory to PC Mc Vane's evidence.

- [40] PC Polius at the date of his witness statement had been a police officer for five years and at the time of the incident had been attached to the Babonneau Police Station for one year. On the night in question, he was wearing a long black pants and a black t-shirt and a police reflector vest over his clothing.
- [41] PC Polius says when Mandy thrust the knife towards PC Mc Vane he noticed PC Mc Vane attempting to back off but Mandy then gave him a thrust to his throat which caused him to fall off the side of the road into a drain about four feet deep. He says Mandy then fell on top of PC Mc Vane in the drain. This account is slightly different to that of PC Mc Vane who said that he fell over the drain on the lower side of the drain. PC Polius says the lighting was poor but he could see that there was vegetation along the slope and a concrete drain. PC Polius says Mandy was still on top of PC Mc Vane holding the knife in his hand. He saw them in a scuffle so he ran to assist in getting Mandy off PC Mc Vane. He says he hit Mandy on his back and neck area with his baton whilst telling him drop PC Mc Vane and the knife he was holding. PC Polius says he did not use his firearm because both PC Mc Vane and Mandy were 'struggling' and he did not want to accidentally shoot his colleague.
- [42] He gives evidence that when Mandy swung his right hand which had the knife at him, he moved back. He says Mandy continued to hold PC Mc Vane in his throat. He says after he heard what sounded like a gunshot, he saw Mandy lying back slowly and he released PC Mc Vane and lay on his back holding his chest.
- [43] PC Polius says he then ran to the vehicle to get the flashlight to search for the firearm since PC Mc Vane did not know where it had fallen. He says he raised Mandy's left side and retrieved the gun from under him and recovered the knife on Mandy's right side.
- [44] PC Polius says Mandy got up and sat on the side of the road. He also says he saw PC Mc Vane holding his face and he saw a hole in PC Mc Vane's t-shirt that was not there earlier. PC Polius says that three officers assisted them in placing Mandy

onto the police vehicle and they left. PC Polius says he contacted PC Lambert and told him what had happened. They picked up PC Lambert at the bus stop about one minute's drive away and he took over driving and they proceeded to Victoria Hospital.

Ed Emmanuel PC 291 ("PC Emmanuel")

- [45] PC Emmanuel is a police constable attached to the Crime Scenes Unit. His evidence is that he visited the scene on Friday, 9th August, 2013 at 6:30 a.m. He took photographs of several items, however none of the photographs were date stamped to verify the date when they were taken. For the purposes of this case, I did not find it necessary to place reliance on the photographs. I however note some of the measurements taken by PC Emmanuel. PC Emmanuel says that the distance from the right side of the road to where the shooting took place was 6 feet and the street lamp facing south to the spot of the incident-123 feet and from the street light facing north to the spot of the incident-98 feet. PC Emmanuel notes that there were two street lamps on either end of the scene which is consistent with my observations at the locus.

Larry St. Marie PC 263 ("PC St. Marie")

- [46] PC St. Marie is a police constable attached to the Crime Scenes Unit. Like PC Emmanuel, he visited the scene of the incident at about 1:00 p.m. on Friday, 9th August 2013. He says he noticed the area just past the bridge. The vegetation which consisted mainly of sweet potatoes and flowers appeared to have been disturbed. There was an apparent blood spot in the drain and the immediate scene was below the street level. He also speaks of there being two lamp poles in the area. He says he took measurements. The measurements showed the distance from the edge of the road to where the incident happened to be 7 feet; drop from the road to the gutter to be 4 feet; the distance from the lamp pole before the bridge going towards Chassin to be 40 yards, the distance from the lamp pole after the bridge heading to Chassin to be 32 yards and from Mr. Dosithe's home to the spot

where the incident occurred to be about 61 yards. From my observations, these measurements appear to be an accurate reflection of the scene.

Nerius Lambert PC547 ("PC Lambert")

- [47] PC Lambert was attached to the Babonneau Police Station at the time of the incident. He says that on 8th August 2013 he reported for duty to start a two-day shift. He says at the beginning of the shift and in keeping with standard procedures, Sergeant of Police 440 Ernesto Emmanuel (then Corporal) briefed him and the other officers on duty on the tasks assigned for the tour of duty, use of force policy and use of firearm guidelines.
- [48] He says that the following morning at about 8 a.m. as the most senior constable on duty, he issued PC Polius and himself with firearms, a 9 mm Glock Pistol RPA 892 and 893 respectively. He does not say that he issued PC Mc Vane with a firearm but the Issuing and Receiving Register shows an entry of the issue of a firearm matching the description of the firearm which PC Mc Vane says was issued to him, that is, a Beretta Pistol serial number 1379092 and does not show the issue of another Glock Pistol on that day. In cross-examination, PC Lambert confirmed that he was the one who issued the firearms to PC. Mc Vane and Polius. I therefore accept that what is stated in the witness statement must be an error.
- [49] PC Lambert's evidence confirms that he, PC Mc Vane and PC Polius left the Babonneau Police Station on the night of 8th August 2013 for mobile patrol, that both PC Mc Vane and PC Polius were wearing reflector vests and that he stopped at the Fond Assau bus shelter where he disembarked on foot patrol whilst the other two officers continued on mobile patrol. He says whilst he was at the bus shelter, he received a call from PC Polius at about 12:20 a.m. and he told him what had happened. He says when the officers got to his location, he observed a young man who appeared to be in pain holding his chest area whilst laying on his right side at the back of the police vehicle. He says he made attempts to contact the ambulance services but was unsuccessful. He says he called his supervisor, Corporal

Emmanuel and informed him of the incident and requested that the ambulance services be contacted. He then took over the driving from PC Mc Vane and proceeded to the Victoria Hospital with PC Polius, PC Mc Vane and Mandy. He says he spoke to both PC Mc Vane and PC Polius who gave him an account of what had transpired. PC Polius showed him what appeared to be a knife with a brown wooden handle with a broken tip. He says the knife was handed to PC Ed Emmanuel who put it in a small white box and sealed it with evidence tape.

Utrius Rosemond PC 286 ("PC Rosemond")

[50] PC Rosemond was one of the three police officers who assisted at the scene the night of the incident. He says he and two other officers were in the area that night on a mission to apprehend a defendant for whom he had a bench warrant when they happened upon PC Mc Vane and PC Polius who were standing next to a male individual on the left side of the road. PC Rosemond says the male individual (Mandy) was lying on his back on the road behind where the police vehicle was. He says they stopped to enquire what had happened. At the time PC Rosemond says he observed that Mandy appeared to be conscious and still breathing and that he saw what appeared to be blood at his chest area. He says Mandy was wearing a black jacket and a white vest. He describes Mandy as tall and muscular in build.

[51] PC Rosemond says that he along with the two other officers (Harrow and Joseph) assisted PC Mc Vane and PC Polius in placing Mandy on the police vehicle to take him to hospital. He says PC Polius stayed in the tray of the vehicle with Mandy. He says he and the officers then continued along their way to execute the bench warrant.

Ian Harrow, PC 491 ("PC Harrow")

[52] PC Harrow's evidence is in similar vein to that of PC Rosemond. However, in his evidence in chief he did not speak to whether Mandy was seated or lying down when he was picked up. In cross-examination though, he said that Mandy was lying down when he was picked up. Then later on he said he could not recall what position

Mandy was in when they first arrived on the scene. He said Mandy was lying somewhere in the middle of the road on his back. That position is very different to the evidence of PC Polius and PC Mc Vane which put Mandy by the side of the road just on the edge of the drain which he climbed out of after being shot and having fallen into the said drain.

Ernesto Emmanuel, Sergeant 440 ("Sgt. Emmanuel")

- [53] Sgt. Emmanuel at the time of the incident was attached to the Babonneau Police Station as a Corporal of Police. He was the Supervisor in Charge of the two-day shift which started on 7th August 2013 and of which PC Mc Vane, PC Polius and PC Lambert were all part of. He says he held a briefing with the shift on the use of force and use of firearms in keeping with standard procedures and then detailed PC Mc Vane, Polius and Lambert and requested that both mobile and foot patrols be conducted in the area of Babonneau. Sgt. Emmanuel says that he was informed of the incident at about 12:49 a.m. on the morning of 9th August 2013 by PC Lambert who advised that they were on their way to the hospital with the injured Mandy and that efforts to contact the ambulance had proved futile. Sgt. Emmanuel says he and the then Officer in Charge of the Babonneau Police Station, Inspector Ronald Phillip went to Victoria Hospital where they met with PC Polius and PC Mc Vane. He makes mention that a black bubble jacket and what appeared to be a knife with a brown wooden handle were handed over to PC Ed Emmanuel by PC Polius.
- [54] Sgt. Emmanuel says he accompanied Inspector Ronald Phillip to Chassin, Babonneau later the morning of 9th August 2013 in search for the mother of Mandy to inform her of what had transpired. He says that Ms. Louisy informed them that she was not aware that her son had problems with anyone but that since his girlfriend left and went to St. Vincent it may have sent him off. He says she also said that Mandy was a loner. He says when he enquired of her whether Mandy had been to the mental health facility, she said no. The majority of the cross-examination of Sgt. Emmanuel centered on whether PC Lambert had authority to issue firearms to PC Mc Vane and PC Polius which I will comment on later.

Superintendent of Police Ronald Phillip (“SOP Phillip”)

- [55] SOP Phillip at the time of the incident was an Inspector of Police and held the position of Officer in Charge at the Babonneau Police Station. SOP Phillip says that he was advised of the incident by Sgt. Emmanuel at about 1:00 a.m. on 9th August 2013 and thereafter they proceeded to the Victoria Hospital. He describes in very much the same detail as Sgt. Emmanuel what transpired once they got to the hospital and then says that later that morning at about 8:00 a.m., he and Sgt. Emmanuel went in search of Mandy’s mother. In both SOP Phillip’s and Sgt. Emmanuel’s evidence, they both say that they enquired of Ms. Louisy whether her son had ever been to the mental health facility. I am not clear who actually made the enquiry and the evidence just seems to mirror that of Sgt. Emmanuel.
- [56] The majority of the cross-examination of SOP Phillip also centered on who had the authority to issue the firearms and what was the approved means of communication when incidents of this nature arose. SOP Phillip was asked whether any efforts were made to have the knife tested and fingerprinted to which he responded that the investigations would have been carried out by a separate unit for transparency so he could not say. SOP Phillip agreed that the Police Standing Orders which date back to 1990 speak to the issue of firearms and that permission to use a firearm must be obtained from an officer not below the rank of Assistant Superintendent except where circumstances render it impracticable. However, SOP Phillip explained that the Standing Orders are dated and are not pragmatic as some police stations are actually managed by persons below the rank of assistant superintendent.

Facts not in Dispute

- [57] It is not disputed that Mandy Louisy was shot by PC Mc Vane in the early hours of 9th August 2013, that Mandy was taken by police vehicle to the Victoria Hospital where he succumbed to his injuries later that same day.

Facts in Dispute

- [58] The factual issues in dispute need to be resolved by the Court to determine what exactly transpired between Mandy and the police officers that night of 8th August 2013 into the early morning hours of 9th August 2013. This will enable the Court to conclude whether PC Mc Vane was acting in self-defence when he shot Mandy or whether he and PC Polius acted negligently or recklessly in handling the situation and Mandy.
- [59] The Court must consider what evidence there is from the defendant to support self-defence. Further in considering negligence, the Court must have regard to all the circumstances surrounding the incident and not just the point at which Mandy was shot.

The Applicable Law

- [60] Section 23(1) of the **Police Act**² states in relation to the duties of police officers:
- “(1) It is the duty of the Force to take lawful measures for—
 - (a) preserving the public peace;
 - (b) preventing and detecting crimes and other infractions of the law;
 - (c) apprehending and causing to be apprehended persons who shall have committed, or shall be charged with or suspected of having committed or having abetted the commission of, or being about to commit any crime, or offence;...”
- [61] Section 571 of the **Criminal Code**³ provides as follows:
- “A person may use such force as is reasonable in the circumstances in the prevention of crime,...”
- [62] Self-defence can only properly be established in circumstances where there exists, on the defendant’s part an honest belief that he or she needed to take action in order to defend himself/herself but also, that the extent of the action taken in defending himself/herself was reasonable, as distinct from excessive.⁴

² Cap. 14.01, Revised Laws of Saint Lucia.

³ Cap. 3.01, Revised Laws of Saint Lucia.

⁴ Beckford v R [1988] AC 130.

- [63] In relation to negligence the claimant must prove that there existed a duty of care by the police to Mandy; that that duty was breached, that the breach caused the damage and that that damage is of the particular kind that is not unforeseeable as to be too remote. Negligence can only succeed if the Court finds that the actions of the police officers were unlawful or unreasonable.
- [64] The Standing Orders of the Royal Saint Lucia Police Force dated 1990 in standing order No. 46 provides that “firearms are to be used by authorized and trained Police Officers only as a last resort where conventional methods have been tried and failed, or must from the nature of the circumstances obtaining be unlikely to succeed if tried. They must be used, for example, when it is apparent that a Police Officer cannot achieve the lawful purpose of preventing loss of life by other means.”
- [65] The defendant referred to the Use of Force Policy for Law Enforcement Officers which came into effect by a Cabinet Conclusion No. 583 of 2015 dated 21st September 2015. Whilst this policy does not have the force of law as it has not been made into regulations as required by section 59 of the **Police Act**, it provides some factors which should guide a law enforcement officer’s determination of reasonable use of force. Some of these factors include (a) the conduct of the subject being confronted; (b) whether the subject poses an imminent threat to the law enforcement officer or other persons taking into account the subject’s age, size, skill level and strength; (c) the mental capacity of the subject; (d) whether the subject is evading or attempting to evade arrest; (e) the foreseeable risk of injury to the law enforcement officer; the proximity or access to weapons by the subject; (f) the age, size and strength of the law enforcement officers, environmental conditions and other exigent circumstances.

Analysis

- [66] I will consider these issues together: whether a trespass to the person of Mandy was committed; whether the shooting of Mandy was unlawful or without justification

or whether the Police acted in self-defence when they shot Mandy and whether the death of Mandy was caused by the negligent and/or reckless acts of the Police.

- [67] In order to establish battery it must be proven on a balance of probabilities that (a) there was intent to commit the act; (b) there was non-consensual contact with the person and (c) the battery caused actual harm meaning physical, mental, or emotional, not limited to just physical harm. The requisite intent required is merely to touch or make contact without consent. It need not be an intention to do wrong and the wrongdoer need not intend to cause the particular harm that occurs. In this case, it is clear that a battery did occur against the person of Mandy. The question is whether the defendant was acting in self defence and so would not be liable for battery.

A closer look at the Evidence

- [68] I picked up some inconsistencies in the evidence which I will now look at. In cross-examination, PC Mc Vane said that when PC Polius introduced himself to Mandy, the vehicle was not moving but had stopped but in his witness statement he says that he slowed down which to me suggests that they did not come to a complete stop. Mr. Dosithe says in his evidence the vehicle was driving beside Mandy whilst he continued walking and he never stopped. In cross-examination, PC Polius said that he remained in the vehicle and said "police stop" whilst the vehicle drove alongside Mandy. PC Mc Vane on the other hand had said that the vehicle had stopped. PC Polius' answer in cross-examination is consistent with the account given by Mr. Dosithe.
- [69] In paragraph 14 of his witness statement PC Mc Vane says both he and PC Polius showed their ID cards, yet in cross-examination he says at one time that he did not get a chance to show his card and then he says both he and PC Polius showed their ID cards about the same time.

[70] PC Polius' description of where PC Mc Vane fell and where Mandy was after he was shot differs from the account of PC Mc Vane. PC Mc Vane's account is that he fell off the road and over the drain and landed in the vegetation with his feet towards the drain and Mandy was on top of him with his knee in his chest. PC Polius' account is that PC Mc Vane fell into the drain and Mandy fell on top of him. He has also said that he could see that there was vegetation and a concrete drain so he could not have been confused as to the exact location of PC Mc Vane. From my visit to the site, PC Polius' account is less likely as the drain is only about one and half feet wide and I cannot see how it could accommodate both PC Mc Vane and Mandy given the description of what transpired. To my mind, if the two had fallen in the drain, Mandy would certainly have had the advantage he being taller and by all accounts a strong individual. This inconsistency is critical as it affects how the entire incident is viewed.

[71] PC Polius' account of what happened after Mandy was shot again differs from what he says in his evidence in chief. In his evidence in chief, he says after the shot, Mandy fell back slowly and then in cross-examination, he says Mandy was lying on top of PC Mc Vane after the shot and then he got up himself, he came off PC Mc Vane and lay on his back. That evidence in cross-examination is also different to PC Mc Vane's account of what happened after Mandy was shot. PC Mc Vane puts Mandy in the drain after he was shot. It is also curious that PC Mc Vane says that he stooped by Mandy because he says he did not know whether Mandy was still armed with the knife and then PC Polius came and they searched for the gun and discovered the knife when PC Polius lifted the left thigh of Mandy. PC Polius did not seem to have any concerns about Mandy still being armed as he promptly lifted his side and retrieved the missing items. I have some difficulty visualizing this given the depth of the drain which Mandy was allegedly in.

[72] In cross-examination when asked whether Mandy had said anything to him when he introduced himself, PC Polius said he just repeated "police" and smiled. PC Mc Vane said Mandy had laughed and said police. Both he and PC Polius say that

Mandy said that he would kill a police that night and asked whether they wanted to see blood. I have difficulty believing this evidence because of the inconsistencies which exist in the accounts of PC Mc Vane and PC Polius. That evidence also does not square with the person whom the claimant and Mr. Dosithe describe. I believe Mr. Dosithe when he testified that Mandy just kept walking whilst he was being spoken to by the police and did not answer.

[73] PC Polius in cross-examination says he hit Mandy all over his body but in his evidence in chief said he hit his back and neck. He first said he only hit Mandy when he was in the scuffle with PC Mc Vane and then later said that he hit him before he got in the scuffle. He admitted that Mandy seemed stronger than both of them.

[74] At the time of trial, Mr. Dosithe confirmed that his house was no longer there but the pillars upon which it stood were still at the site. The Court along with the parties visited the locus in the evening time to be able to as far as possible see the locus at night which is when the incident would have occurred. I made certain observations. Mr. Dosithe's house was no longer there as he had said but the pillars were and having been at the actual location, the pillars stood about five to six feet from the ground. The house would have sat on top of those pillars and I am satisfied that from that height, Mr. Dosithe would have had a clear view of the road below. There is a lamp post directly opposite the house spot on the right side of the road which lights a good portion of the road area. When one gets closer to the bridge and potato patch area, it is a little darker. There is a lamp post a little higher up as you come to the end of the bridge on the left side of the road. At the time of my visit, the area where the potato patch was had changed since the passing of one of the storms, but the drain was still present. That drain is very narrow about one and half feet wide but it is a deep drain about three to four feet deep.

[75] From his house, I am satisfied that Mr. Dosithe would have been able to hear voices as it was midnight when the night is still and sounds are more audible. Mr. Dosithe was clear that he was able to see that it was Mandy that night. That is not hard to

believe as the police admit in their evidence that they were wearing reflector vests and because the evidence is clear that in comparison to the police officers, Mandy was tall, being over six feet. Whilst I believe that Mr. Dosithe would have been able to make out the officers because of the reflector vests, I do not think he would have been able to see with precision all the details. I definitely do not think he could have seen what happened once the action moved to the potato patch because that area is devoid of any light. I found Mr. Dosithe to be credible despite his tendency to want to give his story no matter what he was asked but I attribute this to his deep sense of outrage at what had happened. I therefore believe Mr. Dosithe's version of events up to the point when the action moved into the potato patch.

[76] The suggestion that Mandy may have had mental problems was refuted by his mother and by Mr. Dosithe who both indicated that Mandy had never been at Golden Hope (Mental Facility) at any time. There was no concrete evidence presented that Mandy ever suffered from mental illness and so I ascribe no weight to that evidence. The fact that his mother said that there was one incident where he had damaged things in his house is not sufficient to conclude that Mandy was an aggressive person.

[77] I now consider the evidence in relation to what transpired when the police vehicle stopped and the officers alighted. The evidence of PC Mc Vane is that when Mandy swung the knife it stuck in his t-shirt and made a hole. PC Mc Vane then says that Mandy launched at him and gave a thrust at his throat with his left hand and he fell back over the drain. PC Mc Vane says that he was holding Mandy's right wrist to keep the knife away from him. Then Mandy started squeezing his throat with his left hand all this time Mandy's knee was in PC Mc Vane's chest and his body was bent over PC Mc Vane. Then PC Mc Vane says Mandy bit him on the left side of his head near his temple. He says he did not let go of Mandy's hand. Then he says Mandy released his bite and dropped his throat and then struck at PC Polius. I have tried to picture this scene and I must admit I have some difficulty accepting the version of events as relayed by PC Mc Vane and Polius. Whereas I have no

difficulty accepting that Mandy may have lunged at PC Mc Vane and they fell and a struggle ensued, I have difficulty envisioning this scene with a knife in Mandy's hand. I cannot see how Mandy would have been able to bend over and bite PC Mc Vane on the left side of his head on his temple and it still be possible for PC Mc Vane to continue holding up Mandy's right wrist when Mandy would have been bent over biting at his head. The knife just does not make sense in the sequence of events. I accept that there was a struggle but I do not accept that Mandy had any knife. When I consider this along with the other inconsistencies, I do not accept the evidence of the defendant as being totally credible.

[78] The defendant relies on self-defense and the evidentiary burden is on them to bring forth evidence before the Court in order to enable that defence to be considered. The burden of proof in that regard rests solely on the defendant's shoulders. The officers all gave evidence of this knife which was eleven inches long and which had a broken tip, yet no evidence was led that this knife was ever examined or tested to ascertain that it was Mandy's in light of the evidence that such behaviour did not accord with who Mandy was. I do not believe that Mandy had any knife.

[79] In light of this, can it be said that the action of PC Mc Vane in firing at Mandy was justified in the circumstances? The police are to use only such force as is reasonable. In the circumstances, there could be no justifiable reason for shooting at Mandy. The evidence shows that PC Mc Vane was clearly overpowered by Mandy who stood 6 feet tall and was evidently stronger compared to PC Mc Vane and PC Polius who were just over five feet tall. I can understand the fear that PC Mc Vane speaks of in those circumstances but that does not justify the use of lethal force. In those circumstances, the shooting of Mandy was unlawful as it was excessive in the circumstances albeit PC Mc Vane may have shot at Mandy in the honest belief that he needed to do so in defence of himself.

[80] I believe that Mandy completely ignored PC Polius when he attempted to speak to him that night and continued walking down the road as if he had not been spoken

to. I believe Mr. Dosithe when he says he did not see Mandy behaving aggressively. It is reasonable that if someone does not respond when asked to show their hands, they may be concealing something but the events that followed are crucial. However, it is equally possible that the individual may just simply have his hands in the pockets of his jacket.

[81] Mandy did not respond when approached by the Police. PC Mc Vane and PC Polius then stopped and got out of their police vehicle. Up to this point, Mandy had not done anything except not respond to the instructions given. There was no apparent reason to alight the vehicle especially as they say Mandy had said he would kill a police and they did not know if he was armed. In fact, PC Mc Vane admitted during cross-examination that it was possible that Mandy simply had his hands in his pockets. A reasonable, competent officer would have recognized that there were too many unknowns. In addition, there was no evidence that any report had been made about Mandy or someone fitting his description being armed or that he was someone known to the law. PC Polius and PC Mc Vane alighted the vehicle and then PC Polius as he admitted under cross-examination hit Mandy with a baton trying to get him to comply with the instructions to show his hands. This is also the evidence of Mr. Dosithe. That simply escalated the situation unnecessarily. Mandy then tried to get away from the blows and then a scuffle ensued with PC Mc Vane. The police officers took decisions that night that were not necessary as there was no imminent danger when they started off and it would have been more prudent to have consulted with PC Lambert, a senior officer as to how best to deal with the situation. There was really no need to get out of the vehicle. In that sense, the officers acted carelessly which ultimately led to the circumstance where PC Mc Vane felt the need to shoot at Mandy in defence of himself. I therefore find that the police officers were negligent in their handling of the situation and that this ultimately led to the shooting of Mandy and his subsequent death.

[82] In analyzing these two issues, the claimant in closing submissions focused on the fact that the protocols for issuing of firearms had not been followed and generally

that the police had failed to follow proper police procedure. I however do not think that this is relevant to the determination of the issues. There was no evidence to show that any of the officers were not authorized or competent to have firearms or were not trained police officers. It must therefore be presumed that the police officers were lawfully entitled to carry firearms.

Whether the Police Officers acted in Bad Faith

[83] The defendant submits pursuant to article 2066 of the **Civil Code** that good faith is always presumed and so he who alleges bad faith must prove it. The defendant submits that there is no evidence of bad faith on the part of the police officers. Bad faith although pleaded was not proven and the defendant therefore submits that by virtue of article 2124 of the **Civil Code**, the claim is prescribed and cannot be maintained.

[84] The claimant pleaded the following particulars of bad faith:

- (a) Deliberately shooting Mandy in the chest;
- (b) Shooting an unarmed man who had committed no offence and who was not known to the police;
- (c) Abusing their position of power over Mandy as police officers in discharging a dangerous weapon;
- (d) Discharging a dangerous weapon having no regard for Mandy's right to life or any other person in the vicinity;
- (e) Deliberately targeting Mandy to cause him injury and harm;
- (f) Knowing that as trained officers firing a gun in Mandy's direction would cause him injury or lead to his death but firing at close range in any event.

[85] The evidence as a whole does not show bad faith on the part of PC Mc Vane or PC Polius. The evidence shows that PC Mc Vane when he fired at Mandy held an honest opinion that he was justified in taking the action that he took albeit it was unreasonable in the circumstances of the case and on the facts as found by this Court above. In any event, the defendant's submissions regarding the claim being

prescribed cannot be upheld. The incident occurred on 9th August 2013 and the claim was first filed on 31st January 2014 well within the six months as provided for in article 2124 of the Code despite the fact that there were two amendments to the claim as late as 2016. The claim having been filed in time, there is no need for the claimant to establish bad faith on the part of the police officers. The claim is therefore not prescribed.

Can the Defendant rely on the Maxim Ex Turpi Causa Non Oritur Actio

- [86] The defendant also seeks to rely on the legal doctrine *ex turpi causa non oritur actio* which refers to the fact that no action may be founded on illegal or immoral conduct. The defendant relies on the case of **The Attorney General of Saint Lucia et al v Donovan Isidore**⁵ where Gordon JA quoted from the English Court of Appeal case of **Harry Cross v William Dickson Derby**. The Court in **Harry Cross** said:

“...In my judgment where the claimant is behaving unlawfully, or criminally, on the occasion when his cause of action in tort arises, his claim is not liable to be defeated *ex turpi causa* unless it is also established that the facts which give rise to it are inextricably linked with his criminal conduct. I have deliberately expressed myself in language, which goes well beyond questions of causation in the general sense.

The principle which I have endeavored to identify was succinctly encapsulated by Rougier J in his judgment in **Revill v Newbery** when he concluded that the *ex turpi causa* principle applied only “if the injury complained of was so closely interwoven in the illegal or criminal act as to be virtually part of it or if it was a direct uninterrupted consequence of that illegal act.”⁶

- [87] Having decided that the shooting of Mandy was unlawful as it was unreasonable use of force given the findings of this Court, there is no need to discuss whether this doctrine applies. The defendant cannot seek to exculpate the Police from their own unlawful actions by relying on this doctrine in circumstances where the actions of PC Mc Vane in shooting Mandy have been found to be disproportionate and excessive.

⁵ SLUHCVP2003/0020, delivered 24th May 2004 (unreported)

⁶ At paragraph [9]

Conclusion

- [88] By way of conclusion, I do not accept that PC Mc Vane shot Mandy in self defence and I therefore find that the shooting of Mandy was unlawful and an excessive use of force in the circumstances. I also find that PC Mc Vane and PC Polius were negligent in their handling of Mandy from their first contact with him. The claimant is therefore entitled to damages and I now assess those damages.

The Measure of Damages

Special Damages

- [89] Ms. Louisy claims special damages in the sum of \$838.98 for funeral expenses which are not objected to by the defendant and so I award \$838.98 as special damages.

General Damages

Damages on behalf of the Estate of Mandy Louisy – Article 609

- [90] Article 609 of the **Civil Code** provides:

“609.

- (1) On the death of any person after the commencement of this Chapter, all causes of action subsisting against or vested in him or her shall survive against, or, as the case may be, for the benefit of, his or her succession:

...

- (2) Where a cause of action survives as aforesaid for the benefit of the succession of a deceased person, the damages recoverable for the benefit of the succession of that person—

(a) ...

(b) ...

- (c) Where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his or her succession consequent on his or her death, except that a sum in respect of funeral expenses may be included.

- (3) No proceedings shall be maintainable in respect of a cause of action in delict or quasi-delict which by virtue of this article has survived against the succession of a deceased person, unless either—

- (a) proceedings against him or her in respect of that cause of action were pending at the date of his or her death; or
 - (b) proceedings are taken in respect thereof not later than 6 months after his or her personal representative took out representation.
- (4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Chapter, to have been subsisting against him before his or her death such cause of action in respect of that act or omission as would have subsisted if he or she had died after the damage was suffered.
- (5) ...
- (6) ...”

A. Loss of Expectation of Life

[91] In the case of **Bertha Compton (nee Blaize) Qua Administratrix of the Estate of the late Macrina Blaize) v Dr. Christina Nathaniel et al**,⁷ Georges J [Ag.] said the following:

“Article 609 of the **Civil Code** permits the making of a conventional award for loss of expectation of life. As Lord Mance declared in delivering the opinion of Her Majesty's Board in *George v Eagle Air Services Ltd* (paragraph 5 supra) the abolition in England of such awards by the Administration of Justice Act 1982 section 1(20)(A) has been held by the Eastern Caribbean Court of Appeal to have no effect in Saint Lucia: *Mathurin v Augustin* (HCV 2007/041, 2nd June 2008). In order to accommodate inflation the standard sum under that head has progressively been uprated and indeed in ***Jallim v Ghirawoo (2003/0483, 17th February 2005)*** the Court of Appeal indicated obiter in relation to an accident occurring in October 2002 that in its view in 2005 the time had come to uprate the conventional award to **\$3,500.00**. Bearing in mind that the *George v Eagle Air Services Ltd* case related to an accident in 1990 the Board considered \$2,500.00 appropriate. In light of the prevailing trend as well as the decision of Shanks J in *Plummer et al v Conway Bay Ltd* Suit No. 1041 of 2000 increasing an award to \$3,000.00 which was subsequently upheld by the Court of Appeal and affirmed by the Privy Coun[cil] (No. 81 of 2006) I would myself award a like amount under that

⁷ SLUHCV2000/0031, delivered 20th August 2010 at para 9.

head which in fact accords with that suggested by counsel for each side.”
(my emphasis)

[92] There is no set scale for an award for loss of expectation of life and so the Court must take into account similar awards made in the jurisdiction whilst seeking to ensure consistency with such awards.

[93] Having perused the various cases and taking into account the pronouncement of the Court of Appeal in **Jallim v Ghirawoo**, I would award the sum of **\$5,000.00** for loss of expectation of life.

B. Pain and Suffering

[94] The medical report of Dr. Christy Daniel dated 23rd September 2013 referred to in the further amended statement of claim revealed that Mandy was admitted in the early hours of 9th August 2013 reportedly having been shot by the police. On examination, he had what appeared to be a bullet entry wound to the right lower back just above the iliac crest and a bullet exit wound in the epigastrium. Laparotomy was performed and the findings were:

- (a) large retroperitoneal hematoma on the right side;
- (b) through and through injury to his inferior vena cava just below the renal vein; and
- (c) perforation to the 1st part of the duodenal.

[95] The holes and duodenal perforation were repaired after which he was admitted to the Intensive Care Unit (ICU). On the morning round he was found to be unresponsive and his prognosis was poor. Mandy died at 9:45 a.m. that same day.

[96] The defendant in submissions proposed a sum of \$9,000.00 for pain and suffering. They referred to the case of **Enis St. Rose Johnson as Personal Representative of Cassandra Muriel St. Rose v Dr. Robertson Thomas et al**⁸ where the court found that the deceased suffered 5 ½ hours and awarded \$5,000.00.

⁸ DOMHCV2012/0329, delivered 3rd October 2014.

[97] The evidence clearly shows that Mandy was in pain and was holding his chest after he was shot. The witnesses for the defendant all testified to seeing Mandy bleeding from the chest. Mandy would have survived for approximately 8-9 hours before he succumbed to his injuries. In the case **Sandra Ann-Marie George (administrator of the Estate of Karlos George) v Nigel Don-Juan Glasgow**⁹ the award for pain and suffering was \$5,000.00 in 2017. The awards for pain and suffering range from \$1,500.00 to \$5,000.00 in most cases. However, since the defendant has proposed an award of \$9,000.00, I am prepared to award that sum for pain and suffering as an agreed figure.

C. Damages for the Lost Years (Loss of Earnings)

[98] In calculating the award for loss of earnings, the loss to the estate is what the deceased would have been likely to have available to save, spend or distribute after meeting the cost of his living at a standard which the job and career prospects at the time of death would suggest he was reasonably likely to achieve.

[99] Ms. Louisy's evidence is that Mandy was a trained boat captain. She says he was a healthy strong man standing over 6 feet tall. Ms. Louisy who was 52 years at the date of filing of her witness statement says she was unemployed at the time of the incident and is still unemployed. She says that she and her young daughter, Denisha Louisy who was 12 at the date of the statement are dependants of Mandy whom he supported financially by providing a monthly allowance of \$800.00 from his earnings as a boat captain.

[100] In cross-examination, when asked how much Mandy made a day as a boat captain, Ms. Louisy said she did not know how much he was working for. Then when it was suggested to her that Mandy was never working, she said he was working as a farmer but at the time of his death he was not working as a boat captain. She said he made \$60.00 a day as a farmer and worked every two weeks. In her statement

⁹ SVGHCV2011/0465, delivered 2nd February 2017.

given to the police on 12th August 2013, Ms. Louisy says ‘Mandy use[d] to work as a boat captain ... but it’s years now he not working’.

- [101] The defendant submits that given the state of the evidence of the claimant in this regard, no award should be made under this head relying on the case of **Peter Cherry et al v Trevor Trim et al**.¹⁰ I agree with the defendant that the state of the evidence of Mandy’s earnings is far from satisfactory. There is no evidence of when Mandy stopped working as a boat captain and how long he had been working as a farmer. That information is critical as it would assist the court in determining the extent of Mandy’s employment. There is no evidence of whether Mandy worked every day of the week when he did work. The lack of evidence renders it difficult to calculate the multiplicand and to find an applicable multiplier. In view of this, I decline to make an award for loss of earnings.

The Dependency Claim

- [102] Article 988(2), (3) and (10), of the **Civil Code** provide as follows:

“988.

(2) Where the death of a person is caused by a wrongful act, neglect or default which is such as would (if death had not ensued) have entitled the party injured to maintain an action for damages in respect of his or her injury thereby, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to felony.

(3) **Every such action shall be for the benefit of the wife or husband, and every parent and child of the person whose death has been caused**, but notwithstanding anything contained in this Code with regard to prescription, no such action shall be commenced at any time later than 3 years after the death of such deceased person.

...

(10) For the purposes of an action brought under this article, damages may be awarded in respect of the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought.” (My emphasis)

¹⁰ SLUHCV2011/0073, delivered 31st October 2013.

[103] It is clear that Ms. Louisy as Mandy's mother would be a dependant. The article does not refer to siblings as dependants and therefore Mandy's sister would not be a dependant for the purposes of this article. The evidence of Ms. Louisy is that she received \$800.00 monthly from Mandy from his earnings as a boat captain but the evidence as revealed during trial clearly shows that Mandy had ceased being a boat captain for years 'now' according to the statement which Ms. Louisy gave to the police. There is therefore no evidence to support the claim to a monthly allowance paid by Mandy.

[104] Even if the Court wished to make an award, there is just not sufficient evidence to be able to do so and would be pure speculation on the Court's part. The Court therefore agrees with the defendant's submission that no award should be made under this head.

Aggravated and Exemplary Damages

[105] Aggravated damages take into account the defendant's motives, conduct and manner of committing a wrong in so far as they may have aggravated the claimant's damage by injuring his proper feelings of dignity and pride. As I have found above, the police officers did not act in bad faith. I do not find that there was any conduct on their part which would call for an award of aggravated damages. The evidence does not support such an award. The police officers did attempt to assist Mandy by taking him to the hospital after the incident, were visibly shaken by the events of the night, and still appeared shaken at trial.

[106] Exemplary damages may be awarded in an action for trespass to the person where the trespass falls within one of the three categories in which such damages are generally available. The three categories were set out in **Rookes v Barnard**.¹¹ They are: (1) oppressive, arbitrary or unconstitutional actions by the servants of government; (2) where the defendant's conduct was 'calculated' to make a profit for himself; (3) any category in which exemplary damages are expressly

¹¹ [1964] AC 1129, [1964] 1 All ER 367, HL, per Devlin LJ.

authorised by statute. There may be such an award in an action against the police or other emanations of the State, where the conduct of police officers or other agents has been oppressive or arbitrary.

- [107] The police officers in this case made some decisions in how they handled Mandy that night as a result of poor exercise of judgment which ultimately led to use of excessive force which was not justified. However, I take into consideration that these were relatively young and inexperienced officers having been in the Police Force for five years (PC Mc Vane) and one year (PC Polius) respectively. I do not see that there was any conduct on the part of the officers which was oppressive or arbitrary. I do not think the police officers intended that things would have turned out the way they did. This was a case of the young enthusiastic officers eager to put their skills to work but making poor decisions in the process. I therefore make no award for aggravated or exemplary damages.

Order

- [108] In the premises, the Order is as follows:

(1) Judgment is entered for the claimant.

(2) The claimant is awarded the following:

Damages pursuant to article 609 of the Code:

- (a) Special damages in the sum of \$838.98 with interest thereon at the rate of 3% per annum from the date of the incident, 9th August 2013 to the date of judgment;
- (b) Damages for pain and suffering in the sum of \$9,000.00 with interest thereon at the rate of 6% per annum from the date of service of the claim to the date of judgment;
- (c) Damages for loss of expectation of life in the sum of \$5,000.00;
- (d) Interest on the global award of \$14,838.98 at the rate of 6% per annum from the date of judgment to the date of payment;
- (e) Prescribed costs to the claimant pursuant to CPR 65.5 in the sum of \$2,225.85.

No award is made in respect of loss of earnings or the dependency claim pursuant to article 988.

[109] I sincerely apologise to counsel and the parties for the delay in delivering this judgment.

**Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar