

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

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

SLUHCV2008/0179

BETWEEN:

ANDRE HALL

Claimant

and

THE ATTORNEY GENERAL

Defendant

Before:

The Hon. Mde. Justice Rosalyn E. Wilkinson

High Court Judge

Appearances:

Mr. Horace Fraser and with him Ms. Mary M. Francis for the Claimant

Mrs. Brender Portland-Reynolds and with her Ms. Jan Drysdale for the Defendant.

2017: November 22nd

JUDGMENT

[1] **WILKINSON, J.:** Mr. Hall filed his claim form and statement of claim on 18th February 2008, and thereafter an amended claim form and amended statement of claim on July 1st 2010. Therein he claimed special damages of \$9,300.00, general damages for assault, personal injury, pain and suffering, false imprisonment and trespass to property, exemplary damages, costs and interest.

[2] The Attorney General defended the claim. The amended defence pleaded that there was a warrant outstanding for the arrest of Mr. Hall who was wanted for the offence of unlawfully wounding with a cutlass Ms. Mary Chandler on Saturday 7th

July 2007 and the Police Officers went in search of Mr. Hall after receiving information from an informant to execute the warrant.

- [3] This matter unfortunately had a history of being started but due to applications for adjournment the hearing was protracted. The matter first came on for trial on 26th September 2011, and the trial commenced but was not completed. It was thereafter adjourned to a date to be fixed by the Registry. It next came on 22nd November 2011, and on that occasion it was adjourned to 3rd April 2012, because Counsel, Mr. Horace Fraser had to travel out of State to attend to personal family matters at Guyana and Counsel for the Attorney General, Mrs. Brender Portland-Reynolds also had to travel out of the State on Government business. The matter next came on for trial on 3rd April 2012, and the trial continued but was not concluded. It was fixed to continue on 27th November 2012. On 27th November 2012, witness for the Attorney-General, Police Constable Stanislaus Mitchell (formerly Stanislaus Menal) who was still under cross-examination was reported to be ill by Counsel for the Defendant and a medical certificate was presented to the Court. Police Constable Randy Paul who was to be the follow on witness was also on medical leave until 4th January 2013. The trial was adjourned to continue on 21st March 2013. The matter did not come on 21st March 2013, but next came on for continuation of the trial on 14th May 2013. On this occasion, Police Constable Mitchell was reported to be still on sick leave and with Counsel's agreement there was a break in the cross-examination of Police Constable Mitchell and the Court proceeded to the Attorney General's next witness, Sergeant Dexter Cumberbatch. Sergeant Cumberbatch's evidence was started but not concluded and the trial was fixed to continue on a date to be fixed by the Registrar. The matter next came on for continuation on 21st October 2013, before Justice Marlene Carter (Ag), and it being part-heard before this Court it was adjourned to 3rd March 2014. The matter was not fixed for continuation on 3rd March 2014, but next came on 10th February 2014, which was earlier than previously ordered. On 10th February 2014, lead Counsel, Mr. Horace Fraser was out of the State and Counsel present expressed surprise that the matter came on before 3rd March 2014, as previously ordered.

The matter was then rescheduled to continue on 3rd March 2014, as previously ordered by Carter J (Ag.). As scheduled on 3rd March 2014, the matter came on and the Court received the evidence of the remaining witnesses for the Attorney-General. At that hearing the witness statement of Police Constable Alleyn Prospere was struck out he having failed to appear at the trial.

Issue

- [4] The sole issue is whether the Police actions and in particular that of shooting Mr. Hall who was unarmed and whose back was to the Police at the time, were reasonable in the execution of a warrant for his arrest.

Evidence

- [5] The evidence save that Mr. Hall was shot is at polar opposites as to how the shooting occurred.

The Claimant's evidence

- [6] Mr. Hall who is also known by the nickname 'Siam' resided at Ciceron in the Quarter of Castries on 24th August 2007. There were disclosed several pictures of his house and the immediate vicinity. Sergeant Cumberbatch recognised Mr. Hall's house when cross-examined in regards to the building seen in the pictures.
- [7] Mr. Hall's house is comprised of 1 room, is located approximately 180 – 200 yards from the main road and is built on a small level area along the sloping land of a hillside. Mr. Hall said that he has been residing on the land for approximately 6 years. The house is constructed of plywood. There are no conventional windows of glass and wood or glass and metal combination. The single entrance and exit appears to be an average size door area with the door itself being a 2-piece, a top half and bottom half with each piece being able to be closed separately. The 2 halves as seen in the pictures disclosed were secured when closed from the inside by big deadbolts - 2 on the bottom half and 1 on the top half, and from the outside by a padlock on the top half of the door. There is also a much smaller opening

half-way up against one side of the house. The opening is covered by a small door of the same patterned plywood material as the side wherein it is located. It is attached with 2 hinges which are affixed on the outside of the building. There is no lock or padlock on the outside. A picture disclosed shows that it is closed by 2 deadbolts on the inside. Mr. Hall also disclosed a photograph which show a part of his house and another house in close proximity to his house. In another picture was also seen some banana trees off an area from the house.

- [8] Mr. Hall has no title to the land upon which his house is built. Under cross-examination when asked if he was the person responsible for clearing the area, and he responded "Yes."
- [9] Mr. Hall was born on 11th January 1981. At 24th August 2007, when he was shot, he was 26 years old, and prior to being shot he was employed by the construction company of Nelson and Associate. The general manager of the company, Mr. Oscar Nelson under letter (undated) confirmed that Mr. Hall had been employed with his company from January 2007 to August 2007, as a carpenter's assistant with a daily wage of \$70.00 per day. Mr. Hall was described as a diligent worker and a major asset to the company during the period of his employment. According to Mr. Nelson, Mr. Hall thru family members notified the company that he had sustained a serious bodily injury and so was no longer able to continue working for the company. Mr. Nelson said that since Mr. Hall's absence, the company had pursued 2 major projects and the interim carpenter had received an estimated \$14,000.00 to time of his writing (that being the equivalent of 200 work days).
- [10] Under cross-examination, Mr. Hall did not know Mr. Nelson but said that he was given the job by his friend, Seon and who was his boss on the job. He estimated that he had worked for Seon for approximately 3 months before he got shot.

- [11] According to the Police Officers at around 12:30 am to 1:00 a.m. on 24th August 2007, there was a full moon which enabled them to see their surroundings. Mr. Hall at this time was at his house with his girlfriend, Ms. Gina Williams. They were asleep in bed when around 1:00 a.m. he was suddenly awakened by a loud banging on the door of his house and before he could get out of bed, without warning and without permission, his door was kicked in. 6 Police Officers entered the room with guns drawn and surrounded his bed. All of the Police Officers were in uniforms and wore bullet proof vests. Following the shooting, he came to know the Police Officers save for Sergeant Cumberbatch whom he knew prior. The Police Officers who entered his house were Sergeant Cumberbatch, Police Constable Paul, Police Constable Mitchell, Police Constable Clifford, Police Constable Prospere, and Police Constable De Leon.
- [12] At the time Mr. Hall was only clothed in only his underpants and before he could move off his bed, he was told "Don't move." His response was to remain silent. He was then ordered to raise his hands in the air and get out of the house. Being afraid for his life, he complied. At the time he observed that Ms. Williams had followed him and the Police Officers outside of his house.
- [13] Once outside the house, with his hands still raised above his head, he heard Sergeant Cumberbatch say to him to lie face down on the ground. Whilst on the ground 2 other Police Officers placed his hands behind his back and pressed his hands down. Sergeant Cumberbatch then exchanged his long machine gun with one of the other Police Officers for a 12 gauge shotgun. Whilst still lying on the ground, Sergeant Cumberbatch shot him in his right leg at close range in the calf area and side of his knee. He felt his leg burning and flesh was blasted out of his calf area. He bled profusely and was in great pain. He heard Sergeant Cumberbatch say "Good job, he cannot run away."

- [14] After being shot, Mr. Hall said that he heard the Police Officers telling Ms. Williams to get back in the house or they would kill him, if she did not. He heard Ms. Williams say "Don't kill him. Don't kill him."
- [15] Mr. Hall was then ordered to get up from the ground by the Police Officers. He informed them that he was unable to walk and needed help. He heard Ms. Williams say to the Police Officers that it was not right for them to take him away without a shirt on. A Police Officer then asked Ms. Williams to get him a shirt which she did. He asked the Police Officers to use the shirt to tie his injured leg.
- [16] Mr. Hall told the Police Officers that he could not walk and they formed a human chain by holding hands to form a line and dragged him up the slope to where the Police vehicle was parked. During the course of dragging him up the hill he sustained several bruises and lacerations to his face, back and chest. He was put in a Police vehicle, in handcuffs and taken to the Victoria Hospital in the Quarter of Castries. At the Victoria Hospital he was warded in Ward 9 and handcuffed to the hospital bed. Upon his lawyer's intervention the handcuffs were removed approximately 3 days later. He was operated on by Dr. Richardson St. Rose, an orthopaedic surgeon on 17th October 2007, i.e 54 days later.
- [17] Mr. Hall was hospitalised from August 24th 2007 to October 29th 2007, a total of 67 days. Upon his release from Victoria Hospital he was taken directly to the Castries Central Police Station still under arrest.
- [18] According to Mr. Hall, up to October 27th 2007, when he was released from the Victoria Hospital and brought to the Castries Central Police Station, there was no warrant disclosed to him. At the Castries Central Police Station, Mr. Hall was charged, some 65 days later for wounding Ms. Mary Chandler on 7th July 2007.

- [19] Mr. Hall maintains that he was not informed by the Police Officers that they had a warrant for his arrest nor was he given any reason for the forced entry into his house. He denies the statement that the Police shouted at him "Siam, Police. Stop. We have a warrant for your arrest."
- [20] Mr. Hall further states that there being only 1 entrance and exit door to his house that he used this door when the Police asked him to get out of his house with his hands up and so it was untrue that he rushed out of a second door towards a cliff to escape when the Police Officers entered his house.
- [21] On discharge from the Victoria Hospital Mr. Hall says that Dr. St. Rose told him that he would require post-surgery treatment to avoid infection in his leg and so he regularly attended the Ciceron Health Centre between October 29th 2007, and December 31st 2007. It cost him \$40.00 per trip for a total cost of \$2,000.00.
- [22] Dr. Richardson St. Rose, FRSC issued a medical report dated 19th December 2007, and therein he described Mr. Hall's injuries as a compound fracture of the proximal ends of the right tibia fibula with much soft tissue loss, a large defect about the lateral aspect of the right knee joint and the lateral popliteal nerve was destroyed. He stated that Mr. Hall was admitted to hospital the same day that he received the wound and at that time it was cleaned and dressed. The wound was complicated by infection and necrotic tissue and bone. This was debrided on 27 September 2007. The large defect was covered by split skin grafting on 17th October 2007. Daily dressings were applied until the wound was clean. A satisfactory healing warranted Mr. Hall's discharge and he was discharged on 29th October 2007, and at that time he was being followed up at the surgical out-patients clinic. According to Dr. St. Rose, the late complications of Mr. Hall's injury will be chronic pain in his right knee due to arthritis and a permanent right foot drop due to the popliteal nerve injury. There will be a permanent disability of 40 percent. The invoice of \$100.00 for Dr. St. Rose's report was exhibited.

- [23] Mr. Hall says that he now walks with a limp and he is not able to stand for lengthy periods because of pain in his leg. He is therefore no longer able to continue to work in the construction industry.
- [24] Since being shot by the Police, Mr. Hall has been unemployed due to his disability. In this regard he claims a loss of salary for the period 24th August 2007 and 15th February 2008 (date claim filed) for a total of \$7,000.00.
- [25] At time of trial he was the father of 2 young children, a 4 month old daughter and a 2 year old son.
- [26] Under cross-examination Mr. Hall insisted that if he were to have jumped off the balcony as alleged by the Police Officers, he would have been heading down a precipice and he would break his leg.
- [27] Under cross-examination Mr. Hall admitted that he knew Ms. Mary Chandler who had filed a complaint with the Police against him. He and her daughter, Ms. Joanna Chandler were friends. He was also aware of the incident alleged between him and Ms. Mary Chandler and which could have led the Police to arrest him.
- [28] Ms. Gina Williams, Mr. Hall's girlfriend gave evidence on his behalf. They had been co-habiting for approximately 11/2 years in his one (1) room house at Ciceron. Ms. Williams was asleep when suddenly she was awakened by a loud banging noise on the door of the house. Next, without warning and on kicking in the door of the house, while Mr. Hall and herself were still in bed, she saw 6 Police Officers dressed in black Police uniform standing around the bed, armed with guns.
- [29] She later came to know the Police Officers to be Sergeant Cumberbatch, Police Constable Paul, Police Constable Mitchell, Police Constable Clifford, Police Constable Prospere and Police Constable De Leon.

- [30] She saw no warrant presented by the Police Officers to Mr. Hall.
- [31] She became afraid.
- [32] Ms. Williams heard the Police Officers say "Don't move." and then one of the Police Officers said to Mr. Hall "Put up your hands." Mr. Hall then put up his hands and stood up. Ms. Williams saw the Police Officers search Mr. Hall who was bare-backed and only wearing his underpants. Thereafter, the Police Officers searched the house and found nothing. Mr. Hall was ordered out of the house with his hands raised. Ms. Williams stood at the door of the house and began to cry.
- [33] On Mr. Hall reaching outside of the house, Ms. Williams heard the Police Officers order Mr. Hall to lie face down on the ground and she saw him do so. She saw 2 Police Officers standing on one (1) side of him Mr. Hall and they put their hands on his back and kept him pressed down into the ground. She saw Sergeant Cumberbatch holding a long machine gun and another Police Officer close to him held a 12 gauge shotgun. Sergeant Cumberbatch and the other Police Officer switched guns. The Police Officers then told her to get back into the house and that if she did not do so, they would kill Mr. Hall. She refused to obey them.
- [34] Ms. Williams then saw Sergeant Cumberbatch crank the 12 gauge shotgun and shoot Mr. Hall in his right leg. The shot blasted out a piece of flesh and left a deep hole. Mr. Hall's leg begun to bleed heavily and he appeared to her to be in pain. She started screaming and yelling at the Police Officers "Don't kill him. Don't kill him." One of the Police Officers then shouted at Ms. Williams "Shut up there. Shut up there, you are not hearing." Ms. Williams said that she began shouting louder so as to wake up the neighbourhood.
- [35] One of the Police Officers then entered the house saying: "Where are the weapons you have there? Where are the drugs you have there?" The Police

Officer found nothing in the house except for a cutlass which he took up and went back outside.

[36] Ms. Williams heard the Police Officers say to Mr. Hall "Let's go," Mr. Hall who was lying on the ground said, "Help me. I cannot walk. Help me." She then heard Sergeant Cumberbatch say "Good job, he cannot run away." The Police Officers repeated to Mr. Hall "Get up." Ms. Williams asked the Police Officers how they could take Mr. Hall away bare-backed and inquired if she could get him a shirt. She did so. Mr. Hall on receiving the shirt decided to have it tied around his leg to stop the bleeding and one of the Police Officers tied the shirt around Mr. Hall's leg. The Police Officers made a long line by holding hands and dragged Mr. Hall up the slope from the house, to the road where the Police vehicle was parked. Ms. Williams followed the Police Officers up the hill. The distance was approximately 200 yards. On the way, she heard one (1) of the Police Officers say, "How we get him that is how we will go with him." Ms. Williams also heard one of the Police Officers say to Mr. Hall "You lucky, if your girlfriend was not there, you would be a dead man."

[37] Ms. Williams saw Mr. Hall being put into the Police vehicle. 2 of the Police Officers sat in the back of the Police vehicle with Mr. Hall and 4 Police Officers sat in the front. One (1) of the Police Officers said to her, "We will not beat him. We will not kill him. Just go back and sleep." She replied "I cannot sleep there by myself. I must go by my sister who lives in the area." After the Police vehicle drove off, Ms. Williams said that she went to her sister's house where she related to her mother and sister the events of that morning.

[38] At sunrise Ms. Williams returned to Mr. Hall's house to search the ground for the piece of flesh torn off Mr. Hall's leg when he was shot. She nailed the busted door shut and returned to her mother's house.

[39] Later on in the morning of August 24th 2007, Ms. Williams went to the Victoria Hospital to visit with Mr. Hall. She found him lying on a bed in Ward 9. There was a cast on his leg. There was a lot of blood on the bed. She began to cry on seeing him. A Police Officer in uniform was guarding him.

[40] Ms. Williams says that when the Police Officers kicked in the door and entered the house that she did not hear any of them say that Mr. Hall was being arrested on a warrant.

[41] Ms. Williams confirms that there is only 1 door for entry and exit of the house and this was the door that was kicked in by the Police Officers. She denies that Mr. Hall tried to escape thru a second door as such does not exist. She denies that Mr. Hall got thru the second door, onto a balcony and then jumped down a cliff.

[42] Ms. Williams says that she has been emotionally affected by the incident.

The Defendant's evidence

[43] 3 of the 6 Police Officers present at Ciceron in the wee hours of the morning of 24th August 2007 gave evidence on behalf of the Defendant. They were Police Constable Paul, Police Constable Mitchell and Sergeant Cumberbatch.

[44] All 3 Police Officers said that - they reported for duty on 23rd August 2007, at approximately 7pm. During the course of that night, they, together with Police Constable Clifford, Police Constable Prospere and Police Constable Deleon went on mobile patrol. The 6 of them were a task force under the supervision of Sergeant Cumberbatch. Whilst on patrol a report was received of gunshots being fired in the Ciceron area. Sergeant Cumberbatch instructed Police Constable Clifford, their driver, to proceed to Ciceron.

- [45] At Ciceron they did not hear any shots. They searched a notorious area locally called "the Gulf" and their patrol turned up nothing. At around 12:30 a.m. of 24th August 2007, whilst still in Ciceron, an informant approached Sergeant Cumberbatch and provided information about Mr. Hall's whereabouts. At this time there was a warrant of arrest for Mr. Hall for the offence of wounding Ms. Mary Chandler. The informant took the Police Officers to an area in Ciceron known as "Monkey Town". This was the area where it was alleged that Mr. Hall was in hiding. At "Monkey Town", the informant and Sergeant Cumberbatch disembarked the Police vehicle and the informant identified the alleged hiding location of Mr. Hall. The location of the house was found to be on a hillside away from the main road.
- [46] Sergeant Cumberbatch thereafter instructed the Police Officers. Police Constable Clifford was to remain in the Police vehicle, Police Constable Prospere was to remain and keep secure the top of the hillside and the remaining Police Officers traversed the hillside down to Mr. Hall's house. According to the Police Officers, getting to Mr. Hall's house was not an easy trek because aside from the slope the Police found that there were many ropes and or material of fishing line like material tied from tree to tree with tins as noise makers attached. The Police Officers believed that they avoided the traps on their approach to Mr. Hall's house.
- [47] According to Police Constable Paul, upon reaching Mr. Hall's house, Sergeant Cumberbatch positioned the Police Officers at various locations around the house. He was positioned to the front right of the house whilst Police Constable Mitchell was positioned to the front left of the house.
- [48] From Police Constable Paul's position he noticed that there was a balcony at the front of the house and the door in the balcony was open. Then he heard sudden movement within the house and directed his torchlight at the front door area. He saw Mr. Hall coming thru the open door into the balcony. He shouted at him "Siam,

Police Stop. We have a warrant for your arrest.” Mr. Hall did not stop but instead proceeded to jump over the balcony and upon landing on the ground broke into a run. Police Constable Paul moved towards Mr. Hall in an attempt to block him but Mr. Hall managed to evade him. He saw Mr. Hall heading towards a bushy area near the house. He shouted again “Police Stop.” but Mr. Hall continued to run. Then suddenly heard a gunshot, saw Mr. Hall fall to the ground and roll down the hillside. Sergeant Cumberbatch, Police Constable Mitchell, Police Constable Deleon and himself immediately went down the hillside to Mr. Hall.

[49] According to Police Constable Mitchell, from his location he too was able to observe the balcony at the front of the house. He heard a movement within the house and he heard someone shout “Siam, Police Stop. We have a warrant for your arrest.” He then saw Mr. Hall jump from the balcony. He shouted “Stop Police” but Mr. Hall did not stop but rather continued running towards a bushy area. Police Constable Mitchell said that in an effort to prevent Mr. Hall’s escape, he aimed his gun at Mr. Hall’s lower body and fired one (1) round at him. Mr. Hall fell to the ground.

[50] According to Sergeant Cumberbatch after positioning the Police Officers, he proceeded to what seemed to be the main entrance and there he observed a padlock on the door. He shook it, and upon hearing activity inside the house he shouted to Mr. Hall that they had a warrant for his arrest. He then heard someone shout “Siam, Police Stop” and there followed a gunshot. He rushed to the other Police Officers surrounding the house.

[51] All of the Police Officers say that they did not enter Mr. Hall’s house.

[52] Sergeant Cumberbatch, Police Constable Paul and Police Constable Mitchell all went to the area where Mr. Hall fell when shot and saw that he had rolled down the hillside.

- [53] According to the Police Officers, while down the hillside Sergeant Cumberbatch used a rag which he received from another Police Officer and tied it around Mr. Hall's gunshot wound to prevent further bleeding. They then formed a human chain and brought Mr. Hall up the hillside to the small levelled area where the house was located. Mr. Hall was offered a shirt to put on but he opted to use it to tie his leg. The Police Officers save for Sergeant Cumberbatch then carried Mr. Hall to the Police vehicle which transported him to the Victoria Hospital where he was kept under Police guard.
- [54] Under cross-examination Police Constable Paul, confirmed that from where he was posted, there was an open door on the balcony but did not see any stairs to the balcony. He did not see Sergeant Cumberbatch climb onto the balcony or go to the door. He was approximately 4 to 5 feet away from the open door.
- [55] Under cross-examination Police Constable Paul said that he did try to block of Mr. Hall when he was running away by grabbing a hold of him along his torso. He did not continue running after Mr. Hall because he heard a shot and saw Mr. Hall fall. He said that Mr. Hall did not have time reach the bushy area before he was shot and he was at that time approximately 6 to 8 feet away from the balcony.
- [56] Under cross-examination Police Constable Mitchell said that he could not recall whether Mr. Hall was shirtless at the time in question. On 24th August 2007 he was carrying a 12 gauge shot gun. He shot Mr. Hall as a moving target when Mr. Hall was approximate 7-8 feet away from him. He agreed that to the best of his knowledge that the wound from the bullet was a "tearing shot". Police Constable Mitchell admitted that he did not say to Mr. Hall "Stop or I will shoot". He admitted that at the time when he shot Mr. Hall that he was not a threat to either him or any of his fellow Police Officers. He admitted that at the time he shot Mr. Hall he was not under lawful arrest. He said that the whole event took place in approximately 8 seconds.

- [57] Police Constable Mitchell admitted under cross-examination that a Police Officer was only required to discharge his firearm as a last resort. He admitted that he had made no effort to apprehend Mr. Hall, and that he shot him when he was running away from him. He admitted that at the time when he shot Mr. Hall, that Mr. Hall had no weapon.
- [58] On re-examination, it was put to Police Constable Mitchell that he was asked about the Police Force's standing orders on the use of force and what did he mean about using a firearm as a last resort. He responded that it meant that if all other levels of force had failed.
- [59] Under cross-examination Sergeant Cumberbatch said that when they returned to the top of the hillside near Mr. Hall's house, he saw Ms. Williams sitting on the edge of the balcony and he asked her for a shirt for Mr. Hall. She was not co-operative and he pulled himself up to the edge of the balcony and did a scan of the interior of the house. Ms. Williams then handed him a shirt. The shirt was given to Mr. Hall but instead of putting it on, he said that he would use it as extra padding for his leg.
- [60] Sergeant Cumberbatch agreed under cross-examination that there was another house in close proximity to Mr. Hall's house. He admits that on the night in question that he did not see the other house. He said that looking at the photos of the house he would not say there was a second door to enter the house but rather that there was another opening. He agreed that there was no step leading to the balcony. He said that he could not estimate the drop off the balcony to the ground. While he was part of the human chain that took Mr. Hall from down the hillside where he was found after being shot and back up to the level area where the house was located, he was not part of the team of Police Officers who took Mr. Hall to the Police vehicle.

[61] As to the use of the phrase “hiding location” to describe Mr. Hall’s house, Sergeant Cumberbatch said that he used the term “hiding location” to refer to Mr. Hall and to say that Mr. Hall was in hiding.

Findings and analysis

[62] Referring to the issue raised, the Court believes that the answer to the issue is addressed squarely within the evidence of Police Constable Mitchell.

[63] If accepted that there had been a warrant for the arrest of Mr. Hall for an incident which happened approximately 11/2 months earlier, there was no evidence of earlier efforts made to locate Mr. Hall and execute the warrant. It appears that Mr. Hall was residing in a house established at least in excess of the 11/2 months that the warrant had been issued and was outstanding, and so it seems rather convenient at the trial to call his house a “hiding location” (Police Constable Paul), or say that he was in “hiding” (all 3 Police Officers). None of this was proved. Indeed Mr. Hall said that he had been at the same location for approximately 6 years and he was employed, be it 3 or 7 months, and so would have been moving freely to and from his house and place of employment.

[64] As stated prior, the evidence of Mr. Hall and the Police Officers is at polar opposites. If the Court accepts Mr. Hall’s and Ms. Williams’ version of events, then an unarmed Mr. Hall who was not shown a warrant for his arrest and who was complying with Police orders was shot in his right leg.

[65] If the Court accepts the Police Officers’ version of events, it appears on looking at Police Constable Mitchell’s responses under cross-examination, that the conclusion must be that an unarmed Mr. Hall, who was not in any way challenging the Police Officers or threatening violence but was rather running away with his back to the Police Officers of whom at least 3 of them were but a short distance away from him, and in the clear view of Police Constable Mitchell, a decision was

made to shoot Mr. Hall by Police Constable Mitchell and he did shoot Mr. Hall in his lower body – his right leg.

- [66] The Police Officers confirmed that they did not show either Mr. Hall or Ms. Williams the warrant for arrest.
- [67] Police Constable Mitchell appears to have had a “knee jerk” reaction on seeing Mr. Hall running towards the bushy area. His reaction to Mr. Hall running away was certainly not acceptable. He knew better as he described under cross-examination, the shooting of anyone was one only to be applied as a matter of last resort. And dare say the Court, if confronted with similar force or threat. There were none of these circumstances present.
- [68] Accepting that there was a warrant for the arrest of Mr. Hall in connection with Ms. Mary Chandler then same would have entitled the Police Officers to go to the house of Mr. Hall, the Court however, rejects that the Police Constable Mitchell was entitled to shoot Mr. Hall in the circumstances described. He was at no time a threat to the Police Officers, further, he was running away with his back to the Police, and according to Police Constable Paul, Mr. Hall was between 6 to 8 feet away from the balcony when he was shot. All were in close range of each other.
- [69] The actions of Police Constable Mitchell being unacceptable and reprehensible, the Court believes that this is a case deserving not only of general damages for personal injuries but also of exemplary damages to show the Court’s disapproval of Police Constable Mitchell’s action of shooting Mr. Hall.
- [70] Judgment is entered for Mr. Hall on his claim for general and special damages arising out of his personal injuries on being shot. Exemplary damages are also awarded to show the Court’s disapproval of the shooting in the circumstances. All sums awarded are to be assessed in Chambers.

[71] Court's Order:

1. Judgment is entered for Mr. Hall.
2. General damages and special damages are awarded for personal injury and are to be assessed in Chambers.
3. Exemplary damages are awarded and are to be assessed in Chambers.
4. Interest is awarded from 18th February 2008 until payment.
5. Prescribed costs are awarded.

**Justice Rosalyn E. Wilkinson
High Court Judge**

By the Court

Registrar