

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SLUHCV 2005/0941

BETWEEN:

BRYAN FELIX

Claimant

and

[1] THE ATTORNEY GENERAL

[2] POLICE CONSTABLE 237 SEVERIUS MATHURIN

Defendants

Appearances:

Mrs. Lydia B. Faisal for Claimant

Mrs. V. Georgis Taylor-Alexander and Mr. Leslie Prospere for the Defendants

2009: June 17, 18;
2011: September 21.

JUDGMENT

[1] **GEORGES, J. [AG.]:** By amended statement of claim dated and filed 18th December 2006 the claimant in this action a 25-year old labourer/mason of New Development Soufriere claims general damages for personal injuries sustained at or in the vicinity of his residence as a result of his being shot in his left thigh with a revolver by the second defendant PC 237 Severius Mathurin about 10:45 on the night of Sunday, 3rd July 2005. Special damages (of an unspecified amount) for loss of earnings over a six week period are also claimed together with interest and costs.

[2] The claimant in accordance with section 13(2) of the **Crown Proceedings Act** has also instituted this action against the Government of Saint Lucia through its Attorney General as first defendant.

- [3] Particulars of injuries suffered are listed as follows:
- (i) soft tissue injury to the left thigh;
 - (ii) inability to undertake tasks associated with his masonry job for a period of six weeks;
 - (iii) preclusion from sporting and leisure activities which require significant weight bearing for a period of six weeks;
 - (iv) aching sensation of the left thigh with repeated episodes of near giving way of the left knee;
 - (v) difficulty in climbing ladders and stairs and walking long distances.

Claimant's case

- [4] The claimant's case in a nutshell is that about 10.45 on the night of Sunday 3rd July 2005 he was at his home in New Development Soufriere when he heard some commotion outside and on seeing his pregnant girlfriend in a crowd gathered in a yard nearby he proceeded down some stairs in the direction of the noise and the crowd but before he could reach the crowd whilst still descending the stairs the second defendant (PC Mathurin) shouted at him and then unlawfully and without cause shot him in his left thigh. The shooting he alleged was unwarranted and an arbitrary use of and abuse of the powers vested in him by the State.
- [5] The claimant further alleged in his statement of claim that whilst he was being treated later at St. Jude's Hospital in Vieux Fort he was removed by police officers before being discharged and without crutches or medication and driven in a police vehicle to Soufriere Police Station where he was placed in a cell and was subsequently charged with obstructing PC Mathurin whilst in the execution of his lawful duty and also with using threatening words and for assault. He was detained in custody until the following day he said when he was taken to court and was granted bail.

Defence Summary

- [6] Liability is denied by the defendants and more specifically the allegation of unlawful shooting of the claimant by PC Mathurin and the circumstances surrounding and culminating in the claimant being shot in his left thigh.

- [7] The defence account is that on the night in question whilst PC Mathurin was on duty at Soufriere Police Station someone made a complaint of a being assaulted near the claimant's residence whereupon he (PC Mathurin) together with another officer left the station to investigate the complainant. On that day first communion celebrations were said to be in sway in the Town of Soufriere as well as in the New Development community in the location of the alleged assault.

- [8] On arrival at the scene PC Mathurin attempted to and was effecting an arrest on one John Cadette when the claimant and some other persons obstructed him by stoning and beating him. In attempting to gain crowd control and to protect his life which he thought was endangered he drew and discharged his pistol and fired one round of ammunition into the air.

- [9] The crowd calmed down and withdrew from him following which the claimant resumed his attack on him with the crowd following and also resuming their attack on him. The claimant it is alleged was the main aggressor.

- [10] In defence of his life PC Mathurin alleged that he pointed his revolver at the claimant's thigh and discharged a round which action he claimed was consistent with standard police procedure and was done in necessary self defence by his using no more force than was reasonably necessary in the circumstances and in the lawful and bona fide execution of his duties to prevent the claimant obstructing him in the performance of his duties.

- [11] With regard to the personal injuries allegedly sustained by the claimant (as set out at paragraph 3) the defendants contend that they were caused or contributed to through the claimant's own fault and they would rely on the maxim *ex turpi causa haud oritur* – a cause of action will hardly arise from one's own wrongdoing. In

other words the claimant had only himself to blame for his misfortune.

[12] I pause here to observe that paragraph 8 relates how PC Mathurin (on the night in question) in attempting to gain control of the crowd and to protect his life which he thought was endangered drew and discharged his pistol and fired one round of ammunition into the air. The crowd calmed down and withdrew following which the claimant resumed his attack on him with the crowd following and also resuming their attack on him. The claimant was said to be the main aggressor (paragraph 9).

[13] In defence of his life PC Mathurin alleged that he then pointed the revolver at the claimant's thigh and discharged a round ... in necessary self defence using no more force than was reasonably necessary in the circumstances and in the lawful and bona fide execution of his duties to prevent the claimant from obstructing him in the performance of his duties. That as I see it is the crux of this case.

The Issues

[14] The fundamental issue then which falls to be determined is whether PC Mathurin shot the claimant in necessary self defence whilst in the lawful execution of his duties on the night of Sunday 3rd July 2005 at New Development Soufriere as he claims or whether the shooting could in all the circumstances be regarded as an arbitrary use and abuse of the power vested in him by the State as a police officer as the claimant contends and was thus unlawful? The answer lies in the court's assessment and critical analysis of the oral evidence and witness statements of the witnesses – including their demeanour at the witness stand especially under cross-examination and all of the surrounding circumstances.

The Law

[15] The issue in this case is largely one of fact as it is recognized and accepted that police officers are authorized by law to carry firearms. In the specific circumstances which obtained here however the claimant alleges that PC Mathurin exceeded his authority and abused the privilege accorded to him by using the

firearm entrusted to him in a manner which caused harm to him in circumstances which were unwarranted and legally unjustified.

The evidence

- [16] Four witnesses testified on behalf of the claimant. Firstly the claimant Bryan Felix in a 25-paragraph witness statement related how on Sunday, 3rd July 2005, there was a first communion party at his rented home (which was a house on pillars) in New Development Soufriere and that everything went well until about 10:00 p.m. when the son of the landlady of the house (Romauld Augustin) entered the premises with a cutlass and chopped the water pipes located at the foot of the steps leading to the house. There appears to have been an ongoing dispute between Augustin and the landlady (his mother) over ownership of the house. At the material time Augustin (that is the landlady's son) was said to have been quarrelling and using profane language. Some of the adults present were said to be upset and incensed by his behaviour and he was asked to leave which he did saying that this was not the end.
- [17] The claimant (at paragraph 7 of his witness statement) said about thirty minutes later whilst upstairs using the bathroom he heard loud talking and noise coming from outside. He hurried to finish what he was doing and headed towards the door leading downstairs and as he stood there he saw his pregnant girlfriend and a small crowd. He shouted to her and inquired what was going on but she did not respond whereupon he proceeded to descend the steps and just before reaching the bottom flight he said he heard someone shout "Ok! you coming too?" following which he heard a loud bang and felt a sharp pain in his left thigh and warm blood pouring down his leg.
- [18] He called to his girlfriend for help and asked who was the man who had shot him and after that he was not sure what else happened. He appears to have blacked out. The following day he woke up at St. Jude's Hospital in Vieux Fort he said. Later that day he said he was visited by two police officers who identified themselves to him and left having given him their contact numbers and asked him

to call them as soon as he felt able to as they needed a statement form from him regarding the shooting incident. At the time that he was shot he disclosed that he did not know that his assailant was in fact the second defendant PC 237 Mathurin as he was in plain clothes and he had no means of otherwise knowing.

- [19] Later that morning he continued three officers came to see him and inquired whether he was the person who had gotten shot the previous night at New Development in Soufriere and he said that he was. Two of them then left and one remained behind. When asked whether he had a gun with him the officer replied that he had and on inquiring why he needed a gun whilst talking to him he merely smiled but gave no reply to his question he said.
- [20] About twenty-five minutes later the two officers who had earlier left returned and informed him that they had to take him to the Vieux Fort Police Station to give a statement. He told them that he was not able to walk to the vehicle and had not yet received therapy, crutches or medication. He told them that he had not yet been discharged. The officers informed him that they would help him to get to the vehicle and would take him back after he had given the statement. He then asked why it was that they could not take the statement from him at the hospital because he knew that this was done all the time. They did not answer that question. He was very suspicious of the officers he said but he had no choice but to do as they said.
- [21] When they arrived at the Vieux Fort Police Station the officers asked him to sit in a chair where he remained for about five minutes. No statement was taken from him but he said they placed him instead inside of a van and proceeded in the direction of Soufriere. When he noticed that they drove past the entrance to the St. Jude's Hospital he asked them what was really going on and where they were taking him. He was then informed that he was being taken to the Soufriere Police Station whereupon he asked about his medication and crutches. He complained that he was sore and in great pain. The officers told him that his family would get him whatever he needed.

- [22] Upon their arrival at the Soufriere Police Station the officers helped him he said to get inside and then immediately afterwards they drove away. He was given a chair to sit in inside a small room. An officer then came to him and said that he was being held because he had three charges and a warrant for his arrest at Choiseul Police Station. He declared that he was totally shocked. He asked the officer about the warrant and what he was being charged for - what did he do and when did he do it? It was whilst the officer was explaining to him that he got to know that the man who had shot him was a police officer he disclosed. He complained about the charges and the warrant since he had done nothing at all. However the officer told him that his complaints were not his problem and that he would have his day in court on the following day.
- [23] They kept him at the station seated in the chair for the entire day he revealed. He was very sore and in great pain he said and was very uncomfortable in the chair and felt weak and drained. Later that evening he needed to use the bathroom. However no one came to give him any assistance but rather they pointed him in the direction of the bathroom. He tried to get up on his own but fell down to the floor. The wound started bleeding and soon the bandages were soaked up with blood. He cried out for help and explained that he needed a crutch or something to lean upon but he was ignored. He said that he complained that he had been taken from the hospital without being discharged and that he needed to see a doctor again. He was however ignored he lamented. Later that evening he said that his girlfriend visited him and she was permitted to tie a piece of cloth around the blood soaked wound. That night he said he slept on the cold concrete floor of the police station and throughout the night suffered severe pain in his thigh. The following morning he said he was taken to court and granted bail.
- [24] The next day he returned to the St. Jude's Hospital and he received therapy medication and crutches and also obtained six weeks sick leave as he was employed as a daily paid worker. After his sick leave was finished he was still in a lot of pain and suffered with muscular cramps. He was forced to remain at work he said as his family needed the money. He continued to be in a lot of pain so he

decided to visit a specialist at Tapion Hospital who explained the reason for the pain cramps and numbness that he had been and was feeling. He also explained why his leg gave way sometimes when he walked.

- [25] In conclusion he asserted that he had done absolutely nothing wrong when he was shot by the police officer. The charges that were later filed against him arose out of the police officer's abuse of his power. All their actions against him were oppressive and totally unwarranted he declared.

Cross-examination

- [26] In cross-examination the claimant confirmed that on Sunday 3rd July 2005 there was a first communion party at his home at New Development in Soufriere during which he was injured as a result of a bullet. Alcohol he said was being served at the party and he had had about four shots of Compari and a Guinness. It was actually John Cadette's party he explained for Cadette's 8 year old daughter by Sabina Hippolyte (aka Kurkurl) who was then pregnant with his (the claimant's) child. At the date of their witness statements – 24th October 2006 John Cadette and himself each had a child with Kurkurl he said. About 20 persons were present he said when the party started about 3:00 p.m. as well as children. Ms. Hippolyte estimated that there were about 35 persons present.
- [27] By 10 o' clock the crowd had reduced to about 12 adults and six children the claimant declared. Apart from his girlfriend and the children all the adults he said had participated in the drinks. John Cadette however testified that although he had bought the drinks he himself did not drink and had had no drinks. In his (the claimant's) opinion the adults and children present constituted a crowd and the party was going well and he was having a good time until a man named Romauld Augustin (also known as "Hungry Again") son of the landlady of the house which his girlfriend (Sabina Hippolyte alias Kurkurl) occupied entered the premises with a cutlass. He was aware of an ongoing dispute for some time regarding the ownership of the house between Romauld Augustin and the landlady who was his mother and that he had attempted on a number of occasions to put Sabina out.

- [28] Those attempts he said had proved futile and Mr. Augustin became frustrated with his mother as well as Sabina. On that evening he (Augustin) was quarelling and cursing after entering the property (which was built on stilts) and he proceeded to chop the pipes to the house thus disrupting the water supply whereupon an argument ensued between John Cadette and Mr. Augustin which he joined.
- [29] He denied hitting Mr. Augustin and hence there was no need for the crowd to restrain him from doing so. He added that there were lights under the house (where they were gathered) as well as a lamp post by the road. He alleged that he did not see when Mr. Augustin returned with the police as he was not around. He was in fact upstairs at the time he said using the bathroom. He said that he did not tell anyone that he was going there. Yet his girlfriend Sabina under cross-examination confirmed that he did tell her before the (shooting) incident that he was going to use the toilet (upstairs).
- [30] He further testified that when the police arrived he was not around so that he would not have known how many of them came as he was upstairs at the time. He was not aware of any reason why the police came to the scene he added. He could not think that anything had occurred at the party to justify or warrant their presence there. In his opinion they had no reason to be there and he himself he said had not done anything which would have brought them to the party.
- [31] Prior to the (shooting) incident he continued he had not known PC237 Severius Mathurin. He said that he did hear one gunshot that night and he was not downstairs at the time of the incident. PC Mathurin he declared did say prior to shooting him "OK! You coming too!" He was not aware that by then his friend John Cadette had been arrested. Following his being shot by PC Mathurin in his left thigh he was conveyed by motor car to the Soufriere Hospital and thence (by ambulance) to St. Jude's Hospital. From there he was taken by the police to Soufriere Police Station where he was arrested and charged with threatening behaviour and obstruction and detained overnight and taken to the Soufriere Magistrate's Court the following day where he was released on bail.

- [32] On further cross-examination he agreed that he was angry with Mr. Augustin on the night of the incident but said that it was untrue that because of his anger he encouraged persons at the party to beat the police nor did he himself participate in beating them that night. That on the other hand is one of the main planks of the defence case with PC Mathurin alleging that from the arrival of the police at the scene that night in a van driven by Mr. Augustin (as the police vehicle was not working) they were confronted by an angry and belligerent crowd and that efforts to prevent the situation from escalating resulted in further aggression and their being beaten and assaulted with the claimant Bryan Felix being the aggressor. There were allegations of stone throwing and a complaint by PC Mathurin of being struck on his right shoulder by a concrete block which was thrown by John Cadette who was subsequently arrested by him (for assault).
- [33] In concluding his cross-examination the claimant declared that he was determined to see PC Mathurin punished for the injuries which he had inflicted on him that night. He could not recall making a complaint against PC Mathurin to the Commissioner of Police or to the Police Complaints Unit. Nor did he know whether PC Mathurin was ever suspended or disciplined over the incident. He further disagreed that the police were simply trying to protect themselves that night from an incident which was provoked by him and by an angry mob/crowd. In answer to the Court the claimant asserted that he was shot whilst coming down the stairs from upstairs and had reached the bottom step.
- [34] John Cadette for his part confirmed that at about 10:45 p.m. Mr. Augustin had walked into the yard where his daughter's first communion party was being held carrying a cutlass and proceeded to the house where Sabina lived and where the party was being held and started chopping the pipes leading to the house.
- [35] After the chopping of the pipes Mr. Augustin he said approached him with certain accusations about the occupants of the house whereupon he (John Cadette) rebuked him for his behaviour and asked him to leave which he did hurling a string of obscenities at him. He returned half an hour later with two men one of whom

asked him who had hit him. All three of them were looking into the small crowd of people who were gathered near the road side he said.

[36] Paragraph 5 of John Cadette's statement reads:

"I spoke up and told Mr. Augustin, that after he had come here and had done this kind of thing (referring to the chopping of the pipes) that he had the guts to return with his friends to cause more trouble. After I had said this Mr. Augustin and I then got into an argument and almost got into a fight. It was then that one of the guys told me that he was going to arrest me. He then at the same time held the back of my trousers. I asked him why he wanted to arrest me when it was Mr. Augustin who had come here and chopped the pipes."

[37] At the same time he continued he saw Sabina lead the other man (PC Lafeuille) by the hand to see the damage which Mr. Augustin had done to the pipes but the man who was holding him (PC Mathurin) was reluctant to go but eventually followed them pulling him along by his trousers with the noisy crowd following.

[38] He then heard someone shouting to Kurkurl (Sabina Hippolyte) to get out of there and noticed that it was Bryan (the claimant) to whom the man who was holding him said "Ok! You coming too?" by which time the claimant who was descending the outside stairs was almost at the bottom of the steps leading to the yard when the man (who had been holding him at his trousers) shot Bryan in his thigh and then fired another bullet in the air which pierced the roof of the house. Bryan he said was left bleeding on the ground and neither of the two men paid any attention to him. The man who had shot Bryan he declared was never attacked by the crowd or anyone else and he had a gun in his hand from the time he came out of the car asking Mr. Augustin who had hit him.

[39] Rather curiously apart from Sabina Hippolyte his erstwhile girlfriend and mother of his eight year old daughter (the first communicant) John Cadette was the only witness who testified that PC Mathurin had fired a shot into the air after he had shot the claimant in his thigh. That surely does not seem to make any sense at all especially as both witnesses said that that bullet had pierced the roof of the house. In cross-examination Sgt. 368 Nicodilus Augustin told the court that he went to the

scene the following day and had a look at the area and was not shown a hole in the galvanize roof of the building which the second shot allegedly fired by PC Mathurin had pierced. And in this regard it is my considered view and I accept as both reasonable and credible the testimony of PC Severius Mathurin that when his colleague and himself were besieged in the yard and being beaten by the angry and belligerent crowd he first fired a shot into the air to protect themselves and to quell the escalating violence. That briefly halted and calmed the crowd PC Mathurin said until the claimant again resumed his aggression towards himself and his colleague followed by the crowd and he then fired a round of ammunition directed at the claimant's left thigh in self defence and in keeping with standard police procedures. He thought he said that his life was then endangered.

[40] No one apart from John Cadette asserted as he did (at paragraph 13 of his witness statement) that the man who shot Bryan was never attacked by any crowd or anyone else and that he had a gun in his hand from the time he came out of the car asking Mr. Augustin who had hit him. The evidence in fact revealed that the police arrived at the scene that night **in a van** driven by Mr. Augustin (as the police vehicle was not working) and the officers and Mr. Augustin alighted. There was a crowd of people gathered beneath a house on pillars where there was much laughter. The officers began walking into the yard and the crowd started moving towards them in an apparently agitated and belligerent mood.

[41] Mr. Augustin had earlier lodged a complaint at the Soufriere Police Station that he had been attacked by the claimant when he was explaining to persons present including John Cadette and the claimant why he had cut the pipelines of the house where the first communion party was being held. The listeners were angry and infuriated and the claimant according to Mr. Augustin began attacking him and some persons tried restraining him. He therefore decided to walk away and whilst his back was turned someone knocked him behind his head and he decided to make a report to the Soufriere Police Station.

[42] On arrival of the two police officers and himself at the scene he was asked to

identify the person who had attacked him and he pointed to the claimant who at that point turned away from the police and proceeded to walk from the nearby road where the van was parked back into the yard. Notwithstanding several requests by the police to him to come to them for questioning the claimant declined and continued on his way further into the yard away from the officers who followed him into the yard with the crowd in the yard coming angrily and threateningly towards Mr. Augustin who thereupon beat a hasty retreat to the safety of his vehicle.

- [43] It was PC 237 Severius Mathurin accompanied by PC 627 Anthony Lafeuille both in plain clothes who responded to Mr. Romauld Augustin's complaint/report about 10:00 p.m. on the night of Sunday 3rd July 2005 to the scene of the alleged assault at New Development Soufriere with PC Mathurin being armed with a service revolver. On arrival at the scene PC Mathurin stated that he and his colleague alighted from the vehicle and started walking into the yard and the crowd began moving towards them in what appeared to be an agitated and belligerent mood. There was a great deal of shouting, quarelling and obscenities coming from them according to him so the officers left the yard and returned to the road and stood near Mr. Augustin's van.

- [44] Continuing in chief PC Mathurin said that about that time someone from the crowd said:

"After Hungry came here and do all his things he still go and look for police to bring here."

A man whose name he later found out to be John Cadette then said:

"That is my child first communion party and Hungry come here and do havoc; I must do something with him tonight."

Romauld Augustin it seemed was the person being referred to as "Hungry" the officer pointed out whereupon PC Mathurin said he declared to the crowd at the top of his voice that he and his colleague (PC Anthony Lafeuille) were police officers who had received a report and came to put peace if there was a problem and he thereupon called on Mr. Augustin to identify the offending person whereupon he pointed to someone in the crowd.

- [45] Just as he was turning to see who it was he said he saw John Cadette from the corner of his eye throw a stone in his direction which struck him on his right shoulder whereupon he immediately drew his revolver from his waist and pointed it downwards and turned back in Mr. Cadette's direction. He sensed by then that the crowd was becoming more agitated and uncontrollable and some people came and restrained Mr. Cadette adding that he then realized no more stones were being thrown so he replaced the firearm and tried to approach Mr. Cadette but several people from the crowd immediately assaulted him and pushed him away to keep him from Mr. Cadette. He was pulled in all different directions at once he declared but he kept focused on Mr. Cadette and noticed that he left the crowd and headed to a house at the back of the house on pillars where the party was being held. Having freed himself from the crowd and called PC Lafeuille he solicited his help in arresting Mr. Cadette for earlier assaulting him with the stone.
- [46] They both proceeded to the house where they met Mr. Cadette on the steps of the front door and he told him that he was arresting him for assaulting him with a stone and cautioned him following which he (Mr. Cadette) apologized and said that he had thrown the stone behind Hungry and agreed to cooperate with the police who held him and started walking down the steps.
- [47] It is at that point as they were moving down the steps that PC Mathurin said he heard someone from the crowd say: "You eh going nowhere with no f.....g (expletive) officer!" and a man whom he later found out was Bryan Felix the claimant exclaimed "Mikey make that faggot drop you boy!" and they all began raining blows on him in an effort to free Mr. Cadette. PC Mathurin said that he received several blows to his body which began to ache severely by which time he became separated from his colleague who was also under attack. He himself thought that his life was in danger he declared and drew his revolver and discharged a round in the air. Instantly all became quiet he said and the assaults stopped. However the claimant then shouted "That small that eh mean nothing."
- [48] He then immediately again found himself under attack from the claimant and the

rest of the crowd and someone jumped on his back and grabbed his throat whereupon he fell down backward but was able to fight his way back to his feet. The claimant he said was right there all the time hitting him punching him all over his chest and abdomen. He felt his life was in danger. During this time the firearm was still in his hand and out his side. The claimant he said showed no intention of stop punching him so he pointed the revolver at his thigh and discharged a round as this seemed the only way of stopping his assault on him.

[49] The claimant thereupon ceased his attack and backed away. The crowd on noticing that he had been shot immediately stopped beating him and retreated. He called for ambulance but a white car took the claimant away before its arrival. It was only then PC Mathurin declared that Mr. Cadette stopped resisting whereupon PC Lafeuille and himself returned to the Soufriere Police Station with Mr. Cadette who was subsequently charged for assaulting him and the claimant for insulting words and obstruction.

[50] In cross-examination PC Severius Mathurin disclosed that at the time of the incident he had been a police officer for a little over three years. PC Lafeuille was his senior he added. He (PC Mathurin) was armed when they visited the scene in question. He was supposed to be armed as the Standard Police Procedure says that at least one police officer attending a scene has to be armed.

[51] Mr. Romauld Augustin he said was the only person who came to make a report at the time in question. He was not aware that Mr. Augustin had caused damage to the water pipes five times before that. He became aware that he had damaged the water pipes of the house the day after the incident. He had taken no action for criminal damage he said.

[52] Mr. Augustin had made a report to him at the Soufriere Police Station on the day in question against a young man known to him as Features for assault following which he left with a service revolver on Mr. Augustin's van for the scene. At the time of the report he saw no graze marks or scratches anywhere on Mr. Augustin's person he said.

- [53] On arrival at the scene PC Mathurin said he heard laughter coming from the crowd. He got the impression that the people were in a happy mood. When they alighted from the vehicle the crowd began moving towards them and appeared to be agitated and belligerent. He did not alight from the vehicle carrying a pistol he said. He and his colleague were in plain clothes. He went on to confirm that sometime after their arrival at the scene someone in the crowd said "After Hungry come here and do all his things he still go and look for police to bring here." He did not question Mr. Augustin about the statement made by a person in the crowd. He was not then aware that the complainant was the person referred to as Hungry.
- [54] He affirmed that he had identified himself and his colleague to the crowd and said that they had received a report and had come to put peace. He denied asking Mr. Augustin to identify the person who had hit him. At paragraph 16 of his witness statement he declared that (on arrival at the scene) he and his colleague did ask Mr. Augustin to identify the offending person and he did indicate someone in the crowd.
- [55] He could not explain why the mood of the crowd had changed shortly after their arrival. After he and PC Lafeuille had alighted from the van Mr. Augustin who was the driver got out of his seat and they converged. The crowd then began shouting comments referring to Hungry. PC Mathurin declared that he was hit by a stone (not a concrete block as alleged elsewhere) on the back of his right shoulder and it was painful. He went to the doctor subsequently he said. He removed the pistol from his waist after he was struck at which point he said the claimant had not yet got into the picture. It was after he had arrested John Cadette he said that the claimant became involved.
- [56] He affirmed that he knew who threw the stone which struck him at the back of his right shoulder because as he was turning around he saw the person throw the stone from the corner of his eyes and before it struck him. The distance he said was not that far to have permitted him to take evasive action he pointed out. This strikes me as both logical and credible and I believe him. He assumed – and in

my view quite correctly – that after he had removed the firearm from his waist everyone saw that he had it. He subsequently replaced it in his waist he said. Prior to that he had observed that some people from the crowd came and held John Cadette back and he also realized that no more stones were being thrown. However several people from the crowd immediately assaulted him by pushing him away in an apparent effort to keep him away from getting to Mr. Cadette whereupon he called on PC Lafeuille to assist him in arresting Mr. Cadette. He (PC Lafeuille) had by then freed himself from the crowd and had gone to the house so he called to him for assistance. When he met him on the steps of the house he (PC Mathurin) spoke to him and Mr. Cadette spoke to PC Mathurin.

[57] He denied putting up a story to cover up his wrong doing. Speaking for myself I am fully satisfied that generally speaking PC Mathurin has given a cogent coherent and truthful account of what occurred at New Development Soufriere on the night of Sunday 3rd July 2005. He impressed as a credible witness and by and large his evidence tallied with that of PC Lafeuille. They both impressed as being frank and trustworthy.

[58] In hindsight I realize that I may have spent more time than was probably necessary in recapitulating and sifting the evidence of the four principal protagonists in this unfortunate saga – namely the claimant Bryan Felix and the witness John Cadette on the one hand and the second defendant PC 237 Severius Mathurin and PC Anthony Lafeuille who accompanied him to the scene at New Development Soufriere on the night in question consequent upon a report at the Soufriere Police Station by Romauld Augustin of his being attacked and subsequently assaulted there by someone who had hit him at the back of his head.

[59] The gist of the claimant's case as I see it is that following the arrival of the police at the scene a fracas initially broke out in the yard of the house between the police and an angry and belligerent crowd following on the arrest of John Cadette for striking PC Mathurin at the back of his right shoulder with a stone.

- [60] The confrontation between the crowd and the police as well as the stone throwing appears to have quelled for a while but soon resumed with intensity when the crowd led by the claimant as the main aggressor in an attempt to free John Cadette began raining blows on PC Mathurin pushing him. By then he had become separated from PC Lafeuille who had gone over to the house at the instigation of Sabina Hippolyte to view the chopped pipes and was also under attack. Fearing for his own life and safety PC Mathurin drew his revolver and discharged a round in the air when all at once became quiet and the assaults on him ceased.
- [61] This however did not deter the claimant who with the rest of the crowd once again attacked him causing him to fall backwards. On regaining his feet he still found himself under siege especially by the claimant. He felt his life was in danger and with his firearm still in his hand at his side he pointed the revolver at the claimant's thigh and discharged a round which seemed to be the only way of curtailing the unrelenting assaults on him by the claimant for he thereupon stopped his attack and withdrew.
- [62] The claimant's account on the other hand is that he was no where in the vicinity of or in the yard of the house when the police arrived at the scene on the night in question as he had gone to use the bathroom upstairs from where he heard loud talking and noise coming from outside so he hurried up and came out of the bathroom and on looking out saw his girlfriend Sabina who was then pregnant with his child in a crowd of people and he asked her what was going on. She did not apparently hear him or respond and as a result he continued down the steps and just before reaching the bottom of the flight of steps someone shouted out "Oh! You coming too!" and then he heard a loud bang and felt a sharp pain in his left thigh and felt warm blood pouring down his leg whereupon he called out to his girlfriend for help and asked her who had shot him. He was not sure what else happened he declared but the next day he woke up at the St. Jude's Hospital.
- [63] I pause to point out that in cross-examination the claimant maintained that he had

not told anyone that he was going upstairs to use the bathroom but his girlfriend Sabina insisted under cross-examination that he had in fact told her so. She further said that she was standing next to him at the foot of the stairs when he got shot yet he testified that after he got shot he called out to her for help. At paragraph 7 of his witness statement he stated that whilst he was upstairs using the bathroom he had heard loud talking and noise coming from outside and on hurrying and looking out (from upstairs) he saw Sabina and a small crowd in the yard. He then began descending the stairway.

- [64] In light of the foregoing it is palpably plain that the claimant's account that he was shot in his left thigh by PC Mathurin on the bottom step of the stairway of the house on the night in question for no apparent reason is not true and ought in my view to be rejected. And Sabina Hippolyte's effort to assist him in that regard has merely served to condemn him for the inconsistencies in her evidence clearly undermine the veracity of his own account of his whereabouts immediately prior to his being shot. On the whole she impressed as a witness with an interest of her own to serve.
- [65] Judging from the preponderance of the evidence as a whole and the coherence of PC Mathurin's testimony which largely tallied with that of PC Lafeuille I have no hesitation in accepting the defendants' account as being an accurate credible and trustworthy version of what occurred at New Development Soufriere on the night of 3rd July 2005 in preference to that of the claimant and his witnesses.
- [66] I am further fully satisfied that PC Mathurin's use of his service revolver was in all the circumstances within the ambit of the statutory powers of arrest in keeping with section 23(c) of the **Police Act** Cap 14.01 of the Revised Laws of St. Lucia 2005.
- [67] Further Article 570(2) of the **Criminal Code** of St. Lucia Act No. 9 of 2004 delineates the police power of arrest thus:

"Any police officer may arrest without warrant anyone who is or whom he or she with reasonable cause suspects to be in the act of committing or about to commit, an offence.

Those statutory powers of arrest must however be exercised consistently with the requirements of Article 571 of the **Criminal Code** which prescribes that:

“A person may use such force as is reasonable in the circumstances in the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of a person unlawfully at large.”

The question is did the second defendant use reasonable force in attempting to apprehend the claimant.

[68] As related earlier in the judgment the claimant and the crowd assaulted the second defendant in an attempt to prevent Mr. Cadette's arrest with the claimant and the rest of the crowd raining blows on him in their apparent effort to free Mr. Cadette. PC Mathurin said he received several blows to his body which ached severely. The claimant punched him in his chest and abdomen and showed no intention of relenting. He thought his life was in danger. His colleague PC Lafeuille was himself at the time under siege attempting to deflect and repel the unrelenting assaults from the crowd. It was then that PC Mathurin initially attempted to diffuse the assault by discharging a single round into the air but this proved to be of no avail as the assaults on him led by the claimant and the crowd persisted unabated and in defence of his life and for the protection of his own safety PC Mathurin was in the circumstances driven to shoot the claimant in his left thigh which succeeded in quelling and abating the escalating violence on his person by the claimant who was leading and pressing the assault aided and abetted by the belligerent crowd.

[69] I entertain no doubt whatsoever and I am fully convinced that the use of the service revolver by PC Mathurin in those circumstances was reasonable use of force in self defence of himself and I so hold.

[70] **Clarke and Lindsell on Torts** Fifteenth Edition paragraph 8-02 defines self defence in the following terms:

“it is lawful for one man to use force towards another in the defence of his own person, but this force must not transgress the reasonable limits of the occasion, what is reasonable being a question of fact in each case.”

The evidence adduced shows that PC Mathurin was under serious and incessant

assaults from the claimant and the crowd of people at the first communion celebrations. The evidence also shows that PC Mathurin felt that his life was at the time in imminent danger. In the circumstances his use of the firearm as he did was an entirely reasonable use of force in defence of his life and limb.

[71] In the result the claim against the defendants is dismissed with agreed costs of \$5,000.00 to the defendants.



Ephraim Georges
High Court Judge [Ag.]