



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2008 HCV 01057

BETWEEN MELVIN SMALLING 1ST CLAIMANT

BETWEEN MAURICE SMALLING 2ND CLAIMANT

A N D DETECTIVE CORPORAL EVON BLAKE 1ST DEFENDANT

A N D DETECTIVE CORPORAL CLIFF COLEMAN 2ND DEFENDANT

**A N D UNNAMED POLICE OFFICERS
STATIONED AT THE PORTMORE
POLICE STATION 3RD DEFENDANT**

A N D THE COMMISSIONER OF POLICE 4TH DEFENDANT

A N D THE ATTORNEY GENERAL 5TH DEFENDANT

AND

CONSOLIDATED WITH: CLAIM NO. 2009 HCV 05358

BETWEEN MAURICE SMALLING CLAIMANT

A N D DETECTIVE CORPORAL EVON BLAKE 1ST DEFENDANT

A N D DETECTIVE CORPORAL CLIFF COLEMAN 2ND DEFENDANT

**A N D UNNAMED POLICE OFFICERS
STATIONED AT THE PORTMORE
POLICE STATION 3RD DEFENDANT**

A N D THE COMMISSIONER OF POLICE 4TH DEFENDANT

A N D THE ATTORNEY GENERAL 5TH DEFENDANT

Mr. Sylvester Hemmings for claimants.

Mrs. Deidre Pinnock instructed by Director of State Proceedings for the 5th defendant.

Heard: 16th, 17th, 19th October, 2012

EVAN BROWN, J

[1] These consolidated claims involving Melvin and Maurice Smalling were filed on March 4, 2008, and they arose out of an incident which took place in 2007, that is, on the 21st of February, 2007 Ash Wednesday, a public holiday.

[2] The claimants in their amended particulars claim negligence and this negligence that the 1st defendant, who is not before me in the capacity of a defendant, as I was told that only the 5th defendant, the Attorney General, was in fact served but the person named in the claim as the 1st defendant was the chief actor on the side of the defence, that he recklessly shot the claimants and conspired together further aggravating the claimants' injuries and also there are particulars for unlawful, malicious and arbitrary arrest.

[3] That the 1st, 2nd, and 3rd defendants maliciously conspired to cover up their criminal and/or negligent actions by unlawfully, arbitrarily and maliciously arresting the claimant, jailing the claimant in inhumane condition, arresting and detaining the claimant without any reasonable cause or excuse; and it goes on, the 1st defendant conspiring with the 2nd defendant in breaching the claimants' rights to liberty and justice and particulars of aggravated damages are set out, also particulars of exemplary damages, particulars of injuries as well are set out and there's a head for Special Damages amounting to some \$163,500.00.

[4] General Damages claims are for negligent and malicious shooting of the claimant, unlawful and malicious arrest and detention and arrest, pain and suffering, physical and psychological, aggravated damages, exemplary damages, interest costs and other such benefits as the court may deem fit.

[5] Well, the defence filed in answer to the charges in the Particulars of Claim in sum amounts to a justification, justified shooting; that the 1st defendant was acting in lawful self-defence of himself and others and also the particulars concerning the alleged treatment of the claimants, those are denied.

[6] So it boils down then to the quality of the evidence that was led before the court and I remind myself that I'm sitting in the civil arena and consequently the standard of proof to which the case for the claimants must rise is that only on a balance of probabilities.

[7] Now what has struck the court is that this incident wasn't one in which there was a police operation which had gone bad. That is not what is being said, it is not one in which it is being said that there was a drunken police officer. Although questions were asked of the officer to suggest, and I respectfully think that counsel was really fishing, because on none of the statements from the claimants is there any allegation that the 1st defendant appeared to be drunk. So although those questions were asked and I do believe I disallowed some of them, the allegation really isn't that this was a drunken policeman who just was having fun with his licenced firearm.

[8] What is being said on both sides is that, and counsel for the claimants was candid enough in the latter part of his submission to say that he wanted to put the case in the context of the officer being zealous but he used interchangeably zealous and over-zealous. But he went on to say because we admit something happened but he went further, that is the submission continued, the officer went further to implicate so as to cover his over-zealousness in very serious crimes.

[9] So the submission as I understand it then, is that, there is a convergence of the case for the claimants and the case for the defendant, that there was something, that something happen out there but if I understand it further counsel seem to be suggesting that the officer didn't stop to make the appropriate

inquiries as someone charged with the responsibility to serve and protect, but he was trigger happy and because he was trigger happy. I don't know he said over-zealous so he's conceding it appears to me that something happen to alert him to as a police officer but being over-zealous he fired first, then sought to ask questions after and consequently the answers that he got didn't quite match up so there was this plot to cover up his actions.

[10] And this is a convenient way at which to start, in fact that's where the incident originates, so D/Cpl. Blake is on his own personal business and armed with his personal firearm, not one issued by the Jamaica Constabulary Force; and there is this, shall I call it excitement, excitement in the Kens Wild Flower Entertainment area and he intervened he said and he was shot at.

[11] The case for the claimants, they say truth is stranger than fiction but the case for the claimants is rather very strange I find, and as I recall the evidence it is that both gentlemen were at that entertainment area. Maurice wanted to leave as he became bored, Melvin accommodated him, Melvin was the driver of the car, he went ahead to get the car and while he was in that act a woman, apparently unknown to him, came into his car and asked him to take her home and she did so as she told him apparently she was being pursued by robbers or thieves, but he was unwilling to leave his cousin. Apart from that the congestion, the congestion at the place was such that he could not leave there in any haste. So he got out of the car followed by her, at least that's what he said in court, and no sooner had he travelled a couple paces than he heard "don't move". He said saw this brown man with the firearm and next thing he was shot. So without any questions being asked of him he was just shot.

[12] Maurice who was nearby said he saw the D/Cpl. Blake confronting Melvin and he just started firing shots and he said he was about 12 feet from him and he went to the ground, got shot in one hand and when that was happening he feared for his life so he got up and started to take himself from the area and whilst doing

that he received another shot to his other hand. So, on the accounts of both gentlemen this was an unwarranted shooting and on that account counsel would be right that it is a case of an officer being over-zealous.

[13] On the other hand, the defendants through the mouth of D/Cpl. Blake are saying that they saw what appeared to be, well there was some confrontation between – perhaps confrontation isn't the word I should use but his attention was drawn to the car by the voices of females, and those are my words, and he saw one on the ground came out of the car on the ground and another came out and shouting for 'help'.

[14] In addition to that he saw one gunman chasing the female who ran out and during all of this he said he took cover behind a utility pole and sometime there after there was shooting between himself, one man who came out of the car stood by the car and the man who first came out of the car with a firearm. He specifically said Melvin did not shoot at him.

[15] All right, so, as I said it is a strange case for the claimants. Well I saw them in the box all of them at the benefit of seeing them and I wrestled with this case from the out of court preparation and that is where I started where I did that this is not a case of a police officer operation gone bad or a drunken police officer out of control. As I watched D/Cpl. Blake he struck me as a conscientious policeman and I formed the view, and so find that it was the intervention of a conscientious police officer that night, not a drunken police officer. Since I find that he was not a drunken police officer but a conscientious police officer, there had to have been a reason for the shooting. He didn't strike me as a trigger happy, Corporal. So what was the reason for the shooting?

[16] Both Maurice and Melvin have said that D/Cpl. Blake was the only man out there shooting that night. So, if he was the only man out there shooting then it gives me pause that Maurice said from the witness box that when he reported

the incident he told the police that he was shot in a shoot-out and he clearly understood the meaning of a shoot-out. He said that this would have been a gun fight between, I think he said more than two people, but he gave me no doubt, he left me in no doubt that he understood a shoot-out. So why say there was a shoot-out, that he was shot in a shoot-out if he only saw one man shooting at him?

[17] It does not have the ring of truth to it. When he is going to say it was a shoot-out it is either it was a blatant lie, in my judgment, or he never saw the shooting. But he clearly saw the shooting. So if he saw the shooting why was he telling a lie that he was shot in a shoot-out? Well that's not the only thing that he said; but that in my judgment gives cause for pause and on a consideration of all the evidence I am firmly of the view, that D/Cpl. Blake was shot at. And in the circumstances since, he observed what he did and there is a man at first shooting at him, then what should he have done?

[18] And I bear in mind notwithstanding the submission that it was crowded, that D/Cpl. Blake said that where the incident happened it was that part was not crowded because this was some distance away. No entertainment was taken place in that area where the car was so I accept that. Not that there wasn't a lot of people in the general area but in the particular locale of this shooting, that it was not crowded. It would have been another thing if he was being shot at and he shot back into the crowd.

[19] I find it difficult to accept and I reject that D/Cpl. Blake was that a trigger happy cop on the night, I do not accept that. I find that he observed the claimants and another in what appeared to have been a commission of a felony. I find that he challenged them by saying "don't move" and the response was to shoot at him; and I find he shot in response to the shooting at him.

[20] Now the claimant Melvin Smalling, the evidence is that he did not shoot at D/Cpl. Blake but I accept D/Cpl. Blake's evidence that a man came from the car with an exposed firearm and he having come from the car with an exposed firearm. The claimant, Melvin Smalling, knew that this other person had a firearm. There is no doubt about that. So since he knew that that person had a firearm and relating that to the female screams earlier and he was the driver of the motor car so his role there was clearly to be the man to take them away from the scene. So he knew they were armed, at least one of them had brandish this firearm so he knew that. So although he didn't shoot at the officer, he was part and parcel of the criminal enterprise on that night.

[21] On both sides it is agreed that Melvin Smalling was kept in custody after the failure to point him out on the identification parade. But as I understand the law an officer need not be armed with the warrant to arrest a man concerning it. He just has to be aware of it and Melvin himself said that he was told so, that there was this warrant and that's what the officer said he released him but somebody else said he should remain in custody because there was this unexecuted traffic court warrant. So the officer himself is saying he released him but other personnel and Melvin himself said there was this warrant. So he was told of it and later on it was produced albeit after he had left the police station and attending the Spanish Town Court but all of this goes to show that the argument that he was kept in custody was not one contrived but was based in fact. And I so find.

[22] So I do not find that the claim had been proved in any respect. I accept the submissions made by Ms. Pinnock with the one qualification that I have put on it concerning the detention of Melvin between the 9th and the 14th of March, 2007. I do not accept Melvin's evidence that he was being driven around. I accept that he was taken straight to the hospital, I accept that. I do not accept that the police officers, essentially man-handled the medical personnel, and told

them to deliver up the men to them so that they could cart them off to the lock ups.

[23] And the absence of medical records at the Spanish Town Hospital is not in my view evidence of the claimant Maurice Smalling that that is the reason there is no record there for him. I do not accept it because it does not lead inexorably to that conclusion. On a balance of probabilities I find that there was reasonable and probable cause to have arrested both claimants.

[24] I find that the shooting of both of them was justified on the evidence before me. I find that Mr. Melvin Smalling he got back his money, that is \$3,500.00, there's no proper claim there. Long and short of it is, I don't find the case against the defendant proved and I give judgment for the 5th defendant who only is before me. The costs follow the cause to the 5th defendant to be agreed or taxed.