

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW

SUIT NO. C.L. 1996 L-00103

BETWEEN HYACINTH LAWRENCE CLAIMANT
AND CONSTABLE RICHARD DAVIS 1ST DEFENDANT

AND THE ATTORNEY GENERAL 2ND DEFENDANT
 OF JAMAICA

Ms. Stephanie Orr and Ms. S. Wolfe instructed by Crafton S. Miller & Co for the Claimant;

Mrs. Amina Maknoon and Mrs. Trudy-Ann Dixon Frith instructed by the Director of State Proceedings for the Defendants

Heard on March 7 and 30, 2007

ANDERSON J.

This most unfortunate incident involving the Claimant, then a Sergeant of Police in the JCF, took place on July 27, 1994, over twelve years ago and, even perhaps more regrettable, is only now coming on for final resolution.

According to the Claimant, she was shot by a fellow officer, Constable Richard Davis, the 1st Defendant, on the night of July, 27, 1994, when he discharged his firearm apparently to thwart the violent attack upon the Claimant's person by one Michael Perry, a man later determined to be of unsound mind. The evidence of the Claimant, as contained in her witness statement given in 2006, sets out one set of circumstances. However, in cross examination, Mrs. Lawrence gave a different version of the sequence and indeed, her testimony before this court, conflicted in significant and material particulars from the allegations in a statement made to the police, a mere two months after the incident. In court and under cross examination, she admits that she did not see and does not know, who shot her and her evidence is confused as to whether she was shot while she lay on the floor or while she was running away from her attacker towards the CIB office. The basic rule is that "He who alleges must

prove". The Claimant must prove her case on a balance of probabilities. Has the Claimant established her case on this basis?

She was not able to recall many of the items of expenditure which she alleges she incurred as a result of her injury. In her original statement, she said she was shot by Constable Christopher Anderson while in her witness statement she says she was shot by Constable Davis. The evidence of the defence witness, Det. Corporal Anderson, who was on duty with Constable Davis that evening, is that three shots were fired. The first by him, Anderson; the second and third were shots, both from Constable Davis' firearm, were fired during the course of a struggle between Constable Davis, in the course of which the gun came out of the holster and the third shot hit Sergeant Lawrence.

The Claimant says that when she first saw the man later identified as Michael Perry, she was sitting on a bench with other officers. He was in front of the station nude, behaving boisterously and shouting obscenities. She said she saw him enter the station. She said she sat there for about two minutes observing him but did nothing. After that time had elapsed, she got up to "find out what he was all about" when he attacked her.

I have some difficulty in accepting that she was sitting on a the porch of a police station on a bench with other officers, and that she stayed on that bench for two minutes doing nothing while observing a nude man, obviously mentally ill and behaving boisterously.

She is also not clear on whether she was shot by a bullet which was discharged by Anderson, or by a bullet fired from the firearm of Constable Davis.

It is difficult to put together a coherent series of events from Mrs. Lawrence's testimony. On the other hand, I found the testimony of then Constable Anderson straightforward and credible. I accept his recall of the events of that fateful evening/morning. He said that the people on duty were himself, Constable Davis and Sergeant Reid. He had come on to the 11:00 p.m. to 7:00 a.m. shift. He and Davis were in the guard room and Lawrence had finished her duties. He cannot remember exactly where Sergeant Reid was at the time of the start of the incident.

It seems to me that on a balance of probabilities, Mrs. Lawrence was injured when the gun carried by Cons. Davis discharged when he struggled with Michael Perry who had attacked Sgt Lawrence. That there is no evidence that Constable Davis actually pulled the trigger and fired at the intruder. Rather, on a balance of probabilities, it appears that the firearm did go off during the struggle. But even if he had deliberately fired a shot in order to assist in apprehending the intruder, there is probably a good defence under section 33 of the Constabulary Force Act which protects a constable from liability for injury occasioned to an innocent bystander during the course of his duty. The section provides:

Every action to be brought against any constable for any act done by him in the execution of his office, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such act was done either maliciously or without reasonable or probable cause.; and if at the trial of any such action the plaintiff shall fail to prove such allegation he shall be non-suited or a verdict shall be given for the defendant.

It is clear that the 1st Defendant was acting "in the execution of his office" as set out in section 13 of the Constabulary Force Act, when he tried to thwart the attack on Sgt. Lawrence by Michael Perry. There is no allegation or evidence of malice or of failure to meet the test of reasonable or probable cause on the part of the 1st Defendant and so an action against him in negligence must fail.

I also accept the submission of Defendants' attorneys-at-law that, as a matter of public policy, since the 1st Defendant was engaged in the suppression of a crime, he is immune from an action for negligence. (See Hill v Chief Constable of West Yorkshire, [1988] 2 All E R 238.) Costello v Chief Constable of Northumbria Police [1998] 1 All ER 550 is also authority for the proposition that where a police officer is attacked by an assailant, another officer who witnesses that attack is under a duty to come to the officer's aid. And, as stated by May L.J. in that case:

If a police officer tries to protect a fellow police officer from attack, but fails to prevent injury to the fellow officer, there should generally be no liability in tort. The relationship between two police officers is arguably closer than a relationship between a police officer and a member of the public, but public policy considerations are essentially the same. One such consideration is that in the circumstances liability should not turn on, and the court should not have to enquire into, shades of personal judgment and courage in the heat of a potentially dangerous moment.

Nor do I find that there is any evidence that the Crown had been negligent or had breached its duty to provide a safe place of work. There was no evidence to support the view that the fact that there was no gate at the station made it an unsafe place of employment. It would be inappropriate to have a gate so secure that it kept out citizens, including the mentally ill, with legitimate complaints and rights to protection. I do not accept, nor does the evidence which I accept support the allegation that there were no batons to subdue would be intruders. The submission that there was negligence in not providing training to deal with mentally ill persons who may be violent ignores the fact that the police are trained in dealing with violent persons, be they mentally ill or not.

I accordingly find that the Claimant has failed to establish liability for either negligence, or breach of duty to provide a safe place of employment. I find for the Defendants and award costs against the Claimant to be taxed if not agreed.