

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim No. SLUHCV 2008/0309

BETWEEN:

BERNARD AUGUSTE

Claimant

And

IAN JOSEPH

Defendant

Appearances:

Mr. Horace Fraser for the Claimant
Mrs. Petra Nelson for the Defendant

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2009: June 9
June 26
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JUDGMENT

COTTLE J:

[1] This is a claim for damages for assault and battery by the Defendant on the body of the Claimant.

[2] On Saturday 5th January 2008 the Defendant was at his business place, the Wintrade Supermarket at La Clery. The Claimant entered the supermarket. His furtive behavior excited the suspicions of the Defendant and his staff who had been victims of theft many times previously. The Defendant observed the Claimant slip items off the shelf into a bag he was carrying. The Defendant left the supermarket through a rear door intending to accost the Claimant on his exit from the supermarket.

- [3] Eileen Myers, an employee had also been observing the Claimant. She saw him slip packages of saltfish into his bag and try to leave without paying the cashier.
- [4] She grabbed the bag the Claimant was carrying and with the aid of another worker, she tried to detain the Claimant. He was able to evade them and fled on foot. By this time this Defendant was able to come around to the front of the building. He saw the Claimant some distance away. He got into his vehicle and drove to the Claimant. He came out and pointed his licensed firearm at the Claimant. There is dispute between the parties as to what happened next. The Claimant says he told the defendant that he had no saltfish. He pulled out his pocket and raised his shirt to show he had none. The Defendant became irate at this and discharged his firearm at the Claimant hitting him in the chest. He was taken to hospital. He received treatment and was discharged a few days later. There were no complications to his injury but at the time of trial there was still a bullet lodged in his chest. This may well require surgical removal at some point.
- [5] The Defendant says he confronted the Claimant. He had his firearm pointed at him. The Claimant raised his hands. He said he had no saltfish. He then lowered his hands and reached for his waist area. The Defendant said he did not know what the Claimant was reaching for. He felt threatened and discharged a single round striking the Claimant in his chest.

Findings:

- [6] From the evidence presented the court got a picture of a fraught scene. Both men were tense. It is easy to see that in that situation misjudgments are apt to occur. The Claimant had stolen the Defendant's property from the supermarket. The Defendant was trying to apprehend the Claimant. In the tension of the moment the Claimant made a movement which the Defendant reasonably regarded as threatening. He cannot be faulted for his action.

- [7] It is fortunate that the outcome of this episode is that the Claimant has fully recovered from what could easily have been a fatal wound. Indeed it emerged a cross examination that the Claimant had been shot before. He had been shot in the head by the proprietor of a gas station at his business place in circumstances which were not gone into at the trial of this matter.
- [8] I find that the defendant in this case has not breached any duty of care to the Claimant. The Defendant acted reasonably in defence of his person when he felt threatened by the actions of the Claimant who he reasonably believed to be a criminal.
- [9] The claim is dismissed. I award the Defendant costs on the prescribed scale in the sum of \$14,000.00

BRIAN COTTLE
High Court Judge