

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO SLUHCV 2009/0227

BETWEEN:

CLAUDIUS CHARLES

Claimant

And

THE ATTORNEY GENERAL OF SAINT LUCIA

Defendant

Appearances:

Mr. Alvin St. Clair for the Claimant

Ms. Karen Barnard for the Defendant

2010: October 18th, 26th

2012: February 28th

JUDGMENT

[1] **WILKINSON J.:** Mr. Claudius Charles by his claim form and statement of claim sought from the Crown for the actions of PC 556 Patrice Francis the following relief:

- (1) General damages;
- (2) Special damages of \$2,760.00;
- (3) Aggravated and exemplary damages;
- (4) Interest;
- (5) Costs.

The injuries for which loss and damages are claimed arise from a shooting incident.

- [2] The Crown admitted that PC 556 Francis (hereinafter PC Francis) was its representative and alleged that he was acting reasonably in defence of himself to a number of imminent threats against his personal safety. The Crown has also pleaded that it relies upon the maxim *ex turpi causa non oritur actio*.

Issues

- [3] (1) Whether the force used by PC Francis was reasonable in all the circumstances.
- (2) Whether the injury for which damages are sought is a direct consequence of Mr. Charles' actions.

The Evidence

- [4] Between 7:10p.m – 7:30p.m on October 7th 2008, Mr. Charles was driving along the Chausee road after dropping off his girlfriend at the hospital with his young son with the intention to visit with his brother at Marchand. At about the same time PC Francis, a veteran traffic police officer of approximately 15 years, attached to the Traffic Department of the Royal Saint Lucia Police Force, in uniform on his Police motor cycle with the two (2) front pursuit and beacon patrol lights all turned on was riding along the Chausee road as well when he observed a black motor car bearing licence registration number PE 1788 travelling immediately ahead of him in a line of vehicles travelling towards the direction of Marchand. Mr. Charles was driving the black motor car.

- [5] PC Francis observed that as he got closer to the black motor car, the motor car suddenly accelerated, drove onto the right side of the road, overtook several vehicles in the line that were stopped at a red light then made a left turn up the Leslie Land road. PC Francis activated his siren and pursued the motor car. This was the beginning of what was to be a long pursuit by PC Francis of the driver of the black motor car. Under cross-examination, Mr. Charles admitted to travelling the route described by PC Francis in his witness statement although he denied overtaking any vehicles or failing to stop at the traffic lights when they were on red or behind any line of traffic stopped at the red light.
- [6] The route travelled was up the one-way Leslie Land road to Entrepot road, through Water Works road, through Independence City, over Independence City road back to Entrepot road to the T junction where left leads to the Leon Hess Comprehensive School and here the motor car made a right turn down the hill and another right turn so as to start to travel in the direction of Castries. The motor car went along Water Works road once again then made a right turn back onto the Chausee road. It travelled along the Chausee road and upon reaching the Jeremie Street intersection, it overtook a line of motor vehicles which were stopped at the traffic light and then made a right turn onto the La Pansee road. For a brief moment PC Francis lost sight of the black motor car when he was hindered by a motor vehicle turning from Jeremie Street onto the Chausee road, and then he saw the black motor car when he turned onto the La Pansee road. The black motor car had slowed due to traffic congestion but on the sound of PC Francis' siren the road opened up and the black motor car took off speeding up the La Pansee road with PC Francis in pursuit. PC Francis turned off his siren but continued with beacon and pursuit lights on to follow the black motor car. On arrival at the La Clery and La Pansee by-pass, a T junction, there was a truck negotiating the right hand corner. The black motor car attempted to overtake the truck along its right side; it went into a skid and stopped. PC Francis stopped behind the black motor car. The motor car reversed quickly in the direction of PC Francis and he immediately took evasive action by turning the motor cycle out of

junction. The black motor car then took off to the right up the La Pansee road, made a right onto the Morne Du Don road, went pass the Morne Du Don Primary School up the incline in the direction of Agard, all this time with PC Francis in pursuit. Shortly after passing the Morne Du Don Primary School up the incline there was a left hand corner where there were two (2) motor vehicles one behind the other negotiating the corner. The black motor car proceeded to overtake the two (2) motor vehicles at the corner by driving on the right side of the road and there it drove into the debris of a mudslide. It is at this juncture that the shooting incident happened and this is really where the evidence from all the witnesses is truly conflicting.

- [7] Mr. Charles said that when he reached the Morne Du Don Primary School he heard two (2) shots fired and the siren come on. This caused him to stop the black motor car and pull over. PC Charles then rode around his motor car on the left, stopped in front of the motor car, got off the motor cycle and started running towards him with his gun in his hand and when he was about ten (10) feet away, he told him to get out of the motor car. He got out of the motor car and was about 5 feet from the motor car when PC Francis shot him in his leg.
- [8] PC Francis said that after the motor car was forced to stop on the right side of the road in the debris, he stopped his motor cycle, disembarked and carefully approached from the rear of the motor car. On approaching, he heard the loud revving sound of the motor car's engine and as he got near the right side of the motor car, he saw the driver's door open with the driver getting out at the same time, they were in one action. The driver made a dash towards him, and he said loudly "Stop! Stop! Stop!" The driver failed to stop and instead turned around and quickly reached into the motor car in the area of the driver's seat with his right hand. PC Francis feeling a great sense of fear and believing his life in imminent danger pulled his gun, discharged one shot hitting Mr. Charles in his leg.

- [9] Mr. Charles' witness, Mr. David Castang said that he was walking down the Morne Du Don road and was by the Hilltop shop, this being in the opposite direction of which Mr. Charles and PC Francis were travelling, when he saw PC Francis get off his motor cycle with his gun in his hands, heard him say something to Mr. Charles, saw Mr. Charles get out of the motor car and then Mr. Charles walked away from the motor car. When Mr. Charles was "a good" ten (10) feet from the motor car, he saw PC Francis shoot Mr. Charles in his leg. Under cross-examination he said that the shop was two (2) miles from where Mr. Charles go shot and Mr. Charles was inside the car when he got shot and the car was one (1) mile away when Mr. Charles got shot. He then changed the location of Mr. Charles when he was shot to being outside the motor car.
- [10] Under cross-examination Mr. Castang said that he knew Mr. Charles for "awhile", then he changed this to "around 6 months" and then once again he changed to from since 2002. He said that Mr. Charles and himself were very good friends "for now". He said that PC Francis was walking on one side of the road and he on the other side towards the motor vehicle. He also said that Mr. Charles had his driver's window down.
- [11] According to PC Francis there were several incidents along the way between Mr. Charles and himself. The black motor car moved quickly, overtaking motor vehicles along the route, failing to stop at red lights, failing to stop despite the siren, and reaching a speed of about 80 miles per hour when it returned to Chausee road. Other incidents were that as the black motor car travelled up the one-way Leslie Land road just before the Lastic Hill intersection the motor car slowed down at a speed bump and PC Francis rode up alongside the driver's side of the motor car and told Mr. Charles to stop but instead of stopping he swerved towards PC Francis almost causing his motor cycle to fall into the drain running alongside the road. On arrival in the vicinity of the Entrepot Health centre, the motor car came to a sudden stop, and as PC Francis disembarked the motor

cycle, the motor car suddenly reversed at high speed towards PC Francis. PC Francis pulled out his gun and discharged one bullet in the direction of the rear right tyre of the motor car. The motor car stopped reversing and took off with PC Francis once again in pursuit. There was also the previously described reversing incident at the La Clery and La Pansee by-pass.

- [12] Mr. Charles under cross-examination admitted that he was driving without a valid driver's licence, that he could not remember the registration number on the motor car, that it was not a valid registration for the motor car, and that the motor car was not insured. He also said that he was driving with his windows up.

Findings

- [13] There was no evidence to show that Mr. Charles and PC Francis knew each other before October 7th 2008, and there was no evidence that PC Francis knew of the admitted road traffic violations of Mr. Charles. It is the Court's view, that there was weighing on Mr. Charles' mind his violations of the Motor Vehicle and Road Traffic Act¹ and on seeing PC Francis with his beacon and 2 pursuit lights on behind him on the Chausee road, he immediately sought to take evasive action. His evasive action alerted and got the attention of PC Francis. It was Mr. Charles own actions which triggered the pursuit by PC Francis.
- [14] The Court believes the evidence of PC Francis over that of Mr. Charles and his witness, Mr. Castang. There were too many inconsistencies and contradictions in the evidence of both Mr. Charles and Mr. Castang.
- [15] During cross-examination because the Court was not clear whether Mr. Castang had a clear sense of the measurement of distance in feet and miles, he was asked

¹ Act 10 of 2003.

for an estimation of the length of the courtroom and he said it was around 10 feet. Counsel for Mr. Charles estimated 20 – 25 feet. The net result for the Court was that his sense of measurement was not absurdly out of all proportion.

- [16] The Court will deal first with the evidence of Mr. Castang. Mr. Castang said that he knew Mr. Charles for about six (6) months and this meant that he knew him since 2002. When it was put to him that 2002 would mean nearly 6 years, he repeated that he knew Mr. Charles for 6 months. He then said that he was by the Hilltop shop when he saw Mr. Charles get shot, this shop being as he said about 2 miles away from where Mr. Charles got shot. The Court doesn't believe that it was possible to see the incident from two (2) miles away. He said that he heard PC Charles tell Mr. Charles something (ostensibly from 2 miles away at the Hilltop shop) and he saw Mr. Charles get out of his motor car, walk away from the motor car, and when he was approximately 10 feet from the motor car he was shot. Under cross-examination the location of Mr. Charles in relation to the motor car at the time he got shot varied. First, he was in his motor car and then he changed that statement to say he was out of the motor car and that Mr. Charles was not besides the motor car but that the motor car was one (1) mile away from Mr. Charles. A statement he repeated under re-examination.
- [17] Mr. Castang's and Mr. Charles contradicted each other on the state of the driver's window. Mr. Castang said that the driver's window was down. Mr. Charles said that his windows were up.
- [18] Further observations are that although Mr. Castang said that he and PC Francis were walking down the road together albeit on opposite sides of the road, he did not hear what was said to Mr. Charles several feet away which caused Mr. Charles to get out of the motor car. Secondly, he said he saw PC Francis get off his motor cycle with his gun in his hands, and he was walking beside him albeit

opposite sides of the road yet he never felt threatened by the alleged openly drawn gun.

- [19] By reason of the contradictions and other observations of the Court, the Court does not feel able to rely on the evidence of Mr. Castang.
- [20] Mr. Charles' evidence in his witness statement and under cross-examination conflicted on several matters. In his witness statement, he said that he saw PC Francis riding behind him from Leslie Land road and throughout the rest of the route. Under cross-examination Mr. Charles said that he only saw PC Francis intermittently behind him and this was when he was first on Chausee road, when he returned to Chausee road heading towards Jeremie junction, when he went right onto La Pansee off Chausee road, and on the Morne Du Don a little higher up than the Morne Du Don Primary School.
- [21] What is clear from both Mr. Charles' witness statement and his evidence under cross-examination is firstly, that Mr. Charles was aware that PC Francis was pursuing him, and secondly, Mr. Charles did not or refused to slow down and stop at the earliest opportunity.
- [22] In his witness statement, Mr. Charles said that it was not until he reached above the Morne Du Don School that he heard two (2) shots fired and heard the siren come on. Under cross-examination he admitted that he did hear a shot fired when he was on Independence City road although he said he was unclear whether it was coming from behind him. Under cross-examination Mr. Charles further admitted to hearing the siren when he was at La Pansee. On the sound of the siren, he never yielded or pulled his motor car to the side of the road so as to allow PC Francis through or to stop.

- [23] Curiously, Mr. Charles never explained why eventually he stopped on the right hand side of the road when he was driving on the left hand side of the road. PC Francis explained this when he said that Mr. Charles went to the right hand side of the road to overtake the motor cars in front of him. Mr. Castang also put Mr. Charles on the right side of the road as he said that in walking towards Mr. Charles, the motor car was on his left.
- [24] The Court also does not accept the evidence of Mr. Charles or Mr. Castang that PC Francis approached Mr. Charles from the front of the motor car. It would not seem reasonable that PC Francis would put himself in front of the car where the driver could be unpredictable as was demonstrated by his previous attempts to reverse or swerve on him.
- [25] If even, the Court were for a moment to give Mr. Charles the benefit of the doubt, that he did not hear PC Francis say three (3) times to STOP and there being no evidence of weapons or narcotics in Mr. Charles' car, Mr. Charles had demonstrated by his prior actions of reversing in the direct path of PC Francis at his rear and swerving at PC Francis that he could well use his motor car as a weapon to do damage to PC Francis. While the motor car was prevented from going forward because of the debris, there was nothing to stop Mr. Charles from letting down the handbrake and so causing the car to roll back down the incline towards PC Francis, or attempting to jump in the car and reverse once again in the path of PC Francis and then take off.
- [26] The Court finds Mr. Charles prior actions in how he used his motor car compounded with his movement of putting his right hand back into the car on seeing PC Francis approaching him to be sufficient to warrant PC Francis suspecting and apprehending a danger to his person, and to act in self defence by discharging his gun.

[27] The Court accepts the Crown's plea of the maxim ex turpi causa non oritur action².

[28] Mr. Charles' claim is struck out.

[29] Court's order:

- (1) The claim is struck out.
- (2) No order as to costs.

Rosalyn E. Wilkinson
High Court Judge

² Saint Lucia Civil Appeal No.2003/0020 The Attorney General of Saint Lucia, Francis Dariah v. Donavan Isidore.