

THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

SAINT LUCIA

[1] CLAIM NO. SLUHCV2023/0300

BETWEEN:

MARLEY SIMEON

Claimant

-and-

THE ATTORNEY GENERAL OF SAINT LUCIA

Defendant

[2] CLAIM NO. SLUHCV2023/0320

BETWEEN:

TROYSTAN JN PIERRE

Claimant

-and-

THE ATTORNEY GENERAL OF SAINT LUCIA

Defendant

Before the Honourable Mr. Justice Alvin Shiva Pariagsingh

Appearances: Mr. Alvin St. Clair for the Claimant in [1]
Mr. David Francis and Mr. Mikel King for the Claimant in [2]
Mrs. Rochelle John- Charles and Ms. Tia Austin for the Defendants in
both claims.

2025: September 16, 17, 18, 19 – Trial
October 17 – visit to locus in quo
November 24, 25, 26 – Trial
2026: March 31 – Claimant’s [1] Primary Submissions
March 31 -Defendant’s Primary Submissions in both claims
April 01 – Claimant’s [2] Primary Submissions
April 02 – Claimant’s [1] Submissions in Reply
April 14 – Defendant’s Submissions in Reply
June 25 – Decision

JUDGMENT

INTRODUCTION:

- [1] **PARIAGSINGH, J:** - These claims arise from a serious shooting incident which occurred outside Empire 758 in Laborie during the early hours of 11 February 2023. In the course of that incident, police officers discharged their firearms at Eric Thomas in a public area. Eric Thomas died as a result of gunshot injuries. The two Claimants, Marley Simeon and Troystan Jn Pierre, each sustained serious gunshot injuries. They now seek damages.
- [2] The Claimants were not participants in the confrontation between Eric Thomas and the police officers. Their respective cases are that they were innocent members of the public who were shot when the officers discharged their firearms in circumstances where persons remained in the immediate area. The Defendant disputes that either Claimant was shot by a police firearm and contends that the officers acted reasonably and lawfully in response to an armed threat.

DISPOSITION:

- [3] Having considered the pleadings, the oral and documentary evidence, the CCTV footage, the evidence given under cross-examination and the written submissions of the parties, I accept the Claimants' evidence on the material circumstances in which they were injured. Where the evidence of the police officer's conflicts with that of the Claimants on the decisive exchange of gunfire, I reject the officers' account for the reasons set out in this judgment. I nevertheless accept those aspects of the Defendant's evidence which are consistent with my findings, including evidence concerning the disturbance inside the club, the recovery and preservation of the CCTV footage and the ballistic material.
- [4] For the reasons which follow, I find, on a balance of probabilities, that both Claimants were struck by bullets discharged from police firearms. I also find that the officers owed a duty to take reasonable care for the safety of persons in the area, that they breached that duty, and that their breach caused the injuries suffered by the Claimants. The Attorney General is accordingly liable for the injuries and loss proved by each Claimant.

- [5] The evidence in this case also disclosed matters of serious concern with regard to the use, carriage and subsequent accounting of State-issued firearms and ammunition. Those matters do not determine liability independently of the findings made on the evidence. They are, however, of sufficient public importance to warrant observations at the conclusion of this judgment and a direction that the judgment be brought to the attention of the relevant public authorities.

THE PLEADINGS:

Marley Simeon's Case:

- [6] Marley Simeon's case is that he was seriously injured after being shot during an incident outside Empire 758 in Laborie on 11 February 2023. According to his Statement of Claim, he was standing near the club while a function was taking place and there were many people in the area. He says he saw a man, identified as Eric Thomas, holding a firearm and firing it into the air. Shortly thereafter, he observed the police officers carrying firearms and states that shots were fired while he was attempting to flee the area.
- [7] Mr. Simeon says that while running towards a vehicle and a pole, he suddenly became weak and realised that he had been shot. When he lifted his shirt, he saw that his intestines were exposed. He says he did not have a weapon, was not involved in the shooting, and was simply trying to get away from the danger.
- [8] Although Mr. Simeon cannot identify which particular officer fired the bullet that struck him, he alleges that the injury was caused by a bullet discharged from one of the police officers' firearms. His case is that the officers acted recklessly and negligently by firing weapons in an area where a crowd was present, without taking proper care to avoid injuring innocent persons. He also relies on the doctrine of *res ipsa loquitur*, arguing that the circumstances themselves allow an inference of negligence, particularly because the police were in a position to conduct ballistic testing and determine which weapon caused his injury, yet failed to do so.

- [9] Mr. Simeon further claims that the Attorney General is responsible for the actions of the police officers because they were acting in the course of their duties as members of the Royal Saint Lucia Police Force.
- [10] In support of his injuries, Mr. Simeon relies on medical evidence from St. Jude Hospital. The medical report states that he suffered a gunshot wound to the abdomen, with serious internal injuries requiring emergency surgery. He underwent an exploratory laparotomy and small bowel resection, and the report records that he later developed a bowel obstruction which required a second operation on 24 February 2023. He was eventually discharged on 28 February 2023 and continued follow-up treatment afterwards.
- [11] Mr. Simeon says that the injuries have had a lasting effect on his daily life. He claims that he has difficulty with bowel movements, must be careful about what he eats, and can no longer comfortably participate in activities such as football, hiking, climbing, lifting heavy items or physical work. He also says that his ability to work and engage in sexual activity has been negatively impacted.
- [12] At the time of the incident, Mr. Simeon says he was employed at KFC in Laborie as a team member. His employer confirmed that he had been working there since January 2023 and was paid \$6.50 per hour for approximately 20 hours per fortnight. He claims that, as a result of his injuries, he was unable to return to work and lost income from February 2023 onwards.
- [13] The Claimant is seeking general damages for his injuries, pain and suffering and loss of income, special damages for medical expenses stated at approximately \$13,211.00, together with interest and legal costs.

The Defendant's Case:

- [14] The Defendant denies liability for Mr. Simeon's injuries. While it is accept that the first three Defendants originally sued as parties were police officers and members of the Royal Saint Lucia Police Force, they do not accept that they acted negligently, recklessly or unlawfully.

- [15] According to the Defence, the incident began when the police officers who were at Empire 758 heard two shots discharged outside the club. The Defendant says that the officers involved gave chase in the direction of the armed man, whom they identify as Eric Thomas, and who fired shots in the direction of the police officers. They claim that the officers were responding to an immediate threat created by an armed person who had discharged a firearm in a public place and in close proximity to members of the public and the police.
- [16] The Defendant also disputes Mr. Simeon's account of what he saw. They rely on what they say were statements previously made by Mr. Simeon to the police. In particular, they say that Mr. Simeon initially stated that he saw the man with the firearm firing shots, but did not know exactly how he himself came to be shot because he was trying to move away from the scene. The Defendant therefore denies that Mr. Simeon can properly say that his injury was caused by a bullet fired from one of the police officers' firearms.
- [17] The Defendant also says that other persons present at the scene gave information to the police about the incident. Its Defence refers to witness statements, video footage and crime scene photographs obtained during the investigation. They rely on those materials in support of their position that the police officers were reacting to gunfire from the armed man and that their conduct was reasonable in the circumstances.
- [18] In response to the allegation of negligence, the Defendant denies that the officers discharged their firearms carelessly or without regard for the safety of others. Their position is that any action taken by the officers was done in the lawful execution of their duties, in circumstances where a firearm had been discharged near a crowd and in the direction of police officers.
- [19] The Defendant further denies that the rule of *res ipsa loquitur* applies. They do not accept that Mr. Simeon has proven that his injuries resulted from any reckless or negligent act by the police officers. Their case is that, without evidence showing which

firearm discharged the bullet that struck him, the Claimant cannot establish that any one of the officers caused his injury.

- [20] The Attorney General also disputes being liable to compensate Mr. Simeon, on the basis that liability can only arise if wrongdoing by the police officers is first established. The Defendants accordingly deny the claim for damages, loss of income, interest and costs.

Troystan Jn Pierre's Case:

- [21] Troystan Jn Pierre's case arises out of the same shooting incident which occurred near Empire 758 Bar in Laborie on 11 February 2023. He claims that he suffered serious injury after being struck by gunfire discharged by police officers who were responding to an incident in the area.
- [22] According to Mr. Jn Pierre, he was 28 years old at the time and was standing near a small shop known as 'George Hut'. He says that two men were arguing nearby, and one of them said that he was going home to get his gun before leaving the area.
- [23] Mr. Jn Pierre says that, shortly afterwards, he heard what he believed to be gunshots coming from behind the bar. He then saw a police officer, whom he believes was PC Justus, come out from inside Empire 758, stand in the road and fire two rounds into the air before going back into the bar.
- [24] He states that approximately 20 minutes later, he heard more gunshots coming from the front of Empire 758. At that point, he says he saw a young man with a grey and black metallic object in his hand, which he believed to be a firearm. Mr. Jn Pierre claims that PC William and another officer, whom he believes was PC Holder, instructed the young man with the firearm to "put down the gun". He then saw PC Holder discharge his firearm and shoot the young man in the leg from behind. According to Mr. Jn Pierre, the young man continued walking and then attempted to turn towards the officers, after which both officers fired multiple rounds at him.

- [25] Mr. Jn Pierre says that he and several other persons were only about 10 feet away from the young man when the officers began firing. When the shooting started, he tried to dive out of the way and hide behind a parked vehicle. However, he says that before he could get to safety, he was struck by a bullet in his right thigh.
- [26] After being shot, Mr. Jn Pierre says he fell to the ground and was unable to move properly. From where he was lying, he says he saw PC Justus William approach Eric Thomas, who was on the ground, and discharge two further rounds at him at close range. Mr. Jn Pierre further alleges that, while he was in pain and calling out that he had been shot, PC William responded by telling him to “shut up and move deh”, rather than assisting him. He says that other persons nearby eventually assisted him and arranged for him to be taken to St. Jude Hospital.
- [27] Mr. Jn Pierre’s case is that the police officers were negligent because they opened fire in a public area while members of the public were nearby and within range of being injured. He says that the officers should have appreciated the risk to innocent bystanders and that their decision to fire in those circumstances caused his injury.
- [28] The medical report from St. Jude Hospital, dated 24 May 2023 and attached to the pleadings, records that Mr. Jn Pierre attended the emergency room on 11 February 2023 with pain in his right thigh caused by a gunshot wound. On examination, he was in obvious pain and had swelling and tenderness to the thigh, weakness in the right lower limb and difficulty walking. An X-ray showed a commuted fracture of the midshaft of his right femur together with multiple foreign bodies said to be bullet fragments. He underwent surgery on 20 February 2023, involving plate and screw fixation of the right femur. He was discharged on 22 February 2023 and, at the time of the report, continued to walk with crutches and bear no weight on his right lower limb.
- [29] Mr. Jn Pierre says that before the incident he was a farmer who also kept animals. Since being injured, he claims he has been unable to continue his work and was forced to sell his animals. He says he has remained on crutches, has experienced

continuing pain and has required assistance from his cousin, Shanda Jn Pierre, with household duties and basic care. He also says that he was an active football player before the shooting but has been unable to play sports or move around normally since his injury.

- [30] In relation to his financial losses, Mr. Jn Pierre claims special damages totaling \$8,133.00, consisting of ambulance costs, X-ray expenses, hospital visit fees, the cost of a medical report and surgery. The St. Jude Hospital account statement shows hospital charges totaling \$7,698.90.
- [31] Mr. Jn Pierre also claims aggravated damages. His position is that the officers' actions were embarrassing, harsh and unnecessary, particularly because he says he was an innocent member of the public who was shot and then treated dismissively when he called for help.
- [32] He is therefore seeking general damages for personal injury, special damages of \$8,133.00, interest, aggravated damages, exemplary damages, costs and any further relief considered appropriate by the Court.

The Defendant's Case:

- [33] The Attorney General denies liability for Mr. Jn Pierre's injuries. While it is admitted that the police officers involved were acting in the course of their duties, the Defendant denies that the State is liable for any unlawful or negligent conduct and maintains that the officers acted lawfully throughout the incident.
- [34] The Defendant gives a different account of what occurred at Empire 758. According to the Defence, PC William and PC Jonathan Holder were inside the club when a disturbance began involving several persons, including Eric Thomas, who is referred to in the Defence as the deceased. The Defendant says that the officers attempted to calm the situation, but during the disturbance PC Holder was struck on the head with a firearm by Mr. Thomas, while another person punched him on the right side of his face. Mr. Thomas then allegedly ran out of the club.

- [35] The Defendant states that PC Holder later heard what appeared to be two rounds of ammunition being fired close to where he was standing. He then saw that Mr. Thomas, the person who had earlier struck him, was the person discharging a firearm. According to the Defence, the sound of gunfire alerted PC William and Sergeant Neal Charles, who gave chase and ordered Mr. Thomas to put down the weapon, but he refused to do so.
- [36] The Attorney General's case is that the police officers were faced with an armed man who was recklessly firing a weapon in a public place and in the direction of police officers. It is alleged that the officers discharged their own firearms only in order to subdue Mr. Thomas and protect themselves and members of the public from serious harm. The Defence maintains that their conduct was lawful under the **Police Act**¹ and the **Criminal Code of Saint Lucia**².
- [37] The Defendant specifically denies Mr. Jn Pierre's allegation that PC William came out of Empire 758 and fired two shots into the air before returning inside. The Defendant also denies that PC William or PC Holder fired two additional rounds at the young man at close range, as claimed by Mr. Jn Pierre.
- [38] The Defendant further denies that PC William spoke harshly to Mr. Jn Pierre or told him to "shut up and move deh." According to the Defence, after Mr. Thomas had been subdued, the police officers withdrew to a safe distance and called for assistance because other gunshots were still being fired in the area.
- [39] An important part of the Defence is that the Attorney General does not accept that Mr. Jn Pierre was shot by a police officer. The Defendant argues that Mr. Jn Pierre must prove that the bullet which injured his leg came from a firearm discharged by one of the officers, particularly in circumstances where the Defence says another armed person was also firing shots at the scene.

¹ Cap. 14.01 of the Revised Laws of Saint Lucia

² Cap. 3.01 of the Revised Laws of Saint Lucia

- [40] The Attorney General denies that the officers negligently discharged firearms in the direction of members of the public. The Defence states that by the time the officers fired, the crowd had already scattered for safety after the deceased fired the first shots. It maintains that the officers fired only in the direction of the armed man and only because he posed a serious threat.
- [41] Although the Defendant does not directly admit or deny the medical injuries, financial losses or difficulties alleged by Mr. Jn Pierre, it requires him to provide proof of those matters. The Defendant also denies his claim for aggravated damages, including his allegation that the officers acted in a harsh, high-handed or embarrassing manner.
- [42] The Defendant accepts that Mr. Jn Pierre sent a pre-action letter giving notice of his intention to bring legal proceedings. However, it says that when the notice was received, the State did not yet have the necessary information regarding the incident.
- [43] The Attorney General's overall position is that the police officers were responding to a dangerous and rapidly developing situation caused by an armed individual, that their use of force was lawful and justified and that Mr. Jn Pierre has not established that his injury was caused by any wrongdoing on their part. The Defendant therefore asks that the claim be dismissed with costs.

ISSUES TO BE DETERMINED:

- [44] The core issues to be determined in these claims are:
- 1) What occurred during the shooting incident at Empire 758 on 11 February 2023.
 - 2) Whether police officers acted lawfully and reasonably when they discharged their firearms.
 - 3) Whether Marley Simeon and Troystan Jn Pierre were injured by bullets fired from police firearms.
 - 4) Whether the police officers were negligent or reckless in exposing members of the public to the risk of injury.

5) Whether the Attorney General is liable for the injuries and losses suffered by either Claimant.

6) What damages, if any, should be awarded to each Claimant.

THE EVIDENCE:

Marley Simeon:

[45] Mr. Simeon's witness statement is generally consistent with his pleaded case. He maintains that he was near Empire 758 when the shooting occurred, that he saw Eric Thomas fire shots into the air and that the gunfire which followed came from the police officers while he and others were trying to get away.

[46] His witness statement gives fuller evidence about the effect of the injury on his life. He says that after being shot he required help from his mother and then girlfriend with basic tasks such as bathing and using the bathroom. He describes difficulty eating, significant weight loss, continuing bowel problems and discomfort. He also says that he has been unable to return to playing football in the way he used to, that he has difficulty with physical activities, that he cannot cook and eat as he once did, and that he no longer goes out socially as before.

[47] Mr. Simeon also states that the incident affected his relationship with his girlfriend and that he lost his job at KFC because of the injuries. He maintains that the officers fired in a crowded area without proper regard for the people around them. He goes further than the pleadings by saying that he did not see anyone other than the police officers firing at Eric Thomas at the stage when Eric was shot. His medical records, hospital expenses and employment letter are attached to his statement.

[48] In cross examination, Mr. Simeon remained consistent on the broad circumstances of the shooting. He continued to say that Eric initially fired shots into the air, that police later discharged firearms in Eric's direction, and that he was injured during that later firing. There were, however, important matters affecting both liability and damages.

- [49] He could not identify the firearm which caused his injury. This was already acknowledged in his pleaded case. In cross-examination, his evidence remained that he believed the police caused his injury because they were the persons firing at the relevant moment. The Court itself recognises that this aspect of his case depends on credibility and circumstantial evidence rather than a recovered bullet or ballistic match.
- [50] His account that Eric did not fire at the officers remained firm. When he was recalled and shown video footage, he accepted that Eric turned but maintained that Eric did not shoot at Officer Holder. He said that Eric had a firearm facing downwards when he turned. He also said that he did not see any bottle thrown at PC William, although PC William claimed that a bottle had been thrown at him.
- [51] His evidence about continuing disability was materially reduced in cross-examination. His witness statement was expressed in the present tense and suggested that he continued to be unable to drink alcohol, go out on weekends and participate in ordinary activities. In cross-examination he accepted that he had resumed going out on weekends and had started drinking alcohol again. He explained that the restrictions described in his statement applied mainly during the first five or six months after the shooting.
- [52] His evidence of continuing bowel difficulties is not fully supported by the later medical assessment. Mr. Simeon's statement described continuing bowel problems. However, Dr. Beaubrun's report recorded that, by the time of his examination in April 2024, Mr. Simeon reported no residual abdominal pain, nausea or altered bowel habits, and the clinical examination was otherwise normal. This does not undermine the seriousness of the original injury, but it does weaken the suggestion of substantial continuing physical symptoms at the later stage.

Tasha Simeon:

- [53] Ms. Tasha Simeon is Mr. Simeon's mother. She did not witness the shooting. She says that she heard gunshots in the early hours of the morning and later received a call informing her that her son had been shot.
- [54] Her evidence focuses on what she experienced during his hospital treatment and recovery. She describes seeing him in hospital after emergency surgery and waiting anxiously while he later underwent a second operation. She says that once he returned home, she had to care for him closely, prepare food suited to his condition, ensure that he took his medication and assist him with matters he had previously managed on his own.
- [55] Ms. Simeon also says that her own small business was affected because she spent time looking after her son rather than operating it. Her evidence supports Mr. Simeon's account of the seriousness of his condition and the level of support he required following discharge from hospital.
- [56] In cross examination she accepted that she did not witness the shooting and could not say who fired the bullet that injured her son. There is no material inconsistency in her evidence concerning Marley's condition after the incident. Her evidence is simply confined to the aftermath of the injury and the support he required.

Dr. Christopher Beaubrun:

- [57] Dr. Beaubrun gives medical expert evidence concerning Mr. Simeon's injuries. His evidence confirms that Mr. Simeon suffered a life-threatening gunshot injury to the abdomen involving significant blood loss and damage requiring emergency surgery. He records that Mr. Simeon required a small bowel resection and mesenteric repair and later had to undergo a second operation because of bowel obstruction caused by adhesions.
- [58] Dr. Beaubrun examined Mr. Simeon in April 2024. At that time, he found that Mr. Simeon was walking normally and was not in physical distress. He records that Mr. Simeon reported no continuing abdominal pain, nausea or altered bowel habits during

that examination. His physical findings were mainly the surgical and gunshot scars remaining on Mr. Simeon's abdomen and body.

[59] His evidence supports the seriousness of the original injury and treatment required, while also indicating that, by the time of his examination, Mr. Simeon had made a good physical recovery.

[60] In cross examination, Dr. Beaubrun accepted that he prepared the report at Marley's request but properly maintained that his duty was to the Court. His evidence remained independent and medically focused.

[61] The main points emerging from cross-examination were:

- 1) There were apparent date errors in his report concerning the date of the St. Jude Hospital report and treatment dates. These appear to be clerical errors rather than matters affecting the substance of his medical opinion.
- 2) He confirmed that his later examination showed no residual abdominal symptoms of the kind described by Marley in his witness statement.
- 3) His evidence could not establish which firearm caused Marley's injury.

Troystan Jn Pierre:

[62] Mr. Jn Pierre's witness statement is substantially consistent with his pleaded case. He maintains that he was standing near Empire 758 when the incident developed, that he saw police officers firing in the direction of the armed man while members of the public were still nearby and that he was struck in the thigh while attempting to take cover.

[63] He continues to allege that after the young man had fallen to the ground, he saw PC Justus William fire two additional rounds at close range. He also maintains that, after he cried out that he had been shot, PC William responded by telling him to "shut up and move deh".

- [64] Mr. Jn Pierre says that the gunshot injury fractured his femur and left him dependent on crutches. He explains that he previously made his living from farming and caring for animals but was unable to continue doing that work after the injury. He says that he sold his animals to cover living expenses and became dependent on assistance from his cousin Shanda Jn Pierre, for care and household responsibilities. He also says that he has been unable to return to football or normal physical activity.
- [65] In cross examination, Mr. Jn Pierre maintained the core parts of his account. He did not withdraw the allegations that he saw police firing, that he was shot during that exchange, that PC William later fired at Eric while Eric was on the ground, or that PC William spoke harshly to him afterwards.
- [66] His position in relation to Eric when the police fired became unclear. In his statement, he said that he and other persons were standing about 10 to 15 feet behind Eric when the officers fired. In cross-examination, he explained that he was initially positioned differently, but that when Eric turned or moved, he ended up behind him. Later, when the Defendant's case was put to him that nobody was behind Eric when the police fired, he answered, "I agree."
- [67] Shortly afterwards, however, he continued to insist that he was present and saw the officers firing. This is a real inconsistency on an important issue, whether he was actually in the line or area of police fire at the relevant time. It does not necessarily destroy his evidence, because the exchange may have involved different stages of gunfire, but it requires careful treatment.
- [68] He accepted that he had no ballistic or forensic evidence linking his injury to a police firearm. Mr. Jn Pierre accepted that his medical records only established that he was injured by a bullet. They did not identify the firearm which discharged it. His case on causation therefore rests mainly on his evidence that he saw the police firing when he was struck.
- [69] In cross-examination he accepted that there were persons other than police officers with firearms in the vicinity. However, he did not accept that he was shot by any

person other than the police. That remains a factual dispute rather than an admission against his case.

[70] His financial claim relating to farming and livestock was not supported by documents. He accepted that he produced no receipts, sale records or other documentary proof of his farming income or the sale of animals. He maintained that he was in fact engaged in farming, but the alleged financial loss is not independently supported.

[71] He maintained his account when confronted with the CCTV footage. When shown the video evidence, he did not accept the suggestion that the footage showed Eric turning and firing at police officers. He stated that he could not see any shot being fired by Eric in that part of the video.

PC Jonathan Holder:

[72] PC Holder gives evidence as one of the officers directly involved in the incident. His account is broadly consistent with the Defence. He says that he was providing security at Empire 758 when a disturbance broke out inside the club. While trying to control the situation, he says he was struck on the head with a firearm by the man later identified as Eric Thomas.

[73] According to PC Holder, the armed man ran outside. He says that he later saw the same man holding a firearm and firing shots. PC Holder states that he repeatedly told the man to put down the weapon and attempted to take the firearm from him but was unable to do so. He says that the man then pointed the firearm and fired in his direction, causing him to take cover.

[74] PC Holder accepts that he discharged his own firearm. He says that he fired three rounds at the armed man because he believed his life and the lives of persons nearby were in immediate danger. He denies that members of the public were in his line of fire and says that he did not see either Claimant during the shooting.

[75] His evidence also refers to other gunshots being fired in the area. In Troystan's matter, he exhibits a photograph showing damage to the rear windscreen of a vehicle,

which he says was caused during the gunfire. His evidence is relied upon to support the Defendant's case that the officers were responding to an armed threat rather than firing carelessly into a crowd.

[76] In cross examination, PC Holder maintained that he fired at Eric only because he was shooting at him. However, important parts of his evidence were weakened.

[77] He accepted that he fired three rounds at Eric but could not say where those rounds went. When asked where his shots landed, he said that only God could answer that question. This is significant because both Claimants were injured during the same episode of gunfire.

[78] His broad statement that no persons were in or around the vicinity was qualified in cross-examination. When pressed on whether persons were around Eric, he initially repeated that nobody was between himself and Eric. However, he later accepted that he could not recall whether persons were around Eric when he fired.

[79] He did not know how many rounds the other officers fired. Although he said Officer Charles was nearby, he could not speak to the number of rounds discharged by Charles.

PC Justus William:

[80] PC William also gives evidence as an officer directly involved in the incident. He says that he was inside Empire 758 when the disturbance began and saw PC Holder being struck on the head with what appeared to be a firearm. He says he followed the armed man outside in an attempt to apprehend him.

[81] PC William describes a highly dangerous and confused situation outside the club. He says that a bottle was thrown at him and that he also saw another man wearing a blue shirt draw and point a firearm. He says that shots were being fired from more than one direction.

- [82] His account is that he later saw the man who had struck PC Holder still carrying a firearm. He says that both he and PC Holder repeatedly ordered the man to drop the weapon, but he refused and instead fired towards the officers. PC William says he then discharged his own firearm in order to neutralise the threat.
- [83] PC William states that once the man fell to the ground, he recovered a black and chrome Taurus 9mm pistol from him. He says the firearm still contained five rounds. He denies that any member of the public was standing between him and the armed man when he fired and says that his shots were directed only at the person whom he believed posed an immediate danger.
- [84] His evidence directly contradicts Mr. Jn Pierre's allegation that he fired indiscriminately near bystanders or later shot the man again at close range. It also contradicts Mr. Jn Pierre's allegation that he spoke harshly to him after he was injured.
- [85] In cross examination, PC William's evidence was challenged at length and there are several matters affecting its reliability.
- [86] He was not at Empire 758 on official duty before the incident developed. He accepted that he had attended the establishment socially and was not there on government business. He also accepted that PC Holder and Sergeant Fontenelle were acting as security officers for the private establishment. This does not prevent him from acting as a police officer when danger arose, but it provides context for how the officers became involved.
- [87] There is a serious issue concerning the number of rounds in his firearm. PC William said that his firearm used a magazine holding 17 rounds and that, after the incident, 15 rounds remained, consistent with his claim that he fired only two rounds. During cross-examination, documentary records were put to him concerning the ammunition in his firearm when it was later submitted. His evidence became difficult to reconcile with those records. He also denied having earlier said that he had a full magazine that night, although the Court recorded that he had given that evidence earlier in the same cross-examination.

- [88] His firearm was not handed over immediately after the incident. His evidence was that he surrendered it to the armourer later, rather than directly to the investigating officer at the scene or immediately afterwards. Given that the number and source of police rounds are central issues, this affects the reliability of the subsequent ammunition accounting.
- [89] He denied firing two rounds into the air or shooting Eric while Eric was already on the ground. Those allegations were put to him directly on behalf of Mr. Jn Pierre and he denied them. This remains a direct credibility conflict between him and Mr. Jn Pierre.
- [90] He accepted that persons were present on the street. Although his statement suggested that nobody was in or around the area when he fired, he accepted in cross-examination that there were several persons on the street. His position became that no one was directly between him and Eric. This is a narrower and materially different account from saying that no members of the public were nearby.
- [91] The CCTV footage showed him handling two firearms after Eric had fallen. PC William accepted that the footage showed him with two firearms. He explained that one was his weapon and the other was the firearm he had recovered from Eric and that he held them up in an effort to de-escalate a confrontation with a person accusing him of shooting Eric without reason.
- [92] He could not assist with his precise position and firing direction after the site visit. When recalled after the locus visit and asked whether he was facing towards Vieux Fort or Choiseul when he fired, he said he could not recall. This limits his ability to rebut the Claimants' case on trajectory and positioning.

Sergeant Neal Charles:

- [93] Sergeant Charles gives evidence that he became involved after hearing gunshots outside the club. He says that he saw PC Holder pursuing a man who had a firearm in his hand and that he heard commands being given for the man to stop and drop the weapon.

- [94] According to Sergeant Charles, the armed man refused to comply and fired in the direction of the officers. He says that he then discharged his own firearm because he believed there was an immediate threat to his life and to other persons nearby.
- [95] Sergeant Charles says that PC William also fired in response to the threat, after which the armed man fell to the ground. He states that he provided security while PC William recovered the firearm. He later contacted emergency services and requested that the scene be processed.
- [96] Like the other police witnesses, Sergeant Charles says there was no person standing between him and the armed man when he fired. He also says that he did not notice either Claimant during the incident and remembers members of the public running away once the shooting began. His evidence supports the Defence's position that the police firing was directed at the armed man and occurred only after he fired at officers.
- [97] In cross examination the principal issue raised concerned his report following the discharge of his firearm.
- [98] He accepted that he was familiar with the Standing Orders and that he prepared a report concerning the incident. It was put to him that the report should have been produced within 24 hours, whereas the report shown to him bore a date approximately two months after the incident. His answer was that a report was required to be made but he did not clearly accept that it had to be produced within 24 hours.

Ken Berrance:

- [99] Mr. Berrance is the owner of Empire 758. He says that PC Holder and Sergeant Fontenelle were employed by him to provide security at the club on the night of the incident.
- [100] His evidence is that he saw the disturbance begin inside the club and saw the officers attempting to separate persons involved in the altercation. He says that he saw one of the men strike PC Holder on the head. He remained inside the club when the

shooting later occurred outside and therefore does not give direct evidence about who fired the shots outside or who caused the Claimants' injuries.

[101] Mr. Berrance's evidence is also important in relation to the CCTV footage. He says that the cameras inside and outside the club were working properly, that he later viewed the recording, and that he gave the police permission to retrieve a copy of the footage. His evidence assists the Defendant in establishing the source and authenticity of the video recording relied upon at trial.

[102] In cross examination, Mr. Berrance accepted that the security officers' responsibility extended to the safety of patrons in the road area around the establishment. He was also shown parts of the CCTV footage.

[103] The most significant part of his evidence is that, when asked whether he saw Eric fire a gun at any officer in the video, he said that he did not see that in the footage.

PC Ashley Peter:

[104] PC Peter does not give eyewitness evidence about the shooting. His evidence concerns the recovery and handling of the CCTV footage from Empire 758.

[105] He says that after PC Shoulette informed him that permission had been obtained from Mr. Berrance, he attended the club and retrieved the CCTV footage from the surveillance system. He copied the footage onto a thumb drive, created a hash code to protect its integrity and later copied the footage onto a non-rewritable DVD.

[106] PC Peter says that the equipment was operating properly, that there was nothing to suggest the footage had been altered and that the copy exhibited in the proceedings is the same footage retrieved from the club's CCTV system. His evidence is therefore directed to the admissibility and reliability of the video evidence rather than the events of the shooting itself.

[107] In cross examination, his evidence remained directed to the copying and preservation of the CCTV footage. There is no material inconsistency concerning the shooting itself

because he did not claim to have observed the incident firsthand. The cross-examination raised questions about the extent of the footage extracted and placed before the Court, but did not establish that the footage had been altered.

PC Murgaran Shoulette:

[108] PC Shoulette was assigned to investigate the police shooting. In his earlier statement, he says that he attended the scene, obtained witness statements from Mr. Berrance and Mr. Bicar, and identified that CCTV cameras were installed at the club. He also says that he received no bullet or bullet fragments from St. Jude Hospital in relation to the injuries suffered by Mr. Simeon and Mr. Jn Pierre and that, for that reason, no ballistic comparison could be conducted to establish which firearm caused either injury.

[109] In a later statement filed in the consolidated proceedings, PC Shoulette gives further evidence. He says that he interviewed Mr. Simeon on the day of the incident and recorded an unsigned statement from him. According to PC Shoulette, Mr. Simeon stated during that interview that he had seen his friend Eric with a firearm and had seen Eric fire two shots into the air. That part of the evidence is broadly consistent with Mr. Simeon's position that Eric initially fired into the air.

[110] PC Shoulette also says that a Ballistics Certificate was later disclosed to the Attorney General's Chambers after it had been inadvertently left out of the police investigation file. He states that eight cartridge casings recovered from the scene bore the headstamp used for police operational ammunition, while the remaining casings were not ammunition used by the Royal Saint Lucia Police Force. This evidence is relevant to the issue of whether more than one source of gunfire existed at the scene, although it does not itself identify which firearm caused either Claimant's injury.

[111] His cross-examination exposed several important evidential difficulties. He accepted that there were two conflicting versions of events. He agreed that the police officers gave one account, while civilian witnesses gave materially different accounts on important issues.

- [112] He accepted that civilian evidence supported the allegation that Eric was shot while on the ground. He accepted that the statement of Justus William said Eric was not shot while on the ground. He also accepted that Mr. Jn Pierre's statement made the same allegation.
- [113] He accepted a difference between the officers' accounts of who Eric allegedly fired at. During cross-examination it was pointed out that Sergeant Charles' statement referred to Eric firing in his direction, whereas the account relied on by PC Holder and PC William was that Eric fired at Holder. Sergeant Shoulette accepted that Charles' statement did not state that Eric fired at Holder.
- [114] The precise number of police rounds fired remains uncertain. The Ballistics Certificate establishes that at least eight police-type cartridge casings were recovered from the scene. Yet the officers' individual accounts of how many rounds they each fired do not appear to fit neatly with that objective evidence. Sergeant Shoulette accepted that questions about the discharge of firearms were central to the inconsistencies being put to him.
- [115] Records which might have clarified the issue were not available. He could not say how many rounds each officer had before the shooting. He accepted that he had made enquiries but that the information was not forthcoming. He also accepted that the firearms were submitted several days after the incident rather than immediately.

Steve Bicar:

- [116] Mr. Bicar says that he attended Empire 758 with PC William and Adrian Dalsou. He recalls hearing gunshots and then seeing PC William pursuing a man who was carrying a firearm. He says that PC William repeatedly instructed the man to stop and drop his weapon, but the man refused and later turned in PC William's direction before several shots were fired and he fell to the ground.
- [117] Mr. Bicar says that he had a clear view and saw no person standing between PC William and the armed man. He also says that, after the shooting, other persons in the area became aggressive towards PC William and that he saw another individual

draw a firearm and approach him. Mr. Bicar states that he himself drew his licensed pistol in response to that perceived threat, although he does not say that he fired it.

[118] His evidence supports the Defendant's account that firearms were present among other persons in the crowd and that PC William was confronted with a genuine threat.

[119] In cross examination Mr. Bicar's oral evidence was materially less supportive of the police account than his general position might suggest.

[120] He accepted that he did not see the first two shots being discharged, he only heard them. He attempted in oral evidence to say that he saw Eric raising the firearm towards PC William. However, when shown his written statements, he accepted that he had not said that Eric raised his firearm. His statement referred only to Eric turning or swinging his hands in PC William's direction.

[121] More importantly, he accepted that in neither of his statements did he say that Eric discharged his firearm during the final exchange.

Adrian Dalsou:

[122] Adrian Dalsou states that he personally witnessed a violent, armed incident at Empire758 Bar in Laborie on the night of 10 February 2023. He says he attended the club at about 11:30 p.m. with PC Justus William and Steve Bicar. Inside, he saw a fight and observed PC Holder attempting to separate the men. According to Dalsou, an unidentified man approached Holder and struck him in the head with a firearm. The man then went outside, displayed the weapon, and allegedly threw a bottle at Holder.

[123] Outside the club, Dalsou says the same man fired two shots into the air. PC William and Sergeant Charles identified themselves as police officers and repeatedly ordered him to drop the firearm. The man allegedly ignored the commands, walked away with the gun in his hand, and pointed or swung it in the direction of civilians. Dalsou says the area was well lit and that he had a clear view.

- [124] Dalsou states that several other people at the scene were also armed and that he heard multiple shots from firearms other than those held by the police officers or the principal armed man at that particular stage. He also says he saw civilians collecting spent cartridge cases.
- [125] According to his witness statement, the police followed the armed man and continued ordering and even pleading with him to surrender the weapon. Dalsou says the man eventually turned and fired toward the officers, forcing them to take cover. Dalsou then moved into the club's parking area for safety. After hearing further shots, he returned and saw the man lying on his back, surrounded by people.
- [126] Dalsou also saw another man nearby holding his abdomen and apparently suffering from a gunshot wound. He believed that the armed man, rather than the police, had shot this individual. However, this part of his statement is an inference based on the persons' positions, not something he says he directly saw. An ambulance later removed the injured man.
- [127] He further describes members of the crowd threatening PC William, Sergeant Charles, Steve Bicar, and himself. His overall opinion is that the officers had no reasonable alternative but to discharge their firearms to defend themselves and protect the public. He says their intervention prevented further injuries.
- [128] In cross-examination, Mr. Dalsou did not impress me as an independent or reliable witness. His account closely followed the evidence of PC William, PC Holder and Sergeant Charles on the principal disputed matters, particularly the allegation that Eric Thomas fired towards the officers and that the officers had no reasonable alternative but to discharge their weapons. His manner of giving evidence suggested a partisan desire to support the police account rather than a detached recollection of what he had personally observed.
- [129] Mr. Dalsou was particularly non-committal when confronted with specific facts and with the CCTV footage. His evidence that Eric fired towards the officers was not satisfactorily supported by the footage and conflicted with the evidence of Mr. Simeon,

Mr. Jn Pierre and Mr. Berrance. It was also stronger than the contemporaneous account of Mr. Bicar, who accepted in cross-examination that neither of his statements recorded Eric discharging his firearm during the final exchange. I therefore do not accept Mr. Dalsou's evidence that Eric fired at the officers during the decisive exchange.

[130] I accept his evidence only to the limited extent that it is independently supported: that there was a disturbance inside the club, that Eric was armed and had earlier discharged shots, that police officers gave commands, and that other firearms and hostile persons were present at different stages of the incident. His belief that Eric, rather than the police, shot the other injured man was merely an inference from the persons' positions and carries no material evidential weight. Overall, Mr. Dalsou's evidence does not alter my findings concerning the decisive exchange of gunfire, the presence of civilians, or the source of the Claimants' injuries.

Sergeant Clarence Fontenelle:

[131] Sergeant Fontenelle was working security at Empire 758 with PC Holder. He says that he dealt with an earlier disturbance inside the club and later assisted in separating persons involved in another fight.

[132] His evidence is that, while he was occupied with one of the persons involved in the fight, PC Holder moved towards the entrance with another individual. Sergeant Fontenelle then heard gunshots coming from outside the building. He remained with the person he was restraining for safety reasons and did not see the actual firing of gunfire outside.

[133] When he later went outside, he says that he saw PC Holder, who reported an injury to his face, as well as PC William and Sergeant Charles. He then contacted emergency services, the police and the Scenes of Crime Unit.

[134] Sergeant Fontenelle's evidence supports the Defendant's account that a disturbance took place inside the club and that PC Holder was injured. However, because he did

not witness the shooting outside, his statement does not assist directly with identifying who fired the shots that struck either Claimant.

[135] In cross examination, his evidence remained limited to the background events inside the club and the duties of the security officers. He accepted that the Standing Orders required reporting following the discharge of police firearms and was questioned about how officers could respond to suspected criminal conduct.

[136] There is no material inconsistency affecting the central question of who shot the Claimants, because he did not claim to have witnessed that part of the incident.

RESOLUTION OF DISPUTED FACTS:

Whether Eric Thomas was armed?

[137] On the evidence I find that Eric Thomas was armed during the incident. Both Claimants accepted seeing him with a firearm, the police officers gave evidence to that effect and the later recovery of a firearm from him was relied upon by the Defence.

Whether Eric initially discharged shots into the air?

[138] This fact is established. Marley said so in his own evidence. Sergeant Shoulette's evidence was that Marley also gave that account during the investigation. Troystan's evidence was also consistent with shots being heard before the later police firing.

Whether Eric fired at the police officers immediately before they discharged their weapons?

[139] The police officers maintained that Eric fired at them and that they discharged their firearms in response to an immediate threat to their lives and to the safety of persons nearby. That account is central to the Defendant's reliance on self-defence and the lawful use of force. I have considered it carefully against the oral evidence, the witness statements and the CCTV footage.

[140] I do not accept the officers' account that Eric fired at them during the material exchange. Mr. Simeon was clear that, although Eric had earlier fired shots into the air, he did not see Eric fire at the officers when the police began shooting. Mr. Jn

Pierre also maintained that the video did not show Eric firing at any officer. Mr. Berrance, when shown the footage, said that he did not see Eric fire at an officer. Mr. Bicar, although called on behalf of the Defendant, accepted that neither of his written statements said that Eric discharged his firearm during the final exchange. Further, the accounts of the officers were not consistent as to the officer or officers at whom Eric was alleged to have fired. These matters, taken together with my own assessment of the CCTV footage, cause me to reject the evidence that Eric discharged his firearm at any police officer during the decisive exchange.

[141] I find that Eric was armed and that he had earlier discharged shots into the air. I also accept that, during the later encounter, he turned while the officers were in his vicinity. However, I do not find that he raised or directed his firearm at the officers, or that he fired at any of them before they opened fire. At that stage, members of the public remained in the immediate area. In those circumstances, the officers' decision to discharge multiple rounds cannot be justified on the basis of the immediate armed attack alleged by them. I therefore find, on a balance of probabilities, that Eric did not fire at the officers during the material exchange.

How many rounds were discharged by police officers?

[142] The evidence on this issue is unsatisfactory. The Ballistics Certificate establishes at least eight police-type casings. However, the accounts given by the officers concerning the number of rounds fired do not appear to reconcile neatly with that objective evidence. PC William's evidence is particularly problematic because of the inconsistency relating to the number of rounds remaining in his firearm and the delay in surrendering it.

[143] Accordingly, I find that at least eight police rounds were discharged, but I am unable to accept the precise round-count evidence of the individual officers without reservation.

Whether members of the public were still in the area when the police fired?

[144] The Defendant's pleaded case was that the crowd had dispersed before police fired. The oral evidence does not comfortably support such a broad position.

[145] Troystan says persons were nearby. Marley says he was attempting to escape when he was shot. PC Holder accepted that he could not recall whether persons were around Eric when he fired. PC William accepted that several persons were still on the street.

[146] Accordingly, I find as a fact that members of the public remained in the general area when police discharged their firearms. The evidence does not establish the precise position of every individual at every moment, but it does establish that the shooting took place in circumstances where innocent persons were at risk.

Whether police gunfire caused Marley Simeon's injury?

[147] Mr. Simeon was not involved in the confrontation with Eric Thomas or with the police officers. I accept his evidence that, when the police began firing at Eric, he attempted to move away from the danger and obtain cover. It is not in dispute that he sustained a serious gunshot injury during the incident.

[148] It is also not in dispute that the police officers discharged multiple rounds at Eric during the material exchange. I have already found that, although Eric had earlier fired shots into the air, he did not discharge his firearm at the officers during that exchange. I accept Mr. Simeon's evidence that, at the time he was shot, the firearms being discharged in the relevant area were those of the police officers firing at Eric.

[149] The medical evidence establishes that Mr. Simeon sustained a gunshot wound entering through the right lower abdomen and exiting through the left lower back, causing serious intra-abdominal injury. Although the medical evidence does not identify the particular firearm from which the bullet was discharged, the injury is consistent with his evidence that he was struck while within the area exposed to the police gunfire.

[150] I have considered the Defendant's submission that other firearms were present at the scene and that, in the absence of a ballistic comparison, Mr. Simeon cannot establish that he was shot by a police officer. The presence of other firearms at an earlier or later stage of the incident does not, without more, provide a probable alternative cause of his injury. The relevant question is what occurred at the time when Mr. Simeon was shot.

[151] On that issue, I accept Mr. Simeon's evidence. The police officers were firing multiple rounds at Eric in a public area. Mr. Simeon was close enough to that gunfire to be struck during the same exchange. I have rejected the officers' evidence that Eric was firing at them during that exchange, and I do not accept that the evidence identifies any other person as firing towards Mr. Simeon at the material time.

[152] The absence of a recovered bullet or ballistic comparison does not prevent the Court from determining causation on the balance of probabilities. In this case, the timing of the injury, the admitted discharge of multiple police rounds, the direction of the police firing, the ballistic evidence confirming the discharge of police ammunition at the scene, and the evidence of Mr. Simeon which I accept, together establish that it is more likely than not that he was struck by police gunfire. I therefore find that Mr. Simeon's injury was caused by a bullet discharged from one of the police officers' firearms.

Whether police gunfire caused Troystan Jn Pierre's injury?

[153] Mr. Jn Pierre was also not involved in the confrontation with Eric or the police officers. I accept his evidence that he was in the immediate vicinity of Eric when the police officers opened fire and that he attempted to get out of the way by moving behind a parked vehicle. Before he could reach safety, he was struck in the right thigh.

[154] I have considered the inconsistency in Mr. Jn Pierre's evidence concerning his precise position in relation to Eric when the officers fired. In my view, that inconsistency does not undermine the substance of his evidence. His consistent account was that he was close to Eric, that he saw police officers firing in Eric's direction, and that he was

struck during that firing. The medical evidence supports that he suffered a gunshot wound to the right thigh, with a commuted fracture of the midshaft of the right femur and multiple foreign bodies consistent with bullet fragments.

[155] As in Mr. Simeon's case, the Defendant relies on the presence of other firearms at the scene and the absence of ballistic proof identifying a police firearm. I do not accept that this creates a probable alternative explanation for Mr. Jn Pierre's injury. I have found that, during the material exchange, Eric was not firing at the officers. I accept Mr. Jn Pierre's evidence that the gunfire directed towards the area where he was positioned came from the police officers as they fired at Eric.

[156] Considering the evidence as a whole, including Mr. Jn Pierre's accepted eyewitness account, the admitted police gunfire, his proximity to Eric, the timing of his injury and the absence of credible evidence that he was struck by gunfire from any other source at the material time, I find, on a balance of probabilities, that Mr. Jn Pierre was struck by a bullet discharged from one of the police officers' firearms.

Whether PC William fired at Eric while Eric was on the ground?

[157] Mr. Jn Pierre gave evidence that, after he had been shot and had moved behind a vehicle, he saw PC Justus William approach Eric Thomas, who was by then on the ground, and discharge two further rounds at him at close range. PC William denied that allegation. This is a direct conflict in the evidence which I must resolve.

[158] I accept Mr. Jn Pierre's evidence on this issue. He was present at the scene and, on his account, had taken cover close enough to observe what occurred after Eric fell. His evidence on this point was clear and remained unchanged under cross-examination. I have considered his earlier inconsistency concerning his precise position during the initial exchange of gunfire, but I do not regard that matter as undermining his evidence as to what he observed after he had been shot and had moved behind the vehicle.

[159] I do not accept PC William's denial. For the reasons already given, I have rejected material parts of the officers' account of the shooting, including the assertion that Eric

fired at them during the decisive exchange. PC William's account is also affected by the difficulties in his evidence concerning the rounds discharged from his firearm and his inability to provide reliable assistance as to his position and direction of fire. In those circumstances, where his evidence conflicts with that of Mr. Jn Pierre on this issue, I prefer and accept the evidence of Mr. Jn Pierre.

[160] I therefore find, on a balance of probabilities, that after Eric Thomas had fallen to the ground, PC Justus William approached him and discharged two further rounds at him at close range.

[161] That finding is not necessary to establish that police gunfire caused the injuries suffered by either Claimant. On Mr. Jn Pierre's evidence, which I accept, he had already been shot before he witnessed PC William fire the further rounds at Eric. There is no evidence that those later shots caused Mr. Simeon's abdominal injury. The findings on causation are based on the earlier police gunfire during which both Claimants were struck.

[162] The finding is nevertheless relevant to my assessment of PC William's credibility and to the Defendant's case that the officers used no more force than was necessary to respond to an immediate armed threat. The firing of further rounds at Eric after he had already fallen is inconsistent with PC William's account that the use of force was confined to what was required to neutralise an immediate danger.

[163] The finding is also relevant to Mr. Jn Pierre's claim for aggravated damages, although only as part of the circumstances surrounding the injury done to him. He had already been shot and, while injured and attempting to obtain safety, witnessed further gunfire directed at Eric while Eric was on the ground. I accept that this formed part of the frightening experience which immediately followed his own injury. It is to be considered together with his evidence, which I also accept, that when he called out for assistance after being shot, PC William told him to "shut up and move deh."

[164] In Mr. Simeon's case, the finding does not provide any separate basis for damages. He did not claim to have witnessed the later shooting of Eric or to have suffered any

additional injury or distress as a result of it. Its relevance to his case is confined to the Court's assessment of PC William's credibility and of the overall manner in which police firearms were used during the incident.

THE PARTIES SUBMISSIONS:

[165] I now proceed to consider the parties written submission in light of the findings made above. I have accepted the Claimants' account of the material shooting, rejected the officers' account that Eric Thomas fired at them during the decisive exchange, and found that the shots which injured Mr. Simeon and Mr. Jn Pierre were discharged by police officers. Those findings substantially determine the legal issues raised in the written submissions.

Duty of Care:

[166] The Defendant submits that the officers were responding to danger created by an armed third party and that this is not a case in which the police themselves created the risk. That submission cannot stand with the findings of fact. The relevant conduct is not a failure by the police to protect the Claimants from Eric Thomas. It is the positive act of trained police officers discharging firearms in a public area while innocent persons remained within the area of danger.

[167] The appropriate authority is **Robinson v Chief Constable of West Yorkshire Police**³. The principle drawn from that case is that the police are subject to the ordinary law of negligence where their positive acts directly and foreseeably cause physical injury to members of the public. The present case falls within that principle. The Claimants were not persons seeking protection from a third-party threat, they were bystanders injured by police gunfire during the officers' attempted apprehension of Eric Thomas.

[168] The reliance placed by the Claimants on **Ramdeen v Attorney General of Trinidad and Tobago**⁴ is also well founded. The factual circumstances are not identical, but

³ [2018] UKSC 4

⁴ H.C.A NO. Cv 807/1995

the principle is applicable, where armed police choose to engage an armed suspect in an area where civilians are present, they must have regard to the foreseeable risk that innocent persons may be injured by the resulting use of firearms. The present case is, if anything, stronger for the Claimants because I have rejected the evidence that Eric was firing at the officers when they opened fire.

[169] Although Mr. Jn Pierre also relied on **Anns v Merton London Borough Council**⁵, it is unnecessary to resolve the case by reference to the broader formulation in **Anns**. The existence of a duty in this case is sufficiently established by the ordinary principles explained in **Robinson**, applied to the positive conduct of the officers.

Breach of Duty and the Standard Expected of Armed Police Officers:

[170] The Claimants submit that the officers failed to meet the standard required of trained police officers carrying firearms. That submission is consistent with the findings already made. The officers knew that they were in the vicinity of a nightclub where members of the public were present. They knew that Eric had a firearm. They also knew, or ought to have known, that discharging firearms in those circumstances exposed persons nearby to the risk of serious injury or death.

[171] The reasoning in **Attorney General of Jamaica v Latoya Brown**⁶ is particularly helpful. That case recognises that firearms, because of their inherent danger to innocent bystanders, must only be used where necessary and with the greatest care. It also treats proportionality as central to the assessment of police conduct. The same approach is reflected in the Standing Orders relied upon by the parties, which describe the discharge of firearms as a last resort and emphasise the need to avoid unnecessary danger to the public.

[172] The Defendant seeks to distinguish **Latoya Brown** on the basis that the present matter involved an armed man, multiple possible shooters and a developing emergency. That distinction depended upon acceptance of the officers' evidence that

⁵ [1978] AC 728

⁶ [2023] JMCA Civ 17

Eric fired at them during the material exchange and that the danger came from sources other than the police. Those factual premises have been rejected. On the facts as found, Eric had earlier discharged shots into the air, but he was not firing at the officers when they discharged multiple rounds at him in the vicinity of the Claimants. The reasoning in **Latoya Brown** is therefore applicable rather than distinguishable.

[173] The Claimants' reliance on **George v Attorney General**⁷, referred to in Mr. Simeon's submissions, is also appropriate. An officer may use force where reasonably necessary but may not proceed to extremes without reasonable necessity. Here, the use of deadly force was not shown to have been necessary at the point at which it was used. The police officers' conduct was excessive and failed to take proper account of the presence of innocent bystanders. I therefore find that the duty of care owed to both Claimants was breached.

Causation:

[174] The Defendant relies on **Clements v Clements**⁸ and the ordinary principle that a claimant bears the burden of proving causation on a balance of probabilities. There is no difficulty with that legal principle. The issue is whether the Claimants have satisfied that burden on the facts.

[175] The Defendant submits that the absence of ballistic evidence identifying the particular police firearm is fatal to the claims. I do not accept that submission. Ballistic identification would have provided further confirmation, but it is not the only means by which causation can be proved. Causation may properly be determined by drawing reasonable inferences from the evidence as a whole.

[176] The reasoning in **Attorney General of Jamaica v Latoya Brown** is directly relevant here. In that case, the Court accepted an inference of police causation where the accepted evidence was that, at the material time, the security forces were the persons

⁷ (1981) 18 JLR 120

⁸ [2012] 2 SCR

firing in the claimant's direction. The Defendant contends that such evidential certainty is absent in the present case. That submission is inconsistent with the findings already made. I have accepted that, during the material exchange in which both Claimants were struck, the police officers were the persons firing towards the area where the Claimants were positioned. The earlier presence of other firearms at the scene does not provide a probable alternative cause of either injury.

[177] In relation to Mr. Jn Pierre, his evidence places him immediately behind or near Eric when police rounds were discharged in Eric's direction. In relation to Mr. Simeon, his evidence places him in the area towards which the officers were firing as he attempted to get away. The admitted police gunfire, the direction of that firing, the injuries suffered during the same exchange, and the absence of credible evidence that either injury was caused by some other firearm is sufficient to satisfy the balance of probabilities.

[178] The Defendant's reliance on **Clements v Clements** does not assist it. The Claimants do not rely on speculation or on a mere possibility. They rely on the inference arising from the accepted sequence of events. Applying the ordinary "but for" test, neither Claimant would have sustained the relevant gunshot injury but for the negligent discharge of police firearms during the confrontation with Eric Thomas. The claims therefore succeed on causation.

Self-Defence, Reasonable Force and the Statutory Provisions:

[179] The Defendant relies on the **Criminal Code** provisions concerning reasonable force in self-defence and force used when effecting an arrest. It also relies on **Namishy Clarke v Attorney General of Jamaica**⁹ and **Gilchrist v Chief Constable of Greater Manchester Police**¹⁰ in support of the submission that officers confronting an armed and dangerous individual must be permitted to make urgent decisions without the benefit of hindsight.

⁹ Claim No. 2007HCV00031

¹⁰ [2019] EWHC 1233 (QB)

[180] That proposition is unobjectionable in principle. The Court must not assess police conduct as though officers acting in a genuinely life-threatening emergency had time for calm reflection. However, that principle does not dispense with the need for an evidential foundation for the asserted emergency. In the present case, the officers' claimed justification for opening fire was that Eric turned and fired at them. That account has been rejected.

[181] The case is therefore materially different from the circumstances addressed in **Namishy Clarke** and **Gilchrist**, where the officers' perception of an immediate threat formed a proper part of the factual basis upon which their conduct was evaluated. Here, the officers were not responding to gunfire directed at them at the material time. Their actions must be assessed against the circumstances as found, namely that they fired multiple rounds at Eric while members of the public remained exposed to danger.

[182] Mr. Jn Pierre's reliance on **Ashley v Chief Constable of Sussex Police**¹¹ is persuasive in this context. Even where an officer says that force was used in self-defence, civil liability depends upon whether the belief in the need for force was objectively reasonable in the circumstances. Having rejected the evidence of an immediate armed attack by Eric upon the officers, I am unable to find that the officers had a reasonable basis for using deadly force in the manner in which they did. The plea of self-defence and lawful use of force accordingly fails.

Alleged Intervening Conduct of Eric Thomas:

[183] The Defendant's submissions proceed in part on the basis that the danger arose from Eric's independent criminal conduct. In light of the causation finding, it is unnecessary to determine whether an injury caused by Eric's firearm might nevertheless have remained attributable to police negligence. Neither Claimant was injured by Eric's firearm.

[184] For completeness, the alternative argument advanced by Mr. Simeon by reference to Robinson is sound in principle. Where the very risk created by a negligent police

¹¹ [2008] UKHL 25

operation is that an armed suspect may react in a way which injures an innocent bystander, that reaction would not necessarily break the chain of causation. However, that issue does not arise for decision because the injuries have been found to result from police gunfire itself.

Contributory Negligence:

[185] The Defendant's contention that the Claimants contributed to their injuries cannot succeed on the findings made. Neither Claimant was participating in the confrontation. Both were members of the public caught in the area when the police began firing, and both attempted to escape or take cover.

[186] Mr. Simeon's reply submissions properly rely on **Joseph Andrews v Attorney General of Jamaica**¹², as approved in **Attorney General of Jamaica v Latoya Brown**. Those authorities reject the suggestion that an innocent person lawfully in a public place is required to anticipate police gunfire or to protect himself from negligent firearm use. The fact that the Claimants were at or near Empire 758 does not amount to contributory negligence. Nor does the fact that they were unable to avoid bullets fired during a sudden exchange.

[187] There will therefore be no reduction of damages on the basis of contributory negligence.

[188] The officers were acting, or purported to act, in the execution of police functions when they pursued Eric Thomas and discharged their service firearms. The Defendant did not dispute that the officers were police officers acting in the course of their duties, but denied wrongdoing. Having found negligence and causation established, I find the Attorney General vicariously liable for the injuries and consequential loss suffered by both Claimants.

¹² Suit No. C.L. A42/79

ASSESSMENT OF DAMAGES:

[189] Having found the Defendant liable for the injuries caused to both Claimants, I now turn to the assessment of damages. The applicable approach to general damages is that stated in **Cornilliac v St Louis**¹³: the Court considers the nature and extent of the injuries, the resulting disability, the pain and suffering endured, the loss of amenities and the extent to which pecuniary prospects have been affected. The Court must compensate each Claimant for his own injury and its consequences; the seriousness of the police conduct does not, without more, enlarge compensatory damages.

Marley Simeon:

General Damages for Pain, Suffering and Loss of Amenities:

[190] Mr. Simeon was a young man of 21 years at the time of the shooting. His injury was grave. He sustained a gunshot wound entering through the right lower abdomen and exiting through the left lower back, causing serious intra-abdominal injuries.

[191] The medical evidence establishes substantial internal bleeding, injury to the bowel and the need for emergency surgery involving exploratory laparotomy, small bowel resection and repair. He later developed a bowel obstruction caused by adhesions and required a second laparotomy. He remained in hospital for approximately 17 days.

[192] The period immediately following the injury was plainly very difficult. Mr. Simeon was unable to care for himself normally, had difficulty using the bathroom, required assistance with bathing and ordinary personal needs, was restricted in what he could eat, lost weight and was unable to return to his work or usual physical and social activities. The evidence of his mother supports the level of assistance he needed during the early period of recovery.

¹³ (1965) 7 WIR 491

[193] There is, however, an important limitation on this head of damage. Mr. Simeon fairly accepted that he ultimately recovered. Dr. Beaubrun's evidence was that, when examined in April 2024, Mr. Simeon was ambulant, in no physical distress, and reported no residual abdominal pain, nausea or altered bowel habits. His continuing physical impairment was not established to the extent initially suggested in his witness statement. His case is therefore one of an extremely serious and life-threatening injury, painful surgery and a significant period of incapacity, but not permanent disability.

[194] Mr. Simeon relies on **Andre Hall v Attorney General**¹⁴, where an award of \$160,000.00 was made in 2018 for serious gunshot-related orthopaedic injuries, and on **James Duporte and Avon Lapsey v Attorney General St Kitts**¹⁵, where an award of \$150,000.00 was made in 2001 for a gunshot injury involving prolonged hospitalisation and continuing urinary and sexual difficulties. Those cases are useful, but Mr. Simeon's injury must be assessed on its own features. His initial injury was more immediately life-threatening than some of the comparators, but unlike the claimant in **Duporte and Lapsey**, he did not establish enduring functional impairment.

[195] In all the circumstances, I consider an award of \$80,000.00 to be fair compensation for Mr. Simeon's pain, suffering and loss of amenities. This recognises the severity of the gunshot wound, the two abdominal operations, the distressing period of recovery and the temporary loss of ordinary enjoyment of life, while also taking account of his substantial eventual recovery.

Special Damages: Medical and Related Expenses:

[196] Mr. Simeon pleaded special damages for medical expenses in the sum of \$13,211.00 and relied on the hospital account, pharmacy receipt, imaging receipts and related documentary evidence attached to his witness statement.

¹⁴ SLUHCV2008/0179

¹⁵ Civil Suit No. 67 of 1997

[197] The principles stated in **Carlus Thomas et al v Alrick Dick**¹⁶ and **The Proprietors, Condominium Plan No. 2/1989 v Trinity Investment Company Limited**¹⁷ are applicable. Special damages must be pleaded and supported by evidence upon which the Court can reasonably rely. The Court is not required to reject a genuine loss merely because every component is not supported by an ideal form of receipt, but it must be satisfied that the sum awarded was actually incurred as a result of the injury.

[198] The documentary exhibits total \$13,211.30. However, the Claimant sought \$13,211.00 in his final submissions. I therefore award the amount pursued, namely \$13,211.00.

Loss of Earnings:

[199] Mr. Simeon claimed loss of earnings arising from his inability to continue his employment at KFC. His employment letter confirms that he was employed as a team member and earned approximately \$520.00 per fortnight. In his submissions, he limited this claim to a five-month period, accepting that by that stage he was sufficiently recovered to resume working.

[200] The approach in **British Transport Commission v Gourley**¹⁸ is applicable. Loss of earnings is a pecuniary loss which must, so far as money can do so, restore the injured person to the financial position he would have occupied but for the wrong.

[201] The claimed monthly figure of \$1,040.00 is supported by the employment evidence and is not unreasonable. I accept that Mr. Simeon was unable to work for conservatively five months because of his injuries. I therefore award, \$1,040.00 × 5 months = \$5,200.00.

Gratuitous Care and Household Assistance:

[202] Mr. Simeon also seeks an award for care and assistance provided by his mother during his recovery. The evidence establishes that, following discharge, he required

¹⁶ SVGHCV2019/0002

¹⁷ ANUHCVP2008/0009

¹⁸ [1956] AC 185

assistance with ordinary daily matters, food preparation, medication and personal care. Given the seriousness of his abdominal injury and his second operation, the need for such assistance is entirely credible.

[203] The principle relied upon from **Halsbury's Laws of England**, together with **Sindy Binda v Juan Caliste et al**¹⁹, supports an award for necessary care provided without charge by a family member. However, the amount claimed must still be approached with care. Ms. Simeon's evidence that her business was affected establishes some inconvenience and burden, but it does not provide a sufficiently reliable basis for valuing care at \$500.00 per day, nor does it establish net income lost by her at that rate.

[204] I therefore make a moderate award which recognises the real care provided but avoids speculation. Under this head I award \$2,000.00.

[205] The total award to Marley Simeon is as follows:

Head of Damage	Award
General damages for pain, suffering and loss of amenities	\$80,000.00
Medical and related special damages	\$13,211.00
Loss of earnings	\$5,200.00
Gratuitous care and household assistance	\$2,000.00
Total before interest and costs	\$100,411.00

Troystan Jn Pierre:

General Damages for Pain, Suffering and Loss of Amenities:

[206] Mr. Jn Pierre was 28 years old when he was shot. He sustained a gunshot wound to the right thigh, with an entry and exit wound. An X-ray showed multiple foreign bodies consistent with bullet fragments. The gunshot caused a commuted fracture of the midshaft of his right femur. He was admitted to hospital, underwent open reduction and internal fixation with plate and screw fixation, and was discharged using crutches with restrictions on weight bearing.

¹⁹ GDAHCV2014/0097

[207] His injury was serious and painful. A fractured femur is a significant injury, particularly for a person who says he previously led an active life, played football and performed physical farming work. His evidence that he was unable to care for his animals, required assistance during his recovery and could not resume football as before is consistent with the nature of the injury and surgery.

[208] Unlike Mr. Simeon, there is less medical evidence concerning Mr. Jn Pierre's long-term position. There is no expert evidence establishing permanent disability or a lasting impairment of earning capacity. I therefore accept that his injury caused considerable pain, a significant period of incapacity and interference with physical activity, but I do not make an award on the basis of established permanent disability.

[209] Mr. Jn Pierre relies on **Alisha Rodney v William Airall**²⁰, where a claimant with a midshaft femur fracture and related injuries was awarded \$140,000.00 in general damages, and **Mary Anderson v Kenton Donacien**²¹, where comparable femur fracture awards were considered in a range between \$50,000.00 and \$140,000.00.

[210] Having regard to those authorities, the seriousness of the commuted fracture, the need for surgery, his period on crutches and the absence of evidence proving permanent disability. I award \$50,000.00 for pain, suffering and loss of amenities.

Special Damages:

[211] Mr. Jn Pierre pleaded special damages in the sum of \$8,133.00, arising from hospital treatment, surgery, ambulance, imaging and medical report expenses. The documentary evidence establishes substantial hospital charges arising directly from the injury.

[212] Although there appears to be some arithmetical inconsistency between the individual figures referred to in the material and the pleaded total, the Court cannot award more than the amount claimed without amendment. I am satisfied that expenses at least

²⁰ ANUHCv2013/0051

²¹ SLUHCv2013/0965

equal to the pleaded amount were incurred as a direct consequence of the shooting. I therefore award \$8,133.00 as special damages.

Loss of Earnings or Farming Income:

[213] Mr. Jn Pierre gave evidence that he was a farmer and kept animals before the incident and that his injury prevented him from continuing that work normally. I accept that a serious leg injury of this kind would have interfered with his ability to perform farming work during his recovery.

[214] However, no properly quantified claim for loss of earnings or loss of farming income was established. There were no accounts, sales records, evidence of regular earnings, evidence of the value of animals allegedly sold, or reliable basis upon which the Court could calculate a pecuniary loss.

[215] Accordingly, I make no separate award for loss of earnings or loss arising from farming or animal husbandry. The interference with his ordinary physical work and activity has been considered in the award for loss of amenities.

Gratuitous Care:

[216] Mr. Jn Pierre stated that his cousin assisted him while he was on crutches and unable to carry out ordinary household responsibilities. He relies on **Christopher Joachim v Damian Luke**²² as authority for awarding damages for gratuitous care.

[217] I accept that he likely required some assistance during his recovery. However, his cousin did not give evidence, no duration or schedule of care was established, and no monetary valuation was advanced in the submissions. In those circumstances, a separate award would be speculative. The need for assistance during recovery is instead reflected in the general damages awarded for his loss of amenities. I therefore make no separate award under this head.

²² DOMHCV2015/0139

Aggravated Damages:

[218] Mr. Jn Pierre claims aggravated damages arising from the manner in which he was injured and treated immediately afterwards. His submissions refer to **Rookes v Barnard**²³. Strictly speaking, **Rookes v Barnard** is principally concerned with exemplary damages. Aggravated damages are compensatory, they are awarded where the manner of the wrong has increased the claimant's injury through humiliation, insult, indignity or additional distress.

[219] The present case justifies an award under that head. Mr. Jn Pierre was not merely shot by police gunfire. On the findings already made, after being injured and taking cover, he witnessed PC William approach Eric Thomas and fire further rounds at him while he was on the ground. Mr. Jn Pierre then cried out that he had been shot and was met by PC William's dismissive instruction to "shut up and move deh". That conduct occurred when he was injured, frightened and in need of assistance. It added an element of callousness and indignity to an already traumatic event.

[220] I consider an award of \$10,000.00 appropriate as aggravated damages as this amount is moderate, compensates for the additional indignity and distress caused by the officer's callous response and avoids duplication with the general damages award

Exemplary Damages:

[221] Mr. Jn Pierre also pleaded exemplary damages. The conduct found against PC William is serious and deserves the Court's clear condemnation. However, exemplary damages are exceptional and should not be awarded merely because the conduct was reprehensible. The Court must also guard against duplication where aggravated damages have already been awarded to compensate for the distress and indignity caused by the manner of the wrong.

[222] In my view, the additional injury suffered by Mr. Jn Pierre through the officers' conduct is adequately and properly recognised by the award of aggravated damages. I therefore make no separate award of exemplary damages.

²³ [1964] AC 1129

[223] The total Award to Troystan Jn Pierre:

Head of Damage	Award
General damages for pain, suffering and loss of amenities	\$50,000.00
Special damages	\$8,133.00
Aggravated damages	\$10,000.00
Loss of farming income	Nil
Gratuitous care	Nil
Exemplary damages	Nil
Total before interest and costs	\$68,133.00

INTEREST:

Pre-Judgment interest:

[224] Pre-judgment interest shall accrue on general damages at the rate of 6% per annum from the date of the service of the claim to today's date. Pre-judgment interest shall accrue on special damages from the date of the shooting to today's date at the rate of 3% per annum. This interest is awarded in both claims.

[225] There shall be no award of interest on aggravated damages.

Post Judgment Interest:

[226] Post judgment interest shall accrue at the rate of 6% per annum from today's date until the judgment is satisfied in full.

COSTS:

[227] The Claimants have succeeded on liability and are entitled to their costs. The Defendant shall pay the Claimants costs of these claims on the value of the awards made (including pre-judgment interest) on the prescribed scale.

Observations on Police Firearms Management and Accountability:

[228] Before leaving this judgment, I consider it necessary to express grave concern about aspects of the police response and the accountability measures revealed in this case. These observations do not amount to disciplinary or criminal findings against any individual officer. They arise because two innocent members of the public suffered serious injuries from police gunfire in a public place.

[229] Where State issued firearms are discharged, particularly in a crowded area, there must be a clear and dependable account of the firearm carried by each officer, the ammunition available before the incident, the rounds discharged, the rounds remaining and the prompt securing of the weapons for investigation.

[230] That did not occur in this case. The evidence left unresolved questions concerning the rounds discharged by the officers, the timing of the submission of the firearms and the delayed disclosure of material ballistic evidence. Those shortcomings were especially serious because the source of the bullets which injured the Claimants was a central issue at trial.

[231] The Court is also concerned that service issued firearms were being carried and from indications continue to be carried by off duty police officers in circumstances involving private security work and social attendance at a crowded entertainment venue. The issue is not whether an off-duty officer may respond to danger, plainly, there are circumstances where an officer may be required to act. The concern is whether adequate policies and safeguards exist to govern the retention and carriage of State issued firearms by officers who are off duty, engaged in private employment or attending social gatherings where disorder may arise.

[232] The facts of this case also demonstrate the importance of continued firearms training directed not only at the use of a weapon, but at restraint, proportionality, the safety of bystanders and the risks of discharging firearms in crowded public places. The Standing Orders describe the use of firearms as a last resort and require an armed suspect to be apprehended with the least possible danger. Those safeguards are important precisely because, as occurred here, innocent members of the public may suffer grave injury when firearms are discharged without sufficient regard to their presence.

[233] It is extremely unsatisfactory that the Defendant relied on the absence of ballistic proof while the State's own processes did not provide a complete and timely accounting of the firearms and ammunition involved. A civilian injured during police gunfire should

not be placed at an evidential disadvantage because of shortcomings in the investigation and preservation of evidence.

[234] The Court therefore directs the Registrar of the High Court to bring a copy of this judgment to the attention of the Director of Public Prosecutions and the Commissioner of Police so that they may consider such action as they deem appropriate given my findings. This may include a review of the procedures governing the carriage of service firearms outside ordinary duty and their use during private employment or social attendance. Consideration may also be given to the immediate accounting for and examination of firearms following a police shooting, the timely disclosure of relevant investigative material and the adequacy of ongoing firearms training concerning public safety.

ORDERS:

[235] For the reasons in this judgment, I make the following orders:

In SLUHCV2023/0300 – Marley Simeon :

- 1) Judgment is entered for the Claimant, Marley Simeon against the Defendant.
- 2) The Defendant shall pay the Claimant:
 - i. General Damages for pain, suffering and loss of amenities in the sum of \$80,000.00.
 - ii. Medical and related special damages \$13,211.00
 - iii. Loss of earnings \$5,200.00
 - iv. Gratuitous care and household assistance \$2,000.00.

IN SLUHCV2023/0320- Troyston Jn Pierre:

- 3) Judgment is entered for the Claimant, Troyston Jn Pierre against the Defendant.

- 4) The Defendant shall pay the Claimant:
- i. General Damages for pain, suffering and loss of amenities in the sum of \$50,000.00.
 - ii. Special damages in the sum of \$8,133.00
 - iii. Aggravated damages in the sum of \$10,000.00

And in both claims:

- 5) The Defendant shall pay the Claimant pre-judgment interest on special damages at the rate of 3% per annum from the date of the shooting until today's date.
- 6) The Defendant shall pay the Claimants pre-judgment interest on general damages at the rate of 6% per annum from the date of the service of the claim to today's date.
- 7) The Defendant shall pay the Claimants post-judgment interest at the rate of 6% per annum from the date of judgment until payment in full.
- 8) There shall be no award of interest on aggravated damages.
- 9) The Defendant shall pay the Claimants costs of both claims on the prescribed scale on the value of the award made, including pre-judgment interest.
- 10) The Registrar shall forward a copy of this judgment to the Director of Public Prosecutions and the Commissioner of Police.

**Alvin Shiva Pariagsingh
High Court Judge**

By the Court,

Deputy Registrar of the High Court