

IN THE SUPREME COURT OF BELIZE, A.D. 2015

CLAIM NO. 500 of 2014

**DEAN YEARWOOD SR.
PORFIRIA YEARWOOD
Intended Administrators of the Estate of
DEAN ALEX YEARWOOD**

CLAIMANTS

AND

**P.C. NO. 475 GLEN WAYNE GRANT
COMMISSIONER OF POLICE
ATTORNEY GENERAL OF BELIZE**

DEFENDANTS

BEFORE the Honourable Madam Justice Sonya Young

Hearings

2015
8th July
9th July
20th October

Written Submissions

2015
17th July - Claimants
Received unfiled - Defendants

Mr. Phillip Palacio for the Claimants
Ms. Trienia Young for the Defendants.

**Keywords: Law of Tort - Negligence - Death - Self Defence - Police Officer -
Police Immunity from Negligence Suit - Quantum of Damages - Torts Act Cap
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JUDGMENT

1. A brisk September morning in 2013, one police officer lay dead on the ground of a nondescript yard, while another police officer holds the smoking gun that took his life. The weight of blame must necessarily redeem one, but condemn the other. It is a too real portrayal of what is perhaps the most secret of all fears of any faithful law enforcement officer. This is, however, not a case seeking to indict the police force, nor is it a case seeking to put a value on human life. It is instead a case seeking to find the facts of what occurred on that morning and to apply the law to those facts.
2. The dependents of the late Dean Yearwood Jr., pray the following reliefs:
 1. *Damages under the Torts Act for the loss of expectation of life of Dean Alex Yearwood (deceased) whose death was occasioned by the negligent shooting of the first Defendant on September 9, 2014 on Central American Boulevard in Belize City;*
 2. *Interest on any damages found to be due to the said Estate and dependents of the deceased pursuant to Section 167 of the Supreme Court of Judicature Act, Chapter 91;*
 3. *Costs.*
 4. *Such other reliefs as this Honourable Court deems just in the circumstances.*
3. Originally, they had also claimed as intended Administrators under the Administration of Estates Act. An earlier ruling of the court struck out this particular claim.
4. The Defendants deny liability. They plead the defence of self defence and submit that the first Defendant's actions were justifiable in the circumstances. They ask that the matter be dismissed with costs.

5. **The Issues:**

1. Whether P.C Glen Wayne Grant's negligence caused the death of the deceased
2. Whether P.C Glen Wayne Grant discharged his firearm in self defence
3. Whether the Police have immunity from negligence suit
4. Whether the Claimants are entitled to damages and if so, in what quantum

The Evidence

6. Dean Yearwood Jr. was a first class detective of the Belize Police Department. He was the son of the first Claimant (also a police officer) and the second Claimant. When he died, he was 24 years old and had been a member of the Police Force for just over three years. Prior to this, he was a voluntary private in the Belize Defence Force from 2006. The certificates of training exhibited by his father, demonstrates that he was a well instructed member, who seemed poised for success. He is portrayed as a dutiful and responsible son, the pride of any parent. He is forever silenced and cannot now explain his actions that morning.
7. Police Constable Glen Wayne Grant has been an officer for a little more than eight years. He is attached to the Special Crime Branch of Precinct 1, where he is now the officer-in-charge. On that fateful morning he rode his police issue bicycle and carried his police issued 9mm Beretta and radio. He was alone.
8. As to what occurred on the morning of the 8th September, we are presented with the eyewitness testimony of Ryan Swift in whose yard Dean Alex

Yearwood Jr., met his fate. Swift, with his self proclaimed "*elephant*" memory, says he came downstairs around 1:00 a.m. to check his house and yard, as is his habit. Although there was no outside light on, he maintained that his yard was not very dark. He withstood strenuous cross examination on the issue of overgrown shrubs and trees blocking his view of, or blocking the light from, the supermarket.

9. He says he saw two persons struggling in his yard. One was handcuffed and he recognized him as one of his workers. That person shouted to him while trying to free himself from the handcuffs. Not long after, a third person came along, stood opposite, in front of the Public' s Supermarket and started shooting. He fled into his office to hide. He could not say whether the second person in his yard ever returned fire to the individual outside the supermarket. From his refuge he heard five shots ring out. (The number of shots heard is immaterial. Even Grant, admitted that he could not say how many he fired or how many the other person fired). When the gunshots ceased, Swift, returned to his vantage point and saw that the two persons, who had been struggling earlier, now lay on the ground in his yard. He does not speak to their locations otherwise.
10. Very soon thereafter, the police arrived and announced that one of the two persons was, in fact, dead. The young man whom he had recognized, had been shot, but was still alive. A police officer removed a gun from the dead man' s waist. Later that day a team of police officers returned to his yard and took photographs. Although they enquired as to what had happened, they did not record a statement from him. When questioned under cross-

examination, Swift revealed for the first time that there was another man in that yard. He said he had not mentioned this in his evidence in chief because he did not think it was important. He did not see the second young man trying to rob anyone or do anything. He was not asked anything further about this man.

11. Glen Wayne Grant tells a different story. He places himself in a well lit area outside the Publics Supermarket. From there, he says he saw a male person run out of a, poorly lit and heavily vegetated, yard situated at the corner of Nargusta Street and Central Boulevard. We can safely accept this to be Swift's yard. He was, at that time, about 50 yards (equivalent to 150ft) away from that person. He then saw a male person in a white shirt (whom he later learnt was Dean Yearwood Jr.) chasing yet another person who had also exited that yard. He continued towards the yard and saw what appeared to be a silver .38 calibre handgun in Dean Yearwood Jr' s hands.
12. Dean Yearwood Jr. fired one shot towards the fleeing male person. On seeing this, Grant reached for his radio and called 911 to inform them that shots were being fired. Then he drew his firearm and identified himself to Dean Yearwood Jr. as a police officer by saying "freeze, police." Dean Yearwood Jr. was now about 20 feet away. His testimony, as to distance, left much to be desired. It varied throughout, somewhere between 50 and 20 feet. He explains the discrepancy by stating that he was walking towards the deceased, "*closing in on him*".

13. Dean turned towards him and fired a single shot in his direction, then he ran about 3 feet into the same yard and hid behind a tree. Grant, fearing for his life, returned fire at what he believed to be an attack. Under cross examination, he expressed, for the first time, that this was a warning shot. In fact his witness statement clearly states at paragraph 8 "*I was unable to issue a warning shot to alert Dean Yearwood, Jr. that I was armed*"
14. Be that as it may, Grant goes on to explain that he fired that one shot towards the tree in the yard where his "*target*" had hidden. That clearly could not be a warning shot where it is aimed at his target. A warning shot is never intended to hit the person at all. An exchange of gunfire ensued between the two. Grant fired a total of 11 rounds. When the gunfire eventually ceased, he saw the white shirt slowly go down and assumed Dean had been hit. He approached the area and stood on Central American Boulevard, just 10 feet from Dean. He was able to see Dean breathing and slumped on his right side against the tree. He told him to push the firearm out. Dean complied by pushing the firearm on to the sidewalk, just three feet from Grant. Grant then stood over the firearm. He gives no indication of where the firearm or Dean eventually rested. While waiting for police assistance, he heard a voice say "Grant a get shot." He realized, for the first time, that there was someone else in that yard. He only recognized the injured person, as Brian Vasquez, when they were taking him away by ambulance sometime later.
15. He maintained that at no time did Dean identify himself as a police officer or make an attempt to do so. Under cross-examination, Grant eventually accepted that he had not included the chase incident in his written statement to the police. A statement which he had given on the very same morning of

the incident. He also accepted that he did not state therein that he had identified himself as a police officer before the shooting. Finally, he admitted that his contemporaneous statement did state that he called for assistance when shots were being fired at him and not as he had said in his evidence-in-chief when Dean shot at the fleeing man.

16. He attributed these inconsistencies to his tiredness at the time he gave the first statement. He had been on duty since 4:00 p.m. the previous day. He sought to rely on his evidence-in-chief as the truth of what transpired that night.
17. With such vastly conflicting accounts we turn to the expert evidence for whatever help it could possibly provide. Sgt. Isias Sanchez responded to the report that morning. He was the officer in charge of the investigations. When he arrived, he met Dean's body partly on the sidewalk and partly in the lot of No.35 Nargusta Street, Ryan Swift's yard. He does not indicate which sidewalk or which parts of the body were where. He observed a .38 revolver on the sidewalk. He does not otherwise indicate its position and bizarrely, he does not situate it in relation to Dean's body. He states nothing about marking where either the revolver or the body was found before removing them.
18. What he does say is that the revolver contained four expended shells. He questions Grant who hands over his service pistol, a 9mm Beretta, it contains five live rounds. His investigations lead to the recovery of 11 spent shells and a projectile fragment. These, he said, were discovered by the Scenes of Crime Technician, Daniel Daniels. He packages all these items

and takes them to the National Forensic Science Services (the NFSS). He is unable to recall specifically what items he handed over to the NFSS. He says nothing about the recovery of any other expended bullets at the scene or elsewhere. He does not say whether any tests were requested or done for gunpowder residue on the deceased's hands. He did not record a statement from Ryan Swift although he knows that he is the home owner. He says he did not see Swift when he arrived at the scene.

19. Daniel Daniels, the scenes of crime technician attached to the Belize Police Department, processed the scene. In his witness statement he gave the most detailed description of the layout. He explained that the entire area was dark because of the vegetation - "*(t)he lighting condition was poor in the surrounding area at the corner of Nargusta St. which intersects with the Central American Boulevard*". He goes on "*I observed a yard at the said corner which as (sic) partly fenced up by a chain link fence and another section of the yard was partly open. A two story wooden house stood in the far corner of the yard on the northern side. The south side of the yard was very open and highly vegetated with fruit trees and flowering trees which grew along the fence line. The yard itself had poor lighting condition due to the shadowing from the trees.*"

20. When he saw Dean's body, it was "*on the right side of the sidewalk on the left hand side of the boulevard when coming from the direction of the Belcan Bridge.*" He then speaks of blood on the mouth and left armpit area but not of any on the ground. This struck me, since Dean, according to the forensic expert, died of exsanguination. But the doctor also testified that "*there was abundant fluid and clotted blood in the chest cavity*". Perhaps that could account for the absence of blood, but what concerned me more however, was how the body got completely on to the sidewalk when others placed it in the yard or partly in

the yard. He continues that a black handle gun was also on the sidewalk about 6ft from the yard. He does not situate the gun in relation to Dean's body either.

21. His investigations lead to the discovery of 11 expended shell casings and a fragment of a copper jacket on the ground in front of the Publics Supermarket building. He describes the lighting in this area as 'very good' - "*I could see clearly all the items of exhibit on the ground*". He also discovers what appeared to be damage, caused by a bullet, on the wall of that supermarket.
22. He took over thirty photographs of "*the scene and close-ups of the items*". He presented ten of these to the court. One photograph shows the outside of the supermarket with a light over the main door. In the foreground is a vehicle with its headlights telling on the ground outside the supermarket so that six markers indicating spent shells are visible. However, the area behind and next to the vehicle is pitch black. There is no photograph showing the remaining spent shells. One is left to rely on this witness's vague oral testimony for their location. Then there is one showing the view along the boulevard and towards the supermarket by daylight. What is most interesting about that photograph is the view captured of the overgrown trees and thick plants at the fence of No38. However, there is no photograph showing the view of the yard on the Nargusta St. side.
23. Three other close-up photographs show two areas of chipped cement on the supermarket wall while another shows a portion of Ryan Swift's open yard area and house by daylight. From that picture one can certainly see the shadow casts by the trees. Two (also close-ups) show suspected bullet holes

in the walls of that house. The witness explained that the hole passed through the outer wall and penetrated the inner wall, then exited the house. Another photograph shows a revolver on what seems to be the pavement. It is a close-up so it gives no indication of the location of the firearm in relation to anything else. There is also a photograph of what the technician refers to as a lead like object in the yard of No.38. This too is a close-up and gives nothing away as to its location. There is no corresponding photograph of a copper fragment found outside the supermarket.

24. Noticeably absent also was a photograph of the body where it was found lying or a photograph of the firearm in proximity to the body or even a photograph of markers indicating same. I mention this specifically because the witness testified that the body and the suspected firearm were removed after he had taken his photographs. This seems in my estimation to be cogent evidence which ought not to have been excluded without at least an explanation.

25. Dr. Mario Estradabran, a forensic specialist, viewed and examined the deceased's body. He found, unsurprisingly, that he had died of exsanguination. He explained that there was one entry and one exit wound, which were both consistent with a 9mm firearm. What or who caused the death was never in issue. However, what was certain was that the deceased had been shot in his back. The good doctor opined that "*at the time of the shooting the deceased's back was in a slanted position, with the deceased being in a slightly stooped position. It is also my opinion that at the time of the shooting the victim was moving away from the shooter*".

26. Under cross examination he maintained that the deceased would have died right away, within a few minutes (30-45 mins) of receiving his injuries. What was most convincing however was his opinion that the injury would have absolutely immobilized the deceased. He said that having been shot, he may have been able to move a few feet, but having fallen, he would have been totally unable to move.
27. The firearm examiner and ballistic expert of the Belize Police Department, Orlando Vera presented his expert report. He has been doing forensics and ballistics for the past nine years and is presently the Assistant Director at the NFSS. He holds a post graduate diploma and a masters degree in forensic science. He acknowledged that, on the 9th September 2013, he received certain items from Sgt. Sanchez on which he conducted his examination. His written report was simply an identification and classification of the items and a statement on the functionality of both firearms. It also revealed that Grant's firearm had a magazine capacity of 17 rounds.
28. He did not say whether either firearm had recently been fired. He stated nothing about whether or not he could say which of the three expended bullets he examined came from which firearm (if any), although he makes it a point to include the number of lands and grooves found on each one. I state, only because I observed, that each one had a different number of lands and grooves. He gave no indication of whether he test fired the firearms to perhaps compare the lands and grooves on those expended bullets with the expended bullets he was given to examine. He had to be questioned by the court to explain how Grant's firearm functioned with respect to the firing of the round and discharge of the spent shell.

29. This witness also visited the scene on the day after the incident. There, he said, he observed a bullet impact about 3ft from floor level on the wall of the said supermarket. This, in his expert opinion, was consistent with the deceased's trajectory or direction of shooting. From his own observations at the autopsy he placed the deceased at a 90 degree angle to, and at least fifteen feet from, the shooter.
30. When pressed under cross examination, he explained that the trajectory he had determined, was really only consistent with what he had been told. He had not visited the scene before the body or other exhibits had been removed. His opinion, therefore, was based on the observations and information of others. Moreover, as an expert he never indicated why he believed the damage to the wall was caused by a bullet, whether that damage was fresh or why it would, in his opinion, be located at three feet. He does not even specify whether he believed the damage had been caused by a single bullet or otherwise. The unanswered questions were many.
31. He then went on to make a sweeping statement about the direction in which Grant must have been moving while he was firing. He based his conclusion on the location of each spent round. This completely baffled the court which found it imperative to probe such a quantum leap in his findings. He then agreed that Grant could have been moving in either direction and the placement of the spent shells could indicate nothing more than that he was moving as he fired.
32. I found this witness to be most unhelpful to the real issues. Interestingly, (through no fault of his) no nexus was created between the three expended

bullets given to him to examine and precisely where each one was found at the scene. The expert found on examination that one was of undetermined calibre, one was a 9mm calibre and one which his report said was marked "Brian Vasquez" was a 38 spl calibre bullet. So which of the three, if any, was the 'fragment of a copper jacket' found on the ground outside the supermarket, remains a mystery. To my mind, this may have been cogent evidence in support of the case presented by the defence. Why was such a glaring gap left?

Whether Glen Wayne Grant's negligence caused the death of the deceased:

33. In *Letang v Cooper [1965] 1QB 232 at 239* Lord Denning M.R. stated:

"If one man intentionally applies force directly to another, the plaintiff has a cause of action in assault and battery, or, if you please to describe it, in trespass to the person. If he does not inflict injury intentionally, the plaintiff has no cause of action in trespass. His only cause of action is in negligence, and then only on proof of want of reasonable care."

Counsel, for the defendants, seems to interpret this to mean that applying intentional force gives you only a claim in trespass to the person. But in fact there is most times an overlap between negligence and the intentional torts. So although an act may be intentional it may also be negligent and so give rise to a claim in negligence. However a strictly negligent act can never be intentional see *Clerk v Lindsell* on Torts 20th Ed 8-02.

34. The basis of the tort of negligence is the establishment of a duty of care owed by the defendant to the claimant. **Caparo Industries Plc v Dickman [1990] 2AC 605** laid down the three fold test to be applied in determining

the existence of such a duty of care - foreseeable harm from the defendant's conduct, proximity of the parties and imposition of the liability must be fair, just and reasonable. The burden of proving that this duty exists and that the harm or death was as a direct result of its breach, lies squarely with the claimant.

35. Now, the functions of a police officer as expressed in section 4 of the Police Act, Cap 138 are "*...the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of property and the due enforcement of all laws, regulations, rules and orders with which it is charged, and for the performance of such duties, police officers may carry arms*".

36. The use of the arms they carry is restricted by the Order 30 of the Police Standing Orders, Cap 17

"It must be clearly understood that the use of firearms unless in self defence or in the defence of another is a use of excessive force and punishable under the criminal code and the discipline regulations."

When we look to the Criminal Code, Cap 101 in particular section 36(4) we are informed that

"For the prevention of or for the defence of himself or of any other person against any of the following crimes, a person may justify the use of necessary force or harm extending in case of extreme necessity even to killing, namely:

(c) Murder

(d) Manslaughter, except manslaughter by negligence

(k) Dangerous or grievous harm"

37. But the salutary warning given by **Morrison J** in *Barbara McLeod v The Attorney General of Jamaica et or HCV04260/2006 at parag 26* must be heeded;

"However, a police officer, in that situation is not to be taken as having the carte blanche authority to proceed to extremes without reasonable necessity and without due consideration for members of the public in the execution of their duty".

38. Likewise that of McKain J in *Joseph Andrews v Attorney-General of Jamaica (1981)18JLR 344(SC)* states at page 438

"It is good law that an officer may repel force with force where his authority to arrest or imprison is being resisted, and even if death should result, yet this consequence would be justifiable in law. But he ought not to proceed to extremes without reasonable necessity, and the public has to be considered if he proposes to discharge a firearm where other person than a fugitive may be located."

39. A police officer's job is difficult and dangerous. It is clear that they have the authority to use deadly force only where the circumstances require. In such life threatening circumstances they are not expected to weight to a nicety how much force is required. But they are not allowed to use excessive force and they are under a duty not to discharge their firearm carelessly. *".....where it is necessary, such as, where his authority to arrest or imprison is resisted to meet force by force of arms, in self defence even if death ensues. However, the constable is not to be assumed to be given the uncircumscribed liberality of action: he must endeavor to prosecute this task without acting wantonly or recklessly."* - **Barbara McLeod** (supra) **parag 28**.

40. It is through a microscopic examination of the evidence that the court will determine on a balance of probability whether Grant's actions were negligent. The credibility of the two eye witnesses is now called to scrutiny.
41. Grant's testimony is fraught with discrepancies when juxtaposed with what he provided through his contemporaneous statement to the police and his pleaded case. It compels one to doubt his version of events since the incident must certainly have been fresher in his mind on the morning of the incident. An issue such as the chase could not be lost through tiredness. Especially where he maintains that it was that chase which originally garnered his attention and eventually prompted him to action. Remember, it was during that chase that he saw the firearm, and, he definitely saw it before he heard it.
42. When he radioed for assistance he states quite clearly that shots were being fired. He does not state that he had been fired at or that someone else had been fired at. He simply states that shots were being fired, as if he had only heard them, rather than seen someone firing them. This caused me pause.
43. His pleadings state that he "*saw a male person dressed in a white t-shirt and a black in colour 3/4 pants standing up in the middle of Nargusta St. firing shots towards Hondo St*". Yet, it is his sworn testimony that when he called for assistance, only one shot had been fired at a person who had run down Nargusta Street. If we accept that shots were in fact being fired, his testimony further indicates that the first was fired at the fleeing person and the second was fired at him. Would he at that time really be in a position to radio in a report, then shout directions or would he have been making every effort to protect and/or

defend himself. Having so announced himself, why would another police officer, well within hearing distance, (and who obviously heard him because he turns his attention to him) return fire on his fellow police officer, then run into a darkened yard to hide? That is Grant's own testimony. Why would Grant not recall announcing himself as a police officer when he was preparing his police statement? That is one of the strongest legs on which he would stand to assert that he had not used excessive force. Why does his pleadings only have him announcing himself, as a police, when he instructs the downed man to push out his weapon?

44. Moving on, Grant, having returned fire, would have thus informed Dean that he was armed. It seems highly unlikely therefore, that having run into the dark and bushy yard, Dean would have dared to stand up by the tree with his back to such clear and present danger. We cannot forget that Dean is a trained police officer. This court states that, in Grant's version, Dean must have been standing, since it is Grant's own testimony that he saw the white shirt go down. The court also says that his back must have been to Grant as it is the forensic doctor's testimony that Dean had been shot in the back.
45. Now, it must also be remembered that Grant places himself in the open and well lit area outside the supermarket, akin to a sitting duck. He is not the aggressor, yet he is able to shoot the hiding aggressor in a darkened yard. Grant states nothing of him trying to shield himself or positioning himself so that he would not be harmed. The photograph provided of the outside of the supermarket shows no real hiding places. How was he able to "close in" on his target so easily while being under attack?

46. Grant testified to the darkness and overgrown nature of the yard. His Counsel's cross examination of Swift stressed the darkness of that yard. The photographs provided by the defence shows an area of pitch blackness around the vehicle parked adjacent to the supermarket. Could he be telling the truth when he says he saw the chase from 50yds away. How was Grant able to see the firearm before he heard it? Yet not see the other person who was also in that yard. To my mind, while he stood over the firearm on the sidewalk, he must have come closer to that man than he was to Dean when he first started shooting.
47. The ballistic expert says Grant was moving as he was shooting. If we follow the trail of shells and we accept that he moved from the direction of Vernon Street towards Nargusta Street how much was he actually able to see before he started shooting. The trail in the photograph begins a fair distance from the corner of Nargusta St. and only six markers are visible. Daniel Daniels explains that the first visible shell was over 20ft and the last about 2-3ft, from Nargusta St. Then he says that the other markers are "*more down coming from the direction of Belcan Bridge. On the same side in front of the supermarket. They were all found in front the supermarket*". That places them less than 2-3ft from Nargusta St. How close did he in fact get to his armed target? Even on the limited evidence provided, it seems more probable than not that he, Grant, was the aggressor. Allow me to explain.
48. Grant fires eleven rounds. His expelled shells, found at the scene, undoubtedly prove this and it was not denied. He says he was first fired at, but the evidence presented to this court proves at best that perhaps a gun was taken from the deceased's waist or was found lying on the sidewalk, perhaps

6ft from Mr. Swift's yard. The ballistic expert, who could have bolstered the case for the defence by stating whether that firearm had been recently fired, was inexplicably silent. No results of any tests done for residue on the deceased's hands were presented. The damage to the wall, in the court's view, was not proven in any way to be fresh or to have been caused by a bullet or bullets. In fact, the expert says the damage would have been caused by a bullet coming from the opposite direction to where the deceased body was found and where both eye witnesses placed him. From the expert's direction, it seems more likely that it was caused by a bullet from Grant's own firearm. It cannot be relied on for assistance. The copper fragment found outside the supermarket has not been identified as being of the same calibre as the deceased's firearm. Without more I cannot accept it so to be.

49. Moreover, Grant's behavior after the shooting is wholly incomprehensible. He sees the person go down, he knows the person is armed, yet he approaches the person and demands the firearm. He then moves closer, as he has situated himself on the sidewalk by the time the gun is pushed out. Did he no longer fear for his own safety, was life and limb no longer in peril! Did he believe that an injured man could not or would not shoot him? His approach seems to be far more consistent with the knowledge or belief that the downed person was not armed.
50. The doubt in the court's mind increased when the forensic doctor informed that the deceased would not have been capable of movement after he fell. How then could he have pushed that gun out to Grant as Grant alleges. How did that firearm end up on the sidewalk? I reject Grant's testimony as wholly fabricated and unreliable.

51. When one considers Swift's evidence we find it to be more believable. It must be remembered that Grant merely came upon the scene. It is Swift's testimony that on reaching outside the supermarket, Grant immediately started firing into the yard. Whatever evoked this response must have been something he saw, heard or perceived in that yard. What is striking is that Swift was cross examined as to whether the area in which he lived was high in gang crime. Although he said he did not know, he agreed that there had been several murders and he had heard gunshots a couple times in his area. The fact that the questions were asked, raises the possibility that they were informing factors for Grant.
52. Swift maintains that neither Dean nor the other injured person went out of his yard before Grant started shooting. And that in the aftermath, both bodies were still in his yard. This could certainly explain why Grant may not have seen the other person in that yard. It also explains why the chase did not feature in his contemporaneous report. There was no chase. It is also more probable that Dean (trained police officer) could have been shot in the back and killed in a dark yard, where fire, coming from a well lit area, was opened unexpectedly on him.
53. We are also aware of the damage caused to the house, as well as the piece of lead found in the yard. These are all consistent with the significant number of rounds Grant fired. Swift was able to flee to safety, he can testify to nothing more than the shots he heard fire. Dean was not so fortunate.
54. Why did both Dean and the other person not shout out to signify their presence, especially if Grant had announced that he was a police officer?

Since Grant came upon the scene, the onus was upon him to announce his presence as a police officer. Events may have unfolded in a vastly different way had he done this. Dean was doing his duty legitimately as a police officer. He would have had no reason whatsoever not to respond to such an announcement. To my mind, he ought to have been relieved to potentially now have assistance in apprehending the robber.

55. It therefore begs the question of how much time there really was between when Grant arrived on the scene and when Dean was actually shot. Grant would not have needed to reload since his magazine had a 17 round capacity. He describes what ensued as a five to ten minute exchange of gunfire. In five to ten minutes Grant fired eleven rounds and Dean made it to a tree, three feet from the sidewalk (according to Grant) and no further. The firearm found on the sidewalk contained only four spent shells. The doctor testified that Grant was moving away from his shooter when he was shot. This is certainly not the action of an aggressor. It is more believable that Dean only had time to stoop and turn his back to hide or move away from an attack. He was shot in that position. He could do nothing more. His firearm remained in his waist.

56. Swift's testimony is that he later saw an officer take a firearm from Dean's waist. I believe him. It is unlikely that Dean would be struggling to handcuff an assailant with his firearm in hand. Moreover, if Dean never had an opportunity to fire his firearm at Grant, that would certainly explain why Grant felt it safe to approach him in that darkened yard. It would also explain the mysterious lack of evidence supporting the alleged attack on Grant. I also wonder why the only evidence as to whether that firearm was in

fact Dean's regulation firearm came from the cross examination of Dean's own father. Counsel for the defence put a serial number to Mr. Yearwood Snr who responded "that sounds like it, yes." There must be police records which could verify this. Such a nexus could have been created by the investigating officer.

57. When I consider the chain of events as proven, I believe Dean was armed, and legally so, but he never discharged his firearm at Grant or a fleeing unknown person. I do not believe that Grant ever fired a warning shot, announced himself as a police officer or gave anyone in that yard an opportunity to say or do anything, before he started shooting. It is the court's view that he started firing and did not stop until he was close enough to see that body go down. Perhaps, as he reported by radio, he had heard gunshots. I do not know. But I do not believe that he had been fired at or that he knew or saw that anyone else had been fired at. He would certainly have said that in his radio report.
58. Armed police officers have a duty not to use or discharge their firearm unless faced with life threatening situations. Grant was not responding to a report, conducting a search or investigating a crime. He was not in pursuit of a fugitive and he had heard no distress cries. He ought to have identified the situation as life threatening or potentially life threatening, before discharging his firearm. He did not do this. In that regard he acted negligently.
59. Grant also knew he was shooting in a residential area, he knew there was a wooden house in that yard. Yet he fired eleven rounds into a situation, the precise nature of which he was not aware. He showed no restraint. I find

that, in firing as he did, he was negligent not only for the welfare of the persons in that yard but also members of that household. Grant as a police officer had a duty to exercise reasonable care towards the public before resorting to the use of such extreme force. He breached that duty and Dean's injury and death were certainly a direct and foreseeable outcome of this breach.

Whether P.C Glen Wayne Grant discharged his firearm in self defence

60. The test for self defence in civil matters has been settled by the House of Lords in *Ashby v Chief Constable of Sussex Police [2008] UKHL 25*. It is different than that of the criminal law and the burden of proof is on the defendant who must show that where he is being attacked or is in imminent danger of attack, he honestly and reasonably believed that it was necessary to defend himself and that the force he used was reasonable in all the circumstances. Lord Scott helpfully stated at paragraph 18 "*I would have no hesitation whatever in holding that for civil law purposes an excuse of self-defence based on non-existent facts that are honestly but unreasonably believed to exist must fail*".
61. I do not find that Grant has proven that he was under attack or threat of attack, nor that he honestly or reasonably believed he was. "*Here it is untenable to maintain in the absence of incriminating evidence in tandem with the fatal injury to the back of the deceased, that the police were acting in self defence*" - **Barbara McLeod** (supra) **parag 33**. The force he used was therefore unreasonable in the circumstances. As such this court finds that Grant did not act in self defence. He cannot have its protection.

Police Immunity from Negligence suit:

62. This issue was raised in the Defence submissions only. Usually in British cases it is used as a ground for striking out the entire claim prior to trial. The defence rely on what has become known as the Hill principle as established in **Hill v Chief Constable of West Yorkshire [1988] 2ALL ER 238**. They also presented two Jamaican Supreme Court cases where the principle had been applied - **Hyacinth Lawrence v Constable Richard Davis et al Suit No. C.L. 1996 L-00103** and **Namishy Clarke v The Attorney General, Claim No.2007/HCV-00031**.
63. This principle grants immunity to the police for negligent acts or omissions on the ground of public policy justifications but only where injury was caused during the 'investigation and suppression of crime'. The issue in **Hill** was whether the police ought to be held liable for a negligent act or omission to control the danger posed by the criminal act of a third party. The court held that the police owed no duty of care to a member of the public in respect of an attack on him by another member of the public. There was insufficient proximity between the police and the general public. Additionally, police liability in such circumstances would have detrimental consequences on an officer's sense of public duty and his performance of it - policing from a 'defensive frame of mind'.
64. The case did not define the extent to which the duty of investigation and suppression stretched and so with time the immunity seemed to gain blanket status. With the police using it as a default position. The exceptions of operational negligence (see **Winfield and Jolowitz on Torts 8th Ed p 210**) and in recent times reliance on the Human Rights Act 1998 and right to the

protection of human life, seemed to make a dent. Although the Human Rights Act appeared to create a separate cause of action all together rather than an exception to the rule.

65. The application of the principle by the British courts has proven problematic and has not always been well accepted by that society. Many authors have criticized its vagueness and deemed it an inadequate means of justice. It continues to suffer academic scrutiny. I could find no precedent where such an immunity was accepted as being applicable to Belize. House of Lords decisions are persuasive only, so too are decisions out of the Supreme Court of Jamaica (more so those not tested before an appellate court). Without more, I do not accept that this immunity ought to be stretched over Belize and I decline the invitation. For my own self I do not feel that even under the Hill principle police have a general immunity, they continue to be liable for their own negligent acts that directly harm another. Furthermore, from the facts found Grant was neither acting in the investigation nor suppression of crime.

Damages

66. The Claimants having proven their case are now entitled, as statutorily defined dependents, to have their damages assessed in accordance with Section 9 of the Torts Act:

"Where the death of a person is caused by a wrongful act, neglect or default which is such as would (if death had not ensued) have entitled the party injured to maintain an action for damages in respect of his injury thereby, the person who would have been liable if death had not ensued shall be liable to an action for damages,..."

67. Be reminded that it is the pecuniary loss of support or expectation of support which must be valued and not the life which has been lost. The intangibles such as love and life can never be compensated. We therefore embark on an exercise to value the dependency claim by determining the period of the dependency and the amount of the dependency. The Claimants must first prove an actual or perspective loss. It is not enough for them to simply state that they are dependents.

68. They plead that the deceased was single and had no children. He took care of them solely and that they expected him to maintain them into their advanced age. However, in his witness statement, Mr. Yearwood Snr said that Dean assisted him and his wife tremendously with their expenses and took all financial responsibility for the education of his three younger siblings. I accept that he may have helped his parents but he did not maintain them solely. It is unlikely that a young man, living mainly away from home, would have been the sole provider for his parents and three siblings. Further, although parents come within the Torts Act, siblings are not dependents according to Section 10 which reads:

"Every such action shall be for the benefit of the wife or husband, and every parent and child of the person whose death has been caused,"

69. The statutory right to bring a dependency claim is special and does not exist in common law. It allows the claim to survive, where before it would simply have died with the victim. However, it extends only to a certain stated group of persons and the statutory restrictions must be strictly applied. This court will therefore, not allow siblings to be included in this 'back door' manner. The Claimants have a duty to provide for their own children. Such a duty

subsists whether or not the deceased lived or died. His maintenance of their children is not a reasonably expected benefit and would not be considered in the calculation.

70. Mr. Yearwood Snr went on to explain that Dean bought them some household items (once), paid their utility bills and rent (*"at time (sic)... dependent on whether we need it or not"*) and saw it as his duty to send cash to them, whenever he was paid (\$250 - \$300). He agreed when cross examined that Dean rented a place in Belize, he even added that it was with a young lady. However, he later recanted and said Dean did not pay rent. In any event, Dean lived predominantly in Belize City during the week and would go to the family home most weekends. He was uncertain of what Dean's living expenses were. He did agree that they must exist and cost of living in Belize City, would necessarily be higher than in Orange Walk. No bills or receipts of any kind were presented.
71. Considering the scant evidence provided, this court finds that Dean must have spent a considerable portion of his modest salary on himself. For the most part, he lived away from the family home and must have contributed in some significant way for his own welfare, including rent. Furthermore, the Claimants are both relatively young (48 and 46 respectively) and certainly of working age. They are also quite capable of taking care of themselves financially. Mr. Yearwood Snr is employed and there is no evidence before the court that his wife is not.
72. As stated in *Munkman on Damages for personal Injuries and Death 11th Ed at 16.38* *"it may be less common today for parents to be dependent upon their*

children." Then at **16.41** "*In the case of older children, some care should be taken..... If a reasonable expectation of benefit can be shown then the claim should succeed, albeit contained within modest limits*". The figure that will be set for the amount of this dependency or the multiplicand, will understandably not be very large. It will necessarily be further reduced for the lump sum being ordered and for the vicissitudes of life.

73. According to the evidence before the court, Dean earned remuneration (gross) of \$1,401.00 per month or \$16,812.00 per year with deductions for social security at \$406.16 per year, making a yearly net salary of \$16,405.84. The court is aware that semi monthly payment of allowances does not mean bi monthly payment. The allowances are paid once per month only, at the latter half of each month. The Claimants may have been under some misapprehension as their figure shows double for the monthly allowances. The Defence also provided information of government salary increases but these were not in evidence before the court so they have not been considered.
74. Dean was a young, healthy and dedicated officer who seemed positioned for success both in his private and professional life. It is believed that he would have married by 35 and thus started his own family. His assistance to his parents would have ceased or been significantly reduced. His job was also dangerous and the possibility of death would always loom large. His own life expectancy ought therefore to be reduced.
75. Having considered and compared all the precedents provided by Counsel on both sides, I estimate the period of dependency to be twelve years. The

amount of the dependency I calculate to be one third of his net yearly remuneration - \$5,413.93. In accordance with the principles enunciated in **Re Cookson v Knowles (1977) 1QB 913** interest at half rate is calculated on the pre trial compensation (date of death to date of trial) - \$10,204.72. The post trial damages is calculated to be \$55,059.67. Damages for loss of expectation of life in the conventional sum of \$3,500.00 is also awarded.

IT IS ORDERED

1. The Defendants shall pay to the Claimants as dependants damages in the sum of BZ \$65,264.39 for causing the death of the deceased by negligence.
2. The Defendants shall pay to the Claimants damages in the sum of \$3,500 for loss of expectation of life.
3. The said damages are to be divided equally between the two dependents.
4. Prescribed costs to the Claimant in the sum of \$16,252.88 as agreed.

SONYA YOUNG
JUDGE OF THE SUPREME COURT