J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 276/77

BEFORE:
THE HON. MR. JUSTICE HENRY J.A.
THE HON. MR. JUSTICE KERR J.A.
THE HON. MR. JUSTICE MELVILLE J.A.

REGINA

v

BENJAMIN LLOYD

Mr. Berthan Macaulay Q.C. for the Applicant

Mr. Owen Parkin for the Crown

April 13, 14, 21, 28, 1978

HENRY J.A.

The applicant was charged with the murder of Devon Grant and convicted in the Clarendon Circuit Court for manslaughter. This is an application for leave to appeal against that conviction.

The applicant was an armed security guard employed along with an unarmed security guard to patrol and guard the Appollo Plaza on the night of February 12, 1976. The prosecution's case was that there was a double motive for the killing, the applicant being not only jealous of the apparent relationship between his girl friend and the deceased but also a rival for the affections of the deceased's girl friend, and that the killing was deliberate. The applicant on the other hand denied knowing the deceased. He gave evidence to suggest that he reasonably suspected that the deceased had committed a felony, that he was attempting to arrest the deceased and that he was acting in self-defence in the face of what he reasonably apprehended to be a violent and felonious attack about to be made on him by the deceased.

The learned trial judge, Carey J., gave what counsel for the applicant describes as impeccable directions on self-defence in relation to excusable homicide and having also dealt with justifiable

homicide arising from a killing in the course of attempting to arrest a suspected felon, originally left two verdicts to the jury - murder and acquittal. Some two and a half hours after they retired the jury had failed to arrive at a verdict. They were recalled by the learned trial judge who then left to them the additional verdict of manslaughter in the following terms:-

> "There is perhaps something that I should tell you which I omitted to state in the course of my summing-up, I hinted, I told you that a private citizen as the accused was in these circumstances would be entitled to arrest if he came to the conclusion that the man, whoever he was, had committed a felony but that he would only be entitled to kill in attempting an arrest if there was no other way of arresting the man. If you come to the conclusion that for example you don't believe the prior relationship . insofar as the accused was concerned this man is a stranger, whom he saw come out of a bank then you have to consider whether his action in arresting this man was in all the circumstances reasonable. Now, if you came to the conclusion that the force that he used was unreasonable force that he really was grossly negligent in arresting him in that way by firing his gun and shooting him, if you come to the conclusion it would be open to you to find him guilty of the lesser count of manslaughter because he would not have had the intent that is required to prove a charge of murder, namely the intent to kill or to cause grievous bodily harm. I hinted at that but I didn't deal with it fully. Its perhaps late in the day but I think I should leave this to you. I now do so."

Complaint is made that either the learned trial judge ought not to have left manslaughter at all or, that having done so, he ought to have made it clear to the jury that self-defence was also a defence to manslaughter. In our view the learned trial judge was fully justified in directing the jury on manslaughter following the principles enunciated in Johnson v R (1966) 10 W.I.R. 402 where Wooding C.J. carefully examined the authorities. Insofar as the second limb of the complaint is concerned we do not consider that the directions on manslaughter can be considered in isolation from the main body of the summing-up even though those directions were given hours after the main summing-up. From the wording of the directions it must have been clear to the jury that those directions were merely adding to what had already been said. Towards the end of his summing-up the learned trial judge had said:-

> "If you come to the conclusion that the accused man thought this man was a thief but you find that the necessity of shooting him didn't arise when he had fired the first shot, it didn't hit him but the man had in fact turned around and coming toward him, if you come to the conclusion that he was then engaged in defending himself against an apprehended

> attack and shot in those circumstances if you find it was reasonable in those circumstances to shoot then in those circumstances he would have succeeded in proving that he was defending himself and that is no offence. If the story he gives you leaves you in doubt as to whether he was arresting or whether he was defending himself then since the onus is on the prosecution to prove the offence of murder and you are in doubt again it means that he is not guilty because the prosecution would not have proven what they were required to prove."

We do not consider that it was incumbent on him to repeat these directions.

Complaint is also made that "the learned trial judge by his comments towards the end of his summing-up proceeded to erode almost completely the applicant's defence of self-defence. A trial judge is entitled to comment on the evidence and indeed to give his own views thereon provided he does so fairly, making it clear to the jury that the ultimate decision on facts is theirs. We have carefully examined those portions of the summing-up about which complaint is made. We so not consider that in bringing to the attention of the jury matters which he considered might assist them in assessing the credibility of the applicant, the learned trial judge acted unfairly or to the prejudice of the applicant nor do we consider that, as alleged, he eroded the applicant's defence of self-defence.

For these reasons the application for leave to appeal was refused. Having invited counsel for the applicant to address us on the question of sentence we set aside the sentence of seven years imprisonment and substituted a sentence of two years imprisonment with hard labour to commence on December 9, 1977. This we consider more appropriate to the jury's verdict and to all the circumstances urged by counsel on behalf of the applicant including the fact that he has been in custody since January 1977.