JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 14/81

BEFORE: The Hon. Mr. Justice Zacca - President
The Hon. Mr. Justice Rowe, J.A.
The Hon. Mr. Justice White, J.A.

R. v. BERESFORD BILLETT

Delano Harrison for Appellant

Mr. W. Alder for Crown

October 29, December 18, 1981

WHITE J.A.

The appellant was convicted in the Home Circuit Court for the offence of wounding with intent. At his trial he raised the issue of self-defence, leave to appeal was granted by a single judge, and at the hearing of the appeal learned crown counsel conceded that in terms of the summing up he could not sustain the conviction. The particular aspect of the summing up which attracted the court's attention concerned the directions of the learned trial judge on the burden of proof when the issue of self-defence arises.

At page 4 of the transcript of the summing-up this passage appears:

> "The defence on the other hand has raised the question of self-defence. They are saying that the accused man, when he acted in the manner that he said he acted, what he did was necessary for his own protection. Self-defence does not arise on the Crown's case as I told you. It arises by questions put to the witnesses for the Crown, which they have denied, and also on the evidence given by the accused, and to some extent the evidence given by his witnesses, you see, even though, there are differences in the accused man's evidence and the witnesses' evidence, but it arises on the evidence

> "given by the accused and his witnesses; and where the defence raises self-defence the burden on the defence in establishing it is not as heavy as that burden of proof on the Crown.
>
> The defence need only satisfy you on what is known in law as a balance of probability, or a preponderance of probability. In other words, if when you look at the evidence it is more probable then not that the incident could have taken place in this way that is sufficient. If of course, you entertain a reasonable doubt as to whether or not the accused man was acting in self-defence, in both these cases, if you accept on a balance of probability or you entertain a reasonable doubt that he was so acting, it is your duty to acquit him, find him not guilty."

Again at page 6:

> "So remember that self-defence hasn't been raised by the Crown. It has been raised by the defence the burden on the defence, having raised it, is to satisfy you, and this burden of course is not the general burden of proof that is on the crown throughout the case, it is an evidential burden. This burden on the accused having raised self-defence, is to satisfy you on a balance of probability, a preponderance of probability. If you accept the evidence that he has put up then you must acquit him, that is if you are so satisfied on this balance of probability, you must acquit him. If you entertain a reasonable doubt as to whether he was so acting you must acquit him."

We are of the view that the formulation that "where the defence raises self-defence the burden on the defence in establishing it is not as heavy as that burden of proof on the Crown. The defence need only satisfy you on what is known in law as a balance of probability, on a preponderance of probability" - is an incorrect statement of the law when dealing with the topic of self-defence. It introduces an onus which ignores the simple statement of principle that it is the prosecution which must negative that the accused was acting in self-defence. And, indeed, it is not inappropriate to elaborate thereon by recalling the words of Winn L.J. who gave the judgment of the Court of Appeal in R. v. Wheeler (1967) 1 W.L.R. 1531 at p. 1433, C-G

> "The court desires to say, and this is a convenient moment to say it for general application, that wherever there has been a killing, or indeed the infliction of violence not proving fatal in circumstances where the defendant puts forward a justification such as self-defence, such as provocation, such as resistance to a violent felony, it is very important and indeed quite essential that the jury should understand, and that the matter should be put before them, that there is no danger of their failing to understand that none of those issues of justification are properly to be regarded as defences; unfortunately there is sometimes a regrettable habit of referring to them as, for example, the defence of self-defence. In particular, where a judge does slip into the error or quasi error of referring to such explanations as defences, it is particularly important that he should use language which suffices to make it clear to the jury that they are not defences in respect of which any onus rests upon the accused, but are matters which the prosecution must disprove as an essential part of the prosecution case before a verdict of guilty is justified. But, of course, there are many cases where the facts and circumstances of the case itself and the framework of the summing up to the jury by the Judge suffices perfectly adequately to make it certain that the matter has been understood by the jury in the true light which I have endeavoured to define. It may be quite unnecessary repeatedly and separately to refer to onus in respect of those issues."

This passage sets out particularly and very clearly the proper direction when a judge sums up to a jury on circumstances giving rise to the issue of self-defence. Because of the wholly incorrect directions which were given in the instant case the appeal was allowed, the conviction quashed and sentence set aside.