

3A Chamberlain - Murder - Self-defence - ^{trial judge's direction} whether jury ^{divided} ~~was~~ ^{was} divided
- jury that accused must have believed on reasonable grounds that he was in imminent danger a misdirection
- failure of trial judge to follow directions laid down
in Solomon Beckford v The Queen - test a subjective
one.
Appellate conviction ^{JAMAICA} and sentence set aside
verdict of acquittal entered

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 4/87

BEFORE: The Hon. Mr. Justice Wright, J.A.
The Hon. Mr. Justice Downer, J.A. (Ag.)
The Hon. Mr. Justice Bingham, J.A. (Ag.)

Case referred to
Solomon Beckford v The Queen (1987) 3 WLR at 611
R. vs. DENTON BECKFORD

Frank Phipps, Q.C., & George Soutar for appellant

Paul Dennis for the Crown

October 20, 1987 &

June 29, 1988

DOWNER, J.A.:

This was an application for leave to appeal against the conviction for murder for which the sentence of death was imposed. The trial was conducted by Patterson, J., with a jury in the St. Catherine Circuit Court holden at Spanish Town on January 16, 1987. We treated the application for leave as the hearing of the appeal, and allowed the appeal. The conviction and sentence were set aside and a verdict of acquittal entered. We promised to put our reasons in writing which we now do.

The basis of the Crown's case was the evidence of Alton Downer, Michael McKenzie and Paulette Morgan who were eye-witnesses to the incident. Although there were admitted discrepancies in the account given

by these witnesses, on the main feature which was the stabbing; there was no divergence. The deceased Conroy Malcolm and the three eye-witnesses were on the Old Harbour Road on 23rd June, 1985 and there the accused stabbed Conroy with what was described as a cutlass knife in the region of his heart. How did they account for it? There seems to have been a rivalry between the accused and McKenzie over Paulette and the accused punched McKenzie in his mouth. There were varying accounts as to the precise spot where this took place, and on this discrepancy and others, the judge gave ample directions.

On the Crown's case, neither the deceased nor Downer and McKenzie were armed but in Downer's account, when they took up the deceased he saw a knife at that spot, although he did not know who owned it. It must be said that the judge's summing-up on this aspect of the case was favourable to the accused.

As regards the fatal stabbing, both McKenzie and Downer stated that the accused Beckford first pulled his knife at McKenzie who took avoiding action and then at that point Beckford inflicted the wound on Conroy Malcolm. It should be mentioned that Malcolm and McKenzie were brothers and the learned judge highlighted this to the jury. Just as there were discrepancies as to the precise spot where the accused punched McKenzie, there were discrepancies as to where the actual stabbing took place; but here again the learned judge's directions could not be faulted.

The unsworn statement from the dock was in marked contrast to the Crown's case. The accused admitted being on the scene as he had gone to a dance at the club and that when he came outside he saw Paulette, his girlfriend. She, however, described him as her one-time baby-father and she explained that the baby had died. There was a dispute as to her present relations with McKenzie. Alton Downer said she and McKenzie lived together while she said that she and McKenzie lived in the same yard

but not in the same house. Here it should be pointed out that her account of the stabbing tallied with that of Downer and McKenzie.

In furtherance of his narrative, while he was talking to Paulette, McKenzie came and enquired as to where he was taking her and he replied that he was going home. McKenzie started to pull her and there was a tug-o-war and the accused said he punched McKenzie.

He further stated that as he moved off, a stone hit him on his shoulder and that the deceased and Downer were armed with knives and further that McKenzie said that they should kill him. He added that he ran and then the men pursued him and that it was in those circumstances that he stabbed at them and that "Texas" (Conroy Malcolm) who was in front was then fatally wounded. He also told the Court that he did not mean to kill anyone as he was just trying to defend himself.

It was against this factual background, where self-defence arose on the unsworn statement, that the ground of appeal which determined the outcome of this case was argued. It reads.

"1. The Learned Judge misdirected the jury on the proper test for self-defence when he instructed them that the accused must have believed on reasonable grounds that he was in imminent danger."

The substance of the complaint was that the learned trial judge failed to follow the directions laid down in the recent case of Solomon Beckford v. The Queen [1987] 3 W.L.R. at 611 where the Privy Council ruled that the test to be applied to the accused's belief in face of an attack was a subjective one and to qualify his belief by stipulating that it should be reasonable was a misdirection in law.

It is in the light of this decision that the following directions at page 81 of the record was challenged by Mr. Phipps. The learned judge said:

"Now, let me tell you about self-defence. A man who is attacked in circumstances where he reasonably believes his life to be in danger or that he is in danger of serious bodily injury may use such force as on reasonable grounds he believes is necessary to prevent and resist the attack and if in using such force he kills his attacker he is not guilty of any crime even if the killing as I say is intentional."

[Emphasis supplied]

Further on page 90 of the record, the learned trial judge repeated these directions twice although on one other occasion he gave a simple direction which would have been adequate if it had been emphasised. At page 91 he directed thus: "He must have believed he was in imminent danger of death or serious bodily injury."

The misdirections were understandable as they were given before the decision in Soloman Beckford v. The Queen (supra). Mr. Dennis for the Crown rightly conceded the point. It was in these circumstances that at the conclusion of the hearing, we allowed the appeal.