CA CRIMINAL LAW — Murder — Self-defence — provocation — misdirection — whether judge misdirected jury on self-defence — whether misdirected by judge on provocation and withdrawal of provocation from jury amounted to non-direction — Appeal allowed "on the basis of a misdirection by non-direction on the issue of JAMAICA provocation." Conviction quashed, sentence set aside — verdict and conviction of manslaughter substituted — sentence 15 years imprisonment at hard labour. No case referred to

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 68/88

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BEFORE: The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Wright, J.A.
The Hon. Miss Justice Morgan, J.A.

R. v. FERDINAND BECKFORD

Delroy Chuck for Applicant

Kent Pantry for Crown

October 10, 1988

CAMPBELL, J.A.

The applicant Ferdinand Beckford was found guilty by a jury and sentenced for the offence of murder on the 17th of March, 1988. The facts are quite simple, on the Crown's case two brothers went on to land which they claim was their father's, which land was also claimed by the applicant's family, and on this land they found timber already cut. They placed some of the cut timber on their cart and was carting it away. They had to pass by the house of the applicant's grandmother. On the evidence of the Crown, at least from one of their witnesses, there was a dispute between these two brothers and the applicant's grandmother, in the course of which stones were thrown. One Crown witness who appeared more independent than the others, said that she heard noise, she came to observe what was happening and she confirmed to some extent the existence of a dispute. She confirmed that the deceased Wilbert Warmington came on the scene and there was some discussion between him and the two brothers who were carting away the timber. The evidence of this lady is that the applicant came along, challenged the two brothers who were carting away the timber, as to why they were throwing stones into his grandmothers yard

and breaking up her house when she had not done anything to them. The evidence is that the applicant attempted to attack the two brothers. He chased them but they made good their escape. On the applicant's return to his grandmother's place, Wilbert Warmington was still standing there, he was unarmed. The applicant chopped him, severing his neck resulting in death. That is the crown's version.

The applicant in exercise of his rights, made an unsworn statement, in which he said he heard his grandmother bawling out and calling his name "Gilly." He came from his field and he saw the two brothers whom I have mentioned before. He asked them why they were throwing stones at the grandmother's yard? He said they left off throwing the stones, came at him and threatened him saying that it was for a long time that they wanted to chop him up using the usual expletives. He said that Wilbert Warmington who was present incited these two young men by using words "you no see de boy before unno chop up him, (expletives), is that unno fi do him," Immediately after these words were spoken, he felt a hit and he flashed his cutlas sideways, and that is all he knew about the incident. By his unsworn statement the applicant meant that Wilbert Warmington met his death as a result of the flashing by him of his cutlass. The learned trial judge directed the jury on the issue of self-defence but not on the issue of provocation.

The jury brought in a verdict of guilty of murder.

Before us Mr. Chuck with leave filed and argued two supplemental grounds of appeal. The first one attacks the learned trial judge's summing up on self-defence and in a nut shell Mr. Chuck's submission was that the learned Trial Judge's summing up fell short because he did not direct the jury on self-defence arising out of a mistake of fact, though he conceded that the direction on self-defence based on an actual attack could not be challenged. Despite Mr. Chuck's strenuous effort, we are of the view that on the facts which were in evidence it would certainly have been confusing to the jury, had the learned trial judge embarked on a direction

of self-defence predicated on mistake of facts. What the applicant is saying is that he was under actual attack and if self-defence was to arise, it necessarily had to be based on the defence's version because on the Crown's case no self-defence arose. We did not consider there was any merit in this ground of appeal, Mr. Chuck himself after a time was constrained to indicate he would move on to his second ground of appeal.

This second ground of appeal is based on a complaint that the learned Trial Judge misdirected himself by non-direction, in fact Mr. Chuck went on further to say the non-direction was exacerbated by the learned Trial Judge expressly withdrawing provocation from the jury's consideration. The basis on which Mr. Chuck submitted that the learned Trial Judge should have left provocation to the jury is that despite the fact that on the Crown's case there was no act done or words spoken by the deceased which could be considered provocative, the unsworn statement of the applicant implicated the deceased specifically by the words attributed to him namely that he told the two brothers that they should chop him, (the applicant). These words in our view were capable of amounting to provocation.

In our view it was unfortunate that the learned Trial Judge apparently overlooked these words attributed to Wilbert Warmington. Thus, having found, as he was entitled to find, that on the Crown's version there was no provocative act or words, he regrettably expressly withdrew provocation from the jury. Had he not misdirected himself on this aspect, and had he directed the jury on provocation, we cannot say with any reasonable assurance that the jury would not likely have brought in a verdict of manslaughter. Accordingly, we feel that this appeal ought to be allowed on the basis of a misdirection by non-direction of the learned Trial Judge on the issue of provocation. The application for leave to appeal is treated as the appeal which is accordingly allowed. The conviction is quashed and the sentence set aside. A verdict and conviction of manslaughter is hereby substituted. In considering sentence we have had regard to the circumstances in which

Wilbert Warmington met his death. We frown upon and highly disapprove of the wanton killings which take place whenever there is some quarrel however slight. We consider a term of imprisonment of fifteen years at hard labour would be appropriate in the circumstance. The applicant is accordingly sentence to 15 years imprisonment at hard labour.