JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 288/77

BEFORE: THE HON. MR. JUSTICE KERR, J.A. - PRESIDING
THE HON. MR. JUSTICE ROBOTHAM, J.A.
THE HON. MR. JUSTICE ROWE, J.A. (Ag.)

R. v. GEORGE PATTERSON

Mr. A.G. Gilman for the Appellant
Mrs. S. Lewis for the Crown

May 8, 1978

KERR, J.A.

This is an application for leave to appeal from a conviction for murder in the Home Circuit Court on the 15th day of December, 1977, before White, J. and a jury.

The applicant was charged that on the 22nd of June, 1977, in the parish of Kingston, he murdered Owen Hadlan. On the 22nd of May, 1977, a Sunday morning, at 8.00, the deceased along with three companions, Lloyd Bennett, Rupert Steele and Carlton Murray, were on their way from the beach along East Street in Kingston when, according to the three friends who testified, the accused man came along and stabbed the deceased in his shoulder, then chased Rupert Steele and cut him in his side. Thereupon, Bennett picked up two stones with intent to fling them at him. He ran down East Street. They went on to the police station and made a report, whereupon Constable Ridley and the three witnesses went along the streets of Kingston. There they saw the accused who was pointed out by Steele as the man who stabbed him and his friend. He was searched and a ratchet-knife identified as the weapon used was found on him. Either there or at the station the applicant lifted up his shirt and showed the scars which he said were obtained in gang wars, albeit he was the victim. The witnesses denied that before Owen was stabbed they made either threatening gestures or words or made any hostile manoeuvres towards the applicant. In fact they contended they did not know him before that day and they were never engaged in any gang wars at any time.

The defence was to the effect that he, the applicant, on the day before had been attacked and injured by a number of men and among the men was the deceased; that on the morning while on his lawful business he saw him and the three other companions on East Street; that they manoeuvred to outflank him and having regard to what happened the day before and having regard to the fact that they had their hands in their pockets as they approached him, he apprehended serious injury to himself and he slashed with his knife at Owen. The knife caught Steele. Thereupon, still afraid, he sprang and "jooked" Owen in his shoulder and ran away. He maintained that he did not intend to stab him but to scare him off because he was alone and he was afraid.

The ground of appeal argued was the original ground that the verdict was unreasonable having regard to the evidence, together with the supplementary ground filed which reads:

> "That the learned trial judge erred in removing the issue of manslaughter from the jury and ought to have directed the jury that on the issue of intent if they believed that the appellant did not intend to jook him (that is the deceased) in his shoulder and only did it to scare him off, or that they were in doubt as to whether he so intended then the appellant would not have been guilty of murder but that it was open to them to convict him of manslaughter".

In that regard, after full and careful directions on self-defence the judge, dealing with this aspect of the evidence of the accused man, had this to say:

> "Then, too, it is necessary that I should advert you to the accused saying, "I did not mean to jook him in his shoulder; I did it to scare him off"; and in the context of the facts which you have heard you will have to ascertain whether that was what the accused did. At one time I was tempted to leave for your consideration the question of non-intent, resulting in a verdict of manslaughter, if you were to find him guilty at all, but I am directing you that in the circumstances of this case, bearing in mind what he said, if you accept it, it seems to me that the issue of self-defence will not have been negatived by the prosecution, that is if you accept the evidence of the accused. You see, the accused doesn't have to prove self-defence. He says, 'I was acting in circumstances which created the reaction that I had to act in self-defence', and it is the prosecution which must disprove that he was acting in self-defence".

It is clear, therefore, that the trial judge gave anxious consideration to this aspect of the matter.

In our view, his summing-up went much further than what is sought in the ground of appeal. What the trial judge was saying was that if they accepted the accused's story as to how the injury was inflicted, they should acquit the accused because he would have been acting in self-defence or, alternatively, if he raised a reasonable doubt he would have been entitled to an acquittal. In our view, in the circumstances, to have fragmented his evidence as to how the wound was inflicted so as to leave the issue of manslaughter to the jury would be eroding the defence of self-defence. Having regard to the nature and conduct of the defence, it is our view that the issue of manslaughter did not arise and that the summing-up was fair, clear and adequate.

In the circumstances, the applicantion which involved a point of law is treated as an appeal. The appeal is dismissed.