

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 201/87

COR: The Hon. Mr. Justice Rowe, P.
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice Downer, J.A.

R. vs. HENRY CHISHOLM

Appellant not represented

Miss Y. Sibble for the Crown

April 18, 1988

CAREY, J.A.:

The applicant Henry Chisholm, who was convicted in the Hanover Circuit Court on the 5th November, 1987, for the offence of Wounding with Intent, was sentenced to serve a term of 20 years imprisonment at hard labour, now applies for leave to appeal against that conviction and sentence.

This was a case of great violence which occurred in the district of Cocoon in the parish of Hanover. There are two versions of the incident, that given by the victim Edward Grant and that given by the applicant. On the victim's account which, plainly, the jury accepted, on the 4th of May, 1987 at about 2:30 in the afternoon, he was seated on his verandah when the applicant came to his gate. According to the victim, the applicant told him that he learnt that Grant had obtained a farm worker's card although he had not supported them in the last parish council elections. Now Mr. Grant admitted

that he had got a farm worker's card about three (3) days before. He responded to that statement by saying, "you can't stop me from going to the United States", whereupon the applicant said, "Yes he is going to stop him."

Sometime after this incident, Grant went to a shop in Cocoon where he again saw the applicant. It was at that location that the attack was made upon Grant. The applicant pulled a machete, it is alleged, from his waist and then proceed to inflict a number of injuries on the person of the complainant. So serious they were, we think we should set them out.

A surgeon at the Cornwall Regional Hospital, who examined the injured man, found, he stated - "A large wound to the right side of the face almost severing the right ear, extending to the right cheek and into the cavity of the mouth. It was about 9 inches long and extended through the mandible the lower jaw bone which it had broken; there was also a cut through the facial nerve - he explained that that nerve gives movement to the face. There was a cut through the branch of the nerve which moves the lower lip. There was a cut through the carotid gland, that is the gland which makes saliva in the jaw bone. That cut had extended right through the base of the tongue and cut through two of the teeth and fractured the teeth as well. On the right arm, there was a deep laceration through the triceps muscle on the back of the arm. There was also a cut over the volar aspect of the limb, that is the front section of the wrist, cutting through several of the tendons. On the left hand, there were several cuts to the fore-fingers of the hand and there was a cut on the palmar surface of the thumb. There was another cut about 2 inches long on the index finger of the left hand, and there was an amputation of the tip of the middle finger. There was also a cut at the base of the little finger which went right through and broke the bone; it injured the tendon which moved that finger."

The applicant explained those injuries by saying that they were inflicted when he was attacked by the complainant with a knife, and he used a machete, which he admitted having, by waving it about and in the course of doing so, those injuries were inflicted. That version is, in our view, so implausible that we are not surprised the jury must have rejected it.

The learned trial judge adequately and fairly explained the issue of self-defence to the jury and it is plain that the jury rejected wholly the unsworn statement made by the applicant.

We can see no reason whatever to disturb that finding nor have we observed any defect in the summing-up which would incline us to interfere with the verdict. In the result, the application for leave to appeal is refused. The application also related to sentence. We note that this applicant had a previous conviction, for possession of a firearm and in respect of that conviction, he was sentenced to pay a fine of \$1,000.00 on the 3rd June, 1985. The injuries were serious indeed which rather suggest the intent was to murder. We can find no warrant to interfere either with the sentence imposed by the learned trial judge.

This application is refused. The Court directs the sentence to commence at the date of conviction.