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11th February, 1963.

J A M A I C A

IN THE APPEAL COURT

CRIMINAL APPEAL NO. 214/62

BEFORE: Mr. Justice Duffus - President (Adg).
Mr. Justice Lewis
Mr. Justice Moody

R E G I N A vs. J O S C E L Y N S H A W

Mr. Howard Hamilton for the Appellant.

Mr. Churchill Raymond for the Crown.

JUDGMENT OF THE COURT DELIVERED BY MR. JUSTICE DUFFUS

Joscelyn Shaw was convicted in the Home Circuit Court on the 29th of November last year on an indictment containing two counts. The first count charges shooting with intent, that he, Joscelyn Shaw, on the 27th of May, 1962, shot Aston Nash with intent to do him grievous bodily harm. The second count charges wounding with intent and that count relates to the same incident as the first count and this charges wounding Aston Nash with intent to do him grievous bodily harm. He was convicted on both counts.

The case for the Crown was that the complainant Nash was in an area of Kingston known as Back-o-Wall and that while he was in that area the appellant and a man named Nash, exchanged certain words. The appellant is supposed to have said to Nash, 'what this Rasta look on me for. I don't like Rasta men look at me'. There seemed to have been some further talk between the two men and the Crown alleges that the appellant then took up a stone and struck Nash and that Nash picked up the same stone threw it back at the accused and hit him. Whereupon, without anything further happening the appellant is said to have drawn a revolver from his pocket, aimed it, fired it and the bullet struck the complainant Nash on his shin, after which the appellant got on his bicyle and rode away hastily.

The case for the appellant was that he rode his bicycle into this Back-o-wall area to pay a visit to a friend. The friend was not at home and when he was leaving the area he heard people talking about him. He says that these people threatened him - something to do with the General Elections which had been held a month before. Words to the effect, 'we couldn't get him in the election time but we get him now', and also that they accused the appellant of being 'a police informer'. The appellant says that the complainant who is a Rastafarian had a stone in his hand and as he the appellant was going away he felt a blow. The blow was from the stone which had been thrown by Nash. The appellant says he then suffered great pain and was leaning over on his bicycle. He closed his eyes for a while and then when he opened them, he saw a crowd of people coming down on him and persons in this crowd were saying that they were going to kill him; and that when these people were a short distance away from him, he drew his revolver from his pocket and fired intending to scare off the crowd and prevent them from 'coming down on him' to use his own words.

It transpired that the appellant was very seriously injured. The blow from the stone broke a rib and his spleen was ruptured. He was admitted to a hospital and was detained there for some time. I think his spleen had to be removed in an operation.

At the hearing of this appeal, Counsel for the appellant relied on one ground, that 'the trial Judge had misdirected the Jury by intimating to them that firing a gun on an unarmed crowd in the process of attack might not be the exercise of reasonable force' and in the course of his arguments, he further submitted that the learned trial Judge did not give the jury sufficient assistance in his directions on the matter of self-defence, that he failed to inform them that reasonable apprehension of violence on the part of the appellant, in view of the fact that a hostile mob of persons was approaching the appellant who was by himself and in view of the fact also that the appellant had already received serious injury at the hands of the complainant who was a member of this hostile mob would justify or might justify the use of a fire-arm by the appellant.

Counsel for the Crown has conceded that nowhere in the course

of the directions to the Jury was any direction given to the jury on the question of reasonable apprehension of violence. It seems to us in the circumstances of this case that the learned Judge should have assisted the Jury by informing them that if there was reasonable apprehension of violence in the circumstances of this case that the appellant might very well have been justified in using a fire-arm even though there was no evidence that any member of the hostile crowd was armed with an offensive weapon. It is our view that the failure to give this direction in this case was most unsatisfactory. The jury were entitled on this most important point to have had assistance. So, in the circumstances, we propose to allow the appeal.

Another matter has been brought to our attention by learned Counsel for the Crown and that is that the verdict of the Jury was not unanimous - it was a verdict of six to one - and that the Jury's verdict was taken before the expiration of one hour.

Section 44(3) of the Jury Law provides that the jury may return a verdict which is not unanimous - the exact words of the Section are 'after the lapse of one hour from the retirement of the jury be received by the Court as the verdict of the Jury'. The transcript of the evidence shows that the verdict was received two minutes before the expiration of the hour. If that is so and presumably it is, as Counsel for the appellant who also appeared in the Court below, informs us that he did notice the time and the jury were out for less than an hour, it appears to us that the verdict can not be accepted. It should not have been accepted in the Court below and in the circumstances the trial would be a nullity. We propose, therefore, allowing the appeal and ordering a new trial.

The conviction is quashed and new trial ordered.

Bail will be allowed in Fifty Pounds pending the new trial.