

Criminal Law - Wounding with intent - Unlawful Police Officers - Self defence
Whether judge misdirected jury by telling them that before self defence could
arise to benefit of the appellants it was necessary for them to retreat - whether
misdirection even greater as appellants were police officers who would be discharging
their duty had they retreated - whether judge misdirected jury by failing to direct
them on law applicable to police officers JAMAICA endeavouring to apprehend actual
or suspected offenders - whether judge misdirected self by withdrawing from
jury's consideration evidence of good character of appellants.
IN THE COURT OF APPEAL APPEAL allowed - Conviction quashed - sentence set
aside - verdict of acquittal entered.

SUPREME COURT CRIMINAL APPEAL NOS: 116 & 119/88

Cases referred to
R v Bellis (1966) 50 CAR 88
R v Falconer - Atlee (1979) CAR 348
R v Astley Rickells SCCA 77/87
(unreported) 25/9/87
R v George Burke SCCA 112/87
(unreported) 18/4/88

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

(Self defence - law
applicable to police
officers - evidence of
good character)

EVIDENCE

R. v. LANCE WEBLEY
DESMOND BROWN

K. Churchill-Neita & George Soutar for Webley
Delroy Chuck for Brown
Kent Pantry for Crown

October 10, 11, & November 15, 1988

CAMPBELL, J.A.

The appellants were each found guilty by a jury and sentenced to imprisonment at hard labour by McKain J., on May 20, 1988 in the St. Ann Circuit Court for the offence of wounding with intent contrary to section 20 of the Offences against the Person Act allegedly committed on September 22, 1983.

Lance Webley is a police constable who had enlisted in the Constabulary Force in 1977 and had been transferred to the Special Operations Division in 1981. He had to his credit eight commendations and rewards for outstanding work. The appellant Desmond Brown is a corporal who had enlisted in the Constabulary Force in 1974 and had been transferred to the Special Operations Division in 1980. He also had to his credit thirteen commendations and rewards for outstanding work, he suffered gunshot injury to his head in 1980 while pursuing a gunman who engaged him in a gun battle. Both appellants were at the time of the incident temporarily attached to the Mount Salem Flying Squad in Montego Bay.

The victim in the present case is Trevor Campbell a Taxi-operator and musician residing in St. Ann's Bay in the parish of St. Ann.

The victim was the prosecution's sole eye witness to the incident. He said he owned a Ford Cortina motor car which he plied as a Taxi in Ocho Rios, St. Ann's Bay and Runaway Bay. In the early morning of September 22, 1983 at about 2.15 a.m., he was returning from Salem to St. Ann's Bay. He had travelled to Salem in performance of a contract which he had with a female employee of Shaw Park which obliged him to take her to her home in Salem whenever she worked late, that is to say beyond midnight.

As he proceeded from Salem, he came upon three cars one of which was blocking the road. This was at a place called Landoverly. On his journey to Salem he had seen one of the cars parked on the sidewalk. On his return journey he saw a second car parked almost parallel to that car and another car parked on the opposite side with its front across the road facing the other two cars. He turned on the bright light of his car, saw about four or five men, each dressed in short pants and merino-type vests with big towels over their shoulders. They were walking around the car which he had earlier seen parked on the side walk. He stopped his car with its bright light on about 2 to 3 chains away. He became fearful that the men were robbers. The car which was blocking the road turned and was driven down in front of his car. He swerved to his right accelerated and passed the other two cars. He heard a shout "stop boy" but he sped away towards St. Ann's Bay at about 55 to 60 m.p.h. He noticed that the car which had hitherto been driven in front of him had spun around and was trailing him. This car caught up with him and when it was abreast it turned on its bright light on him. It did not however pass him but rather dropped back without the occupants therein saying anything to him. The persons he saw in the car, about three in number, were dressed differently from those whom he had seen at the road block. After

the car had dropped back behind him, he suddenly heard gunshot explosions which smashed both his rear and front windscreen. He accelerated and drove his car in a zig-zagging way under a trail of bullets some of which injured him in his head, left side and in his back. His car overturned into a canefield about 1 3/4 miles from where he had seen the cars. He escaped and made his way to Columbus Cottage by Columbus beach. He said he first saw the two appellants "down by the beach." Thereafter he qualified this by saying he saw them by the cottage. Later on, other policemen came and he was taken to St. Ann's Bay Hospital. He denied hearing either of the appellants saying anything while they were at the cottage. Under cross-examination he denied that when he was driving past the other two cars at the road block he heard somebody shout "stop Police". He denied that during the chase he saw the car behind "flashing him". He denied that there were three persons including himself in his car and that shots were fired from his car. He admitted that at Columbus Beach he was asked if he had not heard the police siren and that he answered saying he heard a sound which he thought was his car horn but this was while he was running through the canefield. He denied saying that he told anyone that he had heard the siren but the men in his car had told him not to stop. He denied saying he had further said that he had picked up these men at Salem Square. He denied that during the chase he heard any person in the pursuing car shout "Police, police stop."

The sworn testimony of the appellants differ from the Crown's case in areas which were critical to their defence. They said that acting on information about gunmen and drug offences they were en route to St. Mary when they saw a car parked on the sidewalk. They stopped to investigate and in the course of doing so set up a road block. The police officers manning the road block were not dressed as described by the Crown, they were dressed in ordinary long pants albeit not in uniform. One of their numbers shouted "Police stop" to the complainant as he sped away from the road block. In their pursuit of the complainant, they had their

siren and flasher light on, and on getting nearly abreast of the rear door of the complainant's car they shouted "Police, Police stop." There were three persons including the complainant in his car one of whom was seated in the left rear seat. On two occasions when they (the appellants) came near to the complainant's car, this man seated in the left rear seat stretched out his hand and fired at them. They used their firearms to fire at the complainant's car in defence of themselves as they were under attack from someone in that car.

The complaints before us rested mainly on misdirections by the learned trial judge firstly in her direction to the jury on self-defence especially her direction that before self-defence could enure to the benefit of the appellants it was necessary for them to retreat. The gravity of this misdirection was heightened by the fact that the appellants were police officers who, had they retreated, would be abdicating their duties of attempting to apprehend persons whom they honestly suspected of having committed an offence or alternatively persons whose vehicle they were empowered to stop and search but who endeavoured to escape. A further complaint of misdirection was that of non-direction, namely that the learned trial judge failed to direct the jury on the law applicable to the appellants as police officers endeavouring to apprehend actual or suspected offenders namely that such officers were statutorily authorised and therefore justified in taking reasonable steps to do so and that in the circumstance it would be for the jury to say whether what was done was in reasonable execution of their duty. Yet another complaint was that the learned trial judge misdirected herself by withdrawing from the jury's consideration, evidence of the good character of the appellants which was led on their behalf and was most relevant to the credibility of their defence as tending to show that they had, in the past, in the discharge of their duties acted responsibly and with probity, see R. v. Bellis (1966) 50 C.A.R. page 88 and R. v. Falconer-Atlee (1974) 58 C.A.R. page 348.

The learned Deputy Director of Public Prosecutions, frankly, and in our view, correctly conceded that in respect of each ground of complaint, there was a misdirection as identified in the complaints. It is therefore unnecessary for us to highlight by abstracting from the learned judge's directions to the jury the impugned paragraphs. There were indeed, misdirections as complained of. The first two complaints are in our view very serious. The learned trial judge's directions are in conflict with decisions of this court in R. v. Astley Ricketts S.C.C.A. 77/87 (unreported) dated September 25, 1987 and R. v. George Burke S.C.C.A. 112/87 (unreported) dated April 18, 1988. The misdirections had the effect of completely negating to the prejudice of the appellants, the defence of self-defence which fairly arose on their version if accepted by the jury and also deprived them, equally to their prejudice, of the prima facie protection given to them when discharging their general duties under section 13 and the special duty to stop and search vehicles under section 19 of the Constabulary Force Act. It was for the above reasons that we on October 11 allowed the appeal, quashed the conviction set aside the sentence and entered a verdict of acquittal. The ends of justice in our view would not have been served by ordering a new trial.