

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

ADVOCACY PROGRAMME

YEAR II

CRIMINAL BRIEF

R. v. ROGER BENNETT

MODIFIED HUGH WOODING LAW SCHOOL BRIEF

DEPOSITIONS TAKEN BEFORE HIS HONOUR MR SMITH AT THE
MAGISTRATES' COURT

Robert Folkes sworn states:

My name is Robert Folkes. I live at 150 Tunnel Road, Kingston 11. I work at Tunnel Regional Corporation as a works foreman. I am married. I have a wife, Ethel. We have been married for 12 years. We have two children. I am 36 years old.

I remember an incident. I was standing by a friend house. His car was park right there. His name is Roderick. We call him Turbo. I was with my son. We had gone by the shop. My son is 7 years old at the time. I went to buy snacks. It was a Sunday afternoon. About 4:00 pm. We were just talking, breezing a little.

Gundy came and start to quarrel. His real name is Steve Bennett. He say how Turbo report him to police for smoking weed. Gundy lives down the road about four houses from Turbo. Turbo start to quarrel back saying how he had no time to waste on him and tell him to get off from his yard. At this time Turbo gate was open. Gundy was right by the gate coming about 2 to 3 feet inside the property. Turbo came out. He was bare foot He and Gundy start to fight. Gundy get a cut on his head. It start to bleed.

I was standing by the pavement. Turbo was by the downstairs. The house is upstairs and downstairs. It have apartment downstairs. Gundy had a few big stone. There was a heap of stone right there. He start to

pelt Turbo. Turbo run inside. I tell Gundy to behave himself. He say if I want some too.

Gundy pick up one of the stone that he had and pelt and it hit the glass by Turbo front window. Turbo pick up that same stone and pelt it at Gundy. I believe Gundy get hit but I not sure.

Gundy run home.

I tell Turbo to call the police. I was still standing by the pavement. Next thing I see Roger. That is Gundy brother. He was coming down the road with a pipe in his hand. An iron pipe. His mother was with him. His mother was quarrelling saying why all yuh have to hit Gundy for, you all know he is a sick child. Roger come right up to me and hit me with the pipe. He hit me on the head. I feel like my head buss and I start to run. I run into an empty lot next to Turbo house.

Roger run after me. He was hitting me with the pipe. I get hit on my back. I fall down by some sharp gravel in the lot. I stay there a while, then I went back up. My son was there. He was still standing by the pavement. He was crying. Turbo came out. I went by Turbo. They tie my head with a cloth. Next thing I see the police come in. I gave a policeman my shirt with my blood on it. It was a nice white shirt I wore to church earlier that day.

I was taken in an ambulance to Mt Hope Hospital. I was treated and kept for 3 days. It happen 9 March 2009.

I see Roger in court today. Points to accused. I know him over 10 years since I come to live in the area. His family have a bar downstairs where they live. Gundy must be in his twenties. Roger is he younger brother. He in his twenties too.

I live about quarter mile up the road from where the incident happen. The shop is further down the hill, about two houses from Roger's house.

Cross examination

I have a conviction for assault. That was in 2005. Yes it could be March 5 2005. Assault occasioning actual bodily harm. Was a fight at work. Two fellas were fighting and I went to part them.

Not true that there was an incident 2 weeks before with me in Roger and them bar, the Lion's Den. I did not head butt anybody and buss anybody head. I was in the bar two weeks before on the Saturday. But I did not buss nobody head. Roger didn't caution me about coming by the bar. I didn't threaten to do anything to him. Not true.

Re-examination

No charge was brought for any incident by Roger bar involving me.

/s/. Robert Folkes
21 September 2010

/s/Ivor Smith, RM
21 September 2010

Roderick Monk sworn states:

I live at 100 Tunnell Road. I am a taxi driver. I drive taxi for my brother. I am also called Turbo. I have a B 14 Sentra. I remember an incident. It was 9 March 2009. About 4 pm. I was talking to Tiger. Tiger lives up the road. I know him for over 15 years. His real name is Robert Folkes. I was talking to him by my fence. He son was with him. It have a chain link wire fence. Next to me on the right hand side is an empty lot. Gundy come up and start to say he go do me. How I is a police informer and reporting him for weed. I tell him to leave and get out of my place.

He and I start to fight. We fall on the ground rolling. I see blood from his head. His head must a connect with a stone from a stone heap. The government was doing work on the road. When he see the blood like he gone berserk. He get up and run and pick up stones from the heap and he start to pelt me. I run inside. Folkes was by the road quarrelling with him telling him to behave himself. I was hearing him. He was talking hard.

I went inside. After a while I was looking out through a window. One of the stone hit the glass on the front door of the house and crack it. I see Roger and he mother coming from down the road side. Roger had an object in his hand. It look like a pipe about 4 feet long. I see him crack Tiger one on his head. Tiger run and Roger run after him. They went down in the vacant lot. I call the police.

Sometime later I see the police coming. Roger mother was with them. They came and an ambulance came and take Tiger away to the hospital. We give him a cloth and tie his head. He had a buss head.

I made a report.

Cross examination

I work for the KSAC. I drink in Lion's Den already. I never get drunk and fall down there. I lime there plenty time with Tiger. I never see Tiger head butt anybody. I never pelt bottle at Lion's Den on 9 March 2009.

Further cross examination reserved.

/s/. Roderick Monk
21 September 2010

/s/Ivor Smith, RM
21 September 2010

Patrice Fraser sworn states:

I am a police constable number 14321 attached to Tunnell Police Station. We received two reports on 9 March 2009. About 4:15 pm. The first was from Marilyn Bennett of Bennett's Bar at Tunnell Road. The second was from Roderick Monk of Tunnell Road. I was detailed to respond along with Constable Marks.

I went to the home of Roderick Monk which was about 200 feet away. There I met Robert Folkes also called Tiger. Tiger reported that one Roger Bennett had beat him with an iron pipe. He gave me a bloodied white shirt he had been wearing. This is the shirt he gave me. Marked Exhibit 1. An ambulance arrived and I sent the victim to the Mt Hope hospital.

I then went to Bennett's bar, the Lion's Den Pub, where I receive a report. I saw broken bottles on the ground in the car park area. I made observations. I spoke to Marilyn Bennett. She reported that one Folkes had come and pelt bottle at the Bar. And he and Roger fight.

Having had the report I asked to speak to Roger Bennett. I was told he was inside downstairs by the Bar. I went to him and cautioned him using rule 2 caution. He said that one Turbo and Tiger came up and Tiger was pelting the Bar with bottles. It was hitting the door. He said he came out. Tiger attack him and he took a piece of pipe from the yard and hit him on his head. He had a cut on the right arm just above the elbow.

I told him he would have to come with me to the police station. His mother asked if they could carry him to receive medical attention first. I said ok after I got the assurance that they were to come to the station after.

I asked him for the pipe and he gave it to me. It was about 4 feet long and heavy. Made of iron. It was about one inch diameter. I don't have the pipe here. It was lost when the police station was being cleaned out last year.

I then went to Mount Hope Hospital where I met Dr Barnsfield who gave me a medical report in favour of Robert Folkes. This is the medical report. Admitted as Exhibit 2.

Later that night I charged Roger Bennett for wounding with intent.

Cross examination

I did not rush to charge Roger. I know Folkes' wife. She and I in the same church, Tunnell New Tabernacle Church. I call her Sister Ethel. I don't know for sure how the break bottles came to be in the yard of Lion's Den. I received information that they break the bottles themselves. Plus there is always fight by that bar. I never see any fight myself but I get reports in the police station.

Further cross examination reserved.

/s/. Patrice Fraser
21 September 2010

/s/Ivor Smith, RM
21 September 2010

Robert Barnsfield sworn states:

I am a doctor of medicine and a Registered Member of the Medical Board of Jamaica and I work at the Accident & Emergency Ward, Mount Hope Hospital.

On Sunday 9th March, 2009 I examined Robert Folkes at Accident & Emergency, Mount Hope Hospital about 5:30 pm and found him to be suffering from the following injuries:

- (1) Multiple small lacerations to the back and chest area
- (2) Contusion of chest area
- (3) 8 cm jagged laceration to right occipital area of head.

The patient complained of pains about back. An X ray of his head showed no fracture.

The patient was treated and sent to another ward for further treatment and monitoring of head injury.

The injuries were likely caused by (1) small sharp objects like sharp stones, gravel or broken bottles with slight to moderate force, (2) blunt object like a blow with moderate force and (3) a blunt object like a thin cylindrical smooth, hard object with moderate to severe force.

History: The patient said that a neighbour had hit him with an iron pipe.

NO CROSS-EXAMINATION

Signed *R. Barnsfield*

09 March 2009.

/s/Ivor Smith, RM

21 September 2010

(Please note the doctor has migrated to England may be unavailable to be called.)

Defence Brief:

Roger Bennett states:

My name is Roger Bennett. I am 26 years old. I live at 125 Tunnell Road. I am a student of the University of London, External programme, doing a degree in Management Studies. I have no convictions.

My parents have a bar downstairs from where we live. I help them operate it. It is called the Lion's Den Pub. Since my father got a slight stroke a few years ago I do most of the work in the bar assisted by my mother. I work in the bar and study when I get time.

I am charged with wounding with intent. I am not guilty. I acted in self defence.

Gundy is my brother. He is sickly from small. He gets epileptic fits. From time to time he smokes weed but he does that out of frustration and pain. The police held him a couple of times for possession but because they know he is sick they don't do him nothing again really. We have an understanding with the Tunnell police. The most they do is warn him from time to time. He don't smoke all the time, only when he feel frustrated.

He doesn't usually work in the bar. Sometimes when he is good he would help out but that is irregular. Because of his condition some people in the village take advantage of him. I am protective of him but I wouldn't do anything illegal.

I recall 9 March 2009. That day I was in the bar about 4.15 pm. It was quiet. We were closed. I was cleaning out the bar, it being a Sunday. There were no customers around but the one of the front doors to the bar was open for me to clean up. There was also a boy from the neighbourhood who does help me now and then and I give him something for it.

Gundy was out and he came home bleeding from his head and from his right arm. He said Turbo and Tiger attack him. Turbo lives up the road. He drives a taxi and his real name is Ravi Mohammed. Tiger is Robert Folkes.

My mother went to get a bandage for him. Next thing I heard like bottle breaking. When I look out I see Turbo and Tiger pelting bottle at the bar. The bottles were breaking against the wall.

Two weeks before, the Saturday, Tiger was in the bar about 9:30 pm. He and another fella got into a quarrel. I was in the bar. I don't like fighting in the bar. It is not good for business. So I went to part the fight. Tiger hold the man and head butt him and the man head buss. I told Tiger I did not want him in the bar again. He say he is a best customer and how I ungrateful. He said he would do me one day.

Because of what I had seen Tiger do, I was afraid of him especially after the threat he made two weeks earlier.

As a result I picked up a piece of iron pipe that was at the side of the yard. When I saw them they were about 10 to 15 metres from me. Tiger came up and rush me and we both fell to the ground in the struggle. I had the pipe in my right hand. Turbo was right there saying come out on the public road and they would done me today. Turbo had a break bottle in his hand. In the altercation I swing the pipe once and I think it hit Tiger in his head. I was fearful for my life so I acted in self defence. When I hit him Tiger fall down and Turbo came and pick him up and they went in the direction of Turbo's house. When I see the blood I get frighten. I also got injured. My left small finger got fractured when I fell down. I had tried to brakes (parry) the fall.

Both of them were there and swinging the pipe was the only thing I could have done.

A short while later the police arrived. My mother had called them. A woman police came and I told her what happened and I handed over the pipe to her. I then went to seek medical attention and then went to the police station. We went to our private doctor because we thought it would take too long to get attention at the hospital.

I went to the police station about 8 pm and met the police woman. She told me she had found out what had happened already and I would be charged with causing grievous bodily harm.

Everything finished happening by us by 4:30 pm.

/s/. Roger Bennett
10 August 2010

Marilyn Bennett states:

I live with my husband and two children at 125 Tunnell Road where we operate the Lion's Den bar. Some years ago my husband had a slight stroke so my son and I run the bar mainly. My husband helps out when he can.

I have two sons. Roger and Steve. Steve is also called Gundy. He is sickly with the fits. I have had some trouble with him over the years because of his illness. Out of frustration he got caught smoking marijuana a couple of times. Roger almost had to put him out of the house once because of his misbehaviour after drinking and smoking weed. Some of the boys in the neighbourhood trouble him.

On the 9 March 2009 I was at home upstairs about 4 pm. I was putting a bandage and some ice on Steve because he was injured. He told me that Turbo and Tiger had ambushed him and pelted him with stones. As I was doing this, I heard a sound like bottle breaking. I looked out of the window and I saw Turbo in the yard. He was gesticulating with a break bottle. I couldn't see below by the bar because there is an eave overhanging outside the bar. I went to get the key to open the front door to run downstairs. As I got the key I looked out again and saw Tiger and Turbo leaving. Turbo was holding Tiger up. About a minute had passed from when I saw Turbo. A few seconds later I went downstairs and I saw my son holding his left hand in pain. He told me the boys were pelting bottle and he took up a pipe and he thought Tiger got hit. I called the Tunnell police and a police woman and another police came a short while after.

We took Roger to the doctor and then went to the police station. They charged him and I had to get a surety. We have good relations with the police at Tunnell because of the bar and Steve. The police woman Ms Fraser recently came there so I don't know her.

I made a report of the incident to the Tunnell Police but they never charged anybody with the damage to our property.

/s/. Marilyn Bennett
10 August 2010

Sonia Samuels states:

I am 24 years old. I am a student at UWI doing a BA in History. I live almost next door to Roger at 115 Tunnell Road. I have known the Bennetts for a long time. Roger and I are close friends since primary school days. We share CDs, movies and books.

On 9 March 2009 I was at home. I was watching TV and studying when I heard loud shouting going on by the Lion's Den Bar. I couldn't tell what they were saying or who was shouting but it was more than one voice. I can't say if it was only male voices. I then heard like bottles crashing. I am sure it was happening there because of the direction of the sound. I tried calling Roger on his cell but he didn't answer. I went to the porch and I saw Turbo with another man hurrying away from the direction of Roger's house. Turbo lives a couple of houses from us. We live between Roger and Turbo, about the same distance in between from each. I didn't know the other man but I know Turbo. I have travelled in his taxi before. I saw him for a few seconds.

Later that evening Roger called me and told me what Turbo and the other man had done. I told him what I had heard. Some weeks later Roger asked me if I would be willing to tell his lawyer what I had heard and I agreed.

/s/. Sonia Samuels
10 August 2010

MEDICAL REPORT

St. Micheal's Medical Centre
Tunnell Crescent, Kingston 11

This is to certify that on Sunday 9th March, 2009 I examined Roger Bennett at Accident & Emergency, St. Michael's Medical Centre about 5:10 pm and found him to be suffering from the following injuries:

(History: patient said he was attacked by a man and he fell down).

(1) 4 small lacerations to the back and chest area

(2) Bruises to left arm

(3) Hairline fracture between ring and 4th finger

Patient complained of pains about body.

Cast applied. Patient discharged.

The injuries were likely caused by:

Re (1) Small sharp objects with slight to moderate force.

Re (2) Consistent with grazing on rough surface.

Re (2) consistent with a blow or fall with moderate force.

Signed *Dr K. Persad MBBS*

Registered Member of the Medical Board of Jamaica
09 March 2009

(Please note the doctor has migrated to England may be unavailable to be called.)