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IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 21/96

COR: THE HON MR JUSTICE DOWNER JA
THE HON MR JUSTICE PATTERSON JA
THE HON MR JUSTICE WALKER JA (AG)

REGINA VS CHARLES LAWSON

Leonard S Green for appellant

Bryan Sykes & Miss Sharon George for the Crown

November 11 & December 16 1996

WALKER JA (AG)

On February 2 1996, the applicant was convicted of non-capital murder in the Westmoreland Circuit Court before Reid J, sitting with a jury. He was sentenced to imprisonment for life with a recommendation by the court that he should serve a minimum sentence of nine years before becoming eligible for parole.

The prosecution case was short and uncomplicated. The witness, Christopher Lewis, testified that at about 6:30 a.m. on the fateful day he awoke from his slumber to hear the applicant complaining that the deceased, who was also called "Warder," had purloined his (the applicant's) ice-pick. Lewis, the applicant, the deceased and other men had all slept in the same room throughout the previous night. By himself promising to repay the applicant the value of his missing ice-pick, Lewis

police investigated this incident. In the course of his investigations, he recovered a fish gun which formed part of the evidence in the case. He first saw the applicant who was then incarcerated in a cell at the Frome Police Station. At that time, having told the applicant of information he had received relative to the death of the deceased, he cautioned the applicant who said "officer a nuh how dem two man dey tell you how it go. Me will tell you how it go." Subsequently the applicant gave a written statement under caution.

That statement which was unchallenged was tendered and admitted in evidence as part of the prosecution case. It spoke to the dispute between the applicant and the deceased concerning the missing ice-pick and read, inter alia, as follows:

> "...Mi left out a di house go round a di front and go back round a di house and sey, 'Star, yuh nah gi mi mi things, mi know sey a you have it. Him sey, if you know sey a mi have it come grab mi up and tek it mek mi push something inna you side. Same time ...' That is the deceased, '... get up off a him bed and mi see the fish-gun set inna di corner. Mi grab up di fish-gun and him grab after it and it go off and ketch him inna him chest. Him run out a di house and drop inna di yard. Mi and Tiger tek him up and mi carry him go a hospital because a di gun go off, a nuh mi shoot him. When mi lift up Warder fi carry him go out a di bus-stop, mi ice-pick drop out a him pocket.' "

assist the applicant. Mr. Green argued only that the learned trial judge's directions on the issue of self defence were deficient. More specifically, Mr. Green submitted that those directions did not adequately address the element of honest belief which he contended arose on the evidence in the case.

In a case where the defence of self defence is raised on the evidence, the element of honest belief arises for special consideration in circumstances which suggest that the defendant may have been labouring under a mistake as to the facts. In such circumstances, the defendant must be judged according to his mistaken view of the facts and this is so whether the mistake was, on an objective view, a reasonable one or not see ***Solomon Beckford v. R.*** *[1987] 3 WLR 611; [1987] 3 All ER 425.* In the instant case in directing the jury on self defence the learned trial judge delivered himself thus:

> "... Now, self-defence is known to you, members of the jury. If somebody attacks me I am entitled to defend myself, and I can defend myself against an attack even to the extent of killing somebody, if I reasonably thought that that was what was necessary.
>
> If the accused, quite apart from what he raised about the gun going off in a manner through no fault of his and in the course of a struggle, and both himself and the deceased holding that gun, but if you were to find otherwise that he had killed the deceased or shot at him or pointed it at him, which would be an assault in circumstances in which he apprehended

concept of honest belief should be effectively imparted by the judge to the jury. Furthermore, in a case where self defence is raised a summing up which did not include a direction emphasising honest belief would not be deemed to be so defective as to result inevitably in a conviction being quashed. As this court observed in ***R. v. Owen Virgo*** (unreported) SCCA No. 96/87 delivered March 23, 1988 and cited with approval in ***David Bell v. R.*** (unreported) SCCA No. 74/95 delivered December 11, 1995:

> "Only in cases of mistake of facts, or where the circumstances constituting the threat of attack are such that 'there was a further possibility' namely that the accused mistakenly believed that he was under attack, would a direction not emphasising 'honest belief' be so defective as to be fatal to a conviction."

In this case we think that the directions given adequately conveyed to the jury their duty to acquit the applicant if they found as a fact that he may have honestly apprehended personal danger from conduct exhibited by the deceased and, while in that state of apprehension, had reacted instinctively by doing only what he honestly thought was necessary for his defence. By their verdict it is clear that the jury rejected such a scenario and accepted the prosecution case which was one of non-capital murder.

In the result, we refuse this application for leave to appeal and order that the applicant's sentence should commence as from May 2, 1996.