Criminal Law – Wounding with intent. Whether test as laid down by trial judge (re self defence) in consonance with rule in R v Solomon Beckford: whether misdirection. APPEAL DISMISSED

Cases referred to: R v Solomon Beckford P.C. Appeal No. 9/86

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 107/87

BEFORE: THE HON. MR. JUSTICE KERR, J.A.
THE HON. MR. JUSTICE WHITE, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.

REGINA

vs

KEVIN SPENCE

Mr. D.N. Wilcott for Applicant

Mr. C. Brown for the Crown

December 14, 1987 and May 18, 1988

KERR, J.A.:

This application for leave to appeal from a conviction for wounding with intent in the Hanover Circuit Court before Reckord, J. (Acting) and a jury on the 17th June, 1987 was treated as the hearing of the appeal. The appeal was dismissed and the conviction and sentence affirmed. Herein are the reasons for so doing.

It was Christmas Eve 1986 and at 7:30 p.m. the complainant, Glenville Campbell was on the Montpelier Road at Sandy Bay in Hanover when according to Campbell, the appellant came up to him and "put fight to him". He, Campbell, picked up a stone and "flashed" it at appellant. The blow caught appellant over the eye causing a "bruise". Campbell made a report at the nearby Police Station and then went on Church Lane where one Viola Johnson acting as arbitrator suggested that complainant pay appellant Eighty Dollars ($80.00) as compensation. Complainant agreed but appellant did not. The appellant left for his home. The complainant went and sat on the wall by Church Lane. While

there, the appellant returned, armed with a machete and chopped at complainant's neck. The complainant put up his left hand to save his neck but the machete cut both hand and neck. Complainant ran, chased by the appellant who gave him several slaps with the machete. Complainant escaped by jumping over a wire fence beside the clinic. Appellant was then held by a man, while Campbell went to the nearby Sandy Bay Police Station where he made a report. From there, he went to the Lucea Hospital where he was treated. There his wounds were sutured. He subsequently attended the Cornwall Regional Hospital where his hand was X-rayed and placed in a plaster cast. Campbell denied suggestions put in cross-examination that at the time he was attacking the appellant with a stone. Corporal Lawrence, the investigating officer said he advised the appellant of the report Campbell made and cautioned him, and the appellant said, "Officer, a him first lick mi in a mi eye and mi feel grieved, mi go a mi yard fe mi machete and chop him". In his statement from the dock, the appellant said there was a fight between complainant and another man. When he told complainant to "cool it", complainant came up to him and said "I don't want you to say anything to me" and struck him with a stone in his forehead. He was wounded and fell to the ground. One Denton took him to his (Denton's) home. While there, the complainant came and approached him with a stone and while backing away, he picked up a machete and waved it and warned complainant not to come closer. However, complainant rushed him and so was injured by the machete. He denied making any admission to Corporal Lawrence.

Of the grounds of appeal filed, only the following merited earnest consideration:-

> "That the test applied by the trial judge applicable to self-defence is inconsistent with the rule in R. v. Solomon Beckford P/C Appeal No. 9/86."

In his directions to the jury on self-defence, the learned trial judge said:-

> "So firstly you have to decide whether there was any attack at all. Then you have to consider that as a result of the attack the accused must have believed on reasonable grounds that he was in imminent danger of serious bodily injury, and you must decide next whether the force used by the accused must have been used to protect himself either from death or reasonably serious bodily injury intended upon him by the complainant, or, from a reasonable apprehension of it induced by the words and conduct of the complainant." (Emphasis supplied)

In R. v. Solomon Beckford, Lord Griffiths delivering the judgment of the Board disapproved of a summing-up in similar terms thus:-

> "Their Lordships therefore conclude that the summing up in this case contained a material misdirection and .....
> that the test to be applied for self-defence is that a person may use such force as is reasonable in the circumstances as he honestly believes them to be in the defence of himself or another."

In this re-statement of "self-defence", directions in a number of earlier case such as R. v. Chisam (1963) 47 Cr. App. R. 130 in which Lord Chief Justice, Lord Parker, said:-

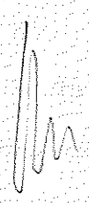
> "There must be a reasonable necessity for the killing, or at least an honest belief based upon reasonable grounds that there is such a necessity."

are no longer acceptable.

Accordingly, "reasonable grounds" for belief in the apprehension of imminent danger is now a factor for the consideration of the jury in determining whether or not the accused had an honest belief and is no longer an essential element, the absence of which, is conclusive against the existence of the issue.

Since the advent of the judgment in R. v. Solomon Beckford, there has been a spate of appeals in cases tried before the decision in that case was delivered as judges here directed juries along the lines indicated in the earlier cases. The instant case was concluded but two days after the judgment in Solomon Beckford was delivered. However, Lord Griffiths in Solomon Beckford was careful to point out that,

> "If on the facts as they appear from the summing up the judge had left the matter to the jury on the basis of a choice between the two accounts then any misdirection as to the reasonableness or otherwise of the appellant's belief would have been of only academic interest."



So was it in the instant case, where the account as given by the prosecution witness was diametrically opposed to that given by the accused and this was brought to the attention of the jury with concise clarity in the following passages:- (p.18)

> "You are the persons who are to determine which side to accept and which one you reject because if you accept what the accused man said, that it was the complainant who came down on him while he was waving his machete to keep him off, armed with a big stone ready to lick him down after having injured him before, then you will have to acquit him; but even if you don't believe that it happened that way you still have to look over all of the evidence and determine whether you accept the case as presented by the prosecution."

and later:-

> "The accused man gave you a story as to how the injury to the hand came about, but he didn't say anything about the neck unless, of course, while he is flashing the machete in the way he did the complainant had his hand up like this and walked into it. If that is what you believe then, Madam Foreman and members of the jury, you have to acquit him; but if what the accused man has told you from the dock there causes any reasonable doubt, not flimsy doubt, reasonable doubt on the Crown's case it would mean, therefore, that the prosecution has failed to satisfy you so that you feel sure, in which case you have to acquit him.

> "The only way you can convict him, first of all you have to say, "I don't believe his story," the accused man, and then look at the Crown's case. If you accept what the complainant says, if you believe that he is a witness of truth and if you believe that he told you the truth that that is the way that the injury was inflicted there would be sufficient evidence for you to say guilty as charged."

In the light of such directions, we are of the view that the verdict of the jury is explicable only on the rejection of the defence and an acceptance without reservations of the case for the prosecution. In the circumstances, no miscarriage of justice was occasioned by the misdirections relating to the test to be applied in determining the existence of the issue of self-defence. For these reasons, the appeal against conviction was dismissed.

With respect to the appeal against sentence, Counsel adverted to the fact that he had no previous convictions, was eighteen (18) years of age and the fact that he had been wounded earlier by the complainant. All these circumstances were urged in mitigation before the learned trial judge who after considering the circumstances of the case and the gravity of the injuries on the complainant, imposed a sentence of four (4) years imprisonment with hard labour. We are unable to say that this sentence was in any way excessive.

Accordingly, the sentence was affirmed and to run from the date of conviction.