

CRIMINAL LAW - Count 1 Wounding

Whether common design

Count 1 and Count 2 stands

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 29/86

BEFORE: THE HON. MR. JUSTICE ROWE - PRESIDENT
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE DOWNER, J.A. (AG.)

REGINA

VS.

LIONEL ROY MURPHY

Mr. Delroy Chuck for the Appellant

Mr. John Moodie for the Crown

February 16, 1987

WRIGHT J.A.:

On the 13th of March, 1986, the appellant Lionel Roy Murphy was convicted in the St. Catherine Circuit Court, presided over by The Hon. Mr. Justice Harrison, on two counts; the first charging him with wounding with intent and the second count charging him with assault occasioning actual bodily harm. The first count was based on the allegation by the Crown that there was common design between the appellant and a relative of his, one Ricky, to wound the complainant, Mr. Wilson, with the machete.

The transcript reveals that there was a confrontation between the parties in the presence of one Mr. Mason and the evidence reveals that there was a barring of Mr. Wilson's way by Ricky and the appellant, during which the appellant slapped Mr. Wilson with the machete, occasioning what the learned trial judge called a 'batter bruise' and that was the subject of the second count, assault occasioning bodily harm.

Thereafter, according to the witness, Mason, the appellant threw away the machete and said to Mr. Wilson: "You want a fair fight," and so he was no longer armed. He and Mr. Wilson grappled. They rolled over on the ground and in that position Ricky is supposed to have chopped Mr. Wilson with the machete.

Now, it is clear from the evidence that after the appellant had thrown away the machete he did not address himself to the use of the machete. There was no exhortation or incitement on his part to Ricky to use the machete. It is obvious on the proper understanding of the evidence, and it is the only reasonable inference that could be drawn, that when Ricky used the machete he was acting on his own, because even if it were to have been inferred that there was a common design, it is clear that it had been abandoned by the appellant at the time when he threw away the machete and invited Mr. Wilson to a fair fight.

On that state of the evidence, it is surprising that that count was allowed to go to the jury at all, because even if there had not been a no-case submission, the case based on common design seems to have so completely fallen apart that it ought to have been withdrawn from the jury. It is true that the learned trial judge put the two aspects as regards the inference that could be drawn but in the circumstances there was no reasonable inference that could be drawn that sustained the charge based on common design, so that in the circumstances there was no evidence to sustain that conviction and as Mr. Chuck has briefly put his argument, the evidence on the transcript tends rather to negative than to support common design and we have no hesitation in agreeing with him.

So far as the second count is concerned, the evidence shows that there was some actual bodily harm, though apparently not serious, and this Mr. Chuck has conceded, though at first, he wished to have that charge reduced to one of common assault. But it would make no difference really because the sentence was so mild - admonish and discharged - that the record would hardly have been affected. Accordingly, the conviction on count one for wounding with intent is quashed and the sentence set aside and verdict of acquittal entered. The verdict and sentence on count two will stand.