

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO 171/2006**

**BEFORE:                   THE HON. MR. JUSTICE COOKE, J.A.  
                                  THE HON. MR. JUSTICE HARRISON, J.A.  
                                  THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag.)**

**CHRISTOPHER THOMAS v R**

**Everton Bird for the appellant**

**Miss Kathy-Ann Pyke, on fiat for the Crown**

**19<sup>th</sup> May 2008**

**ORAL JUDGMENT**

**COOKE, J.A.**

1. This application by Christopher Thomas arises out of a conviction for murder on the 27<sup>th</sup> September 2006 in the Spanish Town Home Circuit Court before Miss Paulette Williams, J. and a jury. The scene of this tragedy took place at a construction site in Cedar Grove in the parish of St. Catherine. He was sentenced to 15 years imprisonment at hard labour.

2. The facts of the case for the prosecution are that it was about 5:30 p.m. and the toil of the day had been completed — the main activity of that day was

the decking of a house. There were about four persons left on that construction site after the daily activities, the appellant, the appellant's brother, Kevin Douglas, o/c Sean Douglas (the deceased) and Denzil Smellie. It would seem that there was some argument on the site pertaining to the loss of money but this was not the genesis of the altercation between the appellant and the deceased. It would appear that the deceased was of the view that the appellant was accusing him of being a thief and words passed between them to the extent that the deceased told the appellant that he was so vexed and that he would not travel with him that evening.

3. The evidence led by the prosecution was that the appellant was the aggressor. He ran and grabbed on to the deceased. However, while this was going on the appellant's brother had a block in his hand and he held it in a threatening manner. Smellie had tried pulling away the appellant from off Douglas. Smellie now having seen the appellant's brother with the block diverted his attention to the brother and he and that brother were grappling over the block. The block fell and when turning around he saw the appellant with a ratchet knife in his hand and soon after both Shawn Douglas (the deceased) and Christopher Thomas (the appellant) ran in opposite directions.

4. The deceased received 3 stab wounds and 2 incised wounds. The first stab wound was to the jugular left right anterior lateral neck, the second was to the right upper anterior arm and the third was through the palm of the hand – it

was the opinion of the doctor that this was a defensive wound, and he received two incise wounds (right upper anterior forearms and the upper anterior chest). The defence was that of self defence in that the deceased had pulled a kitchen knife and he was defending himself.

5. The learned trial judge left this issue (of self defence) fairly and squarely to the jury and gave adequate directions. No fault can be attributed to the learned trial judge in this regard. However, we are of the view that there was evidentiary material which was capable of amounting to provocation and on which the jury should have been directed. In not so doing the learned trial judge was in error. The court will now point out bits of this evidence:

- (i) the appellant spoke about being boxed;
- (ii) he spoke about being "girded" — he was being tightly squeezed around his waist;

We are of the view that the issue of provocation should have been left to the jury for their consideration. Hence, by the failure to do this the appellant was deprived of a verdict of manslaughter. As to this, counsel for the Crown Miss Pyke has readily conceded. This was the only issue in this case to be dealt with as the other challenges were effectively abandoned by the appellant.

6. It only remains for the court to determine what is the appropriate sentence in this matter. The sentence given by the court for murder was 15 years, so obviously for manslaughter it would be less. It is our view, taking all

the circumstances into account, that a sentence of 10 years is appropriate. The sentence will run from the 27<sup>th</sup> September, 2006.

7. Appeal allowed. Conviction of murder quashed. Sentence set aside and a verdict of manslaughter entered. Sentence of 10 years at hard labour is imposed. Sentence to commence as of 27<sup>th</sup> September 2006.