NMLD

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 1/95

BEFORE: THE HON MR JUSTICE CAREY JA
THE HON MR JUSTICE FORTE JA
THE HON MR JUSTICE WOLFE JA

DONALD WILLIAMS
v
REGINAM

Carlton Williams for the applicant

Mrs. Vinette Graham-Allen for the Crown

November 13, and December 11, 1995

WOLFE JA

The Applicant was convicted in the Home Circuit Court on the 17th day of January 1995 before Panton J, sitting with a jury, for the offence of non-capital murder. The mandatory sentence of life imprisonment was imposed. The learned trial judge did not specify a period which the applicant should serve before becoming eligible for parole.

The Crown's case was that a dispute developed between the deceased and one Desmond over a sound system. Desmond accompanied by the applicant went to the home of the deceased, Winston Perch. On arrival words passed between the deceased and the applicant whereupon the deceased was stabbed by the applicant and succumbed to his injury. Upon arrest the applicant when cautioned said "A when we collar up the knife 'jook' him".

The defence on the other hand contended through the sworn testimony of the applicant that he was subjected to a violent attack by the deceased who was armed with a machete and that he, the applicant, in defence of himself took out his knife and whilst being chopped at by the applicant he stretched out his hand with the knife to avoid being chopped and "accidentally he felt his hand collided to his body part".

With the leave of the Court two grounds of appeal were argued before us. The first ground of appeal complained that the learned trial judge failed to deal adequately or

at all with the defence of accident and ultimately withdrew the issue of accident from the consideration of the jury although there was ample evidence to support it.

We are firmly of the view that there is no basis for the complaint. The learned trial judge recounted to the jury the evidence of the applicant and told them that if they believed him or if they were in doubt about what he said as to stretching out his hand with the knife and the body of the deceased coming into contact with it they should acquit the applicant. The trial judge characterized that evidence as amounting to accident. It is therefore a misconception to say that the defence of accident was withdrawn when the learned trial judge directed the jury as follows:

> "Although the accused man has raised this question of accident, I think it is reasonable to say that the main focus of the defence has really been self defence, that is the main focus of the defence."

We entirely agree that the defence was really self defence. The applicant's evidence was that he took out his knife when he was being chopped at and that he stretched out his hand with the knife to avoid being chopped. In leaving the issue of accident to the jury, the learned trial judge was being very generous as accident, in our view, did not properly arise. This ground of appeal therefore fails.

Ground two asserts that the direction of the learned trial judge on self defence undermined the legal definition of self defence and had the effect of misleading the jury to the prejudice of the applicant.

In explaining to the jury the plea of self defence the learned trial judge said.

> "Under our law, anyone who is attacked in circumstances where he believes his life to be in danger or that he is in danger of receiving serious bodily harm may use such force as is reasonable in the circumstances as he honestly believes them to be to prevent or resist attack, and if in using such force he kills and does injury to his attacker, our law says that he would be not guilty of any crime."

Having so defined self-defence the learned trial judge directed the jury in the following terms:

> 'If the act done by the accused man was to protect himself from death or serious bodily injury or did he act as he did in order to protect himself from an attack that he apprehended was coming from the

> deceased. If your answer to either question is yes, then the verdict is not guilty. If you are not sure what your answer should be, the verdict is not guilty. If you are not sure what your answer should be, the verdict should also be not guilty. If, however you answer both questions no, that is, if you are saying that he was not protecting himself from death,he was acting to protect himself from death or serious injury or if you say that he was not acting to protect himself from attack that he apprehended was coming from the deceased, then Mr. Foreman and members of the Jury, it is open to you to return a verdict of guilty if you accept the case for the prosecution. In deciding this question of self-defence you are to consider the extent and the nature of the force used by the accused man or rather used on the accused man, and the force used by him to repel it. So, I will repeat so that there is no misunderstanding. In deciding this question of self-defence you are to consider the extent and the nature of the force used of the accused and force used by him to repel it. That is, of course, if you accept that any force was used on him. If excessive force was used by the accused, then the act would not have been done in necessary self-defence. In deciding whether it was necessary to have used as much force, as in fact was used, you pay regard to all the circumstances that existed at the time and, of course, you bear in mind that anybody who is under an attack or who apprehends that he is about to be attacked, is under no duty to retreat or to run away. In your deliberation or this question of self-defence everything depends on what view you take to the facts and the circumstances of the case as you find them."

Having examined the definition of self defence and the direction on self defence we are unable to hold that the direction undermined the definition. We disagree with the argument that the effect of both was to mislead the jury. The direction was crystal clear. The jury could have had absolutely no difficulty in understanding what was self defence and how it operated in law. This ground of appeal is also without merit.

It is for these reasons that we refused the application for leave to appeal.