

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT LUCIA

SLUHCRA2023/0003

BETWEEN:

DANNY JOSEPH

Appellant

and

THE KING

Respondent

Before:

The Hon. Mr. Mario Michel
The Hon. Mr. Trevor M. Ward
The Hon. Mde. Esco L. Henry

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Mr. Horace Fraser for the Appellant
Mr. Linton Robinson for the Respondent

2024: March 15;
July 26.

Criminal Appeal – Appeal against conviction – Murder – Intent – Section 56 of the Criminal Code of Saint Lucia – Trial judge’s direction to the jury - Whether a trial judge’s failure to give a direction on intent in accordance with section 56 of the Criminal Code of Saint Lucia is fatal to the conviction – Whether lurking doubt that the conviction is unsafe and unsatisfactory

On 6th November 2010, Danny Joseph (“the appellant”) visited his mother’s house at Babonneau, Castries. On the same day, at about 12:30 p.m., the appellant’s uncle, Sylvester Joseph (“the deceased”), went to Mrs. Joseph’s house to discuss an ongoing land dispute involving him and his other siblings, including Mrs. Joseph. A heated argument soon developed between the appellant and the deceased, which soon became a physical altercation. The appellant then, using what was described as a bread knife with a blade measuring about six inches with serrated edges, stabbed the deceased, resulting in his death. A postmortem examination revealed that the deceased had sustained three stab wounds, one of which was fatal. The appellant was arrested later that day, and he gave a statement under caution, which was tendered in evidence. The prosecution’s case was that the appellant intended to cause grievous bodily harm to the

deceased, but in fact caused his death; whereas the appellant's case was that he acted in self-defence and had been provoked by the deceased.

The appellant was convicted on an indictment containing a single count of murder which averred that he, intending to cause grievous bodily harm, did cause the death of Sylvester Joseph, contrary to section 85(b) of the Criminal Code of Saint Lucia (the "Criminal Code").

Being dissatisfied with his conviction, the appellant appealed. By notice of appeal filed on 11th August 2023, the appellant advanced two grounds of appeal. Ground 1 asserted that a material irregularity occurred in the trial process resulting in a miscarriage of justice when the learned trial judge misdirected the jury on the issue of intent in terms of section 56 of the Criminal Code. This misdirection caused the appellant to lose the opportunity of being acquitted on the basis of self-defence or, alternatively, manslaughter by reason of provocation. Ground 2 alleged that the conviction was unsafe and unsatisfactory and went against the weight of the evidence.

Held: dismissing the appeal and affirming the conviction, that:

1. A trial judge's directions on intent should be kept as simple as possible so as to not confuse the jury. When directing the jury on the mental element in a crime of specific intent, the judge should avoid any elaboration and should leave it to the jury's good sense to decide whether the accused acted with the requisite intent. Thus, a trial judge need not direct a jury on each and all the matters mentioned in a provision contained in statute concerning intent. What is required is that the trial judge should direct the jury on the substance of the requirements in the section. On the facts, the judge's directions made it plain to the jury that the prosecution was required to prove that the appellant killed the deceased with the intention to cause him grievous bodily harm as per section 85(b) of the Criminal Code. Although the judge did not explain to the jury how to determine intent [by using the language of section 56(1)], she directed the jury that they had to be sure, in the events that transpired, that the appellant acted with intent to kill or cause the deceased serious injury and not because he lost self-control. The judge further directed that if they found that the appellant acted with intention to cause grievous bodily harm and did cause the deceased's death, they need not go further. This was not a misdirection. The judge's directions were clear and simple to the jury and were sufficient on the issue of intent without any further need by the trial judge to explore the precise wording of section 56 of the Criminal Code.

Alphonse (Denis) v R (1996) 52 WIR 179 distinguished; **James Miller v The King** [2023] UKPC 10 applied; **Ezra Phillip v The King** SLUHCRA2022/0001 (delivered 5th December 2023, unreported) followed; **R v Moloney** [1985] AC 905 applied.

2. In reviewing a trial judge's directions to the jury, an appellate court must have regard to the summing up as a whole to determine whether a misdirection caused a miscarriage of justice resulting in an unsafe conviction. The appellate court must therefore look at the thrust of the directions to consider if they have adequately put the several issues before the jury and properly given them an

appropriate explanation of their task in relation to those issues which they have to decide. The judge's directions therefore ought to be tailored to suit the issues that actually arise in a case and the judge should explain to the jury how to apply the principles of law to the facts of the case. In reviewing the trial judge's summation as a whole, it is evident that whilst not specifically using the language of section 56 of the Criminal Code, there was nothing in the facts or issues of the case that necessitated any elaboration on the issue of intent. The judge properly directed the jury on the burden on the prosecution and carefully reviewed the evidence from which the jury could infer the intent of the appellant. There was therefore no misdirection by the trial judge.

Jevone Demming v The Queen BVIHCRAP2015/0001 (delivered 14th January 2020, unreported) followed; **Daniel Dick Trimmingham v The Queen** [2009] UKPC 25 applied.

3. As to the defences of provocation and self-defence, the trial judge gave full directions on both. Apart from the bare assertion that the judge's failure to direct on intention in accordance with the terms of section 56 of the Criminal Code deprived the appellant of the opportunity to be acquitted of self-defence, no criticism has been levied at the content of the judge's directions on self-defence. Nor has the argument been developed to demonstrate how a failure to elaborate on the meaning of intention would have cost the appellant an acquittal in the face of very fulsome directions on the issue of self-defence. The same can be said in relation to the issue of provocation since the appellant has not criticised the content of the judge's directions and has failed to articulate why a failure to define intention meant that he lost the opportunity to be convicted of manslaughter by virtue of provocation. For these reasons, ground 1 of the appellant's appeal failed.
4. Section 35(1) of the Supreme Court Act provides in part that the Court of Appeal may allow an appeal against conviction if it thinks that the verdict of the jury should be set aside on the ground that it is unsafe or unsatisfactory. The test to be applied is whether the appellate court has a subjective, reasonable or lurking doubt that justice may not have been done by the verdict and has been left in doubt as a result of considering all the circumstances, the evidence, the summing up and the general feel of the case. However, it is trite law that the fact-finding function in a criminal trial is entrusted to the jury, and it is only exceptionally that an appellate court should seek to substitute its view of the facts for the jury's. On the facts of this case, both self-defence and provocation were placed squarely before the jury for their consideration, and it was for them to assess the viability of either defence, assessed against the evidence in the case. None of the matters urged upon the Court by counsel for the appellant provides any ground for thinking that the conviction is unsafe. It was open to the jury to accept the prosecution's evidence that the appellant approached the deceased with a knife concealed behind his back intending to inflict at least serious bodily injury and that when he killed the deceased, he was neither acting in lawful self-defence nor was he acting under provocation. The Court therefore

was of the view that there was no lurking doubt about the conviction or uneasiness about whether an injustice has been done. For these reasons, ground 2 of the appeal failed.

John (Nathaniel) v R (1994) 47 WIR 122 applied; **Dookran and another v The State** [2007] UKPC 15 applied.

JUDGMENT

- [1] **WARD JA:** This appeal raises the issue whether, in all instances, a failure to give a direction on intent in accordance with section 56 of the **Criminal Code**¹ of Saint Lucia is fatal to the conviction.

Factual Background

- [2] On 6th November 2010, a heated argument between Danny Joseph (“the appellant”) and his uncle, Sylvester Joseph (“the deceased”) over a family land dispute led to a physical altercation between them which led to the stabbing death of the deceased. The appellant was convicted on an indictment containing a single count of murder which averred that he, intending to cause grievous bodily harm, did cause the death of Sylvester Joseph, contrary to section 85(b) of the **Criminal Code** of Saint Lucia.

The prosecution’s case

- [3] The prosecution led evidence that on 6th November 2010, the appellant visited his mother’s house at Paix Bouche, Babonneau, Castries. The house was near a shop named “Pork City”, which was operated by the appellant’s maternal uncle, Sylvester Joseph. At about 12:30 p.m. the deceased went to Mrs. Joseph’s house to discuss an ongoing land dispute involving him and his other siblings, including Mrs. Joseph. Soon, a loud and heated argument developed between the deceased and the appellant. The appellant’s girlfriend, Olivia Henry, entered the house at one point and attempted to placate the feuding parties. The deceased eventually left the house, and she went to the shop. It appears that the deceased continued quarrelling loudly for some time. Subsequently, Antoine St. Luce was at the back of the shop slaughtering pigs

¹ Cap. 3:01 of the revised laws of Saint Lucia.

with one Peter Edward when he heard a commotion. They ventured to the front of the shop, apparently to call the deceased to the back of the shop for yet another time. According to St. Luce, he saw the deceased, who was standing next to a pipe, pick up two bottles. At the same time, he also observed the appellant walking down the steps of his mother's house holding a soft drink bottle in his left hand with his right hand behind his back. At that point the deceased and the appellant were about 12 feet from each other. The deceased then threw a bottle at the appellant. They walked towards each other and began to fight, during which the deceased struck the appellant several times in his head with a bottle. He then observed the appellant holding a knife to the deceased's neck. At that point St. Luce and Peter Edward rushed toward the men and Mr. Edward eventually managed to disarm the appellant. Peter Edward's observations differed somewhat. He testified that when he got to the front of the shop he saw the deceased throwing bottles at Mrs. Joseph's house. The appellant then ran out of the house holding a knife behind his back. He ran towards the deceased, "plunged the knife forward" and stabbed the deceased, who immediately collapsed. Mr. Edward took the knife from the deceased. The knife was described as a bread knife with a blade measuring about six inches with serrated edges.

[4] A postmortem examination revealed that the deceased had sustained three stab wounds; one of which was fatal as it penetrated some 11.5 cm into the right upper chest of the deceased. The superior vena cava and the pulmonary artery had both been penetrated. The other injuries consisted of a stab wound to the deceased's right arm which was 11.5 cm deep and a stab wound to the left lower back which was 5 cm deep.

[5] The appellant was arrested later that day. He gave a statement under caution, which was tendered in evidence. It read:

"At 11:30 a.m. on Saturday sixth November, twenty ten, my uncle and I were arguing. He made several attempts to hurt me and made threats to me. It did not happen because of the fact that people were holding him. From there, people were holding him. They couldn't because he is a big guy. I was standing in the balcony of my mother's house. He was standing in the yard. He said to me if I step out he is going to kill me. I tried leaving and he blocked and started collecting bottles. He throw the bottles at me. After the second bottle, I went closer to him so

I couldn't get hit. That's when he grabbed me and knocked me on my head with the bottle. He tried pushing me away. That's when I pulled my knife from my pocket and swing at him. I saw he began to shake. I couldn't believe I did that. He fall to the ground. I stood there and watched him. I saw the knife in my hand had blood. I dropped the knife and I walked to the road. People started checking on him. They put him on a ride and went with him. I tried calling the police."

The case for the appellant

[6] The appellant relied on the contents of his statement under caution and adduced the evidence of two witnesses in his defence: another uncle and his mother. His uncle, Thomas Jn Baptiste, (the deceased's brother) testified that he had briefly visited the house of the appellant's mother for about 15 minutes following a call from her but although he had seen the deceased taking drinks out of his vehicle, he had not heard him quarrelling while he was there. The thrust of his evidence was: (1) the appellant was right handed; (2) that if one were behind the shop, one could not see someone who was either on the balcony or front steps of Mrs. Joseph's house; (3) if one is leaving Mrs. Joseph's balcony and descending the steps, a person emerging from behind the shop would see the left side of the person descending the steps but it would be impossible for them to see the person's back. On the face of it, this evidence seems to have been deployed to rebut the evidence of Peter Edward that he had observed the appellant running from the house holding a knife behind his back.

[7] The witness statement of the appellant's mother was read into evidence. Its purpose was largely to describe what happened when the deceased came to her house that morning. In short, her evidence was that the appellant and the deceased began exchanging words after the deceased came to her house. The appellant asked the deceased to leave her house. She removed a cutlass which was behind the chair on which she was seated and hid it, whereupon the deceased said in patois: "You remove it, I would fly his arm." She told the deceased there was no reason for that. The deceased left to retrieve his copy of a document he had received from his lawyer. The argument between him and the appellant continued. She locked the front door and urged the appellant not to go outside. She asked someone to close the back door. She tried contacting the police but was unsuccessful. She summoned her brother Thomas and spoke to him at the front door when he arrived. Sometime thereafter the appellant said

he was leaving for Plateau. After he left, she closed the door and went inside. She then heard the deceased's voice again on the outside and heard the sound of bottles breaking on her balcony. She could hear people saying that the deceased and the appellant were fighting. She later learnt that the deceased had died.

The appeal

- [8] By notice of appeal filed 11th August 2023 the appellant advances two grounds of appeal. Ground 1 asserts that a material irregularity occurred in the trial process resulting in a miscarriage of justice when the learned trial judge misdirected the jury on the issue of intent. Ground 2 alleges that the conviction is unsafe and unsatisfactory and goes against the weight of the evidence.

The appellant's submissions - Ground 1

- [9] In relation to ground 1, learned counsel for the appellant, Mr. Horace Fraser, submitted that the judge was obliged to direct the jury on intent in terms of section 56 of the **Criminal Code**, which provides:

"56. INTENT

(1) A person who voluntarily commits an act is presumed to intend the consequence of the act if he or she believes in the probability of the consequence occurring or commits the act with the purpose of achieving the consequence.

(2) In determining whether a person has committed an offence with the requisite intent, the Court may infer the requisite intent from the act committed by the person and the relevant surrounding circumstances taking into account the following factors—

- (a) the emotional motive which prompted the person to commit the act;
- (b) the person's reasons or purposive motive for committing the act or the ultimate purpose which the person sought to achieve by committing the act;
- (c) the person's desire for the consequence of the act;
- (d) the person's subjective foresight or belief in the degree of probability of the consequence of the act; and
- (e) the person's subjective honest or actual belief in the existence of certain circumstances which motivated the commission of the act."

- [10] Mr. Fraser submitted that the failure of the trial judge to direct the jury on intent in accordance with section 56 caused him to lose the opportunity of being acquitted on the basis of self-defence or alternatively, manslaughter by reason of provocation. It is further said that the failure to direct on intent left the jury with the impression that having stabbed the deceased, the appellant is taken to have intended the consequences of his actions and was therefore guilty of murder. The jury having found that the appellant was guilty of murder did not go on to consider the defences of self-defence and provocation that were led to them, which led to the trial process being unfair.

The respondent's submissions

- [11] On behalf of the respondent, Mr. Linton Robinson, countered this ground of appeal by contending that, having regard to the disputed issues in the case, the judge's directions on intent were wholly adequate. The disputed issues related to self-defence and provocation since the appellant had admitted inflicting the fatal stab wound to the deceased and it was not disputed that this injury caused the death of the deceased. By pleading self-defence, the appellant must be taken to have accepted that the core elements of murder were present. While the plea of self defence might justify the appellant's actions, it did not negate intention. Thus, it is said that the intention of the appellant at the time of the stabbing was not an issue that the jury needed to decide as the appellant voluntarily admitted that he swung his knife at the deceased in self-defence while they were in a scuffle. A person who voluntarily swings a knife at another person in close contact invariably intends to cause that person bodily injury as it is inevitable that a bladed instrument would cause injury to the body once contact is made.

Discussion

- [12] In summary, section 56(1) of the **Criminal Code** provides that if a person voluntarily commits an act whose purpose is to achieve a certain result, or if he believes it probable that the result will occur if he does the act, he is presumed to intend that result. Subsection (2) identifies a number of factors from which, taken in conjunction with all of the surrounding circumstances, the jury may infer the requisite intent.

[13] The extent of the judge's directions on intent are reflected in the following passages of the transcript:

- (i) The Prosecution will only succeed in proving the defendant is guilty if they have made you sure that in the event that transpired, the Defendant acted with the intent to kill and not because he lost self control. (Record of appeal at p. 318, lines 8 - 10)
- (ii) In the circumstances of this case, the Prosecution must make you sure that the Defendant killed Sylvester and at the time he did so, he intended to kill or cause Sylvester real serious injury. (Record of appeal at p. 318, lines 22 - 24)
- (iii) If you find the defendant guilty, that is, that he having the intention to grievous bodily harm (sic) did cause the death of Sylvester Joseph then you need not go further. (Record of appeal at p. 319, lines 9 - 11)
- (iv) The evidence presented by the Crown must prove that the Defendant caused the murder or the death of Sylvester and did so intending to cause him grievous bodily harm. That is, the Defendant's actions caused the death of Sylvester and that his actions although not committed with the intention of causing murder or to kill Sylvester had intended to cause Sylvester grievous bodily harm...The Crown asserts that when Sylvester inflicted that stab and other stab wounds he intended to cause Sylvester, sorry, the Crown asserts that when the Defendant inflicted the stab and other stab wounds, he intended to cause Sylvester serious bodily harm. Serious or grievous bodily harm means really serious injury. It is accepted that the stab wounds, in particular, the stab wound to the chest of the Deceased amounted to really serious injury (Record of appeal at p. 391, line 25 and p. 320, lines 1 - 13)

- (v) Members of the Jury, the Defendant has accepted that he caused the death of the Defendant and he also accepts that he meant to cause serious bodily injury; this you are entitled to accept. The elements of the offence have therefore been accepted. However, the Defendant says that when he stabbed Sylvester, he was not acting unlawfully but he was acting in lawful self-defence. (Record of appeal at p. 320, lines 14 - 18)

[14] While the foregoing directions made it plain to the jury that the prosecution were required to prove that the appellant killed the deceased with the intention to cause him grievous bodily injury, the judge did not explain to the jury how to decide intent. The prosecution put its case against the appellant, not under section 85(a) of the **Criminal Code**, which requires an intention to cause death, but under Section 85(b) of the **Criminal Code**, which requires only that the appellant, intending to cause grievous bodily injury, caused the death of the deceased.

[15] The judge directed the jury that the appellant accepted that he caused the death of the deceased and also accepted that he meant to cause serious bodily injury. She advised the jury that they were entitled to accept that and concluded that the elements of the offence had therefore been accepted. The case was therefore left to the jury on the footing that the issue was whether the appellant was acting in lawful self-defence at the time he inflicted the fatal injury; or whether he had been provoked. There has been no challenge on this appeal, to this aspect of the judge's directions, in that it has not been argued that the judge misdirected the jury when she told them that the appellant had accepted that he "meant" to cause serious bodily injury to the deceased.

[16] What is argued is that (a) a direction on intention in terms of section 56 of the **Criminal Code** is mandatory and (b) the judge's failure to give it deprived the appellant of the opportunity of being acquitted on the basis of self-defence or alternatively, manslaughter by reason of provocation.

- [17] Dealing with the first limb of the argument, it is usual for judges when directing on intent to at least direct the jury that they should consider what the defendant did and said before, at the time of and after the incident, and then to draw conclusions from these things. It has to be accepted that the judge did not give such a direction or explain intention by using the language of section 56(1) of the **Criminal Code**, or words to the effect, that a person is presumed to intend the consequence of the act if he or she believes in the probability of the consequence occurring or commits the act with the purpose of achieving the consequence. Nor did she specifically engage in a process of identifying any facts which could ground an inference that the appellant had acted with the requisite intent. This raises the issue whether, in all instances, a failure to give a direction on intent in accordance with section 56 of the **Criminal Code** is fatal to the conviction.
- [18] This is not the first time this issue has engaged the Court of Appeal. **Alphonse (Denis) v R**² is an early case which seems to feed such arguments as have been advanced by the appellant in this case. By way of reprisal for an earlier confrontation between the deceased and the appellant, the appellant, in company with friends, confronted the deceased at a disco. The deceased ran but the appellant pursued and caught him. A struggle ensued during which the appellant pulled a knife from his waist and cut the deceased with it. The deceased succumbed to his injury. The appellant and two others were jointly charged with murder. In one of his statements to the police the appellant said “I did not go to kill him I go to give him a cut and had I know (sic) he would die I would never have used the knife on him...” The appellant relied on the defences of provocation and lack of intent to cause death in his trial for murder.
- [19] At the trial, the learned trial judge directed the jury on the law of intent as set out in what was then sections 71-75 of the **Criminal Code**. However, these directions were challenged on appeal on the ground that the judge did not relate the law in sections 71 and 75 to the facts of the case. The Court of Appeal agreed, finding that the provisions of the **Criminal Code** dealing with intent were

² (1996) 52 WIR 179.

never explained to the jury. In delivering the decision of the Court Singh JA, found that:

“This provision [section 72] of the Criminal Code dealing with intent was never put to the jury. In my view, this omission was a misdirection having regard to the statement of the appellant that, had he known that the victim would die, he would never had used the knife on him.”

- [20] Singh JA also referred to the judgment of Sir Vincent Floissac CJ in **Emmanuel (Hazel) v R**,³ where the learned Chief Justice, in dealing with the principle of intent as set out in sections 71 to 75 of the **Criminal Code**, said:

“An accused's criminal intent or intention in relation to his voluntary act or a consequence thereof is basically subjective to the accused. The accused's intent or intention is an inference drawn from his act and its relevant surrounding circumstances viewed collectively.”

- [21] Floissac CJ went on to list five circumstances from which an inference of the defendant's intention can be drawn and did so in words which are now codified in section 56(2) of the **Criminal Code**. It was after citing Floissac CJ that Singh JA commented:

“These are words that judges would do well to use in directing juries on the law of intent.”

- [22] Two observations are made in relation to this case. The first is that it seems to me Singh JA's passing comment or suggestion formed no part of the ratio of the case. Secondly, and more fundamentally, whether or not the appellant had an intention to kill was a live contested issue in the case as the appellant had asserted that that was never his intention. Singh JA stated the competing contentions in the following way:

“The evidence relied on by the prosecution to prove "intent to cause death" can be seen only from an inference to be drawn from the silent testimony of a knife 9 [inches] long being plunged into the back of the deceased 7 [inches] deep puncturing his lung and heart. As against that, there is the evidence from the appellant's statement under caution when he said "I did not go to kill him, I go to give him a cut and had I know he would die I would never use the knife on him".”

- [23] In this case, on the other hand, according to the judge, the appellant had accepted that he intended to cause the deceased grievous bodily injury.

³ Criminal Appeal No. 5 of 1989 (St. Lucia) (unreported).

[24] Thirdly, this was not a case where the judge had failed to give directions in terms of section 56 of the **Criminal Code**; he had. The complaint was that he never related those directions to the facts of the case. This is made clear when Singh JA stated:

“Counsel for the appellant does not challenge the judge’s directions on the law of intent as set out in sections 71 and 75 of the Code but again criticises the summing up for not relating the provisions of sections 71 and 75 to the evidence on intent...consider this criticism justified and the omission a misdirection, especially when there was this conflicting evidence on the issue.”

[25] It seems to me that this case is readily distinguishable.

[26] More to the point is the recent case of **Ezra Phillip v The King**,⁴ on which the appellant relies. In **Ezra Phillip v The King**, this Court considered whether a conviction should be quashed because the trial judge failed to give a direction on intent in accordance with the terms of 56 of the **Criminal Code**.

[27] In that case, Curlan St. Marie went to a karaoke bar in Desruisseaux, Saint Lucia where a fight broke out. Mr. St. Marie was attacked by a group of men estimated by witnesses to be between 8 to 15. The appellant was arrested and charged for intentionally causing dangerous harm to Mr. St. Marie, contrary to section 99(1) of the **Criminal Code** of Saint Lucia. The prosecution led evidence from an eyewitness, who alleged that he saw the appellant stab Mr. St. Marie in his stomach and pull out an object with a long black blade from Mr. St. Marie’s belly. Mr. St. Marie also gave evidence that he saw the appellant approach him just before he was attacked and that he did not see the appellant with a sharp object in his hand. The appellant’s case was that he did not participate in the attack, but that he tried to separate the fight. He said he was not armed and denied stabbing Mr. St. Marie and denied also that he was a part of the group that attacked Mr. St. Marie.

[28] In relation to intent, the judge had directed the jury as follows:

“The next matter that you have to be satisfied on is the issue of Mr. Phillip’s intention. The Prosecution do not have to prove that he set out

⁴ SLUHCRA2022/0001 (delivered 5th December 2023, unreported).

with the intention of causing harm. The fact that afterwards Mr. Phillip may have regretted what had happened does not amount to a defence. You have to reach a conclusion as to his intention if you are satisfied that he was using unlawful violence towards Mr. St. Marie. You can reach a conclusion of his intention only by examining the circumstances of the attack and that includes what was done and said at the time, the nature and duration of the attack, use of any weapon, the nature of any injuries inflicted on Mr. St. Marie and Mr. Phillip's behaviour immediately afterwards. So, therefore, when you come to examine the evidence if you are sure that the Defendant intended to cause dangerous harm to Mr. St. Marie then of course you must convict; if you are not sure that he intended to cause dangerous harm to Mr. St. Marie then you must acquit."

[29] The judge later went on to identify the voluntary act of the appellant as either the stabbing of Mr. St. Marie with a sharp object or participating in the attack on Mr. St. Marie. He referred to intention in relation to the stabbing by saying simply that the appellant would be guilty if the jury found that he stabbed Mr. St. Marie in his stomach intending to do so. He also referred to the fact that the appellant could be found guilty if he deliberately helped or encouraged the group of men to assault Mr. St. Marie.

[30] On appeal, one of the appellant's contentions was that given that the jury had to deal with different versions of how Mr. St. Marie was stabbed, namely, the eyewitness evidence that the appellant stabbed Mr. St. Marie in his stomach; the evidence of Mr. St. Marie that the appellant's brother, Elian, attacked him and struck him on his left arm with a sharp object, and that he saw the appellant coming towards him just before he was attacked; and the appellant's evidence that he did not participate in the attack on Mr. St. Marie; he only tried to part the fight by pulling his two brothers away from the fight, this made the appellant's intention a central issue and the judge was obliged to give a comprehensive direction on intention as it relates to joint enterprise, causing dangerous harm and the appellant's intention to be a peacemaker. Failing to give a proper direction on intention could have led the jury to believe that when Mr. St. Marie saw the appellant coming towards him that he was a part of the joint enterprise to cause dangerous harm to Mr. St. Marie. The learned judge should therefore have directed the jury along the lines of section 56 of the **Criminal Code** dealing with intent.

[31] That submission did not find favour with the Court, which held at paragraph [36]:

“Having considered the learned trial judge’s summing up as a whole, I am satisfied that he gave adequate directions on the substantive requirements of section 56 of the Code insofar as they are relevant to this case and that he related those requirements to the evidence in the case. His directions on intention were concise and clear and the jury must have been satisfied beyond reasonable doubt that the appellant either stabbed Mr. St. Marie in his stomach with a sharp object with the intention of causing him dangerous harm, or that he participated in the fight with the other men by helping or encouraging them with the intention of causing dangerous harm to Mr. St. Marie, for example, by contributing to the force of numbers in a hostile confrontation.”

[32] The Court was assisted in its determination by a consideration of the previous decision of this court in **Denis Alphonse** and also the case of **James Miller v The King**.⁵

[33] **James Miller v The King** was a Privy Council judgment out of the Bahamas, which has a similar, but not identical, provision to section 56 of the **Criminal Code** of St. Lucia. The summary that follows is largely adopted from that provided in the judgment. In this case, two masked men entered a bank around 12.30pm whilst it was open for business. Both were wearing gloves and masks. One was armed with a handgun; the other with a pump action 12 bore shotgun. The evidence established that the latter was the appellant. Two customers were robbed of possessions and money and three tellers were forced to hand over money totalling \$21,344. Two police officers on patrol in a marked police car were instructed to attend at the bank. Corporal Black was driving the vehicle, but she was unable to enter the parking area of the bank due to blocked traffic. Whilst her vehicle was stationary, she saw a masked male smash open the lower portion of the glass entry door to the bank and emerge through it carrying a shotgun. At a distance from the officer of around fifty to sixty feet he stood erect, looked towards the police car, aimed the gun in their direction and fired it. Corporal Black was struck by eleven shotgun pellets in the area of the left side of her head. Despite her injuries she managed to manoeuvre her police car around the vehicle which was parked in front of her and then looked back in the direction of the shooter to see that he had again pointed his gun in the direction

⁵ [2023] UKPC 10.

of the police car. He fired a second shot as Corporal Black managed to drive the vehicle away from the immediate vicinity before Sergeant Hanna took over as driver and transported her to hospital. The appellant and his accomplice attempted to make their escape in a black Honda Accord car before switching to a white Wyndham car which had been parked nearby. A third defendant, Janquo Mackey, was in the rear seat of this vehicle. Other police officers arrived at the scene and gave chase to the Wyndham car as it was being driven by the appellant. In the course of being pursued the car crashed into a telegraph pole and both the appellant and Williams left the vehicle. The appellant was seen to be holding the shotgun, which he discharged in the direction of the pursuing police officers' vehicle. An exchange of fire took place and the appellant ran off followed by other officers. During the course of this chase he was seen to have a further firearm and shots were fired in his direction by one of the pursuing officers. When he was apprehended he was found to be in possession of a silver and black .45 calibre pistol loaded with five live rounds of ammunition. He had sustained gunshot wounds to his right calf and left ankle. The appellant was convicted of attempted murder, which, of course, requires a specific intent to kill.

- [34] A central issue before the Board was the application of the provisions of section 12 of the Bahamas Penal Code, and how a jury should be directed to assess the intention of a person charged with attempted murder. Section 12 of the Bahamas Penal Code reads:

“(1) If a person does an act for the purpose of thereby causing or contributing to cause an event, he intends to cause that event, within the meaning of this Code, although either in fact or in his belief, or both in fact and also in belief, the act is unlikely to cause or contribute to the event.

(2) If a person does an act voluntarily, believing that it will probably cause an event, he intends to cause that event, within the meaning of this Code, although he does not do the act for the purpose of causing or of contributing to cause the event.

(3) If a person does an act of such a kind or in such a manner as that, if he used reasonable caution and observation, it would appear to him that the act would probably cause or contribute to cause an event, or that there would be great risk of the act causing or contributing to cause an event, he shall be presumed to have intended to cause that event, until it is shown that he believed that the act would probably not cause or contribute to cause the event.”

[35] The trial judge had purported to frame his directions on the meaning of intention by reading the terms of section 12(3) of the Penal Code to the jury and had then invited them to consider what reasonable inference would be drawn from the act of an individual pointing a shotgun which he knew to be loaded at another and pulling the trigger. He concluded this exercise by saying:

“... but if a person points a shotgun which you know has a power to kill at another individual at a distance no greater than 60 feet or so fires a shotgun at the individual, what is the intent of that person firing the shotgun? Not once, but twice. It’s a matter for you, Mr. Foreman and members of the jury to decide.”

[36] However, the judge went on to give the following directions:

“But the definition of intent is that you take a firearm, you point it at an individual and you shoot them and in this, if you aim it at their head and you shoot them in the head knowing that the brain is in the head, that the brain is, you might think, a vital organ, that without it you cannot survive. *In those circumstances, you might think that the only purpose the person has for shooting the other individual in the head with a shotgun is to kill them.* A person may have a very good reason for doing so. They may have been acting in self-defence. They may have thought that they would miss, the person would duck or the gun wasn’t loaded. They may have been provoked to do as they did.

If you find that any of those circumstances existed, then you cannot find the accused men guilty of attempted murder. There would have been some justification for their actions or some matter of partial excuse which would have reduced it from attempted murder to a lesser offence. You have to decide whether any of those justifications existed in this case. *There has been no evidence to show what the shooter believed to the contrary of what was disclosed in the Crown’s case. You are therefore left with the only inference that can be drawn which is that the person firing a deadly instrument at another individual’s head, the person having received injury from the first shot and the shooter firing again at the individual, that that person must have intended the necessary consequences of that act.*” (emphasis added).”

[37] The judge’s directions on intent were challenged on appeal. The Board first gave guidance on the interpretation of section 12. It then went on to hold that the judge had erred in four respects in his directions on intent: (1) the effect of the judge telling the jury “you might think that the only purpose the person has for shooting the other individual in the head with a shotgun is to kill them” was that there was only one inference available to be drawn, namely that the appellant had intended to kill; (2) the last part of the judge’s directions suggested that

there was an onus on the appellant to disprove intention to kill; (3) by directing the jury that “If a person discharged a shotgun at a person’s head that that person’s intention was to cause the death of that person” the judge conveyed the impression that there was only one inference available to be drawn in the present case; and (4) the judge erred in directing the jury that attempted murder could be established if the defendants ought to have realised that their conduct would probably cause the death of the police officer, which is the standard for negligent rather than intentional conduct and it invited a conclusion as to guilt based on an objective assessment of intention, and was therefore inappropriate and inconsistent with the correct legal position.

- [38] Clearly, while the judge attempted to fashion his directions on intent to comport with section 12(3) of the Penal Code, he fell into serious error. Ironically, however, in relation to the directions on intent which the Board considered should have sufficed, their Lordships had this to say:

“21. The Board considers that it would have been sufficient on this issue to have given a simple direction to the jury that they could only convict of attempted murder if they were sure that the gunman had intended to kill Corporal Black, and that if the Crown had not persuaded them that this was his intention then they could only convict of a lesser crime. No evidence had been led, or submission advanced, which called for a more complicated direction on the issue of foreseeability of consequence.

22. On this approach the jury would have been entitled to draw the necessary inference by taking account of the whole evidence, including the evidence demonstrating that the appellant had gone to the bank armed with a loaded shotgun and had taken the precaution of wearing a bulletproof vest. These features would be capable of providing powerful insight into what the appellant and Williams had expected to encounter and how they planned to respond.” (emphasis added)

- [39] Pausing here, it is significant to note that the direction suggested by the Board makes no reference at all to the terms of section 12 of the Penal Code, which defines intent. Notwithstanding the several instances of misdirection by the judge, the Board applied the proviso and dismissed the appeal. Its reasons were explained in the following terms at paragraph [46]:

“The test for the application of a proviso of this sort is a high one...Nevertheless, the evidence in the present case was

overwhelming. No reasonable jury properly directed to ask themselves whether they were sure that the gunman had intended to kill Corporal Black could have failed to convict on the charge of attempted murder. It is therefore the Board's view that, even though there were misdirections and even though those misdirections may be regarded as material, the proviso here applies."

[40] At paragraphs 26 of **Ezra Phillip**, this Court succinctly summarised the conclusions of the Privy Council and stated the approach to be taken by a trial judge in relation to directions on intent. For present purposes it suffices to quote Webster J.A.

"[26] The section was considered by the Privy Council in **James Miller v The King**. The Board was concerned with how a jury should be directed to assess the intention of a person charged with the offence of attempted murder having regard to section 12. The Board expressed very clear views that the directions on intent should be kept as simple as possible so as not to confuse the jury. The opinion of the Board was delivered by Lord Turnbull. In paragraph 18 of the opinion Lord Turnbull mentioned the complexities of section 12 of the Code, noted the guidance given to judges in other jurisdictions, including the Criminal Bench Book of Jamaica (which was used by the learned trial judge in this appeal), and continued –

"The approach in each of these judicial guides is to identify directions on intention which are straightforward to formulate and easy to comprehend. Their use across a number of different jurisdictions vouches the value of such an approach."

In the preceding paragraph 18 Lord Turnbull opined-

"The importance of simplicity in jury directions is often emphasised. Lord Hope of Craighead captured this well in his speech in *R v Woollin* at page 97c when he stated:

"I attach great importance to the search for a direction which is both clear and simple. It should be expressed in as few words as possible. That is essential if it is to be intelligible. A jury cannot be expected to absorb and apply a direction which attempts to deal with every situation which might conceivably arise."

Finally, at paragraph 41 Lord Turnbull said –

"A simple direction inviting the jury to consider whether they were sure that the gunman had intended to kill Corporal Black would have been sufficient without any need to explore the content of section 12(3) at all. Even in a case in which foresight of consequence is properly in issue the Board doubts that there

will be value in inviting a jury to absorb and apply the provisions of this subsection.”

[27] The guidance from the Privy Council in **Miller** is compelling. It echoes the general principle that directions to the jury should be simple and easily understood, especially in areas of the law that are not straightforward such as determining a person’s subjective intention. However, the case is only persuasive authority and must be considered in the context of **Alphonse**, which is a decision of this Court and is binding. That said, I do not interpret what the Court of Appeal said in **Alphonse** as laying down a rule that a trial judge, in a case of causing dangerous harm, should direct the jury on each and all of the matters mentioned in section 56. What is required is that the trial judge should direct the jury on the substance of the requirements in the section. This is true of any principle of law, whether statutory or common law, relating to the elements of the crime being charged. The trial judge must do this and explain to the jury contemporaneously, and not in a compartmentalized way, how to apply the principles of law to the facts of the case. In doing this, the trial judge should keep his or her directions simple and intelligible so that the jury can clearly understand how to assess the law and apply it to the facts.”

[41] This is an accurate analysis of the case, which, in my view, undermines the appellant’s argument that a failure to direct on intent in accordance with section 56 of the **Criminal Code** leads ineluctably to the quashing of a conviction. Neither **Dennis Alphonse** nor **Ezra Phillip** can be read as laying down that a trial judge in directing on intention must slavishly follow the terms of section 56.

[42] The principle that a judge’s direction must be tailored to suit the issues that actually arise in the case still holds good, and when an appellate court is reviewing the judge’s directions to the jury it must do so by having regard to the summing up as a whole with a view to determining whether the alleged misdirection caused a miscarriage of justice resulting in an unsafe conviction: **Jevone Demming v The Queen**.⁶

[43] Hardly, if at all, will there be a perfect summing up, hence the need for the summing up to be viewed as a whole. As Lord Carswell put it in **Daniel Dick Trimmingham v The Queen**⁷:

⁶ BVIHCRA2015/0001 (delivered 14th January 2020, unreported).

⁷ [2009] UKPC 25 at paragraph 12.

“...It is possible in various places to say that the judge should have spelled matters out more fully or in a different fashion, but what an appellate tribunal must do is to look at the thrust of the directions and consider if they have adequately put the several issues before the jury and given them a proper explanation of their task in relation to those which they have to decide. In particular, the Board must determine whether, if there has been any defect, there has been any miscarriage of justice which requires their intervention.”

- [44] As the Board recognized in **James Miller**, there may be cases where no elaboration on the concept of intention is necessary. In my view, the case at bar was such a case given the way the case for the appellant was run. The appellant never denied voluntarily inflicting the injury to the deceased. He sought to explain his actions by resorting to self-defence or, alternatively, provocation. Having told the jury that the prosecution was required to prove that the appellant caused the death of the deceased and did so intending to cause grievous bodily injury the learned judge carefully reviewed the evidence from which the jury could infer the intent of the appellant. The jury were aware that the appellant admitted stabbing the deceased and knew well his asserted reason and motive for committing this act and his asserted belief that circumstances were such that it necessitated him stabbing the deceased to defend himself. They would no doubt have set this information against the factual background as led by the prosecution and the prosecution’s version of the circumstances under which the appellant stabbed the deceased. It was for them to determine from all the surrounding circumstances whether the appellant had the requisite intent. It should not be thought that such a task was beyond them for as Lord Turnbull observed at paragraph 18 in **James Miller v The King**:

“Yet intention is an ordinary facet of human conduct and it is not normally a difficult concept to understand. In most cases it ought not to require any explanation. In the absence of an admission or statement as to intention, this ingredient of an offence will generally be established through the process of drawing an inference from the surrounding, or primary, facts as proved. Such an exercise is part and parcel of the ordinary decision-making process which a jury is required to undertake.”

- [45] Mr. Robinson for the respondent has also helpfully cited the observations of Lord Bridge in **R v Moloney**⁸ which I find apposite:

⁸ [1985] AC 905 at 926.

“The golden rule should be that when directing a jury on the mental element necessary in a crime of specific intent, the judge should avoid any elaboration or paraphrase of what is meant by intent, and leave it to the jury’s good sense to decide whether the accused acted with the necessary intent, unless the judge is convinced that, on the facts and having regard to the way the case has been presented to the jury in evidence and argument, some further explanation or elaboration is strictly to avoid misunderstanding. In trials for murder or wounding with intent, I find it very difficult to visualize a case where any such explanation or elaboration could be required, if the offence consisted of a direct attack on the victim with a weapon, except possibly the case where the accused shot at A and killed B, which any first year student could explain to a jury in the simplest terms.”

- [46] I respectfully adopt the foregoing observations. In my view, nothing about the facts or issues in this case necessitated any elaboration on the issue of intent.
- [47] I turn now to address the second limb of ground 1, namely, that the learned judge’s directions on intent deprived the appellant of the opportunity to be acquitted by reason of self-defence or provocation. In supplemental written submissions, the appellant contended that “the jury having found the appellant was guilty of murder did not go on to consider the defenses of self-defence and provocation that were left with them which led to the trial process being unfair.”⁹
- [48] The law recognizes that a person who is attacked or honestly believes or may honestly have believed that he needed to defend himself because he was under attack or in imminent danger of attack is entitled to defend himself. In doing so he is entitled to do what is reasonably necessary, meaning that the defensive action must not be out of proportion to the attack. This plea of self defence is available to a defendant in a criminal trial. A successful plea of self defence results in a complete acquittal.
- [49] Provocation on the other hand is some act or series of acts done or words spoken by the deceased to the accused which would cause in any reasonable person and actually causes in the accused a sudden and temporary loss of self-control, rendering the accused so subject to passion as to cause him to retaliate. It is a defence which is available on a charge of murder only. The burden is on

⁹ Appellant’s supplemental skeleton arguments at para. 2.5.

the prosecution to disprove provocation. If the elements of murder are established and the prosecution fails to disprove provocation the defendant is entitled to a verdict of manslaughter.

- [50] Section 91 of the **Criminal Code** governs the law on provocation in Saint Lucia. It provides:

“91. PROVOCATION

If on a charge of murder there is evidence on which the jury can find that the person charged was provoked (whether by things done or by things said or by both) to lose his or her self-control, the question whether the provocation was enough to make a reasonable person do as he or she did shall be left to be determined by the jury; and in determining the question the jury shall take into account everything both done and said according to the effect which in their opinion, it would have on a reasonable person.”

- [51] The judge gave full directions on both self-defence and provocation. The directions on self defence are contained at pages 320 to 323 of the Record of Appeal. Apart from the bare assertion that the judge’s failure to direct on intention in accordance with the terms of section 56 of the **Criminal Code** deprived the appellant of the opportunity to be acquitted of self-defence, no criticism has been levied at the content of the judge’s directions on self-defence. Nor has the argument been developed to demonstrate how a failure to elaborate on the meaning of intention would have cost the appellant an acquittal in the face of very fulsome directions on the issue of self-defence, which was clearly and properly left to the jury to determine whether he should be acquitted on the basis that he was acting in lawful self-defence.

- [52] The same may be said in relation to the issue of provocation. Those directions are found at pages 323 to 326 of the Record of Appeal. The judge commenced her directions on the issue of provocation by quoting section 91 of the **Criminal Code**. She told the jury that the evidence did raise the issue of provocation. She directed them that the appellant did not bear the burden of proving that he was provoked but that it was for the prosecution to disprove it. She then proceeded to explain the legal concept of provocation, relating the legal directions to the facts as she went along. Again, the appellant has not criticised the content of these directions on provocation and has failed to clearly articulate why a failure

to define intention meant that he lost the opportunity to be convicted of manslaughter by virtue of provocation instead of murder.

[53] In my view, it has simply not been demonstrated that the judge's failure to direct on intent in accordance with section 56 of the **Criminal Code**, cost the appellant the opportunity to be acquitted on the basis of self-defence or alternatively, to be convicted of manslaughter by virtue of provocation instead of murder.

[54] As to the bold contention that the jury having convicted the appellant of murder did not go on to consider the defences of self-defence and provocation that were left with them, thereby rendering the trial process unfair, this is a wild allegation without a substratum of evidential grounding. There is simply no reason to think that the jury did not consider self-defence or provocation when the whole case was conducted on the footing that these were live issues and the summing up made it clear that these were the central issues requiring resolution.

[55] For all the foregoing reasons, I would dismiss ground 1.

Ground 2 - The conviction is unsafe and unsatisfactory and goes against the weight of the evidence.

[56] In written and oral submissions, counsel for the appellant advanced four matters on which it is said that a jury properly directed on intent could not have returned a verdict of guilty of murder. These are:

- (i) the deceased was the aggressor;
- (ii) there was a lull in the quarrel between the appellant and the deceased before the incident took place;
- (iii) the deceased attacked the appellant who reacted in the face of the attack as he was leaving his mother's house; and
- (iv) the attack by the deceased was unprovoked and unwarranted given the factual situation.

[57] Apart from identifying these four matters, the appellant's argument was not really developed. Indeed, in oral arguments, Mr. Fraser did not argue them, simply saying that they were really connected to ground 1.

[58] Section 35(1) of the **Supreme Court Act**¹⁰ provides in part that the Court of Appeal may allow an appeal against conviction if it thinks that the verdict of the jury should be set aside on the ground that it is unsafe or unsatisfactory. The test of whether this is so has been held to be whether the Appeal Court has a lurking doubt as to the correctness of the conviction.

[59] The concept of a lurking doubt was explained by Lord Rodger in **Dookran and another v The State**:¹¹

“Although reference to lurking doubt has been criticised from time to time as an unwarranted gloss on the language of the statute regulating appeal proceedings in England and Wales, it is really just one way in which an appeal court addresses the fundamental question: Is the conviction safe? In the vast majority of cases the answer to that question will be found simply by considering whether the rules of procedure and the rules of law, including the rules on the admissibility of evidence, have been applied properly. Very exceptionally, however, even where the rules have been properly applied, on the basis of the “general feel of the case as the Court experiences it”, there may remain a lurking doubt in the minds of the appellate judges which makes them wonder whether justice has been done”.

[60] Therefore, the question for this Court is “whether this Court of Appeal has a subjective reasonable or lurking doubt that justice may not have been done by the verdict and has been left in doubt as a result of considering all the circumstances of the evidence, the summing up and the general feel of the case”: **John (Nathaniel) v R**.¹²

[61] In my view, this ground of appeal seems no more than an invitation to this Court to usurp the function of the jury and to substitute our view of the facts for those found by the jury. It is a fundamental pillar of the system of justice we operate that the fact-finding function in a criminal trial is entrusted to the jury who are the sole judges of the facts, and it is only exceptionally that the Court should seek to substitute its view of the facts for the jury’s. The decided advantage that the jury had in seeing and hearing the witnesses give evidence and evaluating their

¹⁰ Cap. 2.01 of the revised laws of Saint Lucia.

¹¹ [2007] UKPC 15.

¹² (1994) 47 WIR 122.

credibility cannot be undervalued and their unanimous verdict of guilty of murder after due deliberation is entitled to the greatest deference.

[62] As previously stated, both self-defence and provocation were placed squarely before the jury for their consideration and it was for them to assess the viability of either defence, assessed against the evidence in the case. None of the four matters urged upon the court by counsel for the appellant provides any ground for thinking that the conviction is unsafe as these facts were canvassed during the trial and highlighted in the summing up and can therefore be taken as matters that were well within the contemplation of the jury. The fact that they were not resolved in the appellant's favour does not mean that the verdict is unsafe or unsatisfactory. It was open to the jury to accept the prosecution's evidence that the appellant approached the deceased with a knife concealed behind his back intending to inflict at least serious bodily injury and that when he killed the deceased he was neither acting in lawful self-defence nor was he acting under provocation. I entertain no lurking doubt about the conviction or uneasiness about whether an injustice has been done.

[63] For these reasons I would dismiss the appeal and affirm the conviction.

I concur.

Mario Michel

Justice of Appeal

I concur.

Esco L. Henry

Justice of Appeal

By the Court

Chief Registrar