

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

SAINT LUCIA

SLUHCRA2022/0001

BETWEEN:

EZRA PHILLIP

Appellant

and

THE KING

Respondent

Before:

The Hon. Mr. Mario Michel
The Hon. Mr. Trevor Ward
The Hon. Mr. Paul Webster

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Alberton Richelieu for the Appellant
Mrs. Tanya Alexis - Francis for the Respondent

2023: March 24;
December 5.

Criminal appeal – Appeal against conviction and sentence - Joint enterprise – Intention - Section 56 of the Criminal Code of Saint Lucia - Whether the learned trial judge gave adequate directions to the jury on the element of intention as contained in section 56 of the Criminal Code

In March 2019, Mr. Curlan St. Marie (“Mr. 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, Mr. Ezra Phillip, 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 by eyewitness

Mr. Mickaish King (“Mr. King”) who claimed 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 is 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.

The jury found the appellant guilty of causing dangerous harm to Mr. St. Marie. On 25th February 2022 the learned trial judge sentenced the appellant to 5 years imprisonment and ordered him to pay \$6,000.00 compensation to Mr. St. Marie on or before 4th April 2025, in default to serve a term of imprisonment for six months to run consecutively to the five-year sentence (“the Compensation Order”).

The appellant appealed against his conviction on the grounds that: 1.) The learned trial judge failed to put his case fairly to the jury and 2.) the learned trial judge failed to adequately put to the jury that the appellant’s mere presence on the scene is insufficient. The appellant also appealed against his sentence on the ground that the learned trial judge failed to take delay into account in passing the sentence. The appellant did not pursue this ground. Instead, he challenged the Compensation Order.

Held: dismissing the appeal against conviction and allowing the appeal against sentence to the extent only of setting aside the Compensation Order, that;

1. Section 56(1) of the Criminal Code is a general statement of a person’s intention in committing a criminal act. Section 56(2) lists five matters that the jury can consider in determining whether the prosecution has established the necessary level of intention for the commission of the crime charged. In directing a jury on intent, a judge is not required to direct the jury on each and all of the matters mentioned in section 56. What is required is that the trial judge directs the jury on the substance of the requirements in the section and explains to the jury contemporaneously, how to apply the principles 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.

Sections 56(1) and 56(2) of the Criminal Code Cap. 3.01, Revised Laws of Saint Lucia 2008 applied **Denis Alphonse v The Queen** (1996) 52 WIR 179 applied; **Baldeo Dihal v R** (1960) 2 WIR 282; **Jevonne Demming v R** BVIHCRA2015/0001 (delivered 14th January 2020, unreported) applied; **Daniel Dick Trimmingham** [2009] UKPC 25 applied; **James Miller v The King** [2023] UKPC 10 considered.

2. In this case, a consideration of the learned trial judge’s summing up as a whole shows that he gave adequate directions on the substantive requirements of section 56 of the Criminal 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. Accordingly, the first and second grounds of appeal are dismissed. The appeal against sentence is however allowed to the extent that the compensation order is set aside.

JUDGMENT

- [1] **WEBSTER JA [AG.]**: The appellant, Mr. Ezra Phillip, was arrested and charged on 5th March 2019 for intentionally causing dangerous harm to Mr. Curlan St. Marie (“Mr. St. Marie” or “the virtual complainant”), contrary to section 99(1) of the Criminal Code of Saint Lucia (“the **Criminal Code**”)¹. He was convicted after a trial by jury. On 25th February 2022, the trial judge sentenced the appellant to 5 years imprisonment and ordered him to pay \$6,000.00 compensation to Mr. St. Marie on or before 4th April 2025, in default to serve a term of imprisonment of six months to run consecutively to the five-year sentence.
- [2] On 9th March 2022, the appellant filed a notice of appeal with two grounds against conviction and one ground against sentence. The grounds of appeal against conviction are;
- (1) The learned trial judge failed to put the appellant’s case fairly to the jury.
 - (2) The learned trial judge failed to adequately put to the jury that the appellant’s mere presence on the scene is insufficient.
- [3] The ground of appeal against sentence is that the learned trial judge failed to take delay into account in passing the sentence.

¹ Cap. 3.01, Revised Laws of Saint Lucia 2008.

Background

- [4] On Friday, 1st March 2019, at about 11 pm, Mr. St. Marie and his friend, Mr. Mickaish King, and his brother-in-law, Imbert, went to a karaoke bar in Blanchard, Desruisseaux, Saint Lucia. While there, a fight broke out and Mr. St. Marie was attacked by a group of persons. The fight started when a man described variously as “Albert” or “Chim” spilled his drink on Imbert. Chim apologised, but a quarrel ensued between him and Mr. St. Marie. Mr. King intervened and then he, Mr. St. Marie and Imbert were in the process of leaving the bar when Chim threw a bottle in the direction of Mr. St. Marie, which did not hit him. Chim threw a second bottle which either hit Mr. St. Marie or broke against the wall next to him. Chaos ensued as a group of men estimated by the witnesses to be between 8 and 15 attacked Mr. St. Marie. From this point the case for the prosecution and for the defence diverge.
- [5] The prosecution’s case, through the evidence of the eyewitness Mr. King, is that during the attack on Mr. St. Marie he tripped and fell and when he got up, he (Mr. King) saw the appellant come from nowhere, stabbed Mr. St. Marie in his stomach and pulled out an object with a black blade from Mr. St. Marie’s belly. Mr. King disagreed with the suggestion that the appellant was trying to part the fight.
- [6] The prosecution also relied on the evidence of Mr. St. Marie who testified that he recognised the appellant as one of the persons who attacked him. Specifically, that he saw the appellant coming towards him just before he was attacked. He denied that the appellant was trying to separate the men who attacked him. He tried to run away but he was attacked by the appellant’s brother, Mr. Elian Phillip (“Elian”), who struck him with a sharp object on his left arm. He did not see the appellant with a sharp object in his hand.
- [7] The appellant’s case is that he did not participate in the attack on Mr. St. Marie and his presence at the scene of the attack on Mr. St. Marie was limited to trying to part

the fight. He gave evidence at the trial, and he was cross examined. He testified that there were about 10 persons involved in the fight, which lasted about 2 to 3 minutes. Two of the persons who were attacking Mr. St. Marie were his brothers Elian and Jonathan. He tried to pull them away from the fight. After trying to pull them away he did not do anything else. He said he was not armed and did not have a sharp object in his hand. He denied stabbing Mr. St. Marie and denied that he was a part of the group that attacked him.

[8] The jury having returned a verdict of guilty means that they accepted the case for the prosecution that the persons involved in the attack on Mr. St. Marie did so on the basis of a spontaneous joint enterprise to cause serious harm to him. The appellant was guilty either because he stabbed Mr. St. Marie, which made him a primary offender in the joint enterprise, or he participated in the attack with the intention that dangerous harm would be caused to Mr. St. Marie, which made him a secondary offender.

[9] I will deal with the legal principles that are relevant to this appeal and then apply them to the facts of the case and the grounds of appeal.

Joint enterprise

[10] The case for the prosecution was presented on the basis of a joint enterprise to cause dangerous harm to Mr. St. Marie. Learned counsel for the respondent, Ms. Tanya Francis Alexis, said in paragraph 26 of her written submissions - "It was not in dispute that there was a joint enterprise to attack the virtual complainant." Learned counsel for the appellant, Mr. Alberton Richelieu, also submitted that this was a case of joint enterprise. However, the focus of his submissions was that the trial judge did not give the jury adequate directions about the appellant's intention in participating in the fight.

[11] There is no statutory or other authoritative definition of what is a joint enterprise, probably because the principle can apply to a variety of situations. Its simplest form

and the form that applies in this case is where one person commits an offence (principal offender) and another person who did not commit the offence directly but participated by assisting or encouraging the principal offender to commit the offence with the intention that the principal offender would commit the offence, that other person (the secondary offender) can be prosecuted in the same way and to the same extent as if he or she was the principal offender.

- [12] A joint enterprise is usually preceded by an arrangement or plan or agreement, expressed, implied or just tacit, to commit a crime. The plan or arrangement can arise “on the spur of the moment” and be inferred from the actions of the participants. In this case, the plan or arrangement was to attack Mr. St. Marie. The uncontradicted evidence in this case is that persons were gathered at a karaoke bar in Blanchard on the Friday night when a fight broke out. The fight started spontaneously and there is no evidence that it was planned. Mr. St. Marie was attacked by at least eight persons. During the fight he was stabbed several times. The case against the appellant is that he either committed the offence directly by stabbing Mr. St. Marie, or indirectly as a secondary offender or accomplice by participating in the fight with the intention of aiding, abetting or encouraging the stabbing of the virtual complainant. In short, he committed the offence by aiding, abetting or encouraging the stabbing of the virtual complainant with the necessary intent and it was not necessary to prove a plan or joint enterprise to commit the offence of causing dangerous harm to the virtual complainant.

Ground of appeal No 1 – The learned trial judge failed to put the appellant’s case fairly to the jury

- [13] Mr. Richelieu submitted that the jury had to deal with different versions of how Mr. St. Marie was stabbed. Firstly, they had the evidence of Mr. King that the appellant stabbed Mr. St. Marie in his stomach. Then there was 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. Finally, the appellant’s evidence is 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.

- [14] If the jury believed Mr. King that the appellant stabbed Mr. St. Marie, they would have very little difficulty inferring that the appellant intended to cause Mr. St. Marie dangerous harm. However, if they disbelieved Mr. King and believed Mr. St. Marie the issue of the appellant's intention in moving towards Mr. St. Marie would be very important because the appellant said that his intention was to part the fight and not to cause dangerous harm to Mr. St. Marie. Mr. Richelieu submitted that 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 have directed the jury along the lines of section 56 of the **Criminal Code** dealing with intent. Section 56 states:

"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.”

[15] Mr. Richelieu supported his submission by reference to the case of **Denis Alphonse v The Queen**² a decision of this Court sitting in St Lucia. The relevant facts are that there was a confrontation between the deceased and the appellant when the deceased hit the appellant with a bottle. Five days later the appellant, in the company of two of his friends and armed with a piece of stick, confronted the deceased at a disco. The deceased ran but was chased and caught by the appellant. In the ensuing struggle the appellant pulled a knife nine inches long from his waist and cut the deceased with it. The deceased succumbed to his injury. 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.

[16] 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**.³ However, learned counsel for the appellant (who is the same counsel in the instant appeal) challenged the judge's summing up on intent on the ground that he 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 never explained to the jury. The unanimous decision of the Court was delivered by Satrohan Singh JA, who 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. My conclusion on

² (1996) 52 WIR 179.

³ The law of intent is now in section 56 of the Code.

the directions on intent is that there is again merit in the points taken by counsel for the appellant.”⁴

- [17] Satrohan Singh JA also referred to the judgment of Sir Vincent Floissac CJ in **Hazel Emmanuel v R** (unreported), 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. Those surrounding circumstances include (1) the emotion or emotional motive (e.g. hatred, jealousy or greed) which prompted the accused to commit the act, (2) the accused's reasons or purposive motive for committing the act or the ultimate purpose (object or consequence) which the accused sought to achieve by committing the act, (3) the accused's desire for the consequence of the act, (4) the accused's subjective foresight or foreseeability of or subjective belief in the degree of probability of the consequence (which degree may range from a bare possibility to a certainty or near-certainty), and (5) the accused's subjective honest or actual belief in the existence of certain circumstances (e.g. consent or danger) which motivated the act.”⁵

The matters listed as (1) to (5) by Floissac CJ as the surrounding circumstances from which an inference of the defendant's intention can be inferred eventually found their way into what is now section 56 of the **Criminal Code**. Having cited this passage from the Floissac CJ's judgment, Satrohan Singh JA commented: “These are words that judges would do well to use in directing juries on the law of intent.”⁶

- [18] In further support of his submissions on intent, Mr. Richelieu referred to the case of **Baldeo Dihal v R**⁷, a 1960 decision of the Federal Supreme Court on appeal from the Supreme Court of British Guiana. The appellant was convicted of murder. At his trial, the learned trial judge directed the jury on the law relating to self-defence but did not relate the law to the facts of the case. The Federal Supreme Court agreed

⁴ Supra n.2 at page 186.

⁵ Supra n. 2 at page 185 – The Court's researchers did not locate a copy of the judgment in **Hazel Emmanuel** and the Court relied on the judgment of Satrohan Singh JA for this passage.

⁶ Supra n.2 at page 186.

⁷ (1960) 2 WIR 282.

that this was a misdirection, allowed the appeal, set aside the conviction and ordered a retrial. In delivering the unanimous judgment of the Court, Rennie J said-

“It was submitted to us that the law was laid down in one compartment, so to speak, and the facts were referred to in another, and no attempt was made to relate the one to the other. The directions do seem to deserve this criticism. The law of self-defence was meticulously explained as a lecturer might well explain it to a class of students, but nowhere in the directions are the jury told what facts they should take into account when considering this aspect of the case.”⁸

[19] Subject to my comments below, the principles in **Denis Alphonse** and **Baldeo Dihal** are clear and accepted. But it is not clear from Mr. Richelieu’s written and oral submissions what direction the judge should have given the jury on the issue of intent. His position seems to be that the judge should have told the jury (in accordance with section 56 of the Code) what was the voluntary act of the appellant and that he is presumed to intend the consequences of that act; that the presumption is rebuttable by the facts of the case; that the appellant’s presence at the scene was as a peacemaker as evidenced by his attempt to part the fight; that he did not intend to cause grievous harm to Mr. St. Marie by his presence at the scene as a part of the joint enterprise; as a result of the misdirection the appellant’s defence was not put to the jury fairly. I did not understand from his written and oral submissions that he thought that the learned trial judge should have directed the jury in accordance with the matters mentioned in subsection (2) of section 56.

[20] Learned counsel for the prosecution, Ms. Tanya Alexis-Francis, accepted that the trial judge did not mention section 56 in his directions to the jury. However, the cumulative effect of the directions on intention together with the directions on joint enterprise is that the appellant’s subjective belief and degrees of probability as required by section 56 were brought home to the jury and were adequate. She relied

⁸ Ibid at page 282.

on the decision of this court in **Jevonne Demming v R**⁹ for the general principle that when an appellate court is reviewing the trial judge's directions to the jury, the directions must be looked at as a whole to determine if any misdirection by the trial judge caused a miscarriage of justice resulting in an unsafe conviction. Learned counsel also relied on the opinion of Lord Carswell in **Daniel Dick Trimmingham v R**¹⁰ that:

“...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.”

In short, Ms. Alexis-Francis submitted that even if there was a misdirection on intention, the directions as a whole were fair to the appellant and there was no miscarriage of justice that resulted in an unsafe conviction. This court should therefore dismiss the appeal against conviction.

Intent

- [21] The central issue in this appeal is to determine what is an adequate direction on intent on a charge for causing dangerous harm under section 99(1) of the **Criminal Code**, having regard to section 56 of the Code. Subsection (1) of section 56 is a general statement of a person's intention in committing a criminal act. There must be a voluntary act by the person charged and he or she is presumed to intend the consequences of that act if he or she believes the consequences will probably occur or commits the act for the purpose of achieving the consequence.
- [22] Applied to this case, the voluntary act can be one of two things - either being at the scene of the fight and participating in it, or stabbing Mr. St. Marie with a knife. In the former situation of just participating in the fight, if the appellant believed that Mr. St. Marie would probably suffer serious harm then he is presumed to intend that

⁹ BVIHCRA2015/0001 (delivered 14th January 2020, unreported).

¹⁰ [2009] UKPC 25 at paragraph 12.

consequence and the jury was entitled to find him guilty. However, the presumption is rebuttable, and if, for example, the jury believed that he participated for the purpose of parting the fight the jury is entitled to find that he is not guilty because the act of parting the fight is inconsistent with intending to cause dangerous harm to Mr. St. Marie.

[23] The alternative voluntary act of the appellant stabbing the virtual complainant is easier to deal with in terms of intent. If the jury accepted Mr. King's evidence that the appellant stabbed the virtual complainant, the act of stabbing Mr. St. Marie in his stomach with a knife which could have resulted in death but for prompt medical treatment, is clear evidence that the appellant intended to cause dangerous harm to Mr. St. Marie.

[24] Subsection (2) of section 56 does not say what is intent, but it lists five matters that the jury can consider in determining whether the prosecution has established the necessary level of intention for the commission of the crime charged.

[25] The Bahamas has a similar though not identical provision in section 12 of the Bahamas Penal Code.¹¹ The section provides that:

“(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 his belief, the act is unlikely to cause or to contribute to cause the event.

(2) If a person does an act voluntarily, believing that it will probably cause or contribute to 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

¹¹ Cap. 84, the Laws of the Bahamas.

that he believed that the act would probably not cause or contribute to cause the event.”

[26] The section was considered by the Privy Council in **James Miller v The King**.¹² 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 Jamaica¹³ (which was used by the learned trial judge in this appeal¹⁴), 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.”¹⁵

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.”

¹² [2023] UKPC 10 – a copy of the judgment was handed to counsel at the hearing for their comments.

¹³ Ibid paragraph 19.

¹⁴ Record of Appeal e-page 211 et seq.

¹⁵ Ibid paragraph 19.

- [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.
- [28] In this case, a simple summary of the substance of the provisions of section 56 followed by the relevant facts of the case would have been sufficient. A direction on (say) paragraph (a) of section 56(2) "The emotional nature which prompted the [appellant] to commit the act" would be unnecessary if not confusing because the events happened spontaneously, lasted a few short minutes, and there was no evidence of the emotional nature that prompted the appellant to act as he did. What the trial judge was required to, and did, was to refer to the evidence and direct the jury "You can reach a conclusion on his intention only by examining the circumstances of the attack which include ..." followed by a listing of some of the things that the jury could consider.¹⁶

¹⁶ Summing up, page 7 lines 14-15 and see paragraph 29 for details of the directions on this point.

The directions on intent

- [29] I will now consider the trial judge's directions on intent to see if they satisfy in substance the criteria in section 56 of the Code. The trial judge's first reference to the intention of the appellant is on page 7 of the transcript of the summing up, where he said –

“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 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.”

- [30] This is a good introduction to the issue of intent in this case, but it does not do what the cases of **Alphonse** and **Baldeo** require, which is to relate to the jury the evidence from which they can use to infer the intention of the appellant.

- [31] The trial judge returned to the issue of intention again at page 26 of the summing up, where he said-

“[The] Prosecution alleged that the Defendant either on his own or as part of the group of men, of men then attack Mr. St. Marie with a knife and stabbed him in the abdomen. The medical evidence confirms that Mr. St. Marie sustained the injuries outlined in the Medical Report and you will have that, that is the Exhibits F and G but, of course, you also have the benefit of Dr. Rohan Edward's evidence, which I already summarized to you. The Defendant does not dispute that Mr. St. Marie was injured or that he was injured, sorry, the Defendant does not dispute that Mr. St. Marie was injured but the Defendant says that he did not attack Mr. St. Marie with a knife or at all and that while he was present at the scene, he took no part in the assault on Mr. St. Marie. The defendant goes further to say that he was peacemaker and sought to ward off the persons attacking Mr. St. Marie.

I am required to direct you that there are two ways in which the Defendant can be guilty of this charge. Firstly, he will be guilty if you find that he stabbed the Defendant in the abdomen, intending to do so. Secondly, he will be guilty if you find that the Defendant deliberately help or encouraged the group of men to assault Mr. St. Marie even if you cannot say which of the group of men, if any, stabbed Mr. St. Marie in the abdomen. In law it is possible for a person to be guilty of a crime even if it is actually carried out by somebody else.

I am required to direct you that merely being present at the scene of a crime is not enough to make the Defendant guilty of a crime but if you find that the Defendant intended by his presence to help or encourage the group of men to commit the crime by giving moral support to the group of men or by contributing to the force of numbers in the attack on Mr. St. Marie then the Defendant is guilty.

Encouraging others may take different forms; it will usually be in the form of words but also be by conduct. Mere presence is not enough to prove encouragement but if you find that the Defendant intended to associate with the other men by encouraging them to commit dangerous harm on Mr. St. Marie by, for example, contributing to the force of numbers in a hostile confrontation, he would be guilty.”

[32] In this part of the summing up the trial judge related the evidence to the requirements of intent in section 56. Firstly, he stated clearly that the voluntary act of the appellant was either stabbing 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. He may not have used the word intention in doing so but the use of the word “deliberately” clearly suggested to the jury that in participating in the fight the appellant intended that Mr. St. Marie would be assaulted.¹⁷

[33] The trial judge also referred in this part of the directions to the appellant’s defence that he took no part in the assault on Mr. St. Marie and that he was a peacemaker

¹⁷ See also paragraph 34 below.

seeking to ward off persons from attacking Mr. St. Marie. This was a clear reference to the appellant's state of mind, which is one of the matters contemplated by section 56.

[34] Further, the trial judge directed the jury that the appellant's presence at the scene was not enough to make him guilty of the crime but that he would be guilty if they found that he intended by his presence to help or encourage the group of men who were attacking Mr. St. Marie to commit the crime by giving moral support or contributing to the force of numbers in the attack.

[35] The trial judge then assisted the jury by giving them what he described as a "route to verdict" in the following terms -

"Are you sure that the Defendant did one or both of the following things; that is the critical question. Are you sure that he cause (sic) dangerous harm to Mr. St. Marie by stabbing him in the abdomen or deliberately helped or encouraged a group of men to stab Mr. St. Marie in the abdomen and thus cause him to suffer dangerous harm? If the answer is yes, we are sure that he did one of these things, then return a verdict or guilty; if the answer is no, we are not sure that he did either of the two things I just told you about, then you return a verdict of not guilty.... You have to be sure that the defendant did one or both of the following things. That is to say he cause harm to Mr St Marie by stabbing him in the abdomen or he deliberately helped or encouraged the group of men to stab Mr. St. Marie in the abdomen and thus cause him to suffer dangerous harm; that is the critical issue because that is the charge. He is not on trial for fighting with the – Mr. St. Marie generally."

[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.

Conclusion on the grounds of appeal

[37] The first ground of appeal, that the trial judge did not put the appellant's case fairly to the jury, rests entirely on the complaint that the trial judge misdirected the jury on the issue of the appellant's intention including the failure to direct the jury in accordance with section 56 of the **Criminal Code**. Based on the foregoing analysis, I would dismiss this ground of appeal.

[38] The second ground of appeal, that the learned trial judge failed to adequately put to the jury that the appellant's mere presence on the scene is insufficient, was not pursued by Mr. Richelieu in his oral submissions. This is not surprising because there is no merit in the ground. The passages from the trial judge's directions at paragraph 31 above show that he gave adequate directions to the jury twice on this issue and I dealt with the issue in paragraph 32 referred to above. I would also dismiss this ground of appeal.

[39] There was no appeal against the judge's directions on joint enterprise and no other challenge to the conviction. I would therefore dismiss the appeal against conviction.

Appeal against sentence

[40] The original ground of appeal against the sentence was that the trial judge did not consider delay (in bringing the case to trial) in the sentencing. This ground was not pursued. The additional ground that the appellant pay \$6,000.00 compensation to Mr. St. Marie on or before 4th April 2025, in default to serve a term of imprisonment of six months to run consecutive to the five years' imprisonment, was correctly conceded by learned counsel for the prosecution. The Court's order will reflect this.

Disposal

- [41] I would dismiss the appeal against conviction and allow the appeal against sentence to the extent only of setting aside the order that the appellant pay \$6,000.00 in compensation to the virtual complainant.

I concur.

Mario Michel

Justice of Appeal

I concur.

Trevor Ward

Justice of Appeal

By the Court

Chief Registrar