

IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)

CASE NO. ANUHCR 2023/0021

BETWEEN:

THE KING

vs

JAMAUL JACOBS

Appearances:

Ms. Rashida Jonas, Counsel for the Crown
Mr. George Lake, Counsel for the Defendant

2024: January 23rd, 29th, 31st;
February 1st, 21st.

DECISION

Background and Jurisdiction

- [1] **SMITH, J.:** The Learned Director of Public Prosecutions initially indicted Jamaul Jacobs for two counts of wounding. Count one was that the defendant on 16th March, 2022 wounded Dillon Wilson with intent to do him grievous bodily harm. Count two was that the defendant unlawfully and maliciously wounded Dillon Wilson. The counts were in the alternative.
- [2] The list of matters to be mandatorily tried by a Judge without a jury was amended by the **Criminal Proceedings (Trial by Judge Alone) (Amendment) Act No.7 of 2022** which was published in the Official Gazette on the 21st of April, 2022. The **(Amendment) Act** added certain offences contained in the **Offences Against the Person Act** including those charged pursuant to section 20 of the **Act**. That law made it mandatory for certain offences to be tried by a Judge sitting without a jury. The charges on the indictment fell to be tried by a Judge sitting alone.
- [3] At the close of the Crown's case, Defence Counsel made a submission of no case to answer and the Counsel for the Crown responded. The submission failed in relation to count one on the indictment as the Court found that the Crown had not established a prima facie case by not proving "intention to cause Dillon Wilson grievous bodily harm". The Court therefore upheld the submission

on count one. The Court ruled the defendant had a case to answer to count two. The defendant was then given his three options and he opted to give sworn testimony’.

Brief Facts

- [4] The brief facts of this case are that the complainant, and his friends were “liming” at Dre’s Bar. The defendant and his friends were also hanging out at the same spot. The complainant kept on barging through the defendant’s group of friends. An argument ensued with the defendant pushing the complainant and he in turn allegedly told the defendant that he was “going for his gun”. The complainant left the bar, the defendant followed, caught up with the complainant, punched him numerous times and according to the Crown slashed the complainant’s throat.

Burden and Standard of Proof

- [5] In a Judge-alone trial, or a ‘Bench Trial’, a Judge sits without a jury. The Judge is both the Judge of the law and the forum of fact. The burden of proof and the standard of proof remain the same as they were and are in every other criminal case. It is the Crown that has the responsibility of satisfying the forum of fact that it was the defendant who committed the offence as alleged; and the Crown can only do so by making the forum of fact feel certain of the defendant’s guilt. As the trier of the facts I have reminded myself that the defendant does not have to prove anything.

Elements to be Proved

- [6] I directed myself that the Crown must prove each element of the offences by providing me with evidence of such a quality that I can feel sure of the respective elements of count two on the Indictment. Ultimately, if I am sure of each element and have no reasonable doubt, then I can be certain of the guilt of the defendant and may convict him. If, on the other hand, the Crown fails to make me feel sure and I have reasonable doubt of any of the elements of the offence I will be obliged to acquit him.
- [7] The Crown had to prove that a) the complainant was wounded b) that it was the defendant who caused the said wound. c) that the defendant acted unlawfully. A wound is a breaking of the skin and Dr. Bowen testified that she observed “superficial lacerations in the neck area” of the complainant. The complainant also pointed out to the Court the scar, left by the wound.

General Directions/Reminders

- [8] The Court is aware that it is entirely for the Court to decide what evidence it accepts as reliable and what it rejects as unreliable. When a defendant has given evidence, the Judge as the sole arbiter of the facts and the law must apply the same fair and impartial standards when weighing up the

evidence of the witnesses for the Crown and the defence. The Judge as the sole arbiter of the facts, does not have to resolve every issue that has arisen, only those issues that are necessary for me to reach my verdict. I am reminded of the following: -

- i. I am permitted to draw sensible conclusions from the evidence that I accept as reliable, but I must not engage in speculation or guesswork about matters which have not been covered by the evidence.
- ii. I am allowed to draw inferences, but these inferences must be grounded in the evidence that has been led.
- iii. It is important that my verdict is based only on my own independent view of the evidence. No emotional reaction to the case and/or any sympathy for anyone involved in the case and/or by any fixed ideas/ preconceptions/ prejudices that I may have had can be used to colour my verdict.

Good Character Direction

- [9] There are two limbs of good character--credibility and propensity. Because the defendant did testify under oath, he is entitled to the benefit of the full good character direction which is credibility limb of good character as well as the benefit of the propensity limb which says that Mr. Jacobs is less likely to have committed the offence because of his previous clean criminal record. Good character is not a defence but it is a positive feature of the defendant that I should take into account when assessing whether I believe the defendant committed the offence.
- [10] After considering his good character and taking both the propensity and credibility limbs into account, the good character of the defendant does weigh in his favour. I have reached this conclusion after considering that the conduct by the defendant apparently would have been out of character for him, a person who had not previously been convicted of violating the law.

Discrepancies and Inconsistencies

- [11] As in every criminal case there were discrepancies and inconsistencies in the evidence. How a trial Judge deals with inconsistencies must depend on the particular facts of the case.
- [12] In the case of **Daken v. R. (1964) W.I.R. 442** at p. 444F Wooding C. J. stated:—

“No general principle can be enunciated except that it should never be forgotten that in the final analysis questions of fact are to be decided by a jury and not by the presiding judge. The judge may, and in cases such as we are now considering we think it is his duty to, give such directions as will assist the jury in assessing the credit worthiness of the evidence given by the witness whose credibility has been attacked, but it can be but seldom that the circumstances will warrant his going beyond that...”

[13] This was a Bench Trial and so as in the case of a magisterial trial, the facts and the law are in the purview of the Magistrate or Judge. Some of the discrepancies highlighted in the evidence are as follows:-

- 1) The complainant was adamant that he did not run out of the bar, while the evidence of the defendant and that of the security guard was that he did indeed run out of the bar. The security guard testified that *"at 3:00 am I was at the front inside the club, two young men ran past me, one at the back had a black bag on his side, other people were running behind him"*.
- 2) The defendant said he punched the complainant in his face repeatedly. The evidence of the doctor was that she saw that the complainant had an injury to his buttresses and that he indicated to her that he had been repeatedly punched in his face. When this was put to the complainant that he had been punched he denied this being so.
- 3) Further, the doctor's evidence was that: *"The patient said he was punched to the face. He observed bleeding to the gums and throat. He had pain on the buttresses (triangle ears, nose and eyes)."*

The Police Investigation

[14] The police did the bare minimum in investigating this matter. As the Court pointed out in the no case submission ruling this was indeed a bare bones investigation. A lot more could have been done in relation to the scissors which were neither tested nor photographed.

The Crown's Case

[15] Briefly, the Crown's case as set out in the previous paragraphs, was that the complainant and the defendant were socializing in separate groups at Dre's Bar. An altercation broke out between the defendant and the complainant. Then complainant left the bar with the defendant in hot pursuit. When the complainant reached to his car he was attacked by the defendant who slashed his throat with a sharp object. The complainant bleeding from his neck was taken to the hospital, the defendant walked away but was later apprehended by a passing patrol of police officers. The security guard on duty that night testified to seeing the complainant running out of the bar with the defendant running after him. The medical doctor indicated that the complainant had superficial lacerations on his neck and injuries to his buttresses indicating that the complainant had disclosed to being punched repeatedly. The patient said he was punched to the face. The complainant also told the doctor that he observed bleeding to the gums and throat. He had pain on the buttresses (triangle ears, nose and eyes).

The Defendant's Case

- [16] The defendant's case was that the complainant told him that he was going to his car for his gun and he, fearing for his life pursued and punched him in his face. He said that he had his keys in his hands but denies slashing the complainant's neck. The defendant's witness corroborated the testimony of the defendant as well as the testimony of the security guard.

Self Defence

- [17] The defendant indicated in his sworn testimony that the complainant told him that he was going to his car to retrieve his gun. It was his testimony that he followed the complainant and punched him several times. He denied slashing the complainant's throat. His testimony was "*I never swiped at the complainant with any object*" but he went on further to say that he had his keys in his right hand and he did not know that the complainant was cut and that he had no intention to cut him.
- [18] The Court in considering the self defence issue has to consider whether the prosecution has negated self defence. A person attacked has the right to defend himself from his attacker but he should use no more force than is necessary. If the Court finds the force used was more than necessary then he has committed no crime. If the Court comes to the conclusion that the defendant honestly believed or may have believed that force was necessary to protect himself or any other person for that matter, in that case then the prosecution would have failed to prove the case against the defendant.
- [19] There is no rule in law to say that a person must wait to be struck first before they may defend themselves, (see **R v Deana, 2 Cr App R 75**). A man who is attacked or believes that he is about to be attacked may use such force as is both necessary and reasonable in order to defend himself. If that is what he does then he acts lawfully. It follows that a man who starts the violence, the aggressor, cannot rely upon self-defence to render his actions lawful. Of course during a fight a man will not only strike blows, but will defend himself by warding off blows from his opponent, but if he started the fight, if he volunteered for it, such actions are not lawful, they are unlawful acts of violence.

Burden of Proof in Relation to Self Defence

- [20] The burden of proof remains with the prosecution when the issue of self-defence is raised. The prosecution must adduce sufficient evidence to satisfy the Court beyond reasonable doubt that the defendant was either:-
- not acting to defend himself/herself or another; or

- not acting to defend property; or not acting to prevent a crime or to apprehend an offender; or
- if he was so acting, the force used was excessive.

[21] Prosecutors should take special care to recognize, and ensure a sufficiency of evidence in, those cases where self-defence is likely to be an issue.

Analysis

[22] The Court has examined the discrepancies in the evidence. The Court is left wondering why the complainant would lie about running out of the bar and being punched. He told the doctor that he was punched and that he had blood in his nose and gums. His credibility has been a big issue for the Court. The Court is also of the view that the Crown has not negated self defence. The evidence was that the complainant said he was going for his gun. He ran out of the bar followed by the defendant who punched him up in his face, remember this was denied by the complainant. These issues were not explored under cross examination of the defendant.

[23] The Court finds this a difficult case to resolve and the lack of credibility of the complainant did not assist. Where there is a lurking doubt, that doubt has to be resolved in favour of the defendant and accordingly, I find the defendant not guilty.

Ann-Marie Smith
High Court Judge

By the Court

Registrar