

IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)

CASE NO. ANUHCR 2021/0067

BETWEEN:

[1] THE KING

and

[1] MITCH DeSOUZA

[2] SHAQUOI WARNER

Appearances:

Mr. Sean Nelson, Counsel for the Crown
Defendants in person

2023: January 17th, 31st

JUDGMENT

- [1] **WILLIAMS, J.:** This case arises out of an incident that occurred at a night club in Codrington, Barbuda, in February 2017, at which the virtual complainant, Mr. Yannick Beazer was injured.
- [2] The defendants, Mr. Mitch DeSouza and his cousin, Mr. Shaquoi Warner, were originally jointly indicted with Mr. DeSouza's sister, Ms. Shanice DeSouza, who is also known as 'Dana', for two offences contrary to the **Offences Against the Persons Act**, Cap 300 of the Laws of Antigua and Barbuda, Revised Edition 1992.
- [3] All the Defendants pleaded 'not guilty' to the offences.
- [4] Ms. DeSouza was represented by Counsel, Mr. Michael Archibald.
- [5] At the close of the Crown's case, the learned Prosecutor, Mr. Sean Nelson, indicated that having reviewed the evidence, the Crown was no longer proceeding against Ms. DeSouza.

- [6] Having found that there was a *prima facie* case for the two remaining Defendants to answer, the election was put separately to Mr. DeSouza and Mr. Warner. Each Defendant opted to remain silent and indicated that they had no witness to call.

The Indictment

- [7] On the 14th of January, 2022 the Learned Director of Public Prosecutions filed an indictment charging the two defendants, Mr. DeSouza and Mr. Warner, as well as Ms. DeSouza with two offences contrary to the **Offences Against the Persons Act** Cap 300 of the Laws of Antigua and Barbuda Revised Edition 1992.
- [8] The First Count on the indictment was for wounding with intent, contrary to section 20 of the **Act**. The allegation was that the Defendants “on the 11th of February 2017, at Lyme Light (sic) Club, in the parish of Holy Trinity, Barbuda in the State of Antigua and Barbuda, unlawfully and maliciously wounded [Mr.] Yannick Beazer with intent to do him grievous bodily harm.”
- [9] The Second Count, (which was in the alternative to the First Count), charged the Defendants with unlawful wounding, contrary to section 22 of the **Act**. The particulars of this count stated that the Defendants on the same date and place as the First Count “unlawfully and maliciously wounded” Mr. Beazer.
- [10] With regard to the First Count, the Crown was required to prove the specific intent of the Defendants to cause grievous bodily harm. There was no such requirement for the alternative charge, which recited that the Defendants had no lawful excuse for doing what they did and that they acted maliciously.
- [11] The offence of wounding with intent required the Crown to prove, so that the forum of fact is sure, that:
- i. The virtual complainant, Mr. Beazer, was wounded or suffered grievous bodily harm.
 - ii. The defendants, Mr. DeSouza and Mr. Warner, either singly or jointly wounded or caused the grievous bodily harm to the virtual Complainant.
 - iii. The Defendants had no lawful excuse for acting as they did.
 - iv. The Defendants at the time of inflicting the wound or grievous bodily harm to Mr. Beazer had the specific intent to do so.
- [12] To prove the alternative count of unlawful founding, the Crown was required to establish the same elements identified previously for the offence of wounding with intent, save and except that the Crown did not have to prove that the Defendants at the time of inflicting the wound or grievous bodily harm to Mr. Beazer had the specific intent to do so.

Jurisdiction

- [13] Pursuant to the **Criminal Proceedings (Trial by Judge Alone) Act**, No. 8 of 2021, (as amended by **Act No: 7 of 2022**), this matter was tried by a single Judge, sitting without a jury. Section 4, (as amended), makes it mandatory for offences contrary to sections 20 and 22 of the **Offences Against the Person Act** to be tried by a Judge, sitting alone without a jury.
- [14] In bench trials, the Judge is the forum of both the law and the fact.
- [15] As in any criminal case, the burden of proof rested upon the Crown. The Crown had to prove its case so that the forum of fact was sure of the Defendant's guilt.
- [16] The Defendants had nothing to prove.

The Facts

- [17] The virtual Complainant, Mr. Beazer, aged 33 at the time, promoted shows. On the night of the 10th of February, 2017 he organized a show at the Lyme Night Club, located in Codrington, Barbuda. There was a small make-shift stage, measuring 8 feet x 8 feet, consisting of two pieces of plywood measuring 8 ft x 4 ft and raised about 1 foot off the ground. The disc jockey and music equipment were located on the stage.
- [18] Mr. DeSouza, 19, and Mr. Warner, 18, were among patrons who were partying, at the Lyme Night Club, in the area of the stage at about 4:00 am on the 11th of February, 2017.
- [19] Mr. DeSouza and Mr. Warner were among patrons who in the course of their festivities mounted the stage. Mr. Beazer gesticulated to them to get off the stage. Sometime afterwards one of the cell tower monitors owned by Mr. Beazer fell off the stage. Mr. Beazer approached the men who were on the stage. Mr. Beazer grabbed hold of Mr. DeSouza; this holding lasted for quite some time as both men ended up going outside and coming back inside during the course of the wrestling.
- [20] At some point, Mr. Beazer suffered injuries to his head. He was seen at the Victoria Hospital by Dr. Luis Manuel Pineda. The Doctor described the two wounds he found as follows: "Head – left parietal side, deep wound of 10 cm long and suspected skull fracture; right parietal side – a small laceration of 3 cm long."

The Issues

- [21] There was no question as to whether or not Mr. Beazer was injured.
- [22] The live issues in the case were:
- i. When were injuries inflicted on the virtual complainant?
 - ii. Who inflicted the injuries to Mr. Beazer?

- iii. In what circumstances were the injuries inflicted?

Witness Review

- [23] The narrative from the several witnesses for the Crown may appear to lack consistency with each other on the critical aspects of this case, regarding how and when Mr. Beazer may have sustained the injuries, as well as who may have inflicted the injuries.
- [24] It would be helpful to review the highlights of the testimony from the various witnesses.

Emrick John

- [25] Mr. John recalls being at the Lyme Night Club around 4:00 am, standing with Mr. Beazer. One of the speakers fell from close to the stage. Among the persons partying and jumping on the stage was Mr. Warner. Inside the disco “wasn’t too dark. It wasn’t too bright.” He said there was “a dim light by the Dee Jay” that enabled him to see what was on the stage. There was also a light at the bar.
- [26] According to Mr. John, the virtual Complainant rushed to the stage after the speakers fell. It appeared to the witness that Mr. Beazer tripped and stumbled forwards “towards the guys” who were on the stage. There were about five persons on the stage at that time. He saw Mr. Beazer “went forward and went and pushed on Mr. Warner. Then there was “a shuffle” – which the witness explained as “pushing each other” - involving Mr. Beazer which “went towards a door next to the stage. They ended up outside. Everybody who was around the stage ended up outside. They were outside for a bit. Maybe 3 to 5 minutes.”
- [27] Mr. John said that he saw police Officer George holding the virtual Complainant and bringing Mr. Beazer back inside. Next, the witness heard “a smash” and Mr. Beazer came towards Mr. John. The witness saw what appeared to be blood coming down the virtual Complainant’s face. Mr. John did not know how or exactly when the virtual Complainant sustained the injury. He did not see any blood on Mr. Beazer at the time Officer George was escorting the virtual Complainant back inside. Mr. John took Mr. Beazer to the hospital.
- [28] During cross examination, the witness said: “I know Yannick [the virtual complainant] was next to me. I wasn’t focusing on exactly what taking place, whether he rushed towards a particular individual. I know he rushed to the stage and tripped.” Mr. John said: “The motion was towards whoever was on the stage, not towards Shaquai [Mr. Warner] alone.”
- [29] Mr. John testified that at about the time of the incident, about 80 persons were still at the fete and about 40 went outside when the fight began.

Shane John

- [30] Mr. Shane John is related to the virtual Complainant as well as the DeSouza’s. He said that the organizer of the function was Mr. Ken Walcott and that he, Shane, (his first name is used to distinguish him from the first witness who has the same surname), was working at the bar.

- [31] This witness realised there was “a commotion on the dance floor. I saw people running towards where the Dee Jay was playing music. I saw people throwing punches and like a fighting going on. I saw Mitch, Shaquoi, also Yannick throwing punches at each other.” There were persons trying to part them.
- [32] Shane then saw a “bottle fly across the room. I stood and watched a bit. Then police come and held on to Yannick. Mitch and Shaquoi friends began to hold them and take them outside.”
- [33] Shane said he saw Ms. Dana [Shanice] DeSouza “coming toward Yannick with a bottle. I proceeded to leave the bar area, held on to her and took the bottle away... took her outside. Someone took her from me... I proceeded to go back inside to the bar area where I was before. I saw police escorting Yannick outside with blood dripping from his head.”
- [34] He said that the area where the Dee Jay was had light, so he could clearly see.
- [35] Questioned in cross examination, Shane said that while Ms. DeSouza had a bottle in her hand, he did not see her do anything with it. By the time he took her outside, he had already taken the bottle away from her. When he saw Ms. DeSouza with the bottle in her hands, the Defendants were already in the process of being taken outside by their friends.
- [36] Shane also testified that in relation to the fighting, he only saw fists being thrown. He did not see the bottle that was flying through the air connect with the virtual Complainant. At the time of his escorting Ms. DeSouza outside, he did not see any blood on Mr. Beazer’s head.
- [37] The witness said that the first time that he knew the virtual Complainant was injured, was when he, (Shane), was coming back into the Club from taking Ms. DeSouza outside and Mr. Beazer was coming out.

Kema George

- [38] Mr. George was in the Lyme Night Club on the morning in question when he realised something was happening. He went to observe. He saw Mr. DeSouza and the virtual Complainant fighting. Mr. Warner then joined in the fight. He saw Mr. Warner with a bottle hitting Mr. Beazer in his head. It was dark; there was little light. He was about 6 to 10 feet away from the fighting. He then removed himself.
- [39] The persons who were involved in the fight were the virtual Complainant, Mr. DeSouza, Mr. Warner and an individual named Eric.
- [40] He said in cross examination that he saw Ms. DeSouza go towards where the fight was taking place, then he saw a man whom he know as ‘Labour’ take her away.
- [41] According to Mr. George, about 100 persons were in the club at the time.

Yannick Beazer

- [42] The virtual Complainant testified that at around 3:30 am on the 11th of February, 2017 he was at the Lyme Night Club standing at the bar along with Emrick John. He was the promoter of the event at the Club. He noticed three young men on the stage jumping up. The equipment on the stage belonged to him. He approached the stage and when he was about 10 feet from the men he gesticulated to them and they came off the stage.
- [43] Fifteen minutes later, he heard an announcement asking people to come off the stage because there was equipment on it. Mr. Beazer said that the men – in particular Mr. DeSouza, Mr. Warner and another gentleman - began to behave worse.
- [44] Mr. Beazer said that where the stage was had enough light to enable him to see.
- [45] One of the cell tower monitors fell and Mr. Beazer again approached the stage. He said that he misstepped and he fell on Mr. DeSouza. The virtual Complainant testified that the First Defendant then jumped off the stage “picked up a guinness bottle and aimed it at me. He raised his hand above his waist and aimed it like he was going to throw the bottle at me. That’s when I held on to Mitch, both of his hands, around, like a bear hug.”
- [46] Mr. Beazer said that he heard Ms. DeSouza come to his right side and demand that he let go her brother. She then hit him with a bottle on the right side of his head. Mr. Beazer said that Mr. Warner also got involved: “He started to hit me. He was hitting me in my head. I was still holding Mitch. Even when I was being struck by the other persons, I was still holding on to Mitch.”
- [47] The virtual Complainant testified that Mr. Warner then “had his hand around my neck in a chokehold and he was still hitting me in my head.”
- [48] This holding and beating continued even as they exited the building. Mr. Beazer testified that while he was being struck by other persons, he kept holding on to Mr. DeSouza. He continued: “We ended back up inside the building. Myself, Mitch DeSouza, Mr. Warner and Dana. I was still holding Mitch.”
- [49] Mr. Beazer explained that: “If I wasn’t holding Mitch hands, I think he would have mashed up my face with the bottle from being so close to me.
- [50] Mr. Beazer testified that he was being struck by Mr. Warner “real hard and in the centre of my head. I was still being hit in the head by Shaquoi and he was still holding on to me.” He said he heard Ms. DeSouza demanding once more that he let go of her brother and she “hit me again to the right side of my head.”
- [51] The virtual Complainant’s evidence was that “Police George got involved. He separated me from Mitch DeSouza. That’s when Mitch got a chance to hit me on the left side of my head and the bottle broke. I was taken to the hospital by Mr. John. I realise I was bleeding from the left and right side of my head.”

- [52] During the cross examination by Counsel Archibald, Mr. Beazer said that the fight lasted for about 10 minutes or less; inside, the fighting was for about four to five minutes. He demonstrated how he held Mr. DeSouza in a bear hug, with his arms around those of the first Defendant's. He stated that he held Mr. DeSouza in the bear hug from the beginning when they were inside, throughout the time that they were outside and until they were separated when they returned inside.
- [53] Mr. Beazer's evidence was that there were about 220 persons at the event. The persons he recognised during the incident were Ms. DeSouza, Mr. Warner, Mr. DeSouza and the officer who separated him from the First Defendant. Mr. Beazer said that throughout the entire incident, "nobody besides Officer George came to assist. That was when I had come back inside." He said he did not know if other persons were involved in the scuffle.
- [54] Mr. Beazer said that Ms. DeSouza was the first person to hit him. "She was the first person who knock me with something. I didn't see no blood come from nowhere after she knocked me with the bottle. I felt a swelling. She hit me when we got back in the club again. She hit me on the side twice. She hit me the same place – right side of my head."
- [55] The virtual Complainant testified that when he was struck by Ms. DeSouza, she was at the time to his right side. She was standing at a right angle to him. He indicated that at the time his head was on Mr. DeSouza's left shoulder, as he (the virtual Complainant) was holding Mr. DeSouza in a bear hug.

Susan Wadada

- [56] Ms. Wadada's evidence was tendered formally, pursuant to the provision of the **Criminal Proceedings (Trial by Judge Alone) Act** which permits the statements of agreed witnesses to be read into evidence.
- [57] Ms. Wadada said that she was with Ms. DeSouza by a pole, dancing, when the fight broke out. She said that "Shaquoi and Mitch were on and off the stage dancing... Yannick Beazer went on the stage and pushed Shaquoi violently off the stage and then did the same to Mitch. The two of them fought back. Yannick and Mitch started to fight and the fight went outside the dance through a door at the back. There was a bunch of young boys in the same age group in the scuffle. They pinned Yannick in a corner outside the building by the back door. I can't tell if they were parting the fight or joining in. I saw Dana went to where the fight was and I followed her. I saw that Dana was getting upset because her brother was in a fight. I heard her shouted, 'Nobody can knock me [expletive deleted] brother'. She repeated that twice. She was about 2 feet away from the fight and I saw Kema Nedd hold her back... and a man I only know as 'Labour' appeared and held on to her and took her away from the fight to the fence at the back of the yard.... Not once did I see her with any bottle or weapon in her hand except her phone."
- [58] According to Ms. Wadada's witness statement, the area where the fight was "had a light shining over the back door and the moon was extremely bright that night."

Caution Statements and Interviews

- [59] As part of the Crown's case, the caution statements recorded by the police and interviews conducted by the police with the Defendants were tendered.
- [60] The Crown by way of Notice of Additional Evidence filed on the 13th of January, 2023 tendered a statement from Corporal 557 Philsbert George, who was the investigator in the matter. The statements of the accused formed a part of Corporal George's evidence. His testimony was formally read into evidence as all Parties considered his attendance unnecessary.
- [61] Mr. DeSouza gave a caution statement to the police between 8:14 am and 8:24 am on the 11th of February, 2017. It cannot be easily read in parts because of water damage to the document. In the statement the first Defendant appears to be saying that he and some friends were on the stage dancing and that Yannick ran up and pushed off two of his (Mr. DeSouza's) friends from the stage. Yannick then held on to his (the Defendant's neck) and started to choke him. Mr. DeSouza said that his sister told Yannick to let him go, but the virtual Complainant would not. Mr. DeSouza said that he "use (sic) the bottle and buss he head." Mr. DeSouza said that he "musta buss he [Mr. Beazer] head from behind then the officer musta part the fight and bring me to the station."
- [62] Two days after giving the caution statement to the police, Mr. DeSouza was interviewed by the police. That was between 3:53 pm and 5:32 pm on the 13th of February, 2017.
- [63] Mr. DeSouza acknowledged that he was on the stage along with Mr. Warner and Eric. No one asked them to come off the stage. He acknowledged that he was in a fight with Mr. Beazer. Some of the questions asked by the investigator and the answers given by Mr. DeSouza are worth repeating:
- Q: Who hit you?
A: Yannick.
Q: Where did Yannick hit you?
A: Yannick choke me.
Q: When Yannick choke you, what did you do?
A: The only thing I could do to defend myself when he was choking me is to hit him with the bottle in his head.
Q: Was that the same bottle you were drinking from?
A: Yes.
Q: Can you recall where Yannick got hit with that bottle?
A: In his head.
Q: Which side of his head did he get hit with the bottle?
A: Somewhere in his head.
Q: Can you recall seeing Yannick head bleeding that night?
A: No
- [64] The second defendant, Mr. Warner, in his statement (which also was damaged by water), and which was recorded between 9:45 am and 9:58 am on the 11th of February, 2017 said that he was dancing

when he saw “Yannick push Mitch and then Mitch and he start fight... I rush go break up the fight. A bottle break. Something went in my eye. I back off and... rubbing my eye. It was burning me and then I started to walk out and then go straight home. At no point I didn’t hit Yannick.”

- [65] Mr. Warner in his interview with the police on the 17th of February, 2017 made no admissions about any wrong doing. He said he went to the Club alone and left alone. He said that he was on the stage at the night Club along with Mitch and Eric. He said that he knows Mr. Beazer and that Mr. Beazer came and pushed him off the stage. He witnessed that there was a fight. He saw Mr. Beazer choking Mr. DeSouza and he went to part them. He repeated what he said in his caution statement, that when he went to break up the fight, a bottle broke and something went into his eye, so he backed off and went home, because his eyes were burning him. He denied hitting Mr. Beazer with a bottle or at all. In fact, he did not even see Mr. Beazer being struck by a bottle. He described the lighting in the Club as “dark”.

Credibility Assessment

- [66] Neither of the two Defendants sought to cross examine any of the Crown’s witnesses other than Mr. Emrick John. They did not seek to put their narrative of the incident to the virtual Complainant or any of the other witnesses for the Crown.
- [67] Whose testimony ought to be relied on in determining whether or not the Crown has proven its case against one or the other of the Defendants or both of them?
- [68] It is accepted that whenever there is an incident, that a witness may testify only as to what he or she observed and knows. Also, different persons may observe an incident, about which they are testifying, at different stages. Their powers of observation, retention and recall may also vary.
- [69] However, hovering over this case are specifics which vary so widely, such that all the narratives cannot be true. For example: while the virtual Complainant insists he was struck twice on the right side of his head – which is where he received one of the two injuries – by Ms. DeSouza, other witnesses for the Crown expressly contradicted that part of Mr. Beazar’s testimony. The end result was that even without there being any submission on behalf of Ms. DeSouza, the Crown sought to end the prosecution of Ms. DeSouza.
- [70] Mr. Beazer was not the most impressive of witnesses. His demeanour and attitude during cross examination by Mr. Archibald on behalf of Ms. DeSouza suggested that he was being less than candid. For example:
- Counsel suggested to Mr. Beazer that he only called Ms. DeSouza’s name because she protested the virtual Complainants man-handling of her brother, then followed up with a simple, straightforward, non-controversial question as to whether or not Mr. DeSouza was younger than the virtual Complainant. Mr. Beazer waffled, saying he did not know the first Defendant’s age and sought to avoid answering before acknowledging that the Defendant was a little boy when he, Mr. Beazer worked with the first Defendant’s father.

- Also, the virtual Complainant's statement that he was not vex when he saw his equipment (the monitor) had fallen off the stage as a result of the activities on the Defendants' jumping on the stage, or neither was he vex because he had spoken to them previously about getting off the stage, not only flies in the face of commonsense, but the evidence from other witnesses that Mr. Beazer rushed to the stage and that he pushed the men off the stage contradicts his testimony.

[71] The virtual Complainant's testimony was that when the first Defendant administered the blow to the left side of his head and the bottle broke, it was in the presence of Officer George, who had just parted them. It is noteworthy that when Mr. DeSouza was interviewed by Corporal George about the incident, the Officer never put to the first Defendant that he saw Mr. DeSouza commit the offence.

Who Inflicted the injuries?

[72] Mr. Beazer sustained injuries to the right and left parietal region of his head. He said that it was Ms. DeSouza who hit him twice to the right side of his head. Once before he went outside during the course of the fight and the second time when he came back inside. He testified that the blow to the left side was inflicted by Mr. DeSouza

[73] Mr. Beazer said he was struck repeatedly and throughout the fight to the center of his head by Mr. Warner. There is no injury to the center of the virtual Complainant's head.

[74] While Mr. Emrick John saw the scuffle involving Mr. Beazer and Mr. DeSouza, he did not see how Mr. Beazer got injured. Mr. John heard a smash and later saw blood on the virtual Complainant. This, according to the witness, was after officer George brought the virtual Complainant back inside.

[75] Mr. Shane John testified that he saw the Defendants and the virtual Complainant throwing punches at each other. He saw a bottle fly across the room; he did not know who threw the bottle. He saw Ms. DeSouza with a bottle going towards Mr. Beazer; the witness said he went and took the bottle away from her and then he took her outside. He saw the Defendants being escorted out of the room by their friends. Mr. Shane John testified that as he was returning from taking Ms. DeSouza outside, he saw the police taking Mr. Beazer outside and the virtual Complainant was bleeding.

[76] Mr. Kema George said that he saw Mr. Warner with a bottle, and he was hitting the virtual Complainant in his head. He said there was a person named Eric involved in the fighting as well. He said that although Ms. DeSouza started to go towards the fight, she was taken outside.

[77] Ms. Susan Wadada not only puts Ms. DeSouza away from the fighting, but also said that Ms. DeSouza did not have any bottle, but rather a cell phone.

[78] The many versions as to what transpired do at least two things: they provide conflicting narratives as to what actually transpired; and to the extent that there is some consensus among the eye witnesses, the narratives cause questions to be asked about the reliability of the virtual

Complainant's testimony. For example, while he attributes the injuries to the right side of his head to have been inflicted by Ms. DeSouza, the Crown's witnesses say otherwise.

- [79] In the circumstances, serious doubts remain as to where the truth lies.
- [80] The Crown was required to prove its case on one or the other counts on the indictment by making the fact finding forum sure of the guilt of the Defendants. The Crown has not discharged that burden; the case has fallen short of the requisite standard of proof.
- [81] In any event, Mr. Beazer acknowledged that he had the first Defendant physically restrained for about 10 minutes, taking Mr. DeSouza from inside the club to the outside and then bringing the first Defendant back inside. Throughout all this, Mr. Beazer resisted all the petitions to let go Mr. DeSouza. In those circumstances, was the first Defendant entitled to take such reasonable steps he considered necessary to secure his liberty, including the minimal use of force?
- [82] Also, even if one were to accept that the second Defendant struck Mr. Beazer and that in doing so, Mr. Warner used a bottle, the evidence from the virtual Complainant is quite clear: Mr. Warner struck him in the centre of his head; the persons he named as injuring him were Ms. DeSouza, with blows to the right side of his head and Mr. DeSouza to the left of his head. The medical describes two injuries only: one to the right parietal region and the other to the left parietal region.
- [83] The defendants, Mr. Mitch DeSouza and Mr. Shaquai Warner are not guilty of the offences of: on the 11th of February, 2017 unlawfully and maliciously wounding with intent Mr. Yannick Beazer; and, of, on the 11th of February, 2017 unlawfully and maliciously wounding Mr. Yannick Beazer.

Colin Williams
High Court Judge

By the Court

Registrar