



IN THE CARIBBEAN COURT OF JUSTICE
APPELLATE JURISDICTION

ON APPEAL FROM THE COURT OF APPEAL OF THE
EASTERN CARIBBEAN SUPREME COURT (SAINT LUCIA)

CCJ Appeal No LCCR2024/001
LC Criminal Appeal No SLUHCRA2021/0003

BETWEEN

MARIUS WILSON

APPELLANT

AND

THE KING

RESPONDENT

Before: Mr Justice Saunders, President
Mme Justice Rajnauth-Lee
Mr Justice Barrow
Mr Justice Burgess
Mr Justice Jamadar

Date of Judgment: 30 July 2024

Appearances

Mr Alberton Richelieu and Ms Alberta Richelieu for the Appellant

Ms Kelly Marie Thomson and Mr Linton Robinson for the Respondent

Criminal law — Appeal — No case submission — Whether evidence of unlawful shooting sufficient to put to jury — Whether judge erred in rejecting no case submission — Criminal Code, Cap 3:01.

Criminal law — Evidence — Self-defence — Directions to jury — Whether judge failed to put defence fairly to jury — Hostile witnesses — Whether judge's directions on evidential value of hostile witnesses' testimonies was adequate.

Criminal law — Trial — Summing-up — Good character — Whether judge's summation diluted good character directions.

SUMMARY

On 7 June 2012, Winsbert Alexander was at Spinners Nightclub ('Spinners'), in the company of several relatives including his niece Lloni Alexander and his girlfriend, Rita Demar. Marius Wilson ('the appellant') who had been cohabiting with Lloni Alexander, arrived at Spinners in the early morning. The appellant testified that there had been several incidents between himself and Winsbert in which Winsbert had threatened to kill him. Shortly after entering Spinners, the appellant said that a man known to him shouted, 'Watch out, make a 180-degree, fire.' A nickname for Winsbert was 'Fire'. The appellant said that when he turned around, he saw Winsbert charging towards him, his hands outstretched, holding an object with a black handle and silver body which appeared to be a firearm. The appellant drew his licensed firearm and shot Winsbert. He said he told the police who asked him if he had shot Winsbert, he had not done anything wrong; 'the guy was the one who attacked me with a gun, so I defended myself.' There was no other firearm found at the scene. The appellant was charged with the offences of intentionally causing dangerous harm to Winsbert Alexander and using a deadly instrument with intent to cause grievous harm to Winsbert Alexander, contrary to ss 99(1) and 101(1)(b) of the Criminal Code of Saint Lucia, respectively.

The lone eyewitness who gave evidence that supported the prosecution, Rita Demar, said that Winsbert was not doing anything before he was shot and that it was the appellant who shot Winsbert. All other eyewitnesses, including Winsbert, who previously had given full statements to the police, stated they could not recall the contents of their previous statements. The trial judge granted the application to treat these other eyewitnesses as hostile allowing them to be cross-examined by the prosecution.

On 30 July 2021, the appellant was convicted of both offences after a jury trial. On 8 November 2021, he was sentenced to five years on the first count and four years on the second count, both sentences to run concurrently. By judgment dated 25 July 2023, the Court of Appeal dismissed his appeal against conviction and allowed the appeal against sentence, varying the sentences of five years and four years to three years and two years respectively, to run concurrently.

The appellant appealed to the Caribbean Court of Justice ('the CCJ') citing six grounds of appeal. These grounds mainly asserted that the Court of Appeal was wrong in law when a) it upheld the trial judge's dismissal of the no case submission made at the trial; b) it did not agree with the submission that the trial judge had misdirected the jury on the evidential nature of hostile witnesses; c) it approved the trial judge's direction to the jury on the issue of good character given the appellant's profile; and d) it disregarded the written submissions that the defence of self-defence which was advanced at trial was not negated by the prosecution. Thus, the appellant claimed, he suffered a miscarriage of justice.

The judgment of the CCJ, authored by Barrow J, first considered the appellant's submission that the trial judge's directions would have caused the jury to use the 'evidence' of Winsbert to bolster the evidence of Rita Demar thus resulting in a flawed conviction. The CCJ found that the judge confused the reference to whose evidence the jury was being asked to decide was true or untrue. At the material point in the directions to the jury, the judge was addressing the evidence of the appellant; not of Winsbert. The impugned statement of the trial judge was, '...the evidence of this bad blood does not mean that Winsbert's evidence is untrue or that Winsbert attacked the Defendant'. However, given the directions which immediately followed this misstatement, the Court found that what the judge intended to say, as captured in italics and square brackets, was '...the evidence of this bad blood does not mean that [*the Defendant's*] evidence is untrue or that Winsbert attacked the Defendant.'

Furthermore, the CCJ held that the impugned statement could not have misled the jury as the appellant's submission itself recognised that nothing said by Winsbert could be taken as 'evidence' and none of the hostile witnesses said anything, which if taken as evidence, prejudiced the appellant. Further, the trial judge repeatedly directed the jury that what the witnesses did not accept as their evidence was not evidence to be considered in the case. This ensured that the jury was clear that any suggestion of what occurred, as put by the prosecutor to the witnesses as facts stated in their police statements, was not evidence and was not to be treated as the testimony of the witnesses.

While the appellant acknowledged that the trial judge gave a full direction on good character, it was submitted by the appellant that the trial judge's direction on good character was too broad in telling the jury they could take account of *everything* they had heard about the appellant. This, it was said, opened the floodgates to irrelevant, inadmissible and prejudicial matters to be considered given the appellant's profile in a small society like St Lucia where everyone knows everyone. The CCJ held that the submission did not withstand scrutiny given the tenor of the directions from which the targeted phrase was extracted together with the earlier limitations given to the jury when they were impanelled, which cautioned them to confine their considerations to what took place in court.

The appellant also submitted that the trial judge failed to put the appellant's defence fairly to the jury in that the trial judge should have directed the jury that having regard to Rita Demar's evidence they must consider whether the evidence was sufficient to negative the appellant's claim of self-defence. The CCJ disagreed, holding that there was sufficient evidence to negative the claim of self-defence and it made no difference whether that claim had been negated specifically by Rita Demar's evidence. Additionally, as regards the no case submission, the CCJ held that the appellant failed to show that the Court of Appeal should have held that the stated evidence, including the absence of the alleged firearm wielded by Winsbert, together with the uncontroversial fact that the appellant shot Winsbert, was not sufficient to establish a case of unlawful shooting for the jury's consideration.

Cases referred to:

R v Galbraith [1981] 2 All ER 1060; *R v Hamilton* JM 2002 CA 46 (CARILAW), (7 November 2002); *R v Hunter* [2015] 1 WLR 5367; *R v Maw* [1994] Crim LR 841; *R v Moustakim* [2008] EWCA Crim 3096; *Springer v R* BB 2006 CA 17 (CARILAW), (12 June 2006); *Wilson v R* (LC CA, 25 July 2023).

Legislation referred to:

Saint Lucia – Criminal Code, Cap 3:01.

Other sources referred to:

Ormerod D and Perry D (eds), *Blackstone's Criminal Practice 2017* (Oxford University Press 2017).

JUDGMENT**Reasons for Judgment:**

Barrow J (Saunders P and Rajnauth-Lee, Burgess, Jamadar JJ concurring) [1] – [36]

Disposition [37]

BARROW J:**Introduction**

[1] The appellant, Marius Wilson, has served the concurrent sentences of three and two years' imprisonment imposed upon him on his conviction for the offences of intentionally causing dangerous harm and using a deadly instrument with intent to cause grievous harm¹ to Winsbert Alexander. His continued prosecution of his appeal against conviction no doubt indicates a wish to regain his reputation as a person of good character and perhaps, to retain his place in the ranks of practising attorneys-at-law.

[2] The convictions on 30 July 2021 were after a trial before a judge and jury and his appeal to the Court of Appeal succeeded only in reducing the sentences by two years each but the convictions were upheld. The present appeal to the Caribbean Court of Justice ('the CCJ') principally complains of misdirection by the trial judge to the jury on how they should treat the evidence of prosecution witnesses who, with one exception, had all resiled from the police statements they made shortly after the shooting. The appellant also complains of a flaw in the directions by the judge to the jury on how to treat the appellant's

¹ Contrary to Criminal Code, Cap 3:01 ss 99(1) and 101(1)(b).

good character as well as on grounds relating to self-defence and his submission of no case to answer.

The Facts

- [3] There was no dispute about who, what, when and where. Winsbert Alexander, his niece Lloni Alexander, his partner Rita Demar, and others were gathered at Spinners Nightclub on the night preceding 7 June 2012. Lloni was cohabiting with the appellant, and they had been in a relationship for some nine years. At about 2:30 in the morning, the appellant came to Spinners with a party. Sometime later he shot Winsbert, who survived.
- [4] The dispute is as to how it happened. Rita alone testified to that. Her testimony was brevity itself, establishing hardly more than the fact that the appellant shot Winsbert. She said that at the material time she was standing next to Winsbert, and she saw the appellant pass in front of her and go in the direction where Lloni Alexander was standing, about 14 feet to her right. At the time Winsbert was standing next to her; he was not doing anything. She saw the appellant shoot Winsbert. That was it.
- [5] The other witnesses who had been members of the party, including Winsbert Alexander himself, the victim of the shooting, uniformly claimed not to know or remember what happened, even after they had been shown before trial the statements they had made to the police at the time of investigations. As summarised by the Court of Appeal, from which the following paraphrase draws heavily, the evidence that was obtained from these witnesses was that Lloni had been the appellant's girlfriend for some time before the incident; the appellant had spoken to her briefly at Spinners after which she continued enjoying herself; and Winsbert was about 8 feet away from Lloni. He had nothing in his hands at the time.

- [6] A police officer who was engaged at the premises at the time testified about the immediate aftermath, after hearing the gunshot. He told of detaining the appellant, having to subdue him, taking a firearm from him, and related that the appellant said that he did not do anything. The officer from the police station who responded to the phone call reporting the occurrence testified to attending at the scene, seeing the victim on the floor being given first aid, and seeing a spent firearm shell on the floor that was retrieved by an accompanying officer. He said he did not observe anything else being recovered from the scene apart from the spent shell.
- [7] The appellant testified. He said he was living with his girlfriend Lloni, with whom he had been in a relationship for nine years. He knew Winsbert, who was Lloni's uncle; however, he and Winsbert were not then on speaking terms because of several incidents between them. He narrated those incidents including that on one occasion he confronted Winsbert who threatened to kill him. He called the police on that occasion and on other occasions. On each occasion when there was an incident Winsbert threatened to kill him, he said.
- [8] In relation to the occurrence at Spinners, the appellant testified that he arrived there that early morning along with others and they entered. He went onto the balcony and later went into the club to see his friends. He said as he approached a group of men seated by the bar, one of them stood up suddenly and shouted at him, 'Watch out, make a 180-degree, fire.' A nickname for Winsbert was 'Fire'. The appellant said he turned around instinctively, and he saw Winsbert running towards him with his hands outstretched with an object that appeared to be a firearm with a black handle and silver body. He drew his own firearm and fired one shot in the upper right area of Winsbert's body to stop his advance. He saw Winsbert fall. He said he told the police who asked him if he had shot Winsbert, he had not done anything wrong: '[t]he guy was the one who attacked me with a gun, so I defended myself.'

- [9] In cross-examination, the appellant denied going to Lloni's mother's house to get the keys to a Jeep that Lloni was driving. He denied going to Spinners that night in search of Lloni and further denied seeing her at Spinners. The appellant denied shooting Winsbert after he came between Lloni and him, preventing him from getting to Lloni. He maintained that he did not see Lloni at Spinners and could not have grabbed her hand. He stated that after he shot Winsbert he went outside in the direction of the police. When counsel put to him that he was shaken up because he realised that he had shot Winsbert for no reason, he responded in the negative and further stated that he was shaken up because Winsbert was the one who had attacked him. He told the police that he did not do anything wrong and that '[t]he man just attack me with a gun.' He denied that the police had to subdue him after the shooting.

The Hostile Witnesses

- [10] The way the prosecution dealt with the witnesses they called to testify in support of the prosecution's case is a large part of the background of the appeal. In the case of each recalcitrant witness, the prosecutor put the substance but not the actual contents of their police statements to them, as the judge astutely ensured. Notwithstanding they had been shown their statements before testifying, they persisted in remembering nothing. The refusal of these witnesses to testify as to what they had previously stated to the police made it proper for the trial judge to accede to the applications by the prosecution to deem each of them a hostile witness. The well-established procedure in criminal trials was for them to be cross-examined by the prosecution who had called them, which would otherwise be wholly impermissible. The witnesses were so cross-examined, but they remained steadfast in their refusal to assist the prosecution.
- [11] Despite the negative support by these prosecution witnesses of the case for the defence, which may have encouraged the defence submission of no case to answer, which the trial judge rejected, the jury convicted the appellant on the

evidence presented. The appellant does not advance the ground that the verdict of the jury was against the weight of the evidence and does not argue that it should be set aside because the evidence was insufficient to convict. Rather, the appellant advances the grounds indicated at the outset beginning with the ground that the Court of Appeal erred in finding that the judge gave adequate directions to the jury in relation to the evidence of the hostile witnesses.

Directions on the Hostile Witnesses

[12] The ground is a narrow one and is a progression from its antecedent before the Court of Appeal, which complained that the trial judge failed to direct the jury on the evidential value of hostile witnesses in relation to the facts and circumstances of the case. Before that court, the appellant complained that the judge should have more clearly directed the jury that what the hostile witnesses said was not evidence or was of no evidential value against the appellant. The thrust before this Court is that the Court of Appeal failed to appreciate that the effect of some of what the trial judge said was capable of conveying and was likely to convey to the jury that what the witnesses said was, indeed, evidence – which it is fully accepted it was not.

[13] The appellant pointed only to one instance where the judge may have wrongfully conveyed to the jury that what a hostile witness testified could be taken as evidence against the defendant and, he submitted, the direction or misdirection created the highly likely possibility of the jury using the evidence of Winsbert Alexander to bolster the evidence of Rita Demar and convict the appellant. The particular direction was where the judge told the jury: ‘So, of course, the evidence of this bad blood does not mean that Winsbert’s evidence is untrue or that Winsbert attacked the defendant.’ The appellant submits that, the judge having clearly instructed the jury that Winsbert’s evidence was of no probative value, there was no evidence for the jury to assess as true or untrue. However, the direction, the appellant submitted, could have led the jury to ask,

where is Winsbert's evidence for them to assess for truth or untruth? And the jury would thereby have been left with the impression that they could have considered and acted on their notion of what was contained in the previous statement of Winsbert Alexander to the police, to negative the appellant's assertions to the court.

[14] The starting point for considering this direction is to identify the context in which the impugned words were stated. The words were spoken when the judge, in the course of the summing up, was delivering general directions on the law that the jury would have to apply in deciding the case. Having directed them on the law regarding intention, the judge next directed the jury on the law regarding self-defence. In directing them on self-defence, the judge summarised what the appellant testified occurred; about Winsbert attacking him because of the bad blood that they had between them from events in the past. The judge then directed the jury to consider whether to believe the appellant in his evidence on the matter of self-defence and how the incident occurred. He directed them to consider whether what the appellant stated was true or not.

[15] It is the clear inference that what the judge intended to say as indicated in square brackets and italics was, '... the evidence of this bad blood does not mean that [*the Defendant's*] evidence is untrue or that Winsbert attacked the Defendant'. Regrettably, the judge confused the reference to whose evidence the jury was being asked to decide was true or untrue. That what the judge intended to say is what is inserted in square brackets and italics in the extract above, follows ineluctably from the sentence which followed in the summing up immediately after the misstated direction:²

So, simply because there's evidence of bad blood does not mean that Winsbert attacked him. It is for you to assess whether and to what extent this evidence of any bad blood may assist you in assessing the evidence

² Record of Appeal, 'Summation' 1348-1349.

and resolving the question of whether the Defendant did act or may have acted in self-defence; do you understand? Good, right.

[16] At that point in the exercise, the jury was not being asked to consider anybody's evidence but the evidence of the appellant. The direction was contextually incapable of leading the jury to consider the rest of Winsbert's evidence – which was not in anyone's mind, at that stage. The jury was being asked to consider the rest of the appellant's evidence. On the matter of self-defence, that should be enough to dispose of this ground and it serves only to vindicate further the fairness of the summing up that the following observations are now made.

[17] To recap, the jury would not have been misled by the selected statement made by the judge because, as the appellant's submission itself premises, there had been nothing said by Winsbert that could be 'evidence' for the jury to consider to be true or untrue. In the context in which the impugned statement was made, it was utterly insignificant and meaningless. The central fact is that not one of the hostile witnesses said at the trial anything that, if it were taken as evidence and true, was adverse to the appellant. Further, it was the repeated direction by the judge that what the witnesses did not accept as their evidence was not evidence in the case. That direction was to ensure that the jury was clear that the suggestions of what occurred, as put by the prosecutor to the witnesses as facts stated in their police statements, was not evidence and was not to be treated as the testimony of the witnesses.

[18] An example of this direction is the following: ³

Now, I also have to tell you re hostile witnesses that their statement to the police is not evidence, because if it were evidence then it would have been tendered in evidence for you to consider. How then, are you to deal with what was suggested to the Witness in the statements when they were cross-examined? The short answer is this; the statement is not evidence and as such its contents. That is to say, the parts that were put to them is not evidence which you can't consider in coming to your verdict. For example, when it was put to a Witness that he told the police

³ Record of Appeal, 'Summation' 1351.

something in their statement, and they said they could not recall saying that, then what matters is their answer to the question and not the question itself. Their answers were that they could not recall and that is what matters. You, of course, will decide whether they could genuinely recall events and you will decide what you believe and what facts you find in keeping with directions that I will come on to give you next, right.

The Real Case Against the Appellant

[19] A consequence of the appellant giving sworn testimony was that he could be cross-examined by the prosecution, and that is what occurred in this case. In that cross-examination, the prosecution was able to put fully and robustly to the appellant all the things that, it is presumed, the hostile witnesses had previously told the police. The prosecution was able to get that scenario before the jury. Certainly, it was not evidence. However, it was a scenario that the jury properly could consider as more likely to be along the lines of what truly happened at Spinners. Those suggestions would have tied in with the evidence from one of the hostile witnesses that the appellant had spoken briefly with Lloni before the shooting and, from the police, that no other firearm was recovered at the scene with which Winsbert could have threatened the appellant. These were both, in the context of this case, significant facts that contradicted material parts of the testimony of the appellant on self-defence.

[20] As the case was fought, with the appellant being cross-examined, in the end the prosecution did not need the jury to give any weight to the suggestions rejected by the hostile witnesses in the questions put to them as to what they had told the police. It was enough that the prosecution could ask the jury, in considering the testimony and claim of self-defence, to give weight to the suggestions the prosecution put to the appellant as being the truth of the matter. Once that claim of self-defence was rejected by the jury, the bare evidence before them was that the appellant, as he confirmed, had shot Winsbert Alexander. With self-defence rejected, this was simply an unlawful shooting.

- [21] The cases cited by the appellant on how to direct a jury on the evidence from hostile witnesses included *R v Hamilton*⁴ and *R v Maw*⁵ but these were of no assistance to the appellant's case and, when properly considered, operate against the appellant. The appellant's case is to be distinguished from the cases cited because, in the appellant's case, there was nothing that came from the witnesses that could have been relied on against the appellant by the jury and it was precisely the opposite in these cases.
- [22] In *Hamilton* the two hostile witnesses to a triple murder each accepted in court the contents of statements they had made to the police and in depositions they had given at the Preliminary Inquiry, directly identifying accused persons. At the trial they undermined the truth of those statements. The Jamaican Court of Appeal upheld the appellants' case that the trial judge had failed to direct the jury that none of the previous statements was evidence and that they could not be relied on. The court found it highly likely that the jury had used this material to support the testimony of the other witness who testified against the accused. The failure of the judge to make clear that the previous statements were not evidence was fatal to the convictions, which were set aside. In the present case, as has been indicated, there was nothing from the hostile witnesses that could have been erroneously relied on by the jury. The extract at [18] above shows the judge clearly directing the jury that the only evidence from these witnesses was that they did not remember information allegedly contained in their statements and that the suggestions put to them were no part of their evidence. To be pellucid: the contents of the previous statements were not placed before the jury but only suggestions as to what they may have said, and they were specifically directed not to treat as evidence such suggestions as to their contents.

⁴ JM 2002 CA 46 (CARILAW), (7 November 2002).

⁵ [1994] Crim LR 841.

[23] *Maw*⁶ is also unhelpful as in that case the virtual complainant was treated as a hostile witness – perhaps prematurely – after he had testified, in evidence in chief, to not seeing who had pushed him down a flight of steps. After he so testified he was deemed a hostile witness. He was cross-examined in the course of his examination in chief by the prosecution, in reliance on the previous statement he gave to the police, and he accepted that he had identified in that statement the appellant as the person who had pushed him. Then, in cross-examination by defence counsel, he accepted that what he had first said in evidence in chief was correct and that he had not seen who pushed him. In re-examination he vacillated and said he was not sure. The Court of Appeal decided that the trial judge should have withdrawn the case from the jury and, having not done so, the direction he gave to the jury was unsatisfactory because the judge propounded that the prosecution’s case could be supported by what the witness had previously told the police. As the court earlier had observed, this was not evidence on which the jury could act and it was wholly wrong that they should have been left to do so, and the conviction was quashed. Again, this was a case where at the trial the witness accepted that he had stated what was contained in the previous statement. In contrast, in the present appeal no hostile witness so accepted in evidence.

Good Character

[24] The appellant complains that the Court of Appeal erred in finding the directions to the jury on character were unimpeachable. The direction which the appellant impeaches was when the judge told the jury:⁷

...[W]hat weight should be given to his good character at the extent to which it assist you on the facts of this particular case are for you to decide. *In making that assessment, you may take account of everything you have heard about him. The fact that he is a lawyer by profession*

⁶ *ibid.*

⁷ Record of Appeal, ‘Summation’ 1371.

does not make him any more or less credible than any other witness (appellant's emphasis).

[25] The submission of the appellant is that the underlined passage significantly watered down the effectiveness of the good character direction and was unfair to him, leading to a miscarriage of justice. That pronouncement, the appellant submitted, left the jury to speculate about his character and about what they may have heard about him as a lawyer or as a person. The submission goes on that in a small society like St Lucia, where everyone knows everyone, it is not known what members of the jury may have heard about the appellant and which could have sent them down on a journey of speculation. The Court of Appeal, therefore erred on this issue, it was submitted. The appellant contended that the formulation was too wide and opened the floodgates to irrelevant, inadmissible and prejudicial matters to be considered by the jury. The more correct formulation, counsel offered, should no doubt have been 'You may take into account matters concerning him from the evidence you heard at the trial.' However, this is not what the judge directed, and counsel argued that it sounded like giving an open licence to jurors to take account of everything they heard of the appellant.

[26] The appellant cited the case of *R v Moustakim*⁸ where the Court of Appeal allowed an appeal on the sole ground that the trial judge's direction on the accused's good character was insufficiently emphatic. In that case, the formulation of the good character direction was considered deficient because of the language used by the trial judge, and it was said 'However, the central issue in the case turned on the credibility of the Appellant and it was precisely to this that the direction as to good character was directed.'⁹ In the case at bar, the appellant submitted, the credibility of the appellant was the crucial issue and the prosecution's case against the appellant was not particularly strong. Each

⁸ [2008] EWCA Crim 3096.

⁹ *ibid* at [16].

case turns on its particular facts, circumstances and the issues arising at the trial and the direction should be viewed in that context, the appellant said.

- [27] The submissions for the appellant on this ground opened with the proposition that the appellant was a man of ‘absolute good character’ and a quote from *R v Hunter*¹⁰ in which the meaning of the term was stated as referring to a defendant who has no previous conviction, or caution recorded against them, and no other reprehensible conduct alleged, admitted or proved. This category of defendant, it was stated, is entitled to both limbs of a good character direction. Broadly stated, those limbs are that a person of good character may be considered less likely to offend and is a person who may be more likely to tell the truth.
- [28] It was acknowledged in the submissions that the judge gave a full direction on good character. The complaint is that he diluted it, by stating as he did in the italicised words in the passage quoted at [24]. The contention that the judge may have been taken by the jury as inviting them to consider gossip and street talk is really a complaint that the judge did not add to the impugned statement the words now added and underlined in the phrase ‘... you may take account of everything you have heard [in the courtroom] about him.’ That complaint does not withstand scrutiny for the reason that the impugned words were part of the following statement:¹¹

Now, you would have heard that the Defendant is a man in his middle years with no previous conviction. Good character is not a defence to the charge but it is relevant to your consideration of the case in two ways. Firstly, he's given evidence, his good character therefore is a positive feature for him which you should take into account in considering whether you accept what he told you. Secondly, the fact that the Defendant has not offended in the past, makes it less likely that he acted as is now alleged against him. It has been submitted on behalf of the Defendant that for the first time in his life he has been accused of a crime. He is not the sort of man who is likely to cast aside his good character in this way. That is a matter to which you should pay particular

¹⁰ [2015] 1 WLR 5367.

¹¹ Record of Appeal, ‘Summation’ 1370-1371.

attention. However, what weight should be given to his good character and the extent to which it assist *you on the facts of this particular case* are for you to decide. In making that assessment, you may take account of everything you have heard about him. The fact that he is a lawyer by profession does not make him any more or less credible than any other witness (emphasis added).

- [29] It was the case, therefore, that the sentence in which the impugned words were stated was immediately preceded by a sentence directing the jury to the facts of this particular case. In addition, as the respondent submitted, there can be no ignoring the early limitations the judge gave the jury on what they could consider in doing their duty as a jury. When they were impanelled, the judge expressly told them that they must confine their consideration to what took place in court.¹²

You are the ones who are responsible for returning the verdict. *You do so by listening to the evidence given in the courtroom and nothing else.* Do not go online and conduct any research. Do not read any news articles about the case or listen to any news coverage of the case. Do not discuss the case with your friends or partners. That may be particularly important in this case since, of course, the Defendant, Mr. Wilson may well be known to some of you as a lawyer in the Saint Lucian community for a number of years. You are the ones who are to decide the facts so you keep an open mind and you do not rush to judgment until you have heard all of the evidence (emphasis added).

- [30] It was a matter to which the judge returned in the summing up when he said:¹³

Now, I don't know if the case attracted any media attention back in twenty-twelve, but I remind you that you will not be acting true to your oaths or affirmations if you did consider any of the media attention or anything that you may have heard in the past in relation to this matter.

- [31] In the context of such clear guidance, which would have been well understood and considering the tenor of the directions that were being given from which the targeted phrase was taken, there is no merit in the ground of appeal. The fact

¹² ibid 1022-1023.

¹³ ibid 1374-1375.

that the direction could have been made proof against the present cavil by deploying the draftsman's precision earlier suggested does not make the absence of that precision any indication that the direction as given would have had any adverse effect upon the appellant.

Self-Defence

[32] The judgment of the Court of Appeal¹⁴ records that the appellant lodged in that court a ground of appeal that the judge failed to direct the jury that an intention to cause dangerous harm is not inconsistent with self-defence but that the appellant did not pursue that ground, upon having further reviewed the judge's direction on intention and self-defence. That course may indicate a lack of conviction in the present complaint about self-defence. The complaint is that there was a failure by the trial judge to give specific instructions in the circumstances of this case. The omitted instruction that should have been given, it was said, was that Rita Demar was not asked what Winsbert was doing when he got shot or whether Winsbert had anything in his hands when he got shot. That was a critical moment, the appellant submits, as the appellant's defence was that he spontaneously reacted to Winsbert's actions. The submission peaks with the contention that the judge was then under a duty to instruct the jury that having regard to Rita Demar's evidence, they must consider whether that evidence was sufficient to negative the appellant's claim of self-defence. And that the judge should have thereby invited them to find whether the appellant's act was lawful or unlawful. The learned trial judge failed in his duty to give those detailed and comprehensive instructions to the jury, the appellant concludes, and in that regard failed to put the appellant's defence fairly to the jury.

[33] With respect, the submission is strained. There is simply nothing that made it necessary that the judge should have given the direction to the jury to consider

¹⁴ *Wilson v R* (LC CA, 25 July 2023) at [12].

whether Winsbert had a gun with which he attacked the appellant in the context of Rita Demar's evidence. It is a fallacy that because Rita Demar did not give evidence about Winsbert having a gun this meant there was no evidence about a gun. There was cogent evidence on the matter, as prosecuting counsel submitted to the jury in her closing address, in the inescapable inference to be drawn from the fact that no firearm that belonged to Winsbert was recovered. That was sufficient evidence to negative the claim of self-defence. It made no difference that it was not negated instead by evidence coming from Rita Demar. This ground cannot succeed.

No Case Submission

[34] The appellant's remaining ground of appeal was that his submission of no case to answer was erroneously rejected by the trial judge because at the end of the prosecution's case there was no evidence that it was an unlawful shooting and the Court of Appeal erred in not so concluding. The submission is leavened by references to the standard authorities on when such a submission should be upheld, including *R v Galbraith*¹⁵, the discussion in *Blackstone's Criminal Practice 2017*¹⁶ and the observations of Simmonds CJ in *Springer v R*¹⁷.

[35] It may have emerged, by now, as a suggestion from the treatment of the other grounds that there was sufficient evidence for a conviction that justified the trial judge's ruling, rejecting the submission of no case to answer. That emergent suggestion is now strengthened by reference to the acknowledgement in the appellant's present submissions that Rita Demar testified that when Winsbert was standing next to her before the shooting he did nothing. And that Lloni Alexander testified that she did not see Winsbert with anything in his hand. The argument that these witnesses did not testify to the precise moment of the shooting was a matter for the jury to consider, in assessing the weight of the

¹⁵ [1981] 2 All ER 1060.

¹⁶ David Ormerod and David Perry (eds), *Blackstone's Criminal Practice 2017* (Oxford University Press 2017) para D 16.55.

¹⁷ BB 2006 CA 17 (CARILAW), (12 June 2006).

evidence as to whether Winsbert had a gun. So, too, was the evidence of the police officers who recovered no firearm at the scene with which Winsbert might have attacked the appellant. The state of the evidence at the close of the case for the prosecution was exactly as described in *Galbraith*, where Lord Lane said:¹⁸

...[w]here however the Crown's evidence is such that its strength or weakness depends on the view to be taken of the witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury can properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.

[36] The appellant has advanced nothing to show that it was erroneous for the Court of Appeal to have held that the stated evidence, coupled with the uncontroversial fact that the appellant shot Winsbert, was sufficient to establish a case of an unlawful shooting to leave for the jury to consider. This ground of appeal must fail.

Disposition

[37] In summary, none of the grounds of appeal succeeds and the appeal is dismissed.

¹⁸ *Galbraith* (n 15) at 1062.

/s/ A Saunders

Mr Justice Saunders (President)

/s/ M Rajnauth-Lee

Mme Justice Rajnauth-Lee

/s/ D Barrow

Mr Justice Barrow

/s/ A Burgess

Mr Justice Burgess

/s/ P Jamadar

Mr Justice Jamadar