[2017] CCJ 7 (AJ)

IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

CCJ Appeal No. BBCR2016/002
BB Criminal Appeal No. 17 of 2011

BETWEEN

TROY STANFORD **APPELLANT**

AND

THE QUEEN **RESPONDENT**

Before the Honourables **Mr Justice Saunders**
Mr Justice Wit
Mr Justice Hayton
Mr Justice Anderson
Mme Justice Rajnauth-Lee

Appearances
Mr Larry A.C. Smith and Ms Safiya A. Moore for the Appellant
Mr Alliston Seale and Mr Oliver Thomas for the Respondent

JUDGMENT
of
The Honourable Justices Saunders, Wit, Hayton, Anderson and Rajnauth-Lee
Delivered by
The Honourable Mme Justice Rajnauth-Lee
on the
6th day of April, 2017

Introduction

[1] This appeal raises the important issue of whether in the circumstances of this case the trial judge fell into error in not leaving the issue of self-defence to the jury. Troy Stanford ('Stanford') was charged with the murder of Matthew Joseph ('Joseph') in September 2008. Joseph had suffered a fatal gunshot wound following an altercation in the early hours of 15 June 2008. On that date, Stanford was the conductor of motor vehicle registration number ZR 259 driven by Philip Small also known as 'Agony'. Joseph was the conductor of motor vehicle registration number ZR 289 which was driven by Corey Lovell ('Lovell") the key witness for the prosecution. These vehicles were parked in the vicinity of Bush Hall, St. Michael, and were collecting passengers, when the altercation occurred.

[2] Stanford pleaded not guilty to murder when his trial began on 12 June 2011. The jury returned a verdict of guilty of manslaughter and he was sentenced to 18 years, 29 days' imprisonment by Kentish J in August 2012. Stanford appealed to the Court of Appeal against conviction and sentence. The Court of Appeal dismissed the appeal. On the issue of self-defence, the Court of Appeal was of the view that "there was no evidence before the court which would have grounded the defence of self-defence" and that the trial judge was correct not to have directed the jury on self-defence. Stanford appealed to this Court contending that the trial judge had an obligation to direct the jury on any defence which arose on the evidence and that on the facts of this case, the trial judge ought to have directed the jury on self-defence. We are not persuaded that the trial judge so erred. We therefore dismiss the appeal and affirm the decision of the Court of Appeal.

The Trial

The Prosecution Case

[3] At the trial, the prosecution's case was largely based on the eyewitness evidence of Lovell, the driver of ZR 289. Immediately before the altercation, ZR 259 was parked in front of ZR 289 at the junction of Lenister Road, Bush Hall, St. Michael. During his examination-in-

chief, Lovell recounted that shortly after midnight, Joseph left ZR 289 and went to ZR 259 where a scuffle ensued with Stanford. He went on to state[1]:

> "…Matthew Joseph get out of ZR-289 and went over to the conductor of ZR259…Right…And by looking on I saw two of them was like talking. I take my eyes off uh them while two of them was talking. I hear a scuffling and when I look round…I saw two of them started fighting. And the driver of ZR-259 run around with a gun in his hand. And Troy say gimme that and Troy turn and shot Matthew Joseph. Matthew Joseph then run off and Troy run off behind him and shot at him again…"

[4] Under cross examination, Lovell said that there were three people scuffling. His conductor, Joseph, went up to ZR 259 and he saw him talking to Stanford. He took his eyes off them and heard a commotion like people scuffling on the van. According to him, when he heard the scuffling, he looked around and, at the same time, the driver of ZR 259 ran around with a gun in his hand and the scuffling start. Stanford then said "Give me that" and shot Joseph. Lovell also testified that Stanford got the gun from his driver. His evidence was that "the driver of ZR 259 give him the gun and he looked at Matthew [Joseph] and fired back". He then saw Stanford running behind Joseph with the gun.[2]

[5] Under further cross examination, Lovell maintained that the shooting was the result of one scuffle between Agony, Stanford and Joseph [3]:

> "The Court: So he is asking you to describe the first set of scuffling and then the second set of scuffling.
> Lovell: Ma'am, there was only one set of scuffling.
> Mr: Kissoon: Now, the one scuffling you said you heard, and all the time you were saying there were three people scuffling. At all times, there were three people scuffling?
> Lovell: Ma'am, the fight had in three people."

The Defence Case

[6] The Defence advanced a different case. The prosecution and the defence accepted that Joseph was the initial aggressor, having left his vehicle to accost Stanford at ZR 259, but Stanford's evidence differed materially from Lovell's.

[1] Transcript of the High Court, Record of Appeal pg 933 line 17 to pg 934 line 18.
[2] Transcript of the High Court, Record of Appeal pg 963 line 14 to pg 964 line 24.
[3] Transcript of the High Court, Record of Appeal pg 973 line 13 to line 21.

[7] In his written statement made following his arrest on 1 September, 2008, Stanford stated[4]:

> "He then come to me and asked me if I want to do something 'bout it and I tell he I ain't 'bout nutten so just give the people a little peace to get in my van. The man just chuck me in my van cause I did by the van door. From there he did cuffing me in my head and I did trying to block he from cuffing me in my head and I ain't even get a lash 'pon he….
>
> I then see he and Agony did down between the two vans scuffling and "Agony" had something in he left hand, and them did was struggling to get it. I then went forward and I see it did a gun that them did struggling for so I snatched it for them and as I get it in my hand a shot went off and I see the conductor stumble back. Agony then take the gun out of my hand and I run and get in the front seat of my van and I hear another shot...
>
> I ain't went to shoot he, it happened by mistake when I snatched the gun from the two of them."

[8] In an unsworn statement made from the dock on 20 June, 2011, Stanford similarly stated[5]:

> "…I told him…I ain't 'bout nutten so. Just to move out the doorway and give the people lil' peace to get on the van. He then…stepped towards me and chucked me in my chest saying, "Move me nuh." While I was off balanced leaning back in the van, I grabbed hold of the side of the van and push up off of the floor of the van trying to right myself…While I was straightening he then stepped to me and leh go some punches at my head. Because of the position I was in, I wasn't able to defend myself. All I could do was try to block the punches by raising my hand in front my face. I then grabble hold of him. While we were by the doorway struggling, the people in the van start to get agitated and start to shout and push and come out the van…
>
> …I ended up with my back braced against the wall kind of, like in a laying down position and he was still he was on top of me because we were still clinched together. I feel somebody pulling him away from me. He was then pulled out of my hands. He was then pulled out of the hold that I had on him. When I pushed myself up off the wall I saw that it was my driver…I saw that it was my driver who had him hold around the waist pulling him off, telling him to cool heself. I then see the conductor make a grab at his waist where my driver hand was holding him…Where my driver hand was holding him I saw an object, a silver object in between their hands. They were struggling for it. I then realized that the object was a gun and I made a snatch for it, trying to tug it away from them. While we were struggling for the gun it discharged…

[4] Transcript of the High Court, Record of Appeal pg 1081 lines 18 -24, pg 1082 lines 3 – 10, pg 1082 lines 12 – 14.
[5] Transcript of the High Court, Record of Appeal pg 1125 lines 7 – 8, 19 – 25, pg 1126 lines 7 -14, 16 – 19 21 – 25, pg 1127 lines 3 – 14.

> …Yeah, when it discharged. My hand was stung, my hand get sting and I released my hold and jumped back. After the gun went off, people started screaming and running all over the place. I also run towards my van. I never saw where the conductor went or where my driver went because there were people running all over the place. When I opened the front door of my van and was getting in, I heard another explosion. I then got frighten and got back out the van and was about to run 'cross the road when ZR-289 drove away from in front our van, turned left and went down Bush Hall Main Road. I then ran across the road and then went across Stadium Road and went home.
>
> …I did not know the deceased, Matthew Joseph. I may have saw him before but we have never spoken nor had we ever interacted together. I never approached Matthew on that night. At no point in time did I ever trouble or provoke Matthew into attacking me that night. I don't know the reason for him being offset as he claimed or the reason for his aggressive behaviour that night. All I know is that I was by my van working when Matthew leave his van and came to the doorway of my van and started a quarrel which resulted in him attacking me. At no point in time on that night did I have a gun in my possession. At no point in time did I I shoot anyone. The gun discharged accidentally while my driver, Matthew and I was struggling for it, and I can say that I am lucky because it could have easily have been myself, my driver or some innocent bystander that was shot when the gun went off accidentally, and that it the truth."

[9] Throughout the trial, Stanford consistently maintained that he shot Joseph by accident. This contention was equally emphasised by Mr. Kissoon, his Counsel, in his closing statements to the jury.

Trial Judge's Summation

[10] In her summation Kentish J directed the jury on the defences of provocation and accident as well as how they should treat any discrepancies and inconsistencies which arose on the evidence. In directing the jury on provocation and accident, the trial judge reminded the jury of the evidence advanced by the prosecution and the defence, inviting them to draw the appropriate inferences in relation to the issues of fact that arose.

[11] At the conclusion of her summation, Kentish J enquired of Counsel whether there were any issues which she had failed to address in her summation. The conversation with Counsel was as follows:[6]

[6] Transcript of the High Court, Record of Appeal pg 1281 line 22 - pg 1282 line 25.

> "THE COURT: Do you consider that I have omitted something that I ought to have addressed the jury on, or included something I ought not to have addressed the jury on?
>
> MR: KISSOON: Not directly, but I think, for having gone to the provocation, I thought you would have probably put in self-defence also, but that's only an opinion and any defence available to the accused should be addressed…
>
> MR. LEACOCK, Q.C.: No, My Lady, the defence of self-defence and accident are mutually exclusive defences. When you have accidents, you are saying it happened fortuitous: I didn't do anything that would result. When you are pleading self-defence you are saying: I deliberately took action but I was doing this in defence of myself. If you do that you would only confuse the issue. And in my respectful submission there is no room on this case for that, having his defence being largely accident to put self-defence when you are pleading two things completely different is most anomalous in the circumstances.
>
> THE COURT: Thank you, Mr. Director. So, yes, Mr. Kissoon, I am not going to put a direction of self-defence."

Appeal to the Court of Appeal

[12] On appeal, Stanford argued that his sentence was excessive and his conviction unsafe on several grounds. This Court need concern itself with only two of those grounds:

i. The trial judge erred by failing to give a balanced summation of the defence's case compared to the prosecution's case; and

ii. The trial judge erred in law by withholding the defence of self-defence from the jury despite counsel bringing it to the judge's attention.

[13] The appeal was heard by Gibson CJ, Burgess JA and Goodridge JA. In a judgment delivered by Goodridge JA, the Court of Appeal held *inter alia* that the trial judge's summation was balanced and that the verdict was safe and satisfactory[7].

[14] The Court of Appeal considered whether the trial judge erred in withholding the defence of self-defence from the jury although it was brought to her attention. Mr. Khan, Counsel for Stanford, had contended before the Court of Appeal that the judge was under a duty to identify and refer to any possible or alternate defences which arose on the evidence even in

[7] Court of Appeal Judgment, Record of Appeal pg 905 at [40].

circumstances where defence counsel had not relied on that defence. There was therefore a material failure on the part of the judge when she omitted to put the issue of self-defence to the jury. On the other hand, Mr. Seale appearing for the Crown, had submitted that if the judge had raised the issue of self-defence it might have undermined the defence of accident. He contended that on the facts of this case accident and self-defence were mutually exclusive and the judge was therefore correct not to leave self-defence to the jury.

[15] Goodridge JA observed that the case for Stanford was that the shooting was an accident and never self-defence. The Court of Appeal was therefore of the view that the judge was right not to have directed the jury on self-defence. "To do so would have undermined the appellant's case", Goodridge JA noted.

Appeal to the CCJ

[16] Special leave was sought and granted by this Court to appeal the decision of the Court of Appeal. Two issues were raised by the grounds of appeal:

i. Whether the Court of Appeal erred when it failed to determine that the summation of the trial judge was imbalanced; and

ii. Whether the Court of Appeal erred when it failed to determine that the verdict of the jury was unsafe in the circumstances where the trial judge failed to direct the jury on the alternative defence of self-defence, which, though it arose on the evidence, was not directly relied on by Stanford and could be deemed inconsistent with the defence of accident.

[17] At the hearing of the appeal, Mr. Smith appearing for Stanford conceded that the first ground of appeal was a subset of the second and made no further submissions on the first ground. The only question before the Court therefore is whether the trial judge should have given a direction on self-defence.

[18] Both Mr. Smith and Mr. Seale have submitted that it would be helpful to the administration of justice in Barbados, if this Court were to give some guidance or establish guidelines about the degree of evidence necessary to activate a trial judge's direction at summation, in

circumstances where a defence appears on the evidence to be open to the accused, albeit that defence may be considered inconsistent with the defences relied on by the accused. We propose to address this later in this judgment.

Should the trial judge have given a direction on self-defence?

Alternative defences – the duty of the trial judge

[19] It is always the obligation of the trial judge to consider whether the evidence advanced at the trial raises any possible defence to the charge even where the accused has not specifically raised that defence. Once there is such evidence, the trial judge is under a duty to direct the jury on that defence. [8] This principle was demonstrated by the approach of the English Court of Appeal in the case of *R v Kachikwu*.[9] In that case, several police officers had attempted to arrest the accused at his home. The accused was charged with assault occasioning actual bodily harm and argued that he had not caused the mouth injury to the victim, one of the police officers. "He could have done that to himself when he dragged me out," the accused said. The trial judge did not give a direction on self-defence. The conviction was quashed by the Court of Appeal. Winn LJ made the following well-known statement[10]:

> "It is asking much of judges and other tribunals of trial of criminal charges to require that they should always have in mind possible answers, possible excuses in law which have not been relied upon by defending counsel or even, as happened in some cases, have been expressly disclaimed by defending counsel. Nevertheless, it is perfectly clear that this Court has always regarded it as the duty of the judge of the trial to ensure that he himself looks for and sees any possible answers and refers to them in summing up to the jury and takes care to ensure that the jury's verdict rests upon their having in fact excluded any of those excusatory circumstances."

[20] A similar approach was adopted by the Privy Council in the appeal from the Jamaican Court of Appeal of *Von Starck v R.*[11] In that case, a murder accused in his statement made under caution had attributed his actions to cocaine use but he failed to mention it in an

[8] See: Sean Doran, Alternative Defences: the "invisible burden" on the trial judge [1991] Crim L.R. 878 at pgs 880-881; See also Taylor on Appeals 2nd edition (2012) at para. 9.255.
[9] (1968) 52 Cr App Rep 538.
[10] Ibid at [543].
[11] [2000] W.L.R. 1270.

unsworn statement given from the dock. The judge did not direct the jury on the issue whether the accused was guilty of manslaughter not murder because he had been so far under the influence of cocaine that he lacked the requisite intent for murder. The Privy Council considered whether the trial judge had erred in failing to direct the jury on the possibility of a manslaughter conviction. The appeal was allowed, Lord Clyde noting that the trial judge had a duty "*to place before the jury all the possible conclusions which may be open to them on the evidence presented during the trial whether or not they have all been canvassed by either of the parties in their submissions.*"[12]

[21] This duty exists even when a defence is inconsistent with that relied on by the accused. This principle was demonstrated in the case of *R v Bonnick.*[13] In that case, the accused was charged with wounding with intent. The accused's defence was an alibi, although his counsel submitted during the trial that self-defence was also an issue. In summing up the judge told the jury that he refused to let the issue of self-defence go to them because the accused's defence was an alibi. On appeal, Stephenson LJ delivering the judgment of the English Court of Appeal, observed that "there may be evidence of self-defence even though a defendant asserts that he was not present and in so far as the judge told the jury the contrary, he was in error." In such a case, however, it would require "fairly cogent evidence, when the best available witness disables himself by his alibi from supporting it." The court therefore concluded that "the judge was right to exclude the issue on the ground that it was not raised by the evidence of the prosecution witnesses."[14]

Self-Defence – the evidence required.

[22] The common law has always recognised the right of a person to protect himself or another person from imminent attack and if necessary to inflict violence to repel that attack. No crime is committed where the person uses no more force than is reasonable in the situation. Accordingly, if the person honestly believed that the circumstances, if true, would justify his use of force to defend himself or that other person and that it was reasonable to resist the attack, he was entitled to be acquitted of murder.[15]

[12] Ibid at [1275].
[13] (1977) 66 Cr App Rep 266.
[14] Ibid at [269].
[15] For the general law of self-defence see Beckford v R [1988] 1 A.C. 130 and Palmer v R [1971] A.C. 814.

[23] In *Bonnick*, the English Court of Appeal suggested a useful threshold as to the evidence required for a trial judge to direct a jury on an issue, for example, self-defence. In the court's view, the question was one for "the trial judge to answer by applying common sense to the evidence in the particular case." Self-defence should be left to the jury when there was "evidence sufficiently strong to raise a prima facie case of self-defence" if it was accepted. They observed that to invite the jury to consider self-defence upon evidence which did not "reach this standard would be to invite speculation."[16]

[24] A similar approach was adopted by the Privy Council in ***DPP v Bailey***[17], an appeal from the Court of Appeal of Jamaica. In that case, the accused was a special constable who had been threatened by the deceased's brother the day before the altercation. When he encountered the brothers the following day, he was attacked and the brothers attempted to take his gun from him. He contended that the shot went off accidentally. The trial judge summed up on accident and provocation, but informed the jury that self-defence did not arise. At the end of the summing up, counsel for the prosecution told the judge that she had heard nothing about self-defence, the judge repeated that self-defence did not arise. The jury found the accused not guilty of murder, but guilty of manslaughter. The Court of Appeal of Jamaica quashed his conviction, taking the view that it was "too clear for words that self-defence arose on the unsworn statement [of the accused]." The DPP appealed.

[25] The Privy Council warned against leaving "perfectly hopeless defences which have no factual basis of support"[18] to the jury. Where however the accused's account of what happened raised a prima facie case of self-defence, the jury should be directed on self-defence. Even if the evidence from which self-defence could be deduced was not strong, on the facts of this case where there had been an earlier threat, the Court of Appeal was entitled to conclude that self-defence ought to have been explained to and left to the jury.

[26] The Privy Council observed:

> "Where, as here, there was a struggle between these men, two of them wanting to get the gun held by the other, then it was possible that the killing was murder, or that it was provoked, and so it was manslaughter, or it was an accident or that it

[16] Ibid (n14).
[17] (1993) 44 WIR 327.
[18] Ibid at [331].

> happened deliberately in self-defence. Self-defence in this context could well include stopping antagonistic men from trying to get a gun which they might have used to injure the accused."[19]

[27] Similar principles were applied by the Court of Appeal of Barbados in *Scantlebury v R*.[20] In that case, the accused and his friends had attempted to rob the deceased and his brother, which resulted in a scuffle. The accused had a gun and during the scuffle, he was fearful that the deceased and his brother were trying to take it from him. Delivering the judgment of the court, Sir David Simmons CJ noted Scantlebury's evidence that there was a scuffle and that he thought that the men (presumably the deceased and some of his family) were trying to get the gun from him. The court bore in mind that on the night of the incident, the accused had refused legal representation stating that he was acting in self-defence. In his written statement to the police, the accused said that while the scuffle was ongoing, he told himself that they were not getting the gun. Simmons CJ also stated that a "person facing a capital charge must expect to have every reasonable defence raised on the evidence left for the jury's consideration."[21] In those circumstances, the court was of the view that there was evidence of self-defence which called for appropriate directions on the issue.

[28] We agree with the principles set out in the cases referred to above. The duty on the trial judge to give a direction on self-defence can only arise where there is sufficient evidence to raise a prime facie case of self-defence. In our opinion, in this case, there was no evidential basis to warrant a direction on self-defence. On the prosecution's case, the evidence of the eyewitness, Lovell, revealed that there was a scuffle and during that scuffle Stanford asked Agony, his driver, who had the gun to give it to him. Stanford then shot Joseph and ran after him shooting at him a second time. There is nothing in Lovell's evidence to suggest that self-defence could arise, on the contrary.

[29] There is also nothing in Stanford's evidence, when considered alone, which genuinely raises the issue of self-defence. His evidence supports the occurrence of two scuffles. The first scuffle involving himself and Joseph was separated by Agony. This led to the start of the second scuffle involving Agony and Joseph. It was during this second scuffle that Stanford

[19] Ibid.
[20] (2005) 68 WIR 88.
[21] Ibid at [100].

stated that he saw Agony and Joseph struggling for a silver object. Realising this was a gun, he snatched it from them at which point the gun accidentally discharged. There was therefore on his own evidence, even if it was to be disbelieved that the gun discharged "accidentally", no proper basis on which any inference could be drawn that Stanford had pulled the trigger on the honest belief that he and/or Agony were under imminent attack and that he acted reasonably in resisting that attack. In our view, therefore, no prima facie case of self-defence has been raised on Stanford's evidence.

[30] We have also observed that in *Bailey* and *Scantlebury*, the accused gave evidence that they feared that their weapons might be taken from them. We have considered *R v Phillips*[22] (judgment of the English Court of Appeal) which was cited by Mr Smith. This case was, however, of little assistance to Stanford. In *Phillips*, the accused had contended that it was the victim who had produced the knife and threatened him. There was a struggle and the victim had sustained her injuries. In that case, the court was of the view that it would have been necessary to consider self-defence and for it to be left to the jury. That was a wholly different case.

[31] Although we commend Goodridge JA for her careful analysis of the evidence, her observation that a direction on self-defence would have undermined Stanford's case, cannot be allowed to pass without comment. We note further that, at the conclusion of the trial judge's summation, Mr Leacock appearing for the Crown urged the judge not to give a direction on self-defence because, he submitted, the defences of self-defence and accident were 'mutually exclusive'. Mr. Leacock contended that leaving both defences to the jury would be 'anomalous' in the circumstances. The trial judge provided no rationale for her decision, but merely ruled that she was not going to give a direction on self-defence.

[32] The Court of Appeal did not comment on either the submissions of Mr. Leacock or the silence of the trial judge. Before us, however, Mr. Seale appearing for the Crown made it clear that he did not share Mr. Leacock's views. He accepted that there might be cases where the defences of alibi and self-defence or accident and self-defence could run concurrently. He acknowledged the 'invisible burden' of the trial judge and noted that the only

[22] [1999] All ER (D) 1372.

consideration in discharging that burden was whether there was evidence to support the direction.

[33] We do not agree with Goodridge JA that the trial judge's direction on self-defence would have undermined Stanford's case. The sole consideration was whether there was evidence sufficient to raise a prima facie case of self-defence. Once that threshold was met, it was for the trial judge to give the jury the appropriate direction on self-defence. Once there was sufficient evidence, there could have been no question of Stanford's case being undermined. Self-defence, unless disproved by the prosecution, would have entitled him to a "clean acquittal".[23] For the reasons discussed in this judgment, we also do not agree with the general proposition that self-defence and accident were mutually exclusive and that it would be anomalous to give a direction on both.

[34] We are therefore of the view that on the evidence led at the trial, the trial judge was correct not to have left the issue of self-defence to the jury. The Court of Appeal was correct to reject Stanford's appeal on this issue. Accordingly, Stanford fails on both grounds of appeal before us.

The Guidance and Guidelines requested.

[35] Counsel have asked this Court to give guidance or establish guidelines which would serve to assist trial judges in dealing with the question: when is the evidence at the trial sufficient to establish an alternative defence? We have already set out in this judgment what we consider to be the principles applicable to the duty of the trial judge to give a direction on an alternative defence, even if it could be said that the defence was inconsistent with the defences relied on by the accused. We do not think it correct or desirable to go further and to establish guidelines in such cases. We wish to do no more than repeat that the question is best answered by the trial judge, who has heard the evidence and seen the witnesses, applying common sense to the evidence in each case and determining whether there is evidence sufficiently strong to raise a prima facie case of self-defence if it is accepted[24]. We note also that this was the approach which was adopted by the Court of Appeal of Barbados in the

[23] DPP v Walker (1974) 21 WIR 406 at [409].

[24] Ibid (n14).

unreported case of *Jones v R* (2003) cited by Simmons CJ in *Scantlebury*. In *Jones*, the Court of Appeal of Barbados had "explained that the question as to the sufficiency of evidence to raise an issue of self-defence was one for the trial judge to answer by applying common sense to the evidence of the particular case."[25]

[36] In closing we wish to make the following observation. Where self-defence is in issue, the state of mind of the accused is important. The accused is in those circumstances always best placed to assist the jury as to whether he was acting in self-defence. We recognise however that the accused has no obligation to provide that assistance and his failure to do so cannot be held against him. But if, as in this case, the accused gives no evidence whatsoever of self-defence (electing to give evidence entirely and thus rely completely on the defence of accident) and if there is no material in *his* statements from which it can reasonably be inferred that he was or may have been acting in defence of himself or someone else, then the judge must examine the remainder of the evidence to see whether the issue of self-defence reasonably arises.

[37] **Disposition**

The appeal is therefore dismissed and the decision of the Court of Appeal is affirmed.

/s/ A. Saunders
The Hon Mr Justice A Saunders

/s/ J. Wit
The Hon Mr Justice J Wit

/s/ D. Hayton
The Hon Mr Justice D Hayton

/s/ W. Anderson
The Hon Mr Justice W Anderson

/s/ M. Rajnauth-Lee
The Hon Mme Justice M Rajnauth-Lee

[25] See: Ibid (n20) at [99]; see also Jason Jones v. R. (Criminal Appeal No.3 of 2002, unreported decision of 7 March 2003).