IN THE COURT OF APPEAL

GRENADA

Criminal Appeal No. 1 of 1970

Between: DERICKSON RICHARDS Appellant

and

THE QUEEN Respondent

Before: The Honourable the Acting Chief Justice
The Honourable Mr. Justice P. Cecil Lewis
The Honourable Mr. Justice St. Bernard (Ag.)

M.J. St.B. Sylvester for Appellant
D. Lambert, Ag. D.P.P. for Respondent

1970, September 10 & 28

The judgment of the Court was delivered by - ST. BERNARD, J.A. (Ag.).

The appellant was charged on an indictment containing three counts, namely, intentionally and unlawfully causing grievous harm to Gregory Thomas, contrary to section 211 of the Criminal Code, Cap. 76, of the Revised Laws of Grenada; intentionally and unlawfully causing a wound to Gregory Thomas contrary to section 210 of the Criminal Code, Cap. 76 of the Revised Laws of Grenada, and unlawfully assaulting Gregory Thomas with a dangerous instrument, to wit, a knife, with intent unlawfully to would or to cause grievous harm to the said Gregory Thomas, contrary to section 180 (c), Cap. 76 of the Revised Laws of Grenada.

The appellant was convicted on the three counts of this indictment on the 5th June, 1970, and was sentenced to 12 months, 9 months and 6 months imprisonment respectively.

The case for the prosecution was that the appellant had lived for 8 years at the home of Gregory Thomas who had cause to ask him to leave his home about one and a half months prior to November, 1969. On the 30th of November, 1969, Gregory Thomas left Grand Anse about 6.30 p.m. and was returning to his home at Belmont. He met Whitfield Cox about 10 rods from his home and stood speaking with him. The appellant came up and gave Gregory Thomas two kicks. Thomas started to run but

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stumbled and fell. As he fell appellant who had a knife about 18 inches long cut him twice on his back causing wounds 2 inches and 7 inches in length respectively. He was taken to hospital the same evening.

The appellant, who testified on oath, and his witness Carlton Regis gave a different version of the incident. The appellant stated that he went to a christening at Belmont. While the reception was going on Whitfield Cox took a bottle with rum which appellant's father placed on a table. He gave the rum to one Rita to put aside for him and then an argument arose over it. Appellant said "my father left the rum for the people to drink. He did not give you any rum". Cox used indecent words and in so doing his saliva flew in the face of the appellant who pushed him. Cox left saying he was going to get his 'bro' Gregory Thomas. The appellant and Regis then left and on their way they stood up talking for a while. He heard a loud talking from behind. Then Gregory Thomas came up and abused him and said he was coming. Thomas went home and asked for a file and cutlass. His wife inquired what he was doing with the cutlass at that time of the night. He replied, "you don't hear Punto push Whitfield.....and he say it's not Whitfield he want it's me?" Gregory Thomas then came to the road with a cutlass, used indecent language, chucked him and planassed him with the cutlass. He had nothing in his hand. When Thomas attempted to hit him the second blow with the cutlass he held on to him and they started wrestling and during the wrestling he heard Thomas say he got cut: The appellant denied he had a knife at the time.

Carlton Regis substantially supported this story of the appellant.

There are four grounds of appeal as follows:-

(a) The third count contained in the indictment discloses no offence known to the law;

(b) The learned judge failed to properly direct the jury on the issue of self defence and accident;

(c) The witness Greta Baptiste was not called on my behalf; and

(d) The sentence imposed by the learned judge is excessive in the circumstances.

Before this Court counsel for the appellant asked leave to abandon ground 3, and leave was granted.

/In respect of

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In respect of ground one, counsel submitted that section 180 (e) of the Criminal Code under which the appellant was charged in the third count makes no reference whatsoever to intent as an essential ingredient of the offence charged, and therefore was bad in law. He further submitted that the count was also bad for duplicity. The Director of Public Prosecutions conceded that the count was bad in that there was no such offence known to the law. The conviction under this count, therefore, cannot stand.

Before dealing with ground two of this appeal, the Court would like to state that the second and third counts of the indictment are alternative counts and whenever there is a conviction on the first count in such circumstances the jury should be discharged from giving any verdict on the remaining counts; the reason being that if the jury are asked to return a verdict of "not guilty" on those counts, the Court of Appeal will be unable to alter the verdicts to a conviction on the other counts. It should also be pointed out that the first count of this indictment is a felony, being an offence punishable for three years or more, while the second and third counts are misdemeanours - offences punishable for less than three years. It is not permissible to convict on the felony and at the same time to convict on the misdemeanour on the same facts giving rise to those offences.

In regard to ground two, counsel submitted that the learned trial judge left the defence of accident to the jury but nowhere in his summing-up did he leave self defence to them. This he said is a misdirection as it deprived the appellant of a possible verdict of acquittal. He contended that although the appellant denied having a knife in his possession yet there was evidence from the prosecution witnesses that he was in possession of a knife and used it. If the jury believed part of the prosecution's story and part of the defence then there was evidence which could have led a reasonable jury to believe that the appellant was acting in self-defence.

The Court feels there is merit in this argument. In the case of Sydney Reid v. The Queen which was decided by this Court on the 1st July, 1969, Lewis, C.J. stated -

> "A jury is not bound to accept the whole of the evidence for the prosecution or the whole of the evidence for the defence. It may accept a part of the prosecution's case and reject the balance, and it may accept a part of the case for the defence

/and reject

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> and reject the balance. If on a view of the facts which might be favourable to the accused, the jury might accept a part of the case for the prosecution and a part of the case for the defence, and on that view of the facts self-defence or provocation arises, then it is the duty of the judge to leave that defence to the jury".

In our opinion the same principle is applicable in this case. There is evidence that the appellant was violently assaulted. It is true that he denied having a knife but the jury by their verdict showed that they believed he had a knife. If they also believed that he had used that knife when he was violently attacked then it would be open to them to find that he used it in defence of himself against a forcible crime. These circumstances were not directed to the attention of the jury and the appellant was deprived of a chance of a verdict of acquittal. The Court therefore has come to the conclusion that this failure of the trial judge to direct the jury's mind to these circumstances amounts to a misdirection. The appeal is accordingly allowed, the convictions and sentences set aside, and a new trial ordered. The appellant must remain in custody pending the new trial which should take place at the next sitting of the Criminal Assizes of the High Court.

(E. L. St. Bernard)
Justice of Appeal (Ag.)

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