IN THE COURT OF APPEAL

DOMINICA

CRIMINAL APPEAL NO.1 of 1975

BETWEEN: ALGERNON MAFFIE Appellant

AND

THE QUEEN Respondent

Before: The Honourable the Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin

J. Armour for appellant, J. Harris and B. Alleyne with him.
L.I. Austin, Attorney-General, for respondent, R.A. David with him.

1975, June 23 & 24, July 14

J U D G M E N T

DAVIS C.J. delivered the Judgment of the Court:-

The appellant was convicted on 16th January 1975 of two counts in an indictment, both of which alleged shooting with intent to do grievous bodily harm in respect of different persons. He was sentenced to 5 years hard labour on each count, such sentences to run concurrently and has appealed against conviction and sentence.

The facts of the Crown's case can be stated quite shortly. On Sunday 25th August 1974, Sergeant James, Corporal Samuel, P.C. Allen and others, armed with rifles, travelled by two vehicles to Glasgow in the parish of St. George in search of four men, whom the police wished to interview in connection with an incident which had occurred the day before. On arrival at Glasgow the police vehicles stopped near the home of the appellant. As the police alighted from their vehicles the appellant was seen to aim and discharge a shot-gun in the direction of Cpl. Samuel and P.C. Allen who were standing together. As a result they both received gunshot wounds. The police retreated and sought cover. There was further shooting from the premises of the appellant and the police returned fire at the house. No-one was hit, and the appellant and others escaped into the bushes nearby. The prosecution witnesses all stated that there was no attempt at shooting by the police until they had first retreated after Cpl. Samuel and P.C. Allen had been wounded, and until there was further fire from the premises of the appellant.

Chief Justice

Delivered at Antigua on 14th July 1975 pursuant to section 81 (1) of the West Indies Associated States Supreme Court (Dominica) Act No.10 of 1969.

The appellant's account of the incident is best stated in his evidence at the trial:

> "While we were there arguing two transport vehicles - the police jeep and a private car owned by Sgt. Joshua James came up loaded with policemen armed with .303 rifles. Suddenly I heard Sgt. Joshua James passing orders to the rest of the policemen who were then playing up with their guns. I heard Sgt. James give an order to shoot. I then heard a gun go off. Everybody who was sitting together with me ran, excluding my mother and the children. Those who ran, ran to the back of the house. Then I heard more gun shots. I ran up the hill. I ran up Glasgow hill and from there, on the same day I went to Jacko Flats."

In his cross-examination the appellant stated:

> "All the men ran after the first shot was fired. I cannot say whether any of them remained behind to fire at the police. We ran to the back of the house. I ran up the hill towards Glasgow."

And again:

> "It is not to my knowledge that any of us had guns. I did not see guns at the back of the house. There were no guns inside my house."

The evidence of the appellant's mother, Sylvia Israel, is as follows:

> "At that time we were all sitting on a long bench at the front of the yard. When the jeep and car stopped two policemen came out each holding a long rifle. Then Sgt. James whom I could see told Sgt. Bellot to fire. Sgt. James did not mention Sgt. Bellot's name but he said "fire". I saw Sgt. Bellot fire over the house. Then the boys, all the boys, ran to the bushes. I held on the children and I ran inside the house."

And again:

"On the 25th August when the police came I did not see my son with a gun. I saw none of his group fire shots at the police."

The witness Emile Bellot also called by the appellant gave this account:

"Suddenly I heard shots firing. When I looked up I saw the accused and some of his brothers. By brothers I mean Dread brothers. I also saw his mother, the three children and accused's sister. They were sitting on a piece of board in the yard in front of the house. I did not see them point anything at the police. Suddenly I heard shots being fired by the police. The accused and a Dread brother ran up through the bushes to Glasgow."

In short, the defence was that the appellant never had a gun and consequently never fired at the police.

The following passage from the cross-examination of P.C. Allen by counsel for the appellant at the trial makes this quite plain:

"It is not true to say that the accused had no gun at all. It is not true to say that only two of his companions gathered shot-guns and returned fire at the police."

In the course of his summing-up to the jury, the learned trial judge told them:

"It seems to me that from the evidence of the accused himself and his witnesses that this defence hardly arises. It has been denied that the accused shot at the police officers at all. In fact, it has been denied that he ever had a gun at all. The evidence for the prosecution indicates nothing to suggest self-defence. In fact, the prosecution witnesses speak of returning fire after an assault upon them by the accused. However, out of an abundance of caution I shall deal briefly with the defence of self-defence."

He then went on to direct the jury on the law as it relates to self-defence.

The grounds of appeal are:-

"1. The learned trial judge erred and/or was wrong in law on the issue of self-defence in that:

(i) the learned trial judge gave insufficient directions to the jury on the issue of self-defence and in particular the duty to retreat;

(ii) the learned trial judge dealt too briefly with and failed to explain to the jury the precise nature of self-defence ar to analyse the evidence so as to show the jury how the principles of self-defence should be applied to it and further the comments of the learned trial judge effectively conveyed to the jury (that it) was not an issue to which they should address their minds;

(iii) the learned trial judge did not point out to the jury in any clear or sufficiently clear terms that although self-defence is consistently referred to as a defence the onus on that issue rests in the prosecution throughout and that it was the prosecution's duty to prove that the appellant's acts were not acts of legitimate self-defence and it is further submitted that the repeated use of the term "The Defence" of self-defence by the learned trial judge may have conveyed to the jury the impression that there was an onus on the accused to establish that defence;

(iv) the learned trial judge misdirected the jury in concluding that the defence of self-defence hardly arose in view of the denials of the appellant and because the evidence of the prosecution indicated nothing to suggest self-defence.

2. The learned trial judge, though defining the term unlawfully, failed to develop what could amount to a real excuse in the context of the case.

3. The learned trial judge did not correctly interpret to the jury the meaning of grievous bodily harm and the verdict of the jury on this issue cannot be supported having regard to the evidence.

4. The sentence is unduly harsh."

The argument of learned counsel for the appellant may be put in short compass. He first referred the Court to a passage in the evidence, denied by the appellant at the trial, of an alleged oral admission to P.C. Allen. It reads:

"On Wednesday, 28th August 1974, I was shown two shot-guns at the C.I.D. office in the presence of the accused. These guns looked similar to the gun which the accused used on August 25, 1974 to shoot at me. When the guns were shown to me the accused said to me, on the day in question when he saw the police carrying so many guns he had no alternative but to use one of these (of the two shot-guns) in his defence."

Learned counsel, while conceding that by itself it was insufficient to raise an issue of self-defence, contended however that when taken along with other parts of the evidence to which he referred, it was sufficient to raise an issue which should have been left to the jury.

The evidence to which counsel referred was merely negative answers given by prosecution witnesses to suggestions put to them by counsel for the appellant at the trial and which were never proved.

He then criticised the trial judge for telling the jury that self-defence "hardly arises", and submitted that in any event the directions to the jury on self-defence were inadequate for several reasons. It is not necessary for us to examine these reasons in any detail because we share the view of learned counsel that it was inadequately put, if, indeed, it should have been put at all.

The question then arises should the issue of self-defence have been left to the jury. We think not. If an issue relating to self-defence is to be left to the jury there must be some evidence from which a jury would be entitled to find that issue in favour of the accused. To raise the issue there must be some evidence in the

instant case: (a) that the appellant had reason to be in fear of death or bodily injury from some action or words of the police; and (b) that the appellant fired the shot which wounded Cpl. Samuel and P.C. Allen with the intention of defending himself from death or injury that is that he then considered his life or limb in actual danger.

The appellant's evidence at the trial was that he was not armed and so could not have fired at the police, and denied making the alleged oral admission as to having used one of the shot-guns in his defence because he saw the police carrying so many guns. We are of the view that on a consideration of the evidence most favourable to the appellant there was no material on which a jury might have found self-defence. It does not arise and ought to have been withdrawn from the jury. The direction to them on self-defence was mere surplussage, and ought therefore to be disregarded as being redundant.

Ground two was stated by counsel for the appellant to be tied in with ground one and so was not further argued.

On ground three learned counsel referred to the relevant cases and submitted that the trial judge had misdirected the jury in defining to them the meaning of grievous bodily harm. We agree. The allegations in both counts, however, were not wounding or causing grievous bodily harm but rather were allegations of shooting with intent to cause grievous bodily harm, which a jury might infer from all the facts and circumstances.

Ground four was abandoned.

For the reasons stated we have concluded that this appeal must fail. The appeal is accordingly dismissed, and the convictions and sentences affirmed.

MAURICE DAVIS
CHIEF JUSTICE

E.L. ST. BERNARD
JUSTICE OF APPEAL

N.A. PETERKIN
JUSTICE OF APPEAL