

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO.43 OF 2003

BETWEEN:

SHEON VEIRA

Appellant

and

COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Mr. Albert Redhead
The Hon. Mr. Brian Alleyne, SC
The Hon. Mr. Michael Gordon, QC

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Ms. Samantha Robertson for the Appellant
Mr. Colin Williams, Director of Public Prosecutions [Ag.] for the Respondent

2003: November 27;
2004: January 26.

JUDGMENT

[1] **ALLEYNE, J.A.:** On 26th May 2003 the appellant was convicted before the Magistrates Court of the offences of unlawfully and maliciously wounding Anthony Rawlins contrary to section 174 of the Criminal Code, and of driving a motor vehicle without the consent of the owner or other lawful authority, contrary to section 222(1) of the said Code. He had pleaded guilty to the driving charge. He was sentenced to two months imprisonment on that charge, and to six months imprisonment on the charge of wounding, to run consecutively. He has appealed against sentence in respect of both convictions. He did not pursue the appeal against conviction.

- [2] On 4th December 2002 Anthony Rawlins was driving his truck on a narrow street in Greggs. His passage was obstructed by a parked vehicle. He came out of his vehicle thinking that he had touched the parked vehicle. The appellant confronted him, they got into an argument followed by a tussle. The appellant pulled a cutlass and chopped Mr. Rawlins on his head. Mr. Rawlins also suffered other injuries in the course of the struggle, which ensued. The appellant then went into Mr. Rawlins' truck and drove it away. He claimed that he drove it to the hospital where he was treated, and then to Lowmans Windward, from where he went to his home.
- [3] The appellant is 35 years old, a businessman, with no previous convictions. The learned Magistrate took that into account, and also took into account the prevalence of violence in the society, the need to address the issue of violence, the fact as recorded that the appellant showed no remorse, and that after chopping the virtual complainant he drove away in the virtual complainant's vehicle to the hospital, leaving the wounded virtual complainant to fend for himself, without transportation.
- [4] The attack by the appellant on the virtual complainant was apparently unprovoked and wholly unjustified. It was a quite vicious and dangerous attack with a cutlass. The maximum penalty provided by the Code for this offence is 14 years. Notwithstanding that, the matter was triable summarily pursuant to sections 8 to 15 of the Criminal Procedure Code, and the sentence imposed was well within the jurisdiction of the Magistrate as provided by section 17(2)(a) of the said Code. The sentence was reasonable in all the circumstances, and I would dismiss the appeal in respect of that offence and affirm the sentence imposed by the learned magistrate.
- [5] The maximum penalty for the offence under section 222 of the Criminal Code for driving motor vehicle without authorisation is one year's imprisonment. In

Benjamin v R.¹ Wooding C.J. in delivering the judgment of the Court of Appeal of Trinidad and Tobago, adopted five principal objects as comprising the aims of punishment. The learned Chief Justice listed them as:

- [1] the retributive or denunciatory, which is the same as the punitive;
- [2] the deterrent *vis-a-vis* potential offenders;
- [3] the deterrent *vis-a-vis* the particular offender then being sentenced;
- [4] the preventive, which aims at preventing the particular offender from again offending by incarcerating him for a long period; and
- [5] the rehabilitative, which contemplates the rehabilitation of the particular offender so that he might resume his place as a law abiding member of society.

The court recognised that in some cases one object will be predominant whereas in others regard must be had more particularly to two or more of them.

- [6] As indicated earlier, the appellant was a first offender, and this fact ought to be taken into account in imposing sentence.
- [7] It seems to me that it would be only in extreme circumstances that a custodial sentence would be imposed for a first offence of driving a motor vehicle without due authority under the section. The circumstances of this case are unusual, but are they such as would justify a custodial sentence? I think not, especially given the previous unblemished record of the appellant. Sentence in this case needs to be retributive and deterrent *vis-a-vis* this offender. In my view a significant fine would have the desired effect. The learned Director of Public Prosecutions, appearing for the respondent, did not seek to support the sentence on this charge. I would quash the sentence of imprisonment and substitute therefor a fine of \$1000.00 to be paid within 2 months after the completion of the term of imprisonment imposed on him on the charge of wounding, in default 2 months' imprisonment.

¹ [1964] 7 W.I.R 459, 461

[8] The appeal against conviction is dismissed for want of prosecution.

Brian Alleyne, SC
Justice of Appeal

I concur.

Albert Redhead
Justice of Appeal

I concur.

Michael Gordon, QC
Justice of Appeal [Ag.]