GRENADA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO.9 OF 2003

BETWEEN:

ROLAND CHARLES

Appellant

and

THE QUEEN

Before:

The Hon. Mr. Michael Gordon, QC	Justice of Appeal
The Hon. Mr. Denys Barrow, SC	Justice of Appeal
The Hon. Mr. Hugh A. Rawlins	Justice of Appeal

Appearances:

Mr. Derick Sylvester for the Appellant
Mr. Christopher Nelson, DPP, with Mr. Darshan Ramdhani for the Respondent

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2006: May 29;
November 13.

JUDGMENT

[1] GORDON, J.A.: On May 25, 2002, Mr. Emery Jeremiah, hereafter 'the deceased', was on his land at Providence, St. David's. He was seen there and spoken to by Martin Lett, an artist who occupied adjoining lands, at about 7.15 in the morning. The next time the deceased was seen was sometime after 2.00 pm the same day by Kirt James, a postal clerk. His words were "We went to the river to fish. We went to Mr. Emery's land to get a bamboo rod to fish. We checked the first bamboo stool; we didn't get one so we traveled through Mr. Emery's land to the next stool. I bounced upon a body in the drain. I recognised the body to be that of Mr. Emery. The body was lying face down in the drain. I call out to the body. I got no reply."

[2] Earlier that day, at about 7.15 a.m. Kirt James had seen the appellant near a spring called "Bue" at Thebaide, St. David's. The appellant came to the spring to wash his face and left after about two minutes. The two men had a conversation. The appellant said to Kirt that he was going to get breadfruit. Kirt asked him to get one for him, to which the appellant agreed. About thirty to forty-five minutes later Kirt, still at the spring, saw the appellant again. The appellant said he did not get any breadfruit. According to Kirt, the appellant was perspiring a lot.

[3] After discovering the body, Kirt went back home and reported the matter to his aunt, Jacinta Sylvester who was a corporal of police. Two police officers came to Kirt's home and he accompanied them to where he had seen the body. It was, he said, in the same position he had seen it earlier.

[4] The police carried out their investigations and on Monday May 27, 2006 the police took the appellant into custody.

[5] The appellant gave two statements to the police whilst in custody and made an unsworn statement from the dock during his trial. The essence of his version of events is that on Saturday morning May 25, he and his 'brethren' decided they would have an 'oil down' to eat. The appellant undertook to get the breadfruit and callaloo whilst the 'brethren' undertook to get the chicken. In the appellant's words in his unsworn statement in court:

> "I went down to my neighbour land. He is Mr. Jeremiah. I went to the river where there is a callaloo swamp. I cut a piece of wood to pick a breadfruit on my way up. When ah finish cut the piece of stick I heard noises coming behind me. The same time ah look back I saw Mr. Emery right behind me with his cutlass. I was afraid so I lash with the stick I had. He fell. I get frighten. I panic and run. When I run my conscience prick me and I went back to see wha go on dey. When I went back he was lying on the ground with his face down. I was afraid to touch him so I run and cut a piece of stick to turn him on his back. I try turning him on his back. He was too heavy for me. There was a drain next to him, he roll over in the drain. When I look on the ground where he was lying I saw a plastic bag with money in it. I get attracted to the money so I pick it up. I could not help him any more so I ran."

[6] In his statement under caution the appellant gave substantially the same story save that he said in that latter mentioned statement that it was as he was getting his 'rod' to pick the breadfruit he heard somebody say "I go lock you up" and it was then that he turned around and saw the deceased 'was up on me already with the cutlass'.

[7] The appellant was charged with and tried for murder. The jury, after some seventy minutes, returned a unanimous verdict of guilty of murder. The learned D.P.P. did not ask for the death penalty though it is clear from the remarks of the trial judge that that sentence was his preference. "On the totality of the evidence I find no special extenuating circumstances that would not warrant the imposition of the death sentence on the accused." In the result, the trial judge imposed a sentence of life imprisonment.

[8] The appellant has appealed against both his conviction for murder and against the sentence of life imprisonment. The grounds of appeal were five in number, though the fourth ground was the catch-all ground that the trial judge did not fairly sum up the appellant's case to the jury. Additional grounds of appeal were filed shortly before the hearing of this appeal, but they were in essence restatements of the original grounds.

[9] The first ground argued by learned counsel for the appellant revolved around the judge's directions on 'intention'. Learned counsel's first complaint was that the trial judge erred in failing "to relate the law of intention to the facts of the case and therefore misdirected the jury resulting in a miscarriage of justice." Learned counsel for the appellant first took issue with the way the trial judge explained the concept of 'intention' to the jury. The trial judge first informed the jury on the law reading sections of the Grenada Criminal Code to the jury. He then explained the law in the formulation suggested by the then Chief Justice, Sir Vincent Floissac, in Hazel Emmanuel v The Queen[1]. This is a formulation which was further

[1] Saint Lucia, Criminal Appeal No. 5 of 1989 delivered November 14, 1994

approved by S. Singh J.A. in Donnason Knights v The Queen[2], a case which came before the court of appeal from this jurisdiction. What one might call the 'Hazel Emmanuel' direction on intention deals with the issue of subjective belief in the accused. I find no fault with the trial judge's summing up in this respect.

[10] Learned counsel for the appellant also complained that the trial judge failed to relate the law of intention to the facts. Having given the Hazel Emmanuel direction on intention the trial judge then went on to recount the facts as put forward by the prosecution and as put forward by the defence to the jury. After discussing the issue of self defence the trial judge said the following:

> "Again, consider this was the accused acting in self defence? Or did he intentionally or unlawfully murder the accused to steal his money? If you find that the accused struck the deceased to steal his money, but when he delivered the fatal blow, even at that point he did not intend to kill him, then you are to find him guilty of manslaughter and not of murder. If you find him guilty of murder, the prosecution must prove there was an intention to kill and not merely to do harm"

[11] I have difficulty in conceiving what further the trial judge could have said without being tautologous or obfuscating. I find little merit in this ground of appeal.

[12] The next ground of appeal was that the trial judge misdirected the jury on the standard of proof with respect to the plea self-defence. As far as I could tell the trial judge said only this in specific reference to the obligations placed on the prosecution once the issue of self-defence is raised:

> "It is always the duty of the prosecution to disprove self-defence if raised as an issue. And if the prosecution fails to do so the accused must be acquitted. If you find the accused reacted on self-defence, but used more force than is necessary he will be guilty of manslaughter and not murder."

And again:

> "Again, consider this, was the accused acting in self-defence? Or did he intentionally or unlawfully murder the accused [sic] (deceased) to steal his money "

[2] Grenada, Criminal Appeal No. 15 of 1995 delivered September 16, 1996

[13] In Palmer v R[3], a Privy Council case, Lord Morris of Borth-y-Gest put the proper practice in these words:

> "There are no prescribed words which must be employed in or adopted in a summing-up. All that is needed is a clear exposition, in relation to the particular facts of the case, of the conception of necessary self-defence. … A jury will be told that the defence of self-defence, where the evidence makes its raising possible, will only fail if the prosecution shows beyond doubt that what the accused did was not by way of self-defence." (Emphasis added)

[14] The learned trial judge did not go as far as he should have done. In Nicholas v The State[4] Alleyne JA, as he then was, said the following, which might well have been said in this case:

> "It must be said that in this case the judge did, however briefly, remind the jury that it was for the prosecution to negate accident. However, she failed to deal adequately or at all with the considerations which the prosecution needed to prove or negate."

The trial judge left it in such a way as it might have been understood by the jury that the prosecutions burden was to negative self-defence only on a balance of probabilities. I consider this to have been a serious mis-direction.

[15] Learned counsel for the appellant also complained that the trial judge failed to give the jury any direction in respect of the use of justifiable force in accordance with section 62 of the Criminal Code of Grenada. Whilst it is true that the trial judge did not address the jury on the subject of justifiable force, I believe that any criticism would be subsumed in the comments at paragraph 12 and 14 above.

[16] A further ground of appeal raised by the appellant was that the trial judge failed to direct the jury on provocation. Counsel for the appellant urged that when the appellant said in his statement to the police on the 27th May 2002 "I heard somebody say I go lock you up. At the same time I turn around. When I turn around I saw Mr. Emery was up on me already with the cutlass" this raised

[3] (1970) 55 Cr App Rep 223 at page 242
[4] Dominica Criminal Appeal No11 of 2003

provocation as a possible defence. It is to be remembered that the appellant was, by his own admission, on the land of the deceased attempting to take breadfruit and callaloo. I have difficulty in understanding how a man who, in protecting his property, says "I go lock you up" can be deemed to be provoking. In D.P.P. v Leary Walker[5] Lord Salmon had this to say about specious defences:

> "Were that decision allowed to stand, it would follow that, in addition to the defences actually raised on behalf of an accused, trial judges might, in the future, feel obliged to leave to the jury not only any possible but also any impossible defence which had not been raised but which human ingenuity might conceivably devise. Otherwise, after the defences put before the jury at the trial had failed, the accused might succeed in having his conviction quashed on the ground that the impossible defences had not also been left to the jury. Moreover, to leave such defences to the jury would only tend to confuse and hinder them in reaching a true verdict. This would indeed divert the due and orderly administration of justice."

[17] Notwithstanding that I have found that there was a failure to give a proper direction on the issue of self-defence there is no doubt in my mind that if the proper direction had been given the jury would inevitably have come to the conclusion, even if they accepted that there was an element of self- defence, that wholly excessive force was used by the appellant. In this regard the evidence of the pathologist, Professor Louis Vigoa is instructive. On examination of the body Professor Vigoa found a cutting wound to the left side of the chin measuring 4 cm in length, 0.5 cm in width and 2 cm deep. There was a complete fracture of the jaw on that side of the face that was close to the cutting wound. The professor continued to describe further injuries and concluded: "The injury was extensive. Because of the extensive injury it could not have been caused by one blow. The complete fracture of the jaw could have been caused by a very heavy blow."

[18] In the circumstances I would allow the appeal to the extent that I would substitute a verdict of guilty of manslaughter for the verdict of guilty of murder.

[5] (1974), 21 W.I.R. 406 at page 410 paragraph I

[19] The appellant was sentenced to imprisonment for life. The maximum sentence for the crime of manslaughter in Grenada is fifteen years[6]. The appellant has six previous convictions of which one is for violence and three for illegal drugs. In his sentencing judgment the learned trial judge said the following:

> "On the totality of the evidence I find no special extenuating circumstances that would not warrant the imposition of the death sentence on the accused. After inflicting the fatal wound on the deceased and the deceased laid dead or dying the accused returned to him and tried to turn the deceased over on the back but he called no one to assist him to get help for the deceased. He did not even tell his friend and room-mate, Peter Blaize what happened. He took the deceased money and went to have a ball."

I find no reason to discount in any way the sentence allowed by law in the circumstances of this case. The sentence of the appellant is reduced to fifteen years commencing from the date of his original conviction, that is the 3rd April 2003.

Michael Gordon, QC
Justice of Appeal

I concur.

Denys Barrow, SC
Justice of Appeal

I concur.

Hugh A. Rawlins
Justice of Appeal

[6] Section 232, Criminal Code, Cap 1 of the Laws of Grenada