

GRENADA

IN THE COURT OF APPEAL

HCRAP 2007/004

BETWEEN:

ROYSTON STAFFORD

Appellant

and

THE QUEEN

Respondent

Before:

The Hon. Mde. Ola Mae Edwards
The Hon. Mde. Janice George-Creque
The Hon. Mr. Michael Gordon, QC

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

Appearances:

Mr. Derick F. Sylvester for the appellant
Mr. Darshan Ramdhani for the respondent

2009: April: 20, 21.

Criminal Appeal – Intentionally causing death by unlawful harm – Appeal against conviction and sentence – whether conviction unsafe and unsatisfactory -- whether trial judge misled jury on the law of intention to murder – Sections 12 (2) and (3) of the Criminal Code – whether trial judge had a duty to read the statutory provisions and fully explain statutory definition of intent –

The appellant was convicted of intentionally causing the death of an old man by unlawful harm and sentenced to imprisonment for 18 years. He appealed against his conviction and sentence on the ground that it was unsafe and unsatisfactory having regard to the fact that the trial judge misdirected the jury on the law of intention to murder in relation to sections 12 (2) and (3) of the **Grenada Criminal Code**. The appellant also contended that the trial judge had a duty to read the statutory provisions to the jury and to explain the statutory definition of intent.

Held: Applying the proviso dismissing the appeal against conviction and sentence and affirming the conviction and sentence of 18 years imprisonment:

1. The presumption which arises under section 12 (3) of the **Grenada Criminal Code** is not an absolute presumption but a rebuttable presumption which directs an inquiry subjectively to the state of mind of the appellant at the time he committed the act which resulted in death.

Hazel Emmanuel v The Queen Criminal Appeal No. 5 of 1989 (St. Lucia) applied
Tench v R (1992) 41 WIR 103 (St. Lucia) applied.

2. In explaining section 12 (2) of the **Criminal Code**, the omission of the words “although he does not do the act for the purpose of causing or of contributing to cause the event” constitutes a failure on the part of the trial judge to equate the appellant’s subjective intention in regard to the consequential death of the deceased with the appellant’s subjective belief in the probability of the consequence.
3. Having regard to the nature of the evidence in the case and the fact that the prosecution relied on the out of court caution statement of the appellant and answers made by the appellant under caution in a recorded police interview to prove the offence, a full explanation of section 12 (3) of the Code was required.
4. In any direction on intent, simplicity is to be preferred to complexity. However the approach of the trial judge in this case was an oversimplification of the statutory law on intention. In explaining section 12 (3) of the Code the trial judge ought to have told the jury that they should look at the statements to the police to see whether the appellant said anything that was capable of rebutting the statutory presumption in section 12 (3) since the appellant had remained silent and called no witnesses. The trial judge’s failure to do so constituted a misdirection.
5. The conviction was not unsafe and unsatisfactory since the medical evidence showing the nature and extent of the deceased’s injuries was of such as to militate against a successful rebuttal of the presumption under section 12(3) of the **Criminal Code**.

Keith Mitchell v The Queen Criminal Appeal No. 11 of 2005 (Grenada) followed.

DECISION

- [1] **EDWARDS, C.J. [AG.]:** An oral decision was delivered in open court on April 21, 2009 in terms of the following written decision. The appellant was convicted for intentionally causing the death of an old man Ivor O’Brien by unlawful harm on Sunday 12th February 2006 and was sentenced to imprisonment for 18 years.

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- [2] He appealed his conviction and sentence.

[3] Of the 3 grounds of appeal that were argued by the appellant's counsel, only the first ground is deserving of serious consideration in our view; this is the ground that alleges:

"1. The learned trial judge misdirected the jury on the complex law of intention to murder, in relation to sections 12(2) and 12(3) of the Criminal Code."

[4] The specific intention of the appellant to cause the death of the deceased, which is an essential ingredient for the offence of murder, is explained by sections 12(2) and 12(3) of the **Criminal Code** Cap. 1 in the following provisions:

"12(2) If a person does an act voluntarily, believing that it will probably cause or contribute to cause an event, he intends to cause that event within the meaning of this Code, although he does not do the act for the purpose of causing or of contributing to cause the event."

"(3) If a person does an act of such a kind or in such a manner as that, if he used reasonable caution and observation, it would appear to him that the act would probably cause or contribute to cause an event, or that there would be great risk of the act causing or contributing to cause an event, he shall be presumed to have intended to cause that event, until it is shown that he believed that the act would probably not cause or contribute to cause that event."

[5] The learned trial judge at page 134 of the record directed the jury on the law regarding intention in these terms:

"Now section 12 of the Criminal Code provides that if a person does an act voluntarily believing that it would probably cause or contribute to cause an event then he intends to cause that event within the meaning of the code. That section also provides that if a person does an act of such a kind or in such a manner that if he used reasonable caution and observation it would appear to him that the act would probably cause or contribute to cause an event or that there would be a great risk of that act causing the event, then he is presumed to have intended to cause that event."

[6] Learned counsel, Mr. Sylvester contended that having regard to the numerous authorities on the directions recommended under sections 12(2) and 12(3) of the **Grenada Criminal Code** or similar statutory provisions in Saint Lucia the learned

judge had a duty to read the statutory provisions to the jury and fully explain the statutory definition of intent¹.

- [7] The trial judge did not use the formula pronounced by Sir Vincent Floissac C.J. in **Emmanuel's** case where he stated:

“An Accused's criminal intent or intention in relation to his voluntary act or a consequence thereof is basically subjective to the accused. The accused's intent or intention is an inference drawn from his act and its relevant surrounding circumstances viewed collectively. Those surrounding circumstances include [1] the emotion or emotional motive [e.g. hatred, jealousy or greed] which prompted the accused to commit the act [2] the accused's reason or purposive motive for committing the act or the ultimate purpose [object or consequence] which the accused sought to achieve by committing the act [3] the accused's desire for the consequence of the act [4] the accused's subjective foresight or foreseeability of or subjective belief in the degree of probability of the consequence – which degree may range from a bare possibility to a certainty or near certainty and [5] the accused's subjective honest or actual belief in the existence of certain circumstances [e.g. consent or danger] which motivated the act.”

- [8] Sections 71 and 72 of the **Saint Lucia Criminal Code** are similar to section 12(2) and (3) of the **Grenada Criminal Code**. Speaking of the law of intention in Saint Lucia, Sir Vincent stated:

“Section 71 [section 12(2)] deals with intent inferred from a person's belief in the probability of a consequence of his act. Section 72 [section 12(3)] creates a presumption of intent based on a person's foresight of the probability of a consequence of his act and provides for the rebuttal of the presumption to proof of that person's belief in the improbability of the consequence.”

- [9] In **Tench v R**, Sir Vincent Floissac (Floissac C.J. as he then was) explained also (at page 108), that the belief referred to in section 71 [section 12(2)] is subjective. From the authorities referred to by Floissac CJ in **Tench** we deduce that the presumption which arises under section 12(3) of the **Grenada Criminal Code** is

See:

¹ Hazel Emmanuel v The Queen, Criminal Appeal No. 5 of 1989 (St. Lucia) delivered 14th November 1994
Tench v R. (1992) 41 WIR 103 (St. Lucia) delivered 27th January, 1992
Denis Alphonse v The Queen, Criminal Appeal No. 1 of 1995 (St. Lucia) delivered 31st January, 1996
Donnason Knights v The Queen, Criminal Appeal No. 15 of 1995 (Grenada) delivered 16th September 1996

not an absolute presumption but a rebuttable presumption which directs an inquiry subjectively to the state of mind of the appellant at the time he committed the act which resulted in death.

- [10] Learned counsel, Mr. Sylvester complained that in explaining section 12(2) the learned trial judge omitted the words “although he does not do the act for the purpose of causing or of contributing to cause the event”. On the authority of **Tench** this in our view would be a failure of the trial judge to equate the appellant’s subjective intention in regard to the consequential death of the deceased with the appellant’s subjective belief in the probability of the consequence.
- [11] In relation to the truncated section 12(3) direction, the trial judge failed to state that the presumption is rebuttable by proof of the subjective state of mind of the appellant (i.e. his subjective belief in the probability of the consequence) at the time the appellant committed the act which resulted in the deceased’s death. A full explanation of section 12(3) was required in our view having regard to the nature of the evidence in the case. The prosecution relied on the out of court caution statement of the appellant and answers made by the appellant under caution in a recorded police interview to prove the offence.
- [12] In both extra-judicial statements, the appellant admitted that he had broken into the deceased’s home to steal groceries from the kitchen and the deceased had approached him upstairs with a piece of wood. The appellant stated that he threw a tin of condensed milk at the accused twice and on each occasion the deceased fell on the floor after the tin of milk hit him in his head. On receiving the first blow to the head, the deceased had fallen and then got up and was coming at him with the piece of wood. On pelting the tin of milk at the deceased the second time, the tin of milk hit him and he fell and hit his head on the wall.
- [13] The deceased was found the following morning lying in his bedroom face down on the floor, bleeding from head injuries.

- [14] There were three fragments of wood seen by the investigating officer near the deceased. There was blood on the mattress lying on the floor, the side of the bed and the wall.
- [15] Two doctors testified about the thirteen lacerations on the deceased scalp, and the fracture of three bones in the skull of the deceased. The pathologist testified that the direct cause of death was increased intracranial pressure from the swelling of the brain and acute sub dural haematoma. The doctors opined that a very forceful blow with a hard blunt instrument like a piece of wood would cause the fracture of the three bones in the deceased's skull resulting in oedema and haematoma to the brain and a rupture of some delicate blood vessels encircling the brain.
- [16] The appellant remained silent and called no witnesses at the trial.
- [17] In dealing with the appellant's statements to the police the learned judge explained at page 147 of the record:
- "Further, he is saying that he pelted the can of the milk at the deceased and also struck him a second time with the can and that he did not believe that the act, the act of striking him twice would cause or contribute to cause Mr. O'Brien's death, therefore, he is asking you not to presume that he intended to kill Mr. O'Brien. He is saying that the prosecution has failed to prove one of the elements of the offence, that is, that he acted intentionally or that he intended to kill Mr. O'Brien."
- [18] Learned counsel, Mr. Ramdhani commended the trial judge's approach in presenting the case to the jury from the two standpoints of the prosecution's case and the appellant's case by firstly discussing the issue of intention from the standpoint of the prosecution, and thereafter, from the appellant's perspective.
- [19] We support the view expressed that in any direction on intent², simplicity is to be preferred to complexity. The approach of the learned trial judge in the present case was an oversimplification of the statutory law on intention in our view. In explaining section 12(32) the trial judge ought to have told the jury that they should look at these statements to the police to see whether the appellant said anything

See: ² Keith Mitchell v The Queen, Criminal Appeal No. 11 of 2005

that was capable of rebutting the statutory presumption in section 12(3) since the appellant had remained silent and called no witnesses. This omission was a misdirection.

- [20] Learned counsel Mr. Ramdhani argued in substance that in any event the medical evidence regarding the nature and extent of the deceased's injuries would have militated against a successful rebuttal of the presumption under section 12(3). We agree.
- [21] In the circumstances the contention of counsel, Mr. Sylvester that the conviction is unsafe and unsatisfactory fails.
- [22] We find no merit in the grounds that a Lucas direction ought to have been given to the jury on the facts in this case; or that a miscarriage of justice occurred by the manner in which the defence was conducted by counsel for the appellant at the trial.
- [23] We would apply the proviso and uphold the conviction for murder.
- [24] We therefore dismiss the appeal against conviction and sentence and affirm the conviction and sentence of 18 years imprisonment. We wish to commend both counsel for their industry and assistance.

Ola Mae Edwards
Chief Justice [Ag.]

I concur.

Janice George-Creque
Justice of Appeal

I concur.

Michael Gordon, QC
Justice of Appeal [Ag.]