JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 113/2005

BEFORE: THE HON. MR. JUSTICE PANTON, J.A.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MRS. JUSTICE HARRIS, J.A. (Ag.)

COURTNEY CARRIDICE
v. R.

Mrs. Jacqueline Samuels-Brown and Miss Keisha McDonald for applicant.

Jeremy Taylor and Miss Joan Barnett for the Crown.

February 13 and 15, 2006

COOKE, J.A.

1. The applicant, Courtney Carridice was convicted in the Home Circuit Court on the 29th July, 2005 for the offence of wounding with intent. He was sentenced to 7 years hard labour. He applied for leave to appeal against conviction and sentence. This application was refused by the single judge and he now has renewed his application before this court. Leave was granted to so do, and the hearing was considered as that of the appeal. No submissions were addressed to the court on the issue of the sentence imposed.

2. At the trial the complainant, Matthew McLean swore that on the 10th June 2001, between 11 and 11:30 p.m. he was walking on Albert Street. He was going to his sister's house at 4A Albert Street in Franklyn Town where he "was staying". His sister's name is Nadine Panton. He was coming from Harbour View. While walking to his sister's house he was stopped by the police. There were four policemen in a jeep. He raised his hands in the air. One of the policemen (not the applicant) questioned him about whether or not he had anything illegal on him. He, McLean was able to demonstrate that he had nothing illegal and the interrogator seemed satisfied as it is the evidence that that policeman said:

> "de bwoy kriss man him no have nutten pon him."

The policemen who had all come out of the jeep were proceeding back to their vehicle when the applicant commanded McLean in these terms:

> "P...turn yuh face to de wall and nuh look pon me."

McLean did as he was told and then he heard an explosion and he felt the tip of his shirt "jerk like this" (indicating). He spun around and faced the applicant who had his firearm pointed to his chest. He heard a click after which he spun around and ran off bawling for murder. He heard more explosions while he was running and he felt a burning on his skin in the back. He ran to his sister's house and from there he was taken to the Kingston Public Hospital where he remained for one month two weeks and two days.

3. Dr. Randall Collins who examined McLean on the morning after he was admitted said that the latter was suffering

> "from gunshot wound to the back, entering the abdomen."

More specifically the wound to the back was to the left in the lower rib margin.

4. The applicant made an unsworn statement. The gist of this statement is that he fired his M16 rifle in self-defence. He clearly remembered he saw McLean and called out to him identifying himself as a police officer. McLean responded by pulling a firearm from the back of his waist and pointing it in his direction. He demonstrated to the jury how this was done. In fear of his life and those of his colleagues, he discharged two rounds from the M-16 rifle, with which he was armed, in McLean's direction. McLean dropped the firearm and managed to escape in nearby premises. He and his colleagues searched the immediate area and retrieved the firearm McLean had dropped. He subsequently handed over the retrieved firearm as well as his M-16. Character evidence was given on the applicant's behalf by Deputy Superintendent of Police Orville McGregor.

5. Ground 1 is couched in these terms:

> "The learned trial judge's direction on standard of proof were inadequate whereupon there has been a miscarriage of justice."

The complaint here is not that the learned trial judge did not give correct general directions on the issue of the standard of proof. In fact he did so on a number of occasions. It was submitted that the learned trial judge concentrated entirely on the evidence of McLean and the unsworn statement of the applicant as the material from which the jury should determine their verdict. It was argued that:

> "Not once in directing them as to the standard of proof did the learned trial judge instruct the jury that this was applicable to the evidence led on behalf of the prosecution as a whole and in particular to the evidence of Mr. McLean's sister, Ms. Panton. With respect to her evidence the learned trial judge's direction was as follows:
>
> > 'The witness Ms. Panton says the police left just as people were coming out of their homes. Mr.Carridice says that the police were there searching premises . Who do you believe'."

6. The critical issue in this case is whether or not the applicant shot McLean in self-defence. As to the factual circumstances pertaining to this central issue there was only the sworn evidence of McLean and the unsworn statement of the applicant. Nadine Panton's evidence did not concern that aspect of the case. Her involvement began after the wounded McLean reached her house. Accordingly unless her evidence was pertinent to what happened on Albert Street at the time of the shooting, it is difficult to appreciate the significance of her evidence as to the circumstances of the shooting. In this case it was not. She was called by the prosecution essentially to say that when she confronted the applicant as to what her brother had done she was met with silence. The applicant did not say then and there that McLean pointed a firearm at him. It

was right for the learned trial judge to emphasize the conflicting accounts of McLean and the applicant and to place it in the forefront for the jury's consideration. Whether the police searched premises or not after the shooting is not probative of the critical issue to be determined by the jury. In any event, towards the end of his summing-up the learned trial judge directed the jury as follows:

> "So bear all those things in mind, ladies and gentlemen, which has been led in evidence before you and you consider your verdict."

This ground fails.

7. Ground 2 is set out below:

> "The Learned Trial Judge invited the jury to speculate in a manner adverse to the Applicant/Appellant on the failure to produce in evidence the .38 Revolver allegedly recovered from the virtual complainant, accordingly there has been a miscarriage of justice. Pages 38, 39.
>
> ALTERNATIVELY
>
> The Learned Trial Judge's directions to the jury regarding the absence of the .38 Revolver allegedly recovered from the virtual complainant were inadequate and/or confusing; accordingly there has been a miscarriage of justice. Page 36. See also page 35 of the evidence.
>
> 6. The .38 Revolver which, on the prosecution evidence, was handed over by the Applicant to the police; and which the Applicant said was recovered from the virtual complainant was not produced to the court.

> 7. The evidence was that it had been produced at the preliminary enquiry, admitted into evidence and thereafter kept at police stores. However it was not produced at the trial."

8. As pointed out by counsel for the appellant, on the prosecution evidence the .38 revolver which the applicant said that McLean had was handed over to the police. Further that firearm was admitted into evidence at the preliminary enquiry and thereafter kept at police stores. It was not produced at the trial. The direction to the jury in respect of this non-production at the trial was:

> "The police say that that weapon was taken to the forensic laboratory. It was tested. They say that it was produced at the court at Half-way-Tree and yet when the time came to produce it here, it was not produced. Is it a matter of negligence on the part of the police? You will decide. Is there-could there be any ulterior motive for it not to be produced here or is it just a case of human error and the weapon was lost in the court? It is for you to decide."

9. The complaint is that this comment could have led the jury to believe that the applicant was "implicated in this speculative sinister move" to engineer the disappearance of the exhibit. Jurors are possessed of intelligence and commonsense. It is beyond contemplation that the jury would for a moment consider that the applicant would (or could) be involved in an activity which was entirely inimical to his defence. To reiterate, his defence was that McLean pointed a gun at him. He recovered the gun. He handed in that gun. Why would he be a party to its disappearance? Those comments by the learned trial

judge were critical of the police who were in charge of the investigation. This ground fails.

10. Ground 3 was stated as follows:

> "The Learned Trial Judge erred in his direction to the jury as to the law on self-defence and/or its application to the facts and/or the said directions were inadequate, accordingly, there has been a miscarriage of justice."

As to the general directions on self-defence there is no criticism. In these directions the learned trial judge had asked the jury to determine as an issue whether or not the applicant honestly believed that he was under attack. However, it was submitted that when the learned trial judge posed the proposition that:

> "So the question for you to decide is whether Mr. Carridice was under threat from a weapon been pointed at him and you will decide that."

he nullified or significantly undermined or neutralized the previous direction as to honest belief and therefore erred.

In his unsworn statement the applicant said McLean pointed a firearm at him. He was saying he was under threat. Therefore all the learned trial judge was doing is putting the defence's case in perspective. The applicant said he fired because of the threat he faced. In such circumstances the learned trial judge cannot be faulted for accurately reviewing the evidence.

It was further submitted that in directing the jury to determine who to believe as to the respective accounts of McLean and the applicant, the learned trial judge failed to make it sufficiently clear that:

> "If the defence version of what occurred left the jury in any reasonable doubt as to the prosecution's version of what occurred then the applicant is entitled to an acquittal."

It was contended that the learned trial judge,

> "left the same test for judging competing accounts."

This criticism is untenable as is demonstrated by the following passage in the summing-up:

> "Mr. Foreman, ladies and gentlemen, you are essentially deciding whether you believe Mr. Carridice or Mr. McLean. The question is, has the prosecution proved that Mr. Carridice was not acting in self-defence?"

The learned trial judge made it clear that it was not merely the preference in respect of choosing between competing versions but rather, if they choose Mr. McLean's account, was that acceptance such that it could be said that "the prosecution proved that Mr. Carridice was not acting in self-defence". This passage must be viewed within its totality of the summing-up. Earlier the learned trial judge had given correct directions of the issues of burden and standard of proof as well as self-defence. Ground 3 fails.

11. The final ground was that:

> "The Learned Trial Judge's directions as to how to treat with inconsistencies were, as a matter of law, deficient and inadequate and accordingly there has been a miscarriage of justice."

The inconsistencies and discrepancies were as listed by the applicant:

(i) Discrepancy as between Nadine Panton and McLean as to where McLean said he left home to go.

(ii) An inconsistency in respect of Nadine Panton's evidence as between her deposition and her evidence as to whether she had left home to get juice, and left again.

(iii) An inconsistency in respect of Nadine Panton's evidence and her deposition as to the number of spent shells "she recovered, their physical description and their source."

Clearly, this discrepancy and those inconsistencies were not material to the critical issue that the jury had to determine which was – when McLean was shot in the back was the applicant acting in self-defence? Perhaps, it is necessary to state that credibility in a meaningful sense is not at large. The question of credibility becomes meaningful when that "credibility" is relevant to a pertinent issue in the decision making process. This was not so in the instant situation in this case. This ground fails.

12. For the reasons given we have dismissed the appeal. The sentence is to commence on the 29th September, 2005.