

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MR JUSTICE BROOKS P
THE HON MISS JUSTICE STRAW JA
THE HON MR JUSTICE FRASER JA**

PARISH COURT CRIMINAL APPEAL NO COA2019PCCR00002

JEROME GRAHAM v R

Dwight Reece instructed by Reece & Reece for the appellant

Jeremy Taylor KC and Atiba Dyer for the Crown

2 February 2021 and 10 February 2023

BROOKS P

[1] The appellant, Mr Jerome Graham, was convicted in the Parish Court for Manchester for the offence of inflicting grievous bodily harm. On 3 January 2018, the learned Judge of the Parish Court (‘the Parish Court Judge’) sentenced Mr Graham to a fine of \$600,000.00 or in default, to four months’ imprisonment.

[2] Mr Graham has appealed this decision. He asserts that the Parish Court Judge erred in a finding of fact. As unpromising as such a complaint is, the Crown opposed the hearing of the appeal on the basis that Mr Graham’s original ground of appeal was so nebulous that it not only breached the requirements of section 296(3) of the Judicature (Parish Court) Act (‘the JPCA’) but was also of a nature that had been criticised in a previous court judgment.

[3] Before setting out the ground of appeal it is necessary to outline some of the evidence that was adduced before the Parish Court Judge.

The prosecution's case

[4] The prosecution's case was that on the morning of 3 April 2014, sometime between eight and nine o'clock, Mr Graham, who was then a constable in the Island Special Constabulary Force, was on traffic duties with Constable Campbell of the Jamaica Constabulary Force (collectively they will be referred to as 'the constables'). This was in the town of Mandeville in the parish of Manchester. Mr Graham accosted Mr Chester Daley, who was then operating a motor vehicle that he used as a taxi.

[5] The two got into a physical altercation and bystanders intervened to part them. At that point, Mr Daley agreed to walk with the constables to the nearby police station. While they walked, Mr Graham walked behind Mr Daley holding Mr Daley's clothing at the back in the vicinity of his waist.

[6] Another taxi driver, Mr Clevon Mitchell was then driving by in slow-moving traffic. He was going in the same direction as the men were walking. Mr Mitchell testified that Mr Daley wriggled out of Mr Graham's grasp, turned and faced him and said something to him. Mr Graham responded and then punched Mr Daley in the face. Mr Daley fell, hit his head on the ground, and remained motionless.

[7] By the time Mr Mitchell was able to park and get back to the spot where the incident took place, Mr Daley was no longer on the scene. Mr Mitchell only saw the constables there.

[8] Mr Daley was treated at a hospital and within days was examined by a consultant psychiatrist, who testified that he was suffering from "amnesic disorder-dissociative type". Mr Daley's mother testified that:

"After [the day of the incident], it was terrible. [Mr Daley] does not remember anything. He does not respond when I talk to him. He just stares me in the face. He does not answer."

[9] The prosecution originally charged Mr Graham with two offences, namely, assault occasioning actual bodily harm and inflicting grievous bodily harm. It adduced

evidence from another witness who said that Messrs Graham and Daley were originally wrestling on the ground, and Mr Graham used his baton to hit Mr Daley on the head. That testimony conflicted with yet another witness (there were nine prosecution witnesses – three as to the interaction between Messrs Daley and Graham), who said that he witnessed the incident and whereas he saw Mr Graham point his firearm at Mr Daley during their initial foray, he did not see Mr Graham use his baton to hit Mr Daley.

[10] The prosecution's case, therefore, identified two separate physical altercations between Messrs Daley and Graham. The first, on which the charge of assault occasioning actual bodily harm was grounded, concerns the time that they wrestled on the ground. The second, on which the charge of inflicting grievous bodily harm was grounded, concerns Mr Graham later punching Mr Daley.

The no-case submission

[11] At the end of the prosecution's case, counsel representing Mr Graham at the trial submitted that there was no case to answer.

[12] The Parish Court Judge reasoned that the prosecution's evidence concerning the use of the baton was unreliable and he rejected it. Accordingly, he dismissed the charge of assault occasioning actual bodily harm but ruled that Mr Graham had a case to answer in respect of the charge of inflicting grievous bodily harm.

The case for the defence

[13] In answering the charge, Mr Graham made an unsworn statement in which he said that after he stopped Mr Daley, the latter became boisterous and violent when Mr Graham tried to hold him. Mr Graham said that after they fell to the ground, Mr Daley held Mr Graham's neck and scratched Mr Graham's face. Mr Graham said that he had to use his baton "in an attempt to subdue and ward off" Mr Daley's attack.

[14] While escorting Mr Daley to the police station, Mr Graham said, Mr Daley "suddenly erupted into violence". Mr Graham said that Mr Daley punched at him. When

Mr Graham evaded the punch, Mr Daley “appeared to have lost his balance and fell on his back, hitting the back of his head. He appeared to be unconscious”.

The Parish Court Judge’s findings of fact

[15] The Parish Court Judge rejected Mr Graham’s account. He found it unlikely that Mr Daley would have fallen on his back while throwing a punch at Mr Graham who was then in front of him. The Parish Court Judge accepted Mr Mitchell’s evidence as credible. He accepted that Mr Graham punched Mr Daley in the face causing him to fall and hit his head on the ground.

The grounds of appeal

[16] On 15 January 2018, Mr Graham filed one ground of appeal. It stated:

“That the conviction is wholly unsupported by the evidence adduced at [the] trial.”

He gave notice in that document that he reserved “the right to file Supplemental Grounds of Appeal when the Findings of Facts are available”.

[17] On 31 October 2019, he filed a supplemental ground of appeal, which stated:

“The Learned Parish Court Judge erred in finding that the injury to head [sic] of [Mr Daley] was caused by action related to the events in Count two of the indictment and not those of [Count] One which the Court found were lawful.”

The preliminary objection

[18] Mr Taylor KC, for the Crown, submitted that the original ground of appeal suffered from two defects. Firstly, it failed to set out the facts and points of law on which Mr Daley was seeking to rely in support of his appeal and secondly, the single ground of appeal was couched in very broad terms.

[19] The first defect, Mr Taylor submitted, breached the requirements of section 296(2) of the JPCA. This defect, learned counsel argued, allowed the court, pursuant to 296(3) of the JPCA to dismiss the appeal without a hearing.

[20] Mr Taylor also submitted that the terms of the original ground of appeal ran contrary to the guidance of the former court of appeal of Jamaica in **Rex v Archibus Mills** (1941) 4 JLR 55.

[21] The supplemental ground of appeal, Mr Taylor argued, came so long after the findings of fact were available that the court ought not to exercise its discretion in favour of Mr Graham.

[22] Mr Reece, appearing for Mr Graham, acknowledged the defect but asked the court to exercise its discretion in favour of Mr Graham and hear his appeal.

[23] After hearing those submissions, the court reserved its ruling and asked counsel to address it on the substantive appeal. Both kindly and helpfully did so. The submissions on the preliminary point will be addressed first.

[24] Learned King's Counsel is correct that the grounds of appeal breach, what is now, section 299(3) of the JPCA (the JPCA was amended on 2 November 2021). The provision states:

"The grounds of appeal shall set out concisely the facts and points of law (if any) on which the appellant intends to rely in support of the appeal and shall conclude with a statement of the relief prayed for by the appellant."

The section is identical to the previous section 296(2), which was deleted and replaced by an amendment that was made to the JPCA in November 2021.

[25] The basis for the requirements of section 299(3) is to focus the minds of appellants to avoid the filing of hopeless appeals and to assist the court in identifying the issues which the appellant seeks to raise. Without such guidance, the Parish Court and this court would respectively have a much larger number of appeals to process and hear. Similar guidance is outlined in *The White Book Service 2002: Civil Procedure*, Volume 1 at D1-035 where it records that the grounds of appeal should clearly state why the appeal should be allowed.

[26] The former Court of Appeal, in **Rex v Archibus Mills**, acknowledged that where grounds of appeal are filed without particulars, they are "worthless". In that case, the first ground filed on behalf of the appellant was "[t]he verdict is against the evidence and the weight of the evidence". Ground two was "[t]he verdict is contrary to law" and ground three was plainly unsupported at variance with the evidence. The court's criticism of the grounds was scathing.

[27] It is true, however, that the JPCA, despite requiring that grounds of appeal are to concisely set out the facts and points of law, upon which the appellant intends to rely, also allows the court to accommodate appeals that are not in strict compliance with the statutory requirements. The current section 299(2), which is of similar import to the proviso to the previous section 296(1), allows the court to, "in any case, for good cause shown, hear and determine the appeal". Although it may be argued that that subsection is restricted to appeals that are filed out of time, it is noted that section 299(4) uses the term "may" in reference to dismissing an appeal for breaching the requirement in respect of the grounds of appeal. The section states:

"The Court of Appeal may dismiss without a hearing any appeal in which the grounds of appeal do not comply with the provisions of subsection (3)."

[28] It is to be noted that Mr Graham's notice and grounds of appeal were not filed by him but by his attorneys-at-law. There is no excuse for the breach of section 299(3) of the current JPCA. Indeed, none has been proffered. In **Salter Rex & Co v Ghosh** [1971] 2 All ER 865 at 866, it was said that the court does not like to see a litigant suffer for the mistakes of his attorneys-at-law. The court has become more stringent in respect of civil cases but may be less so in cases involving the liberty of the subject.

[29] Attorneys-at-Law are, however, encouraged to refrain from bringing frivolous appeals. This court adopts the directions of the former court of appeal in **Rex v Archibus Mills** on pages 55-56 as follows:

"...this is a frivolous appeal which ought not to have been brought. [Attorneys-at-Law] should not lend themselves to

frivolous appeals by preparing grounds of appeal in which there is clearly no substance or which clearly cannot be substantiated. Apart from other considerations, frivolous appeals result in a waste of time of busy clerks in the offices of the [Parish Courts], a waste of the time of the law officers, and a waste of the time of this Court. All such time wasted causes unnecessary delay to parties seeking justice in the Courts. This Court asks for and expects the co-operation of [attorneys-at-law] in seeing to it that time is not avoidably wasted.”

[30] The court in **Salter Rex & Co v Ghosh**, as a result of the procedural defects in that case, found that it should have been dismissed without a hearing. It, nonetheless, gave some reasons for finding that there was no merit in the appeal. Similarly, despite the defect in Mr Graham’s appeal, because we did have written and oral submissions from counsel, a brief indication of the hopelessness of his appeal will be indicated.

The substantive points

[31] Mr Reece has argued that the finding of the learned Parish Court Judge that it was the unlawful second incident that resulted in permanent injury to Mr Daley is inconsistent with the evidence with Mr Graham’s evidence that he had to use his baton to ward off Mr Daley’s attack. Learned counsel pointed out that the doctors, who gave evidence for the prosecution, could not determine whether Mr Daley’s injuries were caused during the first or the second incident and therefore Mr Graham should not have been convicted considering that uncertainty.

[32] Mr Graham’s appeal was hopeless because this court, as is now well known, does not lightly disagree with a trial judge’s findings of fact. The Privy Council reinforced the principle in **The Queen v Crawford** [2015] UKPC 44 in paragraph [9].

[33] In the present case, the issue for resolution at this point is whether there was evidence to support the Parish Court Judge’s finding, in relation to the offence of inflicting grievous bodily harm, that Mr Graham caused the injury to Mr Daley’s head, as a result of the second incident. The Parish Court Judge set out his reasoning in great and compelling detail. He absolutely rejected the evidence of the witness who said that

Mr Graham used his police baton to hit Mr Daley about the head. The Parish Court Judge found that that witness was not even present at the time of that altercation.

[34] What remained for the Parish Court Judge was the conflicting testimony of Mr Mitchell, the taxi driver, and Mr Graham's unsworn statement. The Parish Court Judge noted that Mr Graham's case was that he did not hit Mr Daley at all during the second incident. The Parish Court Judge not only rejected that assertion but also rejected Mr Graham's account of the way Mr Daley fell. In rejecting the latter account, the Parish Court Judge said in paragraph 56 of his reasons for judgment:

"There is nothing in [Mr Graham's] statement which could explain how [Mr Daley] would have fallen backwards after [turning to face Mr Graham and throwing a punch]. Throwing a punch at [Mr Graham], whom [Mr Daley] was facing at the time on [Mr Graham's] statement, required a forward motion. His momentum would naturally have been carrying him forward. How then would he have fallen backwards?"

[35] There was also evidence from Mr Mitchell describing the way that Mr Daley sustained the head injury. The parish court judge found Mr Mitchell to be a credible witness and accepted that he was able to see, and did see, what had occurred.

[36] There is no flaw in the Parish Court Judge's reasoning. He considered all the matters that he was obliged to consider in analysing the case. He dealt with the burden and standard of proof, the ingredients of the offence, the issue of self-defence and the issue of good character.

[37] The Parish Court Judge specifically dealt with the issue concerning whether Mr Daley's injuries were sustained during the first or second incident. He indicated that he could not say which blows or combination of blows caused Mr Daley's psychiatric injuries since there was no evidence to make that determination. He, however, accepted that it was Mr Graham who caused the injury to the back of Mr Daley's head in the second incident, that it was of a serious nature and this would be sufficient to find him guilty on the second count of inflicting grievous bodily harm.

[38] Considering the unexceptionable way that the Parish Court Judge expressed himself, Mr Graham had no hope of overturning the conviction.

Conclusion

[39] Mr Graham failed to comply with the requirements of the JPCA in that his notice and grounds of appeal did not set out the facts and points of law on which he intended to rely in support of his appeal. The court acknowledges that although the JPCA allows it to hear an appeal despite such breaches, this is not a case in which it should exercise its discretion in favour of Mr Graham.

[40] However, having heard arguments on the substantive matter, the court finds that Mr Graham's complaint against his conviction is absolutely without merit and would have been dismissed in any event.

[41] Accordingly, the court makes the following orders:

1. The appeal against conviction is dismissed.
2. The judgment and verdict of the Judge of the Parish Court are affirmed.