[2013] JMCA Crim 64

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 29/2010

BEFORE: THE HON MR. JUSTICE PANTON P
THE HON MR JUSTICE MORRISON JA
THE HON MR JUSTICE BROOKS JA

RONALD RHODEN v R

William Hines for the appellant

Miss Maxine Jackson and Miss Patrice Hickson for the Crown

ORAL JUDGMENT

17 December 2013

BROOKS JA

[1] The appellant Ronald Rhoden was convicted in the Home Circuit Court on 24 March 2009. The sentence that was imposed on 25 March 2009, as a result of that conviction, was that he should serve eight years imprisonment at hard labour.

[2] The sentence was in respect of a conviction for causing grievous bodily harm with intent. Mr Rhoden secured leave from a single judge of this court to argue his appeal and before us, Mr Hines, on his behalf, submitted that the learned trial judge in

his directions to the jury, failed to adequately analyse the offence of inflicting grievous bodily harm or did so ineffectively in relation to the evidence. The result was that little or no assistance was afforded the jury, thereby depriving the appellant of a fair trial. According to Mr Hines, the said failure had resulted in a miscarriage of justice and vitiates the conviction.

[3] Mr Hines' submissions arose from the fact that there were two counts on the indictment on which Mr Rhoden was charged. The first charged him with causing grievous bodily harm with intent and the second with inflicting grievous bodily harm. The first being a felony and the second being a misdemeanor.

[4] These charges arose from an incident which occurred on 15 August 2007, when the virtual complainant Mr Mike Williams said he was sitting, having lunch, when he saw the appellant, who was his co-worker and who was known to him both by his full name as well as the alias "Blue", approached him. Mr Williams testified that the appellant said to him "Yow, hold dis", and threw some liquid on him from a drink box. Thereafter, the appellant threw a lit piece of paper on Mr Williams and it set him ablaze. He had serious injuries as a result of that incident and the appellant was subsequently arrested and charged for the offences.

[5] In giving his directions to the jury, the learned trial judge did not focus specifically on the issue of the intention as making the distinction between the two counts on the indictment. Instead, what the learned trial judge did, in drawing a

distinction between the two, was to focus on the seriousness of the offence. What the learned trial judge in fact said is recorded at page 4 of his directions to the jury:

> "The first one is really the more serious one, the one we refer to as a felony, and the other one, inflicting grievous bodily harm, is the lesser of the two offences, and it is referred to as a misdemeanor. So, the prosecution has brought two counts in the alternative to say in looking at the case, you are not of the view that the injury was really serious, then you can go on to consider Count 2, which is, inflicting grievous bodily harm."

[6] Miss Jackson for the Crown accepted that the direction had some flaws. She however highlighted the defence raised by the appellant, namely, that there was no interplay between him and the virtual complainant in respect of this incident. She pointed out that Mr Rhoden's defence was that he had had nothing to do with the incident which caused Mr Williams' injury. In light of that defence, learned counsel submitted, it would have been confusing for the learned trial judge to give any further directions in respect of intention.

[7] We are not fully in agreement with Miss Jackson's submission. Having identified the dispute as to fact, it would have been simple enough for the learned trial judge to have given a direction to the jury as to what was the next step in the event that it found that the appellant had inflicted the injury. He could have then said that the count in respect of causing grievous bodily harm with intent required a particular intention in the appellant, whereas that intention was not required in respect of the second count.

[8] However, it cannot be ignored that that the defence was, 'I had nothing to do with this incident'. Bearing that in mind and bearing in mind the actions ascribed to the appellant, the jury, in our view, would not have arrived at any different verdict from the one in which it did.

[9] In the circumstances, although there were some deficiencies with the summation, we are of the view that there is no miscarriage of justice and as a result are prepared to apply the proviso contained in section 14 of the Judicature (Appellate Jurisdiction) Act. In the circumstances, the appeal is dismissed, the conviction and sentence are affirmed and the sentence is to be reckoned as having commenced on 25 March 2009.