

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MISS JUSTICE P WILLIAMS JA
THE HON MR JUSTICE D FRASER JA
THE HON MRS JUSTICE G FRASER JA (AG)**

SUPREME COURT CRIMINAL APPEAL NO 32/2018

JANNIE STONE v R

Leonard Green and Nyron Wright for the appellant

Ms Kathy Ann Pyke and Mrs Kimberly Guy-Reid for the Crown

17 and 21 June 2024

Criminal law – Retirement of jury – In short case, jury being invited to retire 23 minutes before lunchtime without any inquiry whether they preferred to have lunch first not evidence of improper pressure being placed on jury to arrive at a verdict

ORAL JUDGMENT

D FRASER JA

Introduction

[1] On 22 February 2018, after a four-day trial in the circuit court for the parish of Westmoreland before Palmer J (‘the learned trial judge’) and a jury, the appellant was convicted of the offence of wounding with intent. On 23 March 2018, he was sentenced to serve 18 years’ imprisonment at hard labour. His application for permission to appeal made on 6 April 2018, was, on 18 April 2023, granted by a single judge of this court, in respect of both his conviction and sentence.

The case for the prosecution

[2] The case for the prosecution was that, on 20 January 2013, the complainant Trevor Roberts, a security guard, returned home from work at about 11:00 pm. He had dog food in a bag and was at a table outside his front door preparing to feed his dogs. As he put down the bag on the table, the appellant ran up to him and started chopping him from behind.

[3] The complainant turned around and was face to face with the appellant who inflicted several chops to his face and upper body. The appellant was a neighbour who lived close to and was well known to the complainant for two years before the incident. The complainant indicated that at the time of the attack he saw the appellant for about 5 seconds, but it could have been more. He was aided by the lights on the outside of neighbouring houses, as, having just arrived home, he had not yet turned on his lights.

[4] The motive for the attack supplied by the complainant, was that he and the appellant had a falling out as the appellant had blamed him for the end of his relationship with his girlfriend and had told him before the incident that "head a go roll".

[5] The investigating officer, Detective Hanson, testified that he arrived at the scene and saw the complainant on the ground. He noticed that the complainant had what appeared to be blood to his neck and his left hand was chopped off. Detective Hanson was told by the complainant that the appellant, whom Detective Hanson knew before, was his attacker.

[6] Detective Hanson was unable to charge the appellant for wounding the complainant until over a year after the incident as he could not locate him earlier. When Detective Hanson pointed out the offence to him he said, "Mi nuh chop him up, but mi run whey because dem say a mi and bun dung mi house".

[7] The medical certificate received in evidence disclosed that the complainant suffered multiple chops wounds to the skull and limbs, chop to maxilla, and traumatic left arm amputation.

The case for the defence

[8] The appellant made an unsworn statement in which he stated that he knew the complainant before as "Flash". He raised an alibi. He indicated that on the night of the incident he was at his mother's house with his girlfriend. Then, about 1:00 am on 11 January 2013, he and his girlfriend left his mother's house to go back to his house across the road. He was, however, told by some friends that he should not go to his house as he was going to be killed since the complainant's family believed he wounded the complainant.

[9] He further indicated that due to the fear of being killed, he went away to Grange Hill for safety; and, it was not until November 2014 that some police officers asked him his name and told him of a complaint made against him for wounding the complainant. He maintained that he was innocent of the charge, as he was not the person who wounded the complainant.

Grounds of appeal

[10] The appellant filed the following grounds of appeal:

"1. **Mis-identity by the witness:** That the prosecution witnesses wrongfully identified me as the person or among any persons who committed the alleged crime.

2. **Lack of Evidence:** That the prosecution failed to present to the Court any 'concrete' piece of evidence (material, forensic or scientific) evidence [sic] to link me to the alleged crime.

B That the court failed to recognise the fact that the evidence and testimonies upon which the learned trial judge relied on for the purpose to convict me lack facts and credibility thus rendering the verdict unsafe in the circumstances

3. **Conflicting Testimonies:** That the prosecution witness presented to the court conflicting testimonies which amount to perjury thus calls into question the soundness of the verdict.

4. **Unfair Trial:** That based on the evidence presented, the court erred in convicting me for an offence I knew nothing about.
5. **Miscarriage of Justice:** That I was wrongfully convicted for a crime I knew nothing about and could not have committed.”

[11] Mr Leonard Green, counsel for the appellant, did not formally abandon the grounds filed by the appellant. He, however, was granted leave to argue that the learned judge having directed the jury to retire to consider their verdict at 12:37 pm, when their lunch period was 1:00 pm, might have placed pressure on the jury to return a verdict adverse to the appellant.

Submissions

Counsel for the appellant

[12] Mr Green candidly indicated to the court that, having reviewed the transcript and interviewed the appellant, he found nothing that could usefully be urged on the court, save the concern that pressure may have been placed on the jury by the time they were made to retire, resulting in prejudice to the appellant. He relied on the case of **R v Logo (Noble)** [2015] EWCA Crim 136. He complained that no inquiry was made by the learned trial judge of the jury whether they were prepared to proceed with their deliberations at that time or if they preferred to first go to lunch. He submitted that, in those circumstances the jury might have been encouraged to “get it over with” and not fully consider the implications of the discrepancies the learned trial judge had directed them on. This possible pressure he said could have led to an unfair verdict and a miscarriage of justice.

Counsel for the Crown

[13] Mrs Kimberley Guy-Reid, who responded on behalf of the Crown, submitted that the actions of the judge did not place any pressure on the jury. She pointed out that the trial had only lasted four days, the case was not complex and the jury required less than an hour to arrive at a unanimous verdict. Counsel also highlighted that nothing on the

transcript suggested that there was any issue raised with the appropriateness of the time of the jury's retirement. She advanced that the verdict was therefore not unsafe. In support of her submissions, she relied on extracts from the Supreme Court of Judicature of Jamaica Criminal Bench Book ('the Bench Book') and the cases of **Christopher Allen v R** [2023] JMCA Crim 46 and **Wilbert Pryce v R** [2019] JMCA Crim 40.

[14] In written submissions, counsel Miss Pyke and Mrs Guy-Reid responded to all the grounds filed by the appellant indicating that the learned trial judge gave the jury all the necessary directions and appropriate assistance. Though no ground was filed against sentence, counsel nevertheless addressed the sentence imposed and submitted that the learned trial judge considered all the relevant factors and passed a sentence that was reasonable and consistent with prescribed sentences that have been previously affirmed by this court. Accordingly, counsel invited the court to dismiss the appeal and affirm the conviction and sentence of the appellant.

Analysis

[15] At para. [29] of **Christopher Allen v R**, F Williams JA outlined the governing principle in respect of jury deliberations. He stated:

"It is the accepted position that the jury should be allowed to deliberate in complete freedom and that no improper pressure should be exerted on them..."

[16] At page 346 para. 5 of the Bench Book it is indicated that to prevent the jury being placed under pressure to arrive at a verdict, a benchmark of 3:00 pm has been set as the time beyond which jurors should not usually be sent out to deliberate, to avoid them being subject to anxiety, for example, about getting home.

[17] In **Christopher Allen v R**, the jury was first sent out at 2:26 pm and first returned at 3:15 pm. They were not unanimous and were sent back to deliberate at 3:19 pm after which they returned at 3:51 pm with a unanimous verdict. It was held that as the first retirement was before 3:00 pm and there was nothing in the judge's directions that could be said to have placed the jury under undue pressure, that complaint failed.

[18] Of particular interest, given the nature of the complaint in the instant case, is that at page 346 para. 4 of the Bench Book, it is recommended that,

“If the time for a lunch break arrives while the jury is deliberating, the registrar/clerk is to be directed to arrange for orders to be taken from the jurors as to their needs and collect the money from them so that the purchases can be made.”

[19] This direction to the registrar/clerk will not usually be on the record, unless it is indicated to the jurors in open court before they retire. Though from experience, members of this court know that what is prescribed in the Bench Book is the usual practice, we cannot speculate as to what actually happened in this case. There is, however, nothing on the transcript or discernible by reasonable inference, that any pressure was placed on the jury to arrive at their verdict.

[20] In **Wilbert Pryce v R**, in which counsel for the appellant also appeared, the jury was asked to retire at 12:29 pm. As in the instant case, the judge did not address the question of the luncheon adjournment. The jury took just over an hour and a half to arrive at a verdict. In that case the submission was that the time of the retirement gave rise to “the niggling concern that the jury might have been pressured not to give adequate consideration to the issues”. The court held, relying on **Everton Clarke v R** [2017] JMCA Crim 31, that the issues in the case were quite uncomplicated and there was nothing in the evidence to suggest that the time it took the jury to arrive at their verdict was insufficient in the circumstances. Accordingly, the validity of the complaint had not been established.

[21] That conclusion can readily be applied to the instant case. The case was short (four days), and the issues were straightforward. This will be clearly demonstrated when the learned trial judge’s treatment of the evidence and the legal directions he gave is later briefly reviewed. There is absolutely nothing to suggest that the time at which the jurors were invited to commence deliberations, in any way, shape or form, influenced the verdict in this case. They retired at 12:37 pm and returned 52 minutes later at 1:29 pm, a mere 29 minutes into their lunch hour.

[22] The instant case is distinguishable from that of **R v Tommy Walker** (unreported) Court of Appeal, Jamaica, Supreme Court Criminal Appeal No 105/2000, judgment delivered 20 December 2001, which was relied on by Mr Green in **Wilbert Pryce v R**. In **R v Tommy Walker** the jury were invited to retire at 4:55 pm, returned at 5:40 pm divided; retired again at 5:42 pm, returned at 6:15 pm still divided; received further directions from the judge and retired for the third time at 6:29 pm, returning 12 minutes later with a unanimous guilty verdict. In allowing the appeal, this court held that both the statements of the trial judge and the invitation to the jury to retire at that late hour were undesirable and had the effect of pressuring the jury to arrive at a verdict. None of those undesirable circumstances, exist in the instant case.

[23] Of note, is that the case of **R v Logo (Noble)**, cited by Mr Green, does not assist his position. Counsel advanced his argument by relying on the judgment outlining why leave to appeal was granted to Mr Logo. At that hearing, the Court of Appeal of England and Wales (EWCA) considered the following. Mr Logo was tried on a 19-count indictment containing a number of violent and sexual offences alleged to have been committed against one victim. At the close of the prosecution's case, on the direction of the judge, the jury acquitted Mr Noble on two counts.

[24] The jury first retired to consider their other verdicts on 19 March at 10:02 am. On 20 March, at 3:03 pm, they were given a majority direction. On 21 March, at 11:37 am, they returned to court with unanimous verdicts of conviction on eight and acquittal on five counts. That left undetermined four counts of rape. The judge gave the jury a direction approximating a Watson direction, along with words of her own, and they retired further at 11:43 am. At 12:51 pm, after a total deliberation period of 15 hours and 14 minutes, the jury returned and delivered majority verdicts of guilty on all four counts.

[25] The grounds of appeal focused only on these four counts and complained that i) the judge should not have given a Watson direction; ii) she should have invited submissions on whether a Watson direction should have been given; iii) the judge deviated from the wording of the Watson direction in a way that may have placed undue

pressure on the jurors to return verdicts on these counts and iv) the timing of the direction, mid-morning on a Friday, after the jury had already deliberated for about 14 hours, may have placed additional pressure upon the jury to return verdicts on those counts. Having decided the grounds of appeal were arguable, the EWCA granted leave to appeal.

[26] The outcome on the hearing of the appeal reported as **R v Logo** [2015] All ER (D) 143 (Apr) was that the appeal was dismissed as no merit was found in the grounds of appeal. There are two reasons this case cannot advance the appellant's cause in any way. Firstly, and significantly for our purposes, while the first three grounds were analysed, nowhere in the brief report is there even any mention of the complaint about the time the direction was given. Secondly, the purported reasons the respective juries may have been put under pressure to arrive at a verdict were different. In the instant case the concern relates to proximity to the lunch hour at the time the jury was asked to commence deliberations, and, in the cited case, the complaint was the time the jury were given a Watson direction and invited to continue deliberations.

[27] The fundamental conclusion regarding this complaint, therefore, remains clear. There is nothing inherent in the circumstances or evident on the transcript, to support even a smidgen of concern, that the jury's verdict was other than freely and fairly arrived at.

[28] Turning to the summation, we agree with counsel on both sides that the learned trial judge correctly directed the jury on the applicable law and adequately assisted them to assess the material in the case. Recognition identification being the main issue, as indicated by the Crown, the learned trial judge, went into "extensive detail" in his review of the identification evidence including the photographs of the scene, which provided support for the relative location of the electric lighting given by the complainant and investigating officer. The learned trial judge pointed out the strengths and weaknesses in the evidence. He invited the jury to consider the relevant factors affecting the quality of the identification including the lighting, distance, time of observation, whether there

were obstructions, the fact that the complainant was chopped and had blood in his eyes and the effect of sequencing inconsistencies in the evidence of the complainant. He also gave the necessary identification warning and the reasons for the warning, thus bringing home to the jury the significance and basis of the need for caution.

[29] All the other required general and specific directions were admirably given by the learned trial judge, in a summation that was entirely adequate. The conviction is, therefore, unimpeachable.

[30] Regarding the sentence imposed, leave was granted for sentence to be appealed although the grounds of appeal did not challenge sentence. This was perhaps because the learned trial judge employed a high starting point of 25 years, up from the seven recommended in the then recently promulgated Sentencing Guidelines For Use by the Judges of the Supreme Court and The Parish Courts, December 2017 ('the Sentencing Guidelines'). As stated by the learned trial judge, however, the starting point selected was influenced by a number of aggravating factors. These were: the vicious nature of the attack, that it was caused by the belief over loss of a woman, the fact that the complainant was previously a friend who had assisted the appellant, and the ultimate impact the case had on the complainant's quality of life. The aggravating factors having all been rolled into the starting point, he then identified the appellants previous good character, responsibility for dependents, and that he lost his house after the incident (apparently through community vengeance), as mitigating factors, for which he deducted seven years. He thus settled on a final sentence of 18 years.

[31] The procedure followed by the learned trial judge was not strictly in keeping with that recommended in cases such as **Meisha Clement v R** [2016] JMCA Crim 26, **Daniel Roulston v R** [2018] JMCA Crim 20 and the Sentencing Guidelines. However, considering that a full trial was embarked upon, the heinous life-altering injuries visited upon the complainant, and the sentences previously imposed by this court for similar offences, it was not urged, and we do not find, that the sentence imposed was excessive.

[32] Accordingly, we make the following orders:

(1) The appeal is dismissed.

(2) The conviction and sentence are affirmed.

(3) The sentence is reckoned as having commenced on 23 March 2018, the date it was imposed.