[2013] JMCA Crim 1

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO 21/2012

BEFORE: THE HON MR JUSTICE MORRISON JA
THE HON MISS JUSTICE PHILLIPS JA
THE HON MR JUSTICE BROOKS JA

EVERETT RODNEY v R

Lambert Johnson for the appellant

Mrs S. Sahai Whittingham-Maxwell for the Crown

12, 13 November 2012 and 18 January 2013

BROOKS JA

[1] On 2 April 2012, the appellant, Mr Everett Rodney was convicted of the offence of unlawful wounding. This was in the Resident Magistrates' Court for the parish of Westmoreland. Mr Rodney was, at the time, a serving member of the Jamaica Constabulary Force (JCF).

[2] He was not in uniform at approximately 1:30 am on 14 December 2008 when, as found by the learned Resident Magistrate, he shot and injured Mr Andre Cunningham. Mr Rodney was dressed in shorts and a plaid shirt. He was, however, armed with a pistol issued by the JCF. The events leading to the shooting occurred while Mr Rodney

was attending a dance in Highgate, Darliston, in the parish of Westmoreland. Mr Cunningham was also among the patrons.

[3] The learned Resident Magistrate, who convicted Mr Rodney, sentenced him to serve 15 months imprisonment at hard labour. Mr Rodney has appealed against his conviction and sentence. Mr Johnson, who argued Mr Rodney's appeal against the conviction, based his submissions on four main plinths. He argued that:

a. The learned Resident Magistrate made findings of fact that were flawed because they were either not based on the evidence or did not consider serious discrepancies in the prosecution's case.

b. The learned Resident Magistrate erred in her treatment of Mr Rodney's defence that he believed himself to be in danger and fired his weapon in protection of his life and safety.

c. The learned Resident Magistrate entered into the arena and exhibited bias in favour of the prosecution during her treatment of the respective witnesses for each side.

d. The learned Resident Magistrate failed to consider the issue of Mr Rodney's good character, by virtue of the fact that he was a serving police officer.

Each of these issues will be dealt with in turn, but first an outline of each case will be given in order to aid comprehension of the submissions and the analysis.

The prosecution's case

[4] Mr Cunningham and the other witnesses, as to the events of that early morning, testified that Mr Rodney became embroiled in a confrontation with another man, identified as Dalmayne Vassell, while both were inside the premises in which the dance was being hosted. The prosecution's case was that Mr Cunningham had known Mr Rodney before that day and knew that he was a policeman. Mr Cunningham held Mr Rodney, took him out of the premises and took him to his (Rodney's) car, encouraging him to leave in order to avoid a disruption of the dance.

[5] Mr Rodney, however, refused to heed the advice of Mr Cunningham and others. He drew his pistol and charged back into the premises seeking Mr Vassell, saying among other things, "di bwai diss mi, di bwai fi dead". His behaviour infuriated some of the patrons, and they surrounded him in a hostile manner. Mr Cunningham again went to him, hugged him, and walked with him toward the car. This time a crowd of patrons followed them.

[6] They reached the car, but Mr Rodney, despite encouragement, refused to get in. One of the persons who had gone to the dance with Mr Rodney started the car and began to drive away slowly, but Mr Rodney remained obdurate. Then it happened.

[7] Someone threw a missile at Mr Rodney and he reacted. He ran into a lane from whence the missile came, and fired several shots. Persons, who were leaving the dance, were in the lane. He came back to the main road and sat on a wall, despite the fact that his friends were in the car and asking him to get in. More stones were flung from the lane. One hit and shattered the rear windscreen of the car. Another hit Mr Rodney. He remained where he was for a short while, then went back into the lane and fired his weapon again. When he returned to the main road, he went toward his car. Before he got to the car, however, he turned, pointed the gun at Mr Cunningham, and fired at least one shot.

[8] The bullet struck Mr Cunningham and he fell. Mr Rodney then ran toward Mr Cunningham and kicked him several times. According to one witness, Mr Rodney said, while he was kicking Mr Cunningham, "Do you know I get pay to kill people." More missiles, including bottles, were thrown and Mr Rodney ran to his vehicle and got in. The vehicle was then driven away. Mr Cunningham was, thereafter, taken to the hospital.

The case for the defence

[9] Mr Rodney and another police officer, Constable Andre Allen, testified for the defence. They stated that Mr Vassell was the aggressor and that he used the following

words during the clash, "Must kill one a unno police bwai up ya tonight." Mr Vassell went away and returned shortly thereafter with 15-20 men armed with "machetes, sticks, stones and other implements".

[10] Mr Rodney and his friends made their way out of the venue but were closely pursued by an "angry mob, uttering threatening words and behaving boisterously". He got to his car but was hit by stones when he got there. The car was also damaged by stones. He was in fear of his life and he fired one shot from his service pistol in the direction from whence the stones came. He said that he fired six shots from his firearm that night. He fired in order to prevent Mr Vassell's mob from attacking his group.

[11] In cross-examination, Mr Rodney specifically denied the allegations by the prosecution that:

a. he had been coaxed away from the venue;

b. persons spoke to him seeking to pacify the situation;

c. he returned to the venue;

d. he ran into the lane and fired wildly;

e. he stayed back after his friends went into the car;

f. he shot Mr Cunningham;

g. he kicked Mr Cunningham; and

h. he said that he got paid to kill.

[12] Whilst Mr Rodney fired in the direction from whence the stones came, his colleague Constable Allen, who was also armed with a JCF-issued firearm, fired several shots upward into the air. This, Constable Allen said, was in order to fend off the mob.

The findings of fact

[13] Mr Johnson complained that, in her findings of fact, the learned Resident Magistrate drew conclusions that were contrary to the evidence. Learned counsel specifically pointed out that whereas the prosecution's witnesses testified that Mr Rodney faced Mr Cunningham when he fired, the medical evidence indicated that the injuries, although to Mr Cunningham's side, were more to his back. The medical certificate stated that the injuries included "1 cm GSW left posterior axillary fold" and "1 cm GSW x 2 posterior medial and lateral aspect of left arm".

[14] With that medical evidence, learned counsel argued, it was puzzling that the learned Resident Magistrate should have found that Mr Cunningham was shot from in front rather than from behind. The inference to be drawn from Mr Johnson's submission was that it was someone else who inflicted the injuries.

[15] Associated with that complaint, Mr Johnson also stated that the learned Resident Magistrate seemed to have been shifting the burden of proof to Mr Rodney. Learned counsel argued that what the learned Resident Magistrate said, at pages 40-41 of the record of appeal, demonstrated the validity of his submissions. She said:

> "Defence Attorney Mr. Johnson also made heavy weather of the Complainant's [Mr Cunningham's] injury and Medical Certificate. He says it defies common sense that he could

> have been shot more to his back when he said the [appellant] was facing him. Not so. The Complainant said Rodney pointed in his direction and fired, and he also said he faced him. **But there is no evidence before the court as to Mr Rodney's skill as a marksman**. The bullet, the Complainant said, entered through his left arm and ended up going through his side (**more to the back**) and grazed his lungs. He pointed out to the court the place where the bullet entered his arm. That is consistent with being shot from in front, certainly not behind." (Emphasis supplied)

[16] The learned Resident Magistrate, in her reference to Mr Rodney's marksmanship, seems to have been saying that there was no guarantee that Mr Rodney would have hit Mr Cunningham to the front of his body. Contrary to Mr Johnson's submission, this does not place any burden of proof on Mr Rodney. Although the learned Resident Magistrate did not allude to it, there was evidence that when Mr Rodney pointed the gun and fired, Mr Cunningham "ducked, he turned and went down on the ground" (page 20 of the record). That action may well have accounted for Mr Cunningham having sustained injury to those parts of his body.

[17] There was, therefore, evidence that could have explained the sites of Mr Cunningham's injuries. The learned Resident Magistrate was in no doubt that Mr Rodney shot Mr Cunningham. She stated this expressly, as one of her findings of fact. She said at page 41 of the record:

> "4. That after a stone was thrown at [Mr Rodney], he hesitated, again fired into the crowd then turned his gun directly at Andre Cunningham who was not in a group or crowd, and fired at him."

Mr Rodney's subsequent action, as the learned Resident Magistrate found, of kicking Mr Cunningham, would have supported her finding that Mr Rodney was the aggressor and that he had deliberately shot Mr Cunningham.

[18] Mr Johnson also argued that the learned Resident Magistrate failed to consider a number of discrepancies in the prosecution's case. Based on those failures, learned counsel submitted, the findings of fact by the learned Resident Magistrate are not beyond reproach. Among the discrepancies that Mr Johnson identified were:

a. whether Mr Cunningham heard any explosion from Mr Rodney's pistol when he was shot; and

b. whether it was one shot or two that Mr Rodney fired at Mr Cunningham.

The learned Resident Magistrate, instead of identifying and assessing the discrepancies, Mr Johnson submitted, misdirected herself as to what constituted discrepancies. This she did at page 38 of the record, when, in the face of admitted inconsistencies by witnesses for the prosecution, she said:

> "The evidence of the prosecution [sic] witnesses – taken as they are without the legal/court training and expertise – were [sic] indeed conflicting. There were discrepancies between what was in their statement and what they said in court. And there were differences between their individual accounts of the incident. **None of the discrepancies/differences however, warranted being tendered as exhibits by the Defence**." (Emphasis supplied)

[19] Mr Johnson quite correctly pointed out that if the witness admits the inconsistency between his testimony and a previous statement, there is no need to put the portion of the statement into evidence. This is because the admission is the evidence of the inconsistency. To that extent, therefore, the learned Resident Magistrate did misdirect herself. The result of the error would not, however, be that which Mr Johnson advocated.

[20] Learned counsel submitted that these discrepancies meant that the standard of proof was not satisfied. He, however, in his written submissions, used some very novel terms in describing the standard of proof. Learned counsel argued that the "criminal burden of proof…demands of the tribunal of fact…to conclude…that the accused is guilty **without a glimpse of doubt** of the charge brought against him" (emphasis supplied). Later in his submissions, Mr Johnson submitted that "if there is even a **snippet of doubt** to be found, then the verdict of not guilty should…have been entered" (Emphasis supplied). Those terms, with respect to Mr Johnson, do not accurately describe the standard of proof in criminal cases.

[21] Where findings of fact are made by the tribunal entrusted with that duty, this court is reluctant to disturb such findings, as long as there is credible evidence to support such a finding. This approach was enunciated by Smith JA in **Royes v Campbell and Another** No SCCA 133/2002 (delivered 3 November 2005). His Lordship said at page 18 of his judgment:

> "It is now an established principle that in cases in which the Court is asked to reverse a judge's findings of fact, which

> depend upon his view of the credibility of the witnesses, the Court will only do so if satisfied that the judge was 'plainly wrong'."

Smith JA relied on **Watt v Thomas** [1947] AC 484 in support of that statement of the law. That principle would also apply to Resident Magistrates who make findings of fact.

[22] This court has also found that an appellant, seeking to overturn a conviction based on findings of fact, must "show that the verdict is so against the weight of the evidence as to be unreasonable and insupportable" (see **Joseph Lao v R** (1973) 12 JLR 1238). This principle also applies to a Resident Magistrate's findings of fact.

[23] In the instant case, there was ample, credible evidence and a significant degree of consistency between the four witnesses, as to fact, proffered by the prosecution, to allow the learned Resident Magistrate to make the findings that she did. The error concerning the categorisation of previous inconsistent statements is, in the face of the stark differences between the prosecution's case and that of the defence, not so grave as to amount to a miscarriage of justice. There is no reason to disturb the learned Resident Magistrate's findings of fact.

The issue of self-defence

[24] Mr Johnson's next major submission was that the "learned Resident Magistrate misdirected herself in a most grievous fashion" in respect of the issue of self-defence. This, he said, was because she did not pay sufficient regard to the evidence concerning the presence of an illegal firearm at the scene, the fact that there was a crowd that was seeking to mob Mr Rodney, and the fact that he received injuries during the incident.

Learned counsel argued that there was ample evidence of an attack on Mr Rodney. Sufficient, he submitted, for the learned Resident Magistrate to have found that Mr Rodney honestly believed that he was under attack when he discharged his weapon.

[25] Mr Johnson submitted that the learned Resident Magistrate not only ignored that exculpatory evidence, but she also misdirected herself in respect of the law concerning self-defence. Mr Johnson argued that instead of using the subjective test, the learned Resident Magistrate applied an objective test in respect of Mr Rodney's belief. Learned counsel pointed particularly to the fact that the learned Resident Magistrate compared Mr Rodney's reaction to that of Constable Allen. She said at page 40 of the record:

> "Rodney has stated that he 'believed' his life was in danger. The Court has taken this evidence into account. **It's interesting that this could be his belief when his own witness, in the same place and under the same circumstances, formed no such belief. He fired in the air.** What's more, neither Allen nor anyone else from that group sustained injuries that night." (Emphasis supplied)

Mr Johnson relied on the judgment of the Privy Council in **Solomon Beckford v The Queen** (1987) 24 JLR 242; [1988] AC 130 in support of these submissions.

[26] The learned Resident Magistrate made another reference to Mr Rodney's assertion as to his belief. She did this at page 40 of the record:

> "Rodney claims that a stone was flung from the direction of Cunningham – **that is his belief**. That done, and he being under no further attack, he turned to Cunningham and fired directly at him. That cannot be deemed as self-defence for there is no evidence before this court that at the time he fired he was under any attack or faced imminent attack." (Emphasis supplied)

Her apparent acceptance of his belief was not in the context of his reacting to being under attack. That belief was as to the direction from whence the stone came.

[27] Although it does appear that the learned Resident Magistrate used, at the point to which Mr Johnson refers, a standard other than a subjective standard, the comment has to be placed in perspective. Firstly, she had earlier stated that it was a subjective standard that was to have been used. This was at page 39 of the record:

> "The issue is whether or not [the injury] was 'unlawfully' inflicted, in circumstances where the Defence raised is that of self-defence.
>
> The basic principles of self-defence are set out in *Palmer v R, [1971] AC* 814:
>
> *'It is both good law and good sense that a man who is attacked may defend himself. It is both good law and good sense that he may do, but only do, what is reasonably necessary.'*
>
> A person may use such force as is reasonable in the circumstances for the purposes of: self-defence; defence of another; defence of property; prevention of crime.
>
> In assessing the reasonableness of the force used, two questions must be asked:
>
> 1. Was the use of force necessary in the circumstances, i.e. Was there a need for any force at all? and
> 2. Was the force used reasonable in the circumstances?
>
> **The common law has indicated that both questions are to be answered on the basis of the facts as the accused honestly believed them to be**.
>
> To that extent it is a subjective test. There is, however, an objective element to the test. The jury (Resident

> Magistrate) must then go on to ask whether, on the basis of the facts as the accused believed them to be, a reasonable person would regard the force used as reasonable or excessive." (Emphasis supplied)

That statement of the law in respect of honest belief in self-defence is correct.

[28] The second element to the context, in which the learned Resident Magistrate's statement about Mr Rodney's belief is to be considered, is that she accepted the evidence that he was the aggressor in the incident. She said at page 40 of the record:

> "… [Mr Rodney] advanced towards [sic] the crowd, firearm in hand. He was an aggressor, determined to show his might. He fired indiscriminately, and used excessive force. That puts to naught the evidence of Allen that Rodney did not run up into a lane and that he was indeed with that group."

[29] In this context, the learned Resident Magistrate's statements about Mr Rodney's belief seems, not to be the application of an incorrect standard, but a rejection of Mr Rodney's evidence that he believed that his life was in danger. The learned Resident Magistrate also took into account the fact that Mr Rodney was "a trained policeman armed with a lethal weapon". Those circumstances are material to the question of whether Mr Rodney, in fact, held the belief that he asserted that he had.

[30] The learned Resident Magistrate also accepted that after Mr Cunningham fell, having been shot, Mr Rodney went up to him and kicked him several times. This would not be the action of a man who felt that he was under attack and was seeking to leave the area. The learned Resident Magistrate so found. She said, at page 40:

> "The evidence before the court is NOT [sic] that Rodney and friends tried to escape this angry mob by shooting their way

> out of there, causing injury to someone. It is that Rodney had time to run towards the crowd and shoot; return and sit on a culvert and when a 'missile' was thrown which seemed to have hit him, again discharged his weapon towards a group of people, then turned his gun on someone (Cunningham) and fired – not react in self-defence."

[31] The learned Resident Magistrate's approach is consistent with the standard, which their Lordships approved in **Solomon Beckford**. Their Lordships' comments (at page 144 of the Appeal Cases Report) reveal that an objective approach is material to the question of whether the belief was, in fact, held:

> "Their Lordships therefore approve the following passage from the judgment of Lord Lane C.J. in **Reg. v. Williams (Gladstone)**, 78 Cr. App. R. 276, 281, as correctly stating the law of self-defence:
>
> > '**The reasonableness or unreasonableness of the defendant's belief is material to the question of whether the belief was held by the defendant at all.** If the belief was in fact held, its unreasonableness, so far as guilt or innocence is concerned, is neither here nor there. It is irrelevant. Were it otherwise, the defendant would be convicted because he was negligent in failing to recognise that the victim was not consenting or that a crime was not being committed and so on. In other words the jury should be directed first of all that the prosecution have the burden or duty of proving the unlawfulness of the defendant's actions; secondly, if the defendant may have been labouring under a mistake as to the facts, he must be judged according to his mistaken view of the facts; thirdly, that is so whether the mistake was, on an objective view, a reasonable mistake or not.'" (Emphasis supplied)

[32] In the circumstances, Mr Johnson's complaint is not well founded and must fail.

The question of descent into the arena

[33] Although Mr Johnson did not set it out as a ground of appeal, he was allowed to argue that the learned Resident Magistrate entered into the arena, showing bias in favour of the prosecution. Learned counsel submitted that this bias was demonstrated by the fact that the learned Resident Magistrate asked only one question of the prosecution's witnesses, whereas she asked several questions of Mr Rodney.

[34] Mr Johnson argued that the learned Resident Magistrate's questions were not by way of clarification. He submitted that they were questions that had already been asked and answered, and seemed to be by way of another cross-examination.

[35] The record does not support Mr Johnson's submissions. Firstly, the learned Resident Magistrate asked at least three questions of each of two of the prosecution's five witnesses. Secondly, whereas the learned Resident Magistrate did ask several questions of both Mr Rodney and Constable Allen, it is not correct to say that, generally speaking, the questions had already been asked and answered. Mrs Whittingham-Maxwell, for the Crown, is correct in her submission that the questions were by way of clarification for the learned Resident Magistrate's own thought processes.

[36] The answers to the questions asked of Mr Rodney are recorded at page 26:

> "One of the girls being touched [by Mr Vassell] is my girlfriend Theresa McIntosh.
>
> I pulled my firearm at the point where we were being mobbed. When the men attacking us, we fired several shots to keep them from attacking us.

> Shots fired at intervals. Cannot recall how much time passed between shots.
>
> No, did not run up into [the] lane and fired shots there.
>
> I fired in the direction where the stone was coming – not point and fire at Cunningham.
>
> The car was going toward Sav-la-Mar.
>
> Janiel was in the front of the car, Constable Allen and I was [sic] outside of the car.
>
> Stone was coming from everywhere. They were all around us.
>
> Different intervals of stone throwing. Can't say how much time between stone throwing. Everything happen [sic] so fast."

Those answers do not reflect that the learned Resident Magistrate carried out a cross-examination. Mr Allen's answers to the learned Resident Magistrate, recorded at pages 28-29 of the record, also fail to support Mr Johnson's complaint. It is unnecessary to set out those answers here.

The issue of good character

[37] Mr Johnson argued that even though there was no submission made to the learned Resident Magistrate about his character, Mr Rodney was entitled to have her caution herself on both the propensity and credibility limbs of a good character direction. He submitted that Mr Rodney, being a police officer, should have been presumed to have had no convictions. That would have entitled him to a direction that he would not have been disposed to behave in the way alleged by the prosecution. In addition, since he gave sworn testimony, he would have been entitled to a direction

that he is likely to have spoken the truth in respect of the events in question. In the absence of the appropriate caution, the authorities suggest, Mr Rodney could have his conviction set aside (see **R v Vye** [1993] 1 WLR 471, **Langton v The State** (2000) 56 WIR 491, **Samuel Robie v R** [2011] UKPC 43, and **Chris Brooks v R** [2012] JMCA Crim 5 (at paragraph 54)).

[38] Mr Johnson did not provide any authority to support his submission that a police officer is automatically entitled to a good character direction. It is true that an accused person who states that he had never been in trouble with the police, thereby, puts his character in issue and is entitled to a good character direction. It is also true that, ordinarily, a person who has been convicted of an offence is not allowed membership in the JCF. It does not necessarily follow, however, that a member of the JCF must be presumed to have had no previous convictions.

[39] It cannot be that a person, merely by virtue of his office or profession, is presumed to have had no previous convictions. In **Uriah Brown v The Queen** [2005] UKPC 18, the Privy Council treated with an appeal by a police officer against his conviction for motor manslaughter. The issue of good character was not raised at the trial. It was, however, a ground of appeal, that the absence of a good character direction vitiated the conviction. Their Lordships not only did not find that there was an inherent presumption of good character in a police officer but, in summarising the submissions of counsel for Mr Brown, hinted that no such assumption could be made. They said at paragraph 36:

> "Mr Knox [for the appellant] did not lay the blame for this omission [to give a good character direction] upon the judge, who not only had no duty to raise the issue of good character **but would have been ill advised to mention the appellant's character unless he was given information from which he could properly and safely do so**." [Emphasis supplied]

[40] Their Lordships in **Jagdeo Singh v The State** (2005) 68 WIR 424; [2005] UKPC 35 hinted at the difference in views people may have of a certain profession. Mr Jagdeo Singh was "a practising lawyer with no criminal convictions, no recorded blemish on his professional reputation and a commendable record of involvement in community activities". He had placed that evidence before the court at his trial and was, therefore, "entitled to the benefit of a full good character direction to the jury". On the question of presumptions concerning professions, their Lordships said, at paragraph 20 of their judgment:

> "But the belief of lawyers in their own probity is not universally shared, and there are those who believe them to be capable of almost any chicanery or sharp practice."

Similarly, some people hold uncomplimentary views about police officers. Counsel appearing for Mr Rodney at the trial, should not have assumed, if in fact he did, that because Mr Rodney was a serving police officer, he was entitled to a good character direction. It was necessary for Mr Rodney to have distinctly raised the issue of his character in order to secure the benefit of that direction (see paragraph 46 of **Patricia Henry v R** [2011] JMCA Crim 16).

[41] An observation may be made that police officers give evidence on behalf of the Crown in criminal cases, on a daily basis. Whereas it is understood that there is a difference in the burden of proof, no suggestion would be made that those officers, by virtue of their office, should be considered more credible than any other witness.

[42] A contrast may be drawn between the instant case and that of **Edmund Gilbert v The Queen** PCA No 25/2005 (delivered 27 March 2006). In **Gilbert**, the appellant was a "respected and well-known figure in Grenada". "He had been a Senior Tax Collector and a Bishop of one of the Island's Baptist Churches." At his trial for murder he made an unsworn statement from the dock. Their Lordships of the Privy Council, at paragraph 9 of their judgment, summarised his statement, in part. They said:

> "He described how he was 60 years of age and a Minister of Religion for the past 32 years. He also described his work as a tax collector for 36 years. So far as his relationship with the victim was concerned, he contended it was no more than that of 'a father and pastor' and that he was 'merely assisting the family in trying to stabilise her with her wild sexual activities'."

[43] It may be fairly said that Mr Gilbert did not formally put his character in issue. Nonetheless, their Lordships were of the view that the defence had been based on Mr Gilbert's character. They said at paragraph 16 of the judgment:

> "**Here the whole of the defence case started with the unlikelihood of a person who had Mr Gilbert's responsibilities engaging in the conduct on which the prosecution relied**. Furthermore, it must have been apparent to the jury the difference in status of the appellant and the 17 year old Aleccia who gave critical evidence against him. In these circumstances, it is understandable

> why a trial judge might decide not to give a character direction...." (Emphasis supplied)

Whereas their Lordships found that Mr Gilbert was putting his character in issue, the same cannot be said of Mr Rodney.

[44] There was, in the circumstances, no duty on the learned Resident Magistrate to give a good character direction. Their Lordships in **Samuel Robie v R** approved the statement that, "The judge's duty to give the [good character] direction only arises when such evidence is before the court" (see paragraph 9). No explanation has been given for Mr Rodney's failure. There is no record of any antecedents having been given in respect of Mr Rodney prior to the sentence being handed down. There is, therefore no official statement that he has no previous convictions. Nor was any witness as to character called on his behalf. As a result there is still no evidence that Mr Rodney was qualified to put the issue of his good character before the learned Resident Magistrate. The issue of "serious misbehaviour or ineptitude" by defence counsel at Mr Rodney's trial, does not, therefore, arise for discussion.

[45] In any event, given the array of witnesses who gave a fairly consistent account of Mr Rodney's aggressive behaviour, the failure of even a deserved good character direction would not have assisted Mr Rodney. This complaint must also fail.

Conclusion

[46] The main issues which the learned Resident Magistrate had to resolve were issues of fact. Those issues were sharply drawn between the testimony of the

witnesses for the prosecution and that of the defence. The learned Resident Magistrate assessed the prosecution's case using the correct burden and standard of proof and came to the conclusion that the testimony proffered was credible and reliable. She rejected the testimony of Mr Rodney and Constable Allen and found that Mr Rodney was the aggressor in the incident. She used the correct standard in approaching his testimony as to his honest belief. In the circumstances, she rejected his testimony that he was acting in self-defence. She was entitled to do so.

[47] The learned Resident Magistrate did err in stating that the reason previous inconsistent statements, which were conceded by the prosecution's witnesses, were not admitted as exhibits, was because they were not significant enough to warrant being so admitted. Her error, in the face of the strong evidence proffered by the prosecution, did not amount to a miscarriage of justice and would not warrant disturbing the conviction.

[48] Mr Rodney did not distinctly put his character in issue. There was, therefore, no duty on the learned Resident Magistrate to give a good character direction. The mere fact that he was a serving police officer did not entitle him to that direction. Even if he had been so entitled, the circumstances of the instant case do not allow for the conviction to be overturned for the failure to give one. The issues turned on the credibility of the witnesses and the prosecution adduced strong evidence as to fact. The tribunal of fact believed them and rejected the evidence of Mr Rodney and Constable Allen.

[49] The complaint that the learned Resident Magistrate entered into the arena and showed a bias in favour of the prosecution is not supported by the record and is without merit.

[50] Based on the above, the appeal is dismissed and the conviction and sentence are affirmed. Mr Rodney served 38 days of his sentence before he was admitted to bail, on 10 May 2012, pending the resolution of his appeal. That time should be reckoned in calculating the sentence to be served.