

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO 13/2012

**BEFORE: THE HON MRS JUSTICE HARRIS JA
THE HON MR JUSTICE DUKHARAN JA
THE HON MS JUSTICE LAWRENCE-BESWICK JA (Ag)**

BRENTON BROWN v R

Winston Douglas for the appellant

Miss Keri-Ann Kemble for the Crown

10 April, 5 July and 19 July 2013

LAWRENCE-BESWICK JA (Ag)

[1] The appellant Brenton Brown was convicted on 27 January 2012, in the Resident Magistrate's Court for the parish of Trelawny of assaulting Lennon Benjamin occasioning actual bodily harm to him and also of common assault. He was sentenced to nine months imprisonment suspended for one year and fined \$10,000.00 or four months imprisonment respectively. He now challenges the convictions and sentences.

[2] On 5 July 2013, we made the following order:

- “(1) Appeal allowed.
- (2) Conviction quashed and sentences set aside.

(3) Judgment and verdict of acquittal entered.”

We promised to put our reasons in writing. This we now do.

Background

[3] The prosecution placed reliance on three witnesses, namely: the complainant Corporal Lennon Benjamin, Constable Iton Meade and Sergeant George Morrison. It was the prosecution's case that on 14 June 2009, Lennon Benjamin, a police corporal, approached the appellant in order to take him to the police station to execute a warrant on him. The appellant resisted and inflicted injuries on the corporal. Further, the appellant approached the corporal with a knife at which time, in fear for his life, the officer fired a shot, hitting the appellant. The appellant and the officer were both treated at the hospital for their injuries.

[4] Cpl Benjamin and Constable Meade stated that the appellant hit Cpl Benjamin in the face and on the left hand. All three witnesses testified as to seeing injuries to Cpl Benjamin's cheek and his hand. As it concerns the injury to the cheek in particular, the complainant's evidence was that his cheek was slightly swollen and painful (page 2 and page 3 of notes of evidence) and, that he had received treatment for that (page 3 of the notes of evidence). The evidence of the eye-witness, Constable Meade, was that at the police station he saw that Cpl Benjamin's cheek was swollen (page 7 of notes of evidence). The prosecution's third witness, Sergeant Morrison, testified that he too saw injury to Cpl Benjamin's left cheek (page 10 of notes evidence).

[5] The defence's case was that the corporal having approached the appellant, pulled him, resulting in the corporal himself falling, at which stage, his gun went off, injuring the appellant in the leg. The appellant denied pulling a knife and approaching the corporal. Evidence of the appellant's good character was given by Elva Brown who described him as a very quiet, hardworking young man who has never been involved in any wrongdoing.

[6] The learned Resident Magistrate found that:

1. In an attempt to evade an arrest, Mr Brown inflicted injury to the face and left hand of Cpl Benjamin;
2. While in possession of a ratchet knife Mr Brown advanced towards Cpl Benjamin placing him in fear of imminent bodily harm;
3. Cpl Benjamin having fired his firearm in self-defence resulted in Mr Brown sustaining a wound; and
4. Mr Brown committed the offences of assault occasioning actual bodily harm and assault at common law.

Grounds of Appeal

[7] The two grounds on which the appeal was filed were:

“That the learned Magistrate misdirected herself with regard to the evidence of character tendered on behalf of the Appellant and thereby failed to properly consider the

defence and in particular its effect on the credibility of the Appellant.

That the Learned Magistrate failed in her reasons for judgment to disclose any proper analysis of the medical evidence available and thereby failed to appreciate its effect in her assessment of the defence specifically in relation to the injury and the Appellant's credibility and the complainant's credibility."

Ground one - Improper analysis of the character evidence

[8] In view of the merit in ground two of the appeal, as analysed below, it is not necessary to discuss ground one, save to say that no fault can be properly ascribed to the manner in which the learned Resident Magistrate treated the character evidence (see **R v George Cameron** (1989) 26 JLR 453 and **Michael Reid v R** SCCA No 113/2007 delivered 3 April 2009).

Ground two - Improper analysis of the medical evidence

[9] It is clear from the evidence that the witnesses speak to Cpl Benjamin receiving an injury to his cheek, which was slightly swollen. A medical certificate, tendered into evidence through Sergeant Morrison, shows that Cpl Benjamin was examined by a doctor on 14 June 2009 and that he was "suffering from the following injuries: abrasion to left antecubital fossa. No bruises to face". There was no reference to any injury to Cpl Benjamin's cheek nor to treating any injury to his cheek. This revealed a fundamental discrepancy between the medical certificate and the evidence of the Crown's witnesses. The presence of such an injury and the extent of it could support

the Crown's case or alternatively, its absence could cast reasonable doubt on its veracity.

[10] Sergeant Morrison, who was the investigating officer, testified that:

“When Corporal Benjamin made report to me, I made observation of him. I saw a slight bruise in the face. I noticed he had swelling and bruises to left cheek and left arm. Don't know of bruises (to face), but it was swollen. He had already gone to the doctor.” (page 11 of notes of evidence)

This was particularly significant because the evidence was that this was at 11:00 pm at the police station, on the night of the incident, which would have been after the doctor had examined Cpl Benjamin. This would mean that the swelling had subsided before the officer went to the doctor and then re-appeared in the night at the police station. In treating with this apparent contradiction, the Resident Magistrate described Sergeant Morrison's evidence concerning the injuries as inconclusive and unsure (page 21 of notes of evidence) and concluded “that aspect of his evidence is completely rejected by the Court”.

[11] Then, in an obvious contradiction, without explanation, she stated that:

“[Sergeant Morrison's] evidence was significant as to (1) injuries seen on Cpl Benjamin and (2) the knife he received from Cpl. Benjamin.” (at page 22)

The medical evidence was critical in the case because it provided a method by which the learned Resident Magistrate could utilise evidence from a doctor, a purported independent expert witness, to assist in her determination of where the truth lies.

[12] The magistrate recognised correctly that credibility was a major issue and, in analysing the evidence, and accounting for the absence of any reference to an injury on the cheek on the medical certificate, she stated:

“It is well known and accepted that the doctor examines and speaks to the injuries and body parts referred/shown to him. Why would the doctor mention the face at all, had that not been shown or mentioned to him?” (page 20 of her reasons for judgment)

She continued:

“The Complainant did not say he had a bruise there. Neither did the doctor. But the mere fact that the doctor mentions face, as against foot, back or buttocks, is sufficient for me to infer that that place was of significance to the patient and was indeed pointed out to the doctor. What the doctor subsequently recorded, was [sic] his findings: ‘No bruise to face.’”

[13] The learned Resident Magistrate thereby demonstrated that she drew two important inferences from the medical certificate. The first was that the complainant brought the condition of his face to the doctor’s attention and the second was that the fact that there was no record of pain or swelling in the certificate, does not mean that there was, in fact, no swelling or pain. She reasoned further:

“That record does not eliminate ‘swelling’ or the fact that Benjamin was in fact hit there with no lingering resultant **visible** injury.” (page 21 reasons)

[14] The learned magistrate seems to have accepted that there had been no swelling to the officer’s face when the doctor examined him and ascribed that absence to a delay in receiving treatment. She opined that:

"The delay could have led to [sic] swelling subsiding by the time he saw the Doctor." (page 21 of notes of evidence)

In our view, that opinion was speculative. She did not point to the evidence grounding such a finding. Further, she did not show an appreciation for the impact that this medical certificate had on the credibility of the witnesses.

[15] Sergeant Morrison stated that a knife was handed over to him. The evidence was that the police had retrieved it from the appellant. In her reasons for judgment, the magistrate stated that:

"In the circumstances of this case absence of [sic] knife is not fatal to Crown's case even though it's [sic] production would have further strengthened it." (page 20 of notes of evidence)

It is true that the absence of the knife would not be fatal to a conviction but in the circumstances of this case its absence casts grave doubts on the prosecution's case.

[16] In addressing the issue of credibility, the learned Resident Magistrate pointed out that although discrepancies had been put to the witnesses, none had been put into evidence as exhibits:

"...as the witnesses could adequately account for them; they accepted that they said the particular thing in the written statement and whatever was an error they said it was. In that context, the defence could not put it into evidence. Thus, the court could only address its mind to whether the discrepancies and omissions adversely affected the credibility of [sic] witnesses." (page 21 of notes of evidence)

[I7] Each of the three of the Crown's witnesses had agreed in evidence that he had given an account of the incident in his statement to the police which differed in some respects from the account given at the trial (pages 4, 5, 8, 9 and 10 of notes of evidence). Cpl Benjamin and Constable Meade explained that the differences had occurred because they had prepared the case in a rush and had made "a lot of errors" in the preparation of the statements (pages 5, 8 and 9 of notes of evidence). The learned magistrate appeared to accept that explanation for the presence of the discrepancies. She did not indicate why she accepted that a statement written in a hurry could credibly differ in substance from a subsequent account of the same incident, moreso when the author is a trained officer of the law.

[I8] The learned magistrate concluded:

"And in any event the discrepancies did not go to the root of the case or affect any material elements of the case." (page 21 of notes of evidence)

She did not indicate the basis for this reasoning. Some of the discrepancies involved the injuries of the parties. The offences concerned actual physical harm to Cpl Benjamin and his apprehension of harm. In our opinion, the injuries were therefore a fundamental aspect of the case.

[I9] It is of no small moment that no knife was tendered in evidence and there was no explanation for that omission when, on the prosecution's case, the knife played such an important role and the appellant's statement was that he did not pull a knife.

Conclusion

[20] The credibility of Cpl Benjamin and Constable Meade was critical to the proper determination of the case. In our view, there is merit in ground two of the appeal that:

“That the Learned Magistrate failed in her reasons for judgment to disclose any proper analysis of the medical evidence available and thereby failed to appreciate its effect in her assessment of the defence specifically in relation to the injury and the Appellant's credibility and the complainant's credibility.”

In our opinion, the verdict is unreasonable and cannot be supported by the evidence (**R v Joseph Lao** (1970) 12 JLR 1238). It is for the foregoing reasons that we made the order stated in paragraph [2] herein.