

JAMAICA

IN THE COURT OF APPEAL

PARISH COURT CRIMINAL APPEAL NO 8/2017

**BEFORE: THE HON MR JUSTICE MORRISON P
THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE MCDONALD-BISHOP JA**

NATE BROWN v R

Obiko Gordon instructed by Frater Ennis & Gordon for the appellant

Mrs Christine Johnson-Spence and Miss Sasha-Ann Boot for the Crown

20 March 2018

BROOKS JA

[1] This is an appeal by Mr Nate Brown, the appellant, from his conviction for unlawful wounding in the Parish Court for the parish of Saint Ann. On 15 March 2017, the learned Parish Court Judge, Miss Andrea Thomas, fined Mr Brown \$25,000.00 and ordered that in the alternative he serves six months imprisonment at hard labour.

[2] The evidence adduced by the prosecution that led to Mr Brown's conviction is that he chopped the virtual complainant, his uncle, Mr Eli Brown, on the hand. The incident occurred on 8 September 2013 at Hermitage, in the parish of Saint Ann.

[3] The injury arose out of a dispute between the two men over the place where Mr Eli Brown had tied out his pig. On Mr Eli Brown's account, Mr Nate Brown attacked him when he complained about Mr Nate Brown's interference with the rope that had tied the pig.

[4] Mr Nate Brown testified at the trial that Mr Eli Brown attacked him after he had released the pig, which was tied to a tree in his (Mr Nate Brown's) yard. Mr Nate Brown said that he had chopped the pig's rope with a machete.

[5] On both accounts, a fight then ensued. Mr Eli Brown said that it resulted in Mr Nate Brown chopping him on the hand, while Mr Nate Brown said that they wrestled on a piece of old zinc and it was the zinc that had cut Mr Eli Brown.

[6] The learned Parish Court Judge heard testimony from both the complainant, Mr Eli Brown as well as a district constable for the prosecution, and, for the defence, Mr Nate Brown and a witness called by Mr Nate Brown. Although rejecting some of Mr Eli Brown's testimony, the learned Parish Court Judge accepted that the injury that he had received was as a result of a chop with a machete.

[7] Mr Obiko Gordon, on behalf of Mr Nate Brown, with the leave of the court, argued six supplemental grounds of appeal namely:

- "1. The Learned Trial Judge erred when she ignored the major discrepancies in the testimony of the Complainant and came to a conclusion that the Appellant was guilty.

2. The Learned Trial Judge unreasonably rejected the evidence of Constable Morgan who said that the complainant showed him the pear tree and it was in fact in the [appellant's] yard, and therefore arrived at an incorrect finding of fact that the Appellant was the aggressor and the complainant was not a trespasser.
3. The Learned Trial Judge erred in law when she found that the discrepancy in the Complainant's evidence as to the sequence of events and when exactly he got chopped was not material to the Crown's case.
4. The Learned Trial Judge erred in neglecting the defence of accident on the sole basis of what was contained in the medical certificate of Doctor Ephraim Ingram.
5. The Learned Trial Judge failed to take into account the testimony of the Officer during cross examination when he agreed with the suggestion that the [appellant] was bleeding when [sic] made the report about Eli Brown.
6. The Learned Trial Judge rejected the evidence of the [appellant]. However she failed to inform herself that even if she does not believe the [appellant] because she is of the view that he is lying, she must still go back to the Crown's case and satisfy herself that the Crown has proved the offence beyond a reasonable doubt."

[8] Learned counsel, at the outset of his oral submissions, accepted that he had an uphill task in attacking a conviction, which was based on findings of fact by the tribunal at first instance charged with that task. He also relied on his written submissions.

Ground 1 – the learned Parish Court Judge’s treatment of inconsistencies

[9] The complaint that the learned Parish Court Judge ignored the inconsistencies in the testimony of the complainant is misplaced. The learned Parish Court Judge

thoroughly assessed the complainant's evidence and identified several inconsistencies which she individually analysed (see pages 22-23 of the record of appeal). Accordingly, ground 1 fails.

Ground 2 – the treatment with the location of the pear tree

[10] It was not only Mr Eli Brown who contradicted the district constable, who was the investigating officer, on the point of whether the pear tree on which the pig was tied, was in Mr Eli Brown's yard or Mr Nate Brown's yard. Mr Nate Brown's witness also contradicted the district constable. In any event, the learned Parish Court Judge found that even if Mr Eli Brown was a trespasser, he was not the aggressor and did not pose a threat to Mr Nate Brown's safety at the time when Mr Eli Brown received the chop. Thus, this ground fails.

Ground 3 – the treatment of the discrepancies concerning the sequence of events

[11] Mr Gordon submitted that the learned Parish Court Judge failed to properly analyse the evidence and identify the sequence as to when it was that Mr Eli Brown got chopped and whether it was with a machete, since Mr Eli Brown didn't say so explicitly.

[12] We accept that there seems to be some confusion on paper as to that issue, but the learned Parish Court Judge saw and heard the witnesses. She would have been able to draw such inferences from the evidence as were reasonable in the circumstances. She was in a better position to determine how it was that Mr Eli Brown received his injury.

[13] We find no reason to disturb her findings of fact that it was after wrestling between them that Mr Nate Brown got up and chopped Mr Eli Brown. As such, ground 3 fails.

Ground 4 – the treatment of the doctor's certificate

[14] It is not correct to say that the learned Parish Court Judge erred in neglecting the defence of accident on the sole basis of what was contained in the medical certificate of Dr Ephraim Ingram.

[15] The learned Parish Court Judge accepted Mr Eli Brown's evidence and, based on the medical evidence, accepted that he had been chopped with a machete. This ground also fails.

Ground 5 – the treatment of the injury to the appellant

[16] The investigating officer testified that Mr Nate Brown was bleeding when he made a report at the police station. It is correct that the learned Parish Court Judge did not mention this bit of evidence. She did note however that Mr Eli Brown did say that he had bitten Mr Nate Brown. As the investigating officer did not give any particulars about the bleeding, the absence of a specific comment by the learned Parish Court Judge cannot be fatal to her findings.

Ground 6 – the procedure for assessing the Crown's case

[17] Mr Gordon complained that the learned Parish Court Judge did not state that having rejected the case for the defence that she was bound to determine whether the prosecution had discharged the burden of proof placed on it. The learned Parish Court

Judge did not commit the breach complained about. We accept that she did not expressly say that having rejected the defendant's case she would have to go back to the Crown's case, but she clearly did so by implication, having rejected the defence's case and then going on to analyse the Crown's case.

Conclusion

[18] Based on that analysis, the appellant's burden of disturbing a conviction based on findings of fact has not been discharged.

[19] The result is that the appeal must be dismissed and the conviction and sentence affirmed. It is so ordered.