

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MISS JUSTICE P WILLIAMS JA
THE HON MISS JUSTICE SIMMONS JA
THE HON MRS JUSTICE DUNBAR GREEN JA**

PARISH COURT CRIMINAL APPEAL NO COA2024PCCR00004

CARLA MAY CROOKS v R

Leroy K Equiano for the appellant

Ms Kathrina Watson and Ms Ashley Innis for the Crown

16 December 2025 and 29 May 2026

Criminal Law – Appeal – Conviction – Unlawful wounding – Whether self-defence adequately considered by trial judge – Whether evidence sufficient to ground conviction – Annotations made in body of the evidence by trial judge – Whether real possibility of bias – Sentence – Whether sentence manifestly excessive

DUNBAR GREEN JA

Introduction

[1] This appeal arises from the conviction of Carla May Crooks ('the appellant') in the Parish Court for the parish of Saint Thomas ('the Parish Court'), before Her Honour Mrs Tracey-Ann Robinson ('the learned judge of the Parish Court'), on 14 May 2024. The appellant, along with her mother, Mrs Curline Crooks, and father, Mr Leroy Crooks, was convicted of the offence of unlawful wounding. The particulars of the offence were that the accused persons ('the accused') unlawfully and maliciously wounded Ms Wilma Leach ('the complainant'), who is the appellant's maternal half-sister. Mr Crooks is the complainant's stepfather.

[2] The prosecution's case was that the appellant and her parents were trespassers who initiated and sustained violence against the complainant, and that the complainant

was compelled to defend herself. In contrast, the defence maintained that the appellant acted in defence of her father, who had been struck with a machete by the complainant, and that her action was reasonable in the circumstances.

[3] Whereas Mrs Crooks was given a non-custodial sentence and Mr Crooks a sentence not requiring immediate incarceration, the appellant was sentenced to 18 months' imprisonment at hard labour.

Summary of evidence at trial

The complainant's evidence

[4] The complainant testified that, on 1 January 2023, while she was at home, the appellant accompanied by their mother, Mrs Crooks, entered the premises uninvited. She explained that, although they had resided there together approximately four years earlier, the property had since been conveyed to her by her father, and she held legal title to it.

[5] The complainant stated that she challenged their presence on her property, questioning the legitimacy of their intrusion. A confrontation ensued, during which she was attacked first inside her house and then outside in her yard. She described being placed in a chokehold, pushed into a fence, beaten, and later struck on the head with a stick by the appellant.

[6] She further recounted being beaten by Mrs Crooks, and stoned and beaten by Mr Crooks, who arrived at her house later. She said that, on the approach of Mr Crooks, she asked him to leave her property, but instead he picked up a stone and threw it at her. The stone, she said, "busted" her forearm. It was her evidence also that, she kept slipping through stones, thrown at her by Mr Crooks, and "busted" a toe in the process. Ultimately, Mr Crooks, she said, "grabbed into" her and started punching her while Mrs Crooks tried to pull him away. She then felt a sharp blow to the back of her head. In response, she turned and swung a machete at the other attacker, whom she later discovered was the appellant. She explained that she did not know how she came into possession of the

machete, but admitted that during the fight with Mr Crooks, she used the machete to slap him. This, she said, was in self-defence.

[7] It was her further evidence that, because of the actions of the accused, she sustained the loss of four teeth, a laceration to the head, a fractured skull and multiple cuts and bruises to an arm and toe.

The medical evidence

[8] Dr Aung Myin Tin, the attending medical doctor at Princess Margaret Hospital, confirmed that the complainant presented with multiple bruises to the right cheek, a swollen left eye, and a minor laceration to the upper lip. More significantly, he observed a fractured upper incisor tooth and a skull bone fracture. The latter two injuries, he opined, were of a serious nature.

The appellant's evidence

[9] The appellant testified that her purpose in visiting the complainant's premises was to retrieve furniture and clothing belonging to Mrs Crooks. She stated that, prior to this, she had informed the police that the complainant intended to dismantle a shed that she and Mr Crooks had built at the property. According to her evidence, upon entering the house, the complainant began yelling and questioning their presence. She said that the complainant, who had been in the yard, then rushed inside the house and began "thumping" her before pushing her outside. The appellant further stated that the complainant tripped and fell into the fence, after which a struggle ensued. During the struggle, the complainant bit her finger, and the appellant, in turn, scratched the complainant's eyes. Their mother attempted to break up the fight but failed, so two neighbours eventually helped separate them.

[10] The appellant further testified that as she and Mrs Crooks were about to leave the property, the complainant emerged from the house armed with a machete. She stated that she took up a stick to defend herself and Mrs Crooks. Mr Crooks then entered the yard and began making enquiries about what was happening. According to her evidence,

the complainant grabbed him and struck him with the machete, whereupon, acting in defence of her parents, and particularly her father, she struck the complainant with the stick. She added that the complainant then swung the machete, inflicting a cut to her left inner wrist for which she received medical attention.

Mrs Crooks' evidence

[11] Mrs Crooks testified that she and the appellant went to the complainant's property, after making a report at the police station, as the complainant was to dismantle a shed. She stated that the front door was open and that the complainant and her nephew were at the back. According to her evidence, the complainant enquired why they were there and then began punching the appellant. The two grappled and fell, with the complainant beneath and the appellant above her. Mrs Crooks said she attempted to stop the fight but was unsuccessful and sought assistance from a neighbour. By the time the neighbour intervened, the fight had already moved to the fence. The neighbour parted them, after which the complainant returned to her house and emerged with a machete.

[12] Mr Crooks then appeared and began making enquiries about the fight. In response, Mrs Crooks testified that the complainant grabbed and slapped him with the machete, causing his spectacles to fall. She said the complainant advanced upon him again with the machete, whereupon Mr Crooks armed himself with a stone. The appellant, meanwhile, found a piece of stick which she used to strike the complainant in the head after the complainant chopped at her with the machete.

Mr Crooks' evidence

[13] Mr Crooks and Mrs Crooks gave broadly similar accounts of Mr Crooks' intervention. He stated that, upon observing the complainant being armed with a machete and threatening to chop the appellant, he approached and enquired about the altercation. While doing so, the complainant struck him on the back with the machete, causing his spectacles to fall. When she advanced again, he armed himself with a stone and threw it at her, stating that he did so to protect himself and the appellant. The appellant, who

was nearby, picked up a stick and struck the complainant, who retaliated with the machete. Mrs Crooks then intervened and pulled him out of the yard.

The video evidence

[14] Videotapes were received into evidence by agreement of the prosecution and defence.

Summary of findings by the learned judge of the Parish Court

[15] The learned judge of the Parish Court reviewed the video evidence and found that it materially corroborated the complainant's account. She concluded that the appellant and her co-accused were aggressors, and that the complainant acted lawfully in self-defence when she slapped Mr Crooks with the machete.

[16] The learned judge of the Parish Court rejected the defence's explanation for entering the property, finding it implausible. She held that the appellant's blows to the complainant formed part of a sustained attack rather than defensive acts and accepted the complainant's evidence that she struck Mr Crooks with the machete only after he attacked her. The learned judge of the Parish Court found that the appellant's final blow to the complainant's head was retaliatory and, accordingly, concluded that the appellant was guilty of unlawful wounding.

Notice and grounds of appeal

[17] By notice of appeal, the appellant challenges both her conviction and sentence. The original grounds advanced were:

- "1. That the evidence led by the Crown was not sufficient to warrant a conviction.
2. That the decision of the Learned Parish Judge was against the weight of the evidence.
3. That the sentence is excessive in the circumstances."

[18] At the hearing of the appeal, the appellant was granted leave to argue two supplemental grounds as follows:

“1. The learned trial judge misinterpreted the law on self-defence and as such failed to apply the correct principle resulting in the rejection of the appellant’s defence.

2. The learned trial judge, by the manner in which she recorded the evidence, demonstrated an early bias against the appellant and as such the appellant did not receive a fair trial.”

[19] For convenience, the supplemental grounds are treated as grounds 4 and 5. Given the overlap between grounds 1, 2, and 4, they will be addressed together. Ground 5 will be considered separately, and ground 3, relating to sentence, will be dealt with at the end.

Ground 1: that the evidence led by the Crown was not sufficient to warrant a conviction.

Ground 2: that the decision of the learned judge of the Parish Court was against the weight of the evidence.

Ground 4: the learned judge of the Parish Court misinterpreted the law on self-defence and as such failed to apply the correct principles resulting in the rejection of the appellant’s defence

Summary of submissions for the appellant

[20] Counsel for the appellant, Mr Leroy Equiano, submitted that the law of self-defence permits a defendant to use necessary, reasonable, and proportionate force to protect himself or another from imminent attack. It was argued that the learned judge of the Parish Court failed to direct herself appropriately on the principles of self-defence, including that of honest belief. He relied on **R v Rose** [1884] 15 Cox 540 and **Solomon Beckford v The Queen** [1987] UKPC 1. He also argued that even where an accused may have initiated or contributed to hostility, the defence of self-defence remains available, citing **R v Rashford** [2005] EWCA Crim 3377.

[21] Counsel contended that the learned judge of the Parish Court wrongly emphasised the fact that the appellant had entered the complainant's home without permission. He submitted that the appellant was unarmed when she entered and only armed herself after the complainant introduced a machete. He further argued that the video evidence showed the complainant holding Mr Crooks with a machete in hand when the appellant struck her, and that the appellant acted out of fear and in defence of her father.

[22] Counsel submitted that the learned judge of the Parish Court's reliance on the appellant's unscheduled and unwelcome entry onto the property was misplaced. Apart from the absence of invitation, it was said that there was no evidence of threats, aggressive language, or conduct by the appellant that placed the complainant under attack or reasonable apprehension of danger. He further contended that undue emphasis was placed on the fact that the appellant had vacated the complainant's property years earlier.

[23] It was argued that the complainant's right to protect her property did not extend to the use of disproportionate force. The use of a machete against persons said to be unarmed and retreating was characterised as an escalation rather than a proportionate response.

[24] Against that background, counsel contended that there was no proper basis for the learned judge of the Parish Court's finding of a "pre-emptive strike," and that her reasoning disclosed bias and failure to engage with evidence supporting the appellant's defence.

[25] Counsel further submitted that inconsistencies between the complainant's testimony and the medical evidence undermined the prosecution's case. He pointed to the complainant's allegation of losing four teeth and sustaining a "busted arm," whereas the medical evidence recorded only one broken tooth and did not mention an arm injury.

Summary of submissions for the Crown

[26] Crown Counsel, Ms Kathrina Watson, relying on **R v Joseph Lao** [1973] 12 JLR 1238, submitted that the verdict should not be disturbed unless found to be palpably wrong.

[27] She submitted that while the learned judge of the Parish Court's directions were not extensive, they sufficiently referenced necessity, reasonableness, and honest belief; the accepted statement of the law as found in **Palmer v R** [1970] UKPC 31, **Solomon Beckford v R**, and **Wayne Hamil v R** [2021] JMCA Crim 12. Counsel emphasised that the appellant was the aggressor, and self-defence scarcely arises for an aggressor, citing **Bayne Simms v Regina** (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal No 109/2006, judgment delivered 24 April 2009. She also submitted that the appellant's stated reasons for entering the premises were dubious, and the videos contradicted her account.

[28] Alternatively, counsel submitted that any error in findings, or otherwise, was not material and did not occasion a miscarriage of justice.

Analysis and disposal of grounds

Review powers of this court

[29] Section 14 of the Judicature (Appellate Jurisdiction) Act prescribes the powers of this court. An appeal may be allowed where the verdict is unreasonable, not supported by the evidence, founded upon an error of law, or where a miscarriage of justice has occurred. However, even if a point raised on appeal might be decided in favour of the appellant, the court may dismiss the appeal if no substantial miscarriage of justice has occurred.

[30] In addition, the court is empowered to substitute a different lawful sentence where the sentence originally imposed is found to be inappropriate.

Principles of self-defence

[31] The law of self-defence is well settled. As Lord Morris explained in **Palmer v R**, a person attacked or who believes he is about to be attacked may defend himself, but only with force reasonably necessary, recognising that in the heat of conflict exact measurement of response cannot be expected. That approach was further elucidated in **Solomon Beckford v R**, where Lord Griffiths made clear that, when dealing with the issue of an imminent attack, the critical question is whether the accused believed, or may have believed, that the use of force was necessary to defend himself or to prevent a crime. If such a belief arises on the evidence, the prosecution bears the burden of disproving it.

[32] The distinction in the law between circumstances of an actual attack and a belief in an imminent attack has been emphasised in subsequent case law. In **Regina v Garnett Shand** (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal No 2/93, judgment delivered 5 July 1993, at pages 5-7, Gordon JA explained that a direction on honest belief is required only where the case turns on the accused's perception of an imminent attack, rather than on evidence of an attack that had in fact begun. Consistent with that analysis, Harrison JA (acting as he then was) observed in **Regina v Peter Senior and Clayton Bryan** (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal No 133/2003, judgment delivered 11 March 2005, that where the evidence clearly establishes an actual attack, the question for the court is a simpler one. It is a question of whether the accused was under attack or was himself the aggressor. In such circumstances, a specific direction on honest belief is unnecessary, as the issue depends upon a factual determination of who initiated the violence.

Adequacy of directions and application of the principles of self-defence

[33] At pages 9 to 11 of the record of proceedings ('the record'), the learned judge of the Parish Court directed herself in accordance with the governing principles of self-defence and the facts of this case. She stated that self-defence is a complete defence, and that if she were left in doubt as to whether the accused acted in self-defence that

doubt was to be resolved in the accused's favour. She explained that a person acts lawfully in self-defence where it is necessary to defend against an actual or threatened attack and where the force used is reasonable in the circumstances. She explained the relevant considerations for determining whether the force was reasonable. She directed herself that defensive force must not be out of proportion to the attack, but that in the heat of the moment, a person cannot be expected to weigh precisely the amount of force required.

[34] The learned judge of the Parish Court correctly identified the central issue as whether the appellant's blows were defensive or retaliatory, and whether they were reasonably necessary, it being undisputed that there was a fight in which the complainant and possibly the appellant were injured. She emphasised that self-defence arose only if the appellant was, in fact, defending herself or another, and not if she was the aggressor and attacking the complainant, retaliating, or acting in revenge against her. She also correctly stated that the burden lay on the prosecution both in proving the case and in negating self-defence.

[35] These directions, though not extensive, captured the essential principles set out in **Palmer v R** and **Solomon Beckford v R**. There is no set formula of words to be used; what matters is that the judge adequately directed herself on the salient components and applied them to the evidence (see **Palmer v R**, pages 831-832).

[36] In applying the law to the facts, the learned judge of the Parish Court, at pages 28–32 of the record, found that the complainant had not granted permission for the appellant or her parents to enter her premises. She accepted the complainant's account that the appellant and her mother first attacked her inside her home, before pushing her into a fence and continuing the assault in her yard, joined later by Mr Crooks. She rejected the defence's assertion that they had gone there to collect furniture, finding instead that the accused had conspired to assault the complainant.

[37] At page 32 of the record, the learned judge of the Parish Court observed that, given the threatened circumstances, the complainant would have been entitled to a pre-emptive strike. However, she accepted the complainant's evidence that she did not inflict the first blow. Having carefully assessed the demeanour and evidence of the complainant and the accused, the learned judge of the Parish Court accepted the complainant as credible and reliable, noting that her evidence was logical, supported by exhibits, and corroborated by medical testimony.

[38] In analysing the sequence of events, the learned judge of the Parish Court concluded that Mr Crooks was not intervening to protect the appellant but was himself actively engaged in the beating of the complainant, as a continuation of the assault, while Mrs Crooks attempted to restrain him. She accepted the complainant's evidence that she was attacked first by the appellant and Mrs Crooks and later beaten by Mr Crooks. Further, it was during the beating that the complainant slapped Mr Crooks with the machete in self-defence, and the appellant struck the final blow.

[39] The learned judge of the Parish Court's conclusion as to the appellant's culpability was that she held the complainant in a chokehold, squeezed her eye, shoved her into a fence, and beat her. She then armed herself with a stick and first struck the complainant while Mr Crooks was stoning her. She again struck her in the head, during a tussle in which Mr Crooks was beating the complainant. The learned judge of the Parish Court found that the appellant's blows were, therefore, not defensive but part of a sustained attack. She characterised the final blow to the complainant's head as retaliatory. The learned judge of the Parish Court also concluded that the situation of violence was created by the appellant and Mrs Crooks, later supported by Mr Crooks; and the complainant's use of the machete was lawful self-defence, occurring only after she had been attacked by Mr Crooks.

[40] Ultimately, the learned judge of the Parish Court found that the video evidence was critical as it showed the appellant and her co-accused advancing upon the

complainant, striking her repeatedly, and persisting in the assault despite opportunities to withdraw.

This court's review of the video evidence

[41] Video evidence usually becomes admissible "once it is established that a videotape has not been altered or changed, and that it depicts the scene of crime" (see **R v Nikolovski** [1997] 1 LRC 617). In the instant case, no evidence was led as to the provenance or accuracy of the videotapes. As indicated earlier, they were received into evidence by the agreement of the prosecution and defence, and there was no challenge to the accuracy of their content.

[42] We have taken the opportunity to review the videotapes which form part of the record before us.

[43] They did not capture the initial stage of the fight. The first videotape shows the complainant on the ground at the fence with the appellant positioned over her. Mrs Crooks said she was urging them to stop the fight at this point.

[44] The essential aspect of the fight, for the purpose of the appeal, is the second stage, after Mr Crooks joined. The complainant testified that the appellant struck her with a stick while Mr Crooks threw stones and engaged her in a fight, causing multiple injuries. The appellant claimed she struck the complainant in defence of her father, who had been slapped with the machete. Mr Crooks stated that he was struck on the shoulder and threw a stone in response, a claim supported by Mrs Crooks' evidence.

[45] The second video depicts this stage of the fight. It shows the appellant and Mrs Crooks walking as if they were leaving the property, with the appellant holding a stick. The appellant is seen walking backwards, gesticulating with the stick, while Mrs Crooks pushes her forward. Mr Crooks enters the frame and nudges Mrs Crooks forward. All three accused appear to be walking away, but Mr Crooks then turns back. The appellant continues walking with Mrs Crooks.

[46] Mr Crooks is next seen running towards a pile of rubble and bending as if to take up an object. The frame shifts to the complainant, standing with a machete in hand. She is then seen sidestepping, as if avoiding a projectile. The frame shifts to Mr Crooks, holding a large stone. The appellant, now standing beside him, points the stick towards the complainant's face. The complainant steps forward. The frame shifts to Mr Crooks, who is seen throwing a stone while Mrs Crooks holds on to his shirt and tries to pull him back.

[47] The complainant bends and picks up the machete from the ground, at which point the appellant strikes her on the back. The complainant straightens and raises the machete, and the appellant strikes her on her hand. Mr Crooks is seen advancing towards the complainant with a large stone raised above his head, while Mrs Crooks attempts to restrain him. The complainant spins and raises the machete in a chopping motion, but the appellant is no longer in the frame. The complainant then turns to face Mr Crooks, who is advancing with a stone. The next frame shows the complainant and Mr Crooks in a tussle. Mrs Crooks is seen pulling him back, and a stone is on the ground. The appellant, on re-entering the frame, is seen running in and delivering a blow to the back of the complainant's head with the stick. She retreats after the complainant swings the machete toward her.

[48] The third videotape confirms the appellant striking the complainant to the back of the head.

[49] The video evidence did not specifically confirm or disprove the complainant's evidence that she was being beaten by Mr Crooks when the appellant delivered the final blow although it clearly showed Mr Crooks turning back and picking up stones, advancing towards the complainant and throwing the stones at her while the appellant struck her to the back and hand, Mrs Crooks pulling him back, and himself and the complainant being engaged in a tussle.

[50] We note, further to this, that the sequencing of events given by the appellant and her co-accused was inconsistent with the video evidence. The video footage showed the appellant walking with a stick before Mr Crooks threw the first stone, and her first two blows to the complainant coincided with Mr Crooks' stoning of the complainant. The appellant's third blow was during the tussle in which the complainant said she was being beaten by Mr Crooks. By contrast, the appellant claimed to have struck only once. She also did not mention the stone throwing. Mr Crooks understated his role, saying he threw a single stone, whereas the video showed him throwing multiple. He also did not mention the tussle. Mrs Crooks was not truthful about when the appellant armed herself with the stick.

[51] So, the learned judge of the Parish Court was left with the complainant's evidence that she was being beaten by Mr Crooks when the final blow was struck, and Mrs Crooks was trying to restrain him, which she was free to accept or reject. The learned judge of the Parish Court accepted that Mr Crooks was beating the complainant when Mrs Crooks was pulling him back and that it was during Mr Crooks' attack on the complainant that the appellant struck the complainant to the head. In so doing, she cannot be faulted.

[52] Taken together, the videotapes depicted, in part, a sustained attack upon the complainant, corroborating her account and undermining the appellant's. All the evidence considered, the learned judge of the Parish Court was entitled to reject the claim of self-defence, finding instead that the violence was instigated by the appellant and Mrs Crooks and aggravated by the participation of Mr Crooks. Her observation that "three on one is murder" is a colloquial expression underscoring the seriousness of the assault and did not detract from her legal analysis.

[53] Contrary to Mr Equiano's submission, the learned judge of the Parish Court was also entitled to find that the appellant and her co-accused were the aggressors. In **R v Rashford**, the court held that an aggressor may still rely on self-defence if the victim's response creates imminent danger. But note para. 24 of **Bayne Simms v Regina**, where, relying on **The State v Hansraj Ori and Tulsie Persaud** [1975] 22 WIR 201,

this court stated that where the defendant is the aggressor, self-defence can hardly arise. These authorities affirm that self-defence is not automatically precluded for aggressors, but, in this case, the learned judge of the Parish Court found (and correctly so) that the appellant and her co-accused created the violent situation and sustained it. Thus, she rejected their assertion of self-defence. In the circumstances, the learned judge of the Parish Court was also entitled to accept the complainant's evidence that she slapped Mr Crooks with the machete in self-defence, and that her use of the weapon was lawful in the circumstances.

[54] The learned judge of the Parish Court's emphasis on trespass was not misplaced. The reasons advanced by the appellant and Mrs Crooks for entering the property were, as she found, dubious, and their presence was uninvited. Separately, the remarks concerning a "pre-emptive strike" were seemingly not intended to preclude the availability of self-defence, but rather to underscore the settled principle that a homeowner may lawfully take protective action where he or she is reasonably threatened by trespassers. The appellant's and Mrs Crooks' accounts varied between a purported police report and their testimony, and the learned judge of the Parish Court was entitled to record that the explanations given did not appear valid.

[55] Mr Equiano argued that the learned judge of the Parish Court failed to make a specific finding as to whether the appellant honestly believed she needed to defend her parents. While the learned judge of the Parish Court referred to honest belief, she did not expressly determine whether the appellant may have held such a belief. However, as the authorities of **Regina Garnett Shand, Regina v Peter Senior** and **Clayton Bryan v R** demonstrate, no specific direction on honest belief was required where the evidence spoke to actual attacks rather than imminent threats. The appellant's evidence was that the complainant slapped her father with the machete, and she, in turn, struck the complainant.

[56] In the context of a fast-moving fight, self-defence is not as clear-cut as in a single incident. The learned judge of the Parish Court herself acknowledged that Mr Crooks'

participation was not a “one-time intervention” but part of a continuous sequence of aggression. The video evidence, together with the rest of the evidence that the learned judge of the Parish Court accepted, supports a conclusion that the appellant struck the complainant while she was under attack from Mr Crooks, and that her blows were part of the sustained aggression rather than defensive acts. Mr Equiano’s submission that there were two separate fights is not supported by the evidence. The incident appeared to be a single altercation with two phases. But, even if the events could be characterised as separate fights, the learned judge of the Parish Court was entitled to find that the appellant’s assertion of self-defence was unjustified.

[57] The appellant also relied on inconsistencies between the complainant’s account of her injuries and the medical evidence, particularly regarding the number of teeth lost and the alleged arm injury, to support the ground that the evidence was not sufficient to support the conviction.

[58] At page 33 of the record, however, the learned judge of the Parish Court observed: “[t]he extent of the complainant’s injuries was not challenged. What has been challenged is how she got some of the injuries, as it was suggested some of the injuries were from her falling in the fence”. Thus, the defence did not dispute the injuries themselves, but their cause. More importantly, the medical doctor confirmed that the complainant sustained serious injuries, including multiple bruises, a swollen wrist, a cut to the lip, a broken incisor, and a skull fracture. The video evidence showed the appellant striking the complainant and throwing stones, consistent with her testimony that her arm and toe were injured by and during the stoning, and Mr Crooks admitted to throwing a stone.

[59] Upon our review, the medical evidence materially supported the complainant’s evidence of injury (see **Owayne Warren v R** [2024] JMCA Crim 36 and **The State v Kerry Samad** Crim App No P042 of 2005) in which the test affirmed is whether the medical evidence and the direct evidence are totally inconsistent such that it can be concluded that the direct evidence is not supported by the expert evidence). In our view, there was ample evidence to sustain the conviction.

[60] In conclusion, the learned judge of the Parish Court was faced with two conflicting accounts. She correctly directed herself on the applicable principles and applied them to the evidence. She accepted the prosecution's case that there was no attack on the appellant or her co-accused, but rather the aggression emanated from the appellant and her co-accused and was sustained, causing serious injury to the complainant. Accordingly, she rejected the defence. Having reviewed the evidence in its entirety, we are satisfied that the learned judge of the Parish Court was entitled to find that the appellant and her co-accused mounted a sustained attack on the complainant, which culminated in the wounds she received. In those circumstances, it was open to the learned judge of the Parish Court to reject the appellant's claim that she wounded the complainant in defence of her father.

[61] Grounds 1, 2, and 4, therefore, fail.

Ground 5: The learned judge of the Parish Court, by the manner in which she recorded the evidence, demonstrated an early bias against the appellant and as such the appellant did not receive a fair trial.

Summary of submissions for the appellant

[62] Mr Equiano submitted that the learned judge of the Parish Court's annotations in the notes of evidence, which included evaluative comments, demonstrated that she had prejudged the case. Counsel pointed the court to pages 12 -15 and 17 of the record as well as to specific annotations. He argued that the bias was evidenced by, among other things, flawed findings, disregard for explanations from the appellant, and undue weight placed on certain aspects of the evidence. Further, he argued, the learned judge of the Parish Court's use of certain terminology, such as "ambushed", "toxic environment" and "pre-emptive strike" was inappropriate and demonstrated bias against the appellant while unjustifiably legitimising the complainant's conduct. It was argued also that the language used by the learned judge of the Parish Court, betrayed hostility towards the appellant and her co-accused and revealed a predisposition against the defence. In the circumstances, it was submitted that the appellant was deprived of a fair trial.

Summary of submissions for the Crown

[63] In response, Ms Watson submitted that the annotations were no more than the learned judge of the Parish Court's working notes, reflecting her thought process in the discharge of her dual role as both finder of fact and arbiter of law. It was an assessment of credibility and relevance as the evidence unfolded. Counsel argued that judges are entitled to make evaluative notes, provided that their ultimate findings are based on the evidence and the law. It was contended that a fair-minded observer, cognisant of the judge's duty to adopt a balanced approach to the evidence, would not reasonably conclude that the learned judge of the Parish Court failed in this regard.

Analysis and disposal of ground 5

[64] Bias, whether actual or apparent, strikes at the heart of judicial integrity. The test, as consistently applied, is whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased. This principle was articulated in **Porter v Magill** [2002] 2 AC 357 and has been adopted in our jurisdiction (see, for example, **Larkland Latouche v June Chung and Others** [2023] JMCA Civ 25).

[65] The Parish Court's preparation of the record for this appeal was contrary to established practice. Section 300 of the Judicature (Parish Courts) Act and Practice Direction No 1/2006 from this court, together, provide the framework for the preparation of appeal records for appellate review and contemplate the separation of evidentiary material from findings, verdict, and sentence remarks. Adherence to those requirements, subject only to necessary and appropriate modification, will assist in promoting consistency and confidence in the appellate process.

[66] There was no separate record of the evidence included in the appeal bundle. Contrary to the guidance, the evidence was integrated in the learned judge of the Parish Court's reasons for her decision. She commenced her reasoning with the standard and specific self-directions (she, being arbiter of fact and law), and then inserted what appears to be verbatim evidence along with annotations in brackets. These annotations

were characterised as “note to self”. At first, it appeared that the learned judge of the Parish Court’s comments were inserted during the taking of the evidence, but upon closer examination, it became apparent that at least some of them were comments made after the taking of the evidence and were part of the evaluative process.

[67] The critical question is whether the annotations/notes reveal that the learned judge of the Parish Court closed her mind to the defence’s case or failed to consider it fairly. Having reviewed the record, we find no such indication. They reflect impressions and analysis of specific aspects of the evidence, rather than any premature conclusion.

[68] Thus, at page 12 of the record, the learned judge of the Parish Court juxtaposed the complainant’s testimony with that of the appellant and the exhibits. That comparative exercise was consistent with her duty as finder of fact, particularly given that the burden of proof rested on the prosecution. Similar annotations appear at pages 13 and 14, where the learned judge of the Parish Court continued to contrast competing accounts against the objective material. Far from demonstrating a predisposition to unfairness, those passages show that the learned judge of the Parish Court consistently weighed the complainant’s account against the appellant’s version and the exhibits, engaging in the comparative assessment required when determining whether the prosecution had discharged its burden. That is characteristically a function of a finder of fact, which she was in the instant case.

[69] The same approach is evident in the treatment of the evidence of the appellant and her co-accused. At pages 19 to 21, the annotations in the appellant’s evidence record her testimony being weighed against the exhibits and the prosecution’s case, while at pages 22 to 25, the notes relating to Mrs Crooks and Mr Crooks reflect the same evaluative process. The learned judge of the Parish Court expressly rejected the defence version, noting the absence of credible evidence to support the claim that Mrs Crooks went to the premises to retrieve furniture or prevent demolition of the shed. On the other hand, she accepted the complainant as a witness of truth, corroborated by the video exhibits and medical evidence of Dr Tin. In weighing the evidence, it was not improper

for her to express her view of its strengths and weaknesses and determine which case she found more credible. A judicial ruling necessarily involves preferring one party's case over another.

[70] The observation that the appellant and co-accused had vacated the premises years earlier was a legitimate evaluative comment, directed to the significance of their presence on the property at the material time. In that context, the learned judge of the Parish Court was required to examine the reasons advanced for their presence and to note any inconsistencies or discrepancies. We discern nothing improper in the learned judge of the Parish Court giving weight to particular matters or identifying discrepancies in the evidence. Such evaluation lies squarely within her function as judge of fact.

[71] The appellant further relied on passages in which the learned judge of the Parish Court, among other descriptions, described the accused as having "ambushed" the complainant. While the language was strong, it was employed in the context of findings of fact, not as an expression of prejudgment. The learned judge of the Parish Court was entitled to so characterise the conduct of the appellant and co-accused in the light of the evidence she accepted.

[72] It is important to distinguish between robust judicial findings and bias. A judge who finds a witness to be untruthful or an accused to be an aggressor is not thereby biased; she is performing her duty to evaluate the evidence. In **Locabail (UK) Ltd v Bayfield Properties Ltd** [2000] QB 451, the English Court of Appeal made clear that judicial remarks, even when strongly expressed or critical, will not ordinarily give rise to a real possibility of bias unless they disclose animosity, partiality, or a closed mind.

[73] That said, judges should exercise care in the language they use, both in contemporaneous notes and in written reasons. Overly emotive or intemperate expression may risk perceptions of unfairness, even where none exists. Judicial authority is best conveyed through measured and restrained reasoning. In the instant case, while the learned judge of the Parish Court's language was undoubtedly robust, it did not,

however, cross the line into partiality. Her findings were anchored in the evidence, in particular the video recordings, and her conclusions were explained by reference to that evidence.

[74] Taken in their entirety, the learned judge of the Parish Court's notes and reasons disclose a judge who engaged carefully with the evidence, made credibility assessments, and articulated why the defence case was rejected. She considered relevant circumstances, including the reasons advanced for the accused's presence, the accused's account of the incident, the progression of events, and the evaluation of testimony alongside the video evidence. Her written reasons demonstrate that she considered both versions of events, weighed them against the video evidence, and explained why she accepted the complainant's account. That is the ordinary process of adjudication, not evidence of bias. The mere fact that a judge records impressions or preliminary views in note form, does not, without more, establish bias. Read individually, and as a whole, the annotations/notes reflect a balanced and systematic assessment of the evidence, and do not disclose any predisposition or bias.

[75] That said, as the instant case illustrates, annotations may give rise to suspicion of bias, even if unfounded. Clarity is best achieved where reasons for decision and notes of evidence are kept distinct. While judges may properly make personal annotations to assist in their evaluative process, such working notes should not appear in the official record transmitted on appeal. The inclusion of evaluative comments within notes of evidence, even if entirely benign, may give rise to misunderstanding or unnecessary grounds of appeal or argument. It is, therefore, desirable that the evidentiary record remain confined to the evidence itself, as the acceptable practice dictates.

[76] For those reasons, we find no merit in Ground 5.

Disposal of grounds pertaining to conviction

[77] We have found no merit in the appeal against conviction. The learned judge of the Parish Court's directions, though concise, captured the essential principles and were

sufficient. The evidence was sufficient, the findings of the learned judge of the Parish Court were open to her on the evidence, her conclusions well-reasoned, and no bias was demonstrated. Therefore, the appeal against conviction is dismissed.

Ground 3: that the sentence is excessive in the circumstances

Submissions for the appellant

[78] The appellant's final ground of appeal is that the sentence imposed is excessive. Mr Equiano submitted that the learned judge of the Parish Court failed to give sufficient weight to mitigating factors, including the appellant's youth, her lack of previous convictions, and the circumstances in which the offence occurred. It was submitted that the custodial term was disproportionate and failed to reflect the possibility of rehabilitation.

Submissions for the Crown

[79] Ms Watson, in response, contended that the sentence was within the statutory range and properly reflected the seriousness of the offence. Counsel emphasised that the complainant sustained grave injuries, including a fractured skull, broken teeth, and lasting trauma. Counsel also submitted that the learned judge of the Parish Court was entitled to impose a sentence of imprisonment to mark the gravity of the offence and to deter similar conduct.

Analysis and disposal of ground 3

[80] Sentencing is a matter of discretion for the trial judge, exercised in accordance with established principles. It is well settled that an appellate court will not interfere with a sentence merely because it might have imposed a different one. Intervention is justified only where there is an error in principle or where the sentence is manifestly excessive or inadequate (**R v Ball** [1951] 35 Cr App R 164; **R v Alpha Green** (1969) 11 JLR 283).

[81] Section 22 of the Offences Against the Person Act prescribes a maximum penalty of three years' imprisonment for unlawful wounding. In determining the appropriate sentence within that limit, regard must be had to established ranges, parity, the

Sentencing Guidelines for use by Judges of the Parish Court ('Sentencing Guidelines') and relevant authority, including case law.

[82] In **R v Henry** (unreported), Court of Appeal, Jamaica, Resident Magistrates Criminal Appeal No 13/1989, judgment delivered 16 March 1989, the appellant inflicted a chop wound with a machete and was sentenced to 12 months' imprisonment at hard labour, affirmed on appeal. A similar conviction for unlawful wounding arose in **Roberto Nesbeth v R** [2014] JMCA Crim 23, where a sentence of two years' imprisonment at hard labour was imposed but suspended for two years. The circumstances in **Winston Wynter v R** [2014] JMCA Crim 14 were also serious. The applicant seized a corporal's firearm during a struggle and used it to inflict injuries to the corporal's head, resulting in sentences of 15 years' imprisonment for illegal possession of firearm and three years' imprisonment for unlawful wounding, both upheld on appeal. By contrast, in **Charles Johnson v R** [2017] JMCA Crim 38, although machete wounds necessitated the complainant's hospitalisation for one week, they were not regarded as very serious and the appellant was sentenced to 12 months' imprisonment at hard labour. On appeal, the sentence was suspended for two years with a supervision order of 12 months during the period of suspension.

[83] These authorities demonstrate that immediate incarceration is not inevitable in cases of unlawful wounding, and that suspended sentences have been deemed appropriate where the circumstances warrant.

[84] In sentencing the appellant, the learned judge of the Parish Court considered the maximum penalty and the normal range of "12–18 months for serious wounds for first offence" as included in the Sentencing Guidelines. Consistent with those guidelines, she used a starting point of 18 months' imprisonment. She added five months to the starting point for aggravating factors including the nature and circumstances of the injuries, particularly the fractured skull, the level of pre-meditation, the multiple participants, and the appellant's maturity (35 years old). This yielded 23 months.

[85] The learned judge of the Parish Court then turned to the mitigating circumstances, specifically the favourable social enquiry report and the absence of previous convictions, and applied a reduction of four months, resulting in a sentence of 19 months. A credit of one month was applied to reflect the 10 days the appellant spent in pre-trial custody, resulting in a final sentence of 18 months' imprisonment.

[86] We are satisfied that the sentencing exercise was grounded in statute and established principles from case law, including **Daniel Roulston v R** [2018] JMCA Crim 20, and broadly accords with comparable cases. We are, nonetheless, concerned by the significant disparity between the sentence imposed on the appellant and those imposed on her co-accused, Mr and Mrs Crooks, particularly as the learned judge of the Parish Court did not regard their respective roles as materially different. Mr Crooks was sentenced to two years' imprisonment, suspended for two years, with a requirement to receive counselling. Mrs Crooks was sentenced to a combination order of 200 hours of community service and two years of supervision, together with anger management treatment. As indicated earlier, the appellant was sentenced to 18 months' imprisonment at hard labour- a sentence of immediate incarceration.

[87] We understand that culpability, based on a joint enterprise, does not necessarily mean identical sentences for all offenders. So, while the court is required to consider the parity principle in sentencing, the role played by each participant in cases of joint enterprise must also be carefully weighed. So too, of utmost importance are the relevant mitigating circumstances for each offender. We note that the appellant was the offender who struck the complainant on the head, causing one of the most serious injuries, namely the fractured skull. This happened towards the end of the fracas, after the stoning episode by Mr Crooks, and while Mr Crooks and the complainant were engaged in a tussle. At this point, Mrs Crooks, a main player initially, was observed attempting to de-escalate the conflict by pulling away Mr Crooks, who seemingly had no intention of retreating.

[88] This is how the learned judge of the Parish Court dealt with the issue of joint enterprise, at pages 28–32 of the record:

"...This speaks to a joint enterprise in law. Based on the evidence of the complainant and corroborated by all three accused in their cross-examination, they had no permission from the complainant to be on her premises. It is clear from these accounts that the complainant was attacked initially in her home and spilled onto her premises. Initially, by [the appellant] and their mother Mrs Curline Crooks and then pushed into a fence in her yard and beaten some more, and then Mr Crooks entered on her premises and joined his wife and daughter in further beating the complainant to include the hit to the head by [the appellant] who now wants to claim self-defence to self and others (her mother and father)...I reject this. The situation of violence was created by [the appellant] and her mother and then joined by the father Mr Crooks who did nothing to diffuse the situation but joined his family in inflicting harm to the complainant by throwing stones which caused a wound that bled...

In exhibit 3 [Mrs Crooks] after the complainant has been beaten already, and was being attacked by [Mrs Crook's] husband, can be seen pulling away her husband. A little too late I might add. The joint enterprise to commit a criminal act had already been formed and offence committed. It was far too late to be growing conscience at that time, after the complainant was beaten to including her skull being fractured.

...And from exhibit 3 [Mr Crooks] became a part of the fight, that of beating the complainant.

...In fact it was when Mr Crooks was beating the complainant, Mrs Crooks finally trying to pull Mr Crooks away from beating the complainant...that [the appellant] made that devastating blow to the back of the complainant's head."

[89] In the light of those findings, the learned judge of the Parish Court's analysis, and her sentencing approach, we make four observations. First, we do not believe that the roles of the three participants were so materially different as to justify such wide disparity in sentencing outcomes. Second, while we acknowledge the advanced age of the appellant's co-accused, both being in their seventies, this factor, though important, should not justify such a wide disparity in sentencing outcomes. Third, we recognise that in uncharacteristic offences, such as the instant one, where all the players are close

relatives, the circumstances which precipitated the violent act usually carry significant weight as a mitigating factor (see D A Thomas, Principles of Sentencing, Second Edition, page 207). Fourth, we are mindful that the learned judge of the Parish Court was correct in observing that the injuries to the complainant, particularly the fractured skull received at the hand of the appellant, are serious.

[90] In the circumstances, although the sentence imposed was not wrong in principle, we consider that it should be recalculated in light of additional mitigating factors not expressly addressed by the learned judge of the Parish Court, including the appellant's relatively young dependant, her role as primary caregiver and breadwinner, the circumstances giving rise to the altercation, the prospect of rehabilitation outside prison and the possibility of family reconciliation.

[91] In considering the sentencing afresh, we adopt a starting point of 18 months' imprisonment, reflecting the intrinsic seriousness of the offence; a hit to the back of the head causing a fracture to the skull among other wounds. The aggravating features, excluding the use of personal violence, which is inherent in the offence, would justify an uplift to 24 months. The mitigating circumstances considered by the learned judge of the Parish Court, namely the favourable social enquiry report and the absence of any previous conviction, as well as the appellant's relatively young dependant, warrants a reduction of five months, resulting in 19 months. With one month's credit for pre-trial custody, the sentence remains 18 months' imprisonment.

[92] However, consistent with **Charles Johnson v R**, and having regard to the circumstances precipitating the offence, the low risk of re-offending evidenced by the character testimony of Retired Detective Inspector Kermit Fairweather, and the prospects for rehabilitation within the family, we conclude that the sentence of imprisonment should be suspended and a supervision order of 12 months be included (see section 9 of the Criminal Justice (Reform) Act).

Disposition

[93] Accordingly, the court makes the following orders:

- i) The appeal against conviction is dismissed.
- ii) The appeal against sentence is allowed.
- iii) The sentence of 18 months' imprisonment at hard labour, imposed by the learned judge of the Parish Court, is set aside and substituted therefor is a sentence of 18 months' imprisonment suspended for three years, together with a supervision order for 12 months.
- iv) The sentence is to be reckoned as having commenced from the date of this order.