

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 83/2014

**BEFORE: THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE SINCLAIR-HAYNES JA
THE HON MR JUSTICE PUSEY JA (AG)**

ORAL GAMMON v R

Applicant not appearing or represented

Ms Laronia Montague-Williams and Stephen Smith for the Crown

17 October 2018

BROOKS JA

[1] This is an application by Mr Oral Gammon for leave to appeal from his conviction for causing grievous bodily harm with intent. He was convicted on 13 June 2014 in the circuit court for the parish of Manchester. On 25 July 2014, the learned trial judge, Harris J, sentenced him to 18 years imprisonment at hard labour.

[2] He has filed an application for leave to appeal from that conviction and sentence. A single judge of this court refused his application, but he has renewed it before the court. The grounds of appeal that he advanced are:

- “(a) **Unfair Trial:** That the court failed to recognised [sic] the fact that the complainant [sic] injury was cause by self inflicted action and that I had nothing to do with the alledge [sic] crime.
- (b) **Lack of Evidence:** That the prosecution failed to put forward [any] “concrete” or substansive [sic] piece of evidence to support the offence of causing greivous [sic] bodily harm/intent to the complainant.
- (c) **Miscarriage of Justice:** That the evidence and testimonies...upon which the Learned Trial Judge relied on the direct [sic] the jury lack facts and creditibility [sic], thus rendering the verdict unsafe in the circumstances and further resulting in my conviction.”

[3] The prosecution’s case was that Mr Gammon and Ms Meline Watson were in a common-law relationship. On 11 May 2012 he came home at approximately 1:30 am, after being away from home for seven days. He was in a belligerent mood. He cursed Ms Watson and indicated that he wanted to kill her.

[4] She went out to the balcony of their home, which was on the second floor of a three-storey building. He went out to her on the balcony. He was then armed with a cutlass. He used it to chop at her, but she evaded the cutlass, and it fell. He then grabbed her around her waist. She held on to the balcony rail. They wrestled. She hurt her foot during the wrestling and let go of the railing. He then threw her over the railing to the ground some 27 to 30 feet below. As he pushed her over he said, “A dead yuh must dead gal” (page 26 of transcript) and/or “Gal a dead you fi dead” (page 35 of the transcript).

[5] One of Ms Watson's cousins, Ms Tracey-Ann Baker, saw when Mr Gammon threw Ms Watson over the railing. Ms Baker was inside the building at the time. She said that some time later she went downstairs and saw Ms Watson on the ground. Ms Watson was then unable to move.

[6] Ms Watson said that another of her cousins, Anna-Kay, called for help. Persons came to assist Ms Watson, as did Mr Gammon. He drove her to the Mandeville Hospital where she was treated. She was in hospital for over two months. The result of the fall is that she is paralysed from the waist down.

[7] Mr Gammon was taken into custody on the same night of the incident. He initially denied that he had thrown Ms Watson off the balcony. Two days later, however, when he was formally charged, he said that he was sorry for having done the action.

[8] Mr Gammon, in his sworn testimony, denied that he had threatened to kill Ms Watson or that he had had anything to do with Ms Watson's injury. He said that Ms Watson was suicidal and that it was not the first time that she had tried to hurt herself. He also said that the false accusation against him was part of a conspiracy between Ms Watson and her family members to get control of his money.

[9] The learned trial judge placed the various issues squarely before the jury. She made it clear that it was a matter of who the jury believed was speaking the truth. She warned them several times that even if they rejected Mr Gammon's account they were obliged to ensure that the prosecution had satisfied them so that they felt sure of the prosecution's case.

[10] It was in those circumstances that the jury arrived at their decision. There is no basis for impugning the learned trial judge's direction to, or the finding of, the jury. None of the proposed grounds of appeal have any merit. The application for leave to appeal against conviction must fail.

[11] Although there was no proposed ground of appeal dealing with sentence, Mr Gammon did indicate that he wished to appeal against sentence. He is not on good ground in respect of this aspect, either. The learned trial judge, in passing sentence, stressed the seriousness of the injuries inflicted on Ms Watson. Harris J also stated that Mr Gammon had received an unfavourable Social Enquiry Report. She nonetheless considered, as mitigating factors, his relatively young age of 42 years, and the fact that he was a father with young children.

[12] Considering that Mr Gammon had two previous convictions for violence, namely wounding with intent and manslaughter, and that he had been released from prison just the year before he committed the offence against Ms Watson, the learned trial judge cannot be said to have been wrong in handing down the sentence that she did. The sentence is in line with the normal range of the sentences for this offence.

[13] It is true that the learned trial judge did not use the procedure recommended in **Meisha Clement v R** [2016] JMCA Crim 26 in arriving at her decision, and it is recognised that **Meisha Clement v R** was decided after the present case, but the result is unlikely to have been very different had she done so.

[14] In the circumstances the application must be refused.

Conclusion

[15] Based on that analysis, the order is that the application for leave to appeal against conviction and sentence is refused. The applicant's sentence is to be reckoned as having commenced on 25 July 2014. The court is grateful for the assistance rendered by counsel for the Crown, with whose analysis of the case, we agree.