[2011] JMCA Crim 20

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 105/2007

BEFORE: THE HON. MR JUSTICE MORRISON JA
THE HON. MISS JUSTICE PHILLIPS JA
THE HON. MRS JUSTICE McINTOSH JA

RAYMOND HUNTER v R

Miss Althea McBean for the appellant

Miss Maxine Jackson and Adley Duncan for the Crown

19, 20 January; 15 April and 19 May 2011

MORRISON JA

The background to the appeal

[1] On 26 June 2007, the appellant was convicted of the offence of wounding with intent, after a trial before Gayle J and a jury in the Circuit Court for the parish of Saint Mary and, on 6 July 2007, he was sentenced to imprisonment for 25 years at hard labour. The appellant's application for leave to appeal was considered and granted by a single judge of this court on 8 January 2009. On 15 April 2011 we heard the appeal and made the order expressed in para. [42] below. We promised then to put our reasons in writing. This we now do.

[2] The appellant was charged on an indictment containing a single count of wounding with intent, the particulars of which were that on 30 May 2005 he had, in the parish of Saint Mary, wounded Mr Barrington Beckford with intent to cause him grievous bodily harm. To this indictment the appellant pleaded not guilty.

[3] The offence for which the appellant was charged and convicted allegedly took place, unusually, in the Oracabessa Police Station ('the station'). In the early evening of 30 May 2005, the appellant was one of some 19 or 20 prisoners in detention in the cell block of the station. The complainant, Mr Barrington Beckford, was a detective sergeant of police and the supervisor on duty at the station that evening. Also on duty at the station at the time were Miss Paulette Johnson and Mr Garfield Stennett, both of whom were district constables, and Mr Walworth Duncan, also a detective sergeant of police. The first three of these police officers were the witnesses as to the facts for the prosecution, while the fourth was the investigating officer.

[4] At about 7:30 that evening, District Constable Johnson and her colleague, District Constable Stennett, both of whom were unarmed, were in the process of escorting a male prisoner to the cell block at the station. It appears from the evidence that the cell block was separated from the rest of the station by a gate, which was usually kept locked. When District Constable Stennett arrived at the gate, he opened it and placed the prisoner in front of him, before following about three feet behind him through the gate. Suddenly, a group of prisoners inside the cell block attacked District Constable

Stennett and, as District Constable Johnson was in the process of closing the gate, a number of them threw themselves against the gate. As one of the prisoners started to throw punches at her, District Constable Johnson saw the appellant, who was previously known to her, come forward and grab her by the hair. A struggle ensued between them, during which the appellant, who was "patting" District Constable Johnson in the area of her waist, attempted to pull her into the recreation area of the station, that is, away from the cell block. However, District Constable Stennett came to her rescue and pulled the appellant away from her, leaving her free to run from the cell block and into the recreation area.

[5] District Constable Stennett largely confirmed District Constable Johnson's account and he too identified the appellant as the second of the two prisoners who had attacked her. He saw when the appellant held on to her hair and started to search her body and confirmed that he then went to her assistance. Finally, when District Constable Johnson got free, she ran towards the recreation area, closely followed by District Constable Stennett. The suggestion put to District Constable Stennett in cross examination that there were more than two prisoners in the passageway behind the gate leading to the cell block was denied by him, though he did say that there was a third prisoner who was in the shower at the time.

[6] During all of this, Sergeant Beckford was in the recreation area, having only recently reported for duty. He first became aware of something untoward happening when he saw District Constable Johnson and District Constable Stennett come running

into the recreation area from the direction of the cell block, and heard one or both of them saying that "prisoners were escaping". Sergeant Beckford then went up the passage leading to the cell block, when he saw the appellant running towards him. This is his account of what then ensued:

> "A. I rushed to the accused and grabbed onto him and hold him.
>
> Q. How long you grabbed the accused for?
>
> A. I grabbed the accused for about half a minute.
>
> Q. When you saw the accused, he had anything in his hands?
>
> Q. No, when I saw the accused, he had both hands to his sides.
>
> A. What next happened?
>
> Q. From the corner of my eyes, I recall seeing DC Dough coming towards us.
>
> Q. Who is the us?
>
> A. Me and the accused. At that time the accused broke free and ran back to the cells."

[7] Sergeant Beckford then resumed walking towards the cell block, accompanied by District Constable Dough, when, feeling his left side wet, he looked down and realised that his entire left side was covered with blood. It was only then that he appreciated that he had been cut and that there was blood rushing from a wound in the vicinity of his left breast. When he pulled open his shirt and put his hand to his left breast, his finger "went down in a hole". It was not clear to him how he had received this wound,

but he surmised that it could only have happened when he was struggling with the appellant, as the appellant was the only person with whom he had come into contact. The appellant had been known to Sergeant Beckford for about five years before this incident and could have been in custody at the station for about a month before, during which period he had seen him, he said, "every day that I went to the station". Immediately upon becoming aware that he was hurt, Sergeant Beckford exclaimed to District Constable Dough, "Look how Yam kill me", 'Yam' being, he told the court, "the name that people call [the appellant]". The area in which they had struggled together was well illuminated by fluorescent lighting, which Sergeant Beckford described as "very good".

[8] Among the things put to Sergeant Beckford in cross examination was that he had encountered and been attacked by "a number of the prisoners who were trying to escape from the police station that night". Sergeant Beckford disagreed with this suggestion and insisted that the appellant was the only prisoner seen by him in the passageway as he approached the cell block.

[9] District Constable Stennett also confirmed much of what Sergeant Beckford had told the court, stating that after he ran back to the recreation area, he had looked back in the direction of the cell block and had seen the appellant and Sergeant Beckford "wrestling arm in arm, up, both of them arms up", until Sergeant Beckford managed to push the appellant "back in the passage, out of my sight". He had Sergeant Beckford and the appellant in his sight at this time for about six seconds. His impression was

that the appellant was attempting to escape and that Sergeant Beckford was trying to prevent him from doing so. He saw when Sergeant Beckford, having freed himself of the appellant, came back towards the recreation room, holding his chest and heard him say "Jam stab me". 'Jam' was, he testified, an alias which he knew to be the appellant's.

[10] Sergeant Beckford was in due course taken to the Port Maria Hospital and then transferred after a couple hours to the St Ann's Bay Hospital, where he was to remain for close to two months. He had sustained a deep puncture wound to the chest wall that had entered the chest cavity, causing significant bleeding within the chest cavity as a result of damage to a blood vessel to the left lung and necessitating emergency surgery. Dr Peter Glegg, who gave evidence for the Crown, told the court that he had never before encountered a case of a person "spontaneously bleeding from the lung", and his opinion was that these injuries would have been caused by a sharp, pointed instrument used with a great degree of force. As a result of his injuries, Sergeant Beckford had a "long complicated hospital stay" and up to the time of the trial his treatment was still ongoing. In Dr Glegg's opinion, these injuries would cause permanent damage to the affected lung and tissue.

[11] Sergeant Walworth Duncan also gave evidence for the Crown. Regrettably, no record of his examination in chief is to be found in the official transcript of the evidence at trial. However, his evidence was summarised by the trial judge in his summation to the jury as follows. Sergeant Duncan was the investigating officer, who was summoned

to the station, having been given certain information, sometime after 7:30 p.m. on 30 May 2005. At the station, Sergeant Duncan spoke to the appellant ("O/C Yam") and accused him of stabbing Sergeant Beckford who was in the process of preventing him from escaping custody, to which the appellant made no response. As a result of other information which he received at the station, Sergeant Duncan went into a female bathroom on the premises where he found a sharp instrument, some four inches long and about quarter of an inch in thickness, wrapped up with cloth and concealed behind a curtain. One end of this instrument, which resembled a blade, was sharpened and Sergeant Beckford observed blood stains on it. He returned to the cell block and showed this instrument to the appellant, telling him that he believed that "this was the object that is [sic] used to stab Sergeant Beckford", to which the appellant again made no response. (This instrument was appropriately packaged and labelled and sent off to the forensic laboratory for testing but, although it appears that it was in due course received back from the lab, it was reported to have been lost by the time of trial.) When the appellant was in due course arrested and charged by Sergeant Duncan, he again remained silent.

[12] In his defence, the appellant made a brief unsworn statement from the dock. At about 7:30 on the evening in question, he told the court, he was in his cell when he heard a police officer say, "Mr Hunter, you, Mr Hunter, you see how you stab up Sergeant Becky?" The appellant stated that he responded, saying, "How you mean fi a say me stab up Sergeant Becky and me in a my cell, and him say to me, him say, Yam, a tonight you dead." The appellant's statement then continued as follows:

"ACCUSED: Then I hear a portion a them a come with key and so.

HIS LORDSHIP: You hear a portion a them doing what?

ACCUSED: Portion of them coming with key and something, sir. Then the officers pull the main gate and throw in three tear gas and lock back the main gate and go way and then come back round a gate and throw in two more and go way and then say the third time them come back now them come back and pull the cell them and start beat. Them take out two, them take out the two man way them see pon the passage, it was two, them have at least eight prisoners on the passage. After them -- me see after them carry we out pon the corridor come beat we, them beat round four a we and them carry three or four prisoner out on the corridor and beat them, send fi a doctor.

HIS LORDSHIP: Yes.

ACCUSED: And m'Lord, I feel my -- and the doctor come and feel me head. That's all.

HIS LORDSHIP: Yes.

ACCUSED: Yes, sir.

ACCUSED: Then them carry me come a court. Them carry me to court and that's all. That's all m'Lord."

[13] The learned trial judge then summed up the case to the jury, who, after retiring for a mere 15 minutes, returned a unanimous verdict of guilt against the appellant. In passing sentence on him, the judge had access to the police report on the appellant's

antecedents, which revealed that he had 12 previous convictions for a range of offences against the person and property. The judge determined that, given the seriousness of the injuries that had been sustained by Sergeant Beckford, he had "no alternative but to impose a serious sentence for a serious crime" and accordingly sentenced the appellant to 25 years imprisonment at hard labour.

The grounds of appeal and the submissions

[14] When the appeal in this matter came on for hearing on 19 January 2011, counsel for the appellant, Miss Althea McBean, sought and was given permission to argue four supplemental grounds of appeal, in substitution for the original grounds filed by the appellant, which were abandoned. The supplemental grounds are as follows:

> "1. The verdict is unreasonable having regard to the evidence before the Court.
>
> 2. The Learned Trial Judge failed to adequately direct the Jury on the issue of identification in his summation.
>
> 3. The Learned Trial Judge failed to properly deal with the law on circumstantial evidence or to properly assist the Jury on how to treat inferences.
>
> 4. The sentence delivered by the Learned trial Judge was manifestly excessive in light of the circumstances of the case."

[15] Taking grounds one and three together, Miss McBean pointed out that none of the witnesses actually saw the appellant stab Sergeant Beckford or, for that matter, saw the appellant with a weapon or with anything in his hands during the entire incident. As a result, the complainant himself was unable to say exactly when he

received the injuries and there was therefore a gap in the evidence. In these circumstances, Miss McBean submitted, the judge's directions to the jury on the drawing of inferences were inadequate and not related to the evidence in the case. So too were the directions on circumstantial evidence. Miss McBean also complained that the judge had failed to direct the jury on how to deal with the silence of the appellant when confronted by Sergeant Duncan with the weapon allegedly used to commit the offence. In support of these submissions, Miss McBean referred us to two previous decisions of this court in ***R v Diedrick*** (SCCA No. 107/1989, judgment delivered 22 March 1991) and ***Loretta Brissett v R*** (SCCA No. 69/2002, judgment delivered 20 December 2004).

[16] As regards ground two, Miss McBean's complaint was that the judge's directions on identification had been misleading and inadequate and, as with the directions on inferences, unrelated to the evidence in the case. Further, the judge had failed to draw the jury's attention to the weaknesses in the case. In support of this ground, Miss McBean referred us to ***R v Bryan Davis*** (SCCA No. 97/1996, judgment delivered 12 May 1997), again a decision of this court.

[17] And finally, on ground four, Miss McBean submitted that the sentence of 25 years imprisonment imposed by the trial judge was manifestly excessive when compared to sentences imposed for offences of a similar nature, despite the fact that in this case it was a police officer who had been stabbed. She also pointed out that the appellant's 12 previous convictions were based on a total of four incidents and urged

the court to bear this fact in mind in determining what weight should be given to the appellant's previous record. On this ground, Miss McBean referred us to ***R v Earl Mowatt & R v Christopher Brown*** (1990) 27 JLR 32, a case in which this court emphasised the desirability of harmonising sentences for convictions on similar charges.

[18] In so far as the disposal of the appeal in the event of it being allowed is concerned, Miss McBean submitted that if it were to be allowed on grounds two and/or three, an order for a retrial might be appropriate, but that in this regard it would be necessary for the court to take into account the amount of time which had elapsed since the offence was allegedly committed.

[19] For the Crown, Miss Maxine Jackson submitted that for the appellant to succeed on ground one it was necessary for him to show that the verdict of the jury was against the weight of the evidence. In this regard, she referred us to the decision of this court, a perennial favourite of the Crown in response to similar grounds, in ***R v Lao*** (1973) 12 JLR 1238. She submitted further that, having been adequately directed by the judge on the proper approach they should take, the jury had drawn inferences in this case, which were reasonable and inescapable based on the evidence and that the verdict ought not to be disturbed.

[20] As regards ground two, Miss Jackson conceded that the trial judge's direction on identification "was brief and could have been more comprehensive which would make it more helpful to the jury". However, she submitted that the judge had done enough in

his summing up to bring home to the jury the need to exercise care in the evaluation of the evidence of identification (or, as in this case, recognition). She pointed out that it was "well settled" that in identification cases no rigid form of words was required from the judge so long as the basic principles were underscored and, that having been done in this case, the verdict of the jury would inevitably have been the same had fuller directions been given on identification. Finally on this point, Miss Jackson submitted that, in the light of the fact that the eyewitnesses in this case were all police officers, greater weight could be given to their evidence than that of ordinary members of the public, relying in this regard on ***R v Ramsden*** [1991] Crim LR 295, a decision of the English Court of Appeal.

[21] On ground three, Miss Jackson again conceded that the judge had not given a specific direction on circumstantial evidence, but she submitted that the general directions given by the judge on inferences "would have been sufficient to assist the jury on this point in light of the special circumstances of the case". Further, she submitted that the judge's failure to link that direction to the facts of the case in his summing up was not fatal in this case, given that the issue which the jury had to consider related to the single question whether it was the appellant who inflicted the injury sustained by Sergeant Beckford.

[22] And finally, on ground three, Miss Jackson, while again accepting that the judge had not given the jury any specific direction on how to treat with the appellant's silence on being confronted with the alleged weapon, submitted that the judge did emphasise

to the jury throughout his summation that the burden of proof rested on the prosecution and that the appellant had no burden of proving his innocence.

[23] As to the disposal of the appeal, Miss Jackson urged us, if any of the appellant's grounds of appeal were to find favour with the court, to apply the proviso to section 14(1) of the Judicature (Appellate Jurisdiction) Act or, alternatively, to order that there should be a new trial, pursuant to section 14(2) of the Act.

Discussion and analysis

[24] The issues which appear to us to be raised by the grounds of appeal and the submissions are set out below, in the order in which we propose to deal with them:

(i) identification (ground two);

(ii) verdict unreasonable and circumstantial evidence (grounds one and three); and

(iii) sentence (ground four).

(i) Identification (ground two)

[25] The appellant's complaint on this ground is that the judge failed to point out the weaknesses in the identification evidence and thus denied the appellant a fair chance of an acquittal. As a result of the appellant's unsworn statement, in which he placed himself in his cell at the time when Sergeant Beckford was stabbed, identification was

clearly an issue in the case. Accordingly, Gayle J was required to give to the jury a standard ***Turnbull*** direction on the special need for caution in approaching the evidence of identification, recalling for them the reason for the warning and pointing out to them the possibility of an honest witness (or witnesses) being mistaken. He was also required to examine with the jury the circumstances in which the identification of the appellant by the witnesses came to be made and to remind them of any specific weaknesses which might have appeared in the identification evidence (***R v Turnbull*** [1977] QB 224, 228-229).

[26] The learned judge told the jury, correctly, that the issues of identification and credibility were "two of the main issues in this case". He then went on to say this:

> "But you recall each one of the witness [sic] in their testimony told you how long they knew this person before and the lighting condition. But let me hasten to warn you that when it comes to identification, that even an honest witness sometime [sic] can make mistaken identification of a person. You can say that they think this is a person that is somebody else. But I must hasten to tell you to look at the evidence of each person, how long they say they knew him, what was the lighting condition. Look at the statement that he placed himself there."

[27] There can be no question, in our view, that this was a wholly inadequate direction on the issue of identification in the circumstances of this case. Thus, the jury were not told anything of the special need for caution in their approach to the evidence and there was no attempt whatsoever by the judge to examine with them, in that context, the circumstances in which each of the witnesses had come to identify the

appellant. Further, the judge did not remind the jury of the special weaknesses in the evidence, such as, for instance, that the incident which gave rise to the charge in this case was an entirely unexpected, spontaneous event, that the action unfolded within a short compass in time, that there was at least one, and perhaps two, other prisoners in the vicinity of the attack on Sergeant Beckford at the material time and that it certainly seemed to District Constable Johnson and District Constable Stennett, both of whom purported to identify the appellant, that a jailbreak was imminent that evening. Further still, and quite inaccurately, the judge told the jury to "look at the statement that he placed himself there" (presumably a reference to the appellant's unsworn statement in which he had said that he was in his cell at the material time), thereby misstating the appellant's defence in an obviously material respect.

[28] In his oft cited judgment in ***Reid v R*** (1989) 90 Cr App R 121, 130, Lord Ackner stated that "a significant failure to follow the guidelines laid down in *Turnbull* will cause the conviction to be quashed because it will have resulted in a substantial miscarriage of justice". The need for a suitable ***Turnbull*** warning, even in recognition cases, as the instant case was, has also been emphasised in a number of cases (see, for example ***Evans v R*** (1991) 39 WIR 290 and ***R v Bryan Davis***, pages 6 – 7).

[29] However, in his well known work, The Modern Law of Evidence (6th edn, page 252), Professor Adrian Keane makes the point that "…***R v Turnbull*** is not a statute and does not require an incantation of a formula or set words: provided that the judge complies with the sense and spirit of the guidance given, he has a broad discretion to

express himself in his own way" (for an example of a case on appeal from this court which was held by the Privy Council to fall within this category, see ***Rose v R*** (1994) 46 WIR 213). Further, it is also clear that, in 'exceptional circumstances', a conviction following on from a failure by the trial judge to give the ***Turnbull*** directions altogether may nevertheless be upheld on appeal (see ***Scott v R*** [1989] 2 All ER 305, 314 – 15). A good example is provided by ***Freemantle v R*** [1994] 3 All ER 225, in which the Board held (in a judgment delivered by the late Sir Vincent Floissac CJ) that 'exceptional circumstances' might include the fact that the evidence of identification was of exceptionally good quality and, accordingly, applied the proviso in a case in which the failure of the trial judge to give the requisite warning was conceded by the Crown to have been a non-direction amounting to a misdirection.

[30] After anxious consideration, we have come to the view that, notwithstanding the trial judge's laconic and unhelpful warning to the jury (which, it seems to us, may have just barely complied with the sense and spirit of the ***Turnbull*** guidelines), this is a case in which the evidence identifying the appellant can similarly be described as being of exceptionally good quality. A number of factors have led us to this conclusion. In the first place, this was a recognition case, the appellant having been previously known to all three of the identifying witnesses (and had been continuously seen by Sergeant Beckford on a daily basis for a period of at least a month before the incident); secondly, the identifying witnesses had more than a fleeting glance of the appellant (Sergeant Beckford's evidence, for instance, was that he had seen "all of him, his front" and had "grabbed onto him and hold him" for about half a minute); thirdly, the lighting in the

area of the attack on Sergeant Beckford was on all accounts of good quality; fourthly, there was nothing obstructing the witnesses' view of the appellant; fifthly, there were no material discrepancies in the identification evidence of Sergeant Beckford, District Constable Johnson and District Constable Stennett, who therefore corroborated each other; sixthly, all three witnesses maintained that the appellant was not identified by them from a crowd of men, as was suggested on behalf of the defence, but that there were not more than two other persons in his immediate vicinity at the time of the attack on Sergeant Beckford; and, seventhly (though hardly least), the identifying witnesses were all police officers, who, though obviously subject to the same rules as lay witnesses, were "likely to have a greater appreciation of the importance of identification" (***R v Ramsden***, page 296).

[31] Taken together, it seems to us that this evidence carried what Sir Vincent Floissac described (memorably) in ***Freemantle v R*** (at page 229) as "cumulative potency", which, notwithstanding the weaknesses which we have identified (at para. [27] above), has led us to conclude that, although the point raised by this ground might be decided in the appellant's favour, no substantial miscarriage of justice has actually occurred and that the appeal cannot therefore be allowed on this ground (Judicature (Appellate Jurisdiction) Act, section 14 (1)).

(ii) Verdict unreasonable and circumstantial evidence (grounds one and three)

[32] Both grounds one and three have to do with the related questions of whether the learned trial judge gave adequate assistance to the jury with regard to the drawing

of inferences and the circumstantial evidence in the case, and whether the jury's conclusion that the appellant was guilty can be justified in the light of that evidence. No complaint is made in respect of Gayle J's direction to the jury on the question of inferences, which was in the following terms:

> "Now, Mr. Foreman and members of the jury, it is not everything that has to be proved that can be proved by direct evidence. You are not always going to get a witness coming here and say, I saw this happen with my own eyes, or, I heard this with my ears, or own ears, for that matter. Sometimes some things have to be proved indirectly and the law recognizes that. The law says that some things have to be proved by what is called inferences. That is, you, the judges of the facts, are entitled to draw inferences from the facts which you find proved.
>
> However, before you can draw any inferences or draw on an inference, you must be satisfied that that inference is the only inference that can reasonably be drawn, and that that inference is inescapable. In other words, when you draw an inference, that is the only inference when the facts are put to you that you find so. And when drawing an inference, no other inference can be drawn."

[33] Despite this direction, Miss McBean nevertheless complained that the judge should have given the jury a "full direction" on circumstantial evidence, by pointing out to them "that any inference drawn must be from facts proven and that such inference must be inconsistent with any other possibility". There appears to us to be a distinct echo in this submission of the so-called rule in ***Hodge's case*** (1838) 2 Lew CC 227, 228, which, as this court held in ***R v Cecil Bailey*** (1975) 23 WIR 363 (among several other cases), called for a special direction to the jury in a case in which the prosecution

relied entirely on circumstantial evidence, to the effect that, in order to find the defendant guilty, they had to be satisfied that the circumstances were not only consistent with his having committed the crime, but also inconsistent with any other rational conclusion.

[34] However, in ***McGreevy v DPP*** [1973] 1 WLR 276, the House of Lords firmly rejected the existence of any such rule in English law, holding that, in cases where the evidence against the defendant is partially or wholly circumstantial, it suffices to direct the jury that the prosecution has the burden of proving the defendant's guilt beyond reasonable doubt. And further, in a notable judgment in ***Loretta Brissett v R***, Smith JA considered the impact of ***McGreevy*** on the previously "settled rule" in ***Hodge's case*** and concluded that ***McGreevy***, as a decision of the House of Lords in relation to the common law, was binding upon this court. Accordingly, it was decided that the trial judge's directions in that case, in which he had explained to the jury what circumstantial evidence was, had told them in clear terms what the critical issues in the case were, and had "made them to understand in no uncertain terms that they must not convict unless they were satisfied that guilt has been proved and has been proved beyond reasonable doubt", were entirely adequate (page 27).

[35] We consider that it is nevertheless important to keep in mind, as Forte JA (as he then was) was careful to point out in ***Bernal & Moore v R*** (1996) 50 WIR 296, 313, that ***McGreevy***, although concluding that there was no necessity to give any special direction to the jury in cases dependent on circumstantial evidence, "nonetheless

recognised that a jury in determining the issues based on circumstantial evidence could not (if they are to find the case has been proved beyond reasonable doubt) find an accused guilty if the evidence was also consistent with innocence, because in such a case the requisite standard of proof would not have been reached".

[36] The actual terms of a trial judge's directions to the jury on the burden and standard of proof in a case in which the Crown relies wholly or in part on circumstantial evidence are therefore, as indeed they are in every criminal trial, very important. In the instant case, at the very outset of his summing up, Gayle J told the jury that, the appellant having pleaded not guilty, it then became "the duty of the Prosecution to prove the guilt to the extent that you feel sure of his guilt". The judge went on to give a full direction on the burden and standard of proof, again unexceptionably, as follows:

> "Now, in this case, as in any other case which you might sit in the court as a jury, it is the Prosecution who must prove that the accused is guilty. The accused man, Mr. Hunter, does not have to prove his innocence. There is no burden or duty on him in law to prove his innocence. It is the Prosecution that must prove the guilt of the accused man, by making you feel sure. That is the burden on the Prosecution. And that is the burden on the Prosecution from the start of the case until the end of the case, and that burden never shifts. In other words, my words, it's the Prosecution that brought him here. It's the Prosecution that must prove the case against him, through their various witnesses. The Prosecution must prove the guilt of the accused by making you feel sure of it. Nothing less than that will do. And if after considering all the evidence you are sure that the accused is guilty, you must return a verdict of guilty. If you are not sure, if you have a reasonable doubt, then your verdict must be not guilty."

[37] This was a clear and entirely accurate direction, as was the judge's earlier direction to the jury on the drawing of inferences (see para. [32] above). To the extent that the appellant's ground three implies that a further special direction to the jury was called for on the issue of circumstantial evidence, it is clear that that proposition cannot be sustained in the light of ***McGreevy*** and ***Loretta Brissett***. It is undoubtedly true that, as Miss McBean complained, the judge did not return to the question of inferences in the context of his detailed review of the evidence after having given his general direction on the drawing of inferences (a course which, it seems to us, must almost invariably be helpful to a jury). Notwithstanding this, it appears to us that in this case the issue for the jury's decision was so narrowly drawn, that is, whether Sergeant Beckford's injuries were inflicted by the appellant during the brief period that they "wrestled" with each other in the vicinity of the gate to the cell block, or by someone else, that there was nothing of substance that any further direction from the judge in this regard might have added to his unequivocal instructions to them that they should draw only reasonable inferences and should not return a verdict of guilty unless they were sure of the appellant's guilt.

[38] The evidence in this case was that Sergeant Beckford grabbed on to the appellant and struggled with him for a minute and a half and that it was immediately after the appellant broke free of him that he felt his left side wet. When he looked down he saw that his entire left side was covered with blood. Save for the appellant, he had had no contact with anyone else immediately before he was injured. It seems

to us to be clear on this evidence that the conclusion that it was the appellant who had inflicted Sergeant Beckford's injuries was one which was plainly open to the jury and that it cannot therefore be said that the verdict at the trial was so against the weight of the evidence as to be unreasonable or unsupportable (which is the test for a finding that the verdict of the jury was unreasonable having regard to the evidence approved by this court in ***R v Lao***).

[39] We therefore consider that grounds one and three cannot succeed. In arriving at this conclusion, we have not lost sight of Miss McBean's additional complaint that the judge failed to direct the jury on how to deal with the appellant's silence upon being confronted with the alleged weapon. While we readily accept that it could not have been particularly helpful to the jury to have been told, without comment, that the appellant had remained silent when confronted with the alleged weapon and when he was formally arrested and charged, the judge did not invite the jury to draw any inference unfavourable to the appellant from this fact and we do not therefore consider that the appellant would have been prejudiced in any way.

(iii) Sentence (ground four)

[40] It is clear from the transcript of the trial proceedings that, in sentencing the appellant to 25 years imprisonment at hard labour, Gayle J was substantially influenced by the combination of his previous criminal record and the seriousness of the injuries which Sergeant Beckford had received. There can be no doubt that the judge was fully entitled to take both these factors into consideration for the purpose of determining the

appropriate sentence to be imposed in the circumstances of the instant case. While we obviously share Miss McBean's concern that like offences should attract like sentences, we were regrettably not provided with any comparative material against which to measure the sentence imposed by the judge in this case.

[41] However, taking all factors into account, we have come to the view, not without some hesitation, that in this case the judge's sentence of 25 years was in fact manifestly excessive (despite the appellant's dismal record of previous criminal conduct). In coming to this conclusion, we have had regard in particular to the current statutory minimum sentence for the offence of murder, which is 15 years (see the Offences Against the Person Act, section 3(1)(b)), as well as to the court's own experience in sentencing for like or comparable offences. In all the circumstances of this case, including the appellant's previous record, the seriousness of the injuries sustained by Sergeant Beckford and the fact that this was a vicious and completely unprovoked attack against a member of the security forces acting in the course of his duty, we consider that a sentence of 17 years imprisonment at hard labour would therefore be appropriate.

Conclusion

[42] It is for the foregoing reasons that the Court made the following order : In the result, the appeal against conviction is dismissed. However, the appeal against sentence is allowed; the sentence of 25 years imprisonment imposed by the trial judge is quashed and a sentence of 17 years imprisonment at hard labour, commencing 6 July

2007 (to run concurrently with any other sentence of imprisonment currently being served by the appellant), is substituted therefor.