JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 54/1999

BEFORE: **THE HON. MR.JUSTICE FORTE, P.**
THE HON. MR.JUSTICE WALKER, J.A.
THE HON. MR. JUSTICE LANGRIN, J.A.

MARVIN REID v R

Dr. Randolph Williams for the appellant

Bryan Sykes and **Miss Rochelle Cameron** for the Crown

June 6 and July 17, 2001

WALKER, J.A.:

On March 11, 1999 in the St. Catherine Circuit Court before Pitter J sitting with a jury the appellant was convicted of the murder of Anthony Roper. As a consequence, the appellant was sentenced to imprisonment for life with a recommendation that he should not become eligible for parole before serving a period of twenty years. On June 6, 2001 his appeal against conviction and sentence was dismissed by this court and it was ordered then that the appellant's sentence should commence on June 11, 1999. Following are the reasons for our decision.

The case for the prosecution was that on March 19, 1997 at about 7:15 a.m. a game of dominoes was being played for money around a table in a

park situated in Linstead, St. Catherine. At this time the appellant came on the scene and expressed a wish to join the game. The deceased, who was one of the players, said that he would not play with the appellant. However, notwithstanding the deceased's objection, the appellant was allowed to join the game and did so. Soon an argument developed between the appellant and the deceased during the course of which both men who were standing facing each other drew knives and shoved each other. After this, complying with a request from one of the other players to "cool it down and forget the argument", the deceased put up his knife and returned to the domino table. Thereafter the appellant approached the deceased from behind and used his knife to stab the deceased in the neck. Having done that the appellant ran off and was chased for a short distance by the deceased who, in the course of the chase was seen to stab at the appellant with a knife. Eventually, the appellant managed to escape and the deceased collapsed, as it turned out, mortally wounded.

The post mortem examination of the body of the deceased revealed a single, gaping incised stab wound to the lower left posterior aspect of the neck. The cause of death was a stab wound to the neck inflicted with a severe degree of force.

The case for the defence which consisted of the evidence of the appellant was that on the day in question the appellant was playing a game of dominoes in the Linstead car park when the deceased came on the scene and asked to join the game. The appellant's response to this request was "I am not playing with you". At this point in time friends of the deceased interceded

on his behalf and he was allowed to join the game. Soon afterwards, being of the opinion that he was being victimized, the appellant said that he took up his money from the table and sought to withdraw from the game. At this juncture the deceased grabbed the money out of the appellant's hand and the appellant grabbed back his money. Both men then proceeded to chuck each other after which the deceased drew a knife which he used to "box" the appellant in his face. Immediately the deceased and his friends commenced to attack and to beat the appellant. During the course of this attack the deceased stabbed the appellant in his shoulder with a knife causing a wound which bled. The appellant said that he in turn stabbed the deceased before running away and going home. It was the appellant's evidence that he thought that it was the deceased's intention to kill him (the appellant) when he (the deceased) stabbed him.

This appeal was argued on a single ground which read:

> "The learned trial judge misdirected the jury. He failed to direct them as to the appellant's state of mind at the time of the stabbing and in the circumstances as described by the appellant.
>
> In his summing up the learned trial judge said that for self defence to avail a person charged with murder he must "reasonably" believe that his life was in danger or he was in danger of serious bodily injury".

In this case it was incumbent on the trial judge to direct the jury on the issue of self-defence which clearly arose for their determination. This the trial judge did but, regrettably, by directions which were flawed. At the outset of the hearing of this appeal Mr. Sykes conceded that this was so. What the trial judge said was this:

> "The issue taken with the prosecution is one of self-defence. And a man who is attacked in circumstances where he reasonably believes his life to be in danger, or that he is in danger of serious bodily harm or injury, he may use such force that is reasonable in the circumstances to prevent and resist the attack, or to quell the attack, and if in using such force he kills his attacker he is not guilty of any crime, even if the killing was intentional."

That direction was plainly wrong for it is now trite law that the true test is not one of reasonable belief but rather one of honest belief: see ***Beckford v The Queen*** [1987] 36WIR 300. Dr. Williams submitted that this obvious mis-direction must necessarily be fatal to the appellant's conviction. We disagree. This was a case in which the evidence of the appellant, on which the issue of self-defence arose, spoke to an actual attack mounted upon him by the deceased and his friends. No issue of honest belief arose on that evidence and, therefore, no miscarriage of justice could, conceivably, have occurred as a consequence of the flawed direction of the trial judge. In the result the jury obviously rejected the defence version of the pertinent events, preferring instead to accept the prosecution's case as they had a perfect right to do. There can be no quarrel with the verdict of murder which resulted.