

JAMAICA

IN THE COURT OF APPEAL

PARISH COURT CRIMINAL APPEAL NO 11/2016

**BEFORE: THE HON MR JUSTICE MORRISON P
THE HON MR JUSTICE BROOKS JA
THE HON MISS JUSTICE P WILLIAMS JA**

NERECE SAMUELS v R

Cecil J Mitchell for the appellant

Miss Paula Llewelyn QC, Director of Public Prosecutions, and Mrs Sahai Whittingham Maxwell for the Crown

5 April 2017

BROOKS JA

[1] This is an appeal by Ms Nerece Samuels against a conviction in the Resident Magistrate's Court for the Corporate Area Criminal Division, for the offence of unlawful wounding. The basis of the conviction is that she wounded a woman during a bottle-throwing incident between Ms Samuels and the woman's son. Based on the decision we have reached on this matter it is best that further details of the allegations against Ms Samuels, which led to her conviction, be omitted.

[2] She was convicted on 28 October 2015 and was, on the same day, sentenced to imprisonment for six months. It was her first appearance before the court.

[3] In February 2016, the Judicature (Resident Magistrates) Act was amended to effect a change in the name of the 'Resident Magistrate's Court' to 'Parish Court'. There were also amendments to substitute 'Judge of the Parish Court' wherever there was a reference to 'Resident Magistrate' or 'Magistrate' in the Act. Ms Samuel's case has spanned the change. In order to avoid any confusion, the new terms of "Judge of the Parish Court" and "Parish Court" shall be used, where appropriate, throughout this judgment.

[4] Ms Samuels filed a notice of appeal on 3 November 2015. In her grounds of appeal filed on the same date, Ms Samuels asserted that she did not plead guilty and that the learned Judge of the Parish Court convicted her without hearing any testimony. On Ms Samuels' account, the learned Judge of the Parish Court, during "an exchange" in court with the woman, who was the virtual complainant, and Ms Samuels, insisted that Ms Samuels "must be guilty and as a consequence [she] was pleaded by the Clerk of the Courts on a number of occasions".

[5] According to Ms Samuels, she "kept on insisting that [she] was not guilty and would not plead [sic] guilty". Despite her refusal to plead guilty, she alleges, the learned Judge of the Parish Court "became angry and proceeded arbitrarily and without more to sentence [her] to imprisonment" without the benefit of a Social Enquiry Report and although she had no previous conviction.

[6] Ms Samuels spent two months in custody before she applied for and was granted bail pending appeal. She filed an affidavit in support of her bail application. In that affidavit, Ms Samuels repeated the assertions contained in her grounds of appeal. The single judge, who granted her bail, directed that Ms Samuel's affidavit should be sent to the learned Judge of the Parish Court and that the Judge of the Parish Court should provide this court with an affidavit in response to Ms Samuels' affidavit. Despite the registrar of this court conveying the orders of the single judge to the Parish Court, there was no affidavit forthcoming from the learned Judge of the Parish Court.

[7] In providing her reasons for judgment, in response to the appeal, the learned Judge of the Parish Court, did not directly address Ms Samuels' complaints about the behaviour of the bench at first instance. Instead, after setting out the allegations that were advanced by the prosecutor, the learned Judge of the Parish Court said:

"There was some discussion between the Bench and the parties and I was of the distinct impression that although initially the accused said that she was not guilty, after the discussion and cross-talk she had accepted responsibility for injuring the complainant whereupon, she was sentenced.

In light of her current assertion that she intended to enter a plea of not guilty, may I make bold to say that the matter could be returned to the Corporate Area Criminal Court for trial before a differently constituted court."

[8] Before us, the learned Director of Public Prosecutions, Miss Llewelyn, QC, indicated that the Crown was very disturbed by this matter. The learned Director conceded that in these circumstances, the conviction should be quashed and the sentence set aside. She asserted that there was no basis in law for the learned Judge

of the Parish Court to have taken the approach that she did. The learned Director further said that what had occurred in this matter, at first instance, was an injustice. The interest of justice, she said, required that the matter not be remitted to the Parish Court for a trial as the learned Judge of the Parish Court had suggested.

[9] We agree with the learned Director that what had occurred in the court below should not ever have occurred and should not be repeated.

[10] It is recognised that Judges of the Parish Court, have a huge workload. The number of cases that they are obliged to deal with on any given day is punishing, and so enquiries must be made of the parties to cases, to ensure that the court does not embark on an unnecessary trial. What Judges of the Parish Court must be careful to do, however, is that, if they are of the view that an accused person has changed his stance on a plea of not guilty, they should have that person re-pleaded in order to avoid any situation, as has occurred in this case.

[11] It is without question, based on the above analysis, that Ms Samuels' conviction must necessarily be quashed. What is less clear is the consequential order that should be made in the circumstances. It is now to be determined whether the case should be remitted to the Parish Court for a trial to be held.

Should the case be remitted for a trial?

[12] Section 14(2) of the Judicature (Appellate Jurisdiction) Act empowers this court, if it decides that a conviction should be quashed, to order a new trial, "if the interests of justice so require". The Privy Council had provided, through its judgment in **Dennis**

Reid v R (1978) 16 JLR 246, careful guidance for assessing that question. Their Lordships were dealing with the result of a jury trial, but the principles are applicable to a conviction arising from a summary court. The Privy Council ruled that a “distinction must be made between cases in which the verdict of a jury has been set aside because of the inadequacy of the prosecution’s evidence and cases where the verdict has been set aside because it had been induced by some misdirection or technical blunder” (see the headnote). Lord Diplock outlined some of the considerations that should be taken into account in deciding whether or not to order a new trial. Among the considerations, which he set out at pages 250-251 of the report, were:

- a. the strength of the prosecution’s case;
- b. the seriousness or otherwise of the offence;
- c. the time and expense that a new trial would demand;
- d. the effect of a new trial on the accused;
- e. the length of time that would have elapsed between the event leading to the charges, and the new trial;
- f. the evidence that would be available at the new trial;
- g. the public impact that the case could have.

[13] Their Lordships stressed that the factors, to which they had referred, did not pretend to constitute an exhaustive list. These considerations have been considered in this court in a number of cases, including **Morris Cargill v R** [2016] JMCA Crim 6. These cases suggest that the weight to be attached to the factors stated in **Reid v R** depends on the particular facts of each individual case.

[14] It is unnecessary to assess the present case against each of these factors individually. The primary factors to be considered are the fact that, this was, from all accounts, a conviction arising from a judicial error. It was Ms Samuels' first conviction. The incident was a wholly domestic affair, but did not involve any dangerous weapon such as a knife or firearm. It is accepted that such incidents all too frequently escalate into some serious, if not fatal injury, but happily that did not occur in this case. As the learned Director has suggested, this was a case which was eminently qualified, and cried out, to be referred to the dispute resolution process.

[15] The result of the conviction led to Ms Samuels being imprisoned for over two months. It is unlikely, for such an offence, with a first conviction, that a custodial sentence would have been appropriate. She has therefore received a level of punishment that she was not likely to have been given were she to have been convicted after a trial.

[16] Based on all the above, it would not be in the interests of justice that Ms Samuels should be made to undergo a trial. A judgment and verdict of acquittal should be entered.

ORDER

1. The appeal is allowed.
2. The conviction is quashed and the sentence set aside.
3. A judgment and verdict of acquittal is entered.