

COURTS OFFICE LIBRARY

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL DIVISION

IND. NO. 0024/2010



20-10-2010

REGINA

V

JUSTIN RAMOON

IN OPEN COURT
THE 6TH – 7TH AND 21ST OCTOBER 2010
BEFORE CHIEF JUSTICE ANTHONY SMELLIE

APPEARANCES: Miss Tanya Lobban for the Crown
Mr. Ben Tonner for the Defence

JUDGMENT

1. On the present indictment, the defendant Justin Ramoon has elected to be tried by judge alone pursuant to Section 129 of the Criminal Procedure Code.
2. The case came for trial before me on the 6th to 7th October 2010. I now deliver judgment being mindful of my duty clearly and fully to express and explain my understanding of the applicable law and my treatment of the evidence.

3. The indictment charges the defendant with the offence of possession of an imitation firearm with intent to commit the further offence of assault upon Sven Conner.
4. Sven Conner testified and, as to the crucial issue of the identity of his assailant being the defendant, was the only witness relied upon by the prosecution. Other persons, in particular Andre Woodman and Leighton Rankin, reported to have been present at the incident and therefore material witnesses, declined to give statements to the police.
5. Sven Connor described himself as an out of work electrical tradesman. The narrative of his evidence is as follows.
6. On 21 February 2010 at about 7 – 8 o'clock in the evening, he was present at 47 Fairlawn Road which is off the Bobby Thompson Road area of George Town, behind the High Schools complex. The premises, which share a yard in common with other houses, belonged to the grandmother of his girlfriend. Connor testified that he was simply there with his girlfriend, her children and other family members relaxing and sharing a meal.
7. He then saw a vehicle drive onto Fairlawn Road. He recognised the vehicle because of its distinctive rims, make and colour, as belonging to someone he knew; Anthony Truman, otherwise known as "Chilli Willy". Truman is known to be the partner of the defendant's mother. Connor referred to him as the defendant's "step-father".

8. The vehicle manoeuvred into the driveway opposite then reversed into the driveway of 47 Fairlawn Road where its ingress was stopped by light poles lying on the ground across the driveway.
9. Connor said that he then heard the car doors open and close when he saw a person, whom he recognised to be the defendant, walking towards the house where he was. The defendant was then about 15 feet away.
10. As the defendant got to about an arm's length from him, the defendant pulled what appeared to be a firearm from the right side of his waist. As he pulled the object out, the defendant was "trying to select the gun" meaning, as Connor explained, trying to chamber a round of ammunition in the firing chamber. Connor described the motion while in the witness box, by moving his left hand over his right indicating a sliding motion. He said it appeared to him that the defendant had put a shot or had tried to put a shot into the chamber of the gun. The gun was then pointed towards him.
11. Connor said that as this happened he grabbed hold of the gun and struggled with the defendant, trying to point the gun away from himself. He grabbed the gun with both hands and, as he struggled with the defendant, the other persons present "scattered" away. He continued to struggle with the defendant until he managed to push him to the ground with the gun, at which point the gun fell from the defendant's grip and fell to the ground.
12. The gun felt and sounded metallic. He had previous knowledge of firearms and the gun felt real to him.

13. At that moment, Connor said he happened to look over his shoulder towards the vehicle and saw *"the figures of guys coming from the vehicle"*. Exercising discretion over valour, he decided to run away. He ran into and through the bushes at the back of the premises and made his way to the "Field of Dreams" – the baseball facility some distance away but in the same vicinity of the High School.
14. While there, he spoke to his girlfriend by cell phone, confirming to her that he had been attacked by a gunman. He next called the police and reported the incident giving them his location. He waited until the police arrived when, because his arm had been pulled from its socket during the struggle with his attacker, an ambulance was called. He was taken to the George Town Hospital where he was admitted and treated overnight.
15. As one would expect of a dislocated shoulder, he had been in severe pain.
16. As to the identification of his assailant to be the defendant, Sven Connor's evidence is as follows, from the verbatim transcript:

BY MS. LOBBAN:

Q And how were you able to recognise who it was at that time of night?

A Well, I know him for a long time so --

Q How were you able to recognise who it was

A I see his face.

Q How were you able to see his face at that time of night?

A *Nothing was in my view. I saw him plain as day. Me and him fought. And I know who I fought.*

Q *Hold on, just one question at a time.*

A *Okay, ma'am.*

Q *I was asking you how were you able to see who it was at that hour of the night?*

A *It's light out, ma'am. Lights in the front of the yard.*

Q *What kind of lights?*

A *Where we were sitting down there's lights outside.*

Q *Just a minute.*

A *Over the door, lights there. There are lights on the corner of the house.*

Q *And when he was 15 feet away, how were you able to tell who he was?*

A *He walked -- he walked straight up. I saw him, I know him.*

THE COURT:

Q. *How long before did you know him?*

THE WITNESS:

A. *I know him for years. I watch him grow up.*

BY MS. LOBBAN:

Q *How many years?*

A *Fifteen years. Probably more.*

Q When he was walking towards you which part of him were you able to see?

A His whole -- his whole figure.

Q When he was at arm's length away from you which part of him were you able to see?

A He was still in front of me, so full figure. His full figure.

Q And I see you demonstrating towards your head, sir. What does that mean?

A His face, his body, entirely.

Q Apart from the lights on the house --

A Light poles -- light poles in the yard.

Q Which yard is that?

A The yard next door.

THE COURT:

Q. Is it street lights?

THE WITNESS:

A. Yes, sir.

THE COURT:

A. And these were on?

THE WITNESS:

A. Pardon me?

THE COURT:

Q. These were on --

THE WITNESS:

A. Yes, sir.

THE COURT:

Q. -- all these lights?

THE WITNESS:

A. Yes, sir.

BY MS. LOBBAN:

Q And when you say the yard next door, which yard specifically are you talking?

A The yard that they walked through to get to where I was.

Q When you were struggling with him which part of him were you able to see? When you were struggling with him for the gun, which part of him were you able to see?

A His whole bottom of -- his whole face because I'm fighting with him with the gun.

Q How long, did that struggle last?

A That struggle last, I would say, probably 45 seconds, 50 seconds.

Q And from the time you first recognised who it was coming towards you 'til the time you ran off into the Field of Dreams, how much time was that?

A About -- to be honest, it would be about three to two minutes and a half.

THE COURT:

Q. Was anything said?

THE WITNESS:

A. No.

BY MS. LOBBAN:

Q. Now, you said -- you said you know this person for roughly 15 years?

A. About 15 years.

Q. Where you know him from?

A. Umm, Central.

THE COURT:

Q. That's Central, George Town?

THE WITNESS:

A. Yes, sir.

BY MS. LOBBAN:

Q. And how often would you normally see him?

A. Umm, in all -- before I went to prison I know him, when I came out of prison I know him, when I was on work release I saw him on the road. How regularly did I see him?

Q. How regularly did you see him before this incident?

A. Yeah, I saw him weeks before that.

Q. And did you know anything about him before, where he lived?

A. Yeah.

Q His family members?

A Yeah, I know his immediate family.

Q Who is that?

A His brothers, his mother.

Q Who is his mother and brothers?

A His mother is Miss Taya.

THE COURT:

Q. Who is she?

THE WITNESS:

A. Miss Taya Truman.

THE COURT:

Q. Miss Taya Ramoon?

THE WITNESS:

A. Ramoon or Truman, I don't really know.

BY MS. LOBBAN:

Q And his brothers?

A Osbourne Douglas, Mateo Dinnall.

Q And before this incident did you know where he lived?

A Yes.

Q Where?

A On Tigris Street.

THE COURT:

Q. I didn't get that.

THE WITNESS:

A. *Tigris Street.*

BY MS. LOBBAN:

Q *Where is that? George Town, Bodden Town, where?*

A *That's in Central. George Town.*

Q *Now, could you describe this thing that you said was a gun?*

THE COURT:

A. *Before you go on, this Justin Ramoon, who is he?*

MS. LOBBAN:

Q. *Do you see him here today?*

THE WITNESS:

A. *Yes, ma'am. He's in the dock.*

BY MS. LOBBAN:

Q *Yes. Can you describe the thing you said was a gun that was pointed at you?*

A *Yeah, it was a silver, it looked like a .45-calibre or a .40 [ph].*

Q *Describe what it looked like?*

A *It's silver handgun, automatic, or semi-automatic.*

Q *What you mean by automatic?*

A *They don't have a revolver.*

Q *How did he hold it at the time?*

A *In his hands pointed towards me.*

Q *How did you feel when the gun was pointed toward you?*

A. My life -- my life flashed in front of my eyes then. It was either I run, get a shot, or fight for my life.

THE COURT:

Q. You actually got your hand onto this object?

THE WITNESS:

A. Yes, sir.

THE COURT:

Q. How did it feel?

THE WITNESS:

A. It felt real.

THE COURT:

A. What does that mean?

THE WITNESS:

A. Iron. I held a gun before.

THE COURT:

Q. Metal? Metallic?

THE WITNESS:

A. Metallic.

17. That, on the face of it, is a straightforward narrative of the circumstances under which the witness Sven Connor says he was able to and did recognise the defendant to be his assailant. I found the manner of the delivery of his evidence to be compelling – he was unhesitant, firm and clear in his account. He had known the defendant for many years, was well acquainted with other members of

his family and knew where he lived and grew up. The confrontation between them was at very close quarters under adequate lighting and lasted for a significant period of time from beginning to end – some 2½ to 3 minutes. The actual struggle, during which he was face to face with his assailant, lasted for 45 to 50 seconds. While not beyond the realm of possibility, these are hardly circumstances under which one would expect a witness who is already well acquainted with his assailant, to be mistaken.

18. Nor was that what was put to Sven Connor in cross-examination. Rather, it was put to him by Mr. Tonner that he had a reason, a specific motive, for wanting to implicate the defendant unfairly as the person who had attacked him. This was that he sought to get back at one Royden Robinson, a cousin of the defendant, for having implicated him in allegations involving the attempted murder of Royden Robinson. This was an offence for which Sven Connor had in fact been charged but acquitted at the preliminary inquiry, for lack of a case fit to go to trial.
19. Connor, who admitted to an extensive criminal history (including a firearm offence), confirmed that he had mentioned Royden Robinson to the police in connection with this case. He said:

“I had mentioned Royden Robinson was probably the person who send him [that is, the defendant]. I said that in my statement. Because that’s the only reason – me and Justin (the defendant) have no problems”.

20. Then there was the following exchange between Sven Connor and Defence Counsel:

Q: But my suggestion is that you have a big problem with Mr. Robinson and that you are telling a pack of lies about Justin Ramoon.

A. Why would I tell...why would I tell lie on Justin?

Q. Because, Mr. Connor, you are trying to get to Mr. Robinson.

A. So, tell me something now, Mr. Robinson had me charged for attempted murder....

Q. Mr. Connor, if you ask a question, I'll advise you that I'm not going to answer it. I'll ask the questions.

A. Yes, Sir.

(Then followed a series of questions and answers about other persons present at the scene of the incident and about the failure of Sven Connor to show up at the start of the trial on the first day (4 October 2010).

Then finally, on this issue:

Q. Mr. Connor, I will keep my cross-examination brief. I am suggesting that the evidence you have given implicating Justin Ramoon is a lie.

A. No, Sir, it is not a lie. I have no reason to lie on him, Sir".

21. It is of course accepted that the defendant, having no burden on him to disprove the prosecution's case or to prove his own innocence; assumes no burden to explain Sven Connor's reason or motive for implicating him.
22. The cross-examination on the defendant's behalf does however, serve to put in context, the nature of the defence here. While I must be sure that this is not a case

of mistaken identity before I may convict, that is not the nature of the defence's concern here. The defence asserts that Sven Connor has deliberately lied in his identification of the defendant and that he has a motive, however oblique, for so doing.

23. The implication of the cross-examination of Sven Connor by defence counsel, was that he could not have been as well acquainted with the defendant as Connor testified, because for much of the defendant's young life, Connor would have been in prison. I must therefore examine this issue here.
24. The defendant is 19 years old. When Connor was last imprisoned for manslaughter in 1999, the defendant would have been about 8 years old. Connor was released last year after serving some 10 years of that 15-year sentence (and a further 1 year sentence for riot while in prison).
25. There was, however, a series of questions and answers in Connor's evidence which sought to address this issue. He said that he had known the defendant before going to prison, he had seen him while out on work release and had seen him when he came out of prison. He had last seen the defendant only weeks before the incident. It is clear from the account Connor gives of knowing the defendant's mother and brother that he knows his immediate family well. This, like the fact that Connor knew where the defendant lived as he grew up over the years, is unrefuted. He knew the defendant himself well enough to know of his nickname "Pot" – a nickname later confirmed by the defence witness, Daniel Stewart.

26. The defendant nonetheless sought to repudiate Connor's evidence in this regard. He said that although he knew Connor before, it was not for long. Only for about two months or so; and that he had "just heard about him". He had had no relationship with him.
27. I am satisfied that Sven Connor's extensive knowledge of the defendant's family and other personal circumstances could only have been acquired by a personal acquaintance with the defendant.
28. The defendant gave evidence of alibi and called a witness, albeit belatedly, in support. I will turn to consider this evidence below.
29. Given the physical circumstances under which the confrontation between Sven Connor and his assailant took place, I find that he was quite able to identify his assailant and whom, if someone already well known to him, he would have been able, without difficulty to recognise. I am satisfied that in his naming of the defendant as his assailant, Sven Connor would not have been mistaken.
30. I note that I have arrived at this view of the evidence after consideration and application of the directions given in *R v Turnbull [1995] Q.B. 224*. In particular, that I should warn myself of the special need for caution before convicting an accused person in reliance on the correctness of the identification by him of a witness, and here, especially, a single witness. I am obliged to examine closely the circumstances in which the identification came to be made (see, generally, *Archbold* 2010 Ed. Para 14-2-14-10).
31. As the textbook observes at paragraph 14-5, all the circumstances of the identification which go to the quality of the identification evidence must be

considered. If the quality is good and remains good at the close of the accused's case, the danger of a mistaken identification is lessened. Though not directly suggested by Mr. Tonner, there was the implication whether Sven Connor may have mistakenly named the defendant because of Connor making an association of the defendant with Anthony Truman's car. However, given all the circumstances of the identification, I specifically also discounted that mistaken inference as a possibility.

32. But was Sven Connor deliberately lying?
33. An important factor to bear in mind in seeking an answer to this question is the relative spontaneity with which Sven Connor named the defendant as his assailant.
34. It is apparent from the evidence of Det. Cons. Valentine Reid that no sooner had the police arrived at the Filed of Dreams and taken him to the hospital, than Connor named the defendant as his assailant.
35. His dislocated shoulder, from which he was still in pain, was indicative of the close-quarters struggle he had had with his assailant whose features – described as visible in the lighting then available – would have been fresh in his mind.

The Defence

36. Though not obliged to do so, the defendant did give evidence and did call a witness, Darley Daniel Stewart Jr., his cousin, in support. While the defendant assumed no burden by calling evidence, the evidence by the defence required of the same careful consideration as the evidence called on the prosecution's case.

37. While admitting to having grown up and living at the Tigris Street address known to Sven Connor, the defendant testified that at around the time of the incident – 21 February 2010 – he was not staying at Tigris Street but at his cousin Daniel Stewart’s place, in West Bay. That he was compelled to move to West Bay at end of January 2010 because his mother, who had supported him throughout his life, had been incarcerated in October 2009 and being unable to fend for himself, - working only sporadically – the water and power supply at the Tigris Street address had been disconnected. He therefore went to Mount Pleasant, West Bay, where he “bunked” with his cousin Daniel Stewart from about 1st February 2010, until his arrested on 23 February 2010.
38. It was admitted on behalf of the prosecution, that Taya Truman, the defendant’s mother, was in custody from October 2009 until May 2010 and that the electricity supply to the #3 Tigris Street address was disconnected for non-payment on 19th January 2010. It was re-connected on 3rd May 2010.
39. This was presented as evidence corroborative of the defendant’s account of having been living in West Bay at the time of the incident on 21st February 2010.
40. The defendant said he told the police officer that he was not living at #3 Tigris Street when they executed a search warrant there in his presence on the 28th February 2010 but he did not tell them that he had been staying at Mount Pleasant. He could not recall whether they had asked.
41. The defendant gave a detailed account of having been present throughout the entire day and night of the 21st February 2010 at Mount Pleasant. In this he was supported in remarkable detail by his cousin Daniel Stewart. They both told of

having spent the day at Daniel Stewart's grandmother's premises at Mount Pleasant (where Daniel Stewart occupied the apartment in which the defendant was allowed to stay). That day was described as spent in consummate leisure, playing dominoes, drinking beers and rum, cooking and eating a surfeit of seafood, and smoking ganja.

42. The day ended for the defendant with only a vague recollection of the drunken stupor in which he was carried physically by Daniel Stewart and another cousin, Tamara Smith – who had also spent the day with them – and placed in bed, too inebriated to have managed to get there on his own. This was at about 10 pm, following their binge that had begun at some time between 2 pm and 3 pm. He awoke at Mount Pleasant the next morning, too drunk during the night to have left the house. Certainly, at 7 pm to 8 pm on 21 February 2010 when Sven Connor was being attacked at 47 Fairlawn Drive, on this account the defendant could not have been the attacker, as he was miles away in West Bay and already in a drunken state.
43. He knew nothing of what had transpired at 47 Fairlawn Drive until 25th February 2010 when he reported to the Police as a condition of his probation (or bail – it is not clear which). He was then arrested for this offence.
44. I find the detail in which Daniel Stewart supported the defendant's account of how they spent the day and night of the 21st February 2010 to be remarkable for two reasons in particular.
45. First, the detailed recollection of the day given some 8 months after the event notwithstanding that, on his own admission, Stewart had had no reason to

recollect the happenings of the 21st February 2010 until just the day before he testified (6th October 2010). Second, his admission that he had not expected to testify at all until he had received a telephone call from Tamara Smith the day before he testified, in which she suggested to him that the allegations against the defendant related to that very day they had spent together at Mount Pleasant.

46. I take the following narrative of Stewart's evidence from the verbatim transcript.

47. First, in **examination in chief by Mr. Tonner:**

"Q. How is it, Mr. Stewart, that this was on the 21st February, quite a long time ago, how is it that you can remember what happened on that Sunday.

A. Well, yesterday when I went to work I got a phone call stating that Justin was in Court and somebody came and said that he did something, so I came here because the phone call I got they said that the 21st is the same day that we had the cook out and thing. So that how I could tell you that that day in particular we were together the whole day and the whole night up until the next morning I left.

THE COURT

Q. So you are saying yesterday was the first time you realised you would have to give evidence in Court?

THE WITNESS

A. I didn't know anything about this.

THE COURT

Q. Until yesterday?

THE WITNESS

A. Yesterday I got a phone call stating that this – something had happened, so I came, because I know for sure that me and Justin were together the whole day. So that's why I came.

BY MR. TONNER

Q. Why is it, Mr. Stewart, you didn't approach the police, for example earlier to explain to them that you were together earlier on that day?

A. I never, ever heard anything about this. All I know was Justin had got locked up and that was it. I only been talking to his family and stuff trying to find out what was happening and thing and I never found out anything.

....

THE COURT

Q. Mr. Stewart, you said you heard that he had been arrested.

A. Yes, Sir.

Q. He had gone to the police station to report on bail.

A. Yeah.

Q. And you last saw him on a Friday morning?

A. Yes, Sir, when I was leaving to go to work.

Q. And yesterday was the first time you realised you had to give evidence?

A. Yes, Sir, because I didn't know anything because I heard that he was arrested on attempted murder but I never heard about any shooting on the news or anything like that.. So I thought it was just a rumour. And that morning he told me that he going to check in. And I said [to myself] boy, can't be going to check in, he locked up, if he wanted for attempted murder, so I thought it was just rumours.

THE COURT

Q. So when did you first learn the day when he was supposed to have committed the offence? When did you first understand what day it was that he was supposed to have committed that offence?

THE WITNESS

A. Umm, yeah, I got phone call yesterday.

THE COURT

Q. Yesterday?

THE WITNESS

A. Yes, Sir. And the person, Tamara, told me that somebody say that Justin pull a gun or something like that and you need to come down here. And I come down here then..

THE COURT

Q. So Yesterday Tamara told you that somebody said he had pulled a gun...

THE WITNESS

A. Was testifying against Justin.

THE COURT

Q. On that day the Sunday that you say he was with you?

THE WITNESS

A. Yeah, that is what she...she said that the day that we were down by the house having a cook out.

THE COURT

Q. So it was Tamara who told you this?

THE WITNESS

A. Yes Sir, and I came right away... ”.

RE-EXAMINATION BY MR. TONNER

Q. “Just one further thing. You have spoken to us, obviously about a Sunday, Mr. Stewart. Since the Sunday you described has Mr. Ramoon spent any other Sundays with you?

A. No, sir. After that I never seen him after the Friday.”

48. That last question from Mr. Tonner and the response of the witness were cited by Mr. Tonner as justifying the inference that the last Sunday spent by the defendant with the witness must have been one and the same as Sunday 21st February 2010 when Sven Connor was attacked. And, it would follow that if Daniel Stewart is to

be believed, or if I am left in doubt about his evidence; the defendant could not be found to have been Connor's attacker.

49. It was immediately apparent, however, that Daniel Stewart is not a reliable witness but one who, from the entirety of his evidence, is quite suggestible.

50. It was clear that he was imposed upon by Tamara Smith to give evidence. And while he may well have recalled events which he described, I regard him as having no independent recollection of his own that the day described as "*the day we were down by the house having a cook out*", was indeed the 21st February 2010.

51. It is also further worthy of note that Tamara Smith who, it must be inferred, was present and herself available to testify; chose not to do so but, instead, called upon Daniel Stewart who had all but forgotten, but for her prodding, about the date which she suggested to him.

52. Along with the defendant's account of the events of the 21st February, 2010, I reject Stewart's evidence.

53. I accept Sven Connor's evidence of his identification of the defendant as his attacker.

54. This includes his description of the object, which the defendant brandished appearing to be a firearm, although it was never recovered by the police. I find it to be within the definition of imitation firearm as defined by section 2 of the Firearms Law which reads:

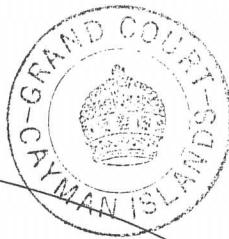
“imitation firearm” means anything which has the appearance of being a firearm, whether or not it is capable of discharging any shot, bullet or other missile.”

55. I am satisfied so that I am sure that the defendant it was who alighted from the vehicle at 47 Fairlawn Road on the evening of the 21st February 2010 and assaulted Sven Connor with an object which had the appearance of being a firearm.

56. Accordingly, I find the prosecution has discharged its burden of proof and that the defendant is guilty of the offence charged in the indictment as presented.


Hon. Anthony Smellie
Chief Justice

October 20 2010.



COURTS OFFICE LIBRARY