In the Grand Court of the Cayman Islands
Holden at George Town, Grand Cayman
On the 22nd April 1985

Before the Hon. Chief Justice, Sir John Summerfield C.B.E., Q.C.

Case No. 1012/84
S.A.Appeal No. 48/84

ERIC DALTON EBANKS

V

REGINA

Mr. Ritch for appellant
Mr. Smellie for respondent

JUDGMENT

The appellant, a police officer, was charged in one charge, with unlawfully assaulting Joel Bernard. In another charge he was charged, jointly with another police officer, with assaulting that same person in a second incident. He was convicted on the first charge. He and the other police officer were acquitted on the second charge.

The second charge was far and away the more serious one as it involved the use of a baton. However, the learned Magistrate disbelieved the version given by Bernard, the complainant, and held that the officers were acting in self defence in that incident.

The incidents occurred in the George Town Police Station where the complainant was being held under suspicion of theft or handling stolen property and was being interrogated upstairs in the C.I.D. office. The learned Magistrate held that, during questioning, the complainant behaved in a disorderly and aggressive manner.

The incidents can be divided into two phases. One concerned events in which the baton was used and in respect of which there was an acquittal. The other concerned alleged assaults before the baton incident and it is with that phase that this appeal is concerned.

The defence was self defence against an apprehended attack by the complainant whom the appellant honestly and reasonably believed, if mistakenly, to be a dangerous man capable of inflicting dangerous bodily harm with his limbs as a master of karate. The assault was in defence on account of fear of an imminent attack. It is clear from the evidence that the complainant was very aggressive. The evidence also supports the finding that he held himself out as a master of karate. He showed photographs of himself in karate poses.

The learned Magistrate observed with some justification that there were six accounts of what transpired. One came from a Kenneth Seymour who was a part owner of the shop from which the goods were alleged to have been stolen. However, no reliance can be placed on his version as the learned Magistrate found him to be unreliable and took the view that it would be unsafe to convict solely on his testimony. Another came from W. Det. Constable Anderson. Although the learned Magistrate allowed her to be treated as a hostile witness he nevertheless placed great weight on her evidence as a key witness and, indeed, his finding turned on her version. The learned Magistrate gave no reason to justify his departure from the normally recognised treatment of a hostile witness and one can only assume that he overlooked the fact that he had allowed her to be treated as hostile and cross-examined. The cross-examination focused on her earlier police statement and elicited a version at variance with that given in examination in Chief and one would have expected some compelling reason for relying on her evidence - including that part elicited by the party calling her (the prosecution) in cross-examination designed to discredit her earlier version. There is merit in the criticism of the approach in relation to this witness and, on this appeal, her evidence should be disregarded.

The only other prosecution eye witness was Sgt. Clifford who witnessed only part of the incident to which the first charge related.

That said it must be emphasised that an assault was admitted and the issue was whether it was in legitimate self defence in the honest and reasonable, if mistaken, belief that the appellant was in imminent danger of a serious attack by the complainant.

The defence placed reliance on one passage in the learned Magistrate's reasons for decision when he dismissed what may be described as the first blow. He said:

> "He (the appellant) formed the opinion that Bernard was a dangerous man. It was after this that he took him upstairs. Yet at no time did he display any fear of the Haitian. In fact the evidence is that he faced up to the Haitian who was in a karate stance, he swung fist at him, thus knocking him into the chair. Even allowing that this was instigated by fear, can this be said about subsequent actions. Det. Anderson's testimony rules this out.".

W. Det. Constable Anderson's testimony related to further assaults, but, as indicated above, that evidence is being disregarded. The argument was that the learned Magistrate was accepting that that first blow may have been in self defence. That is not what was said, but it was argued that that was the implication.

It seems to me that the appellant's own admissions completely undermines his defence. In a police statement shortly after the incident he said:

> "I spoke with him and he made mention that he did karate. He was told to take his personal property upstairs to the C.I.D. Office. He refused to do so and became disorderly. Whilst upstairs in the office I asked him to have a seat he refused this was repeated for sometime with this he started to get disorderly and I pushed him in the chair beside him. I told him that he will be questioned about the property in which he was in possession of, he said that he didn't want us to ask him any questions and that he had receipts to show that he bought those items. I told him. I told him that the property he was in possession of was or is alleged to have been stolen and that we'll be checking to determine whether the said property was stolen or not. At this point he became very annoyed started cursing and going on disorderly,

> "I told him to sit down repeatedly and he refused I then pushed him into the chair next to him, however before pushing him I punched him in the chest and he sat down this was done in order that he will sit down and discontinue his behaviour.".

In his evidence in chief the appellant said:

> "I gave voluntary statement to police and that is the one that was tendered in evidence by the prosecution. It is a true statement.".

Coupling those admissions with the evidence of Sgt. Clifford which the learned Magistrate accepted it is impossible to have any reasonable doubt about the true position. One must remember that the incident occurred in a police station with several police officers in the vicinity. It is hardly real to accept that the appellant was, or thought he was on reasonable grounds, in any real danger which could only be parried by the force applied. It is not possible to ignore his clear admissions on this aspect.

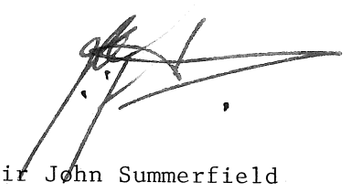
Despite the well founded grounds raised on appeal there has been no substantial miscarriage of justice and, in my view, the proviso to section 172 of the Criminal Procedure Code applies.

As to sentence it must be related to the assault as admitted and must disregard the more serious allegation on which the appellant was acquitted. There was considerable provocation in a difficult situation charged with aggression. In my view a prison sentence, although suspended, was not appropriate. An assault by a police officer on any member of the public, including a suspect, is always a matter for public concern, but is often the result of excessive zeal in a tense situation. One must retain a sense of proportion.

The fine imposed was the maximum that a summary court could impose for this offence (see section 201 and section 23 (2) of the Penal Code read with section 6 (2) of the Criminal Procedure Code). With respect I do not think that the circumstances of this case called for the maximum.

The sentence imposed by the Summary Court is set aside and a fine of $100, or 1 month's imprisonment in default of payment, is substituted therefor.

The appeal succeeds to that extent but is otherwise dismissed.



Sir John Summerfield

30th April 1985.