

TO BE RELEASED ONLY AFTER TRIAL RE: CT. 19/11/03

29/10/03



1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2  
3 IND 12 OF 2003  
4

5  
6 REGINA  
7 v  
8 TONY T. EBANKS  
9

10  
11 Before: Hon. Anthony Smellie Chief Justice  
12

13 Date: 29<sup>th</sup> October 2003  
14

15 Appearances:  
16

17 Mr. Adam Roberts and Mr. Scott Wilson for the Crown  
18 Mr. Harrison QC instructed by Mr. Neville Levy  
19

20  
21 RULING  
22

23 It is a basic principle of our law that the prosecution must prove every element of the  
24 offence to the requisite standard which is beyond reasonable doubt. Before the defendant  
25 might be called upon to answer the Crown's case; the question is whether the prosecution  
26 has adduced evidence upon which I might properly rely to call upon the defendant and  
27 ultimately conclude that the defendant was not acting in self-defence or in defence of his  
28 friend, when he inflicted the fatal injury upon the deceased.

29 As Mr. Harrison has submitted, there is no burden upon the defendant to prove that he did  
30 or to create reasonable doubt whether he acted in that frame of mind.

31 The following important matters which I have considered are clearly proven or must at  
32 this stage be taken as unrefuted:

- 33 (i) that the defendant did indeed inflict the fatal injury upon the deceased,
- 34 (ii) that the deceased and another man Yoandy Swaby had unlawfully entered  
35 the defendant's home armed with a gun in the dead of night,

- 1 (iii) that they used force against the occupants of the house especially Howard  
2 Lee Ebanks, the friend of the defendant, who called out to the defendant  
3 for help in an obvious state of crisis.  
4
- 5 (iv) in all the circumstances, including the presence of the gun, the occupants  
6 of the house including the defendant would have honestly apprehended  
7 that their lives were in danger.  
8 There is no evidence from which it can properly be inferred that the  
9 defendant knew at any time before he wielded the gun like a club to strike  
10 Yoandy Swaby Ebanks, that the gun was not loaded.  
11
- 12 (v) the defendant had himself been the subject of a threat to this life the day  
13 before from Yoandy Swaby Ebanks  
14
- 15 (vi) at the point in time when the fatal injury was inflicted by the defendant,  
16 there is no evidence from which a tribunal properly direct could conclude  
17 beyond reasonable doubt, that the life threatening circumstances brought  
18 about by the intrusion of the deceased and Yoandy Swaby Ebanks had  
19 completely abated.  
20

21 The evidence on this last and the most crucial of the issues, is inconclusive and

22 unreliable. I proceed now to explain my findings in this regard.

23 The theory of the prosecution's case in this regard is that as the gun had been disabled  
24 and no other weapon recovered, the deceased must have been unarmed and no longer  
25 posed a personal threat to the defendant or to his friend Howard Lee Ebanks when the  
26 fatal injury was inflicted.

27 There is however no positive evidence to support that theory and the only - that of  
28 Howard Lee Ebanks and the defendant himself given in his cautioned statements and  
29 interviews - is all to the contrary.

30 While Howard Lee Ebanks has been treated as hostile to the Crown, I might not overlook  
31 the fact that the prosecution had itself sought to elicit what aspects of his account they  
32 would seek to rely upon and put before the Court.

1 In doing so, they preferred the account given in his witness statement in which he said  
2 that the deceased had managed to overpower him during the struggle between them and  
3 had inflicted injuries to his back by biting him. He there and then made no mention of  
4 the deceased being armed with a knife. But in his testimony in this trial to the effect that  
5 the deceased then used a knife, was not the first time he made such an assertion. In his  
6 very first statement to the police under caution on the 31.12.02 he said, referring to the  
7 struggle between himself and Christopher Jefferson:

8 "me and him started wrestling towards the windows and I tripped towards  
9 the windows; as I tripped him up he pulled out a small knife and started to  
10 pierce my back".  
11

12 While because the witness has been treated as hostile, I would have to remind myself to  
13 treat his evidence with great caution and reservation; there is no invariable rule that I  
14 would be required to disregard his evidence. Indeed, the gravamen of the decided case  
15 authorities is to the contrary.

16 See the House of Lords dictum in Ex Parte Alves [1993] A.C. 284 at 291, 298.

17 The positive effect of Howard Lee Ebanks' evidence in the trial at the end of the day; was  
18 to adopt and reaffirm his earliest statement to the police which was that the deceased had  
19 "pulled out a small knife and started to pierce my back".

20 That being so, the legal position is this: "If a hostile witness, on being cross-examined on  
21 a previous inconsistent statement, adopts and confirms some of the contents of the  
22 statement, then what he says becomes part of his evidence and, subject to the jury  
23 assessing his credibility, it is capable of being accepted. However, the evidence is what  
24 he says is in the witness box, not what he said out of court, See Maw [1994] Crim. LR  
25 841 and Blackstones 2002 Ed. p. 2053.

1 This principle must apply even more so, where what the witness says in Court is not only  
2 inconsistent with a previous statement, but also consistent with an even earlier statement.

3 The result is that the evidence which I would be left to consider on the Crown's case  
4 would include positive evidence from its only witness of relevant fact, that the deceased  
5 was or was most likely armed with a knife at the time the fatal injury was inflicted by the  
6 defendant.

7 While at the end of the day I might after further consideration be able to reject that  
8 evidence as unreliable, it would be an extraordinary proposition to suggest that I might be  
9 able to fill in the resultant gaps in the prosecution's case by the mere surmise that because  
10 Howard Lee Ebanks is in that light unreliable in his account in support of the defendant;  
11 they must both be disbelieved to the point of concluding that the deceased Christopher  
12 Jefferson no longer posed a threat such that the defendant could honestly have believed  
13 that he or his friend was any longer in danger.

14  
15 Put another way, if I were to reject the evidence of Howard Lee Ebanks in its entirety,  
16 what then would be left?

17 There would be the several cautioned statements and interviews of the defendant himself  
18 in which he consistently asserted that he acted in self-defence when he struck Christopher  
19 Jefferson with the knife.

20 These statements assert variously that Christopher Jefferson "swiped at me with a dark  
21 object which I could not clearly recognise", that "he had a sharp object which he swung  
22 at me but I don't know what the object was"; that "I regret knowing that it ended the way  
23 it ended but when my life was in jeopardy and I have to act on the spur of a moment any

1 card can play” and finally, in his interview on the 2<sup>nd</sup> January 2002; “whenever he swiped  
2 at me, whatever object Chris had in his hand I ducked and punch cut at him with the knife  
3 that I took up off the floor that was lying next to Yoandy”.

4 In order to overcome this evidence from the defendant’s statements which it was obliged  
5 to adduce on its own case but which contradicts its case, the prosecution would seek to  
6 invite me to do two things.

7 The prosecution would invite me to conclude that the defendant’s account is falsified by  
8 the circumstance that no weapon was found inside the house – no broken bottle or knife –  
9 which could be attributed to the weapon with which the defendant claims the deceased  
10 was armed.

11 The difficulty the prosecution faces in this regard is twofold.

12 First, there is no basis for concluding that Jefferson could not have carried with him when  
13 he exited the bedroom window, any weapon with which he might have been armed.

14 Second, a knife, potentially such a weapon, was recovered in relative proximity to the  
15 body of the deceased, such that this Court is entitled to expect evidence from the  
16 prosecution as to its provenance – certainly at least, evidence refuting any connection  
17 with the deceased. That evidence might have been forthcoming – I do not know, there is  
18 simply no evidence on the matter – if the laboratory results from the tests of it, showed a  
19 complete absence of human blood. It is unlikely in the extreme that Jefferson could have  
20 carried that knife from the room after suffering the fatal injury without any of his own  
21 blood coming in contact with it. Those results were not adduced and nothing further said  
22 about the knife.

1 The result is that we just do not know – thus leaving the possibility, however unlikely,  
2 that Jefferson had carried that knife on fatal that night.

3 The other thing the prosecution would invite me to do, to overcome the evidence it has  
4 adduced from the defendant's own statements, is to treat those statements as self-serving  
5 in those aspects by which the defendant seeks to exonerate himself.

6 In other words, to treat as lies those aspects in which the defendant asserts that he was  
7 under attack from Christopher Jefferson when he struck Jefferson with the knife which  
8 he the defendant, had.

9

10 That too is an extraordinary proposition; for the reason that the only proper basis upon  
11 which I could do so would be that there is other evidence which shows that the defendant  
12 must be lying in those aspects of his statements.

13 But there simply is no such other evidence.

14 Looked at internally by themselves, the defendant's various statements are, if anything,  
15 basically consistent throughout.

16 And in the absence of the evidence of Howard Lee Ebanks and those statements of the  
17 defendant himself; there is simply no evidence from which a picture of what happened  
18 that can be pieced together.

19 The physical circumstances discovered by the police cannot speak for themselves. A  
20 conclusion as to what really happened that night within the house at # 26 Sanburst Lane  
21 cannot be properly arrived at without regard to the evidence of the persons who were  
22 present.

1 That evidence ,so far as it is relevant to the crucial issue of self-defence, comes only from  
2 Howard Lee Ebanks and the defendant himself through his statements which have been  
3 adduced on the prosecution's case.

4 While at the end of the day I might properly conclude that the evidence of Howard Lee  
5 Ebanks and the defendant is, in its entirety unreliable, there simply would be left no  
6 evidence in support of the prosecution's case such that it could be said to have discharged  
7 its burden of proving beyond reasonable doubt that the defendant did not act in self-  
8 defence.

9 That being my conclusion on the state of the evidence on this submission of no case to  
10 answer, there is no basis upon which I could consider the alternative case of  
11 manslaughter.

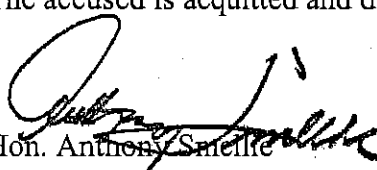
12 A case to answer in that regard, could arise only if there was evidence to base a proper  
13 conclusion that the deceased was positively not armed and posed no further threat - either  
14 to the defendant himself or his co-occupant Howard Lee Ebanks - and further, that the  
15 defendant therefore acted out of anger and provocation. For all the foregoing reasons of  
16 the inadequacy and lack of clarity of the evidence, that too would be an impermissible  
17 basis for a conviction in this case.

18

19 The submission of no case to answer is allowed.

20 The accused is acquitted and discharged.

21

22   
23 Hon. Anthony Smellie  
24 Chief Justice  
Dated the 29<sup>th</sup> October 2003