

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

12/12/2002

Criminal Appeal No. 23/02
Indictment No. 16/02

BETWEEN: **HER MAJESTY THE QUEEN** **Respondent**

AND: **RYAN ALIJA EBANKS** **Appellant**

BEFORE: The Rt. Hon. Justice Zacca, President
 The Hon. Mr. Justice Collett J.A.
 The Hon. Mr. Justice Taylor J.A.

Heard: November 21, 2001

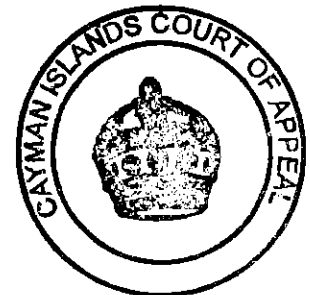
Delivered: December 9th 2002

Scott Wilson for the Crown

Lawrence Aiolfi for the Appellant

Taylor J.A.

REASONS FOR JUDGMENT



The appellant appeals against conviction by a jury on a charge of causing grievous bodily harm, on the ground that his counsel was not permitted by the judge to put the complainant's record to the complainant during the course of cross-examination.

We allowed the appeal, ordered a new trial and said that we would later provide our reasons in writing.

The charge resulted from an altercation between two young men which ended when the accused struck the other man three times on the face with a machete. The accused contended that he acted in self defence. His case was that the complainant, after several times threatening to kill him, and to do so with a gun, then put his hand under his shirt as if to bring out a weapon. After the complainant had denied that he made the alleged threats and the alleged hand motion, counsel for the accused sought to put to the complainant previous convictions for drug-related offences, including a recent conviction for selling cocaine for which the complainant was under sentence at the time. After being assured that the convictions were all drug-related, the judge ruled that the complainant's record was not to be put to him.

No objection was made on the appeal to the judge's charge to the jury. The appeal is concerned only with this one evidentiary ruling.

During submissions made in the absence of the jury, Crown Counsel said she was "taken aback" by the attempt of defence counsel to introduce the complainant's record, and asserted that the prior convictions had "no relevance at all in these proceedings". While counsel for the accused contended that the complainant's convictions were relevant to "the credit and reliability of the

witness”, counsel for the Crown insisted that the convictions were irrelevant because they “do not touch and concern the matters which are at issue in the Court”. Counsel for the accused recognised and accepted that by cross-examining the complainant as to character he might expose the accused, should he testify, to similar cross-examination.

The right to question a witness as to criminal convictions, and to prove them if denied, is provided by Section 5 of the Evidence Law. This provision is the equivalent of Section 6 of the UK Criminal Procedure Act, 1865, of which it is said in Archbold (2002 Ed., Chapter 8, paragraph 152) that the right is subject to some degree of judicial discretion. The authorities referred to are concerned only with “stale” convictions – those rendered irrelevant to the present character of the witness by reason of passage of time. While there is undoubtedly a wider discretion when the accused is under cross-examination, it does not appear that there could be any basis on which the Court might exclude cross-examination of a Crown witness, where credibility is in issue, with respect to recent convictions for offences involving some element of moral turpitude.

In the present case the verdict of the jury would necessarily turn on the view which it took of the credibility of the testimony of complainant and accused regarding the course of events immediately before the blows were struck by the accused. If the threats and hand movement described by the accused were made, and the accused believed as a result he was in immediate danger of

death, it would have been open to the jury to find that the force used by the accused was not disproportionate to the occasion, and he would have been entitled to be acquitted. In deciding whether the required burden of proof had been discharged, the jury could properly take into account the fact that the complainant had recent drug-related convictions, including a very recent conviction for selling cocaine. While these convictions were not for acts of deceit or violence - - so as to show a propensity either for the sort of conduct alleged by the accused or for untruthfulness - - they nevertheless touched on the credit and character of the complainant. They showed him to be a person recently engaged in serious, morally- reprehensible criminal conduct, and that was something the jury could properly take into account in deciding whether it was satisfied he had told the truth regarding the events in question.

Having in mind that the evidence of the complainant was critical to the outcome of the trial, we were of the view that the conviction could not stand. We accordingly allowed the appeal and set aside the verdict and sentence. In the interest of justice we directed that there be a new trial.

Zacca, P.

Collett, J.A.

Taylor, J.A.

