JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 121 of 1974

BEFORE: The Hon. Mr. Justice Luckhoo, Ag. P.
The Hon. Mr. Justice Robinson, J.A.
The Hon. Mr. Justice Zacca, J.A.(ag).

REGINA vs. VAN DRUMMOND

Horace Edwards, Q.C. and L.H. Bunny McLean for the applicant.

Chester Orr, Q.C. Deputy D.P.P. and Marcus Jackson for the Crown.

Heard: 5th, 6th and 23rd December, 1974
17th January, 1975

ROBINSON, J.A.:

The applicant, Van Drummond, was convicted in the Home Circuit Court on June 12, 1974, on an indictment which charged in the first count that he, on September 23, 1973, shot at Oden Beccan with intent to do him grievous bodily harm, contrary to s.16 of the Offences against the Person Law, Cap. 268; in the second count that he, on the said day wounded Oden Beccan with intent to do him grievous bodily harm contrary to s. 16 of the Offences against the Person Law Cap. 268.

On December 23, 1974, after considering all the submissions made in this matter, the Court announced its decision, granting the application for leave to appeal against conviction and treating the hearing of the application as the hearing of the appeal, quashed the convictions and ordered a new trial. We promised to put our reasons therefor in writing and this we now do.

The case for the prosecution was to the following effect. Oden Beccan and a friend were walking along East Street, on the night of 23rd September, 1973, when a car, driven by the applicant, caused them to be splashed and stopped a short distance away. Both men went up to the applicant, who was then standing with his back to the car, and complained that he had "wet" them; after some further talk, Oden Beccan and his friend walked off in opposite directions; Beccan said that so soon as he turned around to go up East Street, the applicant

spun him around, placed a gun on his chest and fired a shot which went through his body; medical examination revealed that a bullet did in fact pass through this man's body.

The applicant in his defence made a statement from the dock. He said that he did drive down East Street on the night in question, that he did park in the vicinity of the Income Tax Department and the Gleaner Company, when two men, whom he did not know before, approached him, accusing him of splashing them as he drove along; this, he denied. At this stage, one of the men, with his hand in his pocket threatened to dig out "all part of me". The applicant went on to say that he told them he was a policeman and as he was about to take out his identification booklet, "the other man which is Oden Beccan, rushed down on me with his right hand in his right trousers pocket. I used my hand to push him off, I was against the car and could not retreat." He said that Beccan again came down upon him with his right hand in his trousers pocket pulling an object resembling a gun. "I did not hesitate; seeing that, I said to myself, 'I gone now'. I made a fast pull from my waist with my service revolver. The revolver did not come out as far as I pulled and I feel a hitch on my trousers band lining. When I succeeded in getting the gun to leave my waist, as the gun came out, it went off."

Other witnesses were called by way of support for the defence.

In his summing-up to the jury, the learned trial judge left the issues of self-defence and accident for the determination of the jury. Various objections were taken to these directions on behalf of the applicant. We consider, however, that the main thrust of counsel's arguments relates to the question of self-defence.

It was contended that:

> "The learned trial judge misdirected the jury on the vital principle of self-defence ..... and his directions fell sufficiently short of the mark to cause a serious miscarriage of justice."

In developing this contention, counsel argued inter alia that the question as to whether or not the applicant should retreat did not arise because (a) the applicant was an officer in the execution of his

duty and (b) in any event, in the circumstances of this case there was no duty in him to retreat.

A perusal of the summing-up to the jury discloses that the judge dealt with the law as it relates to self-defence, including a duty to retreat, in one compartment and the facts in another and nowhere did he relate the law to the facts or sufficiently assist the jury in their task of applying the law to the facts as they might find them, more particularly if they did not reject the "defence" that the applicant had a reasonable apprehension of being shot by the complainant and moreso that the applicant's back at the material time was against the car. The jury should have been told in terms that if they did not reject this, in the face of imminent attack by an assailant thought to be armed with a gun, the question of retreat did not arise.

It is fair to observe that on this aspect of the matter, the jury may still have thought that the applicant had a duty to retreat.

We are of the opinion that in these premises the applicant could well urge that he has been deprived of the chance of an acquittal. In these circumstances, we granted the application for leave to appeal, treated the hearing of the application as the hearing of the appeal and allowed the appeal. We quashed the conviction and set aside the sentence, and in the interests of justice, ordered a new trial at the next sitting of the Home Circuit Court.