IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 131/73

BEFORE: The Hon. Mr. Justice Edun, J.A. (Presiding)
The Hon. Mr. Justice Graham-Perkins, J.A.
The Hon. Mr. Justice Robinson, J.A.

R. v. STANLEY BECKFORD

Mr. Eli Hanna for Appellant
Mr. M. Reckord for the Crown.

APRIL 7 and 11, 1975

EDUN, J.A.:

This application for leave to appeal first came up before a division of this court on May 8, 1974. It was noted on page 38 of the transcript of the summing-up that the accused, Beckford, did not give any evidence and at the same time it is stated that he made an unsworn statement. Nowhere, however, did the trial judge deal with the context of any unsworn statement. We felt, therefore, that there must have been some mistake or omission in the transcript of the summing-up. We were thus of the view that the record of proceedings at the trial was incomplete and must be "set straight" before we proceeded with the appeal; hence we ordered a transcript of the unsworn statement in keeping with rule 48(3) of the Court of Appeal Rules, 1962. We adjourned the hearing of the appeal sine die.

The appeal was next listed on February 13, 1975, and with the judges' bundles there was then a report from the trial judge. We never directed or requested the trial judge to give any report though we could have done so under rule 49 of the Court of Appeal Rules had we thought that the judge owed any explanation to this court. In seeking a compliance with rule 48(3) of the Court of Appeal Rules,

this court was concerned only with the record of the proceedings at the trial being correct. Subsequent to that date, however, there has been a compliance with rule 48(3) and so the hearing of the appeal proceeded on April 7, 1975.

The relevant portion of the transcript which was sought to be corrected and which portion is now provided, reads thus:

"DR. MCHARDY CALLED: NO ANSWER.

MR. DABDOUB: I asked for him to be subpoenaed.

HIS LORDSHIP: Did you check to see if he was?

A. I have not checked.

HIS LORDSHIP: What am I to do now? What do you want me to do now?

MR. DABDOUB: That would close the case for the defence.

HIS LORDSHIP: You said you will .....

MR. DABDOUB: If the witness is not here I am prepared to go on without him. That is the case for both accused."

It is now evident to this court from the record of the proceedings that Stanley Beckford made no unsworn statement and said nothing in answer to the allegations of the witnesses for the prosecution.

Now, as to the facts. Anthony Watson and Stanley Beckford were charged on an indictment containing four counts. On count 1 both were charged with wounding Vincent Allen with intent to murder him and in the alternative, count 2, with wounding Vincent Allen with intent to cause him grievous bodily harm. Anthony Watson alone was charged on count 3 with wounding Norman Wong with intent to murder him and in the alternative, count 4, with wounding Norman Wong with intent to do him grievous bodily harm. After about 41 minutes' deliberation the jury returned unanimous verdicts of guilty against both on counts 2 and 4.

The case for the prosecution was that on September 23, 1972, Allen was attacked by Watson with a machete; Watson was in front of him; that he was also attacked by Beckford who was behind, and that

he, Allen, was backing away from Watson when Beckford was chopping him. Both Allen and Wong were saying that Beckford and Watson chopped them without acting in self-protection or protection of property.

Allen said he lived at 145, Luke Lane and the reason why he went in the yard at No. 147, Luke Lane, was that Watson who was on his verandah was talking roughly about money to Miss Brown, an old lady whom he knew to be suffering from blood pressure. He, Allen, went in the yard but not on the verandah and reasoned with Watson to give Miss Brown some of the money he owed her. With that, Watson came out with a bill machete. He, Allen, shouted to Wong who was then with Miss Brown, to look out. Watson was chopping Wong. Allen said he took up a piece of stick and was about to block a chop which Watson was making at Wong when Beckford chopped him in the middle of his head with a cutlass. He blocked that blow but received from Beckford a chop across the left side of his neck, injuring his neck and cutting off a piece of his left ear. He backed away but then he received another blow on three fingers of his right hand when warding off that blow.

In cross-examination, Allen denied being on the verandah of Beckford's house. He said no crowd was there; he had no cutlass; he did not chop Beckford. Wong had no mob with him. No one said, "Power time. We going to kill the labourite now." No one was trying to oust Beckford or Watson from the possession of their homes.

Watson in his defence gave evidence on oath. He said that on the day in question he saw a mob of men and women marching in. Vincent Allen was the leader and he had a cutlass in his hand and Norman Wong had an extension hose. They were cursing and swearing that "we come to kill a r... c.... labourite." He, Watson, was then sitting on Beckford's verandah. Allen ran on Beckford's verandah, held his grand-daughter's hand and told her to go inside and sit down. Same time Allen drew the cutlass and chopped him in his head. Then he got off the verandah, took up a cutlass and tried to defend himself.

Wong hit him in the chest and he used the cutlass to keep him off. Then he turned round and saw Beckford lying on the ground and bleeding from his head. He bandaged Beckford and took him to the hospital.

Under cross-examination Watson admitted that one 'Junior' used a pick-axe and licked Beckford in his head. He never told anyone that he was sorry that he lost his temper.

As we have already stated, Beckford made no statement, nor gave evidence, nor did any witness give evidence for him. Nevertheless, the learned trial judge directed the jury that if Beckford or Watson acted in self-defence or in defence of property or if they had any reasonable doubt about that, they must acquit both of them. He made it clear to the jury that though Beckford gave no evidence, there was the burden of the prosecution to make them feel sure before they could convict that the accused persons were not acting in self-defence or in defence of property.

Stanley Beckford has applied for leave to appeal against conviction. So far as the record goes, Anthony Watson has abandoned his application for leave to appeal on January 16, 1974. Before us Mr. Eli Hanna has appeared and argued Beckford's application for leave to appeal.

The attorney's main complaint is that the learned trial judge misdirected the jury on the issues of self-defence. He submitted that nowhere in the summing-up was the attention of the jury drawn to the distinction in law between what is permissible in defence of one's house and what is permissible in self-defence. He cited R. v. Hussey, 1924, 18 C.A.R. p.160 in support.

With respect to the points of the submission by the attorney for Beckford, we are of the view that the learned trial judge has fairly and adequately dealt with the points in his summing-up and more especially, firstly, as to self-defence at pages 23 to 24; secondly, as to Watson's saying that he acted in defence

of Beckford, page 45; and, thirdly, as to the correct approach of the evidence by the jury if they believed that Allen, Wong and others were on the verandah or passageway of Beckford's home, page 46. We have directed attorney's attention to those passages but he insisted that the decision of R. v. Hussey established a clear misdirection to the jury in this case.

Before concluding this part of the appeal, we would like to state more about R. v. Hussey. In that case the appellant refused to vacate the room which he rented from a Mrs. West and Mrs. West purported to give him an oral notice to quit which the appellant contended was not a valid notice. Mrs. West, a woman named Mrs. Gould and a man named Crook, armed with a hammer, a spanner, a poker and a chisel, tried to force their way into the room, the door of which the appellant had barricaded. A panel of the door was broken and the appellant fired through the opening and Mrs. Gould and Mr. Crook were wounded. The appellant was charged and convicted of unlawful wounding and was sentenced to twelve months' imprisonment. He appealed and his conviction was quashed on the ground that at no place in the summing-up was the attention of the jury drawn to the distinction in law between what is permissible in self-defence and what is permissible in defence of one's home. No one could have contended successfully in Hussey's case that there was a duty in the appellant to retreat from the door of his room to anywhere else before he could use all necessary force in defence of an invasion of his home. But that apart, the facts in the instant case are clearly distinguishable from the facts in Hussey's case. Here, from the defence point of view, though there may have been talk of evicting labourites or of putting Beckford and Watson out of the premises, the principal wrongful act complained of was the attack on the persons of Watson and Beckford on the verandah or passageway of Beckford's home. This is clearly borne out by the evidence of Watson. Unlike the Hussey's case, there is no evidence

of any forcible dispossession of Watson and Beckford of their homes; so the facts of this case are concerned pricipally, from the defence point of view, with self-defence with the location of the incident taking place on the verandah or passageway of Beckford's home. In Hussey's case there was no personal injury to the appellant and there was abundant evidence of an attack being directed by three persons towards the dispossession of the appellant of his room. There is not, from Beckford or from any witnesses on his behalf, any evidence which could enable the judge to put Beckford's case to the jury on the basis of an invasion of his home. The failure to retreat is only an element in the consideration upon which the reasonableness of an accused's conduct is to be judged.

For those reasons we hold that the submissions on mis-directions by the trial judge are unfounded.

One of the grounds of appeal complained that the trial was a nullity and attorney for the defence made reference to there being a "sick-out" of shorthand writers and some part of the trial proceeded without any notes of the evidence being taken. So far as the record of proceedings of this appeal is concerned, there is, in our view, a sufficient compliance of rule 47(3) of the Court of Appeal Rules. That rule provides:

> "(3) For the purposes of this rule copies of proceedings shall contain -
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> (a) the indictment or inquisition and the plea,
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> (b) the verdict, and evidence given thereafter, and the sentence,
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> (c) notes of any particular part of the evidence or cross-examination relied on as a ground of appeal, and
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> (d) such other notes of evidence as the Registrar may direct to be included in the copies of proceedings:-
>
> Provided:-
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> (i) in capital cases copies of the notes of all the evidence shall be supplied, and

(ii) upon application of either party to an appeal, a single Judge of the Court or the Court itself may direct that copies of any particular part, or the whole of the evidence be supplied to the Court and to the Director of Public Prosecutions."

This is not a murder case and so far as rule 3(d)(ii) (above) and the hearing of the appeal are concerned, the copies of proceedings are complete. We see no merit in this or any other ground of appeal.

For the reasons given we refuse Beckford's application for leave to appeal. Since, however, the applicant, Beckford, is in no way to be blamed for the delay of his appeal being concluded before now, we order that the sentence commence to run from May 8, 1974, the date when his application first came up for hearing before a division of this court.