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UNIVERSITY OF LONDON  
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25 RUSSELL SQUARE  
LONDON W.C.1

1.

No.4 of 1970

IN THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

SIGISMUND PALMER                      Appellant

- and -

THE QUEEN                                      Respondent

CASE FOR THE APPELLANT

Record

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1. This is an appeal by Special Leave in forma pauperis from the Judgment of the Court of Appeal of Jamaica (Waddington Ag. P, Eccleston J.A., and Edun, J.A.) dated the 9th day of May 1969, whereby the said Court dismissed the Appellant's application for Leave to Appeal against his conviction for murder in the Circuit Court for the Parish of St. Ann on the 17th day of December 1968 when he was sentenced to death.

pp.255-256  
p.240, 1.23-  
p.255, 1.12

p.235

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2. The principal matter for determination in this appeal is whether the learned trial judge erred in withdrawing the issue of manslaughter from the jury on the basis that having left with them self defence as a possible defence leading to an acquittal, he should have at the same time directed them that if they found that the Appellant, in defending himself, had used a greater degree of force than was necessary in the circumstances, they should find him guilty of manslaughter and not murder.

3. The Appellant (accused) was charged with murder in that on the 14th day of May 1968 in the Parish of St. Ann, he murdered Cecil Henry.

p.1

4. The case for the Crown is summarised in the judgment of the Court of Appeal as follows:-

p.241, 1.8-  
p.242, 1.42

"The case for the Crown shortly, was that, on the 14th day of May, 1968, the accused and two other men, George Wilson and Valentine Wilson, who were brothers, went to the home of Dahlia Campbell at Simm's Run in the parish of Saint Ann to purchase ganja. According to the evidence of George Wilson, who was called as a witness for the Crown, before they got to Dahlia Campbell's home he had seen the accused with a short gun and he had asked the accused to give him the gun, which the accused did. At Dahlia Campbell's yard, George Wilson told her that he heard that she was selling ganja and he asked her to sell him some. Dahlia Campbell was a bit reluctant, believing that they were police, but after some persuasion she brought them a sample of ganja which they all three tested and approved. Dahlia Campbell then brought out a bag of ganja which they started to weigh. Whilst this was going on, Fedley Brown and Augustus Johnson came to the yard also bringing some ganja with them, and they also offered to sell their ganja to the Wilsons and the accused. Brown and Johnson's ganja was then weighed and after the ganja was weighed George Wilson remarked, "What a way oonu have ganja in the country legge, legge and it is against the law." On his saying this, Dahlia Campbell, Fedley Brown and Augustus Johnson ran away. George Wilson then took up the ganja and a machete belonging to Dahlia Campbell, and fired two shots from the gun. They all three then left with the Ganja, Valentine Wilson carrying one bag, the accused carrying another bag and George Wilson carrying the gun and machete. They went along the road toward Higgin Land, and after they had gone a little distance the accused demanded back the gun from George Wilson. There was some argument over the gun but eventually George Wilson handed the gun back to the accused and took the bag of ganja which the accused had been carrying. By this time it appears that an alarm had been raised that the three men had taken the ganja and had not paid for it, and so they decided to turn off the main road and go up into the hills in order to avoid contact with the crowd.

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George Wilson said that they heard the sound of walking coming towards them, and the accused fired a shot and the people ran. They then went to another hill nearby, where all three of them stooped down when they heard more people coming. George Wilson said that the accused then made an attempt to fire the gun but he (George Wilson) held his hand and told him that he did not want anyone to get shot in the country because it was his (George Wilson's) country. He heard some of the men who where pursuing them say that they were still up there in the bush, and thereupon the accused made another attempt to fire the gun and this time Valentine Wilson stopped him, telling him that he should not fire the shot as it might shoot someone in the bush whom they had not seen. George Wilson said that while they were stooping in the bush they heard a walking coming from the direction from which they had come. The people were near to them and he heard someone saying, "Palmer, Palmer, come and carry your gun." George Wilson said he then saw a shadow, and he took his machete and started to chop his way out of the bush. He then saw the accused leaning on a tree with the gun in his hand and saw him fire two shots in the direction where he had seen the shadow. Wilson then ran out of the bush followed by Valentine Wilson. George Wilson said he heard them both saying that a man had got shot. They were still being followed by some of the people, and the accused spoke loudly so that the people following could hear, saying, that he had a pack of shots and if they followed him until night he would shoot them because dead men tell no tales. Eventually, they threw off their pursuers and returned to Kingston, from whence they had come, with the ganja."

40 5. The evidence of Valentine Wilson substantially supported the evidence of George Wilson. Both Wilsons said that only Valentine Wilson was wearing a red shirt at the relevant time and that George Wilson and the accused were wearing shirts of another colour. pp.133-172

6. The evidence of the Crown witnesses, Dahlia Campbell, Fedley Brown and Augustus Johnson differed substantially from that of the Wilson

p.66,1.20-  
p.75,1.9

brothers as to the events at her home. Dahlia Campbell said that the two Wilsons and the accused had come there whilst Fedley Brown and Augustus Johnson were there, and George Wilson had asked her about 'colly' which is apparently another name for ganja. She told them that she did not plant ganja, and there was then some talk about their being police, and George Wilson then said, "Oonu sell mi some of the weed nuh for man can't live in this bush and don't have weed. If you don't have weed you have money." Augustus Johnson then said, "But it seems like you a police." Whereupon, Wilson stepped back and fired a shot at Johnson's head. Johnson ducked and ran behind the house. George Wilson then went up to Fedley Brown and said to him, "It seems as if you are a rass cloth bad man, you nuh out fi run." He then fired a shot at Brown and Brown ran down the gully. Dahlia Campbell then ran after Brown but she returned to take up her baby when George Wilson fired at her and she said she heard the bullet sing past her ears. She ran away and returned later to find that £60 which she had in a grip in her room were missing as also a scale and a cutlass which she had in her yard. She subsequently attended an identification parade on the 12th of June, 1968, at which she identified the accused and George Wilson as being two of the men who had come to her yard. In cross-examination, she denied emphatically that she had any ganja at her home or that she had agreed to sell any ganja to the three men.

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p.75, 1.10 -  
p.101, 1.6

7. Fedley Brown and Augustus Johnson substantially supported the evidence of Dahlia Campbell. They both denied that they had brought any ganja to the yard or had agreed to sell any ganja to the three men. Brown said further, that after he had run away he was on a little hill from where he could see two of the men go inside Dahlia Campbell's house while one remained outside cursing. He raised an alarm, and about fifteen minutes later he saw the three men going towards Higgin Land. He and some other men trailed the three men, who branched off into a hill. He and some of the other men remained on the level while some others went around the hill. He heard four gun shots on the hill to which the three men had gone. He then went up to the hill, where he saw the body of

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the deceased at the spot where he had heard the shots fired. On the 12th of June, 1968, he also attended an identification parade at which he identified the accused and George Wilson as being two of the men in question.

p.3, l.20-  
p.24

10 8. Granville Fearon testified that he lived about two miles from Dahlia Campbell's yard and on the 14th day of May, 1968, at about 4.30 p.m. he was at his field when he saw three men running past coming from the direction of Campbell's yard and going towards Higgin Land. One of the men was the accused, and he noticed that he had a short gun in his right hand and a bag over his shoulder. Another of the men had a bag and a third one had a handbag over his shoulder. After they passed, he saw Fedley Brown and Augustus Johnson and another man called Boogsie coming from the direction of Dahlia Campbell's home. They spoke to him and they all went towards Higgin Land after the three men. On the way he met the deceased, Cecil Henry, 20 on a hill top and he and Henry were travelling together when he heard the sound of a gun. Before he had gone up into the hill he had heard two shots, and after he went on the hill he heard three more. After the second of the last three shots he saw Cecil Henry fall. He looked in the direction of the shots and saw the accused and two other men. They were about six to seven yards away. The three were together and the 30 accused had the gun in his hand with the muzzle pointing towards where he and the deceased were. After the deceased fell he saw him bleeding from his left eye, and he bawled out, "they shoot Henry." He said the three men could hear this. When he bawled out he said they fired another bullet and it went into a maiden plum tree. The three men then ran out of the hill and he ran after them. When he had run about three quarters of a mile, Joseph Lawrence and George 40 Parry caught up with him, and while they were running behind the three men he heard the accused say that they had trailed him too far and he didn't have any powder left but he had a dagger, for dead men tell no tales. He then became afraid and turned back. On the 12th of June, 1968, he also attended an identification parade but he was unable to identify the accused. He did however, identify George Wilson.

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In cross-examination he admitted that at the preliminary enquiry he never told the police that he saw the accused with a gun. On the question of identification of the accused, he said:-

"Q. Now, let me just take you back here. Now, at the identification parade in Kingston you were unable to identify Palmer, the accused? A. No, sir.

Q. You didn't identify him? A. No, sir.

Q. And I take it you didn't identify him because you had never had a good look at him at all, never? A. When him do the act him did mauga away, sir. 10

HIS LORDSHIP: I haven't got that. Speak up for me and repeat it. When him do the act what? A. When him shoot Henry and I went to the police station him did mauga 'way.

HIS LORDSHIP: Oh, him did mauga down? A. Yes, sir. 20

MR. ROPER: But you see, I thought you would try to identify a man by his face since you saw him so close. You were looking for a man of a certain size or you were looking for a man's face at the identification parade when you went to the identification parade, you see? A. Yes, sir.

Q. Were you trying to point out a man by his face or by his size? A. By his face, sir. 30

Q. Q. By his face? A. Yes, sir.

Q. Then, you saying that his face maugaad away too? A. Yes, sir.

Q. A man's face? A. Yes, sir."

He also admitted that he and other members of the crowd were carrying sticks in chasing the accused and the Wilsons and that they intended to capture them and give them a good beating.

Contrary to what the Wilson brothers had said, Fearon's evidence was that the accused Palmer was wearing a red shirt at the relevant time.

9. Evidence was also given by Joseph Lawrence and George Parry, who both testified that they were amongst the crowd who were trailing the three men, and after hearing the shots they saw the three men going down the hill, and that the accused had the gun in his hand. p.104-  
p.123, 1.15
10. Inspector Kirlew gave evidence that on the 9th June 1968, he interrogated the accused about the murder of Cecil Henry. He told the accused that he had got information that he knew about it, and asked him if he could assist. The accused said, 'Me nuh nothing about it.' George Wilson was then called in, and in the presence of the accused he related substantially all the events to which he subsequently testified in evidence, to which the accused replied, "Me nuh know them, sir." Valentine Wilson was then called in, and he also related the events to which he subsequently testified in evidence. The accused then said: "Since a so it go and them a brother and then say a me, a Valentine shoot the man." p.172, 1.23-  
p.180
11. The accused made an unsworn statement in which he said that he had known Valentine Wilson for about seven years, and George Wilson for about four years. He had gone with them to visit their parents in the country. The following morning the Wilsons said that they were going to their father's land in the mountain, and he went along with them. On the way, Valentine took a gun from a travelling bag which he was carrying and loaded it with some cartridges which he took from a packet. George Wilson asked to see the gun, and Valentine handed it to him. They then went to Dahlia Campbell's yard. His statement as to the ganja transactions at Dahlia Campbell's yard was substantially the same as George Wilson's and Valentine Wilson's testimony, but as regards the shooting there by George Wilson, his statement was substantially the same as the evidence given by Dahlia Campbell, Fedley Brown and Augustus Johnson. He said that after the shooting George Wilson pointed the gun at him pp.181-188

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and told him to take up one of the machetes that were in the yard. George Wilson then took a scale that was in the yard and told him to take one of the bags of ganja, while Valentine Wilson took the other, and they started out. When they got one and a half miles away Valentine said, "All right, George, give me the gun now." George handed Valentine the gun, and Valentine put some more shots in it and then gave it back to George. They continued on and then he heard some talking coming closer in the hill and he saw two men coming. George then turned to them and said, "It is your time now." He then said: "He fired two shots." It appears that he was referring to Valentine, although he did not say when George had handed the gun back to Valentine. However, he went on to say that he heard the footsteps running away and he heard some men down at the level saying, "Dem nuh gone, dem in the hill a fire shot." He then heard a man say, "Come and tell Palmer must come with his gun." They then went to another hill and whilst there he heard some noise encircling the hill. Valentine told him to keep silent. They heard a hard tearing through the thicket. They were shooting down one behind the other, Valentine being in front, the accused in the middle and George at the rear. When the mashing started, Valentine rose with his gun and started to fire some shots. George then said, "All right, come now," and started to chop his way out. He followed behind George and when they had gone about one and a half chains he did not see Valentine. He asked George where Valentine was, and George said, "you don't see him have a gun a defend himself." After they travelled about fifteen chains they heard some stones being flung. Valentine then passed them and he was still firing the gun but there were no shots left in it. Three men were still following them and throwing stones at them. They eventually got back to the Wilsons's mother's home where the ganja was shared up between them, and on the following Friday they returned to Kingston.

12. On the evidence led by the Crown it was clear that the witnesses George and Valentine Wilson were either accomplices or were witnesses who had an interest to serve. The learned trial



Judge properly directed the Jury on the danger of convicting on the uncorroborated evidence of the Wilson brothers.

13. The learned trial Judge then reviewed the evidence to the Jury and pointed out two bits of evidence which he told them could be capable of corroboration. Whilst reviewing the evidence of Granville Fearon, he said:-

10            "Now if you accept that piece of evidence that Palmer it was who had the gun at that stage, then if you accept it, that is evidence which you might regard as corroborative of the evidence given by the Wilsons that it was Palmer who was carrying the gun."            p.216, ls.36-40

And, whilst still reviewing the evidence of Fearon, he said:

20            "Here again you have two Wilsons saying that it was Palmer who fired the shots in the hill. Here you have this independent witness, Granville Fearon, saying that he saw Palmer with the gun in his hand, muzzle pointing towards where Henry and himself were. If you accept that piece of evidence, members of the Jury, that is evidence which may be capable of corroborating the story of these two Wilsons."            p.217, 1.42- p.218, 1.3

30            14. It is respectfully submitted that in a case of this nature where there was conflicting evidence as to who was carrying the gun at various stages, it was incumbent upon the learned trial Judge to direct the Jury carefully and in detail on the issue of identification. This is more especially so when the only corroborative evidence comes from the witness Fearon whose identification of the accused was, it is submitted, highly unsatisfactory. The Appellant submits that when the learned trial Judge directed the Jury (in the terms set out in paragraph 13 above) that they could treat Fearon's evidence as corroborative of the evidence of the Wilson brothers, he should have, at this stage, also directed them in terms that Fearon's corroborative evidence was unsatisfactory for the following reasons:-

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- (a) Only one month after the shooting i.e. on the 12th June 1968, Fearon identified George

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Wilson at an identification parade but could not identify the accused;

- (b) The identification at the trial should be regarded as highly unreliable since the accused was the only person in the dock;
- (c) The fact that Fearon saw three men, two tall ones and one short one who had the gun and that the accused was the short one, carried the matter no further since there was no evidence of the respective heights of the Wilsons and the accused and the three men did not stand side by side for the purposes of comparison. 10
- (d) At the preliminary inquiry, the witness Fearon said that he never told the police that he saw the accused with a gun.
- (e) The Wilson brothers had said that only Valentine Wilson was wearing a red shirt at the relevant time whereas Fearon said that the accused had a red shirt on as well. 20

15. The learned trial Judge in his directions to the Jury left with them the issue of self-defence but withdrew from them any issue as to manslaughter, directing that that there were only two verdicts open to them, namely, guilty or not guilty or murder. He said:-

p.233, ls.29-  
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"Now, members of the Jury, I have deliberately refrained from giving you any direction on manslaughter because in my view, and the responsibility is mine, if I don't see where the evidence lies to sustain manslaughter not to direct you upon it. I have given you no direction on manslaughter in this case and indeed neither counsel for the defence or the Crown has made any reference to manslaughter in this case at all. There are only two verdicts which are open to you in this case; guilty of murder or not guilty. Those are the only two verdicts open to you." 30 40

16. It is respectfully submitted that whilst the learned trial Judge correctly left the issue of

self-defence to the Jury, he erred in withdrawing from them the issue of manslaughter.

17. It is submitted, that since self-defence consists of two elements, namely

(a) an intent to defend one self, and

(b) the use of no more force than is reasonable in the circumstances,

10 then in every case where the first element is present, it must follow that there was no intent to kill or cause grievous bodily harm, hence necessitating a verdict of manslaughter.

18. It is submitted, in the alternative, that the trial Judge should have directed the Jury that if they found that the accused, in defending himself, had used a greater degree of force than was necessary in the circumstances, they should find him guilty of manslaughter and not of murder. (Johnson v. R. (1966) 10 W.I.R. 402, and R. v. Hamilton (1967) 11 W.I.R. 309 following the decision of the High Court of Australia in The Queen v. Howe (1958) 100 C.L.R. 448)

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19. It is submitted that the effect of the doctrine in the Howe case as adopted in the West Indies is that in every case where the trial Judge leaves the issue of self-defence to the Jury, he must in addition to directing them on the possibility of acquittal also tell them that a verdict of manslaughter is open to them.

30 20. On the 17th day of December 1968, the Jury returned a unanimous verdict of guilty and the accused was sentenced to death.

p.235

21. The accused applied for leave to appeal on several grounds but in a Judgment, dated the 9th day of May 1969, the Court of Appeal refused the application.

pp.236-240

40 22. On the 6th day of February 1970, an Order was made granting the Appellant Special Leave to Appeal in forma pauperis to Her Majesty in Council.

pp.255-256

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23. The Appellant respectfully submits that this appeal should be allowed and his conviction and sentence quashed for the following amongst other

R E A S O N S

1. BECAUSE the corroborative evidence given by the witness Fearon as to the identification of the accused was highly unsatisfactory and the learned trial Judge failed to direct the Jury accordingly. 10
2. BECAUSE the learned trial Judge erred in withdrawing the issue of manslaughter from the Jury.
3. BECAUSE the learned trial Judge, having correctly left self-defence to the Jury, failed to direct them that if they found that the accused intended to defend himself and not to kill or cause grievous bodily harm, then they should return a verdict of manslaughter. 20
4. BECAUSE the learned trial Judge, having correctly left self-defence to the Jury, failed to direct them that if the accused had used more force than was necessary in the circumstances, they should return a verdict of manslaughter and not murder.
5. BECAUSE the judgment of the Court of Appeal is wrong and should be reversed.

EUGENE COTRAN

No.4 of 1970

IN THE PRIVY COUNCIL

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B E T W E E N :

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C A S E   F O R   T H E   A P P E L L A N T

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T.L. WILSON & CO.,  
6/8, Westminster Palace Gardens,  
London, S.W.1.