IN THE COURT OF APPEAL OF BELIZE, A.D. 2001

CRIMINAL APPEAL NO. 8 OF 2001

BETWEEN:

PETER AUGUSTINE — Appellant

v

THE QUEEN — **Respondent**

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BEFORE:

The Hon. Mr. Justice Mottley	**Justice of Appeal**
The Hon. Mr. Justice Sosa	**Justice of Appeal**
The Hon. Mr. Justice Carey	**Justice of Appeal**

Appellant in person.
Mr. Rory Field, Director of Public Prosecutions and
Miss Velda Flowers for Crown.

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2001: October 16 and 2002: March 8.

CAREY, JA:

1. The appellant was convicted on an indictment for attempted murder (count 1) of one Martin Martinez and aggravated burglary (count 2) in the dwelling house of the same Martin Martinez and stealing therein a number of articles being then armed with a knife. In respect to these counts, he was sentenced, respectively to concurrent terms of ten years' and five years' imprisonment.

2. His appeal against convictions and sentences came on for hearing before us on 16 October when we allowed the appeal on count 1, quashed the conviction, set aside the sentence and entered a verdict

and judgment of acquittal. However, with respect to count 2, we dismissed his appeal and affirmed the conviction and sentence. We intimated that our reasons would follow.

3. These are the reasons for our decision.

4. The short facts which constituted the prosecution case were these:

At about 2:00 a.m. on the early morning of 5 February 1998 Mr. Martinez was awakened by a realization that he was being repeatedly stabbed by an unknown assailant whom he managed to fight off. He succeeded in pushing his attacker away which allowed him eventually to escape and find refuge in his mother-in-law's house in the neighborhood. Mrs. Martinez who was in bed with her husband, confirmed the attack on her husband and like him was not able to identify the intruder.

5. Mr. Martinez testified that he had received some seventeen stab wounds, some in his left arm and under his arm, to his ear, behind the back of his neck, some on his right hand and one close to his heart. The medical evidence of Dr. Francis Smith did not however corroborate the seemingly serious injuries which Mr. Martinez swore to the jury he had suffered. He described the injuries as minor cuts and abrasions.

6. Later that morning at about 10:00 o'clock, a man wearing a pair of black and white "Fila" tennis shoes, a pair yellow shorts, a black "Nike" shirt went by the race track where he spoke with a jockey named Andres Moreno, who saw him picked up by police officers. All these items including a pair of "Jordache" boxer shorts he was also wearing at the time of his arrest were identified by Mrs. Martinez. The items of

clothing were her husband's, the tape recorder belonged to the school at which she taught. The man was the appellant.

7. He (the appellant) gave evidence at his trial and was cross examined. His evidence consisted of the laconic statement that he did not commit the crime and that he was beaten by the police and prison officers.

8. The appellant was not represented by counsel, he filed no grounds of appeal.

9. Nevertheless, we examined the transcript of the proceedings with particular care. With respect to count 1, which alleged attempted murder, we were unhappy with the directions offered to the jurors on the charge itself. At p.75 of the record, the trial judge is recorded as saying:

> ***"…Now, the ingredients of the offences, attempted murder – to murder somebody is an offence against the laws of this country as no doubt it is that is to say to unlawfully without excuse to kill somebody, that is the offence of murder. To attempt to do that is, what is called attempted murder, without unlawful excuse or justification to attempt to kill somebody…"***

10. We are constrained to say that these directions were not merely inadequate and unhelpful but singularly inaccurate. The ingredients necessary to constitute murder are far more extensive than stated by the judge. Then, to define attempted murder as an attempt to murder provides no assistance whatever to the jury.

11. Murder is defined in the Criminal Code as intentionally causing the death of another without justification or provocation (section 117 Cap. 101). It was essential to emphasize to the jury that the specific intent

which the prosecution must establish on the charge against him was an intent to kill.

12. The facts of this case required a careful direction in this regard seeing that the minor injuries which the householder suffered, did not in our view, lead inexorably to a conclusion that there existed the intent to kill. Although Mr. Martinez spoke of stab wounds, Dr. Francis Smith regarded the injuries as cuts and abrasions. There was one serious injury to the wrist described as a "cut wound" which we should mention. But the jury were not invited to consider it along with the other injuries as capable of revealing the intent required.

13. We wish to say that it is wholly inadequate, if helpful directions are to be given to a jury, merely to define the offence in its terms. The trial judge must take the time to assist the jury. The expeditious dispatch of cases is doubtless a commendable objective, but ensuring a fair trial as guaranteed by the Constitution must remain, we would suggest, the paramount consideration. The jury, would we think, have been better assisted to discharge their duty, in regard to attempted murder, if they were told something along the following lines:-

> An attempt to commit a crime is itself a crime. Before the accused can be convicted of this offence, it must be proved;
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> (a) that he had the intention to commit the full offence and that in order to carry out that intention, he
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> (b) did an act or acts which is/are step(s) towards the commission of the specific crime, which
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> (c) is/are directly or immediately and not merely remotely connected with the commission of it, and

(d) the doing of which, cannot be reasonably regarded as having any other purpose than the commission of the specific crime.

All the above must co-exist. Intention alone is not sufficient – it is no offence merely to intend to commit a crime. Doing of the acts alone without intention is not sufficient. Act(s) done must be something more than mere preparation for the commission of the offence.

We would expect that a proper direction on the full offence would precede the above suggestion. In the result, these misdirections and non-directions as it related to count 1 required this court, in the interest of justice, to interfere with the verdict as we have indicated at para. 2 of this judgment.

14. We can now pass to count 2 which charged "Aggravated Burglary".

15. Our examination of the summing up by the trial judge revealed another regrettable failure on his part to assist the jury to understand the issues in the case. It is the undoubted duty of a trial judge in a criminal case to give the jury the benefit of his experience to enable them to render a true verdict by explaining the significance of evidence. We wish to remind that his responsibility extends not only to the law but also to the facts of the case.

16. In the instant case, the prosecution's case was based on the doctrine of recent possession, but this was never explained to the jury. See section 97 of the Evidence Act:-

> ***"…Possession by a person of property recently stolen is, in the absence of a reasonable explanation by that person as to how it came into his possession, some evidence that he either stole it or handled it knowing it to have been stolen according to the circumstances of the case, but if the accused gives an explanation which raises a reasonable doubt as to his guilt, the judge shall direct the jury that it ought not to say that the case has been proved to its satisfaction on that evidence alone…"***

The clear evidence was that the appellant was found in possession of articles which had shortly before been stolen.

19. In the event, we were of opinion that in respect of this count (which we wish to repeat had overwhelming evidence in support), the jury would have returned a verdict of guilty no matter the regrettable omission, and accordingly we would apply the proviso and affirm that conviction.

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MOTTLEY, J.A.

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SOSA, J.A.

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CAREY, J.A.