IN THE COURT OF APPEAL OF BELIZE, A.D. 2009

CRIMINAL APPEAL NO. 11 OF 2008

BETWEEN:

JOHN WILLIAMS **Appellant**

AND

THE QUEEN **Respondent**

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BEFORE:

The Hon. Mr. Justice Mottley	**-**	**President**
The Hon. Mr. Justice Carey	**-**	**Justice of Appeal**
The Hon. Mr. Justice Morrison	**-**	**Justice of Appeal**

Mr. Kevin Arthurs for the appellant.
Ms. Cheryl-Lynn Branker-Taitt, Director of Public Prosecutions (Ag.) for the Crown.

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3 June, 30 October 2009.

MORRISON JA

1. At the conclusion of the hearing of this appeal on 3 June 2009, the court announced that the appeal would be dismissed and the appellant's conviction and sentence affirmed. These are the promised reasons for that decision.

2. The appellant was tried in the Supreme Court June Sessions – Central District before Lucas J and a jury on an indictment charging him with the murder of Mr. Canuto Maurice Tillett. On 17 October 2008 the jury found him guilty of manslaughter and on 23 October 2008 he was sentenced to imprisonment for 15 years.

3. At about 8:00 p.m. on the evening of 5 April 2007, the deceased (who was also known as 'Khaki'), his wife Joyce, the appellant (also known as 'John John') and Mr. Raymond Mejia (also known as 'Mage' or 'Major') were at the deceased's house in the Lake Independence area of Belize City. The deceased, Mage and others were engaged in what Mr. Kevin Arthurs, counsel for the appellant on the appeal, described as "a drinking conference." It appears that the deceased was drunk. At some point in the evening an argument developed between the deceased and Mage, as a result of which the deceased went to his bedroom and returned, armed with a hammer, with which he attempted to attack Mage. However, Mage was able to avoid the attack, take away the hammer from the deceased and give it to Joyce. That argument subsided and the drinking continued. After a while, the deceased announced "da noh Mage a mean fi f_k up, da John John" and again went to his room. Shortly after that, the deceased was on his way back to the living area when the appellant came upon him at the doorway to his room and started to "whop up" the deceased with a stick, which, according to the witness Mage, looked "like a piece of firewood about two to three feet in length." The deceased fell to the ground, where Joyce and Mage tried unsuccessfully to resuscitate him. He appears to have died on the spot.

4. The pathologist who conducted the post mortem examination found external injuries to the left side of the deceased's head, as well as scratch marks on the left upper chest and the right forearm. The pathologist's opinion was that the cause of death was a severe head injury due to a

traumatic fracture of the skull. While he could not say how many blows were involved, the pathologist did say that for the skull to have been fractured the blow or blows would have involved "at least moderate to severe force."

5. The appellant gave sworn evidence in his defence. He is the son-in-law of the deceased's wife Joyce and described the relationship between himself and the deceased as "good, till when ih start to drink … When the man drink e give trouble." On the evening in question, the deceased "mi di behave bad like picking on people and soh", when he started to accuse him (the appellant) of stealing his money. At this point, the deceased 'seemed to get mad", went into his room and came back out with a hammer in his right hand, saying "I wa f_k up John", while "coming after me wid the hammer." This is the appellant's account of what happened next:

> "A: The man approach side a me, then the man approach me wid the hammer, I feel scared; I noh know weh fi do. Soh I feel like the man mi wa stone the hammer, di man di come, the man come wid a motion to whop, so I pick up wa piece a stick from ena di house and fire whop.
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> Q: This Francine girl, who is she; oh you said she's your girlfriend noh?
>
> A: Yes sir.
>
> Q: How many whop?
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> A: One, one whop.

Q: You admit it was one whop; on what direction, on what part a di body then?

A: I fire the whop I'm not sure weh I ketch ah, I noh look pan the area.

Q: What you said?

A: I'm not sure weh I ketch ah."

6. Finally, asked by his counsel "why did you whop that man with a stick", the appellant's answer was "I whop the man because the man mi di come after me in a grievous way, soh did the only thing I coulda mi do fi defend myself da fire wa wop."

7. In his summing-up, Lucas J gave the jury full and accurate directions on the law of self-defence, telling them more than once that if the appellant "honestly believe (sic) that when [the deceased] approached him that he was going to stone him or hit him with the hammer, you must judge him by his belief because he could use reasonable force because of that belief." He also left manslaughter to the jury, both on the basis of unintentional homicide and provocation. No complaint is made about the learned judge's directions in any of these respects and it seems clear by its verdict that the jury fully appreciated the force of them when they returned a unanimous verdict of not guilty of murder, but guilty of manslaughter.

8. Counsel for the appellant. Mr. Kevin Arthurs filed a single ground of appeal, which was as follows:

"The learned trial judge erred in failing to direct the jury in respect of the defence of accident."

9. Mr. Arthurs referred us to the passage in the evidence already quoted at paragraph 5 above and submitted that this passage "contains the substance of the contention that the defence of accident should properly have been left to the jury for their consideration and discharge of their sworn duty."

10. Mr. Arthurs cited in support of this submission **R v Mark Anthony O'Sullivan**, an unreported decision of the English Court of Appeal Criminal Division (judgment delivered 9 March 2004), for the reference in the judgment of Rix LJ to "the judge's obligation to leave every possible available defence of a defendant to the jury" (paragraph 17). Accordingly, in that case it was held that the trial judge had failed to apprehend and to direct the jury on the appellant's "true defence", which was one of accident.

11. While we fully accept that the judge at a criminal trial is under an obligation to leave "every possible available defence to the jury", that obligation must be qualified by the consideration that the judge is only required to leave to the jury defences available to the accused on the evidence adduced in the trial. So it is that in the instant case, in which the accused's primary defence was plainly that he had acted in self defence, the judge also quite properly left to the jury the possibility that the killing of the deceased might also have been unintentional or as a result of provocation. However, there was, in our view, absolutely no evidence from which it could be inferred that the killing of the deceased by the appellant might have been as the result of an accident (indeed, the appellant's own evidence was plainly to the contrary), and in these circumstances the judge cannot be faulted for failing to leave accident to the jury. Indeed, had he done so in this case, his summing up might have been quite fairly open to the criticism that by so doing he was inviting the jury to speculate.

12. It is for these reasons that the court took the view that, notwithstanding Mr. Arthurs' spirited efforts, there was no merit in the appeal and dismissed it accordingly.

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MOTTLEY P

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CAREY JA

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MORRISON JA