IN THE SUPEME COURT OF BELIZE, A.D. 2006

INFERIOR COURT OF APPEAL NO. 3 OF 2006

APPEAL FROM THE INFERIOR COURT – COROZAL DISTRICT

	(DAVID LAWRENCE	**APPELLANT**
	(	
BETWEEN	**(AND**	
	(	
	(KEVIN McCAULEY	**RESPONDENT**

Coram: Hon Justice Sir John Muria

Hearing: 10 May 2007
Judgment: 31 August 2007

Advocates:
Nicolas Dujon Esq. for Appellant
Kevin McCauley, Respondent, in person

<u>JUDGMENT</u>

Muria J.: This is an appeal against the judgment of the learned Resident Magistrate sitting at Corozal Magistrates Court in which the learned Magistrate adjudged that appellant was responsible for the payment of ½ the claim in the sum of $283.00 plus $50.00 costs to the respondent.

In support of his appeal, the appellant relies on three grounds, namely:

1. The decision was unreasonable or could not be supported having regard to the evidence.
2. The decision was erroneous in point of law as it was assumed by the learned Magistrate that the consideration of self-defence could not arise in law if the person praying the same in aid struck the first blow.
3. The decision was based on a wrong principle or was such that an Inferior Court viewing the circumstances reasonably could not properly have so decided.

Mr. Dujon of Counsel for the appellant centres his client's case on ground two of the appeal.

Brief Background

The brief background of this case was that on 15 May 2001 at about 3:45 p.m. an argument ensued between the respondent and the appellant near the latter's sister's house at Corozal Town. Both of them were armed, the appellant had a baseball bat and the respondent had a stick, a "pimento stick." In the course of the argument the appellant struck the respondent with the bat injuring his head.

The case before the Magistrates Court

The respondent brought a suit against the appellant in the Magistrates Court claiming the sum of $599.17 being expenses incurred for medical attention, transportation, court fee and service fee. The appellant denied the claim. At the end of the trial the learned Magistrate found that "*David Lawrence is responsible for the payment of ½ the claim in the sum of $283.00. Must pay in full by 30 December 2005. In default distress*."

In her reasons for decision, the learned Magistrate obviously noted that an altercation took place between the respondent and appellant, and that both were armed respectively with a stick and a baseball bat. In expressing the court's view on the evidence the learned Magistrate said:

> *"The court is of the opinion that deft Lawrence was properly armed and was not the defend less(sic) person he wants the court to believe. Deft Lawrence was the aggressor and his action was not that of self-defense as he was the person who struck first. Deft Lawrence claimed McCauley box his hand. Lawrence could not say how McCauley did this action, if McCauley used his hand or stick. McCauley charged at Lawrence, he used words and there is no evidence to support that McCauley ever hit Lawrence*

with the stick. The evidence clearly support that deft Lawrence behavior is responsible for ½ of the Civil Suit # 133/05 application made by plaintiff Kevin McCauley."

Having heard the evidence, the learned Magistrate was of the opinion that the appellant was "*properly armed*" and not defenseless. It would seem that the learned Magistrate accepted the respondent's story that he was not armed with anything beyond a piece of stick. Earlier in her reasons, the learned Magistrate alluded to the fact that the respondent was armed with a piece of stick while the appellant was armed with a baseball bat in his left hand and a "pint" in his right hand. The learned Magistrate found that the appellant was the first to launch an assault at the respondent by "stoning him with a pint." The learned Magistrate also noted the evidence that the respondent charged at the appellant after missing the pint, but that he (respondent) was only "using words", not stick.

Consideration of the appeal

Whilst I accept that there is no evidence that the respondent ever hit the appellant with the "pimento" stick, there is, however, some evidence to support the suggestion that the respondent had the stick with him as he was quarreling with the appellant. That evidence came from the respondent's witness Kenrick Gill

who told the respondent to pick up "something" to defend himself with. Mr. Gill went on to say that the respondent then picked up an old piece of "pimento" 2 ½ feet long. Asked in cross-examination if he saw the respondent threw the stick away, Mr. Gill said, "*No I did not see him throw his stick.*" Again asked if the respondent had the stick in his hand when the appellant hit him with the bat, Mr. Gill said, "*Yes he had the stick in his hand*" and went on to say that the blow from the appellant "*was a sudden hit.*"

Again the evidence from Vivian Lawrence, the appellant's sister, also supports the suggestion that the respondent was holding a stick at the time of the incident. She said:

> *"I saw McCauley he had a piece of pimento stick, my brother had a bat. David went back and said leave me alone to McCauley. I saw as if McCauley was going to hit him but David hit him first."*

The appellant's evidence on this aspect of the case is that after he threw the pint at the respondent, who ducked and missed it, he (respondent) charged at him, saying that he (respondent) would knock him with the stick. The appellant continued:

> *"Yes he had a stick in his hand. Yes I saw him make a move and I hurry to hit him to his shoulder and he duck and it hit his head. Yes I had to hit him. Yes I was afraid. I did not know what to do. Yes I was afraid he would have kill me. Yes he always threatened me. As he knows I am afraid of him. I don't know why it because he is bigger than me."*

When one views the evidence of Kenrick Gill, Vivian Lawrence and the appellant together, the suggestion that the respondent was unarmed when he charged at the appellant after missing the "pint" cannot be supported. In any case, there was no challenge at all to this aspect of the appellant's evidence. He said that he had to hit the respondent otherwise the respondent would kill him. The appellant was there clearly raising his defence of self-defence.

It is true that the appellant first "stoned" the respondent with a pint. However, the respondent ducked and missed the pint. It would not be unreasonable for the respondent to take, or be expected to take the more prudent step of avoiding further trouble by immediately leaving the scene of the fight, having missed the missile thrown at him and having no weapon (stick) with him, as he claimed. Instead, the respondent decided to respond to the assault and charged at the appellant. If he had no weapon, as he claimed, and knowing that his opponent had

a silver baseball bat, charging at the appellant in those circumstances would be unreasonable and certainly most unwise. A similar concern was raised by the Court in *Avelio Ake v Orlando Tzul* (4 May 2000) Supreme Court of Belize Action No. 294 of 1998

On a fair assessment of the evidence, in my view, it would be open to the learned Magistrate to come to the conclusion that the respondent was also armed at the time of the fight and was not entirely free from being regarded as an aggressor in this case. That being the case, the defence of self-defence was available to the appellant. The court should then proceed to consider the defence and decide whether the elements of self-defence were established or not. One such element is that whether the appellant believe that it was necessary for him to do what he did in the circumstances, and second, whether his belief was based on reasonable grounds.

Mr Dujon referred to a number of authorities, both criminal and civil, on the point, including *Avelio Ake v Orlando Tzul* (above), a case which arose from Corozal Town, as in the present case; *R v Belnavis* (1964) W.I.R. 128; and *Clerk & Lindsell on Torts* 14th Ed. The elements of self-defence in criminal and civil cases

are the same. The standard of proof and onus, however, in a criminal case differs from those in a civil case. In a criminal case the standard of proof is proof beyond reasonable doubt and onus is on the prosecution to establish that the defendant has no reasonable grounds for his belief. In a civil claim for damages, the standard is proof on the balance of probability and the onus is on the defendant to show that his belief is necessary and based on reasonable grounds.

In this case, the manner in which the Court below dealt with the evidence had deprived the appellant of the defence of self-defence or the proper consideration thereof. This is an error of law which vitiates the decision of the court below.

On the issue of whether self-defence is available to a person praying the same struck the first blow, I do not think it is necessary for me to deal with that point here, since the defence of self-defence was available to the appellant and ought to have been considered by the learned Magistrate. I would only resonate with the position in law as expounded in the authorities referred to by Counsel for the appellant, that is to say, that "the law does not require that a man labouring under a natural feeling of resentment consequent of gross provocation should wisely measure the weight of his blows:" *Avelio Ake v Orlando Tzul*. See also *Clerk & Lindsellon Torts*, at paragraph 552.

On a more elementary aspect of the decision of the Court below, it has not been shown that the learned Magistrate make a finding of liability first against the appellant before determining that he was responsible for the payment of half (½) of the claim. In this case, since the appellant raised the defence of self-defence, it was essential that the defence be considered and a finding of liability be made to show the basis of the order that the appellant was responsible for the payment of half of the claim.

It would seem also, and the implication is, that the learned Magistrate, felt that both the appellant and respondent were equally at fault and should share the responsibility. Again, in the face of a defence being mounted by the appellant, the decision to order the appellant to pay half of the cost of claim without determining the defence raised would be wrong.

Conclusion and order

In the circumstances, the appeal must succeed. The appeal is allowed. The decision of the Court below is quashed. Cost to the appellant to be taxed if not agreed.

Order: Appeal allowed

Decision of the Court below quashed

Costs of this appeal to the appellant, to be taxed if not agreed.

Hon Justice Sir John Muria.