

IN THE COURT OF APPEAL OF BELIZE, A.D. 2011

CRIMINAL APPEAL NO. 11 of 2010

BETWEEN:

GLENFORD DIEGO

Appellant

AND

THE QUEEN

Respondent

—

BEFORE:

The Hon. Mr. Justice Morrison	-	Justice of Appeal
The Hon. Mr. Justice Alleyne	-	Justice of Appeal
The Hon. Mr. Justice Carey	-	Justice of Appeal

Appellant in person.

Mrs. Cheryl-Lynn Vidal, Director of Public Prosecutions for the Crown.

—

10 and 25 March 2011.

MORRISON JA

[1] This is an appeal from conviction and sentence for attempted murder. The appellant was convicted on 27 July 2010, after a trial before Lucas J and a jury, and on 30 July 2010 he was sentenced to 8 years' imprisonment. At the conclusion of the hearing of the appeal on 10 March 2011, the Court dismissed the appeal and promised reasons in writing, which we now provide.

[2] The case against the appellant was that on 15 November 2007, at approximately 5:40 in the afternoon, he discharged several shots from a firearm at Mr. Mark Sacasa in the vicinity of Mr. Sacasa's home at 3833 Rivero Street Extension in Belize City. Mr. Sacasa sustained gunshot injuries to his left elbow and right thigh, and, when he was subsequently taken to the Karl Heusner Memorial Hospital, x-ray studies revealed a fracture in the olecranon bone of the left elbow. These injuries were not regarded as life threatening by Dr. Andre Sosa, who gave evidence at the appellant's trial of having examined and treated Mr. Sacasa at the hospital. However, it was the doctor's opinion that there was a potential for infection and future impediment of movement in the left upper limb as a result of the injuries.

[3] Mr. Sacasa's evidence was that the appellant, who was 19 years old at the time of the trial, had been known to him by name for 12 years prior to the shooting incident and that he and the appellant had lived in the same neighbourhood during that period. They saw each other regularly and were in fact related to each other, in that Mr. Sacasa and the appellant's mother were relatives.

[4] In his defence, the appellant made an unsworn statement from the dock, in which he told the Court that at the time of the incident he was actually on a job site at the Laru Beya Hotel in Seine Bight Village in Stann Creek District. He had been working there from early in September 2007 and the first time he became aware of the alleged shooting incident was when he was approached by police officers in connection with an attempted murder in Belize City. He was taken to the Queen Street Police Station in the city, where he was beaten and tortured in an effort to force him to give a statement, but that he had refused to do so. Although the appellant did not say this in so many words in his unsworn statement, he did suggest to Mr. Sacasa in cross-examination that he (Mr. Sacasa) was seeing him (the appellant) for the first time when they were in court.

[5] In summing up the case to the jury, the learned trial judge correctly identified the appellant's "main defence" as an alibi and gave a full and

accurate **Turnbull** warning, as part of which he carefully took the jury through the evidence as to the lighting, the distance at which the appellant was observed by Mr. Sacasa, the duration of the period during which he had him under his observation, whether or not there was anything obstructing his view of the appellant and whether the appellant had been known to Mr. Sacasa for 12 years before the incident, as Mr. Sacasa alleged. At the request of prosecuting counsel at the end of the summing-up, Lucas J in fact repeated the **Turnbull** warning for the jury a second time.

[6] In the result, the appellant was convicted by a unanimous jury and sentenced by the judge to 8 years' imprisonment.

[7] On his appeal from conviction and sentence, the appellant (as he had done in the court below) appeared in person, advancing a single ground of appeal, as follows:

“I had no attorney to defend me in Court and thought I was not given a fair trial.”

[8] In his submissions in support of this ground, the appellant repeated what he had told the jury at his trial, which was that the allegations against him had been fabricated by Mr. Sacasa. In a brief response, the learned Director indicated that she had seen nothing on the record to suggest that the appellant had not been properly convicted upon ample evidence.

[9] We agree with the Director. The evidence against the appellant was as ample as it was compelling and the jury, having been given proper directions by the judge, was in our view fully entitled to return a verdict of guilt against him. As regards sentence, although the appellant did argue faintly that the sentence of 8 years' imprisonment was excessive, we considered that the sentence was, if anything, lenient and that there was no basis for it to be disturbed.

[10] It is for these reasons that the appeal was dismissed and the conviction and sentence affirmed.

MORRISON JA

ALLEYNE JA

CAREY JA