

IN THE COURT OF APPEAL OF BELIZE AD 2015  
CRIMINAL APPEAL NO 16 OF 2013

**BURTON CALIZ**

Appellant

v

**THE QUEEN**

Respondent

BEFORE

The Hon Mr Justice Sir Manuel Sosa  
The Hon Mr Justice Samuel Awich  
The Hon Mr Justice Christopher Blackman

President  
Justice of Appeal  
Justice of Appeal

Appellant in person.

L Willis, Senior Crown Counsel and L Banner, Crown Counsel for the respondent.

12 and 27 March 2015.

**BLACKMAN JA**

[1] In light of the concession by the Crown that there had been a material irregularity by the trial judge during the course of the trial, the appeal was allowed and the conviction and sentence quashed. Due to the passage of time which had elapsed since the commission of the alleged offence, we decided not to order a retrial.

[2] Notwithstanding the concession by the Crown, in view of what transpired at the trial, we set out here under our reasons for allowing the appeal.

### **INTRODUCTION**

[3] The appellant was tried by a judge and jury on the charge of manslaughter, and in the alternative, the charge of manslaughter by negligence, consequent to the death of Leroy Pilgrim on February 12, 2004. Following the summation by the learned trial judge, the jury retired to consider their verdict at 12.33 pm. Page 391 of the Record of Appeal disclosed that at 3.50 pm the jury returned to the Court and gave a unanimous verdict of not guilty on the charge of manslaughter.

[4] The Marshall of the Court then enquired of the Forelady of the jury whether they had agreed upon a verdict in relation to the second count, manslaughter by negligence. Having regard to the grounds of appeal filed by the appellant, we set out below, the exchange between the Marshall and Madam Foreman, as recorded at pages 392 and 393 of the Record of appeal.

“THE MARSHALL: Madam Forelady and members of the jury, have you agreed upon a verdict in relation to the second count, Manslaughter by negligence?

THE JURY: No.

THE COURT: What’s that?

THE MARSHALL: No, My Lord no.

THE MARSHALL: Madam Forelady and members of the jury, have you agreed upon a verdict in relation to the second count, the charge of manslaughter by negligence?

THE JURY: Sir?

THE MARSHALL: Have you reached an agreement in relation to the second count manslaughter by negligence?

THE JURY: Yes.

THE MARSHALL: Yes.

THE MARSHALL: Is your verdict unanimous?

THE JURY: No.

THE MARSHALL: Are you agreeing in proportion of 8-1?

THE JURY: No.

THE MARSHALL: Are you agreeing in the proportion of 7-2?

THE JURY: No.

THE MARSHALL: No, My Lord.”

[5] At the conclusion of the foregoing exchange, the learned trial judge said, as recorded at page 393 of the Record of Appeal:

“THE COURT Yes, I don’t know madam forelady I don’t want to appear to be questioning you but is there something troubling you that you wish to address, maybe you need some direction or a little bit time more. Otherwise I’ll give you what is commonly known as the Watson Direction I will ask you to retire about some time. You just decide how much time while in there if you want maybe you come out, I don’t want to limit you to 1 hour 20 minutes I don’t want to pressure you but I just want to see if you can resolve that one you see. If you can’t or are you deadlock? I will give you a little bit time more and then you can decide whether if you want to come out and if you can reach a verdict then that will be but I have to tell you this that each of you have taken an oath to return a true verdict according to the evidence. No one must be false to that oath but you have a duty not only as individuals but also collectively that is the strength of the jury system. Each of you takes into the jury box individually your own experience and wisdom. Your task is to pool your experiences and

wisdom; you do that by giving you (sic) views and listening to the views of others. There must be discussion arguments and give and take with it the scope of the oath that is the way agreements is reached. If unhappily the 9 of you cannot reach a verdict you must say so. So I will ask you to retire until anytime that you may wish to come out. You could come out in a minute and say no we can't."

[6] The jury again retired at 3.55 pm and returned at a time not specified in the Record of Appeal. There was then this exchange between the Marshall and Madam Foreman, as reflected at pages 394 and 395 of the Record of Appeal.

"THE MARSHALL: Madam Forelady and members of the jury, have you agreed upon a verdict in relation to the second count, the charge of manslaughter by negligence?

THE JURY: Yes.

THE MARSHALL: Is your verdict unanimous?

THE JURY: No.

THE MARSHALL: Are you agreeing in proportion of 8-1?

THE JURY: No.

THE MARSHALL: Are you agreeing in the proportion of 7-2?

THE JURY: Yes.

THE MARSHALL: How say you, is the prisoner guilty or not guilty

THE JURY: Guilty.

THE MARSHALL: Guilty, My Lord, My Lord the jury is saying that he is guilty on the second count of manslaughter by negligence."

[7] The appellant was fined \$3000.00 on October 18, 2013 payable by the end of January, 2014. By Notice of Appeal filed in the General Registry on October 23, 2013, the appellant filed the following three grounds of appeal:

1. That the Learned Trial Judge erred in law when at the verdict stage of the trial the Jury brought in a verdict but the Judge sent the Jury back to the Jury Room for another verdict.
2. That the Learned Trial Judge failed to accept a lawful and proper verdict as he was obliged to do when the Jury informed the Court it had reached a verdict, such a verdict was not unanimous and was a Hung Jury based on the Forelady's answer to the proper questions of the Marshall about the numbers of those for guilty and those for not guilty.
3. That in exercising his discretion the Learned Trial Judge erred in law in not accepting the Jury's lawful and proper decision thereby resulting in the conviction of the Appellant for Manslaughter by Negligence.

[8] As the appellant was unrepresented at the hearing of the appeal, the Court invited Counsel for the Crown to consider the remarks of the learned trial judge reproduced at paragraph 5 above. Mr. Willis noted that although the judge remarked " ...I don't want to appear to be questioning you...is there something troubling you that wish to address, maybe you need some direction or a little bit time more" , the judge never paused to receive an answer. As the reproduced extract from the Record makes clear, no further direction was given to the jury to assist them with whatever had been troubling, and eventually, they returned a majority verdict, leading to the complaint by the appellant that the jury had been pressured to reach a verdict which led to his conviction for manslaughter by negligence.

[9] There are other unhappy aspects about the remarks reproduced at paragraph 5 above and what transpired thereafter. Firstly, immediately after referring to the Watson Direction, which the learned judge implied he would not give, he proceeded to do just that without ever giving the jury an opportunity to explain their concerns. Secondly, in our view, it is not enlightening to a jury to refer to a Watson Direction as, this was not

helpful to the jury and was probably confusing. Indeed, as noted at paragraph 4-415 of Archbold, a **Watson Direction** should not be given after the jurors' retirement. Thirdly, the Record of Appeal failed to record the time when the Court reconvened. Mr. Banner who had been Counsel at the trial, said the elapsed period for the second retirement, was in excess of 30 minutes before the majority verdict was given.

[10] The events in the instant case bear some comparison with those which unfolded in the Privy Council case of **Defour v The State of Trinidad and Tobago** [1999] UKPC 34; 1 W.I.R 1731. In **Defour** the jury having retired, deliberated for a period of three hours. They were then brought back into court, and the foreman indicated they had not reached a verdict and expressed certain concerns to the trial judge. The judge felt unable to assist them further and gave them an additional thirty minutes to return to the jury room and consider the verdict. At paragraph 37 of the **Defour** decision the Board expressed the opinion that there was an appreciable risk that the imposition of a time limit placed the jurors under pressure to reach a verdict, although this would not have been the intention of the judge. Consequently, the conviction was considered unsafe and was quashed.

[11] In the case at bar, while the trial judge was less repressive than his Trinidadian colleague in terms of a time limit, in that as noted at paragraph 5 above, he said *"If unhappily the 9 of you cannot reach a verdict you must say so. So I will ask you to retire until anytime that you may wish to come out. You could come out in a minute and say no we can't,* when one considers that a period of 3 hours 17 minutes elapsed before the verdict on the first count, the invitation to take as long as they wished, could equally be seen as pressure to arrive at a guilty verdict.

[12] It was in that context we accepted the Crown's concession and made the orders referred to at the beginning of this judgment.

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SIR MANUEL SOSA P

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AWICH JA

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BLACKMAN JA