



**IN THE CAYMAN ISLANDS COURT OF APPEAL ON
APPEAL FROM THE GRAND COURT OF THE
CAYMAN ISLANDS CRIMINAL DIVISION**

**CICA (Criminal) Appeal No. 0017 of 2023
IND No. 0063 of 2022
SC No. 01165 of 2022**

BETWEEN:

AISHA JAMILAH ENGLISH

Appellant

AND

HIS MAJESTY THE KING

Respondent

Before: **The Rt Hon Sir John Goldring, President
The Hon Sir Richard Field, Justice of Appeal
The Hon Sir Michael Birt, Justice of Appeal**

Appearances: **Mr Simon Csoka KC instructed by Mr Dennis Brady of Brady Law
for Appellant
Mr Scott Wainwright Assistant Director of Public Prosecutions for
Respondent**

Date of Hearing: **19 April 2024**

**Transcript of
Oral Judgment:** **19 April 2024**

Approved for Release: **8 May 2024**



JUDGMENT

Goldring JA (President)

1. On Friday 19 April 2024, the court allowed this appeal against conviction. It agreed there should be no retrial. These are the reasons.

The conviction

2. On 8 September 2022 the Appellant was convicted of malicious wounding following a three-day trial. On 23 November 2022 she was sentenced by the trial judge, the Honourable Justice McDonald-Bishop, to imprisonment for one year and nine months. She was represented by Mr. Keith Myers of counsel from the time of her police interview following her arrest and thereafter at trial.

The facts

3. Given the issues in this appeal, they can be summarised very shortly.
4. The Appellant and the complainant, Ms. Stacy-Ann West, worked together. The allegation was that the Appellant, without warning, stabbed Ms. West in the back when she was angry about the late payment of her share in an informal customary collective investment scheme. The defence was that the Appellant had picked up a knife when Ms. West had her in a choke; that she injured Ms. West in self-defence when seeking to break free. Ms. West suffered a minor flesh wound above her shoulder blade and a cut to her chin. The Appellant had abrasions to her neck. Ms. West was also, on the evidence, armed with a knife.

Events following the Appellant's conviction

5. The Appellant changed her legal advisors. She instructed new Cayman counsel, namely,

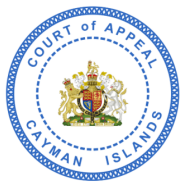


Mr. Brady of Brady Law. He instructed Mr Csoka KC, who appeared before us. On 19 April 2023 the Appellant provided Mr. Brady with a statement dealing with her relationship with Mr. Myers. In the light of the contents of that statement, on 7 June 2023 Justice Cheryl Richards KC granted the Appellant bail.

6. In short, the Appellant's statement described Mr. Myers behaving in a sexual way with her prior to trial, culminating in close sexual contact. Mr. Csoka submitted that the statement revealed Mr. Myers taking advantage of the Appellant's vulnerability and violating any sense of professional client/lawyer relationship. He further submitted that when the Appellant ultimately rebuffed Mr. Myers' sexual advances, he paid little attention to her case, conducting no preparatory work with her and, in effect, "winged it" at the trial. The Appellant said that she did not see any of the evidence until the first day of her trial.
7. In observations with which we agreed, Mr. Csoka submitted that the case required a detailed proof of evidence from the Appellant and her comments on the witness statements, in particular that of Ms. West. While Mr. Myers did provide some notes to Mr. Brady, there was no proof of evidence or comments on the witness statements. The notes, which contained little detail, did not appear to be in chronological order. Mr Csoka observed that the Appellant's account appeared to amount to three short sentences.
8. Mr. Csoka further submitted that it was striking there was no note to suggest consideration of calling as a witness Asoya Bennett. Ms Bennett had made the 911 call. She had described both women as having been armed with knives.

Mr. Myers' affidavit

9. On 4 July 2022 Mr. Myers filed an affidavit in which he denied any sexual or other impropriety with the Appellant. He asserted that he thoroughly prepared her case with her before trial and had presented it competently. He stated, among other things, that prosecuting counsel suggested that Ms. English was flirtatious.



10. The affidavit appeared to have been sworn before a series of WhatsApp messages were recovered from the Appellant's mobile phone, albeit that unless deleted, the messages would have been on Mr. Myers' phone as well. We agreed with Mr. Csoka that it is difficult to read the messages in any other way than that suggested in the Appellant's statement. They are sexual. Mr. Csoka was entitled to submit they were predatory. On their face they suggest a wholly improper relationship as between counsel and client. It was difficult to reconcile the content of the messages of the account given by Mr. Myers in his affidavit.

Mr. Csoka's submissions

11. Mr. Csoka submitted that the evidence of sexual impropriety by Mr. Myers towards the Appellant tainted the whole process of trial preparation and the trial itself. The court cannot, submitted Mr. Csoka, have any confidence in the truth of what Mr. Myers asserted in his affidavit. The court cannot be confident that Mr. Myers was sufficiently prepared and that he properly presented the Appellant's case. The criminal justice system, submitted Mr. Csoka, relies upon counsel to behave with propriety, both to the courts and their clients. Once this reliance disappears, so too does due process. In the circumstances, he submitted, the conviction was tainted beyond redemption.

The Respondent's response

12. Mr. Wainwright on behalf of the Respondent set out the Crown's response in a short document which we shall set out in full:

"The respondent does not seek to resist this appeal. It is the view of the Respondent that this case may well fall within the category of 'lurking doubt' cases. Had the criticism contained within the grounds of appeal been restricted to the conduct of the cross-examination, the Respondent's position on the appeal might well have been different. Although there are valid criticisms to be made of the cross-examination, it could be argued that the case of self-defence was, in general terms, put. However,



where the Appellant asserts that her case was not properly prepared and instructions properly taken and acted upon, the Respondent is not in a position to properly contest such an assertion.

In this respect we have considered the following:

1. Scant file notes/instructions.
2. The absence of a proof of evidence.
3. The extent to which the WhatsApp communications undermined the affidavit provided by trial counsel.

In light of all of the above, the Respondent would not be in a position to make any meaningful submissions as to the allegations contained within the grounds as to the inadequate preparation and presentation of the case. In the wholly exceptional circumstances in this particular case, the Respondent is unable to resist the appeal. We understand that the Appellant spent approximately six months in custody from a total sentence of 21 months. In the circumstances, we do not believe it would be appropriate nor in the interests of justice to seek a retrial".

The court's conclusion

13. We agreed with Mr. Csoka's submissions. We agreed the Respondent was right not to seek to sustain this conviction. We also agreed the Respondent was right not to seek a retrial.

Some final observations

14. This is a very troubling case. On the face of it, Mr. Myers' conduct was indefensible. The contents of his affidavit in the face of the WhatsApp messages raises very serious issues which require investigation by the police. We direct the Director of Public Prosecutions to ensure this matter is taken forward. Moreover, the contents of this judgment need to be drawn to the attention of the authorities with responsibility for the professional conduct of



advocates both in the Cayman Islands and in England and Wales.

