

Section 20

This file contains two directions, the first where the only issue is where the defendant caused the wound and the second where there is also an issue of self defence.

Unlawfully and maliciously wounding (Did the defendant do it?)

Count * Unlawfully and maliciously wounding
wounding That simply means breaking the skin. Any cut is a wound. It is not disputed that the injury to C*** 's neck was a wound.

maliciously That means that a defendant intended to cause some injury. It is enough that a defendant foresees that some physical harm might result from his action.

unlawfully That means without any legal excuse. There is no suggestion in this case that the defendant had any lawful excuse.

In this case C** says that the defendant ***. If that is what he did, he is guilty of unlawfully and maliciously wounding her. D**** denies this. He says that ***. If what he says may be true, he is not guilty.

So, the key question for you to answer, having regard to all the evidence and the directions which I give you, is

Did D**?

If you are sure that the answer is “yes”, he is guilty of Count *. If the answer may be “no”, then he is not guilty.

Unlawful wounding (Did the defendant do it and self defence)

unlawfully

That means without any legal excuse. In this case the defendant and his witnesses say he was acting in self defence or defence of another. That may be a lawful excuse. I will return to that in a moment.

maliciously

That means that a defendant intended to cause some injury. It is enough that a defendant foresees that some physical harm might result from his action.

wounded

That simply means breaking the skin. Any cut is a wound. It is not disputed that the cuts to C***'s neck were “wounds”. However, the defendant denies that he caused them.

Putting it very simply, C** says that D***

D** admits punching C** , but denies causing the cuts and says that in any event he was acting in lawful self-defence.

Self Defence

So, what is the law concerning self defence or defence of another? A person who is attacked or believes that he is about to be attacked may use such force as is reasonably necessary to defend himself or anyone else who is being attacked. If that is the case he is acting in lawful self-defence, and is entitled to be found 'Not Guilty'. It is for the prosecution to make you sure that a defendant was not acting in lawful self-defence or defence of another. He does not have to prove anything.

A person only acts in lawful self-defence or defence of another if, in all the circumstances, he believes that it is necessary for him to defend himself and if the amount of force that he uses in doing so is reasonable. So, there are two main questions for you to answer in relation to the defendant:

1. Did the defendant honestly believe, or may he honestly have believed, that it was necessary to defend himself or his friend X**? A person who knows he does not need to resort to violence does not act in lawful self-defence. If you are sure that the defendant did not honestly believe that it was necessary to defend himself or X**, then self-defence does not arise in this case. But if you decide that he was or may have been acting in that belief, you must consider the second question:

2. Taking the circumstances and the danger as the defendant honestly believed them to be, was the amount of force used reasonable? Force used in self-defence is unreasonable and unlawful if it is out of all proportion to the nature of the attack, or is in excess of what is really required of the defendant to defend himself.

Remember that a person who is defending himself cannot be expected in the heat of the moment to weigh precisely the exact amount of defensive action which is necessary. If you conclude that the defendant did no more than he honestly and instinctively thought was necessary to defend himself, you may think that would be strong evidence that the amount of force used was reasonable. However, if you are sure that the force used by the defendant was unreasonable, he cannot have been acting in lawful self-defence.

So, the key questions for you to answer in relation to Count *, having regard to all the evidence and the directions which I give you, are

Did the defendant D** cause the *** to C**'s neck?

If the answer may be "no", he is not guilty and you do not have to consider the remaining questions. But if you are sure the answer is "yes", i.e. you are sure that D*** caused the injury to C**'s neck, please move on to the remaining questions.

Did D*** believe, or may he honestly have believed, that it was necessary to defend himself or X***?

If you are sure that the answer to that question is no, he is guilty and you do not have to consider the final question. If the answer may be yes, move on to the final question.

Taking the circumstances and the danger as D** honestly believed them to be, was the amount of force he used reasonable?

If you are sure that the answer to that question is no, he is guilty. If the answer may be yes, he is not guilty.