JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 72/06

BEFORE: THE HON. MR. JUSTICE SMITH, J.A.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MISS JUSTICE GLORIA SMITH, J.A. (Ag.)

CORDELL BECKFORD v R

Miss Althea McBean for the Applicant

Miss Maxine Jackson for the Crown

May 2, 2008

ORAL JUDGMENT

SMITH, J.A.

The applicant Cordell Beckford and his co-accused Jason Scott were convicted of murder on the 11th May, 2006. They were tried on an indictment and the particulars of offence read as follows:

> "Cordell Beckford and Jason Scott on the 13th day of May, 2004 in the parish of St, James murdered Oriane Richards."

The learned trial judge after the jury had returned their verdict of guilty, imposed a sentence of life imprisonment and directed that they each serve 25 years before becoming eligible for parole. The applicant Beckford sought leave to appeal against both conviction and sentence,

whereas Scott applied for leave to appeal against sentence alone. A single judge refused both applications and Cordell Beckford has renewed his application before this court.

Counsel for Beckford, Miss McBean, sought and obtained leave to argue 3 grounds of appeal. Before she actually started she told the court that she was not going to pursue the ground concerning self defence. In fact, she argued two (2) grounds. The grounds read as follows:

(1) The verdict arrived at in this case was unreasonable having regard to the evidence before the court; and

(2) The sentence was manifestly excessive.

A brief outline of the facts given by counsel indicates that on the 13th of March, 2004 at about 8:30 p.m., Oraine Richards was killed along a roadway in the district of Lilliput in St. James. He was walking along a path with four other men. They had an altercation with the two applicants who were approaching in the opposite direction. The deceased was chopped 14 times and succumbed to his injuries shortly after. Both applicants chopped and killed the deceased. They were both acting in concert.

The applicant Cordell Beckford in his unsworn statement said that he and his co-accused went to a shop on the night in question and were playing dominoes until late. On their way home through a short cut a

group of five (5) men attacked them and he ran. Jason Scott stated that on reaching the short cut, a group of men attacked him and he swung at two of them several times and he also received several chops before he escaped.

The first ground is that the verdict is unreasonable. Counsel for the applicant Beckford relied mainly on the discrepancies that were in the case. Her complaint is that on account of the discrepancies, the evidence of the Crown was left in shambles and could not support the charge of murder. Counsel took us through various aspects of the evidence to demonstrate her point and referred to the discrepancies of which she complained. The Crown's case was based on common design. The learned judge in his summing up gave adequate and, in our view, correct direction on common design and on discrepancies. Indeed counsel did not make any complaint about the judge's direction on either common design or discrepancies. It is important to look at the judge's summing up in regard to common design. At page 119 of the transcript the learned judge had this to say:

> "Now, in a lot of cases, you will find discrepancies, one witness will say something different and one will say something else. Two persons will look at an accident, one will say it is a blue car and one will say it is a green car, but when you look at the root of the problem, it is still a car. So what Mr. Reeves is saying is that it was a stab to the abdomen with what you call a so-called 'jammer' or ice prick. But the doctor's evidence is that he did not see any injuries there.

> So what you have to ask yourselves is what Mr. Scott did with that 'jammer' caused an injury?"
>
> Now he said that he saw a man on the ground and he went to get help, some assistance to take him to the hospital. "

The judge also recounted the evidence of Mr. Dwight Reeves and Mr. Llorio Robinson, the two persons on whose oral testimonies, the crown relied. At page 114 of the summing up, he said:

> "He told you that he is a Lifeguard and a Landscaper. And that on the night in question he was at the garage working on a car and he and the mechanic went for a test drive and while driving, he saw some men. He was told something by the mechanic and he saw two men running down a man with a machete. He said he drove past and he returned, he saw a man standing over the man on the ground. The man had a machete raised in his hand and he saw another man running towards the man on the ground, this man had a knife and he stabbed the man on the ground with the knife. He said he know that man on the ground."

At page 125 the judge reviewed the evidence of Mr. Robinson and I will briefly refer to it:

> " So what Mr. Robinson is saying is that after Jason Scott chopped at the deceased and the other accused man stabbed at him the deceased ran and both accused ran him down. He said they started to run behind him, but the accused, Scott, turned around pick up some stones and throw at them and they stopped. So this is as far as Mr. Robinson can see, what happen. Thereafter, he is not an eyewitness."

Also on page 109 of the transcript the learned trial judge said:

> "Now, they are charged together and I must tell you that in law there is a thing called – an area of law called common design. What it means is where two or more persons embark on a joint enterprise; each is liable for acts done in pursuance of that joint enterprise even if unusual consequences arise from the execution of the agreed enterprise. It is for those consequences, what I mean, if two people have an agreement to go and chop up someone and two or three of them are chopping at the deceased person and he dies, then, it wouldn't only be the one who gave the fatal chop, the others are equally liable."

The directions given by the learned trial judge on these vital areas of the law are adequate and correct.

The discrepancies are primarily a matter for the tribunal of facts, for the jury to say what they make of the discrepancies if they are material. If they are completely immaterial or trivial, the jury should ignore them. We have two witnesses and the doctor's evidence. The judge adequately directed the jury which returned their verdict adverse to both applicants and it is clear to our minds that there was evidence on which the jury could return those verdicts.

The evidence of Mr. Robinson was clear. He said that he saw both inflicting injuries to the deceased. Mr. Reeves, whose evidence the learned counsel criticized, also said that he saw what took place. Credibility is a matter for the jury. We are clearly of the view that the evidence was enough to support the convictions in respect of both applicants. We cannot agree with learned counsel that the verdict was

unreasonable and could not be supported having regard to the evidence. Accordingly, that ground fails.

In respect of sentence, counsel urged the court that he was only twenty (20) years and he has no previous conviction. As regards his age, the court notes that the offences involving violence are being committed by young people. However, we agree with counsel that, on the evidence, there should be some distinction regarding the sentences imposed. Beckford has no previous conviction, unlike Scott who has one previous conviction. We are of the view that the period of 25 years before Beckford becomes eligible for parole seems manifestly excessive and that it should be reduced to 20 years.

The upshot then is that the application for leave to appeal against conviction is refused. The application for leave to appeal against sentence is granted and we treat the hearing of the application for leave as the hearing of the appeal; the sentence is varied to substitute 20 years for 25 years before which Beckford will become eligible for parole. His sentence will now be life sentence at hard labour and 20 years to be served before becoming eligible for parole. The sentence should commence on the 11th August, 2006.