

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 209/2001

**BEFORE: THE HON. MR. JUSTICE SMITH, J.A.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MRS. JUSTICE M^CINTOSH, J.A.(Ag.)**

**DARLON CLARKE
v
REGINA**

Robert Fletcher for the Applicant

Miss Maxine Jackson for the Crown

July 7, 2009

Oral Judgment

COOKE, J.A.

1. On the 26th September 2001, the applicant was convicted in the Home Circuit Court in Kingston for the murder of Oral Crooks. He was sentenced to life imprisonment and the learned trial judge ordered that he would not be eligible for parole until 30 years shall have elapsed.

2. The single judge who first attended to this matter refused leave to appeal and today the application is renewed in this court. Mr. Robert Fletcher appears on the applicant's behalf. He has told us that he has scoured the transcript and he is unable to discern any ground which he could possibly argue. But he has

done more than that, and with commendable thoroughness, he, himself embarked on a thorough investigation as to the truthfulness of the alibi defence which was raised, as to which, more will be said subsequently. The circumstances of the murder may be succinctly stated as follows:

At about 11:30 p.m. on the 5th May 1998, Simone Campbell and her "baby's father", the deceased Oral Crooks, were at home. The transcript gave a picture of domestic tranquility. She was there feeding her 3 month old baby, and he was in a small room, approximately 10ft x 12ft watching television. The door was 'kicked in' and the applicant entered, armed with a gun and started firing. The pathologist on page 53 of the transcript, described about eleven (11) wounds to the upper body and it is not, we think necessary, to describe each wound in detail. Simone herself received five wounds, all of which were inflicted by the applicant.

3. In respect of the wounds to Oral Crooks, those were fatal. Simone survived and was able to give evidence in this case. The crucial or critical aspect of this case turned on the question of the correctness of the identification evidence. Miss Simone Campbell swore that she had known the applicant for some four (4) years, and she knew him by the nickname "Scallawah". She had seen him on the 2nd of May because on the 2nd of May at that very house there had been a 'nine night' as the sister of the deceased had previously died and that was the reason for the 'nine night'. She said she was able to see because of the lighting that flowed from the television which was on as well as light that came

through the kicked-in door. There was a bulb. This bulb had been placed there to provide lighting for the 'nine night'. She was able to describe the clothes he had on. She further said that also present, was Paul, who did not enter the room, the brother of the applicant and the latter upbraided him (the applicant) for this shooting.

4. The other witness, as to identification, is the mother. She was having her prayers when there was the sound of gunshots, so she went out and there she saw the applicant, a person who, according to her, grew up in her hands, and who at the 'nine night' had served fish-tea. She challenged him as to his presence in her yard and when he pointed the gun, I suppose at the instigation of Paul to shoot her because she was a witness, she prayed in aid the blood of Jesus on his head, and that seemed to have been a sufficient deterrent and they left. She was about six yards from him and she was able to see him by the light, not only of the bulb, the 100 watt bulb that had been placed for the purpose of the 'nine night', but also there was a street light.

5. The learned trial judge in our view dealt adequately with the general directions or adequately addressed the jury in respect of the general directions. She in particular told the jury that they should be no less cautious because this was a recognition case. During the course of her summing up, not only did she, give general directions on identification evidence, she reminded the jury about the caution which must be exercised in dealing with identification evidence.

6. Further, she pointed out to the jury what she perceived as possible weaknesses in the case. At page 144 she dealt with the fact that the applicant had a scarf, and although it was not suggested by the defence in cross-examination, she nonetheless left it to the jury as to whether or not the scarf could have cast a shadow. She pointed out that Simone panicked and that should be taken into consideration in the assessment of the quality of her identification evidence. She pointed out the various times, approximately four minutes in respect of Simone and one half of a minute in respect of the mother, and she analysed the evidence in respect of the essential aspects pertaining to identification which compendiously may be described as the opportunity factors such as lighting, distance, time etc.

7. The defence was one of alibi, that he was in the lock-ups in Ocho Rios at the relevant time, and rebuttal evidence was called through I think, his mother. The mother of the applicant came and flatly contradicted her son's assertion. Therefore, it is not difficult to understand why the alibi was rejected. His mother said that on that night her son, the applicant, was at her home. So we are of the view that there was evidence of a substantial nature which grounded the conviction. We are further of the view that the approach of the judge was in accordance with accepted judicial principles. We are further satisfied that the learned trial judge not only enunciated the principles that should inform her

analysis, but by her analysis demonstrated without a doubt an application of those essential principles.

8. Accordingly, we will treat the application as the hearing of the appeal. The appeal is dismissed, the conviction and sentence are affirmed, and sentence shall commence on 26th December 2001.