JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO.64/94

BEFORE: THE HON. MR. JUSTICE RATTRAY, P
THE HON. MR. JUSTICE GORDON, J.A.
THE HON. MR. JUSTICE PATTERSON, J.A.

IAN DRUMMOND
v
REGINAM

The Applicant was unrepresented

Paula Llewellyn, Deputy Director of Public Prosecutions for Crown

November 13 and December 11, 1995

PATTERSON, J.A.

The applicant was convicted in the Circuit Court Division of the Gun Court for the parish of Kingston on the 30th June, 1994, of the offence of non-capital murder. He was sentenced to imprisonment for life and the court specified that he should serve a period of twenty years before becoming eligible for parole. On the 13th November, 1995,we refused his application for leave to appeal against conviction and sentence, and we now state our reasons for the decision.

The deceased, a young person aged sixteen years, was fatally shot at about 1:00 a.m. on the 27th June, 1993, as he sat on a step in premises at 130 Red Hills Road in St. Andrew, watching a number of persons playing dominoes and cards. His brother, Carvin Newman, who was also there, was the sole eye witness who testified for the prosecution. He said the applicant kicked open the gate to the premises and entered with a long gun in his hand. The applicant spoke asking them "a how oono a gwaan soh"?, and immediately he pointed the gun in the direction of the deceased and fired a shot at him. They were then about seven yards apart. Someone asked the applicant "Brethren, a wey wi doh

oono," and the applicant then trained the gun in his direction. The witness said that at that point in time, he ran off to his home next door. He did not stop to see what had happened to his brother. While in the confines of his home, he heard other shots being fired. When it was quiet again he returned to the adjoining premises and there he found his brother lying in a sand heap not far off from where he had been sitting on the step. His brother was bleeding from the region of his anterior chest. He was rushed off to the hospital, but died before he got there. Subsequently a post mortem examination on the body of the deceased revealed multiple gun shot pellet wounds to the right anterior chest, perforating the skin and entering the chest cavity. The lungs, heart and liver were perforated, resulting in his death.

The police were notified of the shooting, and Sergeant McInnis testified that he went in search of the applicant whose home was not far from that of the deceased. He found the applicant covered all over by clothing in a room of his house. He arrested him on the charge of murder.

The applicant denied that he committed the offence. In an unsworn statement he told the jury this:

> "I come from Common. I didn't kill anyone. The reason my name is called is because I come from Common. They are carrying feelings for Common man long time."

The applicant was represented by counsel at the trial, but he did not have the assistance of counsel in drafting his grounds of appeal, which simply states:-"Contrary statement by witnesses." We sought the assistance of Miss Llewellyn who informed us that she was quite unable to identify from the records any arguable ground of appeal.. We nevertheless examined the records and gave careful consideration to the application.

It was plain that the defence was a total denial of the charge. Karl Harrison J. (Ag) identified the crucial issue raised in the case to be visual identification of the accused person. The case depended wholly on the correctness of the identification of the applicant by a single witness who said he knew the applicant for a great many number of years and that he recognised him as the person who entered the premises and shot the deceased. The learned judge gave a careful summation of the identifying evidence, pointing out to the jury the specific weaknesses, and warning them of the special need for caution before

acting in reliance on the uncorroborated evidence of the sole identification witness. There can be no doubt that the learned judge had in mind the guidelines laid down in **R.v. Turnbull and others** [977] 1 Q.B.224, and that he adhered to them strictly. The quality of the identification evidence remained good at the close of the prosecution's case, and a no case submission was rightly rejected in our view.

We were not unmindful of the irregularity created by the judge in allowing the jury to be present during the submissions that the applicant did not have a case to answer, and the ruling on it, but we found no reason to hold that the applicant was prejudiced by the irregularity. The learned judge gave appropriate directions to the jury on this point, which explained fully his reasons for and the effect of his ruling on the case.

The contention of the applicant seems to be focused on the discrepancies and contradictions in the evidence of the identification witness. The jury were told that they should reject all the evidence or a part of the evidence of a witness that they did not believe. They were also told this:-

> "Now you have been told by counsel for the defence that this is a case that the prosecution's main witness has given evidence, and it is inconsistent. There are contradictions, and he has spoken lies. You have heard the submissions of counsel on this. You have heard also, the submissions of counsel for the prosecution that if you so find that there are inconsistencies or if you find that the witness is not telling the truth or he has admitted telling lies; or if you find that he did speak lies, it is entirely a matter for you. You have to consider whether there are inconsistencies, whether there are contradictions, and whether there are discrepancies. And if the witness is not speaking the truth, you and you alone will have to make these findings where this is concerned."

The learned judge continued by correctly telling the jury how they should view the discrepancies inconsistencies and contradictions in the evidence of a witness. The jury were reminded of written statements made by the witness to the police shortly after the incident which were inconsistent with his evidence in court, and they were told that "What he said in the witness box is only evidence that you will take into account, but if

you accept that he did make those statements, then it would be difficult to accept what he says here today."

It is a fact that the witness admitted in cross-examination that he had told the police lies in his written statements to them. He admitted that he lied when he said in his statement that it was five men who walked in the gate and when he named four others apart from the applicant . What was true he said is that he saw the applicant enter. He called the names of the others because "Radcliffe was calling the man them name", and because he did not want "any argument to cause in the lane - I just wanted to go along with it". He explained further that when he saw Radcliffe "start to shift", he decided to go to the police and tell the truth. That was his explanation, and the judge left it for the consideration of the jury. Radcliffe, it seems, had also given a statement to the police and according to the witness, Radcliffe and his brother had decided " to put away" the other four men with the applicant because "if dem still living up there and we come to court on Ian (the applicant), they will try to hurt us". However, he said that before attending court for the preliminary enquiry, he had notified the police of the true position which was that he had lied about the other four men and that it was the applicant alone who entered the premises and shot his brother.

In our view, the directions of the judge on this issue cannot be flawed. The witness gave a prima facie satisfactory explanation of how the inconsistency came about and it was therefore eminently a case where the judge should leave the entire issue for the jury to evaluate and decide the cogency of the prosecution evidence and ultimately to say whether the prosecution had satisfied them of the guilt of the applicant.

In our judgment, the learned judge gave correct and proper directions to the jury. There was ample evidence for the jury to find that the witness was not mistaken as to the identity of the person who entered the premises and shot the deceased, and we saw no reason to interfere with the verdict.

We considered the question of sentence in light of the period specified by the court which the applicant must serve before becoming eligible for parole. No one could doubt that this was a premeditated murder committed without the slightest regard to the sanctity of life. The learned judge, in passing sentence, took into consideration the fact

that the applicant had a previous conviction for unlawful wounding in 1989 which would suggest he had a tendency towards violence. Counsel was invited by the court to address in mitigation, but apparently there was not much to be said in favour of the applicant. The learned judge acted on right principles in specifying the period of twenty years which the applicant should serve before being eligible for parole. We saw no reason to disturb the exercise of his discretion.

Accordingly we refused the application for leave to appeal against conviction and sentence.