

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO. 103/2007**

**BEFORE:                      THE HON. MR JUSTICE COOKE, J.A.  
                                     THE HON. MR JUSTICE HARRISON J.A.  
                                     THE HON. MR JUSTICE MORRISON, J.A.**

**GARY DEAN EVANS v REGINA**

**Leroy Equiano for the Applicant**

**Miss Maxine Ellis for the for the Crown**

**January 18, 2010**

**Oral Judgment**

**COOKE, J.A.**

1.     The applicant, Mr. Gary Dean Evans, has renewed his application for leave to challenge conviction and sentence which were handed down on the 19<sup>th</sup> July 2007 in the Home Circuit Court. On that day, he was convicted of murder and the learned trial judge, Mr. Justice Patrick Brooks, ordered that he should not be eligible for parole until after twenty-five (25) years should have elapsed.

2.     Mr. Equiano, with admirable forthrightness, has indicated to the court that having perused the transcript, he is unable to urge any ground of appeal. This stance has not taken the court by surprise. In fact, there could be no other

stance. The structure, lucidity of language and utmost attention to the appropriate judicial principles pertaining to this case, are factors in the summing up that could give rise to appreciation.

3. The factual circumstances are within a very narrow compass. The only witness that gave evidence as to visual identification was Mr. Omar Barnes. He swore that on the 27<sup>th</sup> October 2005, he and his brother (the deceased), at about 7:00 p.m. were sitting on a bench at 13A Job Lane. He was sitting in the immediate vicinity of a stall which he operated the witness swore that, whilst sitting there with his brother and other companions, he saw two men coming from his yard. The men were dressed in raincoats. The witness said he was on alert at seeing these two men, and they came towards where the group including his brother was sitting. The only communication appears to be an enquiry from the deceased's brother as to "what a gwan dawg?" Thereupon he saw both men produce firearms from beneath their raincoats and the firing began. He ran and hid under a bed and when he returned to the scene soon after, there was his brother in blood.

4. An identification parade was held in April 2006, where the applicant was identified. The evidence is that, the applicant was known to the identifying witness for some time between 1995 and about 1999, but after that, he had not seen him for a number of years until two days before the incident occurred. It

would seem sufficiently sure that during the time span the applicant was in Curacao.

5. The critical issue in this case and perhaps it would not be unfair to say, the whole issue was one of identification. The learned judge was meticulous in his treatment of the identification evidence, both as to the principles that should guide the jury's considerations as well as the application of those principles in respect of the evidence which was tendered. The deceased received some eight wounds, any one of which, according to the pathologist, would have fatal consequences.

6. The jury having been properly directed, not unsurprisingly returned a verdict of guilty. The sentence was one of life imprisonment with no parole until 25 years have elapsed. We do not see where any criticism at all can be leveled at this admirable summing-up of the learned trial judge.

7. Accordingly, the renewed application for leave to appeal is refused. Sentence is to run from the 19<sup>th</sup> October, 2007.