[2013] JMCA Crim 55

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 64/2010

BEFORE: THE HON MR JUSTICE PANTON P
THE HON MRS JUSTICE MCINTOSH JA
THE HON MR JUSTICE BROOKS JA

KEVIN FLETCHER v R

Applicant not appearing or being represented

Mrs Kamar Henry-Anderson and David McLennon for the Crown

16 October 2013

ORAL JUDGMENT

BROOKS JA

[1] Mr Kevin Fletcher was convicted, after a jury trial ending on 29 April 2010, for the offence of murder. He was sentenced on 6 May 2010 to imprisonment for life for the offence and was ordered to serve 30 years before being eligible for parole. He now seeks leave to appeal against his conviction and sentence. Mr Fletcher's application first went before a single judge of this court, who considered his application and refused it. He has renewed his application before the court.

[2] The conviction arises out of evidence that on Saturday 27 December 2008, Miss Maureen Powell and one of her sons, Martin Small, were walking together along Livingston Street, Kingston 12, when they were approached by Mr Fletcher who was known to them before as "Pinhead". The applicant accosted Miss Powell who responded verbally. She was being pulled away from the confrontation when the applicant, who was not wearing a shirt, pulled a "shine gun" from his pants waist and fired two shots hitting Miss Powell. Mr Fletcher then went closer to Miss Powell and fired again. She fell face down on the ground and died at that spot. Another son of Miss Powell, Marvin, had by then come to the spot and Mr Fletcher pointed the gun at both sons. They ran off and he fired shots at them as they retreated. He shouted to them that he had killed their mother. They testified that they spoke to him and addressed him by name during the incident.

[3] Mr Fletcher denied the accusations, and at the trial he gave sworn testimony that he was at his child's mother's house, in another community, on the evening and at the time of the killing. He denied that he was called "Pinhead" and said that he had never had any problems with any of the family members and that he did not have any real close relationship with them. That testimony was in direct conflict with the testimony of both brothers who said that they had close relations with Mr Fletcher and gave details of their knowledge and familiarity with him over the course of several years. They testified that during those years they would see and speak to him almost daily. There was also some evidence of a previous dispute between Mr Fletcher and Miss Powell.

[4] Although Mr Fletcher was neither present nor represented by counsel before this court, his grounds of appeal indicated firstly, that the identification evidence was faulty in that the prosecution witnesses had "wrongly identified me as the person who committed the alleged crime". Secondly, he said that the trial was unfair as the learned trial judge did not caution herself concerning the possibility of fabrication by the witnesses as an act of revenge against him. Thirdly, he complained that there was no strong evidence or material to link him to the crime.

[5] We agree with the submissions of counsel for the Crown that none of these complaints has any merit. The learned trial judge in directing the jury gave careful directions concerning the identification evidence and the dangers associated with evidence of visual identification. She recited the difference in the Crown's case as opposed to Mr Fletcher's case concerning the relationship between Mr Fletcher and Miss Powell's sons, who were the prosecution's witnesses. The question of inconsistencies was clearly brought to the jury's attention and the learned trial judge gave careful directions in that regard.

[6] All those issues were clearly placed before the jury and it is clear from their verdict that they preferred the Crown's case to that advanced by Mr Fletcher. There was no hint given, or allegation made, by the defence at the trial that either brother had any malicious motive leading them to fabricate a false testimony against Mr Fletcher.

[7] In addressing the question of sentence, the learned trial judge considered three facets of punishment, namely, deterrence, retribution and rehabilitation. She, in fact, spent a significant portion of time on the matter of rehabilitation. We therefore have no reason to disturb the sentence imposed by her.

[8] Based on all the above, the application for leave to appeal is refused, the conviction and sentence are affirmed and the sentence is to be reckoned as having commenced on 6 May 2010.