

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 26/07

**BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MRS. JUSTICE HARRIS, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A.**

MICHAEL FREEBOURNE V R

Delano Harrison, Q.C., for the applicant

**Miss Paula Llewellyn, Q.C., Director of Public Prosecutions
& Greg Walcolm, Crown Counsel (Ag.) for the Crown**

3rd November 2009

ORAL JUDGMENT

PANTON, P.

1. In this matter the applicant Mr. Michael Freebourne had been charged along with one Mr. Ishmael McIntosh for the offence of murder, in that they murdered Mr. James Crichton on the 18th of March 2005 in the parish of Saint James. After several days of trial, the jury returned a verdict of guilty in respect of Mr. Freebourne and were undecided in respect of Mr. McIntosh. The learned trial judge Miss Justice Gloria Smith sentenced the applicant to life imprisonment at hard labour with a specification that he should serve thirty (30) years before being eligible for parole.

2. The applicant was refused leave to appeal against his conviction and sentence by a single judge of this court. The single judge in refusing leave to appeal stated that the evidence suggests a strong case against the applicant. Notwithstanding the strength of the case, the learned single judge granted the applicant Legal Aid so that he could seek to persuade the panel that the single judge was incorrect in his assessment. Consequent on that, learned Queen's Counsel Mr. Delano Harrison has appeared in the matter and has quite candidly indicated to the court that, having perused the six hundred and forty-five (645) pages of transcript and having noted the grounds of appeal that had been filed by the applicant, grounds which indicated unfair trial, misidentity by the witness, lack of evidence and miscarriage of justice, in his view the judge's summing-up was unimpeachably correct in law and was commendably lucid and fair. As far as the evidence was concerned, he was of the view that the case against the applicant was overwhelming and that the applicant, in any event was inextricably caught in the web of the doctrine of recent possession, in that he was not only found with the weapon that was used to commit the crime but with property that had been recently stolen in what was a robbery of Mr. Crichton and others at an office.

3. Learned Queen's Counsel has indicated that he communicated his opinion to the applicant, and that in the circumstances, there is nothing further that he could say to the court. We join the Director of Public Prosecutions who

sought leave to state how refreshing it was to hear such a gracious and articulate concession on the part of learned Queen's Counsel Mr. Harrison.

4. We having ourselves read the transcript and having listened to Mr. Walcolm's summary of the facts, are in total agreement with learned Queen's Counsel that the conviction is sound and the sentence appropriate. There is absolutely nothing that anyone could urge, so as to detract from the fair trial which took place and the proper conviction which resulted. Accordingly, we are surprised that the applicant entertained the thought of appealing, he having been caught "red-handed" so to speak.

5. In the circumstances, the application for leave to appeal is refused. The conviction and sentence are affirmed and the sentence is to run from the 9th day of May 2007.