

1166-2

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 10/2006

**BEFORE: THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MRS. JUSTICE HARRIS, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag.)**

KEMAR JARRETT V. REGINA

Alonzo Manning for the applicant.

Miss Ann-Marie Nembhard, Crown Counsel for the Crown

October 16 and 18, 2007

Oral Judgment

COOKE, J.A.

1. The applicant Mr. Kemar Jarrett was on the 17th January, 2006 convicted of the offence of murder in the Home Circuit Court in the parish of Kingston. The learned trial judge ordered that he should serve twenty-five (25) years before he would become eligible for parole.

2. The indictment on which he was charged and convicted, avers that on the 30th July, 2001 he murdered Michael Wilson. Learned Crown Counsel has succinctly and accurately outlined the factual circumstances — I will try to emulate her.

3. On the 29th July 2001 at about 9:15 p.m. Devon Wilson and his brother Michael Wilson, the deceased left from their home. They were on separate missions. Devon Wilson was going to the shop, his brother was going to an event called "Fully Loaded". Their house was at 12 West Avenue, Union Square, Kingston 16.

4. After leaving their home they proceeded through a narrow passageway. The deceased was in front, apparently hurrying to catch-up with his friends and while walking, the voice of Lancelot Thompson otherwise known as "Neely Dads" was heard asking the brother to hold on. Both brothers stopped, and Kemar Jarrett and Lancelot Thompson came up to where they were.

5. The deceased was accused as follows "how unno fe mek unno friend dem fire shot after man?" "bout dem want run man out a di place." [sic] At this time both men "dipped" to their waist, and as could be expected, the brothers fled for their lives. There was a barrage of shots and soon after the deceased was found. He had received three (3) bullet wounds, one to the left side of his head, one to the upper outer aspect of the left thigh and one in the vicinity of the nape of the neck.

6. The first question, which is relevant to this case is the question of identification. In respect of that, the identifying witness said he knew Kemar Jarrett, also called "Natty Patch", for some four and half years. Devon Wilson's father lived in McIntyre Villa and he (Devon), went there daily to see him, hence,

he would see the applicant. As to the lighting, there were street lights at both ends of the passage way, and there was light emanating from windows of houses that abut on this passage way. So there was adequacy of light. When the men came, the witness had a frontal view of them and there was an adequacy of time.

7. The learned trial judge assisted the jury by directing them in general terms about the danger inherent in visual identification, even in recognition cases as this was. She further demonstrated that her responsibility was fulfilled by applying the proper principles to the evidence pertaining to identification. Now it cannot be said which of the two men did the shooting. The Crown relied on common design and inference. The directions in regard to these two aspects of the case were adequate.

8. The applicant made an unsworn statement. He said that he left for England in May which would have pre-dated the time of the murder therefore it could not have been him. He called his mother and sister to say that he was in England. The Crown was allowed to adduce rebuttal evidence and that came in the form of a police officer who interviewed the applicant on his return from England. That officer swore that, in that interview, Kemar Jarrett had told him that he (Kemar Jarrett) had left on 23rd November, 2001.

9. The directions of the learned trial judge on this issue of *alibi* cannot be faulted. Accordingly, the applicant received a fair trial and the court agreed

entirely with Mr. Alonzo Manning, who appeared for the applicant, that there is really no issue pertaining to the conviction which merits his time. Accordingly the application is refused, the conviction and sentence are affirmed. Sentence is to commence on the 18th April, 2006.