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JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 158/05

**BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE K. HARRISON, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag.)**

JASON LAWRENCE V REGINA

Robert Fletcher for the appellant

**Mrs. Caroline Williamson-Hay, Acting Deputy Director of Public
Prosecutions and Vaughn Smith, Acting Crown Counsel, for the Crown**

February 25 and November 21, 2008

PANTON, P.

1. The appellant, who was jointly indicted with one Wayne Salmon, was convicted by a jury on October 27, 2005, of the offence of murder in the St. Elizabeth Circuit Court sitting at Black River. The presiding judge, Jones, J., sentenced him to imprisonment for life, with a specification that he be not eligible for parole until he has served twenty years. The co-accused Wayne Salmon was discharged on a no case submission.

2. A single judge of this Court granted leave to appeal in respect of two aspects of the summation. Counsel, however, did not pursue the appeal along those lines. Instead, he filed and pursued one ground of appeal which reads:

“The summation of the learned trial judge was deficient in that certain critical perspectives on the evidence and/or issues of law were either omitted or understated thereby denying the appellant a fair and balanced assessment of the case”.

We wish to say that we make no criticism of counsel's approach.

The facts

3. The deceased Ervin Madourie, a “crown and anchor man”, aged twenty-nine years, died on Christmas Eve in the year 2004, from a half inch stab wound to the right atrium of the heart. According to the doctor who performed the post mortem examination, the force required for the infliction of this injury was moderate to significant, and death would have been within a matter of minutes.

4. The incident resulting in the death of the deceased occurred at Tern's café in Black River, the capital of the parish of St. Elizabeth. A dance was in progress on the premises. The deceased was standing at his crown and anchor table, shaking dice and cursing. There was an altercation between him and Wayne Salmon, resulting in the deceased slapping Salmon with a machete. Salmon ran, and there followed a bottle throwing incident involving persons who were part of a crowd on the premises. There was then an exchange of words between the deceased and the appellant. The latter was seen to “punch at” the deceased who was then seen bleeding from the area of his chest that received the punch. The deceased had his machete in his hand at the time but had not used or attempted to use it on the appellant.

5. Later, Elwardo Salmon, the fifteen year old brother of Wayne Salmon, was in a taxi on his way home. The appellant was also in the taxi. The appellant told Elwardo Salmon that he should tell his (Elwardo's) mother that he had to kill the man who had slapped his brother Wayne with the machete. The very next morning, Elwardo informed the police of what the appellant had said.

6. The appellant did not give evidence. Instead, he made a statement from the dock to the effect that he was standing at Tern's café, when he saw a crowd running, and bottles being thrown from all angles. He ran with the crowd. He had no form of weapon, and did not say anything to anyone that night.

The submissions

7. Mr. Fletcher submitted that only one eye witness saw the actual killing, but that witness failed to point out the appellant on an identification parade as she had not seen the face of the assailant. In his view, the identification that was done in court was therefore a dock identification, and the learned judge had failed to give any direction thereon. Mr. Fletcher also submitted that in the context of this particular case, the jury should have been warned in respect of the evidence of Elwardo Salmon, brother of the appellant's co-accused. He summed up his submissions by saying that it was arguable that the case rested on the admission alone as the other witnesses merely attest to a killing. Therefore, to ensure fairness, he submitted, the jury should have been invited to

take into account the significance of the fact that Salmon was the brother of the co-accused.

8. Mrs. Caroline Williamson-Hay, for the Crown, responded that the case was not one of dock identification; further, that the evidence of identification was sufficient. In this regard, she pointed to the evidence of Leroy Williams at pages 39 to 41 of the record. She pointed to the fact that the appellant had, in his unsworn statement, placed himself on the scene of the crime. So far as Elwardo Salmon was concerned, she submitted that at the trial no issue was raised as to the fact that the witness was a brother of the co-accused. In any event, she said, the jury was fully aware that the witness was a brother of the co-accused.

9. The complaint by Mr. Fletcher in respect of the identification of the appellant is based on what has to be regarded as a superficial view of the evidence. The factual situation as advanced by the prosecution was as follows –

- (a) The appellant and Wayne Salmon were at Tern's café;
- (b) Salmon had an altercation with the deceased;
- (c) The deceased slapped Salmon with a machete;
- (d) Salmon ran away;
- (e) The witness Leroy Williams saw the appellant, whom he had known before, throw a punch at the deceased;
- (f) Immediately after the throwing of that punch, the deceased was seen bleeding from the region of his chest; and

(g) There is no evidence of any individual other than the appellant being in close proximity to the deceased at the time of the throwing of the punch and the bleeding;

10. Although it would have been desirable, for the sake of completeness, for the judge to have directed the jury on the question of dock identification in respect of the evidence of Jacqueline Linton, the truth is that the evidence of Leroy Williams placed the appellant as the only individual who made violent physical contact with the deceased at the relevant time. In the circumstances it was therefore more apt for the judge to direct the jury to concentrate on the issue of credibility. And that is what he did. Leroy Williams knew the appellant before and saw him "set his hands towards the man (the deceased)" (p.41, lines 3 and 4).

11. The appellant, although not obliged to say anything, chose to make an unsworn statement in which he said he ran with the crowd after stones were flung. He said he spoke to no one, thereby inferring that he never spoke to Elwardo Salmon. However, he said nothing in respect of what Leroy Williams had said. The jurors were left with a clear choice as to the credibility of Leroy Williams and Elwardo Salmon. They not only heard Salmon's evidence, as he gave it, but also the learned judge reminded them thus, at page 222 of the record:

"This case comes down to credibility, did this accused man stabbed (sic) the deceased killing him? Do you accept the witnesses for the prosecution? Do you

accept the statement made by young Salmon that this accused man made an admission to him?"

Earlier, at pages 193 – 194 of the record, the learned judge had also addressed the jury thus:

Line 18: "So when you are looking at the credibility of a witness, there are some tools that you can use. First, you look at the witness' knowledge of the facts they testified about, were they there? Did they see something? The person's disinterestedness in how to move the proceedings, are they related or friends of the person? The person's integrity as you will assess it, their veracity, whether they spoke the truth or not..."

12. In the circumstances, there is no just ground for complaint as to the validity of the conviction. The appeal is dismissed. The conviction and sentence are affirmed. The sentence is to commence from January 27, 2006.