

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO 21/2010**

**BEFORE: THE HON MRS JUSTICE HARRIS P (Ag)  
THE HON MRS JUSTICE MCINTOSH JA  
THE HON MR JUSTICE BROOKS JA**

**RODERICK LYNCH v R**

**Ian Wilkinson and Miss Shanique Scott for the applicant**

**Dirk Harrison and Miss Melony Domville for the Crown**

**30 January and 3 February 2012**

**ORAL JUDGMENT**

**HARRIS P (Ag)**

[1] In this case, the applicant Roderick Lynch was convicted in the Circuit Court for the parish of St James on 25 January 2010 on an indictment which charged him for the murder of Larry Robinson. He was sentenced to life imprisonment and it was ordered that he should not become eligible for parole until he has served 25 years. His application for leave to appeal against conviction and sentence was refused by a single judge who said:

"The evidence for the Crown was compelling and the trial judge directed the jury fully on the two issues in the case, which were identification and credibility."

Before us is a renewal of the application.

[2] The factual circumstances of the case are that at about 10:45 on the morning of 15 May 2005, the main witness for the prosecution, Mr Ronald Moodie was in his yard at Granville washing his clothes. After completing the washing he began hanging them out, at which time he heard an explosion at his gate. This prompted him to look. His attention was drawn to three persons at his gate, the applicant, the deceased and another man. The applicant who was armed with a gun was standing in front of the deceased. The men were about 10 – 12 feet away from Mr Moodie. After hearing a second explosion, Mr Moodie saw the deceased run into his, Mr Moodie's yard holding his chest and bleeding. Following this, the deceased collapsed.

[3] After observing that the applicant had shot the deceased, Mr Moodie shouted, "murder!" This attracted a small crowd. Mr Moodie then called out to the applicant but he said the applicant "fanned" him off and ran away.

[4] The applicant was well known to Mr Moodie. He had known him for approximately 17 years and was accustomed to seeing him daily. He knew where the applicant lived, which was within walking distance from his, Mr Moodie's home. He had last seen the applicant the day prior to the incident. At the time of the incident, Mr Moodie said he had the opportunity to observe his face for three minutes. He was pointed out by Mr Moodie at an identification parade.

[5] In cross examination, Mr Moodie denied that he had told the police that he had seen a man known to him as Roderick of Fullers District, Granville, running behind the deceased with a gun. He admitted that at the preliminary enquiry he had said he heard an explosion and on turning around, he saw the deceased holding his chest. He was asked whether he had told the police that he heard two explosions which sounded like gunshots and then saw the deceased run towards the house. His response was that he heard an explosion.

[6] Dr Murai Sarangi conducted a post mortem examination on the body of the deceased. The examination revealed that the deceased sustained two gun shot wounds. One wound was situated at the right side of his chest, towards the back. The bullet travelled into the chest cavity causing injury to his heart and left lung. The other wound was seen on the left of his abdomen. The path of the bullet caused injuries to his intestines and his liver. Death was due to hemorrhagic shock consequent upon the gun shot wounds to the chest and abdomen.

[7] In an unsworn statement, the applicant said that he lived at Fuller District, Granville and that on 15 August 2008, he did "not go to any one house and shot them".

[8] The sole ground of appeal was stated as "unfair trial".

[9] Mr Wilkinson conceded that he could not in good conscience argue that the jury's decision was wrong. He acknowledged that the learned judge had dealt satisfactorily with the evidence of identification and had properly dealt with all other relevant issues. He agreed with the observation of the single judge that the evidence was compelling.

He also stated that he could offer no challenge to the sentence as it was not excessive. At the end of these submissions, he was requested by the court to inform the appellant of the course which he proposed to adopt. Today, he has advised the court that the applicant was informed and has no objections to the concession.

[10] The main issues arising in this case are visual identification and credibility. The learned judge, in addressing the issue of identification directed the jury in accordance with the guidelines of *R v Turnbull* [1977] QB 224. He did not only issue the appropriate warning and gave them the reason therefor, but also dealt extensively with the evidence of identification. He drew to the jury's attention and left for their consideration Mr Moodie's evidence that the applicant was well known to him, that he would see him frequently, that at the time of the incident, which occurred during daylight, he had seen the applicant's face for three minutes, he being 10 – 12 feet away from him.

[10] The learned judge correctly directed the jury on the burden and standard of proof. He, with due care, instructed them how they should approach discrepancies and inconsistencies. He did not fail to leave for their consideration conflicts between the evidence given by the witness and the inconsistencies emanating from previous statements made by him to the police and the previous statement made by him at the preliminary enquiry for them to decide whether he was speaking the truth.

[11] The learned judge properly directed the jury on all other salient issues arising in the case. There is little doubt that the evidence was overwhelming. In our view, the

summation of the learned judge was flawless. The jury had rightly convicted the applicant. The sentence imposed cannot be said to be manifestly excessive. In the circumstances, the application for leave to appeal against conviction and sentence is refused. The sentence should commence on 25 April 2010.