

AMLE

[2010] JMCA Crim 102

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 12/2009

BEFORE: THE HON. MR JUSTICE PANTON P
THE HON. MR JUSTICE HARRISON JA
THE HON. MR JUSTICE DUKHARAN JA

LEON PINNOCK v R

Robert Fletcher for the appellant

Miss Paula Llewellyn, QC, Director of Public Prosecutions & Alwayne Smith
for the Crown

1 March 2010

ORAL JUDGMENT

PANTON P

[1] The appellant Leon Pinnock was convicted of murder at a sitting of the Portland Circuit Court before Mr Justice Martin Gayle and a jury. He was sentenced to imprisonment for life with a specification that he should serve 25 years imprisonment before being eligible for parole.

[2] A single judge of this court extended the time for Mr Pinnock to apply for leave to appeal and granted him leave to appeal "so that the issue of identification can be explored".

[3] Before us today Mr Robert Fletcher, though he had prepared skeleton arguments, quite candidly conceded that he really cannot find anything of merit to argue in respect of the conviction or sentence. We, without reservation, wholeheartedly agree with his concession given the facts as we see them in the transcript.

[4] The deceased, Mr Marcel Cooper, aged 36 years was a woodworker of Halls Avenue in Port Antonio, Portland. He was the victim of multiple gunshot injuries inflicted at about 6:40 p.m. on 11 March 2006 by the appellant and two other men. Mr Cooper received injuries to his left leg, right calf, right elbow, left nostril, left eyebrow, lower lobe of the right ear and his neck. According to the doctor, major blood vessels were damaged and death was due to massive hemorrhage in the cerebral area and the neck due to these gunshot wounds. The incident took place on Halls Avenue and the deceased ran and fell at the intersection of Halls Avenue and West Street where the police noted there was blood as well as cartridge cases.

[5] The sole eye witness was Mr Samuel Davis, a farmer who, from the evidence, knew the area and the people in the area very well and he himself was well known. He told the jury that he was sitting near to a light post at the end of the road and that there were two street lights a chain and a half apart. He heard a sound like "clappers," he looked up the road and he saw Mr Cooper sitting in a chair about 20 - 25 feet away from him and he saw three men standing in front of Mr Cooper. All three men had 9mm guns, according to Mr Davis, and he knew

all the men. In the case of the appellant whom he knew as "Papa", he had known him for about 15 years up to that time and when he saw him, the appellant was 25 – 30 feet away from him. The men were then firing at the deceased. They fired and ran off, the deceased ran off and the deceased, according to the witness, fell in front of him (the witness). One of the three men who goes by the alias of "Cowboy" came right there and fired more shots into the body of the deceased. Cowboy ran off and then made his link with the appellant who was waiting a short distance away. He, the witness, had last seen the appellant a month or two before the incident.

[6] The appellant made a statement in which he said that on the day in question, he was in Kingston selling with a relative and did not participate in the killing. The jury was clearly impressed by Mr Samuel Davis' evidence and did not believe the appellant and quite properly convicted him.

[7] The learned trial judge properly addressed all that was relevant to this case in terms of the issue of identification and credibility. There is really nothing in the transcript that could have assisted Mr Fletcher in mounting a challenge to the conviction and the sentence. As regards the sentence, by no stretch of the imagination could it be called manifestly excessive.

[8] In the circumstances, the appeal is dismissed and the sentence is to run from 4 March 2009.