

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 170/87

BEFORE: THE HON. MR. JUSTICE ROWE - PRESIDENT
THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.

A.J. Nicholson for Applicant

John Moodie for Crown

R. V. ANDREW CAMPBELL

NOTE OF ORAL JUDGMENT

APRIL 12, 1988

ROWE P.:

The applicant was convicted before Morgan J. and a jury in the St. Catherine Circuit Court for the crime of murder and was sentenced to suffer death in the manner authorised by law.

Livingston Senior was the single eye witness called by the Crown. He had known the applicant for four years. He saw the applicant about three or four times weekly as they lived in the same housing area and he passed and spoke to the applicant regularly. Senior said he knew the applicant as Prentice and that Prentice had had an intimate relationship with the deceased Maureen McLean.

On the night of January 25, 1977, Senior said he was walking, on his way home, through Del a Vega City, where he saw the deceased in the lane. They walked and talked together until he stopped at a shop. As they walked along, the applicant approached from the opposite direction and they met under a street light. The applicant and himself exchanged greetings each calling the other by name. They passed shoulder to shoulder and this gave the witness Senior an excellent opportunity to see, recognize and thus be able to identify the applicant.

When the witness stopped at the shop the deceased walked on. Senior said he did not tarry long as the shop was closed. When he rejoined the road he saw the applicant ahead of him - about two chains - which distance was pointed out to be about eighteen yards. Senior said he heard the applicant speak to the deceased, then he held her in the collar of her dress and cut her with a wooden handle knife in her forehead. Senior waked towards them and he said he saw the applicant holding the knife at the deceased. Eventually he came within inches of the applicant and the deceased and he said to the applicant: "Leave the girl alone, you want to fight the girl with a knife." To this the applicant replied: "Why you come a say anything to me for, gwan wey you a go and don't business with it." It was then, said Senior, that he saw the applicant use the knife to "jook" Maureen McLean in her chest. She fel. to the ground. Senior heard the applicant say: "A wan you dead same place here so. You will mek the second me I will charge fi murder here so", and then the applicant walked away.

The post-mortem examination revealed that the deceased was about 17 years old, height 5' 5", weight 140 lbs.

There were six stab wounds to the body, three of them perforated the chest wall, one of which cut through the ninth rib on the left side and perforated the left ventricle of the heart. The other stab wounds were superficial. Death was due to massive haemorrhage and the fatal wound was inflicted with severe force.

Upon arrest the applicant was cautioned and according to the testimony of Det. A/C Forrest, he said: "I tell you the truth, sir, me jook her with the knife but me neva know she woulda dead."

The deceased was the mother of a child 2½ years old of which the applicant was the reputed father. Evidence was led that the applicant denied paternity although he maintained an intimate relationship with the deceased up to six months before her death.

In cross-examination of Mr. Senior, the defence sought to suggest that he had developed an intimate relationship with the deceased, which he denied. The applicant made an unsworn statement in which he said:

"On the night of 25th of January, 1987, I saw Maureen and Manzie standing at the railway crossing having a quarrel. I ask what it is for. He said my baby mother is tecking him for a fool and is eating out his week's pay.

.....

And they were arguing, quarrelling at the same time and fighting and I leave them and went away."

In her summation to the jury the learned trial judge directed them to acquit if they accepted or were in doubt about the account given by the accused, who denied assaulting the deceased. She also directed them on the issue of visual identification. In three (3) minutes the jury

returned a verdict of guilty of murder.

Before us today Mr. Nicholson, who was not the Attorney who appeared at trial told us that he had read the Record several times and although he thought at one time that the issue of provocation could have arisen he could not find in the Record any basis on which such a ground could be framed.

In our opinion the jury must have accepted the evidence of identification of Mr. Senior and the evidence of the admission coming from the police officer. The issue of lack of intent was clearly left to the jury and when one considers the number of stab wounds which the deceased received, the jury had abundant evidence on which they could find that the intent to kill or cause serious bodily harm was proved.

The application for leave to appeal is therefore refused.