

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS. 138 & 139/87

COR: The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice White, J.A.
The Hon. Mr. Justice Wright, J.A.

REGINA vs. IRVINE REYNOLDS
& ERROL JOHNSON

Noel O. Edwards, Q.C., for Reynolds

Delroy Chuck for Johnson

Miss Paula Llewellyn for the Crown

29th February &
8th & 14th March, 1988

CAREY, J.A.:

In the Clarendon Circuit Court before Gordon, J., and a jury, these applicants were convicted on 15th December, 1987 for the murder of Reginald Campbell. This Court on 29th February refused their applications for leave to appeal. We now set out our reasons, as is now required, although these were made clear to counsel at the hearing.

The facts, in summary, were as follows: The slain man who was a shop-keeper, farmer, secretary to the Coffee Industry Area Board, and Justice of the Peace, living in the district of Sanquinetto in the parish of Clarendon, was in the habit of sleeping at his shop, which is situated some 18 yards from his house. On the

early morning of Sunday, 31st October, 1982 at about 9:00 a.m., he was found by his daughter clad in pyjamas and wearing a pair of sneakers, lying in a passageway on the floor of his shop, dead. The shop was ransacked. There was blood all around him. He had been stabbed in the region of his neck: the right carotid artery and right jugular were severed. There was also partial severance of the left jugular vein. The medical opinion as to the cause of death was stated to be due to haemorrhage from the large blood vessels in the neck which had been lacerated by a sharp pointed instrument like a knife or dagger.

Earlier that morning, at 6:00 or thereabout, both applicants were seen standing across from the slain man's shop, by Lawrence Powell, one of the witnesses for the prosecution. He knew Reynolds, whom he first met in 1981. This applicant addressing him as "La-La" (a nickname) begged a cigarette, but was told that he could not help. He suggested, however, that the applicant should await the opening of the shop by Mr. Campbell who was likely to accommodate him before church. This witness testified that he had seen Mr. Campbell earlier that morning, dressed in pyjamas, feeding his pigs by the sty. Subsequently, he pointed out Reynolds on an identification parade as one of the men he saw standing before Mr. Campbell's shop.

Some time that very morning, Errol Carnegle who claimed to be a brother of Reynolds and who also gave evidence on behalf of the prosecution, related that he saw both applicants walking on the road from the direction of the victim's shop, about a mile from the shop. Johnson was carrying a blue travelling bag, while Reynolds had two. The bags appeared to contain some items. The witness was invited by Reynolds to join them. He did so. He was requested to carry one of the bags which Reynolds was carrying. He was handed a bag.

In the course of this walk Reynolds displayed a knife, with which he played for a time, after which he returned it to his pocket. He mentioned other conduct of Reynolds who, he said, on approach of a bus, scurried up the bank on the side of the road as if he wished to hide. Carnegie observed that both men "look suspicious; them no look right". He left them at a district called Grantham. They had walked a distance of two (2) miles or so. He identified these men with whom he had walked that morning as the applicants.

On 1st November, Flying Squad police officers and others carried out a search of premises occupied by these applicants on Old Harbour Road, in the parish of St. Catherine. In a room occupied by Reynolds, a brown leather bag which contained several packs of cigarettes, and cheques signed by the slain man, were recovered. A large tin of Milo and a pair of hush puppies were seized. In the adjoining room occupied by Johnson, the officers found a large blue travelling bag in which was a pair of sneakers wrapped in plastic.

The slain man's daughter who was called for the prosecution, said she attended at the Mandeville Police Station on 12th November where she was shown the items seized at the applicant's room. She said the items were similar to items her late father sold in his shop and which were missing, while the cheques were her father's. It should be explained that with respect to the cheques recovered, they had been signed by her father in his capacity as chairman of the Area Coffee Industry Board and would have been returned to him upon encashment by the respective payees. When she was shown these items, Johnson said - "Reynolds, ah fi yuh yard dem find the cheque dem."

The applicant Johnson, after this had taken place, expressed the wish to make a statement. This was taken under caution and was admitted in evidence at the trial after the voir dire. The effect of that statement was largely exculpatory except that in it, he admitted

his presence at the scene of the crime. As there was argument relating to it, before us, we set out the material segment:

"Roy say him deh go look fi him people dem a Clarendon and mi fi follow him, and we did reach Clarendon. It work out that we come out a the bus stop Sunday morning. See here so a the bus stop, a big shop deh in front in the bus stop. A say to Roy say which part we could a get two cigarette fi buy. Him say over dat shop, but it lock up. Anyway him deh go try si if him can wake up the man fi get the cigarette. Him leave mi standing same place at the bus stop.

When him say him gone look the cigarette now, all on a sudden mi hear a rustling and a run go round to the back of the shop, because the front did lock. By mi reach round deh mi see the man on the ground bleeding and kicking. A say to Roy say, 'Yuh mean say you ask mi fi follow you go a country and dis is wha yuh come do, yuh come yah come kill the man?' Roy say to mi fi just cool, because him a P.N.P. man. Mi walk out a de shop and little after mi see Roy deh come with a bag. Mi nuh know what him have in the bag. A say to Roy say whey mek him kill the man. Him say just through the man know him."

The defence of each of the applicants was an alibi. Reynolds also disclaimed that Carnegle and himself were related.

The sole ground of appeal in respect of Johnson and the main ground in respect of Reynolds, complained that the directions on identification were inadequate. Learned counsel, Mr. Chuck, who spoke on behalf of both applicants, (as Mr. Edwards was not in voice) was candid in his presentation in this regard. What he suggested was that the learned trial judge had not warned the jury of the possibility of mistakes in cases where identification was an issue.

The learned trial judge did not, at any stage in the course of his summation, give any warning of the dangers in cases where conviction hinges wholly or substantially on visual identification of an appellant by one or more witnesses. However, in the circumstances of the present case, we think, and in the end learned counsel agreed,

that the directions were adequate. The applicant Johnson was identified by Carnegie in whose company he had been for over a distance, estimated at two (2) miles. The journey was in day-light. As to that, the learned trial judge expressed himself thus at p. 307:

"Now, in considering the question of identification you have to take into account the circumstances under which the witnesses said they saw the accused. The two witnesses who went to the identification parade said they saw him during the day. Both witnesses said they knew Reynolds before, one witness went to school with him; 6:00 and 8 o'clock in the morning they saw them.

In the case of Johnson, he was not known by Carnegie before. You have to consider the opportunity Carnegie had to identify him and to recognise him if he saw him again. He saw him over a distance of two miles in close proximity, carrying a bag with them. He went that far and he went no further."

In so far as Reynolds was concerned, he was known before by Carnegie, his brother, and as to the witness Powell, the learned trial judge in the passage cited, alerted the jury to the factors which they were required to bear in mind on this issue of identification. A summing-up should be tailored for the particular circumstances of a case. The Crown's case was based on circumstantial evidence, one of the links being visual identification.

Mr. Chuck timeously put forward another ground of complaint in respect of Johnson, formulated in the following terms:

"The learned trial judge failed to direct the jury adequately on the effects of Johnson's cautioned statement. The possible verdict of manslaughter was not left for their consideration."

It was argued that the cautioned statement of this applicant was capable of showing that, although he was present and knew an offence would be committed, he was not a party to the killing, in other words,

the other applicant had gone on a "frolic of his own", so to speak; beyond the scope of the enterprise.

In our view, the statement was not susceptible to any such interpretation. The applicant said he had been told by Reynolds that he was visiting his family in Clarendon and was more than surprised when he found that Reynolds had murdered the shopkeeper. The value of the statement was to rebut this alibi and to put him on the scene of the crime.

As we have previously stated, counsel was content merely to lay these matters before us. For our part, we have looked at the evidence adduced in its totality and the directions of the learned trial judge and can find no basis for interfering with the verdict of the jury.