

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 78/76

BEFORE: The Hon. Mr. Justice Luckhoo, J.A.(Presiding).
The Hon. Mr. Justice Watkins, J.A.
The Hon. Mr. Justice Henry, J.A.(Ag.).

REGINA v. RICHARD SCOTT

Mr. Chester Orr, Q.C., and Mrs. Shirley Lewis for Crown.

Mr. Dennis Daley for applicant.

November 8, 17, 1976

HENRY, J.A.(Ag.):

This is an application for leave to appeal against a conviction for murder in the Home Circuit Court on May 6, 1976. On November 8, 1976, having set aside the conviction and sentence we promised to put our reasons in writing. We now do so.

Counsel for the applicant sought and obtained leave to argue a number of grounds of appeal but in the event only one of these was argued, that one being sufficient to dispose of the appeal.

It is to the following effect:

"That the learned trial judge erred in refusing to uphold the submissions of defence counsel at the close of the Crown's case that there was no case for the applicant to answer there being no evidence either directly or inferentially, of a common design by the applicant to kill the deceased or any other person and there being no evidence of any active participation, assistance or encouragement by the applicant in the shooting of the deceased."

The only prosecution eye-witness was Special Constable Errol Wilson. According to this witness his mother, small brother and sister and one Carl Barnes were walking with him along White Street at about 9 p.m. on January 7, 1975. He and Barnes stopped to change the cartridge in a tape recorder. They had apparently stopped for about three minutes when he felt a gun at his right ear. The man who held the gun had approached from behind him and having put the gun to the witness'

ear that man then pulled it away and went in front of him. At about that time the witness became aware of four other men, two of whom had guns. The witness and Barnes were facing each other and the men were standing one to the left of the witness, one to his right, one to the right of Barnes, one to the left of Barnes and the fifth man standing beside the man who was to the witness' left. This fifth man the witness said was the applicant Richard Scott. The man who had originally put a gun to the witness' ear said "See the Police bwoy here I gwine kill him blood cloth. Search him for his gun". That man then searched the witness, ordered Barnes to run and when Barnes failed to do so, shot him. The witness then ran.

The only evidence by which the Crown sought to implicate the applicant was the evidence that when S/C Wilson became aware of the men the applicant was standing to his left beside a man with a gun who was also standing to his left. There is no evidence that the men came up together or that the applicant said anything or took part in the searching of Wilson. The applicant was unarmed. The area was one in which, according to Wilson there "is a lot of lanes and a lot of houses". It is not unreasonable to expect that at 9 p.m. there might have been persons on the street going about their lawful occasions who fortuitously found themselves on the scene at the time. In all the circumstances it appeared to us that there was insufficient evidence for a jury to say beyond reasonable doubt that the applicant was party to a joint enterprise by the three armed men, whatever that enterprise may have been. In our view the learned trial judge ought to have upheld the submission at the close of the Crown's case that there was no case for the applicant to answer.

We therefore treated the application for leave as an appeal, allowed the appeal and set aside the conviction and sentence.