

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 41/90

BEFORE: THE HON. MR. JUSTICE CAREY, P (AG.)  
THE HON. MISS JUSTICE MORGAN, J.A  
THE HON. MR. JUSTICE GORDON, J.A (AG.)

REGINA v. ANTHONY COLLINS

H. Hamilton Q.C and P. Ashley for Applicant

Diana Harrison for Crown

3rd and 10th June, 1991

GORDON, J.A. (AG.)

In the Home Circuit Court on 1st March, 1990 before Wolfe, J. and a jury, the applicant was convicted for the murder of Earlande Stewart on 17th September, 1986.

In his application for leave to appeal Mr. Hamilton urged one ground of appeal namely:

"The learned trial judge erred in law by withdrawing the issue of provocation from the consideration of the jury and thereby denied the appellant/defendant the opportunity for a verdict of manslaughter."

The evidence placed before the jury by the Crown was contained mainly in the testimony of the sole eye-witness, Miss Claudette Fuller, the paramour of the deceased who cohabited with him at his home at 9 Oakland Drive, Kingston 11. She said that at about 8 o'clock on the night of the 17th September, 1986 she was at home with the deceased when

she heard noises at the rear of the premises. She went with him to investigate and both exited through a gate at the rear onto Haile Selassie Drive. She observed one Wayne and two other youths coming over the rear fence of 11 Oakland Drive. She also saw Mr. Nehemiah Stewart, the father of the deceased, in a dispute with the lads. The deceased rebuked the boys about their behaviour and one hit him with a bottle and ran off. The deceased who was armed with a machete pursued them flashing his machete.

The deceased and the witness returned to their home and sometime afterwards the deceased left the premises through the front entrance onto Oakland Drive. The witness remained in the house watching the television until she received some information from her sister. She then left the premises onto Haile Selassie Drive. There she saw a large group of men armed with sticks and machetes walking towards Oakland Drive. She recognised in the crowd one "Jiggles", "Devon" and "Wayne". She ran through the front gate to where the deceased stood in front of the Church of God of Prophecy on Oakland Drive. The area was brightly lit by street lights and by a light from the church. About twenty men approached and surrounded the deceased while she was standing with him. She moved to her gate about seven feet away and stood there looking on. Among the group of men were "Junglist" and "Rhygin". She knew the applicant by the name "Rhygin" for over five years. Rhygin stood outside the circle of men around the deceased. Devon asked the deceased who owned 11 Oakland Drive and the deceased replied that he was the owner. Devon then said "suh a you chop me friend a while ago". To this the deceased replied "yuh friend have no manners and discipline because my father talk to him about his place and him a tell him fi go suck him mother". "Jiggles" then went up to the deceased and searched him as if for weapons and the deceased pushed

him off. "Jiggles" then raised a machete to chop the deceased who held his hand and a struggle ensued. "Junglist" then went behind the deceased and struck him in his head with a stone. The deceased began to stagger "as if unconscious". The crowd then began to part and drift away from the deceased and the applicant with gun in hand walked calmly up to the deceased and shot him in his head. He fell, all the men ran away except the applicant who just backed away. In the ipsissima verba of Miss Fuller "Him walk back-way, sir. Him walk straight back on Oakland Drive... Him don't walk front way." The fatal bullet entered the left frontal bone of the head, passed through the left cerebral hemisphere and exited in the left occipito-parietal region.

In his defence the applicant gave evidence on oath. He said he could not say where he was on the 19th September, 1986 but he knew he was not a party to the commission of this crime. He had shot no one.

Provocation was not raised by the applicant in his defence and Mr. Hamilton sought to suggest it arose on the Crown's case in that the deceased had struck and injured a friend of Devon in the incident on Haile Selassie Drive sometime earlier that same night. Mr. Hamilton had the impossible task of identifying on the Crown's case the elements which go to provocation namely: the credible narrative of events indicating:-

- (a) The act of provocation,
- (b) The sudden and temporary loss of self control,
- (c) The act of retaliation

as indicated in Lee Chun Chuen 1963 1 ALL ER 73, in R.v. Hart (1978) 27 W.I.R 229, R.v. Fabian Moses SCCA 98/89 (unreported) dated 18th June, 1990, R.v. Crafton Tomlin SCCA 101/89 dated 16th November, 1990 and R. v. Delroy Samuels SCCA 85/89 dated 11th March, 1991. On the evidence only

the last element was present.

When the crowd surrounded the applicant on Oakland Drive, the incident on Haile Selassie Drive was long past. There was no evidence that the applicant was involved in that incident, no evidence he was the person injured. Rather, the evidence supported a murderous vendetta launched against the deceased. We hold that there was no evidence on which directions could have been given on the issue of provocation and the learned trial judge was quite right in withdrawing from the jury a consideration of that issue. The only other area that could be canvassed, not on the state of the evidence, but as the practice here has developed, is that of identification. Mr. Hamilton made passing reference to it admitting that he could not assail the adequacy of the summing up in that area.

We find that the learned trial judge in his summation dealt fairly with the defence and all the issues that arose. In dealing with identification he was particularly careful to direct the jury of dangers inherent in visual identification evidence and on the whole his charge was impeccable. There is no support for the applicant's contention and the application for leave to appeal is accordingly refused.