

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 130/95

**COR: THE HON MR JUSTICE RATTRAY, PRESIDENT
THE HON MR JUSTICE WOLFE, J A
THE HON MR JUSTICE HARRISON, J A (AG.)**

R v ANTHONY McLEOD

Delroy Chuck for applicant

**Kent Pantry Q. C., Deputy Director of Public Prosecutions
& Miss Janice Gaynor for Crown**

20th March & 8th July, 1996

RATTRAY, P

When this application for leave to appeal came on for hearing on the 20th of March, 1996 Mr. Delroy Chuck, Counsel for the applicant informed the Court that despite a very careful reading of the record he could find no arguable ground of appeal upon which he could base a submission to the Court.

Having perused the record ourselves we agreed with Mr. Chuck and dismissed the application for leave to appeal.

The applicant was tried in the St. Catherine Circuit Court on the 22nd of September, 1995 on an indictment which charged him with capital murder, for that on the 3rd December 1994 he murdered one Anthony Buchanan in the course or furtherance of robbery. He was convicted and sentenced to death.

One Alvin Green gave evidence that on the 3rd December 1994, at about 8.00 p.m. he was robbed of a hundred dollar bill by a group of men who held him up with a gun at the Riversdale crossing on the Rio Magno Road in the parish of Saint Catherine. He could not identify any of the men as the night was dark. Another witness Wesley Smith gave evidence of having seen the accused two days before that incident in the district. The accused lived in Kingston but came originally from that area.

The crucial evidence for the Crown was given by one Calvin Wright, a cousin of the accused and a former schoolmate of both the deceased and the accused. All three were friends until they parted company in the country - the deceased to join the Police Force and the witness with the intention of joining the army.

On Tuesday 6th December, 1994 the accused came to visit him at his home in Kingston. At about 2.00 p.m. they were together on his verandah. He said to the applicant "Boy, what a way dem kill Anthony." referring to the deceased. The applicant said - "A the said thing, me hear you know." At that time, the witness' brother called "Sleepy" came in from work and went into the house. The applicant then told the witness "Between you and me Junior (referring to the witness) you know sey a mi kill him." The applicant then proceeded to tell him of having gone to the country to hold up a lady and meeting a man in the dark, who they stuck up and robbed of a hundred dollar bill. Then a big man came along with a big bag. He along with another man named Chris held up the man and put him on his face. They searched the bag and saw a policeman's uniform in it. He asked Chris, what policeman this was? Chris said he did not know. He cut the man's throat because they feared identification and that policemen would come back and kill them if they did not do this. He used the police uniform to wrap around the deceased's head and face and lit it afire.

The witness told his aunt of the conversation and reported it to the police. The witness admitted in cross-examination that he had heard about the death of the policeman on the radio, but denied manufacturing the evidence of the confession as a result of what he heard on the radio

Dr. Royston Clifford, Government Pathologist gave evidence that death was due to multiple injuries caused by a sharp instrument like a knife. There were first and second degree burns found on the whole of the right side of the body consistent with the deceased first being killed and burnt afterwards.

The brother of the witness Calvin Wright, one Garnett Wright otherwise called "Sleepy" gave evidence of having seen the applicant at his home speaking to Calvin when he came in from work on Tuesday the 6th of December, 1994.

On the 3rd of December 1994, about 10:30 p.m. on receipt of certain information, Detective Inspector Osmond Wright, saw the body of the deceased lying on a section on the left hand side of the Rio Magno/Pen Level road in a pool of blood. On the body in the chest region, he saw what appeared to be the smouldering remains of a police uniform material.

The applicant though taken into custody on the 27th December 1994 was not charged until the 3rd February, 1995.

A no case submission made by counsel for the applicant at the trial was refused by the trial judge.

The applicant gave sworn evidence denying that he was in the district on the 3rd December, 1994. He denied also killing the deceased or that he confessed to the killing to Calvin Wright. He also told of bad blood between his family and that of Calvin Wright over money sent from abroad to Wright's family to bury a member of the applicant's family, which was not fully handed over. This had been put in cross-

Wright over money sent from abroad to Wright's family to bury a member of the applicant's family, which was not fully handed over. This had been put in cross-examination to Calvin Wright and though he admitted bad blood between the families, Wright denied that it had anything to do with the funeral money. He said that when he was growing up his father said that he, the father got a child with the applicant's McLeod mother and that was what caused bad blood between the families. The applicant denied going to the home of Calvin Wright on the 6th of December and also seeing Garnett Wright there. He did see Calvin Wright on the 26th of December and was arrested on the 27th of December 1995.

The whole of the Crown's case rested on the acceptance by the jury that the applicant confessed to the crime and that the confession was true. The jury by their verdict showed that they accepted this to be so.

In the circumstances we refused the application for leave to appeal.