

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 40/85

BEFORE: The Hon. Mr. Justice Kerr, P. (Ag.)
The Hon. Mr. Justice Carberry, J.A.
The Hon. Mr. Justice White, J.A.

R. v. CARLTON REID

Mr. Delroy Chuck for applicant.

Mr. John Moodie for Crown.

6th & 15th October, 1986

KERR, P. (Ag.):

This was an application for leave to appeal from a conviction for murder in the Home Circuit Court, Gun Court Division, on the 26th March, 1985, before Downer, J. and a jury. The applicant was charged on indictment for the murder of Miriam Henry.

The 10th June, 1983, was pay day at the Water Commission's pumping station at Langley in St. Andrew. At about 10:30 a.m. the deceased, her daughter, Hermine Henry, (both employed there as cooks), and two other employees, Patrick Josephs and Glasspole Allen, were sheltering from the rain in a kitchen. This kitchen made of board and zinc, was detached and some 2 chains from the main building. While there a gunman armed with

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a short gun came to the front of the kitchen, and in obscene language ordered the occupants to go to the store-room. Hermine Henry in evidence described the man as fair, about 5'4" with slight 'bandy' legs, and that he wore a mask and had a cap on his head. She said she recognized the gunman to be the applicant, by his shape, his legs and his voice. They had been school-mates at the Mt. James primary school, they lived in the same district, Mt. James, she saw him almost every day. Convincingly she said, "Well is somebody that me and him go together go to school together, live very near, so if him mask until God come I could still recognize him." Now when they were reluctant to leave the kitchen, the applicant fired a shot and it caught the deceased in her shoulder. Allen then kicked out the boards in the kitchen and through the opening so made, deceased, Josephs and Allen ran out into the yard where they were confronted by another gunman. Hermine Henry remained in the kitchen hiding behind a door.

The applicant discovered her, he fired a warning shot into the ground and at gun-point marched her towards the main building. On the way she saw a gunman in the yard with a long gun, and in the main building downstairs a third gunman armed with a short gun. At applicant's order she lay on the floor. He went upstairs, and she heard two or more shots, and shortly after she saw Patrick Josephs crawling on hands and knees down the stairs. He joined her and others who had been herded there. The gunman with the long gun rifled and robbed Josephs. After this the gunmen left. The police came later and when she went upstairs she saw her mother lying dead in a room. She had been shot in the forehead. Patrick Josephs and Allen corroborated her as to the events in the kitchen. They both identified the appellant as the gunman there. They had known him for many years before.

Josephs said although appellant had his hat drawn over his face he recognized him by his shoes, his walk, and his 'bandy' legs and his voice. He had known him from 15-20 years. The appellant went to same school as his brother. Josephs said when deceased, Allen and himself ran from the kitchen, they met the gunman with the rifle and at his bidding, they entered the main building, they ran upstairs and locked themselves in a room. The applicant came there and ordered the door to be opened. He, Josephs, opened the door and was running away when he received a shot which felled him. As he crept along the passage, he heard shots coming from the room in which he had left the deceased. The applicant then came to him and ordered him to join the others, and when he complained that he could not go down the stairs, the applicant pulled him down the stairs. From there he crawled to where his other co-workers were. His pockets were searched and he was robbed of his watch, a ring and other "knick-knacks".

Vincent Williams, the watchman for the premises, said that about 11 o'clock that morning he arrived there for his pay and saw three gunmen in the yard. One of them was the applicant, whom he knew from the applicant was a baby. He, the witness was over 50 years of age. When he saw the applicant he was near the front step of the building by a Mr. Jones' car. One of the applicant's colleagues was puncturing the car. Witness spoke with the applicant. Applicant ordered him to drop the machete he was carrying. He recognized applicant by his voice and his 'bandy'-legged walk. He dropped the machete. Applicant then came up, took a wallet from his pocket and ordered him into the main building, there he saw blood on the floor and a number of persons including Hermine Henry and Patrick Josephs. Josephs was bleeding from a wound in his back. The applicant wore a

mask but this did not prevent him from recognizing the applicant.

The identification of the witnesses was challenged by cross-examination. Apart from minor discrepancies between the witnesses as to the description of the applicant's hat and mask, the cross-examination was ineffective. Supplementary to this challenge to the identification evidence, the appellant gave a very short unsworn statement to the effect that on the day in question he was at 118 Hagley Park Road (Half-Way Tree) with his baby's mother.

Mr. Chuck with commendable frankness, advised the Court that having carefully read the record and considered the learned trial judge's summation, he could find no arguable grounds to support the application.

The learned trial judge's directions were full and careful. He adverted the jury's attention to the important issues of fact and carefully left those issues for their determination. There was ample and cogent evidence to support the jury's verdict.

Accordingly this application was refused.