

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 193/79

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

R. v. CLINTON LAWRENCE

Mr. S.C. Morris & Miss D Lightbourne for Appellant

Mr. G. Belnavis for Crown

May 22, July 31, 1980

MELVILLE J.A.

On October 2, 1978 the applicant was convicted in the St. James Circuit Court for the murder of Wellesley Campbell on the 18th of March, 1978 and sentenced to suffer death in the manner authorised by law.

According to the evidence of Mr. Horace Brown on Friday the 17th of March 1978 at about 2 p.m. he and the deceased were on the Shaw Castle Road when the applicant approached and without further ado began to throw stones at the deceased. Some 3 stones, none of which caught the deceased, were thrown at the deceased who managed to make his escape. When Mr. Brown asked the applicant why he was stoning the deceased, his reply was that the deceased had destroyed his 'things.' At about 3 p.m. on the following Monday this witness saw the body of the deceased in his cultivation which was approximately 15 chains from the stone throwing incident.

As given by Mr. Brown the geography of the area of George's Valley was that the deceased occupied some 8 square chains of land 5 of which was cultivated whilst the rest is in 'bush' except for some unspecified area which had been cleared. Mr Jarrett's property was to the south of the deceased's land, whilst Mr. Jemieson's was to the north; and on the east and contiguous with the deceased's land was the land of Miss Violet Campbell. Somewhere from the road-whether this is from the Shaw Castle Road is not clear - there is a track which is used as a short cut by the whole district to get to the various holdings in this land settlement and possibly on to the road again. The way Mr. Brown puts it is that the road forms a 'V' and the short cut goes through the property. Now, this witness puts the track as going through the deceased's property. Where he saw the body of the deceased was in the cleared area of the deceased's land but near to the bush and some eleven chains from where the applicant lived. How one could get from the applicant's home to where the deceased was discovered was left in the vague state that one would walk on the road.

A schoolboy, Delroy Seivright, was apparently the last person to see the deceased alive. He had gone to the deceased's cultivation to collect firewood, and he left the deceased weeding in his cultivation at what he said was about 2 p.m. on the Saturday. Where he saw the body of the deceased on the Monday was about 3 yards from where he had left him weeding on the Saturday.

Miss Violet Campbell who has her $\frac{1}{2}$ acre of land to the east of the deceased's cultivation, said that she tied out her two goats on the cleared land in the deceased's cultivation on the

Saturday, and was returning to her home at about mid-day when she saw Delroy Seivright and the deceased in the deceased's cultivation. She went back the same evening at about 5 o'clock to attend to her goats and when she got to the cultivation she saw the applicant in the deceased's cultivation. At that time she was about $\frac{1}{2}$ chain from where she had seen Delroy and the deceased, but she did not see the deceased. The applicant was standing under a little piece of bush like he was hiding. He passed about 2 yards from her and his face wasn't looking pleased; he was walking quickly and apparently looking behind him as he walked away. She puts the size of the cleared area where she had tied her goats as about $\frac{1}{2}$ square and when asked to compare her $\frac{1}{2}$ square with the size of the Court room, whether larger or smaller, her reply was, "I never measure it but I think I tie the goat into a little place." It might be well to recall at this stage the evidence of Mr. Brown on this point. Of the three uncultivated squares of the deceased's land he had said that a 'big' part had been cleared but he was never asked to clarify what that meant.

Continuing with the evidence of Miss Campbell, she said that the short cut was through Mr. Jemieson's property, which was contrary to what Mr. Brown had said. When she saw the body of the deceased on the Monday it was under some bushes and about 2 chains from where she had tied her goats. Unfortunately, she was never asked where was the body in relation to where she had seen the applicant on the Saturday. In cross-examination after denying that it was on Jemieson's land that she had seen the applicant and also

denying that at the preliminary enquiry she had said that; and after the preliminaries to obtain a contradiction, she was asked:

Q. "Do you remember, Miss Campbell, on that occasion saying the following words in respect of that 5 o'clock incident: "I return for my goats at 5 p.m. I saw the accused on Jemieson's property?"

A. I never...when I was standing...

Q. Do you recall using those words?

A. Remember please, sometimes you are talking and me just can't hear what you say. I never say Jemieson's property. I say he was passing there and I going down, and him in George's Valley."

Then later in cross-examination:-

Q. "You don't recall saying you saw accused at James Jemieson's property?"

A. "I never did, sir. Is not so it go at all."

It turned out that this witness was unable to read or write, but one can only express amazement that no effort seemed to have been made to get the deposition in evidence to contradict the witness on this vital issue. Although the witness would not be able to identify her deposition, it seems so simple to get say, the sub-officer who was in charge of the Court, or some one who was present when the deposition was taken to attend the trial, give the formal evidence of the taking of the deposition and tender it in evidence. The only other area of Miss Campbell's evidence worth mentioning is that her common law husband, Mr. Joseph Dixon, had left home on the Saturday from the morning and did not return until in the afternoon, sometime before sunset, but she was unable to state

at what hour.

Mr. Joseph Dixon's evidence was that he had left home at about mid-day going to his work on this Saturday. He saw the applicant at the 'line' between Mr. Jemieson and Miss Campbell, take up a stone, take it into the bushes and fling it down, whereupon the applicant turned and said "you bitch you". The applicant then walked in the direction of the witness who turned away. Although this witness was then approximately four chains away - a distance which seems to be accurate as it was pointed out to the Court - and is admittedly a person with poor eyesight, and deaf or extremely hard of hearing to boot; he subsequently purported to identify the stone which he saw the applicant throw. On the Monday he saw the body of the deceased in the bushes, but admitted under cross-examination that the body was about 3 yards away from where he had seen the applicant throw down the stone. On the Saturday Mr. Dixon returned to his home somewhere between 1 and 2 in the afternoon but he didn't remember seeing Miss Campbell at home. He admitted that he had no watch so his estimates of time could be far out. In the end it seems as if the trial judge virtually withdrew his evidence from the jury's consideration.

Sergeant Wilson's evidence was that he went to this cultivation at George's Valley on Monday the 20th of March where he saw the body of a man lying face down at the top of a 'weeded clearing'. He turned the body over and noticed that the forehead was bashed in. The stone which was in evidence was near to the

head and appeared to be blood stained. After arresting and cautioning the applicant for murdering the deceased the applicant said "A who see me". The medical evidence disclosed a simple depressed comminuted fracture to the right occipital parietal region some 6 by 8 cm. in area to the skull of the deceased. Death was due to a right sub-dural haemorrhage secondary to the fracture to the skull. For some unknown reason this post mortem was not done until the 13th of May, nearly 2 months after the body was discovered, so the doctor was unable to say when death had occurred.

In his unsworn statement the applicant said the deceased had borrowed two dollars from him and he kept asking the deceased to repay him. On the Friday, (that is the 17th) he asked the deceased for the money. The deceased used abusive language and was advancing with his machete towards him, so he threw the stones at him, "through him did have the machete." On the Monday the people from the village came and tied him up and took him to where the body was, and accused him of murdering the man. He told them he knew nothing about it, but they put him in a van and took him to the Spring Mount Police Station. That was all he could say about the murder.

The facts have been set out at some length as the Crown's case was based on circumstantial evidence and one of the grounds relied on in this Court was that the learned trial judge failed to adequately direct the jury on the question of contradictions that arose on the Crown's case. Most of the contradictions canvassed need not be mentioned but some were not without merit.

Whether the track or short cut passed through the deceased's land as stated by Mr. Brown, or through Mr. Jemieson's land as stated by Miss Campbell, was not dealt with in the least. This becomes important when Miss Campbell apparently contradicted herself as to whether the applicant was seen by her on Jemieson's land or the deceased's property. All that was done in the summing up was to summarize the evidence quoted earlier without any comment whatever. True it is that strictly speaking, no evidence was tendered to contradict what she had said at the trial, yet at least the jury should have been told how to treat it whether as a contradiction or not, because although the witness had denied making the statement it would still be open to the jury to reject her evidence on that point. One can see the importance of this in the way the Crown's case was left to the jury. It was a matter of accepting Miss Campbell as a witness of truth or the whole case would fall to the ground. Again Miss Campbell placed the body of the deceased in the bushes - that is perhaps why she did not see the body at the time she saw the applicant; yet Mr. Brown puts the body as being in the cleared area and Sgt. Wilson also supports this. If these witnesses were to be believed it is difficult to accept that Miss Campbell could have failed to see the body, if indeed the cleared area was of the size that she made it out to be. Although that might be a matter of speculation, these were areas in which there were differences not only in Miss Campbell's evidence itself, but also in what the other witnesses said. It seems to us that

these were areas in which the jury should have had the assistance of the trial judge in coming to a decision as to Miss Campbell's credibility.

That the verdict is unreasonable and cannot be supported having regard to the evidence was the only other ground that merits any consideration. This has caused us some concern. It was common ground that if Mr. Dixon's evidence was credible, along with the other bits and pieces of evidence, and if the time difference between Mr. Dixon's and Miss Campbell's evidence could be reconciled then the evidence would have been sufficient to support the conviction. That Mr. Dixon's eye-sight was bad cannot be doubted; that he was at least hard of hearing was not questioned as he seemed unable to hear the trial judge though he must have been very close to him at the trial. In the course of reviewing the evidence the trial Judge seemed at first to have left Mr. Dixon's evidence for their consideration with all its defects but nearing the end of his summing up he said:

"I do not think that you, the jury, can put much weight on the evidence ^{of} Mr. Joseph Dixon, but if you believe that Mr. Dixon's evidence waters down Miss Violet Campbell's evidence, if you think it weakens Miss Campbell's evidence, then it weakens the whole of the Crown's case. But if you believe Miss Campbell stands alone and her evidence is good, you ask yourselves now the most pertinent question, is she speaking the truth when she says that about 5 o'clock that afternoon she saw the accused in Mr. Campbell's property and she saw him walking away from the property with his face not looking 'pleasable' and walking swiftly and

and looking back in the manner she described? And if you say now, yes, she is telling the truth, you will have to say what was he doing there, because his account is 'I was never there' ".

Near the very end of the summing up he continued.

"If you say, well, we don't believe him (meaning the applicant) at all, you have to ask yourselves, do we believe Mr. Brown that the attack was made by the accused upon Mr. Campbell on the Friday as Mr. Brown described it? Do you believe Violet Campbell that she saw the accused as she described, on the Saturday afternoon? And if you believe those two pieces of evidence does that drive you to the conclusion that it is this accused and this accused only who killed Wellesley Campbell? If you say no, then he is not guilty. If you say we are not sure, he is not guilty. If you say yes, then your verdict would be guilty as charged.

These passages seem to imply a withdrawal of Mr. Dixon's evidence. If that is so what is left? Motive as given by Mr. Brown, Miss Campbell's evidence, what the applicant said after caution which is completely neutral and the medical evidence. The latter in our view does not point unequivocally to the death having occurred on the Saturday. Putting it at its highest the evidence seems to amount to no more than grave suspicion. For those reasons this conviction cannot stand. Accordingly the hearing is treated as the hearing of the appeal; the appeal is allowed and the conviction and sentence are set aside.