

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 53/83

COR: The Hon. Mr. Justice Zacca, P.
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice Ross, J.A.

R. v. DEVON ALLEN

G. Soutar for the applicant

K. Dukharan for the Crown

10th October, 1983

CAREY, J.A.:

NOTE OF ORAL JUDGMENT

Mr. Soutar has candidly stated that he has nothing to urge in support of the two grounds of this application for leave, a view with which we entirely agree. Those grounds were:

- (i) Unfair trial
- (ii) Verdict is unreasonable having regard to the evidence.

The applicant was convicted in the Home Circuit Court on 17th May, 1983 before Theobalds, J., and a jury for the murder of one Wilmot Hibbert. The crime was alleged to have been committed on 26th September, 1980.

The slain man lived at 47 Rum Lane in the parish of Kingston with his wife Leonora and child. In the early morning of 26th September, 1980, Mrs. Hibbert was awakened by the barking of dogs. She was sleeping in one room while her husband and son occupied another bedroom. From her room, she was able to look directly into that room. She observed the applicant whom she knows as "Dabsie Doo", approaching along the lane. The street light and moon-light allowed her to see him quite clearly as he came to the gate of the premises where he stopped. "P.N.P. start here so", he said. Finally, he came into the premises to her husband's door; not using the entrance, but through some back way across the roof top of some old, apparently derelict, building. There, she heard him call out - "Old bwoy, old bwoy" - whereupon, her husband awoke the child. By this time, she had come to the doorway between the rooms. Both her husband and Everton were still in the bed. The applicant opened the window into that room, pulled a gun and fired. Her husband held his stomach, cried out, then fell back on the bed, dead. [The post-mortem disclosed he had been shot in the right side of his chest; the bullet passing through the lung and back].

Mrs. Hibbert said she called for help. The applicant and another man then entered the house from which the applicant removed her Television and handed it to his companion. She spoke to the applicant - "Imagine, yuh just kill the man and you come back come take the T.V.". His response was to place the gun at her forehead and remark - "I don't know of that." Both men then left.

Everton, aged 11 years, gave evidence corroborating this story.

The applicant said he was not responsible for the killing of Mr. Hibbert.

The Court considered the evidence adduced, and the summing-up of the learned trial judge. He left the issue of identification correctly and carefully to the jury. We entirely agree with the view of counsel. The application for leave is refused.