

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 200/79

BEFORE: THE HON. MR. JUSTICE ZACCA, J.A.
THE HON. MR. JUSTICE KERR, J.A.
THE HON. MR. JUSTICE ROWE, J.A.

REGINA

VS.

EVERTON BAILEY

Mr. E.P. deLisser for Applicant

Messrs. H. Gayle and P. Sutherland for Crown

HEARD March 20, 1981

NOTES OF ORAL JUDGMENT

ROWE P.:

The applicant was convicted on November 15, 1979 for the murder of Abraham McKenzie in the Home Circuit Court before Theobalds J. and a jury and was sentenced to death. His application for leave to appeal came on for hearing on March 20, 1981 and Mr. deLisser sought and obtained leave to argue five grounds of appeal, viz.:

- "1. That the Learned Trial Judge misdirected the Jury in that in dealing with the issue of 'inferences' he led the Jury to believe that the fact the Appellant was seen with a gun meant that it was he who shot and killed the deceased.
2. That the Learned Trial Judge did not adequately deal with the question of common design.
3. That the Learned Trial Judge misdirected the Jury by wrongly asking them to consider the evidence of a witness one Kenneth Henry who was not called.

- "4. That the Learned Trial Judge may have confused the Jury in dealing with:
- (i) the purpose of cross-examination.
 - (ii) assessing demeanour.
 - (iii) inferences.
5. That the Learned Trial Judge wrongly put to the Jury a highly speculative theory of the crime which was not supported by the evidence."

He elected, however, to submit arguments on Ground 2 only, complaining that the learned trial judge did not adequately deal with the question of common design. In the light of the defence there was no basis on which this complaint could be sustained.

It had been the Crown's case that the deceased, an Inspector of Police, had visited licensed betting office premises along Heywood Street in Kingston on Saturday, March 20, 1979; that soon thereafter he was seen struggling with a man; that several gunshots were heard and the deceased fell to the ground. The man with whom the deceased was struggling was seen with a revolver in his hand and this gun he put in his waist and walked away from the premises. One witness said he saw a third man come to the gate but that man did nothing.

Inspector McKenzie was shot five times at close range. The applicant was identified as the person who had the firearm and who was seen struggling with the deceased by a member of the prosecution witnesses. In his defence the applicant put forward an alibi and argued that the prosecution witnesses were mistaken in their identification.

These issues were left to the jury in the most adequate manner and the Court found no merit in the single ground argued.