

C.A. CRIMINAL LAW - Murder - Sentence of Death - Common
design - Defence Counsel concludes no ground of
appeal to argue - leave to appeal refused -
Sentence affirmed.

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS: 35 & 36/86

BEFORE: The Hon. Mr. Justice Carberry, J.A.
The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Bingham, J.A (Ag.)

R. v. GEORGE GRAHAM
ARTHUR MORRISON

D. Chuck for appellants

Earle Wright for Crown

12th October, 1987

CARBERRY, J.A.:

This is an application for leave to appeal against conviction in the Home Circuit Court, Kingston on the 16th of April, 1986 for murder. The case was tried before the Senior Puisne Judge, Miss Justice Morgan, and started on the 14th and concluded when the verdict was taken on the 16th of April, 1986.

The two accused were tried for the murder of one Owen Brown, which occurred on the 8th of May, 1984. The evidence disclosed that on the evening of the 8th of May, 1984, a Monday evening at about 7.00 p.m., while the deceased and his family were in their flat on Collie Smith Drive, Building 10 Flat 3, five men forcibly entered the house and demanded the body of Owen Brown. It appeared from what the witnesses said that this was a continuation of an incident that had started earlier that morning at the same location. Two of the five men were identified by Sandra Brown, a sister of the deceased; one as George Graham o/c "Moneyman" and the other Arthur Watson but apparently his proper name is Arthur Morrison, the men had guns and "Moneyman" or Graham cautioned his colleagues not to

shoot inside the flat because there was a young baby there. He then attempted to hold the deceased by his belt and to pull him out of the house. The deceased broke away and said "No, I am not coming out." They attempted to drag him out, but he resisted, got away from them and ran inside into another bed room where his father was actually resting on the bed. A few minutes later some fifteen other men forced their way into the flat. They had a variety of weapons: long guns, machetes, bottles; some were masked, some were not. On their arrival the accused Arthur Morrison, said "mek we kill the boy." They then all went towards the second bedroom where the hunted victim had taken refuge with his father. Shots were heard. First it was a single shot and the party that had gone into the room moved out. One of them however said, "let us make sure that the boy ded" and he went back into the room and fired a second shot. The evidence is that at that stage the young man, the deceased, was lying on the floor and that the second shot was fired by lifting up his head and putting the gun in more or less the same position where the first shot had entered and firing it. It led to a little bit of puzzle to the doctor who did the post mortem. He saw one entry wound which was bigger than normal, but two exit wounds, as the two bullets did not follow exactly the same path.

On the way out one of the young men, part of this execution squad, grabbed at a chain belonging to Marcia one of the sisters of the deceased and was rebuked by another of his colleagues who said "a nah rob we come fi rob, but kill we come fi kill." This remark is of some significance when one considers the question of common design, and whether all of these persons who went there on that occasion had come with the clear intention of killing or executing the deceased and apparently some were indifferent as to whether it was done in his home or outside.

Well, she gave her statement to the police and within a matter of days if not hours, warrants had been issued for the arrest of at least two of the party, these two accused.

The only other witness of this sad execution was the father of the deceased, who had the misfortune of seeing his son executed by a bullet through the back of the brain and his body falling right across the bed on which he was resting. He was so overcome by fear, he said, that he was not able to recognize any of the persons who came into the room and fired the fatal shots. That more or less concludes the evidence except for the evidence of the police who went in search of these two accused and arrested them shortly after. On arrest they denied any knowledge of the incident and when their turn came to exercise their defence both were content to make unsworn statements from the dock, denying that they knew anything about the murder and saying that they had been framed.

The learned judge carefully reviewed the Law, put the evidence to the jury and pointed out to them that this was a case of visual identification in which the reliability of the identification was crucial. The evidence of the main witness Sandra Brown was the crucial bit of evidence. The judge pointed out the danger of accepting or acting on identification evidence, unless the jury were absolutely convinced of its accuracy and credibility. She also reviewed the issue of common design, because Mr. Graham, on the crown's evidence had at any rate distanced himself to some extent from the shooting inside the house, saying that there was a baby there.

The jury had all the issues clearly put before them and they came to the conclusion that both men were guilty as charged. The accused were accordingly convicted and sentence of death was passed upon them.

Before us Mr. Chuck, who was recently assigned to their defence, has said with great candour that he had examined very carefully the evidence and summing-up and that there were no grounds of appeal that he could usefully argue before us with regard to the matter. We agree with him, we would also point out that the case originally came before us on the 26th of May, 1987. The panel then consisted of Mr. Justice Kerr, Mr. Justice Campbell and Mr. Justice Bingham, that is two of the three of us who are here this morning. An application was then made then made to take the matter out the list for two weeks to obtain the the services of senior counsel. Well, this is now roughly five months later and the situation has not altered, Mr. Chuck with great willingness has undertaken the task of examining and seeing whether any arguments could be put forward on behalf of the accused men, and in our view he has come to the correct conclusion that there are no such arguments. Leave to appeal is therefore refused and the conviction and sentence affirmed.