

CRIMINAL LAW Murder — whether verdict unreasonable and unsupported by evidence — whether circumstantial evidence weak and did not point reasonably/conclusively to accused's guilt, summing up — whether trial judge's remarks prejudicial. Application for leave to appeal refused.

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL # 94/85

COR: The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice White, J.A.
The Hon. Mr. Justice Downer, J.A. (Ag.)

THE QUEEN v. GLENFORD CAMPBELL

Mr. Delroy Chuck for applicant

Mr. Canute Brown for Crown

18th May & 19th June, 1987

CAREY, J.A.:

On the 15th October, 1985, at the Manchester Circuit Court before Theobalds J., and a jury, the applicant was convicted of the murder of Ferdinand Thompson and sentenced to death. He applied for leave to appeal his conviction and this we refused on the 18th instant when we intimated that we would put our reasons in writing.

The crime for which the applicant was convicted was alleged to have occurred sometime between 27th November, 1984 when the victim was last seen alive and 16th December, 1984 when his body was retrieved from a "sink-hole" in a district named Mountain in the parish of Manchester. That district is no more than half mile from the victim's home. Although the body was in a state of decomposition when the post-mortem examination was carried out, features of the slain man were still recognizable. The medical evidence showed multiple injuries consistent with infliction by a

sharp cutting implement, such as a machete. The victim received chops to the right thigh, to the lower part of the left forearm near the wrist almost completely severing the hand, to the left side of the neck below the chin and also to the right side of the neck from the midline of the neck to the level of the ear, almost severing the head and the cervical vertebrae.

Mr. Thompson was last seen alive on 27th November, 1984 between 5:30 - 6:00 p.m., walking with the applicant, up a hill. The former had his cutlass with him. It appeared from the evidence that both men got along well. But that did not prevent the applicant from stealing a cow belonging to the slain man. On the day following this disappearance, the applicant led the cow to the home of one Louise Thomas, with whose daughter he was friendly. Miss Thomas observed that his clothes was "dirty", and to her, he conveyed the information that his aunt had given him the cow which he planned to sell. The cow was in fact sold to one Leonard Roberts, a butcher, on that very day.

On the 27th November, 1984 at about 4:30 - 5:30 p.m., according to Maltie Stultz, another of the Crown's several witnesses, the applicant spoke to him about the slain man. The applicant related that he had met one Herbie Kirlew who had a letter marked "on His Majesty Service" (sic) which Kirlew said he had got from a bank with instructions to deliver to Mr. Thompson; that the applicant had told Mr. Thompson about this Herbie Kirlew who was enquiring after him; Thompson asked him where Herbie lived, and where had he left him for they were good friends. The witness also said that he had lived in the district of Allison for about 24 years and he had never heard of a Herbie Kirlew. This witness had "grown" the applicant who lived in his home and this may explain why the applicant confided in him. At all events, Mr. Stultz never saw him thereafter in the home.

The applicant was interviewed by the Police on 12th December, 1984 when he made two statements. First when told that Ferdinand Thompson of Allison had been missing for some time and he was suspected, he replied that he knew nothing about it. However, he went on to say that he had seen Mr. Thompson on 28th November at Ritchie's on the way to Frankfield, but Mr. Thompson had not spoken to him. It is not clear to us whether any caution was administered at this time, or later at the police station when the applicant was asked by the same police officer when it was that he had last seen Mr. Thompson. On this occasion, the applicant said that on the Tuesday (i.e., 27th November) he had seen him when Herbie Kirlew enquired for him. He said he saw Kirlew with envelopes marked "on Her Majesty's Service" some of which were to be signed by Mr. Thompson. He had left Kirlew and gone in search of Mr. Thompson but when he returned with Mr. Thompson he did not see Kirlew. Both men had gone in the direction of Mr. Thompson's farm. However, when they were in the vicinity of the farm, he had "hidden" from Mr. Thompson and returned to Allison. It is right to point out that no objection was taken to these disclosures nor were they challenged in cross-examination by counsel for the applicant.

When a senior police officer interrogated the applicant under caution, he enquired when was the last time the applicant had seen Mr. Thompson. The response was that he had seen him in Allison after it was said that Mr. Thompson was missing, but he had not mentioned that it was rumoured that Mr. Thompson was missing.

The applicant made an unsworn statement in which he confirmed that he met a man who had given his name as Herbie Kirlew. This person requested the whereabouts of "Ferdie". He asked for a more precise description as there was more than one "Ferdie" in the area. When he learnt that Ferdie Thompson was intended, he advised that he had not seen him all day. They had each gone their respective way. In the evening, at

about 4:00 to 4:30 p.m., when he saw Thompson, he told him of the earlier enquiry for him by Kirlew. Thompson asked to describe the man.

He subsequently told an acquaintance who enquired, that he would be going to Clarendon the next day, the Wednesday (i.e., 28th November). On the 17th December, 1985 while he was in Clarendon at his girlfriend's home, the Police arrived and took him off to the Frankfield Police Station. There he was questioned about a cow and Ferdie. He said he knew nothing about Ferdie or the cow. In answer to the question when was the last time he had seen Thompson, he replied, on the Tuesday evening and on Wednesday at Ritchie's.

Subsequently, when he was in the custody of the Mandeville Police, he was again asked about the cow. He said he bought the cow from a truck-man at the Christiana Animal Market on the second Saturday in October. When Detective Inspector Brown was giving evidence regarding his interview with the applicant, he had said that he was told by the applicant that he had bought the cow from a truck-man at the Christiana Animal Market on the 14th November. The officer went on to explain that in all his 12 years, the cattle market was always held on a Saturday.

Before us, Mr. Chuck argued that the evidence of the larceny of the cow by the applicant was insufficient to link the applicant to the crime charged. The evidence amounted to no more than suspicion. The grounds of appeal under which the argument was subsumed, are more extensive than the actual argument. The grounds numbered 1 and 4 were stated thus:-

- "1. That the verdict is unreasonable and cannot be supported by the evidence.

It is suggested that the evidence tend to support the conclusion that the applicant stole the deceased's cow; but there is insufficient evidence marshalled by the Crown from which a reasonable inference can be drawn that the applicant is responsible for the death of the deceased. The evidence presented to support the crime of murder is based solely on suspicion.

4. That the circumstantial evidence relied on by the Crown was weak and negligible and does not point reasonably or conclusively to the accused's guilt."

The evidence against the applicant, contrary to learned counsel's submission, did not consist solely of the evidence of the larceny of the cow by the applicant. The significance of the evidence of the larceny of the cow by the applicant was to supply the motive for the crime. But there was also evidence of opportunity. The last time the victim was seen alive, he was in the company of the applicant. Then the differing stories he told after the disappearance of Mr. Thompson also formed part of the circumstantial evidence which, we think, the jury were entitled to consider. The story he told his foster father, Mr. Stultz, about his meeting with Herbie Kirlew differed from that told the police. In the Stultz account, the applicant had Thompson saying that Herbie Kirlew was his good friend. In the version to the police officer and Derry Thomas who went with the police in search of the applicant, he made no mention about Thompson saying that Kirlew was his good friend, but said that after the slain man and himself had gone in search of Kirlew, they had returned together towards the farm, and he had "hid" from Thompson. Neither Stultz, who had lived in the district for 24 years, nor the victim's brother had ever heard of Herbie Kirlew. Then there was his departure from the Stultz's household which coincided with the disappearance of Thompson from the district.

The forensic evidence showed that death could have occurred approximately a month of the post-mortem examination. The applicant's statement that he had seen the slain man on the 28th November was at odds with the medical evidence, which tended to show that Mr. Thompson had already been murdered when the applicant asserted that he had seen him alive. It was curious if the applicant was to be believed that if it were the fact that he had seen Thompson alive, and a person with whom he was on friendly terms, that he would not have spoken with him about his rumoured disappearance. One other aspect may be mentioned. When the applicant and the victim were last seen together, the victim was carrying

his cutlass. The victim was aged 78 years; the applicant a young man. The injuries to the victim, were inflicted by a cutlass.

In our view, this chronicle of events cannot fairly be described as evidence either weak or negligible. The several strands which comprised the circumstantial evidence and which we have identified, amounted to a powerful case against the applicant. That being so, we conclude that this ground fails.

The other ground on which counsel sought to rely, was couched in these words:

"3. The learned trial judge's remarks were prejudicial and tended to buttress a weak case presented by the Crown. In particular,

(i) 'The deceased had a cutlass, the accused man had nothing, but at age 78 you might wish to consider - it is for you to say - whether or not the accused man would have been able to gain the upper hand, get the cutlass from the deceased and use it to carry out the act' (p. 101)

There was absolutely no evidence to suggest that the accused struggled with the deceased or attacked him."

Mr. Chuck was critical of these directions of the learned judge on the basis that he was unfair in his treatment of the evidence identified. It was the fact that when the slain man was last seen alive in the company of the applicant, he had his cutlass; that the applicant had no implement, and that the victim was 78 years old. The injuries were caused by such an implement as that said to be carried by the slain man at the material time. An obvious inference which these primary facts prompted was that ^{the} injuries were caused by this very cutlass. That inference was obviously prejudicial to the applicant's case, but the inference, nevertheless, was, we think, reasonable and inescapable. The learned judge's comment, based as it was, on solid facts, was eminently fair. We have already expressed our view that this was not a weak case against the applicant. We need only point out that the summing-up taken

as a whole was entirely fair, and balanced, and if defect there was, it was of directions, somewhat repetitious in parts. But that blemish, we think, was the result of an endeavour to be helpful to the jury, and did not detract from the overall effect of a summing-up which was well structured.

We have carefully considered the evidence adduced and the summing-up as a whole, and we have come to the firm conclusion that the inferences from the primary facts pointed in one direction only and that being guilt, and those inferences were inconsistent with any other conclusion. See R. v. Yvonne Johns & Frederick McIntosh (unreported) CA 102 & 103/83 dated 8th June, 1984.

We have not been persuaded that any ground exists which would justify our interference. For these reasons we refused the application for leave to appeal.