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JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 118/96

**COR: THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE GORDON, J.A.
THE HON. MR. JUSTICE BINGHAM, J.A.**

R v HOWARD STONE

Applicant unrepresented

Mr. Kent Pantry Q.C. and Ms. Marlene Malahoo for the Crown

24th November, 1997 and January 12, 1998

GORDON J.A.

On 24th November, 1979 we refused the application for leave to appeal from a conviction of murder and a sentence of imprisonment for life passed on 1st October, 1996 in the Home Circuit Court. Sentence was ordered to commence on January 1, 1997. The short facts in the case are that the victim Barbara Stewart was in her home at 23 Pretoria Road ironing uniforms for her daughters when the tranquillity of her home was disturbed by the invasion of men each armed with a gun. One man went to the door of her room and at close range shot and killed her.

The incident occurred at about 7:00 a.m. on the 19th May, 1992 and was witnessed by Jacqueline Baker and Keneisha Barrett, children of the deceased who gave evidence of seeing the applicant enter the premises with other men. He was armed with a gun, but he did not discharge the fatal

bullets. After the shooting he fled with the others from the premises. Jacqueline Baker saw the applicant and others enter the premises armed with guns and then pass out of sight. She heard explosions then she saw the men with guns running from the premises. Keneisha Barrett saw the applicant and others enter the premises, come to the room where her mother was ironing and saw one Garfield shoot her mother then the men fled.

These witnesses had known the applicant for many years by the name "Doc" and saw him often in the area they lived. The incident occurred in daylight and on their estimates they saw him for over ten minutes.

The medical evidence which confirmed the injuries the witnesses observed, disclosed that there were gunshot wounds, three in number, one to the neck, left breast and left abdomen.

On being arrested for the offence, the applicant declared he knew nothing about it.

In his defence the applicant gave evidence. He said at 7:00 a.m. on the 19th May, 1997 he was at home finishing an item of furniture for delivery. He was not at the scene of the crime. He denied he answered to the name of "Doc". He called one witness, Natasha Baker, a sister of the prosecution witnesses who said she saw three (3) men on the premises, but the applicant who she knew as "Doc" was not one of them.

The learned Chief Justice gave full directions on the defence of alibi, he dealt with the issue of identification following the guidelines. The major

discrepancy in the case was between the evidence of Keneisha who said four men were on the premises and Jacqueline who said there were three men. This discrepancy was dealt with fully and carefully by the learned trial judge. His summation was evenhanded and fair, and we could find no aspect that could support a ground of complaint. For these reasons the application was refused.