

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 143/77

BEFORE: The Hon. Mr. Justice Kerr, J.A.
The Hon. Mr. Justice Rowe, J.A.
The Hon. Mr. Justice Campbell, J.A. (Ag.)

R. v. JUNIOR WHITE

Mr. Dennis Daly & Mrs. J. Samuels-Brown for Appellant

Mr. Dennis Maragh Deputy Director of Public Prosecutions for the Crown

December 16, 1982 & January 21, 1983

ROWE J.A.

On May 27, 1977, Junior White was convicted of the murder of Carlton Brown and was sentenced to death in the manner authorized by law. His application for leave to appeal came before the Court on December 14, 1977 and it was treated as the hearing of the appeal and the appeal was dismissed. We were informed by the Governor General's Secretary in his letter of November 15, 1982 that Junior White's application for leave to appeal to the Judicial Committee of the Privy Council was dismissed.

At its meeting on November 2, 1982 the Governor General in Privy Council considered certain representations made on behalf of Junior White and decided that a petition from attorney-at-law Karen M. Wade, together with a sworn statement from Verona Chambers should be referred to the Court in accordance with section 29 (1) (a) of the Judicature (Appellate Jurisdiction) Act. In accepting a reference under that section the Court, is obliged to consider the whole case and to hear and determine it as in the case of an appeal by a person convicted.

The allegations of fact contained in the Petition for Mercy and the affidavit of Verona Chambers were to the effect that Verona Chambers the sole eye-witness who gave evidence for the Crown at the trial of the appellant, was unsure of the identification of the appellant and had given false testimony at

the trial because she was overcome by fear arising out of threats by certain P.M.P. activists in her area to burn down her house if she did not positively identify the appellant, "a labourite" at the trial. In that affidavit she swore that as a lonely and defenceless woman she feared for the safety of herself and her children and in that state of fear she yielded to the voices of terror. In order to highlight her unwillingness to give evidence against the appellant and to project and illustrate the significance of her change of attitude in response to the threats she swore:

"There was a first trial at which I did not give evidence because the only person I saw charged was 'Tulloch' and I was not sure if he was there on the night of the murder. I know that I saw 'Lollipop' shoot my baby-father that night. I was told to name 'Tulloch' also because he was known to be a friend of 'Lollipop'."

Conceivably, the Privy Council must have been impressed with the sincerity of this unwilling witness, who swore that she only implicated the appellant under extreme pressure. However, the Deputy Director of Public Prosecutions was able to satisfy the Court by producing the Minute Book kept by the Registrar of the Supreme Court (Criminal Division) that Verona Chambers at the "first trial" gave evidence in Court II of the Home Circuit Court, presided over by Vanderpump J. on the 3rd and 4th days of March, 1977. She was examined by Crown Counsel Mr. Miller and cross-examined by Defence Counsel Mr. W.B. Brown. So, for two days, Verona Chambers was in the witness box giving evidence in the case against the appellant. The jury disagreed and a new trial was ordered. At that second trial Verona Chambers in giving evidence readily agreed that she had given evidence at the previous trial in March. Here is one such extract from the transcript of the second trial held in May 1977 which is taken from the evidence of Verona Chambers in cross-examination by defence counsel, Mr. Brown:-

"Q: You remember the first trial in March of this case, eh lady? Do you remember you gave evidence in this same Court?

A: Yes sir.

Q. You remember seeing and hearing a doctor give evidence in this case whilst you were still in Court?

A: Yes sir."

From that exchange it is clear that Verona Chambers was under no misapprehension as to the fact of a first trial, as to when that first trial took place, as to who was on trial then, and as to the part which she played in that trial. Nevertheless in an obvious attempt to mislead the Privy Council she swore to a statement known to her to be false, namely, that she had not given evidence at that first trial.

The urgency and importance of the Reference prompted the Court to put down the appeal for hearing on December 6, 1982. Mr. Dennis Daly and Mrs. Samuels-Brown attended Court in representation of the appellant and requested an adjournment as up to that time the defence had been unable to locate Verona Chambers who would be required to give oral evidence before the Court. The matter was then adjourned to December 9. On that day, Mr. Daly applied for a further postponement. He explained that messages had been left for Verona Chambers at all the places where she was expected to be but up to then she had not attended upon him. The Court acquiesced in this application and granted a further indulgence to December 16. When on that day the case was called the witness whom Mr. Daly had confidently expected to be present was not in attendance and so the matter was put to the foot of the list. Later in the day, sometime after mid-day, the case was called for the final time. Still the witness Verona Chambers was absent.

Mr. Daly after expressing his gratitude to the Court for affording him so many opportunities to secure the attendance of Verona Chambers, informed the Court that he could take the matter no further. He expressed the opinion that the affidavit of Verona Chambers raised more questions than it provided

answers and since she had neglected to make herself available there was no ground of appeal that he could urge upon the Court. Mr. Daly outlined his efforts to interview Verona Chambers. She had come to his Chambers on Thursday, December 9 after he had left Court but as he was unable to interview her then, he made an appointment with her for Monday December 13 at 9 a.m. She did not keep the appointment. On the afternoon of Tuesday December 14, Verona Chambers attended at the Legal Aid Clinic and was interviewed by junior counsel Mrs. Samuels-Brown. Arrangements were then made for her to come to Court on Thursday December 16. First she should come to his Chambers at 9 a.m. and together they would be at Court at 9:30 a.m. Verona Chambers did not keep the 9:a.m. appointment nor did she answer to her name on the several occasions that she was called on December 16. Mr. Daly informed the Court that when the arrangement for her attendance at Court on the 16th December was made, Verona Chambers did not mention any difficulty whatever about her being able to do so.

The Crown had been prepared to call a number of witnesses in opposition to the statements of alleged fact contained in the affidavit sworn to by Verona Chambers. The affidavit and statements from the proposed Crown witnesses were served upon defence counsel and were made available to the Court. It is worthy of note that one statement was from Doreen Chambers the sister of Verona Chambers and another from Christopher Daly the landlord of the premises where the murder was committed. Because these witnesses never appeared before us, it is considered unnecessary to recount the exact contents of their statements and affidavits.

It is not at all in the realms of probability that Verona Chambers could have given the kind and quality of testimony that she offered Mr. Justice Ross and the jury in May 1977 if she were a person acting under duress to commit perjury. In the course of her evidence that witness was testifying as to what transpired on the identification parade when she pointed out the appellant, and so she was asked by Crown Counsel:-

"Q: When you identified him at Hunt's Bay Police Station, why did you identify him?"

This was her answer:

"A: Because I saw him the night when he was shooting Carlton."

During cross-examination by defence counsel it was being suggested to Verona Chambers that she had seen the appellant on a bus shortly after February 28, 1977 and that they had had a conversation. Here is a sample of some telling answers to questions from defence counsel:-

"Q: And I suggest that you asked him if he had heard what had happened to Carlton?"

A: No no see him so me no ask him nothing.

Q: Pardon me.

A: From him kill Carlton I don't see him again until the Identification Parade, 'me no see him'. "

She repeated the answer:

"I say from the night of the killing I don't see him again."

In the final paragraph of her affidavit sworn to on July 9, 1982,

Verona Chambers averred that:

"I want to make it clear that on the night of the murder I saw two (2) men armed with guns approached my gate and 'Lollipop' shot Carlton Brown. On that said night I gave the Police a statement in which I named 'Lollipop' only. As I said before I only named 'Tulloch' later because I was told to do so by the activists in the area because he was known as a friend of 'Lollipop' also because the other man there that night was brown like Tulloch."

It is unclear from the Record of the trial as to what Verona Chambers said in her statement to the police as to ^{the} identity of the murderers. At trial, however, it was first suggested to her by defence counsel that she had given a reason at the preliminary examination as to why she did not call "Tulloch's" name to the policeman on the night of the murder. The learned

trial judge properly asked that his attention be directed to the portion of the Deposition in which that explanation was given and defence counsel promptly resiled from his suggestion. Before the relevant passages are set out, it is worthwhile to mention that in the statement of Corporal Ashman upon which the Crown had proposed to reply, it was stated that Verona Chambers did, on the night of the murder, call the name "Tulloch" to him. Of course as the witness was not called to give evidence we do not rely upon that statement in coming to our conclusions.

Verona Chambers was strenuously cross-examined in an effort to weaken her evidence of the identification of the appellant. The relevant portion of the transcript is reproduced below:

"Q: All right. You know Junior White, you know one Junior White? Lady, do you know one Junior White?

A: Yes, sir.

Q: Yes. From when?

A: Know him as Tulloch six years now.

Q: I asked you if you know one Junior White?

A: I did not know him as Junior White.

Q: So you don't know anybody that you used to call Junior White, isn't that true?

A: I know the same person that sit down there.

Q: Lady, I ask you the same question again. You don't know anybody to call Junior White?

A: I know the same person that sit down there.

Q: I am not asking you that lady. Up to the 28th of February last year, you knew nobody that you call Junior White, isn't that true? Isn't that true? Why you take so long to answer?

A: I know him as Tulloch.

Q: Up to the 28th of February last year, did you know anybody as Junior White?

A: No, sir.

Q: And would I not be correct in saying that when you spoke to Mr. Ashman, the police, on the night of the 28th February last year, you did not have on your mind any name like Tulloch or Junior White, you did not have anything like that on your mind?

A: I did have Tulloch on my mind.

Q: You did not have anything like that on your mind?

A: I knew that his name was Tulloch but I did not recall his name same time.

Q: You remember at the preliminary enquiry telling the lawyer, not me, that why you did not call the name Tulloch to the policeman the same night is because you did not have him on your mind?

HIS LORDSHIP: Could you direct me to that portion?

DEFENCE COUNSEL: I am laying the foundation. Page four M'Lord, about ten lines down M'Lord.

HIS LORDSHIP: What appears on my copy here does not seem a fair question to put.

DEFENCE COUNSEL: Much obliged M'Lord, I will rephrase it. Lady, would you agree with me that you never told the police that night where Tulloch lived as that was not on your mind?

A: Where him live was not on my mind, because they come and kill my baby father. I was not interested in that.

HIS LORDSHIP: The accused was not living on St. Lucia Road on the night of the killing?

DEFENCE COUNSEL: On the night of the killing, did you know where Tulloch was actually living?

A: No, sir.

Q: As a matter of fact, lady, you never had Tulloch on you mind at all that night?

A: I did have him on my mind because I did see him.

Q: You never tell anybody he

CROWN COUNSEL: M'Lord, I do not know if what counsel is saying is an answer to a question or it is a comment, because he is not entitled or allowed properly to put words into the witness' mouth.

HIS LORDSHIP: I did not hear what Mr. Brown said. What I heard was, 'I did have him in my mind because I did see him'. I did not hear what was said after that.

DEFENCE COUNSEL: I am suggesting to you lady that you did not have Tulloch on your mind that night but only Lolly-pop.

A: I had both of them on my mind.

Q: But although you had both of them on your mind, you only called Lolly-pop?

A: Yes."

If ever there was a witness who fended off a spirited challenge, by an experienced cross-examiner such a witness was Verona Chambers. She must have impressed the jury with the precision of her responses and the indignation with which she rejected suggestions that she could be mistaken about the identity of the appellant.

For a reason locked in the breast of Verona Chambers she chose to make an affidavit contradictory of the sworn evidence which she gave on three occasions in a Court of Justice. She was afforded the opportunity to face a Court and to repeat and explain the contents of her affidavit. She studiously neglected to accept that opportunity. A person, such as Verona Chambers, needs to be reminded that there are provisions of the Perjury Act under which punishment with imprisonment at hard labour can be meted out for knowingly and wilfully making a statement false in a material particular in a voluntary declaration or affidavit.

Counsel for the appellant found no ground capable of argument in his favour and after the most careful re-consideration of the evidence given by Verona Chambers at the trial and of the contents of her affidavit, we were clearly of the view that there is no merit whatever in the appeal, and the reference was accordingly treated as an appeal and the appeal was dismissed.