

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 143/77

BEFORE:

THE HON. MR. JUSTICE HENRY, Presiding  
THE HON. MR. JUSTICE KERR  
THE HON. MR. JUSTICE ROBOTHAM

REGINA

v

JUNIOR WHITE

Mrs. M. McIntosh for Crown

Mr. W. Bentley Brown for the Applicant

December 14, 1977

ROBOTHAM J.A.

The deceased, Carlton Brown and a lady by the name of Verona Chambers lived together at 7 Boulevard Road, Olympic Gardens. Immediately across from 7 Boulevard Road, there is the Redimix factory which on the night of February 28, 1976 when this incident took place was brightly lit by two flood lights affixed to the building. These two flood lights shone on and illuminated the area in front of the premises 7 Boulevard Road. At around eight O'clock on this night in question the deceased and Verona Chambers were at the gate of their yard. The deceased was sitting outside the gate and Verona Chambers was standing more or less in the gateway behind him, when she saw a car drive slowly down Bai Road and stop at the intersection of Bai Road and Boulevard Road some ten to twenty feet away from where she and the deceased were. Two men came out of the car, leaving a third in the car, behind the steering wheel. Each of these two men had a gun. She testified that she knew both of these men before. One she knew as Lollipop

(who was not before the court) and the other was the applicant whom she knew for the past six years as "Tulloch". As both men reached in the middle of the street they started firing the guns at the deceased who got up and ran inside the yard. As he started to run he was seen to be clutching his chest. This would seem to indicate that at the time when he ran he had already received shots in his chest. The applicant and Lollipop, according to the witness Verona Chambers, followed the deceased into the yard still shooting at him, and the deceased after going through the gate, fell on his face. After he fell on his face the applicant and Lollipop turned and went back through the gate into the car, and were driven away down Boulevard Road.

The applicant did not deny that Chambers and himself were known to each other but he says that it is only for two or three years and not six as Chambers indicated, and he also denied that he was known as "Tulloch". The deceased died on the spot and his body was removed after the police came to the scene.

On March 25, 1976 Verona Chambers attended an identification parade and from a line of men she pointed out the applicant as one of the two men who gunned down the deceased. Dr. Louis Dawson performed the post-mortem examination and he found four bullet wounds in the chest. These were all entry wounds and three of these wounds correspond to three exit wounds in the back of the deceased. These three bullets, therefore, passed right through the body of the deceased. The fourth bullet lodged in the right side of his back just below the skin. This bullet was removed and it was submitted to Deputy Superintendent Wray, the ballistic expert and he identified it as a .38 calibre lead bullet.

On the same night when Corporal Ashman the investigating officer went on the scene he found three spent shells in the vicinity of the gateway and these shells were also submitted to Mr. Wray, who came to the conclusion that they were fired from a 9 millimeter semi-automatic pistol of a type which ejects the shell as it is fired. He also said that these bullets when fired at

close range because of the speed or velocity at which they travel would most likely pass through the body of a human being. Mr. Wray's evidence is in keeping with Dr. Dawson's finding that three bullets passed through the body of the deceased and one lodged in his body. It was corroborative also of the evidence of Verona Chambers who said that two guns were being fired there that night. Dr. Dawson said that the cause of death was bullet wounds received in the chest.

The defence of the accused was an alibi. He said on that night he was nowhere in the vicinity of Olympic Gardens, but was in Montego Bay selling cloth. This was rejected by the jury.

Counsel for the applicant at the outset sought and obtained leave to argue supplementary grounds filed by him. After having started however, he obtained time from the court and on the resumption he recast the grounds of appeal abandoned grounds one, two, six and seven, and substituted therefor the main ground of the appeal which read:-

"That the learned trial judge failed to adequately direct the jury on the question of visual identification, when the Crown's case rested solely on this and from the evidence of one witness only, Verona Chambers."

The evidence in the case was that Verona Chambers saw these men arrive; she saw them come out of the car; she saw them approach where the deceased and herself were situated; she saw them fire the shots; she saw them chase the man into the yard; she saw them turn around and leave and go back in the car. In addition to this there were the flood lights in the area, and she said she had known the applicant for six years.

It is in the face of all this that counsel for the applicant complains that the judge did not adequately direct the jury on the question of visual identification. It is therefore best to look at what the learned trial judge had to say and this appears at page 230 of the summing-up. He said:-

"Now the matter of identification is what one might

call a vital issue or the very crux of this matter and I think perhaps it may be useful to say something about it before I deal with the elements which go to constitute this charge of murder before you. Now the position is this, Mr. Foreman and members of the jury, that whenever a case against an accused person depends wholly or substantially on the identification - on one or more identifications which the defence alleges to be a mistake, it is my duty to warn you about the need for caution; and the reason why there is the need for this warning is because it is possible to make a mistake on the question of identification. Learned counsel for the defence told you about cases where he had been mistaken for his brother and his brother mistaken for him. Of course, you will also bear in mind that such mistakes occur from time to time. You will bear in mind too that you have got to be careful in considering evidence of identification - you have got to look very carefully at the evidence of identification and decide what you make of it. So you have got to examine very closely the circumstances in which the identification by the witness was made. You have got to look at how long the witness had the accused under observation, what were the circumstances, what was the lighting, whether or not the witness had seen the accused before and how often, how long a period elapsed before the identification - all these are matters which you will have to take into account. Of course, you will also have to bear in mind that the position is quite different where a witness sees a person for the first time when the incident occurs and then picks out the person on an identification parade. In a case where the witness knew the person before and then picks out the person on an identification parade, this is not a case of identification but one of recognition because Verona Chambers says she knew him before and so you may think - it is a matter for you - that in a case such as this where it is a question of recognition and not so much of identification it is much more reliable than a case where the witness didn't know the accused before and then picks him out on the parade.

All these matters, Mr. Foreman and members of the jury, go to the quality of the evidence of identification, and that is what you have got to look at. Is the quality of the identification good? You heard Verona Chambers as to her position, facing the street, on this night of February 28 when this car drove up. You heard her evidence as to the flood lights on the Redimix factory flooding the area with light. You heard her evidence about seeing these two men approaching and ask yourselves, is it at all possible that Verona Chambers could have been mistaken in these circumstances, having regard to all these factors, having regard to the fact that she knew these men for some time before? So, as I say, you have got to consider, is the quality of the evidence such as leave you in no doubt at all as to the identification of these two men who fired these shots on that night? Do you accept the evidence of Verona Chambers?"

He further said at pages 238-239:-

"Now, in this case, the main witness for the prosecution is Verona Chambers, and your verdict in this case will no doubt depend very largely on what view you take of the evidence of this witness having seen her, having heard her evidence, if you consider that she is not truthful and a reliable witness, then of course, you will have to reject her evidence, not rely on it, and if you reject her evidence that would be an end of the matter and you acquit the accused.

In our view the judge dealt adequately with the question of visual identification. Complaint was taken of the fact that the witness Verona Chambers said that she only knew the accused as "Tulloch". Counsel for the applicant submitted that there was no other reliable evidence in the case to identify "Tulloch" and Junior White as being one of the same person. We are not in agreement with this submission. There was evidence from Corporal Ashman that he knew the applicant as "Tulloch" some time before, and there is the evidence of Sergeant Smith to the effect that when he apprehended the applicant he gave his name as "Tulloch". So on the question of identification and the manner in which the judge dealt with it that ground fails.

The next ground argued by counsel, ground 3, was that there was not sufficient evidence of the identification of the body. It is true that Dr. Dawson did not remember the name of the person who identified the body and it is also true that the person who identified the body could not remember the name of Dr. Dawson but Constable Robinson who was present at the post-mortem examination gave evidence. He said that the body was identified by Sidney Brown, who gave evidence to that effect, and that the post-mortem was performed by Dr. Dawson, who also gave evidence to that effect. Even if these witnesses could not remember the names of each other Constable Robinson supplied the missing link and in our view the body was properly identified.

On the question of the no case submission which was ground four, counsel argued that it ought to have been acceded to by the learned trial judge. We are entirely in disagreement with

this. There was abundant evidence on which the applicant should have been called upon to state his defence.

In respect of ground five, it was submitted that in a detailed summing-up the judge did not clearly leave the defence of alibi to the jury. The judge in our view quite clearly left the defence to them. He dealt with the applicant's evidence at length and even after he had concluded the summing-up Mr. Brown made a submission to him to the effect that he had not dealt with the question of alibi and how the jury should treat an alibi. The learned trial judge then had this to say:-

"I am sure you will have gathered that you could not convict the accused unless you reject his alibi because as I have told you, if you accept what the accused said and of course he said to you he was in Montego Bay, if you accept that, of course, he would not be guilty. Similarly, if you are left in doubt by what he has said that he was in Montego Bay again you would acquit him, so it is only if you completely reject what he has said that you would convict."

That ground also fails. In the event, the application for leave to appeal is treated as the hearing of the appeal, and the application is refused.