

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 77/79

BEFORE: The Hon. Mr. Justice Robinson - President  
The Hon. Mr. Justice Carberry, J.A.  
The Hon. Mr. Justice Carey, J.A. (Ag.)

R. v. KEITH FRITH

Mr. G. Soutar for the Appellant

Mr. Anthony Smellie for the Crown

12th & 13th January, 1981

CAREY J.A. (AG.)

The judgment I am about to deliver is a majority judgment of the Court. This is an application for leave to appeal against a conviction for murder in the Clarendon Circuit Court on the 5th of April, 1979 before Willkie J. and a jury. Learned Counsel who appeared on behalf of the applicant intimated that having read the transcript of the evidence and considered the summing up of the learned trial judge, he was quite unable to put forward any cogent argument. A majority of the Court agreed entirely with that view.

The facts were these:

Mr. George Morgan, the deceased, was a taxi driver. He was commissioned by the accused man on the 18th of June, 1978 to take him down to St. Elizabeth on the following day, the 19th of June. There was present during the conversation between them a Miss Agaletha Williams who was the girlfriend of the deceased. During the discussion, she indicated her desire to go along on this trip, but her offer was declined. She was concerned about the welfare of her boyfriend and that was the reason for her offer. The accused man reassured her that he was a

driver and had a driver's licence which he then produced. It was scrutinized by Miss Williams.

On the 19th of June, Mr. Morgan left home to fetch the car, which was kept at the owner's premises elsewhere. Miss Williams never ever saw him alive again.

The evidence indicates that they did go to St. Elizabeth. On the return journey they went to a shop in a district called Beverley District, where the accused borrowed a spare tyre from a gentleman named Mr. Freckleton. The time was then 10.00 p.m. Early in the morning of the 20th June, Mr. Ferdinand Henry, who was a watchman at a building site in Clarendon Gardens, testified that he heard cries for 'murder' twice. That prompted him to investigate. He walked off towards what he called the entrance of the main road. The building site is on a road which is off the main road between Mandeville and May Pen in the region of Four Paths, Clarendon. When Mr. Henry walked along towards the main road, he said, he heard some conversation going on and saw two persons in an Austin motor car, which was parked there. There is no question that the motor car was the car driven by the deceased man. Although Mr. Henry indicated hearing two persons, he only identified one, a gentleman called Tenn Loy Chin, to whom he spoke. Later, when he looked at the car, he observed that the axle was, to quote his words, "drawn out", which seems to indicate that the axle must have been cut. He also noticed that there was blood on the car and in the car.

He returned to this side road we have mentioned, along which there is a bridge. With him at that time was a police officer, Guy Graham, who lived somewhere near the building site. Together they examined the bridge and while thus engaged they heard groans under the bridge and they observed blood on the railing of the bridge. There was a man under the bridge, who eventually was discovered to be the deceased. He was in an injured condition. He had wounds all over his face.. He was taken to the May Pen Hospital.

We would say, at this point, that this bridge, where the body

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was found, was some two or three chains from the main road where the car was parked. Mr. Tenn Loy Chin also gave evidence. He testified that at 3.00 o'clock in the morning while he was on his way from a night club, he observed by the Austin motor car, the applicant, who enquired how far was the nearest police station. He gave the required information. The accused, he said, related that while the taxi driver and himself were coming along, two rastafarians had abducted the driver and carried him somewhere off the main road. Upon hearing this, Mr. Chin advised the applicant that a police officer lived just across the road. The applicant then intimated that he was going off to the police station and that the witness, Mr. Tenn Loy Chin should remain there until he returned. The applicant never went to the police station nor did he return to the car. On the twentieth of June, Mr. Tenn Loy Chin, at an identification parade pointed out the applicant as being the person whom he had seen by the car on the early morning.

The police officer, Det. Corporal Graham, said he was awakened by Henry. He did go towards the Four Paths bridge and he did see Tenn Loy Chin and also an Austin motor car. He went off to the police station, fetched a light and on his return saw the deceased lying under the bridge in some water. He also unearthed in the area where the body was found a driver's licence which belonged to the applicant.

As far as the condition of the motor car went, the axle as we said, was cut and the car, as we explained, had blood all over it. The medical evidence showed that the deceased man had a number of injuries and they are as follows: firstly, there were two abrasions, each measuring one inch by half inch on the right side of the forehead. Secondly, lacerations measuring one and a half inches on the left eye brow. Thirdly, a sutured lacerated wound measuring three inches in the right frontal parietal bone. Fourthly, a sutured lacerated wound, four inches in length and further small abrasions on the right

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shoulder. There was a fracture of the occipital bone on the left side and greater ring of spinoid on the left side, and the brain showed subdural and cerebral haemorrhage. In the doctor's opinion, death was due to cerebral haemorrhage as a result of the injuries to the head caused by blunt external force. When the doctor was cross-examined, he expressed the view that such injuries as he found were consistent, or as consistent with the person being involved in a motor vehicle accident as falling off a bridge. That, then, was the evidence for the prosecution.

The applicant gave evidence on oath and he said he was a sailor, was married with children and that he knew the deceased man, Mr. Morgan. He acknowledged that he chartered his taxi on the nineteenth June and that they did set out for St. Elizabeth. He said that when they got to the Three Miles roundabout they picked up a 'go-go dancer' called 'Pauline', a friend of the deceased. They then proceeded to May Pen to a night club called Starlight City Club where, apparently, they stopped and Pauline spoke to a gentleman called Tenn Loy, who is the witness who gave evidence for the prosecution. Tenn Loy Chin accompanied them to Mandeville, and the evidence was that when they got to Mandeville, Pauline and Tenn Loy Chin disembarked at another night club. The deceased and the applicant went on to St. Elizabeth. They returned from that point and it is accepted that he did speak to Mr. Freckleton from whom he borrowed a tyre. He explained that while they were engaged in changing this tyre, his driver's licence, which was in his breast pocket, fell to the ground. He picked it up and placed it on the dashboard of the motor car. They then continued their journey to Mandeville, where the applicant parted company with the deceased. Some time after this, he discovered that he missed his driver's licence. He made an unsuccessful search. In cross-examination he admitted that though he did not ask the driver, he had checked with the

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police. In fact, he had made an application to the police to obtain a fresh licence.

The prosecution's case was based then on circumstantial evidence, and the evidence which was before the jury, of circumstances which would point toward the guilt of the accused was this: First of all, there was evidence that there were cries of 'murder'; that the driver's licence of the applicant was found in close proximity to the body; and that he told a witness for the Prosecution that the deceased had been taken off by some rasta men. That evidence would seem to indicate that some violence had been done to the deceased of which the applicant was aware. He also enquired the location of the police station but never went there, nor did he return to the scene. The place where the body was found, it emerged in evidence, is used for the dumping of garbage. So there was the cumulative effect of the conduct of the applicant on the scene, his conduct after the incident, and the medical evidence which showed violence had been done to the deceased, evidence of blood in the car and on the rails of the bridge.

It is well established that circumstantial evidence must point in one direction and one direction only, and must be inconsistent with innocence. No complaint can be made, nor was made with respect to the summing-up of the learned trial judge, who left the issues fairly and adequately to the jury for the jury's consideration.

One must bear in mind that there was evidence of blood being found all over the motor car. There was no evidence of any damage to the motor car save for the mechanical mishap, no evidence that the motor car was involved in any motor vehicle accident. All that could be said was that the axle had cut and the vehicle had come to an halt. The cries of 'murder' and the fact that the applicant's driver's licence being found and the conduct of the applicant at the time are inconsistent, in our judgment, with innocence. All these factors, in our opinion, pointed in one direction and one direction only, and this was to guilt.

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The absence of motive and <sup>the</sup> nature of the medical evidence stem perhaps from, indifferent police investigation on the one hand, and a not too careful attention to detail on the part of counsel for the Crown below. On the other hand, the doctor had indicated that the injuries which he saw were as consistent with the person being involved in a motor vehicle accident or as having been received when the person fell off a bridge. But so far as damage to the motor vehicle went, there was no evidence whatsoever to indicate that that motor vehicle was involved in any accident that could lead to the injuries which were seen upon the deceased man. If the deceased fell off the bridge and received the injuries at the bottom of his fall, blood could hardly be found on the railing. Blood, of course, was seen in the car. One must presume that he received some injuries before he reached the bridge. Had he fallen over the bridge accidentally, cries of 'murder' seem to us, most unlikely in that situation. But if he were pushed over or beaten, then cries of 'murder' would be consistent with violence being done to the deceased; blood was found on the rails.

As to the absence of motive, there is no obligation on the Prosecution to establish this. Its absence may be a matter of comment, but, that absence can in no way weaken the prosecution's case. Many murders, as is known, are committed quite without motive.

Counsel for the Crown was asked to give the Court his assistance and he did go through the evidence with great care. At the end of the day there was, in our judgment, circumstantial evidence which pointed in one direction and one direction only, namely the guilt

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of the applicant, and which was inconsistent with innocence. Once the jury had accepted the presence of the applicant on the scene, and the other circumstances we have identified, and rejected the applicant's story, it was entitled to return a verdict adverse to the applicant.

In all the circumstances, we can find no reason to interfere with the verdict of the jury. The application is therefore refused and the conviction and sentence affirmed.