

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 77/81

BEFORE: THE HON. MR. JUSTICE KERR, J.A.
THE HON. MR. JUSTICE ROWE, J.A.
THE HON. MR. JUSTICE CAMPBELL, J.A. (AG.)

REGINA

VS.

KENNETH EVANS

Mr. A.G. Gilman and Miss D. Gordon for Applicant

Mr. W.W. Alder for Crown

HEARD: December 2, 1982

NOTES OF ORAL JUDGMENT

ROWE P.:

The applicant was convicted in the Home Circuit Court on May 5, 1981 before Wright J. and a jury for the murder of Horace McKenzie and was sentenced to death. He filed two Grounds of Appeal, thus:

- " (i) Unfair trial.
- (ii) Verdict unreasonable having regards to the evidence."

He foreshadowed that further grounds would be filed by his attorney. That was not to be. At the hearing of the application, Mr. Gilman addressed the Court, saying:

"After diligent study, the Defence has to announce that there is nothing they can find to argue in favour of this application. "

The facts adduced by the Crown were that at 3 a.m. on February 18, 1980 the deceased and his girlfriend were in their bed at Fleet Street, Kingston. The woman was awakened by an explosion and she saw five men in her room, three standing at the foot of her bed and two were standing

at the door. She was able to see them as electric lights in the room were turned on. At that time she observed that her boyfriend was bleeding from his side.

One of the men, who wore a mask about his mouth, had a firearm from which he discharged two further shots. The woman identified the applicant whom she knew as "Scabbie-diver" to be one of the men standing at the door. She said too, that after the two additional shots were fired, she heard clicks as if further attempts were being made to fire the gun. When the gun failed to go off, the men hissed their teeth and all five walked away together. The defence was an alibi.

All the questions which arose for determination were fully and fairly left to the jury and in the end no complaint was made against their findings or in relation to the directions of the learned trial judge.