J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL Nos. 45 & 46/82

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

R. v. LEBERT POUNALL & CARL BELL

Mr. Dennis Morrison for the applicant Lebert Pounall

Mr. Robert Pickersgill for the applicant Carl Bell

27th January, 1984

ZACCA, P.:

The applicants Carl Bell and Lebert Pounall were charged along with three other men for the murder of Vivian Brown on 4th June, 1980. The facts very briefly are that on the 4th June, 1980, it was alleged that several men including the two applicants went to a house in Zion Hill District in St. Catherine, and there murdered Vivian Brown. The evidence as related with respect to the applicant Carl Bell was that he was seen on the verandah of the house by two witnesses, Granville Brown and Robert Clunis, as one of the men involved in this incident. There was also evidence that a portion of a little finger was found in the doorway the next morning.

The crown led evidence to the effect that the applicant Carl Bell was seen on Saturday, 7th June, 1980, at the Constant Spring Police Station with three of his fingers of the left hand bandaged. The crown sought to lead evidence to the effect that

a C.I.B. Form, Ex. 6, under the name of Carl Bell was found in the Criminal Record Office and that an impression was made of the tip of the finger found, and that Inspector Daley took the finger-print impressions of the accused nine fingers. That is, excluding the left little finger. The impression of the tip of the finger was tendered in evidence as Exhibit 5, and the finger-print impression taken from the accused was tendered in evidence as Exhibit 4. The finger-print impression bearing the name of Carl Bell which was found in the Criminal Record Office was tendered in evidence as Exhibit 6. There was evidence that the impression of the tip portion of the finger was matched and compared with the left little finger impression found on Exhibit 6, and in the opinion of Sergt. McKenzie, the Finger-print Expert, the impression matched, and he said that it was highly probable that the finger that made the impression on Exhibit 5 was the same finger that made the impression on Exhibit 6. Therefore, it was sought to link the applicant Carl Bell through this portion of the little finger.

On behalf of the applicant Carl Bell, it was submitted that the learned trial judge was wrong in admitting the finger-print impression that was found in the Criminal Record Office (Exhibit 6), and further, that in any event there was no nexus between Exhibit 4 and Exhibit 6 in order to establish that Exhibit 6 was in fact the impressions of the fingers of the applicant Carl Bell. The crown conceded that having read the record fully, there is no evidence from which it could be said that a comparison had in fact been made between Exhibits 4 and 6, and that in fact the impression on Exhibit 4 had in fact

matched the impressions on Exhibit 6. It would seem that the jury must have considered the evidence of the finger-print impressions as very vital to the case for the crown because it has been argued that without that evidence the jury would have come to a different verdict.

The evidence as to identification was indeed weak evidence and in fact the evidence as to identification was similar to the evidence of identification led with respect to the three accused who were in fact acquitted by the jury. So it is reasonable to assume that if the evidence of the Finger-print impression had not been available to the jury, that the jury may well have come to the conclusion that the applicant Carl Bell was not guilty of the charge of murder. We are of the view that this evidence was wrongly admitted and if it had not been available, the jury would have come to another conclusion. We are of the view therefore, that the conviction of the applicant Carl Bell cannot be sustained. We do not think it is necessary on this occasion, although indeed another point has been raised, to rule on the question of the mere admissibility of this record Exhibit 6.

Arguments have been put forward which would suggest that misuse was made of the document Exhibit 6, having regard to the Finger-Print Act and as this was not a public document it ought not to be admitted unless the maker of the document had in fact attended at court to give the relevant evidence. However, having regard to the fact that we find (and it has been conceded by the crown) there was no nexus between Exhibit 4 and Exhibit 6, then it is quite clear that the admission of the evidence with regard to comparisons made between Exhibit 5 and Exhibit 6 was wrongly tendered in evidence and ought not to have been admitted in evidence. The application of Carl Bell is treated as the hearing of the appeal. The appeal will be allowed, the conviction quashed and the sentence set aside and

a verdict of acquittal entered.

With respect to the applicant Lebert Pounall, his conviction relates to the question of identification, and it has been submitted on behalf of Pounall that the evidence of identification was unsatisfactory and that the verdict of the jury is unreasonable in that on the basis of the evidence a verdict of guilty in relation to the applicant is inconsistent with the verdict of not guilty entered in respect of three other persons charged at the trial with him.

It was also submitted that the learned trial judge failed sufficiently to relate his directions on the question of identification to the actual evidence in the case of identification, and in particular he failed to alert the jury to the weaknesses in the evidence of identification of the applicant within the overall context of the need to approach the question of identification with caution. We have paid great attention to the directions of the learned trial judge on the question of identification. We are of the view that proper and accurate directions were given by the learned trial judge, having regard to the authorities, and that the directions on identification cannot be faulted in any way.

So far as the weakness of the evidence of identification is concerned, three witnesses gave evidence for the crown who alleged to have seen the applicant Lebert Pounall on the night of 4th June, 1980. The evidence was that all three witnesses knew the applicant prior to the incident, and the question of the light was challenged.

Insofar as the question of the light is concerned, the learned trial judge dealt fully with the evidence as it related to the question of light and the opportunity that the witnesses would have had to observe the men who committed this act.

We are satisfied that the learned trial judge dealt fully and accurately with all these matters relating to identification. Insofar as the weakness of the evidence was concerned, again the learned trial judge pointed out whatever discrepancies had arisen in the trial and it was a matter for the jury to consider the evidence which was led before them and for the jury to say whether the witnesses would have had a sufficient opportunity having regard to the state of the light and other matters, to observe the applicant. It is said there were many discrepancies as to the state of the light but these were left to the jury for their consideration and we are satisfied that there was sufficient evidence for the jury to consider the question of the guilt or innocence of the applicant Lebert Pounall.

The jury, after considering the evidence and the directions of the trial judge came to a verdict of guilty with respect to the applicant Lebert Pounall, and we see no reason for disturbing the finding of the jury.

The application of Lebert Pounall is refused.