

CA Criminal Court - Gun Court Trial Ending

Identification - visual identification

Application for leave to appeal refused

JAMAICA

Application for leave to appeal refused

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 167/88

BEFORE: The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Wright, J.A.
The Hon. Miss Justice Morgan, J.A.

R. v. MAURICE MONTEITH

Mr. A.J. Nicholson for Applicant

Miss Marcia Hughes for Crown

26th June, 1989

CAMPBELL, J.A.

At about 11:15 p.m. on Sunday August 30, 1987 David Harriott and his brother-in-law Patrick Derby were walking to a party travelling from York Avenue in the direction of Mahoe Drive. They had reached a bridge which separates York Avenue from Mahoe Drive. Patrick was in front and was just about stepping off the bridge while Harriott was in the middle of the bridge. Harriott heard a voice say "come cross if you a come cross." He recognized the voice and looked in the direction from whence the voice came. He saw the applicant sitting with a machine gun in his lap on the gully banking about five to six yards away. Harriott had known the applicant for over 12 years. As Patrick cleared the bridge and Harriott crossed over, there was a rapid spurt of gun shots which struck him in his side and right arm. This evidence was substantially confirmed by Patrick.

The applicant made an unsworn statement which raised an alibi. The issue of visual identification was the real and sole issue involved. The learned trial judge having warned himself of the danger of mistaken identification even in recognition cases, painstakingly and minutely analysed the evidence relative to this issue. He resolved the issue adversely to the applicant and there was evidence to support his finding. Mr. Nicholson quite correctly informed the court that he could not properly support the application.

Application for leave to appeal is refused. Sentence ordered to commence from 21st October, 1988.