

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 12/85

BEFORE: The Hon. Mr. Justice Carberry, J.A.
The Hon. Mr. Justice Wright, J.A.
The Hon. Mr. Justice Bingham, J.A. (Ag.)

R. v. MAURICE THOMAS

Mr. K.D. Knight and Robin Smith for the applicant

Mr. Walter Scott for the Crown

September 24, 1986 & January 28, 1987

CARBERRY J.A.

This was an application for leave to appeal against a conviction for murder in the Home Circuit Court before Gordon J. and a jury. The applicant was charged with having murdered Anthony Chamberlain on the 15th day of March, 1982, in the parish of St. Catherine. The trial commenced on the 31st January, and continued on the 1st, 4th and 5th February, 1985. The application for leave to appeal was treated as the hearing of the appeal, and we dismissed the appeal and affirmed the conviction and sentence. As has become customary in these cases we now record our reasons for that decision.

On Monday 15th March, 1982, in a village or district called Lauristan (in the parish of St. Catherine) there lived in a small house with an enclosed yard a peanut vendor called Allan Gray, his common law wife Gloria Thompson, their son Laurel Gray, and Gloria's nephew Anthony Chamberlain. Laurel seems to have been absent from home that afternoon. As to the others: Allan Gray was sitting on the back steps drinking a mug of "chocolate tea", Anthony or Tony was sitting on the front verandah, and Gray had just handed the empty mug to Gloria to

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take inside when both heard the sound of gunshots from the front of the house. The peace of the afternoon had been broken by the invasion of what may be fairly described as a mafia type execution squad whose objective was the execution of Allan Gray. Whether his sales involved a line other than peanuts is unknown.

Hearing the sound of the shots Gray and Gloria seem to have gone round the side of the house towards the front, to see what was happening. They met Tony coming towards them from the front, holding his "stomach": he had been shot - as the medical evidence disclosed in the anterior left chest, over the heart, puncturing the left lobe of the lung and rupturing the muscles of the heart. From her vantage point inside the house Gloria had heard just before the shooting a voice calling out "Nutty, Nutty!" (Allan Gray's nick name). She had heard Tony reply "Is not Nutty this" and a reply: "You are not Nutty (but) you are Nutty's (expletive deleted) body guard" this was followed by the sound of gun shots and Tony's appearance running from the front of the house round the side towards the back steps.

Following behind the mortally wounded Tony were two men: the applicant Maurice Thomas who had what Gray describes as a "long point gun in his hand, and a man known to him as Roy who was armed with a piece of iron pipe wrapped with rubber. On seeing Gray, the applicant Thomas (who rejoiced in the nickname "Berec" - brand name for a type of flashlight and battery) skipped to one side of Tony and started to fire point blank at Gray. His aim was poor: Gray ran round the other side of the house, only to meet two other members of the execution squad. They made him kneel down and resting the gun on his shoulder they shot him through the jaw. He fell to the ground, feigned dead, and they all departed.

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Gray picked himself up off the ground, took a taxi to the Spanish Town Police Station, and was sent from there to the local hospital, and ultimately to the Kingston Public Hospital, where he remained for three weeks. He never saw Anthony Chamberlain again.

Gloria for her part, having met Tony mortally wounded and seen the applicant fire at Gray who was chased out the yard, went back into the house, opened the front door to escape, only to see the applicant and others of the gang who had now arrived. She ran back inside, and hid herself under the bed, waited there for some five minutes. Hearing no further action, she ran over to her next door neighbour and took refuge. Some hours later she plucked up her courage and escorted by an unknown neighbour she went to the Spanish Town Police Station and made a report. She said that Tony had come up the back steps and collapsed (inside the house) between a bicycle and a bag of peanuts. When the police visited the scene as a consequence of her report Tony's dead body was discovered there, in a pool of blood.

In his evidence Gray stated that he had lived in the district some 15 years, and had known the applicant and Roy from they were going to school. He knew them by name: the applicant as a customer who bought peanuts from him, they had had no previous quarrel. He had given the names to the police, and also the names of the other two men who had shot him through the jaw, when he had run out into the street. The applicant lived in the same district some half a mile away.

In her evidence Gloria said that she did not know the applicant's name, but had known him by sight for a long time. She described him as the only grey-eye boy in Lauristan.

It is to be observed that neither witness actually saw the applicant shoot Anthony Chamberlain, but neither had any doubt about it. In cross-examination Gloria stated that she saw the applicant shooting her Allan out of the yard, and that he had shot her nephew. She added that she was not afraid of the Court, but was afraid of the friends whom the applicant had "outside there" and because of them she had had to move from her home: "I have to run for me live."

A suggestion was made that Tony had been shot not by the applicant, but by one of those members of the gang who arrived later and had attempted the "execution" of Gray. The suggestion was clearly untenable on the evidence given by these two witnesses, and was far-fetched to say the least. It did however provoke the judge into advising the jury of the doctrine of common design, and remarking that even if the suggestion was possible, there was clearly a common design to execute the peanut vendor and any one else deemed to be his protector.

It is a sobering thought that had the police intervention or investigation at the scene begun earlier it is just possible that Tony's life might have been saved. They visited the scene at 10.30 p.m. when Gloria went and made her report.

The incident took place at about 6.30 p.m. daylight saving time, the light was good, and both witnesses had known the applicant for a long time. It appears that despite this an Identification parade was held, but it appears that neither of these two attended it and it is not too clear whether or not it related to this incident.

The applicant was arrested on this charge on the 26th July, 1982, and is alleged to have made in response to the caution the ambiguous statement "The peanut man nuh know me already sir!" The defence suggested that this remark was in fact made at the identification parade, but this was denied.

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Whenever in fact made, it was pregnant with possibilities.

The defence was an alibi. The applicant gave sworn evidence to the effect that while he knew Allan Gray,

and knew Gloria Thompson by sight, he had not shot the deceased Anthony Chamberlain, nor been present at the fateful scene in Gray's yard on the 15th March, 1982. He knew where they lived as he too lived in the same area, but on that afternoon he had been at home with his mother and sister, and had even had a visitor, one Christine Findlay who had passed by their home that very evening. The alibi was supported by Christine, who said she had passed there that evening and remembered the date because she had visited Lauristan to look at or view the body of another person who had died in the district. On her way back she had heard gun shots (suggested to be those that had occurred at the Gray's home) and had gone on to find the applicant and his family at their home, where she had stopped to get water and recover her breath.

After a short summing up (some 45 minutes) the jury returned a verdict of guilty of murder some 36 minutes later. They clearly rejected the defence of alibi, and clearly drew from the Crown's evidence the inference that it was the applicant who had shot the deceased Anthony Chamberlain dead.

There were three grounds of appeal, neither of which persuaded us to intervene. It was pointed out that the evidence against the applicant was "circumstantial" in that neither witness had actually seen him shoot the deceased, and that the summing up had been confusing on that issue. We were unable however to find any such confusion: the inference from the evidence was clear, and the jury drew it, and rejected the alibi put forward.

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It was also suggested that the trial judge should have left the issue of manslaughter to the jury: while the directions on common design were not themselves challenged, that he should have left manslaughter as an issue for consideration on the basis that the common design discernable was to kill "nutty" (Allan Gray) and that when Tony was killed this might have been by some other member of the gang who had gone outside the common design.

The suggestion was untenable, having regard to the evidence of Gloria Thompson as to what had been said prior to the shooting, and having regard to the evidence that the other armed members of the gang had arrived on the scene after the deceased had been shot and just in time to catch and attempt to execute Gray after he had escaped the applicant and had emerged on the street.

Finally it was suggested that as to identification of the applicant by the two main witnesses the judge had been content to use the "formula" suggested in Oliver Whyllie's case but had failed to sufficiently explore the strength and weaknesses of that evidence. It is enough to say that we did not share this view of the summing up on this issue. Counsel for the applicant suggested that having regard to the arguments urged there should be a new trial, conceding that on this evidence, a jury properly directed could have found the verdict which this jury found.

It is enough to say that if the jury accepted the evidence offered by the prosecution in this case, and rejected the alibi proffered by the defence, no other verdict was possible and that we were not persuaded that there was any cause to intervene.