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JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS: 30 & 31/85

BEFORE: The Hon. Mr. Justice Kerr, J.A.  
The Hon. Mr. Justice Campbell, J.A.  
The Hon. Mr. Justice Downer, J.A.

R. v. McCORDIE MORRISON  
TONY JONES

Delroy Chuck for Applicants

Kent Pantry and Eme Usim for Crown

Application for leave to appeal  
murder conviction

July 6, 1987

CAMPBELL, J.A.

On the 6th July, 1987 the Court of Appeal through Kerr J.A. presiding refused the application for leave to appeal of the two applicants who had been convicted of murder in the St. Elizabeth Circuit Court held at Black River on March 6, 1985. From the record they were represented at their trial by attorneys-at-law Miss Lorna Bennett and Michael Clarke, for their applications for leave to appeal their conviction they were assigned Mr. Delroy Chuck attorney-at-law.

The applicants had themselves filed the under-mentioned grounds in support of their applications for leave namely -

1. Unfair trial
2. Evidence unreliable
3. Insufficient evidence to warrant a conviction.

No supplementary grounds were filed by Mr. Chuck who on the 6th July, 1987 informed the court that after having read the record he could find no ground on which to support the applications for leave to appeal which applications in his view were without merit. We agreed entirely with him and Kerr J.A. orally dismissed the applications.

I recall that Kerr J.A. in orally dismissing the applications referred to the evidence which disclosed that the applicants in the night of March 6, 1984 were participants in a joint enterprise with another to use violence if necessary to rob the deceased Rudolph Foster of the day's receipt from his grocery shop. The deceased vainly attempted to escape. He was held up by the two applicants and hit in the head. He managed to escape with a pan containing the money. He was chased and fired upon by Tony Jones while McCordie and the other man blocked his escape route, and one of these two men shouted presumably to Jones "Shoot the man nuh man". The medical evidence and the forensic evidence disclosed that death resulted from shot-gun wounds which dis-integrated the spinal cord and sections of the central nervous system. The shot-gun when fired was no more than four yards from the deceased so that all the pellets entered the deceased's back at one site leaving a deep open wound 2½ inches in diameter into which the plastic wad which capped the gun-powder and the fibre wad which provided the base for the pellets also entered. McCordie on being arrested and charged with the offence of murder, after caution said "How come a me alone you arrest?" The applicants were each known to the main prosecution witness for upwards of sixteen years. The place where the incident started was at a shop which was

well lit by electric lighting. This witness was positioned across the road facing the shop. There was also a street light about 15 feet to his left which also shone on the right side of the shop. It was from there that Tony Jones was chasing the deceased towards the direction of the witness then across the front of the shop. The critical factors for satisfactory visual identification of both applicants were present and adequate, the applicants on their own admission were well known to the witness and in the case of McCordie his statement on arrest amounted to admission of participation in the murder.

Kerr J.A. also referred to the learned trial judge's direction to the jury on the issue of visual identification, which we considered was adequate. The learned trial judge at page 104 had said:

"Now the crux of the prosecution's case is that of identification for you may feel that the accused, either of them has not, have not been properly identified. Any doubt on the identification of the accused must be resolved in the accused's favour because it is common knowledge that in this island of ours more than two million people live and in any area you may find more than one person, two or more persons, maybe, who bear a marked resemblance because of the admixture of the races that we have in our heritage. A witness may be mistaken on identification. Although it is our experience that a honest witness who makes a honest mistake will readily admit it, a honest witness may be mistaken and be unaware of the mistake and insists that he is not mistaken. You, therefore, have to look at the circumstances that obtained that night which led to the identification of the accused persons."

The learned trial judge had thereafter considered in detail the evidence of Mr. Canute Thompson the eye-witness for the benefit of the jury.

It was because we were fully satisfied that the learned trial judge's direction to the jury on the vital issue of identification was fair and adequate and that ample evidence to support a proper identification did in fact exist that the court per Kerr J.A. dismissed the applications.