JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 91/85

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WHITE, J.A.
THE HON. MR. JUSTICE DOWNER, J.A. (Ag.)

THE QUEEN

against

MICHAEL HEATH

Mr. Delroy Chuck for applicant

Mr. Walter Scott for Crown

1st & 3rd October, 1986

CAREY, J.A.:

The applicant was convicted in the Clarendon Circuit Court on 18th September, 1985 before Wright, J., and a jury for the murder of one Donald Burrel, and on 20th September sentence of death was passed on him.

In one of the remoter districts of the parish of Clarendon is Blackwoods. On the night of 13th January, 1985 Donald Burrel and Percel McKenzie were walking in that district on a road with the quaint name of 'Canecoo Pass'; they were intending to go to a dance being held in the local dance hall. The applicant who emerged from a shop along the road, exclaimed 'that' it was a long time he want to kill one of we', and producing a long machete delivered one chop to Burrel almost entirely severing the

neck from the body. According to the pathological evidence, the victim died from haemorrhagic shock, that is, he bled to death. The witness Percel McKenzie gave positive evidence identifying the applicant as the assailant. At the time the blow was delivered, the witness was (as he testified) "close as ever" to the assailant whom he said had grown up with him in the same district; had gone to school with him, and they had worked together. He recognised the voice as being that of the applicant when the killing took place; it was not yet night.

Some few days before the incident, there was a conversation between the applicant and Vinette Johnson, who is the girl friend of McKenzie. She said that the applicant threatened that he was going to kill McKenzie. When she enquired what would become of her in the event, his retort was that he would kill one of three persons, among whom was his eventual victim. Vinette Johnson reported this to her boy friend McKenzie who in turn confronted the applicant. He did not deny saying what Johnson had related, but explained that the reason for his utterance was that he felt that McKenzie would seek revenge since the applicant had some difference with his friend.

The applicant in a rather rambling and incoherent statement from the dock put up alibi as his defence. At the material time, he was at home and never left it. He did say in the course of his account, that he had on 13th January attended a dance where some fracas took place. A bottle hit him on his foot. He did not know who was responsible, but one Steven Black had grabbed him in the

collar of his shirt and lifted him so that he just barely touched the ground. This person then boxed him three times. He retaliated by throwing a 1 oz piece of block which caught Black on his hand. Then on the Monday following, he again saw Black who rushed at him. He then recounted an incident with Vinette Johnson in which he suggested that she had said that she would have chopped Stephenson (presumably Steve Black) if Stephenson had attacked her. He admitted that McKenzie had spoken to him about Vinette Johnson's report, but he had denied making any threats. He produced a witness, Patrick Blair, who narrated that he was present that night at a dance hall when Percel McKenzie had rushed in to report the death of Burrel. When he was asked to say who was responsible, he said he had not seen the attacker because the night was dark. In an answer to the Court he was constrained to admit that although the applicant was his friend, and he was well aware that it was McKenzie's evidence which had led to the applicant's committal to stand trial, he had, nevertheless, not contacted the police to contradict McKenzie's story.

The facts were altogether uncomplicated and unexceptionable. The question for the jury which was clearly left for their consideration was the identity of the murderer. The learned trial judge was plainly mindful of R. v. Whylie [1978] 25 W.I.R. 430 in his directions as to visual identification, and was careful to call to the jury's attention all the facts that bore on the matter, adequately and fairly.

In the face of this evidence and the fairness and correctness of the directions of the learned trial judge, learned counsel for the applicant candidly told us that, having read the papers carefully, and considered the summing-up of the learned trial judge, he was quite unable to find any ground which could, with conviction, be urged in favour of the applicant. We, sharing the views of learned counsel that the application was entirely devoid of merit, as we did, we could see no reason whatever for interfering with the verdict of the jury.

For these reasons we were constrained to refuse this application for leave to appeal.