JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 243/89

COR: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE GORDON, J.A.(AG.)

R. v. NATHANIEL WILLIAMS

Mr. Berthan Macaulay, Q.C. for applicant

Miss Diana Harrison for Crown

4th December, 1990

CAREY, J.A.

In the Home Circuit Court on the 1st December, 1988 before Ellis J., and a jury the applicant was convicted on an indictment which contained 3 counts alleging against him murder of a couple Mr. and Mrs. Silvera and the latter's sister Mrs. Alexandria Shaffer. The applicant who was sentenced to death, now applies for leave to appeal those convictions.

Mr. Macaulay has candidly pointed out to this court, that having read the papers with great care, he is unable to find any reason to challenge the summing up. Indeed he characterized it as overly generous. Nor would he ask this court to interfere with the verdict of the jury. He took a very short, narrow and if I may say so, an interesting point.

Before dealing with the ground which was argued, it is only necessary to give a brief outline of the facts to demonstrate the overwhelming case against this appellicant.

This couple and Mrs. Shaffer lived in a small district called Mount Cokely or Muddock's Spring which is near Temple Hall in the parish of Saint Andrew. They were all elderly people.

The applicant was a gardener and odd job-man employed to them. He also lived on those premises. Around the 28th of June, 1986 there was evidence that the relationship between employer Mrs. Silvera and employee had soured. It appeared from one of the witnesses, Mr. Edgar Maitland that Mrs. Silvera had required the applicant to leave the premises by the following morning. When the helper left the premises on that afternoon, 28th of June, she left everyone hale and hearty. She also left the applicant on the premises. During the night of the 28th, a neighbour heard cries and shouts of "whoy, whoy" but those shouts did not disturb his slumber because he remained in bed.

On the Sunday the helper was recalled to the house and what met her sight was indeed a ghastly one. The three old people were dead: they had received a multiplicity of chops to their heads, their throats and their hands. The evidence showed that either the hand or some finger of Mrs. Silvera had been amputated. On the 29th of June, a neighbour, Derrick Grand heard shouts of "see the murderer there." There was a chase in which he joined. The applicant was the person being chased, in the course of which he was hit on his head. He was carrying a bag which fell from his grasp. He made his escape. When that bag was examined, it contained certain items including keys, a cap, a pair of glasses and the bag itself all of which were subsequently identified as being the property of Mr. or Mrs. Silvera. On or about the 15th of July, 1986 the applicant gave himself up to a district constable who seems to be a family friend. He confessed that he was indeed the murderer. When a Deputy Superintendent first interviewed him he also acknowledged that he had killed these people and he also gave reasons for his actions. His motive was that there had been a refusal to increase his wages and in fact his employers were refusing to give him redundancy pay. Those facts led the learned trial judge to leave the issue of provocation to the jury. That

was one of the factors which Mr. Macaulay suggested demonstrated the indulgence of the learned trial judge. He also gave to the police officer a cautioned statement which reiterated the fact that he had killed these people and his reasons therefor.

Those facts which we have endeavoured to outline, were not challenged in any way by the defence. Indeed it is rather difficult to see what the defence was. The applicant made no statement from the docks he remained silent and called a doctor who apart from saying that the applicant was mildly depressive, really fell short of any evidence to show that the defence of diminished responsibility could be prayed in aid. Plainly, the verdict was inevitable and as to that, Mr. Macaulay has candidly stated that he could not challenge the verdict of the jury.

So we can return to the point that was made by him. His ground was stated thus -

> "The trial of the applicant was a nullity in that -
>
> (a) The applicant never pleaded to the Indictment (b) there was no Order made by the trial judge directing a plea of not guilty to be entered on the record pursuant to Section 11 of the Criminal Justice Amendment Act."

What took place at the beginning of this trial, were it not for the nature of the case, would provoke some hilarity. When the applicant was pleaded by the Registrar in the court to the first two counts, he used certain Jamaican expletives which we do not propose to reiterate. When he was pleaded on the third count of the indictment having used the same type of language with regard to the other two, he added these words - "I don't know nothing about that".

Thereafter, followed a lengthy debate between Bench and Bar as to whether the applicant had stood mute. There was an adjournment during which the learned trial judge said he would advise himself. With the assistance of counsel for the Crown, and counsel for the defence, what must be described as really a charade took place. A jury was empanelled to determine the issue of whether a man who had opened his mouth loudly and spoken quite clearly and distinctly as to what he thought of each count on the indictment, stood mute of malice or by the visitation of God.

A doctor was called and evidence adduced. The jury found that he was mute of malice. Prior to the issue being put to the jury, however, the realisation came to the learned trial judge that he was not mute. He was then pleaded once again. On this occasion, having exhausted his expletives doubtless, and cognisant as well of the warning of the learned trial judge who had indicated after his indecent words, that if the applicant persisted in their use, he would have him gagged, he maintained a most respectful silence. This silence prompted the learned trial judge to embark on the trial of this issue and the jury duly found that he was mute of malice. He was then put in charge of the jury in words which Mr. Macaulay has also called in question. Perhaps we should read the charge (so far as relevant) -

> " .... to this indictment he was <u>pleaded not guilty</u> and therefore it is your charge having heard the evidence to say whether he be guilty or not guilty."

The proclamation followed and the trial proceeded.

It is true as Mr. Macaulay has quite properly indicated that the learned trial judge never made any order that a plea of "not guilty" should be entered. Section 11 of the Criminal Justice Administration Act is in the following terms -

> "11. If any person, being arraigned upon or charged with any indictment or information for treason, felony, piracy, or misdemeanour, shall stand mute of malice, or will not answer directly to the indictment or information, in every such case it shall be lawful for the Court, if it shall so think fit, to order the proper officer to enter a plea of, "not guilty" on behalf of such person, and the plea so entered shall have the same force and effect as if such person had actually pleaded the same."

Mr. Macaulay said that this applicant has not pleaded nor answered directly to the indictment and that the learned trial judge was obliged to give some direction having regard to the proceedings which had taken place.

In our view, when the applicant used the words to which reference has already been made at the time the indictment was put to him, adding as well "I don't know nothing about that", that was a most direct answer the applicant gave to the charges. Plainly, in our view, he was answering the charges and saying he was not guilty. There was no need, in our judgment, for the judge to order, pursuant to Section 11, that the Registrar enter a plea of not guilty. Plainly that was wholly unnecessary, the applicant having not stood mute. Further, the applicant had stated in emphatic terms in Jamaican language that he cared little for these things. That amounted, in our view, to answering directly to the indictment.

It was argued by Mr. Macaulay, that because of the intervening charade which took place whereby there was a trial of the issue of mute of malice or by visitation of God, then the charge which was read to the jury saying that he had pleaded not guilty was wrong and that also made the matter a nullity. We cannot accept that

submission. The fact of the matter is that the applicant had pleaded not guilty albeit in Jamaican language and when the Registrar read the charge he did so on the basis of a plea of "not guilty" to the counts on the indictment. That, in our view, is sufficient to dispose of this very narrow and interesting point. But we would refer to R. v. Brennan 28 Cr. App. R. 41 where the appellant was pleaded to an indictment which contained two counts. He pleaded guilty to one and not to the other but was sentenced on both. In those circumstances, the failure to plea was held to be a nullity. That is not only good sense, it is good law. That is not the situation here. No irregularity took place; even if what took place was wholly unnecessary for the reasons we have stated, and what we have characterized as a charade, could not alter the fact of the plea of not guilty having been made to the charges in the indictment.

The application for leave to appeal is accordingly refused.