C.A. CRIMINAL LAW – Murder – (Applicant convicted for murder of two little children, one his 16 month old son) Applicant counsel concedes he can see no ground of merit to put before Court
Court agrees – very clear evidence – evidence overwhelming – no basis on which one could interrupt the summing-up of the learned judge
Application for leave to appeal refused.

JAMAICA

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No Case referred to

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 129/87

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

R. vs. OSWALD ANDERSON

Derrick Darby for applicant

Miss V. Grant for the Crown

June 6, 1988

CAREY, J.A.:

In the St. James Circuit Court on the 23rd of July, 1987 this applicant was convicted for the murder of two little children named Kayon Dawkins and Gregory Anderson, the latter being his son, then aged 16 months.

Mr. Darby, who today appears on behalf of the applicant, has quite candidly conceded that having read the papers carefully, he can see no ground of merit to put before the Court. We entirely agree with that view of counsel. But, as has now become the practice in cases of murder, we propose to say something on the matter. The facts were as follows; and we propose to state them only in summary form -

Marlene Archer is the mother of three children, one of whom she had by this applicant, and she lived with her children at a place called Granville in Montego Bay in St. James. On the 5th November, 1986 she was sleeping at her home at about 11 o'clock

when she was awakened by a voice calling to her from outside on the verandah. She recognised that voice to be that of the applicant. He summoned her to his presence but she declined to comply with that order because, as she told him, she had retired for the night. The applicant delivered himself of some curse words and departed. Some twenty (20) minutes later, he returned and again demanded that she present herself to him, and once more she declined. The next incident was that the window was broken, because a stone had been hurled through it. Then, that was followed by a sound and an explosion. She ran out, only to find that the bedroom in which she slept with her three children was in flames. She managed to save one of the children and the other two died in the conflagration which followed the discharge of that fiery object. We would add that the house was burnt to the ground.

A witness who gave evidence on behalf of the prosecution testified that round about that time, he heard an explosion; saw flames and also observed the applicant running off, himself ablaze. He called to him and asked him what was the reason for setting the place alight, and while enquiring that, the response was, the girl rip him off, and that she took him for an idiot.

The applicant made an unsworn statement in the dock as is customary in this jurisdiction, in the course of which he admitted going to the house and calling to his former girlfriend when he noticed a fire. He ran. He admitted being held, but he stated that he knew nothing about the actual hurling of any missile and certainly he was not responsible.

The learned trial judge was very generous, we feel, he left the issue of provocation to the jury for their consideration. Plainly, the jury rejected that piece of indulgence, and on very clear evidence, returned the verdict of guilty of murder.

The facts were too simple for words. The evidence was overwhelming, and the jury came, in our view, to the right decision and as Mr. Darby properly indicated, there really is no basis on which one could impugn the summing-up of the learned trial judge. In the circumstances, the application for leave to appeal is refused.