

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS. 26 & 27/83

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

THE QUEEN

V.

PATRICK WHITELY &  
LESTER WILLIAMS

Howard Cooke, Jnr. for Whitely

D.V. Daley for Williams

John Moodie for Crown

23rd & 26th September, 1986

CAREY, J.A.:

In the Home Circuit Court before Smith, C.J., and a jury on 24th & 25th February, 1983 these applicants stood trial with two other persons for the murder of one Oswald Lindsay and upon conviction, each was sentenced to death.

The circumstances which gave rise to this charge may properly be labelled dastardly.

On the 9th January, 1981 the victim of this crime was driving in his car from church with Lester Case whither they had gone to prepare for service on the next day. At Bull Bay,

a number of men stopped his car. Presumably none of these men were ever apprehended or charged. Their leader was one David Taylor. Crown Counsel, although receiving a broad hint from the learned Chief Justice that Taylor's words to Lindsay was admissible, declined to accept the suggestion. Taylor gave emphasis to his words by pointing a gun at him, whereupon Lindsay ordered Case to open the door of the car. Case complied. Three men including Taylor then got into the car. All were armed with guns. Lindsay was ordered and drove his car to a beach called Subway Beach. Both men were taken from the car and at this point these applicants who were both known to Mr. Case, emerged from shrubbery along the beach. Two of the men who had commandeered the car, fetched two pieces of rope which were used to truss up both Lindsay and Case. During this exercise these applicants stood guard. On its completion, Williams gave a signal and a boat appeared sailing towards the beach. In it, were two men, one of whom was actually charged and tried for complicity in the murder but was acquitted. These men, also, were armed with guns. On their appearance, the applicant Williams released Case remarking at the same time that "Case was his boy". Thereafter, a discussion took place between the boat-men and two of the other men, neither being these applicants. The upshot of all that talk was that the boat and the boat-men left the scene. Some fifteen minutes later, Lindsay and Case were taken to another section of the beach. Some of the men fetched a shovel. Lindsay whose hands had been tied behind him all this time, was led away by a group of the men including Whitely. Williams in the meantime warned Case that if he reported what had

taken place, he would be killed as would his relatives and his house burnt. He was then made to stand under a large guango tree in company with Williams. Lindsay's car then came up to where he was but was driven away. In it were Taylor and another man. At this point he heard six (6) explosions. He said in evidence that he bent his head and held his belly. The applicant Williams walloped him in his belly and said - "Feel it fi yuh fren' eeh." He walked Case to the main road and advised him that if he were asked about Lindsay, he should say that he had dropped him off and returned to Town. Case then went home.

Some time, subsequent to these events, and while Case was in 'protective custody', he pointed out Williams as one of the men who had played a part in Lindsay's death. Williams' retort was -

"See how mi pull you and tell the man dem nuh fi kill you, and you mek the policeman dem a beat mi up."

In May 1981, he identified the applicant Whitely to the police as another participant in the crime. This applicant said he knew nothing about murder "is the other rest a man dem."

The body of the victim was discovered by the police on 13th January, 1981 in a shallow grave on a beach at Bull Bay. The medical examination carried out by the government pathologist Dr. Mariappa Ramu revealed a firearm entry wound at the back of the head. The bullet had passed through the brain.

Whitely said in an unsworn statement that he was in the area of Bull Bay on the night of the murder but had nothing to do with the killing of Lindsay.

Williams admitted being in the area of Bull Bay and was compelled by two men to do what he had no desire to do. He had nothing either against the murdered man or Case whose life he asked them to spare.

The learned Chief Justice in an impeccable summing-up which neither counsel for the applicants has sought to challenge in any way, correctly, as we think, left the following questions to the jury clearly, fairly and adequately:

1. Was there a plan to kill the victim?
2. Were the applicants present and participating in that common design to kill?
3. Was the applicant Williams present participating willingly in the plan?
4. In the case of the applicant Whitely, did the evidence satisfy them so that they felt sure that he was present at all, bearing in mind his denial that he was present?
5. Was the applicant Whitely present when Lindsay was actually shot?
6. What significance would they attach to the words attributed to Whitely - that he was there but he knew nothing about murder, he did not kill the man (Case's evidence) or that he knew nothing about any murder, 'it was the other man that kill the man' (Detective Inspector Thomas' evidence).

The jury's verdict is explicable only on their answering these pertinent questions in a manner adverse to these applicants, and rejecting the stories told by the applicants. The evidence was, in our view, overwhelming and both counsel had no difficulty in stating their opinion which we shared that there was no ground on which any challenge could be made with respect to the verdict of the jury.

Mr. Cooke for Whitely, however, raised the matter of the sentence imposed on Whitely. He produced evidence, which in the event, we accepted as credible, showing that at the time of the crime, this applicant was under the age of 18 years. Section 29(1) of the Juveniles Act forbids the imposition of sentence of death on a person who is a minor when he commits murder. It provides :-

"29.-(1) Sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the Court that at the time when the offence was committed he was under the age of eighteen years, but in place thereof the court shall sentence him to be detained during Her Majesty's pleasure, and, if so sentenced, he shall, notwithstanding anything in the other provisions of this Act, be liable to be detained in such place (including, save in the case of a child, a prison) and under such conditions as the Minister may direct, and while so detained shall be deemed to be in legal custody."

The applicant who was born on the 22nd July, 1964 would not yet have attained the requisite age of 18, at the time he committed the offence of murder on 9th January, 1981. In the result, we set aside the sentence imposed below and in substitution therefor sentenced the applicant to be detained during Her Majesty's pleasure.

It was for these reasons that we refused their applications for leave to appeal.