

C.A. CRIMINAL LAW - Murder - Manslaughter - Indictment - Evidence
Sentencing - Verdict - Appeal - JAMAICA refused.
Indication for leave to appeal

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 102/88

BEFORE: THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.

R. v. PAUL KELLY & ERROL WILLIAMS

Delroy Chuck for the applicant

Miss Paula Llewellyn for the Crown

March 13 & June 27, 1989

DOWNER, J.A.:

Paul Kelly and Errol Williams were convicted of murder and manslaughter respectively in the Home Circuit Court in a trial which lasted four days between 25th and 29th April, 1988, presided over by Orr, J., and a jury. The mandatory sentence of death was imposed on Kelly while Williams was sentenced to fifteen years imprisonment at hard labour.

The narrative of events was well summarised in the learned judge's summing-up and the starting point was the return of the James' brothers from Chelsea in St. James to their home in Irwin on the Saturday night of 21st March, 1987. They were traders, and Edwin the survivor related that he took a cylinder from the back of the van and went to count out the

money from the day's sales. There was a blackout caused by electric power failure and candles were lit and he went and turned on the headlights of the van. He further related that six men dressed as policemen and soldiers rushed down on him, three being on each side of the van. Four were masked he said and all were armed with short guns save one who had an M16. They ordered him to lie on his stomach; announced that this was a robbery; took his wrist watch and \$100.00 from him and ordered him to call his brother. They also threw a table cloth over his head and threatened to kill him if he made an alarm. When his brother responded from the bathroom, that door was opened and the men rushed in leaving one of the masked men to guard him.

The shooting of Aloysius James was witnessed by Miss Simon his live-in girlfriend and she pointed out that the accused Kelly was without a mask and armed with an M16. He held the candle while they both searched for a key to the drawer with money and she had a good opportunity of seeing him during the half-hour they were in the room together. On two occasions she had a very good opportunity of scrutinizing his face and she said he had a particularly wicked look after he fired the shot which caused the fatal wound. It was a horrifying experience especially as her baby was lying on the bed during the ordeal.

The doctor's evidence was that death was caused from shock, secondary to the gun shot wounds and the presence of powder suggested a close range which accords with the evidence of the eye-witness.

The other important feature in respect of the accused Kelly was the identification parade. The witness took some time as she walked along the line some four times before

identifying the accused and the judge directed the jury carefully on this aspect of the matter pointing out that they had to decide whether the fact that she cried on the parade and took some time to identify was evidence that the identification was sure or that she was mistaken.

The defence was an alibi. Kelly gave evidence which was supported that he was in Love Lane on the night of the incident and no complaint was made about the correctness of the directions of the learned trial judge on that aspect.

It is now appropriate to turn to the case of Williams, bearing in mind the Crown's case was based on common design. With respect to identification, it was somewhat different as Edwin James, the eye-witness, knew Williams for over ten years although he did not know his name. Williams in his evidence also acknowledged that he knew James. It was in those circumstances that the police conducted an identification parade and the accused was picked out by James. As for the opportunity of seeing him on the night of the murder, he reported that there were three occasions. The first was when the accused Williams and others rushed down on the van. The headlights were turned on, although he did not observe him for a long period on that occasion. The second was when Williams and another went to the left side of the van and took him to the back; and the third was when Williams and another of the men took him into the house. He said, on that occasion he was so close to the accused he almost brushed him and he looked at him. He saw his face and on that occasion by candlelight. This was a man whom he had seen for upwards of ten years in the streets of Montego Bay and at the Craft Market. As for the lighting on the van, apart from the headlamp, there were lights on the side. In his defence Williams resorted to an alibi which was

supported and the jury found him guilty of the lesser count of manslaughter, presumably on the basis that he was not in the room where the shooting took place.

Mr. Chuck who appeared for both accused, after a short submission conceded that he could not find any merit in the application for leave to appeal and this Court was in agreement with him and now puts its reasons in writing for refusing the application.

Consequently, the convictions and sentences were affirmed. The sentence of fifteen years hard labour in respect of Williams will run from 28th July, 1988.