

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 45/85

BEFORE: The Hon. Mr. Justice Kerr, President (Ag.)
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice Downer, J.A. (Ag.)

R. v. RALPH McKAY

Noel Edwards, Q.C., for applicant

John Moodie for Crown

13th & 24th November, 1986

CAREY, J.A.:

As has become the custom of this Court in cases of applications for leave to appeal murder convictions, we record our reasons in writing. Learned Counsel for the applicant frankly conceded that there was nothing meritorious he could find to argue before us in favour of this applicant. With that considered opinion, we were in entire agreement and refused the application.

On 29th April, 1985 the applicant was convicted before Theobalds, J., and a jury in the Clarendon Circuit Court and sentenced to death. It was alleged that he had murdered his brother Barry McKay on 29th September, 1983. The brothers McKay lived together in a house in a remote district in the parish of Clarendon called John's Hall, Frankfield. Their relationship did not appear to be the most amicable. In the afternoon of 29th September, the witnesses heard the applicant calling out that he had killed his brother and they should come and remove the body. As a number of school children were about at that

time, the applicant said that he desired only three (3) persons to come into the house. When the witnesses entered, they observed the applicant's brother lying dead on the kitchen floor, an agricultural fork sticking out of his head. The applicant was taken to the police station by a relative who testified that on that very day the slain man had told him that he was going to kill the applicant. When the applicant was handed over he is said to have remarked "When man have problems, they have to get rid of it."

The applicant made a terse unsworn statement from the dock. He is recorded as saying:

"ACCUSED: My name is Ralph McKay, sir. I am a labourer living at Frankfield, between John's Hall and Frankfield. On the day of question my brother Barry attacked me savagely with a cutlass and I use the fork that I was working with to

HIS LORDSHIP: Keep your voice up please.

ACCUSED: I use the fork to jook him to stop him from killing me."

We have, ourselves, read the transcript and note that the learned trial judge left the issue of self defence clearly and adequately to the jury. As must now be obvious, learned Counsel was not able to fault the directions nor question the verdict of the jury.

As the facts which we have recounted appeared to us to be somewhat bizarre, we were at a loss to understand how a defence of diminished responsibility was not put forward at his trial. Mr. Edwards intimated to us that he had firm instructions from his client that on no account was he to call a psychiatrist to give evidence on his behalf. In the circumstances, he was constrained to carry out his instructions. Learned Counsel was well aware that he could not possibly advance any arguments before us in that regard, and was equally aware as to what course he ought, therefore, to adopt.

It was for these reasons that we were constrained to refuse the application for leave to appeal.