

NOTE OF JUDGMENT

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS. 87/82 & 89/82

BEFORE: THE HON. MR. JUSTICE CARBERRY, J.A.
THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A. (Ag.)

REGINA

v

TREVOR WALKER
LAWSON RICHARDS

D. Chuck for Walker

D. McKoy for Richards

M. Dukaran for Crown

October 24, 1984

WRIGHT, J.A. (Ag.):

On October 24, 1984 these applications for leave to appeal against conviction and sentence of death imposed on May 17, 1982 for the murder of Samuel Anderson came before the Court. Mr. Chuck informed the Court that as regards the applicant, Trevor Walker, there was nothing that he could argue. The Court agreed with Mr. Chuck and dismissed the application.

On behalf of the applicant, Lawson Richards, Mr. McKoy sought and was granted leave to argue Supplemental Grounds.

Ground 1. The learned trial judge erred in Law in that in his directions to the jury he effectively removed from their consideration the issue of voluntariness of the caution statement attributed to the applicant Lawson Richards (See pp. 302, 322, 325, 327, 339 of the transcript).

2. The learned trial judge misdirected the jury as to the content of the caution statement attributed to the applicant Lawson Richards (See pp. 303, 304, 308 of the transcript).

Both applicants were convicted and sentenced after a trial lasting from May 10 to 17, 1982 before Bingham J. and a jury in the Home Circuit Court.

The deceased, Samuel Anderson died from a single gun-shot wound to his chest during a robbery as he was engaged in selling meat from a truck - which he was accustomed to do for some two years - at Hermitage, August Town in the parish of St. Andrew in the late afternoon of Friday, June 20, 1980. Nine witnesses testified for the prosecution but by far the most important witness, and the only witness as to identification, was Errol Edwards who was Mr. Anderson's assistant.

It was coming on to dark. Errol Edwards was sitting in the back of Mr. Anderson's stake-body Bedford truck which was parked on the road at Hermitage near the junction with Bailey's Road. Mr. Anderson was seated on the side-walk near the truck. Customers were approaching. As Edwards looked he saw two young men peep in the direction of the truck from about 10 yards away. He thought it suspicious and spoke to Mr. Anderson who then got up and moved towards the front of the truck. At that stage Edwards said he made out the applicant Walker as one of the two men. These two men with nothing in their hands suddenly made their way ahead of the approaching customers past the point where Edwards was sitting and when Edwards looked towards Anderson at the front of the truck these two men were standing on either side of Anderson, each with a gun in his hand pointing at Anderson and demanding his money. Anderson protested 'No, no, don't do it. I don't use to these things'. Next Edwards heard 'bow' - an explosion from one of the guns. Edwards shouted to them 'Hey, youth, don't kill the old man (Anderson was said to be about 66 years old) take his money and go on'. Anderson shook his head and Edwards grabbed up his knife and advanced towards the front of the truck but still in the back when Richards checked his approach with a mixture of expletives and

--'Boy, what you doing? You want a shoot you to -----'. Richards' gun was held upwards as he spoke. Walker grabbed the bag with the money from Anderson's back pocket and Edwards prompted by the threat jumped from the wing of the truck body and fled with the accompaniment of another shot behind him while the two assailants ran along Bailey's Road. Edwards made his report and by the very next day Walker who lived in the area was taken into Police custody by Detective Corporal Sparkes and five days later on June 26 Richards was handed to the Police by his mother and step-father.

On June 23 Walker gave a caution statement in which he said that at the instigation of one 'Buff' he and Richards went to the truck to rob the meat man and that 'Buff' gave Richards a six shooter gun with which he shot the meat man and then he, Richards, took away the money and they both returned to 'Buff' with the money from which they were each rewarded with \$50.00. But on June 26 Richards gave a caution statement in which the roles were reversed. Said he, he did go to the scene on the encouragement of Walker who was armed with a gun with which he shot the man despite Richards entreaty not to do so. And thereafter - and this agrees with Edwards - Walker took the money from Anderson's pocket. His share of the loot handed to him by 'Buff' was \$40.00. Both statements were admitted into evidence after 'voire dices' had been taken.

At an identification parade held at the Halfway Tree Police Station on July 2 Edwards identified Walker. However, it was in the dock that he identified Richards.

Both made unsworn statements in their defence. Walker pleaded an alibi - he was at the home of one Faye when he heard an explosion and became so frightened that he ran away. But the next day two policemen came for him and took him to the Police Station and locked him up because they said Detective Corporal Sparkes wanted him. On the Sunday morning he was taken to the C.I.D. Office where an Inspector, one 'Twewe' and Detective Corporal Sparkes beat him mercilessly with machete and black wire. He sustained machete injury over his eye. He was thus coerced to sign a

statement about which he knew nothing. It was then that Detective Corporal Sparkes fetched the Justice of the Peace, Mr. Francis who was well known to him. He made no complaint to Mr. Francis. Yet, although he said he was in pain and dripping blood, so much so that he had to be taken to hospital, when Detective Corporal Sparkes testified before the jury there was not even a suggestion of any brutality put to him.

In his statement from the dock Richards maintained as he had said in his statement, that he was present but in the role of a customer buying meat and it was just as he arrived at the truck he heard an explosion but could not tell what type of explosion. In fright, all the customers including himself fled. On June 26 while at home, a little boy named Delroy Campbell came and told him that the Police were looking for him in connection with the man who had died on June 20. His parents and one Jean accompanied him to the Police Station.

The issue of crucial importance was obviously visual identification and in a very thorough and careful summation the learned trial judge examined all the relevant aspects for the benefit of the jury.

In addition to the two Supplemental Grounds of Appeal set out earlier there were three other Grounds which were abandoned and it is worthy of note that none of these Grounds complained about the learned trial judges' handling of the issue of identification.

The voluntariness of the statement exhibited as having been given under caution by the applicant Richards was seriously challenged before the jury after Bingham J. had ruled the statement admissible as a voluntary statement. It would therefore, have been a serious error on his part had he, as Ground 1 complains, withdrawn the issue of voluntariness from the jury's consideration. However, when Mr. McKoy referred to the relevant passages in the summing-up from which he hoped to find support for his complaint he had to concede that the complaint could not be sustained. Indeed the complaint was misconceived. At page 325 the learned trial

judge said:-

"Lawson Richards had been brought to the station as you will recall the evidence, by his mother and his step-father and he was handed over. Learned Counsel for the accused Richards makes the point that this is certainly something in his favour because if he was really one of the two culprits involved in this fatal shooting would he come to the station and give up himself? But this is a matter for you to consider. If it finds favour with you then by all means give to this bit of evidence whatever weight you think fit in the circumstances.

But you might consider that this might have been something that is consistent with Richards' innocence. It might go towards supporting the fact that he in those circumstances could never have given a statement under caution in the manner as this caution statement given by him tended to suggest. It would seem to be completely contrary to the fact that he, as in this statement that he gave, could have gone along with another man who had a gun and taken part in this robbery. But it is a matter for you to say how you regard it.

Then at page 327 he said:-

"It was being suggested that he was beaten on a number of occasions, punched, beaten with electric wire and then beaten on another day and so forced to sign the statement. It was being suggested that he never even dictated it, he never altered it, the statement is a concoction, a fabrication by the police, and his signature was only got on the document after a beating that he received."

That is how the jury was directed to consider the statement. It is difficult to think of a more balanced or a fairer manner in which this issue could have been presented to the jury. In the face of such an eminently fair presentation Mr. McKoy capitulated and gracefully left the field taking with him Ground 2 for which there was no factual support and abandoning the other three Grounds already mentioned

It was in those circumstances that we refused the application for leave to appeal.