

No. 734

J A M A I C A

IN THE COURT OF APPEAL

C.A. Nos. 29/65, 30/65, 31/65

BEFORE: The Hon. Mr. Justice Duffus, President
The Hon. Mr. Justice Waddington
The Hon. Mr. Justice Moody (Acting)

R. vs. UDA MAITLAND
ALVIN FORREST
LUCILLE DAHL

MR. A.M. Spaulding for Uda Maitland)
MR. I. Ramsay, Q.C. for Alvin Forrest)
MR. D. J. Thompson, Q. C. for Lucille Dahl)

MR. F. Phipps for the Crown.

6th December, 1965.

DUFFUS, P.,

The Court has given consideration to this matter which has arisen this morning when the appeal was called on for hearing. Learned Counsel for the appellant Maitland is seeking leave to argue eight fresh supplementary grounds of appeal which were filed in the Registry of this Court on the 13th of November.

On enquiry from learned Counsel for the Crown whether he was in a position to meet these new supplementary grounds, or whether he proposed to take objection to any of them, learned Counsel for the Crown intimated that he had no objections to offer in respect of seven of the supplementary grounds, but that he objected to the Court granting leave in respect of the sixth ground which reads:-

"That the learned trial judge misdirected the jury on the law of common design",
in that this ground was deficient in particulars as to what the appellant was complaining about.

Learned counsel for Maitland, Mr. Spaulding, then intimated to the Court that the matter would be dealt with by learned counsel, Mr. I. Ramsay, who appeared for the appellant Forrest, who had a similar supplementary ground, and Mr. Ramsay intimated to us that he was also today holding the brief for Mr. Dudley Thompson, Q.C. , who appears for the appellant Dahl, who likewise has a similar supplementary ground 6. The Court has listened to the arguments by Mr. Ramsay, supplemented by Mr. Spaulding and also to the objections taken by Mr. Phipps on behalf of the Crown. Mr. Ramsay conceded that the ground is not as full as it might have been, and he sought the leave of the Court this morning to further amend the ground by adding to each appellant's supplementary ground 6, in all three supplementary grounds, the following -

"That the learned trial judge misdirected the jury on the law of common design, in that he failed to tell the jury what the legal position would be, if, as a matter of fact, they found that the accused were not acting in concert, and that this error was compounded by the failure of the learned judge to direct the jury as to the mens rea required for manslaughter."

Mr. Phipps again objected to this ground being argued as supplemented by the additional particulars now given by Mr. Ramsay. He complained that the further particulars which Mr. Ramsay sought to add were really no particulars at all; that there was no statement as to exactly what was the misdirection complained of, and in short that the purported further particulars were far too vague and lacking in substance.

The Court has considered the matter very carefully and was minded to refuse the application, which was exactly similar to applications which were made to this Court earlier this term in the cases of R. v. Eric Brown on the 27th September, 1965, and R. v. Keith Bird on the 5th October, 1965.

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and two or three other cases in which the point arose. In those cases, the Court refused the applications to add supplementary grounds at the last minute, but as in the instant case the Court has set aside almost the whole of this week for the hearing of this appeal, and it is now after 12 noon the Court is prepared to grant an adjournment until tomorrow morning to permit learned counsel for the appellants to put their applications in proper order.

The Court has time and again complained about lateness of supplementary grounds and has given directions that when it is proposed to argue supplementary grounds which have not been included in the written supplementary grounds that have been filed, that at the very least these additional supplementary grounds should be put in writing and brought into Court, and that is what the Court will permit the appellants to do in this case. I may mention that the Court does not consider that the grounds as amended or added to by Mr. Ramsay this morning give sufficient details of what he is complaining of. If he wishes the Court to grant leave to argue these supplementary grounds tomorrow, he must see - and the same goes for the other appellants - that the amendment is put in writing and filed with the Registrar of this Court by two o'clock (I think that will give you enough time Mr. Ramsay) this afternoon, so that copies can be handed to the judges of this Court for their study this evening and a copy served on learned counsel for the Crown, who will also have an opportunity of studying the matter complained of.

We wish to make it quite clear that it is only because the Court has set aside the rest of this week for the hearing of this appeal, that it is in a position to grant this indulgence to learned counsel today, and it is not to be taken as a precedent, because otherwise, had the Court been minded to grant

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the application, it would have meant normally that the case would have had to come off the list, and the appellants who have already been in custody some eight months awaiting the hearing of the appeal, would then be detained in custody for at least another four weeks, and we do have to take into account the position of the appellants themselves.