JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 109/83

BEFORE: The Hon. Mr. Justice Rowe, President
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice Ross, J.A.

R. v. WILLARD COLLINS

Richard Small for Applicant

F.A. Smith Deputy D.P.P. and
Winston Douglas for the Crown

February 11 & March 17, 1986

ROWE, P.:

At a trial in the Home Circuit Court before Gordon J. and a jury twenty-one witnesses testified for the prosecution and the applicant gave evidence on oath. The trial lasted four days and the jury after retiring for 57 minutes returned a verdict of guilty of murder. Against this conviction Mr. Small advanced arguments on four grounds of appeal. We commend him on the clarity of his advocacy as well as his ready acceptance of the views of the court that the grounds proffered could not avail the applicant. We promised to put our reasons in writing for having dismissed the application.

Mr. Patrick Brooks who led the prosecution at trial has since resigned from the Department, but he has left behind a masterpiece of orderly presentation which made our task in

reading and reviewing the record a pleasant and forensically stimulating one. The case for the prosecution was multi-faceted and even the shortest summary will reveal the depth of perfidy of the applicant, who, in November, 1980 was a sub-officer in the Jamaica Constabulary Force.

The scenario begins with the theft of a Toyota Corolla motor car from premises in Kingston on October 6, 1980, in which the deceased Rudolph Johnson, had a proprietary interest. Three days later on October 9, the applicant took the stolen car to premises in Old Harbour and engaged one Eric Reid to re-duco the car in a metallic colour somewhat lighter than the original. The applicant returned the following day with the duco and he assisted Mr. Reid to strip vinyl from the top of the car. This was on the night of a Thursday and on the Saturday following, the applicant returned for the car and drove it away. One Clive Edwards, who testified for the prosecution, was seen by Mr. Reid and his partner Mr. Clement, in the vicinity of their garage when the applicant was making the arrangements for the re-ducoing of the car but they said Edwards took no part in the conversation. There was in the view of these witnesses no apparent reason requiring the re-ducoing of the car.

Police investigations into the theft of the car led them to one Dezie Lawrence in St. Ann and this man took a police party to the home of the applicant in St. Catherine on November 6, 1980. There Lawrence said it was the applicant who gave him the car and the applicant retorted, "Him carry it come give me sir". The deceased claimed the Toyota motor car notwithstanding that the colour was now light-brown instead of the original dark-brown as shown by the original colour in the trunk of the car. In the trunk of the car

was a sub-machine gun for the possession of which the applicant gave a satisfactory explanation. Under the left front seat of the car, Cons. Davies said he found a .38 Smith & Wesson revolver with serial No. D995425. He inquired of the applicant to whom that firearm belonged and the applicant's response was that it belonged to another policeman who was working along with him. Cons. Davies was not challenged in cross-examination as to the finding of the revolver under the left front seat of the car or as to the explanation which he said the applicant gave to him.

This firearm became an important link in the Crown's case. Acting Corporal Stephenson swore that on September 21, 1980, he issued .38 Smith & Wesson revolver serial No.D995425 to the applicant who was then assigned to a police unit referred to as Curtail Two, together with 12 rounds of live ammunition. The applicant was entitled to retain that firearm in his possession until he was being transferred from the particular Curtail at which time Acting Corporal Stephenson would attend at the Curtail and repossess or otherwise account for that firearm. Curtail Two had headquarters at Pembroke Hall Secondary School. Curtail Three had its headquarters at Jacisera Park and Cons. Aarons was on station-guard at that Curtail at 7:40 p.m. on November 23, 1980, when the applicant attended there and handed over a .38 Smith & Wesson revolver D. 995425. The applicant had enquired for firearms' register for Curtail Two but it not being there, the station-guard handed him the register for Curtail Three. The applicant was seen to write in that register and when the register was examined it transpired that the return of the firearm was under the date, November 13, 1980 and the serial number was clearly written over other writing already in that column. Constable Aarons noticed that the revolver was wet and the circumstances of its handing over aroused his suspicions and so he watched

the applicant leave the premises and was able to testify that he was driven away in a Morris Oxford motor car in which there was one other person, the driver.

Earlier on November 23, 1980, at about 10.30 a.m. Trevor Francis was walking on a lonely road leading from Point Hill to Bog Walk in St. Catherine. Sounds of gun-shots attracted his attention and on investigating he saw a pool of fresh blood in the road and the dead body of a man, later identified as Rudolph Johnson, in the bushes in the vicinity of the pool of blood in the roadway. He made an alarm. Police arrived and Det. Corporal Pennycooke observed that there were three bullet wounds in the dead body, one to the back of the head, one to the right side of the back and the third on the right inner forearm. In the pocket of the dead man was a promissory note signed "W. Collins". More about the promissory note anon.

Dr. Ramu found in his post-mortem examination that there was a firearm entry wound over the back of the head at the left side in the occipital region. Three fragments of bullet were found between the scalp and the bone and the projectile passed through the brain and lodged in the base of the skull near the pituitary fossa. The firearm entry wound to the back showed that the projectile passed through the 12th thoracic vertebra, the heart, the left lung then through the third intercostal space and finally lodged in the left wall of the chest muscle. These two bullets were recovered and given to the Ballistic Expert for examination. He found that the two bullets were fired from the .38 Smith & Wesson revolver D995425 which had been retrieved from Curtail Three.

One of the issues at trial was whether the prosecution had shown that revolver D995425 had been continuously in the possession of the applicant from September 21 to November 23, 1980. There was the apparently suspicious explantion given by the applicant to Cons. Davies on November 6 as to who was entitled to possession of the revolver and there was the surreptitious handing over of the same revolver on November 23. Clive Edwards, a self-confessed thief with a series of previous convictions, testified that he was a taxi-driver and was authorised by Tilford Wynter to drive Wynter's Morris Oxford on November 21, 1980. In this he was corroborated by Wynter who said he went to the home of the applicant at the invitation of Edwards on the night of November 21 and that the applicant sought the loan of his taxi for Saturday, the 22nd, on the pretext that he, the applicant, was having a problem with a man with whom his car had met in an accident and that that man being wrong, the applicant would have to go and settle the matter.

Edwards said that on the morning of November 23 in response to a message which he received from his baby's mother, he went to the home of the applicant sometime after 8 a.m. It was a matter of some importance as to the time when Edwards went to the home of the applicant. The Crown called a taxi-man Trevor Francis whose account was that he had pre-arranged with the applicant for the applicant to accompany him to Caymanas Park on Sunday the 23rd to confront a defaulting debtor to Francis, that when Francis arrived at the home of the applicant at about 8 a.m. on the 23rd, the applicant explained that he could not honour that appointment as he was busy. The applicant enquired of Francis if he knew where Clive Edwards lived and upon receiving an affirmative answer, the applicant requested Francis to go to the home of Clive Edwards and deliver a message that the

applicant wished to see Edwards. Francis testified that he did not find Edwards at home but left a message with his girl-friend. Inferentially then, it was this message which caused Edwards to drive to the home of the applicant.

Edwards was described by the learned trial judge as an accomplice. On Edwards' account he drove the applicant and another man in the taxi along an obscure route determined by the applicant into the hills above Bog Walk. A defective fuel pump in his car began to give trouble and the applicant suggested that he stop and fix the noise. While he was at the rear of the car, Edwards said he saw the applicant and the third man alight from the car, the applicant said, "A want to kill you long time" and he fired shots at him. The man fell in the road. The applicant went over him and fired a final shot into his head causing a wound from which blood came. Edwards said that at the applicant's request he helped to dump the dead body over the embankment of the road and then they drove back to Spanish Town and to his home. Evidence came from Francis that he saw Edwards and the applicant together coming from the direction of Bog Walk later that morning and that Edwards ignored his signal to stop.

Edwards further said that at his home the applicant sought a quantity of hot water which he poured over the revolver, then placed it in a paper bag. Both men went by another taxi to the applicant's home, and from there Edwards returned to his home for the Morris Oxford taxi in which he conveyed the applicant and the applicant's wife, first to Edgewater, then to a place on Molynes Road near "Redimix" (i.e. where Jacisera Park is situated) and finally to Spanish Town. According to Edwards on the following day the applicant came to him at Waterford and said the police were checking on him (the applicant), consequently he was going to the country and cautioned Edwards not to disclose that the applicant and

himself had gone anywhere together on the previous Sunday.

To return to the confrontation between the police in the person of Cons. Davies, the owner of the Toyota Corolla motor car, Mr. Johnson, and the applicant, on November 6, 1980. Mr. Johnson was prepared to accept payment for his motor car and settle the matter. This the applicant was willing to do but as he did not then have the money he wrote and delivered to Mr. Johnson a promissory note to pay twenty thousand dollars within 8 days. Various attempts were made by the applicant to raise the twenty thousand dollars but up to November 23, only a sum of three thousand five hundred dollars had been paid. It was this promissory note written by the applicant for $20,000 that Det. Corporal Pennycooke took from the body of the deceased.

From this narrative it becomes clearly discernible that the prosecution's case was predicated upon the basis that the applicant having been found in possession of a stolen motor car, was unable to keep his promise to pay for the same and devised the scheme to murder the man to whom the debt was owed. Throughout the conduct of his defence, the applicant sought to implicate Clive Edwards. The duco-men at Old Harbour denied suggestions that it was Clive Edwards who brought the Toyota Corolla to them and asked for the change of colour. Cons.Davies denied that he had sought a bribe of $1,000 from the applicant to be paid out of the $20,000 to be paid to Johnson. Cons. Davies denied that the applicant told him anything at the time of the handing over of the revolver at Curtail Three other than what he testified in evidence-in-chief. Edwards' girl-friend supported his story that on Sunday, November 23, the applicant and Edwards came to Edwards' home together and both went into and remained some time in the kitchen. But the main thrust of the defence was that Edwards had come to the home of the applicant in the early morning of Sunday, November 23 apparently intoxicated and requested the applicant to

permit him to sleep at the applicant's home as he was out of oil for his car. Acceding to this request the applicant said that Edwards slept on his living-room settee and left finally about 8:30 a.m. After the departure of Edwards he discovered that the .38 Smith & Wesson revolver which k he kept in a drawer in the living-room was missing. He went twice to the house of Edwards and found him on the latter occasion at 1 p.m. Edwards denied knowledge of the revolver and so he took him to the Spanish Town Police Station and made a report as to the missing revolver to one Cons. Barrington Sterling, who accompanied the applicant, his wife and daughter and Edwards to Hellshire beach. There Edwards produced the revolver from inside the car, handed it to him and then undressed and went for a swim. On the return journey Cons. Sterling stopped in Independence City and he caused Edwards to drive to Curtail Three intending to hand over the revolver. The applicant said that as soon as Edwards became aware that he was being taken to a place where police and soldiers were, Edwards deliberately stalled the car and then ran away. Part of the applicant's defence was that he made a report to Cons. Aarons, after which he went home by taxi. He had been on sick leave immediately prior to November 23 and as it was more convenient for his wife to live in Montego Bay, he joined her there while he remained on sick leave. His arrest on June 17, 1981 in Montego Bay came as a surprise as he had been attending various police stations to have his leave extended and no one accused him. The applicant further said that the arresting officer had malice against him as that officer had demanded a gift of $5,000 to be supplied when one of the applicant's

two race horses won at Caymanas Park. Detective Sgt. Grant denied the allegations. In the end the applicant denied participating in any way in the murder of Rudolph Johnson.

The first attack mounted against the conviction was that the judge's directions on corroboration were defective in that he failed to instruct the jury on the reasons for the warning that it is dangerous to act on the uncorroborated evidence of an accomplice especially as the trial judge failed to make it clear to the jury that it was their duty as judges of fact to determine whether any of the evidence capable of amounting to corroboration did in fact amount to such corroboration. At page 311 of the record the judge reminded the jury that Clive Edwards could be said to be the chief witness for the Crown. He told the jury that Edwards was an accomplice because on his own evidence he was not only present at the time of the committal of the offence but assisted in removing the dead body from the roadway. Then he went on to say that it was dangerous to convict on his evidence unless it was corroborated. Mr. Small relied on the decision in R. v. Price [1968] 2 All E.R. 282 for his proposition that the trial judge should have gone beyond the issuing of the warning and ought to have explained to the jury the reason and necessity for such a warning. Price's case was concerned with the conviction of a medical practitioner on a charge of using an instrument with intent to procure a miscarriage. The woman involved was treated as an accomplice. Sachs L.J. in delivering the judgment of the court held that the directions given by the trial judge containing the warning were not sufficiently precise and clear. Gordon J. confined himself to hallowed language used in giving this particular warning,

language which cannot in any sense be compared with the rather imprecise formulation in Price's case. Certain passages in the judgment of Sachs L.J. were relied upon by Mr. Small but in our view they have the effect of indicating that in a weak case the nature of the warning will vary from what would be considered adequate when the volume and quality of the corroborative evidence is quite overwhelming as in the instant case. There Sachs L.J. said:

> "Counsel for the appellant in his helpful submissions has pointed out that that particular passage does not refer in so many words to the dangers of convicting on the evidence of an accomplice, and has further criticised the absence, in those phrases in relation to the patient's evidence, of words making it clear that they should only act on her uncorroborated evidence if fully convinced that the patient was speaking the truth. This court has examined the above passage with anxious care and wishes it first of all to be made clear that there is no magic formula which is given to juries, nor is there such a formula as regards the circumstances in which, despite the absence of corroboration, they can act on the evidence of an accomplice. Nor does this court wish in any way to suggest that it is not open to a judge to indicate in his summing-up that the degree of danger or risk in relying on an accomplice's evidence may not vary considerably according to the circumstances of the particular case."

Gordon J. gave a formidable list of the pieces of evidence capable of amounting to corroboration, and notwithstanding the complaint in ground 2 that the judge usurped the functions of the jury in holding that particular evidence amounted to corroboration of the evidence of Edwards, we find that the jury could not have been misled as to the respective functions of judge and jury on this issue. In a laconic passage on page 312 of the record the learned trial judge, in the context of evidence capable of amounting to corroboration, directed the jury that:

> "It is a matter of inference, an inference you can draw, if you accept it, that amounts to corroboration that the possession of this weapon was continuous in the accused up to the time he handed it over to the police on the night that the crime was committed. That is evidence which amounts to corroboration, if you accept it as such."

Although we found no merit in either the first or second ground of appeal, it seems to us that a trial judge may, in cases where he has reason to believe that the level of intelligence of the jury so requires it, expand on the warning as to the dangers of convicting on the uncorroborated evidence of an accomplice by explaining to the jury the rationale behind such a warning. This might have the effect, in appropriate cases, of rendering the warning, more intelligible to the jury. There can be no definite rule as to the circumstances in which the explanation will be warranted as in nearly all cases the question must be left to the discretion of the individual judge.

During the course of the cross-examination of the applicant, counsel for the crown made a series of suggestions to the applicant in respect of a wrecked motor car which the applicant had purchased. One can speculate as to what use the crown would have made of affirmative answers to those suggestions, but all the answers were in the negative. The learned trial judge wisely ignored that portion of the evidence and did not allude to it in any way in the course of the summing-up. To hold that there should be a specific direction to disregard those suggestions, would we think be to place on the trial judge an unnecessary burden. Consequently, his ignoring that portion of the evidence did not amount to a non-direction.

An attempt had been made by defence counsel at trial to cross-examine Cons. Aarons the station-guard at Curtail Three on November 23, 1980 as to something allegedly said to him by the applicant about Clive Edwards. The witness replied that he did not hear the name Clive Edwards nor did the applicant tell him that he, the applicant, wished to write a formal statement. Having replied that he did not hear the applicant mention the name "Clive Edwards", Cons. Aarons was asked:

"Q. Yes. He told you that one Clive Edwards ...."

An objection was raised by crown counsel on the basis that whatever was being put to the witness was self-serving and counsel relied on the decision in R. v. Fernando Marks, S.C.C.A. 138/75 (unreported) in which the judgment of this court was delivered on July 30, 1976. Defence counsel responded that his suggestions were a mere continuation of the narrative already given by Cons. Aarons. The court upheld the objection but ruled that defence counsel could put the question and he would then decide whether or not the witness should answer. The question which followed was a damp squib:

"Q. Did he tell you that he would write a formal report?

A. No, Sir, he didn't say that."

Defence counsel subsided. But the matter did not stop there. When the applicant was giving evidence-in-chief he spoke of his visit to Curtail Three and of seeing Cons. Aarons. His counsel asked a neutral question to which the applicant began to make reply and his counsel interrupted him. The further series of questions and answers went like this:

"Q. Was he in uniform?

A. Yes sir, he was in blue uniform - blue overall - I told him that ----------

Q. You spoke to him?

A. Yes, sir.

Q. And having spoken to him what you did?

A. I told him ----------

Mr. Brooks: M'Lord, I am objecting.

Q. Now, having spoken to him did you do anything?

A. I handed over the firearm to him."

In the face of the trial judge's earlier ruling and the objection of crown counsel, the defence was reluctant to pursue the line of examination in an effort to introduce evidence of what the applicant was supposed to have told Cons. Aarons. There was nothing on the record, as defence counsel readily conceded, to make it clear what it was that defence counsel was trying to elicit. Nevertheless, it was submitted to us that as the prosecution had led evidence of a number of things which it alleged that the applicant had said to Cons. Aarons, the defence was entitled to have put before the jury its version of what the defence was saying happened or was said. It was possible, so the argument ran, that the defence might have had a different version from the prosecution as to what happened or was said or the defence might have had a fuller version of what the prosecution said either happened or was said. The result it was said, was that the prosecution was being permitted to edit from a set of circumstances about which it has introduced evidence, other material, merely because in the opinion of the prosecution those portions were self-serving.

Watkins J.A. (Acting) who delivered the judgment in R. v. Fernando Marks, supra, (incidentally I was the trial judge in that case) said:

> "The law is well settled that a party is not permitted to make evidence for himself and so a statement by an accused party which is merely exculpatory is, without more, inadmissible. Such a statement may, however, be admissible in evidence
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> (i) if it forms part of the res gestae or is tendered to rebut a suggestion that a defence was a concoction (as in Robert's case, [1943] 28 Cr. App. R.102 at 106) or
>
> (ii) as showing the reaction of the accused when first taxed with incriminating facts (R. v. Storey [1968] 52 Cr. App. R. 334 at 337)."

On the night of November 23, 1980, Cons. Aarons did not know of the murder of Rudolph Johnson. He did not ask the applicant any questions and on his account of the conversation the applicant did not call the name Clive Edwards. No one asked the applicant why he was returning the firearm. How then could his statements be a reaction to an accusation of crime? We are clearly of the view that assuming the applicant did say something to Cons. Aarons in addition to what that witness testified, those statements would fall squarely within the prohibition adumbrated by Watkins J.A. viz, a party is not permitted to make evidence for himself. In our view this ground of appeal failed.

Police investigations into this crime were thorough and the case was presented with clarity. We could see no ground whatever on which the jury's verdict could possibly be disturbed in relation to this murder most foul.