

GA - Remittitur - Murder - Trial - Summing up - Evidence  
No misdirection by trial judge - evidence summing up - to be  
Amended for leave to amend refused.  
JAMAICA  
No case for acquittal  
conf

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 89/88

BEFORE: The Hon. Mr. Justice Campbell, J.A.  
The Hon. Mr. Justice Wright, J.A.  
The Hon. Mr. Justice Downer, J.A.

R. v. WINSTON WHYTE

Robin Smith for Applicant

Miss Y. Sibble for Crown

February 27 & March 13, 1989

CAMPBELL, J.A.

The applicant was convicted in the Saint Catherine Circuit Court of the offence of murder and sentenced to death by Ellis J., before a jury on April 18, 1988. The charge was that on August 12, 1987 the applicant murdered Humphrey Brown in the parish of Saint Catherine. The incident took place on the Jamaica Public Service premises at Old Harbour. The evidence of John Grant a security guard supervisor is that on August 12, 1987 about 11 a.m., the deceased a security guard was on duty in the guard house on the Jamaica Public Service compound. He heard someone who was on the Jamaica Public Service playing field adjacent to the compound calling to an employee Chester Waul on the compound. The deceased proceeded from the guard house to the playing field presumably to investigate as the playing field was out of bounds to non-Jamaica Public Service employees. The deceased had his baton with him. The deceased spoke to the person who was calling Chester Waul. This person was Glenmore Paul who was in the company of the applicant. The deceased warned the applicant off the playing field. The latter moved as if he was leaving but

suddenly turned, retraced his steps and bore down on the deceased with an open ratchet knife which he pulled from his waist. He used this knife to stab the deceased in his left breast from which the deceased died.

Glenmore Paul gave evidence in more detail as to the occurrence. He said he was on the playing field by the fence talking to Chester Waul who was on the opposite side. The deceased came by the fence and told them they could not be there talking. He began moving away. The applicant came along and was warned away by the deceased. The applicant argued with the deceased who came through the gate by the playing field fence ostensibly to get the applicant off the premises. The applicant began moving away but stopped and began a further argument with the deceased. He brandished a ratchet knife with which he menaced the deceased who kept backing away while endeavouring with his baton to ward off a stab attack. He was unsuccessful and was stabbed in the left breast. The medical evidence was that death resulted from the stab wound which penetrated the chest some 5-6 inches and went right through the heart.

No issue of self-defence, provocation or lack of intention to kill or cause serious bodily injury arose on the Crown's case. However, in the unsworn statement of the applicant these issues were raised and the learned trial judge fully, adequately and correctly directed the jury on them.

Mr. Smith sought leave to argue two supplemental grounds relating to provocation and self-defence. In the light of the evidence and the summation he however formally abandoned them. He thereafter sought to mount a submission based on inadequate direction on the treatment of discrepancies. Again he had to concede that he could not sustain any submission thereon.

We were unable to discern any misdirection of the jury by the learned trial judge and the evidence amply supported the verdict of the jury. For these reasons we on February 27, refused the application for leave to appeal.