

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 66/06

**BEFORE: THE HON. MR. JUSTICE HARRISON, P.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MRS. JUSTICE HARRIS, J.A.**

R v COURTNEY ELLIOT

Applicant unrepresented

Miss Lisa Palmer and Miss Sanchia-Gay Burrell for the Crown

18th June 2007

ORAL JUDGMENT

HARRISON, P.

This applicant Courtney Elliot was convicted in the Circuit Court Division of the Gun Court in the parish of St. Thomas on the 3rd April 2006 for the offence of murder and sentenced to life imprisonment. It was ordered that the applicant should not be eligible for parole before he had served 28 years. This application has been renewed before this Court after the single judge had refused him leave to appeal his conviction and sentence.

The facts as outlined by counsel for the Crown are that on the 23rd May 2003 the deceased and his girlfriend, one Velma Scott, were at home in a room in a district called Wheelerfield in the parish of St. Thomas. At about 6:30 that morning the applicant came there. He called to the deceased "Longo". He

accused the deceased that he, the deceased, along with his friends had killed one "Beepot," a relative of the applicant. Longo, the deceased, was then sitting on the bed and Miss Scott said that the applicant pulled a gun from his waist and pointed the gun to the side of the head of Longo. She heard a sound, saw fire gash, and she ran through the door. She heard another explosion and she ran to a neighbour. She subsequently returned with the police to the house and saw the deceased lying on the bed. He was bleeding from his forehead. On the 1st July 2003, she attended an identification parade and identified the applicant. She denied in cross examination that there was any struggle.

Sgt. Myers also said he got a report and he went to the house. He saw the deceased lying there. One Det. Campbell also went to that house and he took up a spent shell from the ground and also an expended bullet. Both of these articles were sent to the Forensic Laboratory where they were examined by Supt. Hibbert.

Cons. Wynter, on the 13th June 2005, went to the home of the applicant. There he apprehended the applicant and took from him a 9 mm semi-automatic pistol with a loaded magazine. He took him to the Princess Margaret Hospital. He, the applicant, had been shot.

Det. Riley went to the Princess Margaret Hospital and spoke to the applicant. He received from Cons. Wynter the semi-automatic pistol and the magazine. Det. Sgt. James, who did the identification parade, told the court that the applicant was identified by Miss Scott. Det. Insp. Webster, who was the investigating officer, related that he went to the house, saw the deceased and

saw the wounds to the deceased. He went to the applicant's home on the 3rd June and there retrieved a shirt and in addition a funeral programme in respect of the funeral of one "Beepot". The essence of that, is that it does, to some extent, confirm Miss Scott's evidence that the applicant did go there and make a comment as to the involvement of the deceased in respect of "Beepot." Certainly the funeral programme shows that "Beepot" may well have been associated with the applicant.

Det. Webster said he subsequently arrested the applicant for the murder of "Longo." His correct name was given as Hamroy Reid.

Dr. Sessaiah did the post mortem examination. He said that he saw two gunshot wounds. The first had an entry to the left front of the neck and the exit wound was on the left side of the chest. There seemed to have been a downward movement of the trajectory of the bullet which would of course contradict the defence that there was a holding of the hand and the gun was pointing upwards. On the contrary, it supports the prosecution that the deceased was sitting on the bed and the applicant was standing in front of him, above him.

There was a second entry wound to the left side of the right eye and that exited from the left occipital area of the skull. Here again this shows that the bullet entered the head and went horizontally across. The doctor said the cause of death was due to multiple gunshot wounds. The doctor also said that there was no gunpowder residue to these wounds. This would indicate that the muzzle of the gun was then a distance of more than 2 feet away from the body of the deceased when the firearm was discharged. Of course Miss Scott had given

evidence that there was this almost touching of the gun on the deceased but the doctor's evidence would not support that.

Mr. Hibbert, the ballistics expert, examined the firearm, examined the bullet, the expended cartridge case and also the copper jacketed bullet he received from Det. Cons. Campbell. He said when he received the firearm from Det. Riley he examined the 9mm semi-automatic pistol, and the striation marks on the bullet and also on the cartridge casing. In his opinion the bullet and the cartridge casing were both discharged from the barrel of the 9mm semi automatic pistol. Certainly, that supports the Crown's case as to the fact that that bullet and the cartridge casing were both discharged from the 9mm semi-automatic pistol found in the possession of the applicant.

The defence was one of self defence and the learned trial judge also left self defence and accident. The applicant agreed that he went to the home of the deceased that morning. He told the deceased that he did not know he and his friends had killed "Beepot." He said that the reaction of the deceased was "what you a informer?" It was the deceased who turned, took up a gun while sitting on the bed and turned around with the gun. He said he grabbed it, they wrestled and the gun went off twice. He said that Longo was shot and he the applicant went out with the gun. He said he kept the gun with him until the police took it from him on the 30th June. Of course he admitted that he did not tell the police that Longo got shot.

The learned trial judge dealt with this aspect of the defence, dealt properly with the issues of the burden of proof, and with the discrepancies that arose in

the case. She also dealt with the expert's evidence and how the jury should deal with that in their consideration of the evidence.

The learned trial judge also dealt extensively with the law in respect of self-defence and left these issues for the consideration of the jury. The jury rejected the defence of self defence, in our view quite correctly, and convicted the applicant of the offence of murder as charged.

We agree with Miss Palmer, for the prosecution before us, that there were no issues on which this Court should consider that the conviction should be disturbed.

The application for leave to appeal is refused and the sentence shall commence on the 3rd day of July 2006.