

C. CRIMINAL - Murder - whether verdict "unreasonable  
CA. or cannot be supported having regard to the evidence."  
- appeal dismissed

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 74/83

BEFORE: THE HON. MR. JUSTICE KERR, J.A.  
THE HON. MR. JUSTICE CAMPBELL, J.A.  
THE HON. MR. JUSTICE WRIGHT, J.A.

REGINA

vs.

ANTHONY WILSON

Mr. Alonzo Manning for Applicant

Mrs. Marva McIntosh and Miss Heather Dawn Hylton for Crown

January 15, 1986 & March 19, 1987

WRIGHT, J.A.:

On January 15, 1986, this application for leave to appeal against conviction and sentence of death for the murder of an un-identified female on either the 12th or 13th day of July, 1980 came before the Court. Leave was granted to argue one Ground of Appeal as amended to read:

"The verdict was unreasonable or cannot be supported having regard to the evidence."

After hearing Mr. Manning and without the need to call upon Counsel for the Crown in an oral decision we refused leave because we held that there was no merit in the Ground, that the evidence was ample and the summing-up impeccable. The following are the facts upon which we came to our conclusion.

The trial was held before Orr, J., and a jury in the Home Circuit Court on June 27, 1983 about three years after the killing, which had taken place at 49 East Queen Street. On these premises, in addition to rooms upstairs occupied by a dentist and a bar operated by one Miss Hamilton, there were two rooms, one of which was occupied by the applicant, who was caretaker for the premises and the other by Pauline Brown otherwise called Ioney Dixon, who was an important witness for the prosecution. Indeed, so important was this witness because of the telling effect of her evidence that the defence sought to lay the killing at her door alleging jealousy on her part.

Her evidence was that she had seen the unfortunate victim who sold cigarettes, on more than one occasion. Indeed, on the evening preceding her death she had seen her sitting at a table in Miss Hamilton's bar. However, she did not know her name. The witness went to a dance on the night of July 12, returning home about mid-night. On going to her room she had to pass the applicant's room - she calls him "Reds". Her relationship with him was good. She observed that his bedroom door was open being "kotchted" with a buffet and that the applicant's little child was asleep on the front of the bed and the same un-identified female dressed in a pair of pants and a "ganzie" was also asleep on the bed. Fearing that the child might fall off the bed, the witness entered the applicant's room and put the child on the inside of the bed and it was then that she observed who the female was. She then went to her room and retired to bed. In the early morning towards daylight she heard the sound of a female voice crying in the applicant's

room while the applicant was saying: "Give mi mi \$35.00, give mi mi money weh yuh tief." Upon coming out of her room she saw this female lying outside the applicant's room naked. She spoke to her but had no response. The applicant was then standing at his doorway dressed in a light-blue vest and a pair of red underpants. On these she observed blood. In addition, she saw "nuff blood on the floor and on the mattress" in the applicant's room.

The female lay bleeding from her chest and her vagina and was still crying. The witness fetched from her room a blouse, a skirt and a panty and gave them to the female but she did not put them on. They were left on a bench beside her. She returned to her room and fell asleep.

Sometime afterwards the applicant shook her awake - she is called "Stick" - and said: "Stick, Stick the girl dead. Weh me fi do?" She said to him: "Call the police." At that he said to her: "When the police come you must tell the police say we were inside and hear the gate knocking and when we go we see the girl drop down like she was coming from dance and dem rape her." The witness had a ready

answer for this plan to pervert the course of justice. She replied: "I can't tell the police that, because no blood down the gate or the passage, the whole a the blood down a fi you room." To his request that she put the clothes on the female, she responded that she was not touching her because she did not want her finger-print to go on her;

whereupon, he dressed her himself, then took a key, opened the gate and went to the bar. Not unnaturally, the applicant denied the use of any words attributed to him by this witness. What he said he told her was to tell the police what happened.

In view of the fact that in cross-examination it was suggested to her that, it was she who had hit the deceased with a spade and also because she stated that, she was yet to face the Resident Magistrate's Court on a charge of Larceny, the learned trial judge quite correctly cautioned the jury to look for support for her evidence because she might well have an interest to serve, in paving the way to secure a favourable treatment at the trial of the pending charge. Further, out of an abundance of caution, it would seem, the learned judge advised the jury to disregard a portion of her evidence because he felt there was no connection between the applicant and that aspect of the case, which concerned the finding by the police on the premises, the next morning, of the charred remains of a zippered garment, "like when you burn a ganzie and it don't burn good." In the result, therefore, neither the skirt in which, according to the applicant, the unfortunate deceased was dressed nor the "ganzie and pair of pants which the witness Pauline Brown testified to have been the garb of the deceased, when she saw her asleep in the applicant's bed, has been accounted for. But there is an aspect of her evidence which, if accepted by the jury, must have had a devastating effect on the defence of the applicant. It was this. She said, referring to the time she saw the woman lying in the applicant's bed: "When I saw the girl first nothing never do her." How different was it when she next saw her - naked, bleeding from torso and vagina and unresponsive to efforts to get some clothes on her!

The narrative is continued by Miss Lurline Hamilton, the proprietress of the bar who does not even know if

Pauline Brown lives on the premises. This seems to be accounted for by reason of the respective locations of the various rooms on the building and the fact that there is a separate gate by which entrance is gained to the two rooms towards the back of the premises which were occupied by the applicant and Pauline Brown.

Miss Hamilton's evidence was that, within about five minutes of her opening the bar around 9:00 a.m., the applicant came to her and told her that a girl ran through his yard, stole his money and he beat her and he showed her a piece of stick. Upon her inquiry as to where the girl was, he said she was in the passage. When Miss Hamilton looked in the passage she was so frightened at what she saw, that she turned back through the gate without going very close to the girl, who sat crouched against the wall - bleeding. The length of the stick shown her was about the length of her arm from elbow to finger-tip and, said she, was not the blood-stained one which the police found on the premises and exhibited in Court.

With regard to what Miss Hamilton said was the report made to her by the applicant that a girl ran through his yard, it is significant to note that according to Pauline Brown, in order to go to the bar the applicant took a key and opened the gate.

A rather lengthy cross-examination of Pauline Brown did not secure any significant change in her testimony. Rather, it enabled her to amplify it. During cross-examination she stated that after she came in from the dance and was lying in bed, the applicant had come and offered her chicken. She did not take it but her room-mate



Ivoreen Thompson did. This was before she heard the crying. When she heard the crying she woke up Ivoreen, who also went and looked at the naked bleeding girl and then fled the premises.

Such bonus as was gained from the cross-examination of Miss Hamilton, if bonus it can be called, was a confirmation of her testimony and a slight change by way of confronting her with her deposition, that at the Preliminary Examination she had stated that the applicant had said in his report to her that he "knocked" the girl. That was in contrast to "beat" as she testified before the jury.

Medical evidence given by Dr. Ramu disclosed the following injuries:

- "1. Contusion on the front of the upper extremities and front of thighs. This was reddish in colour.
2. Linear abrasions 1 inch in width and varying lengths were seen over the front and outer side of the right arm, outer side of the left forearm, back of right forearm, front of the right leg and over the back.

On internal examination the entire scalp was contused and reddish in colour. The brain showed subdural haemorrhage.

The mucus surface of the upper lip was contused and reddish in colour. The organs in the chest cavity, that is, lung and the heart and the viscera, the abdominal cavity, stomach, intestines were all congested.

The cause of death was shock and haemorrhage as a result of injury to the head by blunt external force of moderate to severe degree. An instrument such as the blood-stained piece of stick found by the police [Exhibit 1] used with a moderate degree of force could produce the injuries."

Tests at the Forensic Laboratory of vaginal and anal smears

taken by Dr. Ramu proved positive for spermatozoa.

Constable Grace White to whom the applicant made his report on the morning of July 13, 1980 at the Central Police Station and who accompanied him to the premises and saw the body of the deceased in the passage, related that when the applicant came to the Station he reported that at about 4:00 a.m., he heard a knocking at his gate and on looking out at a window he recognised the person as someone he knew and so he went and opened the gate and that the young lady told him that she was coming from a dance when she was beaten and that he had rendered her first-aid. When she viewed the body she saw "marks of violence" - it was battered and bruised and bloody - and it was dressed in a skirt and blouse. She made a report to Detective Sergeant Horace Forbes. The body was removed to the Kingston Public Morgue. On the next day Detective Sergeant Forbes visited the premises at 49 East Queen Street and in the applicant's room he found the piece of stick (Exhibit 1) with what was subsequently confirmed by Forensic Examination to be blood-stains (Group O) corresponding to the blood of the deceased. From an area where something appeared to have been recently burnt in the yard he retrieved the zippered remnant of a burnt garment which the learned trial judge directed the jury to ignore. After Detective Sergeant Forbes had returned to the Station, the applicant, whom he had not seen up till then, came to his office, dressed in blue vest and a pair of red pants from which the legs had been cut. These were taken from him. Tests showed that blood-stains (Group O) were on both garments. The Officer had first cautioned him and told him of the murder case he was investigating involving the

applicant. After that, when the blood-stained stick was shown to him, he said nothing. Again after arrest and caution he said nothing. All efforts to establish the identity of the deceased proved unsuccessful.

At the close of the prosecution's case, apart from the feeble effort to divert attention from the applicant to the witness, Pauline Brown, as the culprit, which effort was about as prominent as a tick on an elephant's back, it is safe to say there was no real challenge to that case. A very formidable case then called for an answer. Such answer was given in an unsworn statement by the applicant from the dock.

In his statement the applicant told of the gate being locked with the key, which he put under his pillow before he retired for the night, after the return of Pauline Brown and Ivoreen Thompson from the dance. Then between 4 a.m. and 4:30 a.m. he was awakened by the barking of dogs and knocking and crying at his gate. He pulled on the old pants and went to Pauline Brown's room but not being certain whether the occupants were asleep or not he went to the gate where, upon looking through a mesh wire he saw a woman whom he knew, though not her name. To his query, she replied that she was coming from a dance. He opened the gate and straightway she fell on him. She was barefooted and was dressed only in a skirt. He took her up the passage into the yard, put her on a chair and gave her a glass of water which she requested. She had bruises on her arms, back and legs which she said she had sustained when she was beaten up at a dance whence she had fled with only her skirt. In Good Samaritan fashion he poured some brandy on a piece of tissue and dabbed it on her injuries. Her scream awakened the witness Pauline Brown who protested: "Woman stop the noise in yah because me waan sleep". He remonstrated: "No Miss Dixon, man, a she come in yah last night was crying".



Miss Dixon got up, turned on her stove allegedly to get hot water to dress a stab wound which she said her roommate Miss Thompson had received at a dance. He informed Miss Brown (Dixon) he was going to the beef shop and asked her to render to the girl any assistance she needed. Thereupon, he took his infant son and left the premises returning after about three quarters of an hour to find the girl lying on a piece of cardboard in the passage. He made tea and took some to her when he discovered that she had neither pulse nor breath. He woke up Miss Brown and told her of his discovery. He sought the assistance of both Miss Brown and Miss Thompson to go to the station where he said he proposed to tell the police of the assistance he had rendered the girl since 4:30 a.m. but both refused each saying she was asleep and did not know what had happened. Thereafter, he went alone to the Central Police Station and made his report to Constable Grace White. The stick produced as Exhibit 1 he said was found in the yard by Detective Sergeant Forbes on the following day when he visited the premises.

Having regard to the obvious disparity between his untested account and the testimony of the witnesses Pauline Brown and Lurline Hamilton we would observe that, if this account was included in the instructions to his Counsel, then Counsel's failure to cross-examine along those lines would be explicable only on the premise of endeavouring to secure maximum effect by the element of surprise. But this course would be adopted at his peril.

The applicant's account omits Miss Hamilton from the case altogether, provides a manner by which the deceased's blood could get on his clothes - by her falling on him, accounts for a skirt being on the body but not the blouse, as well as for the scream that woke up Miss Brown - the brandy

applied to the deceased's bruises - replaces the attempted perverting of the course of justice by the concocted account of which Miss Brown spoke with innocuous words in a different setting and ensures that the deceased was never any nearer to his room than the bench in the passage on which he had placed her to sit.

Although he was under no obligation to prove anything it is obvious that any effort even to tarnish the prosecution's case with an element of doubt was well-nigh impossible, which the jury reflected in their unanimous verdict after retiring for eleven minutes.

No less formidable was Mr. Manning's task in arguing the Ground of Appeal. He was obliged to concede that the jury had been properly directed and that the evidence that the applicant did beat the deceased was cogent but he sought, quite ineffectively to qualify that concession by submitting that the beating was not intended to kill or injure seriously but only to extract information about his stolen money! But unlike the applicant Mr. Manning found it impossible to avoid the evidence of Miss Hamilton. Hence his submission as to the reason for the beating. However, it was our view, having regard to the evidence of Dr. Ramu, that the only reasonable inference that could be drawn was that the person who inflicted those injuries could only have intended to cause serious injury or to kill.

Accordingly, we had no difficulty in dismissing the application as unmeritorious.