

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 44/85

BEFORE: THE HON. MR. JUSTICE KERR, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE DOWNER, J.A. (Ag.)

REGINA VS. CALVIN GORDON

Anthony Pearson for the applicant

Jennifer Straw for the Crown

23rd June, 1987

DOWNER, J.A. (Ag.):

This is an application for leave to appeal from the verdict of murder found by a jury on April 18, 1985 after a trial lasting for four days presided over by Walker J., in the Home Circuit Court. The evidence against the applicant Calvin Gordon was circumstantial, while his defence was an alibi.

The circumstances adduced by the Crown was that on the night of 10th July, 1983 Calvin Gordon went to bed in the kitchen at the home of Adrian Ellis at Mount Friendship in the parish of Saint Andrew. He was related to Ellis, in that his sister was the mother of two of Ellis' children and he was a frequent visitor to the home. The kitchen was detached from the main house and it turned out that the deceased Keith Wilson called at the home that night and also made his bed in the kitchen. Here, it must be pointed out that Wilson's sister Gwendolyn was the then companion of Ellis with whom he had two children. It was not disputed that Ellis saw both the deceased and the applicant retire to bed and the next stage in

the narrative was that at about 2:30 a.m. that morning Ellis heard a sound and was awakened. He then enquired what had happened, the explanation given by the applicant was that he had hit a dog. It was significant that Ellis could see into the kitchen from his house and that when he called neither men were on the bedding to which they had retired earlier that night. The applicant had answered from the back of the kitchen, and his response concerning the whereabouts of the deceased, was that he did not know where he went. This is a different version from that given to the jury as in his evidence the applicant related that there was an homosexual assault on him by the deceased, and because of that he had left the kitchen that night.

The following morning Gwendolyn Wilson on inspecting the bedding on which both men had retired noted that it had blood on it. Two lines were noted which led to the gully and subsequently both Ellis and Gwendolyn went down there, where at a point three spots of blood were seen. Of importance was the fact that the applicant was in the gully and when asked about the blood he said it was from the dog he had hit in the night. Following the trail where Ellis saw grass trampled on, he spoke to another witness Albert Robinson who reported to him and as a result Ellis went to the Stony Hill Police Station.

Gwendolyn Wilson was the next witness of importance in the narrative. She told the court that when she got up in the early morning she had noted that the clothing on the line was all over in blood and that she saw the applicant who was also known as "Apache" down the bush. She asked him for her brother and she was fobbed off with the story that he was gone to work on the bus. She expressed surprise that he would not have gone without informing anyone, and when Ellis pressed him, he said that he did not know what had happened to the deceased.

Albert Robinson's part in the narrative was crucial. Ellis asked him a favour and he followed a track and saw two human feet and immediately he returned, and following this witness was Sergeant Dennis who saw the dead body of Keith Wilson with a wound in the front of his neck. As regards this wound it was described by the pathologist at the post mortem examination as an incised wound over the front of the neck at the lower third, it measured four inches in length and two and a half inches in width. The evidence was from the pathologist that death was due to shock and haemorrhage as a result of a cut throat. Against this background the applicant was arrested and a machete taken from him, and under caution he was reported to have said "me never mean to kill him sah".

There was other evidence which the Crown relied on to connect the applicant with the murder. The kitchen had bags with blood stains on them and a floral dress there was also stained. The applicant was wearing two pairs of trousers and on one of them there was blood stains with group 'O' which was the blood grouping of the deceased. Group 'O' blood was also found on the two shirts he admitted he was wearing.

The learned trial judge gave careful directions on circumstantial evidence and apart from leaving murder to the jury, he left manslaughter on the ground of lack of intent. Manslaughter was also left on the ground of provocation which was somewhat generous having regard to the evidence of the applicant that he left the kitchen that night after a homosexual assault on him. It was in those circumstances that the jury returned a verdict of murder.

Before us, Mr. Pearson for the applicant submitted that he could find no fault in the judge's summing up and he had no points to urge. We agreed with that stand and consequently the application is refused and the conviction and sentence affirmed.