

(A. CRIMINAL) - Murder Trial - Evidence - See to [unclear]
visual identification - whether an evidence sufficient
offer to [unclear] for witnesses to have seen applicant - with
judges direction to jury on identification adequate.
Applicant [unclear] leave to [unclear] refused.
JAMAICA
It was [unclear]

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 169/88//

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

REGINA

VS.

CURTIS LAMBERT

Mr. D. Chuck for applicant

Mr. Lloyd Hibbert for Crown

April 17 & May 15, 1989

MORGAN, J.A.:

On 21st July, 1988 at the Clarendon Circuit Court, May Pen before Bingham, J. and a jury the applicant was convicted of the murder of Dwight Cousins and sentenced to death. We refused his application for leave to appeal that conviction and promised to give our reasons later, as is the present practice in respect of convictions for murder.

The facts are these. One Donald Brown and a friend were standing on the road at Race Course, Clarendon, opposite a bar on the night of 1st July, 1987 at approximately 8:00 p.m. The deceased rode a bicycle passing them at a distance of about two chains. Brown called to the deceased who turned around his bicycle and rode towards them, riding in the middle of the road. The applicant then appeared from behind a light post, held the deceased at the back of the neck with his right hand and stabbed him in his back using a sharp long knife which he held in his left hand. The deceased, who was unarmed, fell from his bicycle bawling out "Jesus Christ me dead. Skipper stab me, mi a go dead". The applicant attempted to stab the

deceased a second time as he lay on the ground but the witness Donald and his friend rushed at him whereupon the applicant ran. They chased him for some distance, but he evaded them.

The supporting witness, Trevor Brown, not only recounted a similar account of the stabbing but said that he saw the applicant standing alone by a telegraph pole, with his hands behind him, prior to the incident and saw him emerge from behind that post when he stabbed the deceased. He pointed out to the Court the distance he stood from the deceased which was estimated at twelve feet.

Dr. Bhatt, who performed the post-mortem examination on the body, found a single stab wound 1" by $\frac{1}{2}$ " on the lower back and concluded that death was due to shock and haemorrhage as a result of this injury.

The applicant in his defence said he went out to sea to fish that evening at 5:00 p.m. with two other men and did not return until 6:00 a.m. He called a witness in support.

The single issue in the case was that of identification. It was accepted that both witnesses and accused knew each other well for a period of fifteen to twenty years as they had all attended the same school. As to the lighting, there was evidence of a hundred-watt light bulb on the piazza of the bar and light which emanated from a house facing the bar some fourteen yards from the incident. In fact, defence Counsel elicited from the witness in cross-examination that it was moonshine - full moon and that he saw the face of the applicant for about five minutes. Such evidence of identification indicated that there was sufficient opportunity for the witnesses to see and make out the applicant who was well known to them. The learned trial judge directed the jury in more than ample terms on the issue of identification and having pointed out the strength of the evidence adduced, also indicated the weaknesses in that there were areas of differences between both eye-witnesses, thereby indicating that they had to satisfy themselves that the witnesses were credible. These areas were where Donald said that

one other person only was present and that he did not see Trevor, whereas Trevor said that he saw Donald and two other persons. These were not unresolved discrepancies as Trevor explained that the third person was standing away from Donald. It was also for the jury to conclude that Trevor was indeed there but Donald did not see him.

There is no basis on which the direction could be faulted and this was acknowledged by learned Counsel who appeared for the applicant.

We have ourselves examined the evidence adduced and think the verdict fully supported the evidence.

In the circumstances the application for leave to appeal was refused.