

CA Criminal Law Murder - Trial - Plea - Applicant refusing to  
plead - withdrawal of legal representation - applicant not taking  
part in trial: whether applicant fit to plead - Identification  
whether properly dealt with in summing up. Application for leave to  
appeal dismissed. No case referred to.

comp.

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 75/88

*Def Counsel conceded*

*Evidence  
Common Pleas*

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

REGINA

v

DELROY RICKETTS

Delroy Chuck for Applicant

Paula Llewellyn for Crown

March 13, 1989 and April 12, 1989

WRIGHT, J.A.:

On March 13, 1989 we agreed with Mr. Chuck that there was no merit in this application for leave to appeal against conviction and sentence of death for the murder of Alvin Wong, a businessman on February 19, 1986. We accordingly dismissed the application and are now fulfilling our promise to put our reasons in writing.

The applicant was tried before Bingham J. and a jury in the St. James Circuit Court held at Montego Bay on March 21-23, 1988. There was an interesting preamble to the trial. Defence Attorney, Mr. Eric Frater, was not present in Court when the case was called up at 10.55 a.m. The Court was informed that he would not be there until 2.00 p.m. The learned trial judge advised the applicant accordingly and told him that he would proceed to empanel the jury. Asked if he heard what the learned trial judge had said the applicant replied

'Yes Sir'. He was then advised that after the empanelling of the jury the Court would adjourn until 2.00 p.m. to await Mr. Frater's arrival. Asked if he understood he did not respond. Nor would he plead to the indictment. The judge promised to assist him. At first he said nothing but when the judge asked 'Are you listening to me?' he answered 'Yes Sir'. He was then pleaded but remained mute and that was how he responded to the next 23 questions put to him by the Court. The adjournment was taken at 11.27 but at 2.21 p.m. when the Court resumed Mr. Frater was still absent.

Accepting the possibility that the applicant though previously coherent could have suffered a sudden affliction which rendered him incapable of speaking, the learned trial judge decided to empanel a jury and to try the issue whether he was mute of malice or by visitation of God. The applicant displayed no interest in that procedure despite the endeavours of the trial judge.

The trial judge's concern that the case should be disposed of was well justified having regard to the endorsements he saw on the records. There had been 15 mention dates while attempts were made to have an Attorney assigned and after one had been assigned, six trial dates had fallen through.

Mr. Frater arrived at 2.35 p.m., apologised for his absence and was allowed time to confer with his client but when he returned to Court at 3.15 p.m. he could only announce that he had not been able to get any instructions from him. Mr. Frater then participated in the empanelling of the jury to try the issue of the applicant's fitness as to which the crown presented one witness, Sergeant Joslyn Kelly who was then stationed at the Montego Bay Police Station. It was his duty to escort prisoners to Court and in that capacity had escorted the applicant to Court over a period of about two years during which time 'his behaviour was always normal, no form of mental disorder'. His speech was always

coherent and that was so up to that morning when the Sergeant took him from the lock-up and escorted him to the lock-up on the Court Building. After he arrived at the Court he spoke with the Sergeant requesting that he be allowed to speak to his father but when this request was refused he sought permission to speak to his girlfriend who was across the street from the lock-up. Thereafter he called to the girlfriend telling her that 'he is not taking any plea'. Next, he asked to be allowed to get the clothes which he subsequently wore to Court. The evidence also disclosed that during the long adjournment before Mr. Frater eventually arrived, the applicant's behaviour was normal. The witness was cross-examined for 10 minutes by Mr. Frater who could elicit nothing to diminish the weight of the evidence in favour of finding that the applicant was malingering. If anything he may well have strengthened the evidence because he managed to extract from the witness that during the adjournment there was some talking between the applicant and his sister. After a retirement of two minutes the jury returned with the unanimous verdict that he was mute of malice. Thereafter, Mr. Frater, with the Court's permission, withdrew from the trial as it appeared that his client had no confidence in him.

During the empanelling of the jury, the applicant began speaking about a man without shirt who was watching him and about whom he said he had spoken to his lawyer the previous night. Seven times he found his speech and the subject-matter was the same.

The trial began in earnest on March 22 and was punctuated on several occasions by the applicant's monologue about the shirtless man though when addressed by the Court he remained silent. He was supplied with a copy of the depositions.

The eye-witness to the incident giving rise to the charge was Alvin Wong Jnr., son of the deceased. He was upstairs in his brother's room about 7.45 p.m. when he heard his mother and father shouting

downstairs. He descended the stairs to ascertain the cause when his father shouted 'Open the door before they kill your mother'. He obeyed and then saw by means of the garage light the applicant just about three feet away with a gun pointing at his father's side. There were three other men as well. Two were armed with guns and one with a knife. His mother was there bleeding from a cut at her neck. The applicant ordered them into the house. Having entered the living room which was lighted by the light at the balcony and a light at the foot of the stairs, the applicant kept demanding money of the deceased - 'Chiney man, weh di money deh?'. The mother, who had first entered the house had disappeared and one of the men went in search of her while the applicant ordered the witness and his father upstairs followed by the other two intruders. The applicant's demand for money continued and when the deceased said he had no money the applicant shot him from a distance of about six feet. Mr. Wong fell and appeared dead after about 20 seconds.

The applicant then demanded that the witness show him where the money was or 'he would do the same thing to him'. The witness then took them to his father's room and showed them a chest of drawers. One of the men then produced a bunch of keys which the deceased had had on him. The witness opened the drawers and the men took money and the father's firearm. The applicant then asked where was the safe and when the witness replied that he knew of no safe he was ordered into his brother's room. He had spent about ten minutes with them in the father's room. The applicant accompanied the witness into the brother's room which was lighted by an electric bulb and ordered him to help them pack up things. While he was thus engaged one of the men came into the room after about 15 minutes, and announced that he had found the safe. At that time the man who had gone in search of Mrs. Wong came from downstairs with a bunch of keys which was handed to the witness who was ordered to open the safe and by way of persuasion he was at the same time cut on his cheek. But this

was to no avail as he did not succeed in opening the safe. The witness was then tied to his father's bed and threatened with death. After about 15 minutes in the father's room they left. Sometime thereafter the witness's brother came and untied him. He then left the house, went in search of a telephone and called the police. At an identification parade held on May 22, 1986 he identified the applicant by means of his features and his voice.

During the witness' testimony the applicant had made a few outbursts and at the end when the trial judge addressed him he stood and resurrected the issue of the shirtless man but when he was told to desist and take his seat he sat and remained silent. That was at 12.58 p.m. when the adjournment was taken.

On the resumption at 2.10 p.m. when the applicant refrained from asking any questions the trial judge questioned the witness until 2.25 p.m., the questions being related to the issue of identification at the home and on the parade. He said that for three-quarters of the time which the men spent at the home, which he estimated to be between 45 minutes to an hour, the applicant was in his presence and he did most of the talking. He therefore had ample opportunity to observe his face and to recognize his voice. Hence his request that the men on the parade speak. As to his face he said he remembered the applicant because of the 'crude look on his face'. In addition he told of the description he had given the police and how the applicant was dressed. The applicant did not say anything after he had been pointed out.

Steadman Ranking, the Police Officer who responded to Alvin Wong's telephone call told of receiving the call at about 8.30 p.m. at the Coral Gardens Police Station and of his going to the house and seeing the body of the deceased in a pool of blood. He said there were punctured wounds and knife wounds to the chest and face.

Detective Inspector Ben Lashley who also visited the death scene about 11.30 p.m. spoke too of the injuries to the body. In addition to the gun-shot wound to the chest he said there was a wound severing a section of the neck; the throat was cut and there were knife wounds to the nose and cheeks. He investigated the case, spoke with the applicant at the Montego Bay Police Station on May 4, 1986 and arrested him on the capital charge following the holding of the Identification Parade on May 22 by Sergeant Harvey Harrison. When charged the applicant said nothing.

Sergeant Harrison gave a detailed account of the holding of the Parade. He said when he told the applicant of the proposed Parade and that he could be represented on the Parade he replied 'I'm all right, me don't want nobody'. He requested that two scars on his face be covered. This was done and corresponding spots on the faces of the other eight men in the line-up were covered with masking tape. Before the witness Alvin Wong Jnr. was called on to the Parade the applicant indicated his satisfaction with the Parade and chose position No. 2 from the left. After being instructed as to what to do the witness walked along the line for about two minutes then requested that the men speak and after they had all said 'What is your name?' the witness pointed to the applicant and said 'This is the one'. Asked, if he was satisfied with the conduct of the Parade the applicant said 'Yes, but me no know him still'. Upon the applicant again declining to ask any questions the trial judge subjected the witness to thirteen minutes of detailed questioning concerning the preparation for and the conduct of the Parade during which he confirmed that he was not aware that the desirable thing to have done was to have had the witness Wong make a preliminary Identification of the suspect whom he wished to hear speak.

At the close of the case for the prosecution the trial judge explained the applicant's rights to him but, quite predictably, he refused to say anything in response. Yet, the record discloses that when

he was told to stand or sit he complied.

In the summing-up the trial judge was careful to instruct the jury that the applicant's silence did not relieve the prosecution of discharging the burden of proof to the required standard. He alerted the jury to the fact that the crucial issue was identification and he spent much time and care in examining the relevant evidence. Thereafter, the jury retired for seven minutes before returning the unanimous verdict of guilty.

We can find no fault in the conduct of the case and more specifically with the summing-up on identification. It is for these reasons that we agreed with Mr. Chuck that there was nothing of merit that could be argued on behalf of the applicant.

As a postscript, we would observe that the correctness of the jury's verdict that the applicant was mute of malice has been vindicated by the applicant himself. Mr. Chuck was frank enough to inform the Court that he had been minded to request that a psychiatric examination of the applicant be done but that question has been settled by a long and coherent letter which he had received from the applicant.