

CRIMINAL LAW - Murder - Dixon convicted for Manslaughter
sentenced 30 years h/c - Green convicted for Murder - Identification
• Whether adequate - whether summing up re identification
adequate - whether summing up prejudicial - Appeals against
convictions dismissed - JAMAICA Dixon sentenced reduced
to 20 years h/c.

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS. 128 & 129/84

BEFORE: THE HON. MR. JUSTICE KERR, J.A.
THE HON. MR. JUSTICE CARBERRY, J.A.
THE HON. MR. JUSTICE WHITE, J.A.

REGINA

VS.

NOEL DIXON

&

CALVIN GREEN

Appellant Dixon (unrepresented)

B.E. Frankson for Appellant Green

John Moodie for the Crown

July 28 and December 17, 1987

KERR J.A.:

On October 11, 1984 on an indictment charging the above-named accused jointly for the murder of Alexander Isaacs in the Manchester Circuit Court before Gordon J. and a jury, Green was found guilty of murder and sentenced to death; Dixon was found guilty of manslaughter and sentenced to thirty years imprisonment with hard labour.

Dixon's application for leave to appeal against conviction was refused by the single Judge who however granted him leave to appeal against sentence. We are in agreement with the single Judge that there is no merit in the application for leave to appeal against conviction. With respect to the appeal against sentence, the appeal was allowed and the sentence varied to twenty years imprisonment with hard labour. The hearing of Green's application for leave to appeal was treated as of the appeal, the appeal was dismissed, the conviction affirmed and the sentence

varied as above.

In a four bedroom house at Asia in the parish of Manchester in January 1984 there lived the deceased, a grocery shop proprietor, with his wife Catherine, and three daughters, the eldest being Lena, 18 years of age, a student at the Manchester Community College.

In the wee hours of the morning of January 21, while the deceased was in bed in the marital bedroom, about four men broke and entered the dwelling-house of Isaacs. Catherine and Lena were in another room - called by them the "sewing room". The evidence of Mrs. Isaacs and Lena portrayed a night of horror. Lena was awakened by the sound of the breaking in and then she heard creaking of the floor in the living room and her father's cry of help from his bedroom. A voice told him to shut up and when he continued there was a gun shot followed by the breaking of glass, muffled cries from her father and another gun shot and her father's cry from the verandah, "Katie, me dead now". Mrs. Isaacs said that when she heard the sounds in the house she climbed on a chair and looked through the fan-light and saw the accused Dixon, whom she knew before, standing in the living room near the door of her husband's bedroom. He was armed with a knife. Shortly after the door to the sewing room was kicked open and the two appellants came in. Green was armed with a short gun. By then the younger daughters had found Lena and their mother in the sewing room. Someone turned on the electric light in the room. Green, who did the talking, demanded money. Lena took money from the wardrobe and gave him.

Green then said to Mrs. Isaacs: "Don't look at me", and enforced his command by hitting her in the face with the gun. Lena said she went to a drawer to search for money and Green who was standing on the bed kicked her in her face and breast. She found some money in a press and gave Green. A third man in sun-shade glasses and hat and with a rag over his face came to the doorway. Green led her to this man and said deal with her. She offered to find more money and was allowed to return to the sewing room;

she searched, found more money and gave it to Green. Green was still dissatisfied and threatened to kill them.

Green had a wound on his index finger and at his order she bound it up with cloth taken from a dresser. Green then led her into the dining room, questioned her as to whether there was any more money in the house, and when she told him that her father may have lodged money at the bank the day before, he took her to the father's room to search. There he admitted shooting the deceased with three shots and threatened to kill her if she did not give him money. Light was on in her father's room. A fourth man "short thick set" was in the room with them. Under the bed she found a bag with money and her father's wallet and gave it to Green. She also gave them cigarettes. She was led back to the sewing room. Dixon who was still there, warned them not to come out the room because they would still be around. They then left - it was then ten minutes past four. They came out at 6:45 a.m. to find the body of the deceased lying on the verandah. Mrs. Isaacs corroborated Lena as to what transpired in the sewing room.

Detective Evon Williams who visited the scene that morning said that he saw the body of deceased lying on the verandah in a pool of blood, and blood stains were on the floor leading to the bedroom of the deceased, and on the bed. He noticed that the entire right hand section of double louvre glass window was broken out.

According to Dr. K. Venkataram who performed the post-mortem examination on the 25th January, 1984, there was a bullet entry wound between the 9th and 10th ribs anteriorly on the right side with exit posteriorly on the left side between the same ribs. By its passage the right lobe of the liver was torn and there was laceration of the right kidney. Death was due to haemorrhage and shock resulting from these injuries.

The issue raised by cross-examination was identification. Both appellants gave unsworn statements from the dock. Dixon said that he was born on 26th October, 1964 in England but came to Jamaica as a child and lived in Manchester. He went to the Frankfield All-Age School where he became acquainted with the Isaacs - Lena and her mother. He knew them for over nine to ten years. Lena used to attend Pratville All-Age School. She won a scholarship to Decarteret College and the year after he won a similar scholarship to Manchester High School. His mother decided to return to England and he had to live with his grandmother at Red Hills, Sterling Castle, St. Andrew. On 7th April, 1984 he left Sterling Castle to visit his home in Manchester, and on the way "came into a collision with the police" and he was charged.

Now Lena Isaacs identified Dixon on an identification parade held on May 12, 1984. She said she recognised him by his thick red lips and wrinkles on his forehead. She denied in cross-examination that she knew him before. On the other hand Mrs. Isaacs said she knew Dixon about ten years before as "Little Dixon". He was living about a mile and a half from her business place and he used to come there to do shopping. That night he was with her in the room for about twenty minutes. In May she attended an identification parade where she pointed out the appellant Dixon.

The cross-examination of Mrs. Isaacs centered around the opportunity for making a positive recognition. It is enough to say that the circumstances were such that there was ample opportunity for positively recognising Dixon whom she well knew before that night. The evidence of identification in respect of Dixon was overwhelming.

The case against Green rested entirely on the evidence of Lena as Mrs. Isaacs failed to identify Green at the identification parade held for that purpose. Lena however, positively identified him at the parade held on May 11, 1984 at the Mandeville Police Station. She said that on the night in question Green was with her for a total of fifteen minutes. The particular features that she noticed were his little beard

and moustache and that his eyes looked cruel. It is clear from the evidence that she had a much greater opportunity of observing the appellant Green than her mother.

Leave was sought to argue supplementary grounds contained in a notice filed on 23rd July, 1987. The first two grounds complained that the directions to the jury as to their approach to identification evidence was inadequate.

We directed Mr. Frankson's attention to the directions on page 114 of the Record where the learned trial judge advised the jury that "in this case, identification is the pivotal point around which everything else revolves" and then proceeded to warn them of the risk of mistaken identification and that therefore they should "approach the evidence of identification with the utmost care and caution". He then went on to tell them of the important factors to be considered in assessing the evidence.

Faced with these directions which we consider were impeccable, Mr. Frankson unhesitatingly abandoned those grounds.

The third ground which was argued but with obvious lack of enthusiasm reads:

"The Learned Trial Judge erred in Law in that he mis-directed the Jury on the evidence and substituted his own views as if they were findings of fact throughout the summoning(sic) up thereby usurping(sic) the functions of the Jury on vital issues which were entirely outside his preview but solely within the province of the jury which must have been prejudicial(sic) to the trial of the Applicant. Further the Learned Trial Judge advanced every point in favour of the prosecution and none in favour of the Applicant."

Mr. Frankson was at pains to find passages to support his complaint. He referred to two which he contended were illustrative. The first at page 99 reads:

"Now, in dealing with the question of discrepancies, I told you some may be great, some may not be. It is for you to say how you reconcile these discrepancies. There is no doubt that the girls knocked on the door. There is no doubt that the room at that time was in darkness; there was no light in that room. Mrs. Isaacs said the girls pushed the door and entered. Lena Isaacs said she opened the

"door for the girls. That is a discrepancy. How you reconcile that is a matter for you".

In relation to the sentences underlined the judge was merely reciting unchallenged evidence favourable to the appellant. It was the evidence of both Mrs. Isaacs and Lena that it was after the door of the sewing room was forced open that someone turned on the lights.

We see no cause for complaint on the learned judge's interpretation and review of this part of the evidence.

The second passage, which was again in reviewing the evidence of Lena Isaacs, reads at p. 100:

"When the door was kicked open she said she saw two men enter - one - Dixon - with the knife, Green with the gun. At that time she said she could not see well because the room was in darkness. The one with the gun had a flashlight, and in the glare of the light she could see that there was a gun, and she could also see the light reflecting from the blade of the knife. When they were huddled in that room the lights were eventually turned on".

Mr. Frankson complained that the word "huddled" was the judge's as neither witness had used that expression.

In our view this was no more than a compendious word for the situation of Mrs. Isaacs and her daughters in the sewing room as described by them in their evidence. It could not conceivably have had any effect upon the important issue of identification.

The summing-up on all the important issues was fair and clear and the evidence was sufficiently credible and cogent to support the jury's verdict.

For these reasons we dismissed Green's appeal and affirmed the conviction and sentence.

We also dismissed Dixon's appeal against conviction for the same reasons. He had been clearly identified by both Lena Isaacs and her mother, Mrs. Catherine Isaacs, as one of the principal actors in the invasion of their house. While Green was the man who actually killed Mr. Isaacs, it is not easy to see why the jury acquitted Dixon of murder,

and were content to find him guilty of manslaughter only. Presumably, they must have taken the view that the common design of the invaders was primarily to rob and that although the use of force was in contemplation it did not include killing or inflicting serious bodily harm and that to that extent Green went beyond the common design when he shot Mr. Isaacs.

The single judge gave Dixon leave to appeal against the sentence of thirty years awarded by the trial judge. While we have no doubt that the trial judge awarded that sentence on the basis of Dixon's clear complicity in the events of that evening, we do not think that he considered the meaning and effect of the distinction made by the jury in dealing with the two men. We are of the view that had as the circumstances were the sentence of thirty years was manifestly excessive and we reduced it to twenty years to run from the date of conviction, i.e the 17th October, 1984.