

C.A. CRIMINAL LAW — Murder — Identification — Defence
Counsel concedes summing up full and fair — leave to
appeal refused.

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 32/1987

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

REGINA V. PAUL GRAY

Mr. Delroy Chuck for the applicant

Miss Heather D. Hylton for the Crown

23rd November and 2nd December, 1987

CARBERRY, J.A.:

This was an application for leave to appeal against a conviction for murder in the Home Circuit Court, Kingston, before Zacca C.J. and a jury. The applicant was charged with the murder of Estella Findley on the 26th May, 1986. The case was heard on the 23rd and 24th February, 1987 and resulted in the applicant's conviction.

The facts were distressingly simple. On the 26th May, 1986, a Monday, a man turned up at 15 Bridgemount Drive, Kingston 8. At that time the only occupants were Estella Findley, the helper or maid who worked there, and Ayanna Wilson, a 12 year old girl, the daughter of the owner Mr. Armond Wilson. The time was 8:50 a.m. The man spoke to Estella, who called Ayanna, who went to the back door and saw the man standing by the clothes line. His face was familiar, but at the moment she did not place or recognize him. The man claimed that her father Mr. Armond Wilson had sent him for a gardening job. He was normally dressed: wore a beige or brown hat, brown shirt and trousers.

Estella said she did not know anything about anyone coming there for a gardening job. She phoned Mr. Wilson. He seems to have confirmed her

suspicious. Maid and daughter went out to the back where they had left the man. He was nowhere to be seen. Daughter went back to her room (she was on holiday from school). Estella went back to the laundry. Some 15 to 20 minutes later Ayanna heard Estella scream. We are not told if she said anything, but thoroughly frightened Ayanna ran out of the house through a grill door on the front verandah, across the front lawn and out into the road. Two workmen were passing by and she spoke to them. One said something and Ayanna looked back at the house to see the man, now recognized as Paul, running across the yard. In the witness' own words "he had on no clothes" and in his hand he had a bundle of clothes. He ran towards and disappeared into a vacant lot next door the Wilsons' house.

By this time Ayanna had placed or recognized the man: he was Paul. His mother had worked with the Wilsons for some years, and her children had visited their mother's work site. These included Paul and his sister. The mother Ena Adams had worked there until December of 1985, and Estella who had taken her place had been working there for some eight months before the incident. Ayanna went next door and phoned the police and her father. The police came in 15 to 20 minutes, and her father soon after. Going round to the back of the house they came upon the body of Estella. She was dead, lying in the pathway by the back of the house in a pool of blood. She had some 14 stab wounds, two of which were fatal.

Paul had done odd days gardening work for Mr. Wilson who had got him a job with some sub-contractors to the Jamaica Public Service Company. That was in 1983. As far as Mr. Wilson knew he had ^{last} visited the house in 1985 in "guineap time" (August). His mother had left the Wilsons' employ in December of that year.

The case rested substantially on the evidence of Ayanna, and her recognition of the man as Paul. A warrant was issued for his arrest, and in due course an identification parade was held which was attended by the two workmen to whom Ayanna had spoken on the road when she ran out the house. Neither of them was able to identify the accused: they had had at the most a fleeting glance of him running in the nude behind the house. Ayanna for her

part knew him as an occasional visitor and odd job worker at the house, knew his mother well, and had seen him and spoken to him with Estella at the back of the house. True she had not at first recognized him: he had seemed familiar and then she placed him. She did not attend the identification parade.

At the trial the defence that was run was mistaken identity. The accused was arrested on the 28th of May, 1986, two days after the murder. A no case submission made on his behalf was not accepted by the trial judge. The applicant then made an unsworn statement from the dock, to the effect that on the day of the incident he was selling "sky juice" at Orange Street. No witness was called to support the alibi. The jury did not accept it, but returned a verdict of guilty of murder, after a summing-up by the Chief Justice. As to this Mr. Chuck who appeared before us for the applicant has conceded that on the sole question fought, identification, the summing-up was full and fair, and he was unable to find any other ground to advance on behalf of the applicant. We accordingly refused leave to appeal and confirmed the verdict and sentence. The multiplicity of stab wounds indicate a frenzied attack. What provoked it we will never know.