

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 87 of 1987

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

REGINA

VS.

RAYMOND MURRAY

Mr. A. Pearson for the applicant

Miss Heather Dawn Hylton for the Crown

November 23, 1987 and January 26, 1988

KERR, J.A.:

The hearing of this application for leave to appeal from a conviction for the murder of Oswald White in the St. Ann Circuit Court on May 28, 1987, before Morgan J and a jury was treated as the appeal. The appeal was dismissed and the conviction and sentence affirmed.

On the night of June 19, 1984, Rudolph Wallen was driving his mini-bus with about eight passengers from Montego Bay to Ocho Rios. En route and on the Queen's Highway near Discovery Bay in the parish of St. Ann he stopped at a request signal from the appellant who had run from the bushes bordering the road on the left. Appellant boarded the bus. Neville Wellington, a bar tender, who was a passenger on the bus said it was then about 7:30 p.m. Appellant sat in the seat immediately behind Wallen, the driver. The bus drove

off and the passengers questioned the appellant about his condition. According to Wellington he noticed that the accused was perspiring, there was blood on his fingers, a scrape on his neck and his clothing was wet and he had on a brown and white crepe. The appellant in answer to his queries said that he and his brother were travelling in a car which got out of control and ran across into the bushes on the Queen's Highway. He did not then know where his brother was. When Wellington asked if they should go back and look for his brother, the appellant said he was going to tell his father. Wellington said he, Wellington, would not leave his brother but the appellant said he was not turning back; he was going to tell his father; he lived in Exchange at Middle Street. It was the view of the passengers that the appellant should be taken to the Police Station to make a report. Wallen drove the bus and parked in front of the Punaway Bay Police Station but at the passengers' insistence he drove into the Station yard. Wallen corroborated Wellington as to the account the appellant gave the passengers of the alleged motor vehicle accident; of the passengers insisting on his making a report to the police; of his wet and sweaty appearance and the blood on his hands. Wellington said that when the appellant appeared reluctant to enter the Police Station, the passengers drew him out the bus and pushed him into the Station. The place where he had picked up the appellant was about thirty chains before reaching the Marine Lab which was on the left hand side of the road going towards Discovery Bay. At the Station the passengers reported to Constable James Grant what the appellant had told them of the "accident". Constable Grant, in evidence, said he was on guard duty. Wallen made a report to him in the presence and hearing of the appellant. Grant said there was blood on the appellant's clothes, finger

nails, hands, shoes and pants and when he asked him about the blood on him, the appellant said: "He was travelling in a car with his brethren and the car overturned and his brethren got cut in his forehead and he left him to look a drive".

He examined the appellant with his clothes off and saw no injuries to him. He communicated by radio with the Discovery Bay Police and detained the appellant in custody. In cross-examination it was suggested to both Wellington and Wallen that the appellant had told them in the bus that he, the appellant, and his brethren had been out about some ganja and some men rushed them and he ran away leaving his "brethren". Both men firmly denied that he gave any such account. It is worthy of note that this line of cross-examination was not pursued with respect to Constable Grant. Grant's cross-examination was concerned with the appearance of the appellant and how he came to the Station.

The Constable maintained that the appellant's clothes were soaked with blood, and there was fresh blood on his hands. He saw no signs of injuries to him. He admitted that the appellant fell to the ground but it appeared as a trick to avoid answering questions. He did not appear to be in pain, nor did he say he wanted to go to the hospital.

Sergeant Larklyn Glennie of the Discovery Bay Police Station, as a result of information received that night, went to the Queen's Highway and on the road leading from the highway to the Marine Lab he saw a green Cortina car in some bushes about two car lengths off the road. The car was facing the highway, the park lights were on, the ignition was on but the engine was not running. There was blood inside the car on the two front seats, on the rear seat and outside on the right front door.

The following morning at about 7:00 o'clock he went back to the scene and in some bushes about one and half chains

from where he saw the car, he found the body of the deceased. The body had some stab wounds.

Earlier on the night of the 19th June, at about 7:00 o'clock the deceased and the appellant had been in Harrison Town. According to Pearl Hudson, the bar maid in Hubert Coomb's Bar in that town, they arrived in the black and green Cortina driven by the deceased whom she knew as Willie Payne. Deceased bought and took away a guinness stout and a red stripe beer. He also bought a drink for a lady in the bar. Both men drove away in the Cortina. Deceased looked his usual happy self. She knew the deceased for about three years. He worked at the Dunn's River Falls.

Dr. Ramesh Bhatt, who performed the post-mortem examination on the body of the deceased on June 26, in evidence said he found on the deceased thirteen wounds - incised wounds to the fingers, hands, shoulders and four stab wounds to the chest and one to the neck. He was of the opinion that death was due to shock and haemorrhage as a result of the penetrating stab wounds which damaged both lungs and that those wounds were caused by a sharp cutting instrument with moderate degree of force. The wounds to the hands were caused by the defensive action of the deceased.

Detective Inspector Warren, then stationed at St. Ann's Bay on the morning of June 20, also visited the Queen's Highway and saw the body of the deceased and later he went to the Runaway Bay Police Station where he informed the appellant he was investigating the case of the murder of Oswald White. The appellant then said: (at pp. 121-2)

" 'Officer, me and the General go to Discovery Bay last night fi get some weed and the car stop. Two men came up and ask the General if him bring the money come fi the weed. The men draw the knife and start stabbing the General and say, 'How you come fi more weed and you no bring money come?'. The

'General drive off the car and it crash in the bush and him go out one side and me go out the other side. Me go out on the main road. Me get a bus and the bus people them drop me off at the Runaway Bay Police Station. I asked him who was referring to when he said the General, and he said, 'The same dead man Oswald White'.'

Constable Grant, in the presence and hearing of the appellant, told Warren of the appellant's earlier story. To this the appellant made no statement. Later in the afternoon the appellant told Inspector Warren that he knew the persons who killed the deceased and gave their names as "Cheekie" and "Carver" at Gordon Town in the Exchange District. Acting on this information the Inspector with other policemen and the appellant went by car to Exchange on the 21st June. The appellant pointed out no one nor did he show the Inspector any particular place. They spent two to three hours in Exchange. The Inspector said he continued his investigations and on the 13th of July, 1984 he spoke to one Bailey otherwise called "Cheekie" and one Gardner otherwise called "Carver" - both from Exchange. In turn he confronted the appellant with these men. When he was confronted with "Cheekie" he said: "This is Cheekie" - Cheekie said he knew the appellant as Ribbit and he was at Exchange the day the police came there in the car. He was right on the wall playing a very big radio. That day was the first time he was hearing of the murder. The appellant when asked what "Cheekie" did, he said he was at Discovery Bay only standing up.

At the confrontation with "Carver", he said he was not the "Carver" of whom he spoke. That "Carver" was a brown man. Inspector Warren said he searched in Exchange without success for another "Carver". In cross-examination he said he took from the pockets of the deceased \$360 (Jamaican) and \$1 (U.S.). He went looking for a man named "Carver" but he also checked carvers by profession.

The learned trial judge ruled against a submission of "no case to answer" and in answer the appellant gave an unsworn statement accurately reviewed by the learned trial judge, thus at pages 190-1:

".... he says he was at Harrison Town at the brethren yard when he saw Oswald White. They went out and they were talking about some herb at Discovery Bay, and he told him to come to the bar and have a drink with him; and then they buy two Guinness, never drink them at the bar, they left the bar with them.

It is the same thing that Miss Hudson says.

Along the way to Discovery Bay him start to tell me who we are going to, that we are going to collect some herb from Cheekie and Carver in Discovery Bay. I decided to go with him to see if I could get a little money. We go to Discovery Bay on the Queen's Highway and we reversed in when we see two men come up. He says to one of the men that him come for some more herb. The man say, 'How you come for more herb and don't carry any money come give we?'. He turn to the man and say, 'After me no get no money fi it, after me no get no money fi it yet, how me fi give you whey me don't get?'. The nearest one to the car draw the knife and start to stab him and he used his right hand and start to block the stabbing. He then jump over on my side, and me jump out the window. Me jump out the window when me see that and run out on the main road; and me get lick pon mi side from one of the man, and he indicates his right side. I run out on the Queen's Highway, and took a bus and tell the driver to let me out at the nearest police station. The driver and conductor tell me they did not want to hear anything and when they reach Runaway Bay Station a man at the back of the bus say he was not to pass that station, must drive in there or he was going to hold on to the bus steering.

Then he goes on: Oswald White is a man I always go out with. He is one of my key brethren. I would not do a thing like that to my brethren, and we don't have nothing at all, me and him never quarrel."

The only ground argued reads:

"The learned trial judge did not assist the jury in considering the case for the defence."

In that regard, Attorney for the appellant referred to the following passage which followed the review of the statement from the dock at page 191:

"Now, as I told you, the crown relies on circumstantial evidence. What the accused man says here, it is consistent with the last story which he told the police, and the manner in which he related it co-incides with the opinion of the doctor that it was possible to receive the injuries in that way, though the doctor says all things are possible."

Mr. Pearson in support of this ground while conceding that the summing-up was otherwise impeccable contended that in this passage the judge delivered a "back-handed compliment" because there was no admission in the defence case of any other story being told but rather the defence case sought to negative any other story. In this passage was an unwarranted implication that there existed two other inconsistent stories.

Now there has been no real challenge to the evidence of Constable Grant as to the report the passengers made to him at the Station and to the appellant's own report of the accident. The learned trial judge's description was intended to identify the particular account to the Inspector. She was concerned primarily in bringing to the jury's attention evidence from the prosecution witnesses that were consistent with the appellant's defence and to that end she continued thus at pages 191-2:

"His condition, too, when seen by the people in the bus; his conversation, what he said; and you will remember somebody described him as bending down on his hip, same movement he made when Constable Grant said he was pulling off an act; he said he was hit on his hip by somebody. That is consistent with his condition as described; and he said he had blood on his clothes because this gentlemen, the deceased, had moved across.

Now, that is what the defence says. What the defence indicates there is that - what they mean to say is that they are telling a straight story."

In so doing the learned trial judge was being scrupulously fair. Accordingly, we found no merit in this ground of appeal.

As Mr. Pearson conceded the prosecution had presented a strong case against the appellant.

For these reasons we dismissed the appeal and affirmed the conviction.