

C.A. Criminal Law - Murder - Identification - Common
- design - Summation to jury adequate - Application
for leave to appeal refused

JAMAICA

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IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 12/87

BEFORE: THE HON. MR. JUSTICE KERR, J.A.
THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE DOWNER, J.A. (Ag.)

REGINA VS. WAYNE WATTS

Mr. D. Chuck for Applicant

Mr. J. Moodie for Crown

July 22 & 29, 1987

CAMPBELL, J.A.:

On July 22, 1987 this application for leave to appeal against a conviction for murder came on for hearing. Mr. Chuck for the applicant informed the court that having carefully perused the transcript of evidence and summing up to the jury, he could find nothing of merit to submit in support of the application. We agreed with him,

The appellant was convicted in the Home Circuit Court, Kingston for the murder of Ainsworth Case in the parish of St. Thomas on December 6, 1985 and was sentenced to death.

The deceased and Miss Carmeta Campbell operated a restaurant, described as "Right Taste" restaurant at Albion in St. Thomas. At about 11.45 p.m. on the 6th of December, 1985 the deceased approached a back grilled exit door of the premises at the end of a passage way together with one Maurice Jones to let the latter out. Maurice Jones had been in the music room attached to the restaurant from about

7.30 p.m. that night playing records. Immediately the door was opened, the applicant appeared outside at the door step with gun in hand menacing Jones and the deceased. Jones held on to the gun. There was a struggle between him and the applicant for possession of the gun. Another man whom Jones could not identify came on the scene in support of the applicant and engaged the deceased in a further struggle. The applicant managed to wrest the gun from the grasp of Jones who thereupon fled for his life. Within a few seconds, and while still running, he heard an explosion coming from the direction where he and the deceased were engaged in the struggle with the applicant and the other man. Jones fled to his home, but within ten to fifteen minutes he and his sister returned to the restaurant where he saw the deceased propped up on a seat in the deceased's van bleeding from his chest. The deceased was pronounced dead from gunshot wound on arrival at hospital. Jones made a report to the police the following day. Two months later on 6th February, 1986 he identified the applicant as one of the deceased's assailants at an identification parade held at the Morant Bay Police Station. Jones had prior to the incident on 6th December, 1985 seen the applicant on more than three occasions in the daytime at the Kingston stand of a minibus plying between Kingston and Morant Bay. On those occasions he was helping passengers embarking on the St. Thomas minibus.

On the night of the incident, Jones observed the applicant at close range with the aid of electric lighting for about a minute and a half both prior to and during the course of the struggle with him. There was thus favourable circumstances in which he could have recognized the applicant whom he had previously seen on other occasions.

The applicant made an unsworn statement in which he said he knew Jones. He said he had a fuss with him arising out of Jones' persistent refusal to pay the bus fare whenever he took the minibus from Kingston to Saint Thomas. Since the day of that fuss which was about May 1985 he had however never set eyes on Jones until the day of the parade on 6th February, 1986.

The issues raised on these facts were identification and common design. On each of these the summation to the jury was adequate. The verdict of the jury was amply supported by the prosecution evidence which they must have properly accepted. It is for these reasons that we agreed with Mr. Chuck that there were no meritorious grounds to sustain the application which was accordingly refused.