

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 30/2010

**BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE DUKHARAN JA
THE HON MR JUSTICE HIBBERT JA (Ag)**

NEVILLE ROBINSON v R

Linton Gordon and Miss Tamiko Smith for the applicant

Loxley Ricketts for the Crown

10 October 2011 and 15 March 2013

HIBBERT JA (Ag)

[1] The applicant was convicted in the Circuit Court for the parish of St Elizabeth on 29 June 2009 for the murder of Glen Brown, which was committed on either 24 or 25 December 2005. He was on 8 July 2009, sentenced to be imprisoned for life with the stipulation that he should not be eligible for parole before 20 years had elapsed. His application for leave to appeal having been refused by a single judge, he renewed his application before the court. On 10 October 2011 we refused his application, indicating that his sentence should commence on 8 October 2009. We now, as promised, put our reasons in writing.

[2] Mr Glen Brown was a construction worker, who, on weekends operated his silver grey Toyota Corolla motor car as a taxi. At that time he resided with his wife at Cave in the parish of Westmoreland. He left home at about 8:00 pm on 24 December 2005 and did not return. Detective Sergeant Angella McCurdy-Caine testified that at about 9:00 am on 25 December 2005, she was at the Black River Police Station to which she was attached. She received information and as a consequence, she and other police officers went to Fort Charles District in St Elizabeth. Along the roadway she saw a large group of persons. There she saw what appeared to be bloodstains leading to a precipice. She looked over the precipice and saw the body of a man lying on his back between some rocks. When the body was removed and brought onto the roadway, she observed several stab wounds to the upper portion of the body. This body was subsequently identified at a post mortem examination, conducted by Dr Derrick Ledford, to be that of Mr Glen Brown. During the examination, Dr Ledford noted three battered marks to the right side of the face and forehead, three stab wounds to the face and forehead and 21 stab wounds to the chest, abdomen, right arm and right shoulder. The doctor opined that death was due to shock as a result of a stab wound to the heart. Detective Sergeant McCurdy-Caine also testified that near to the body she saw a dark coloured mat which appeared to have been removed from the trunk of a motor car. When this was retrieved from the precipice, she noticed what appeared to be blood stains on it.

[3] Miss Joan Brooks gave evidence that, during the evening of 24 December 2005, Mr Brown, whom she had known before, took her to St Elizabeth then took her, her two

daughters and her niece to Goodens River in Westmoreland. He was driving his grey Toyota Corolla motor car registered 6758 ED. He left her at Goodens River at about 10:00 pm that night.

[4] Miss Petra Vassell, who in December 2005 was the girlfriend of the applicant, testified that on 25 December 2005, the applicant arrived at her home in Donnigal in St Elizabeth at about 7:00 am driving a silver Toyota Corolla motor car with registration plates bearing number 2091 DD. She noticed that there was damage to the rear of the car including the right rear light. The applicant told her that he had bought the car three days before. He asked for some water and proceeded to wash both the interior and the exterior of the car including the trunk. She observed something looking like blood in the trunk. She later gave him a blue towel which he spread on the driver's seat. She also stated that she had an uncle who was a police officer who was stationed at the Denham Town Police Station in 2005. In that year, he was shot and injured in the line of duty. He did not, however, own a motor car in December 2005, neither had she ever seen him in a silver Toyota Corolla motor car. She also did not own a motor car and did not drive or attempt to drive the motor car that the applicant drove to her home on 25 December 2005. During a telephone conversation the applicant told her that he was taking the car to the garage.

[5] Mr Desmond Russell also gave evidence at the trial. He operated a garage at his home in Kilmarnock in St Elizabeth. He said that on 31 December 2005, while he was effecting repairs to a car near to his home at about 7:00 pm, the applicant drove a

silver Corolla motor car to where he was and requested that repairs be done to the rear of it as the car had been hit in the back. He later observed damage to the right rear fender and muffler of the car. He caused it to be driven to his home. The following day he entered the car and noticed a towel on the driver's seat. On lifting the towel he saw a lot of blood on the seat. He contacted the applicant by telephone and went out and met with him at a shop. When Mr Russell asked the applicant about the blood on the seat the applicant said he was going to call Petra, his girlfriend. He walked some distance away and appeared to be making a telephone call, using a cellular phone. He then came back and said it was his girlfriend's uncle who was shot in the car. He later told Mr Russell that his girlfriend and her uncle were coming to see the progress of the repair job and urged him to at least remove the bumper to give the appearance that work was being done to the car. Mr Russell also stated that when the applicant brought the car to him he said that the car belonged to his girlfriend and that the damage to it was caused while she was reversing it and hit into an object. That evening the police came to where the car was and spoke to him and he gave a statement. The police took possession of the car.

[6] Detective Constable Vaun Reid was in January 2006 stationed at the New Market Police Station in St Elizabeth. On 1 January of that year, in the afternoon, he received information and went with other police officers to a garage in Kilmarnock. There he saw a grey Toyota Corolla motor car with registration plates 2091 DD. He noticed damage to the right rear section of the car. The applicant who was standing near the car said he had bought it from a man who was known to him as "Terror" and who lived

in Whitehouse in the parish of Westmoreland. On examining the car, Constable Reid noticed what appeared to be blood on the driver's seat, a towel which was on the rear seat and in the trunk. He thereupon contacted Police Control and provided the registration number on the car. He later received certain information and took the applicant into custody. Upon doing so, he informed the applicant that the car was stolen and the owner murdered. The applicant said he had nothing to hide and took Constable Reid to his home where he handed over registration, fitness and insurance certificates to Constable Reid. Constable Reid observed that they all have the name Glen Brown as the owner of the motor car. The engine and chassis numbers on the documents also matched those on the motor car. At the home of the applicant, Constable Reid also collected articles of clothing which included a pair of jeans pants and a jeans jacket. The applicant, the motor car and the clothing were taken to the New Market Police Station. He then contacted Detective Sergeant McCurdy-Caine who attended at the station the following morning. There he handed over to her the articles of clothing and the documents for the motor car. He also pointed out the motor car to Detective Sergeant McCurdy-Cain in the presence of the applicant.

[7] The investigation by Detective Sergeant McCurdy-Cain into the death of Mr Glen Brown gained momentum on 1 January 2006 when she received information from Detective Constable Vaun Reid. The following day she went to the New Market Police Station where she saw and spoke to the applicant, informing him that she was investigating the murder of Glen Brown. After the applicant stated that the Toyota Corolla motor car was his, Detective Sergeant McCurdy-Caine examined it in his

presence. She also observed blood stain in sections of it and noticed that the trunk mat was missing. Detective Constable Reid handed over to her the documents for the car as well as the articles of clothing he took from the applicant's home. On 13 January 2006, Detective Sergeant McCurdy-Caine conducted a question and answer interview with the applicant. During the interview, the applicant said he bought the car from a man whom he knew only as "Terror" who lived at Whitehouse in Westmoreland and whom he had known for about two to three months. He said the purchase was made at his gate at about 7:00 am on 25 December 2005. He admitted that he went to Petra Vassel's home at about 7:00 am that morning and that he washed the car. He admitted that he saw stains on the driver's seat but said he did not know it was blood. He tried to wash this out but did not succeed so he borrowed a towel to cover the wet seat. The applicant was subsequently charged for the offence of murder. On 14 January 2006, Detective Sergeant McCurdy-Caine went to Whitehouse in Westmoreland to the home of Marlene Wright who was said to be the mother of "Terror". She conducted a search there and made enquiries as to the whereabouts of "Terror" but got no useful information. Up to the time of the commencement of the trial she had not been able to locate "Terror".

[8] Detective Sergeant McCurdy-Caine caused to be taken to the Government Forensic Laboratory, the motor car, the trunk mat which was found near to the body of Glen Brown and the articles of clothing which were taken from the applicant's home, together with a sample of blood which was taken from the body of Glen Brown. These articles were examined by Miss Sherron Brydson, a forensic analyst. She found human

blood on the trunk mat, human blood in brown stains and serosanguinous stains on the pair of jeans pants. She also noted serosanguinous stains, brown drops, smudges and film in the trunk of the car as well as serosanguinous stains on the driver's seat, the rear seat and the roof of the car. Samples were taken for further analysis and comparison. DNA tests revealed a match between the blood from the trunk mat and the sample from the deceased and partial match between the blood on the jeans pants and the sample from the deceased. Because of dilution, no matches were found in relation to the blood in the car.

[9] In support of his application for leave to appeal, which was made to the court, the applicant relied on the following grounds:

- "1. The verdict arrived at in this case was unreasonable having regard to the evidence before the court.
2. That the learned Trial judge failed to adequately direct the jury on the explanation given by the accused as to how he came in possession of the car and did not advise them that the explanation given, namely that he bought the car, if accepted by them would require them to acquit the accused.
3. That the learned Trial Judge failed to direct the jury that the Police Officers in not investigating the assertion of the Appellant, that he bought the car from Terror, misconducted themselves and deprived the Appellant of adequately putting forward his defence at the Trial thereby depriving the Appellant of a valid defence and of a fair trial."

[10] Neither in written submissions nor in oral submissions before us was ground one pursued. We will however address this ground as we believe that this impacts the

other two grounds. A similar ground was addressed in **R v Joseph Lao** (1973) 12 JLR 1238. In his judgment, Henriques P, at page 1240, cited with approval the following passage from Ross on the Court of Criminal Appeal (1st edn) at p 88:

“It is not sufficient to establish that if the evidence for the prosecution and defence, or the matters which tell for and against the applicant, be carefully and minutely examined and set one against the other, it may be said that there is some balance in favour of the appellant. In this sense the ground frequently met within notices of appeal – that the verdict was against the weight of the evidence – is not a sufficient ground. It does not go far enough to justify the interference of the court. The verdict must be so against the weight of the evidence as to be unreasonable or insupportable.”

In light of the evidence presented by the prosecution at the trial, this ground would therefore have been doomed to failure.

[11] Although in grounds two and three, the complaint was that the learned trial judge failed to adequately direct the jury, neither in the written nor oral submissions was such an assertion made. Instead, the efforts by the police in trying to locate “Terror” were described as insufficient and therefore deprived the applicant of the opportunity to properly present his case. It was submitted that if “Terror” actually sold the motor car to the applicant, as the applicant asserted, then “Terror” would have been the one most likely to be responsible for the death of Glen Brown or most capable of explaining his death. Counsel further submitted that the inaction of the police in trying to locate “Terror” resulted in the applicant being denied a fair trial and accordingly, a verdict of acquittal should be entered.

[12] The inadequacy of the efforts by the police to locate "Terror" could not, in our view, in the circumstances of this case, have led to the applicant being denied a fair trial. The learned judge, on several occasions, reminded the jury that it was the duty of the prosecution to prove the case against the applicant beyond a reasonable doubt. At page 378 of the transcript, the judge in her summing up to the jury said:

"The prosecution is alleging that it is this accused man who killed him, whereas the defence is saying, we know nothing about the death of Mr. Brown. We bought a car and that's as far as we know. We don't know anything else. It's a complete denial of anything to do with his death. So, as jurors, you will have to determine whether you accept the prosecution's case to the extent, that you feel sure, that it is Mr. Robinson who caused the death of Mr. Glen Brown, because the law says, if you accept what Mr. Robinson has said to you, that he doesn't know anything about it and he did not kill Mr. Glenn Brown, that's the end of the matter, you must acquit him if at the end of the day you are left in a state of reasonable doubt, a doubt based on reason, that he killed Mr. Glen Brown. Then again, the law says you must resolve the doubt in his favour and acquit him."

[13] In reviewing the evidence of Detective Sergeant McCurdy-Caine, the judge at pages 436-7 of the transcript said:

"Now, remember you know, from as far back as when she first came into the matter, and she first spoke to Mr. Robinson, he had told her about Terror, and remember he had also told Mr. Reid about Terror but it is [sic] was not until the 14th, that she went to Miss Marlene White's house, in search of Terror. I think she said she had gone there one time before, with the accused and he was in the car and he pointed out where the house was, but she did not stop."

Clearly, the learned judge was inviting the jury to consider this in determining whether the prosecution had satisfied them to the extent that they felt sure that the applicant had not purchased the car from "Terror".

[14] After reminding the jurors of the applicant's statement from the dock in which he stated that he had bought the car from "Terror" and had nothing to do with the death of Mr Brown, the learned trial judge said:

"If you believe that he is telling the truth, that he knows nothing about the death of this gentleman, then you must acquit him. Likewise, if at the end of the day, you are left in a state of reasonable doubt as to whether or not he killed Mr Glen Brown, then the law says that that doubt must be resolved in his favour."

[15] The judge's summing up, in our view, adequately highlighted the applicant's concern about the efforts made to locate "Terror". We believe that there was an abundance of evidence upon which the jury could properly return a verdict of guilty and we found no reason to disturb such a finding. Accordingly, we refused the applicant's application for leave to appeal.