

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 84/07

BEFORE: THE HON. MRS JUSTICE HARRIS JA
 THE HON. MRS JUSTICE M^CINTOSH JA (Ag)
 THE HON. MR JUSTICE BROOKS JA (Ag)

NASSIVE WILLIAMS v R

Robert Fletcher for the applicant

John Tyme for the Crown

12 July 2010

ORAL JUDGMENT

HARRIS JA

[1] On 8 June 2007, the applicant Nassive Williams was convicted in the circuit court for the parish of Saint James, for the murder of Kelvin Ainsley. He was sentenced to life imprisonment. It was ordered that he should not become eligible for parole until he has served 30 years. His application for leave to appeal was refused by a single judge. Before us is a renewal of his application.

[2] Mr Robert Fletcher, who appeared for him, informed the court that he had thoroughly examined the transcript of evidence and the summation of the learned trial judge and could not advance the ground of appeal filed as having any merit. Accordingly, having not found anything which he could usefully advance to the court, he conceded that he would not pursue the application.

[3] The factual circumstances of this case are that about 12:30 on the morning 15 January 2006, the prosecution's main witness, Miss Javana Graham, was at a 'wake' at Lovers Lane, Content, in the parish of Saint James. She subsequently left, accompanied by her sister and her sister's boyfriend Kelvin Ainsley, who was also known as "Calvin". As they walked along the roadway, they were approached by three men, one of whom was the applicant. He was armed with a gun which he pointed at Kelvin's neck, while demanding money from him. Kelvin attempted to put his hand in his pocket and at the same time, the applicant ordered Miss Graham to lie on the ground, threatening to kill her if she disobeyed him. While she was on the ground, she heard an explosion; shortly after, Kelvin fell to the ground. The applicant then went over him and searched his pockets. Miss Graham was unable to see if the applicant had removed anything from the pockets. All three men left after the shooting.

[4] Miss Graham stated that the applicant was previously known to her. She knew where he lived, and had been seeing him often, sometimes three times daily over a period of two years. On the night of

the incident, she said she had seen him earlier at the 'wake', dressed in a black long-sleeved hooded shirt. At that time, the hood was on his back. She said that she observed him for about an hour or an hour and a half, at which time he was about an arm's length away from her. This observation she said she was able to make with the assistance of a streetlight. She further stated that she was also able to observe him at the time of the incident. At that time he was still dressed in the black long-sleeved hooded shirt, but the hood was extended over his forehead, and above his eyebrows. She was able to see his face for about a minute, he being about two to three feet away from her. This observation then, she was able to make by the aid of a streetlight, which was about 12 feet away, and light from a house, which was about 30 feet away.

[5] On 19 June 2006, she pointed out the applicant at an identification parade. A postmortem examination on the body of the deceased was carried out by Dr Murari Sarangi. His examination revealed a gunshot wound to the neck of the deceased. He also found that the bullet went downwards to the chest cavity, injuring the left lung and part of the aorta. He said that death was due to haemorrhagic shock, as a result of a gunshot wound. He found that there was no gunshot powder residue around the wound and opined that the shooter would have been about a distance of two to three feet away.

[6] The applicant, in an unsworn statement, said that he was in the community at a 'wake', when he heard a lady scream that Calvin had

been shot. He ran to the scene where he saw a crowd and Calvin lying on his back. The police came and took photographs. On the following night he was at a shop playing dominoes. The police came and asked him for his name. They told him that they were looking for him and they took him to the police station. After taking him there, they took him back to his house, where they carried out a search. The police enquired of him if he had been arrested before; he told them "no". He called one witness, a Mr Carlington Edwards, who testified that on the night of the incident the applicant and himself were at the wake with a group of other persons, when he, Mr Edwards heard, that the deceased was shot. He saw people running to the scene and he too, along with the applicant, went there.

[7] The learned trial judge correctly expressed the view that the prosecution's case rested on the issue of visual identification. Accordingly, he did not fail to give the jury the appropriate **Turnbull** directions. He impressed upon them that they should observe a cautious approach in determining the reliability of Miss Graham's evidence as to the correctness of her identification of the applicant. He thoroughly and painstakingly reviewed her evidence, pointing out to the jury that she revealed that the applicant had been previously known to her and she had seen him frequently. He also left for their consideration the fact that on the night of the incident she had two opportunities to observe him, first at the 'wake' and then at the time of the incident.

[8] The applicant raised the issue of his good character by stating that he informed the police that he had never been arrested, in response to their query. This, the learned trial judge brought to the jury's attention and directed them how they should treat it, as regards his credibility and his propensity to commit such an offence. He gave adequate directions on all issues which arose. It cannot be said that there are any flaws in his summation which would render the conviction being set aside. The jury correctly rejected the unsworn statement of the applicant and rightly convicted him.

[9] The application for leave to appeal is refused; the conviction and sentence are affirmed. Sentence should commence on 8 September 2007.