

[2012] JMCA Crim 23

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 41/2010

**BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE MORRISON JA
THE HON MISS JUSTICE PHILLIPS JA**

KEVIN BALFOUR v R

Dr Randolph Williams for the applicant

Jeremy Taylor and Mrs Lori-Anne Cole-Montaque for the Crown

16 May 2012

PANTON P

[1] The applicant was convicted in the Home Circuit Court, Kingston, on 2 February 2010 of the offence of murder arising from the killing of Durval Anglin on 17 April 2007. He was sentenced on 24 February 2010 to 15 years' imprisonment at hard labour, with a specification that he should serve 10 years before becoming eligible for parole.

[2] A single judge of this court refused leave to appeal while indicating that the learned trial judge, Cole-Smith J had adequately dealt with the issues of self defence, provocation and accident. The real issue in the case, said the single judge, was the

credibility of the witnesses. He ordered that the sentence should commence on 7 April 2010.

[3] Dr Randolph Williams, for the applicant, appeared before us this morning and indicated that there was nothing that he could usefully urge to challenge the conviction of the applicant. He agreed that the evidence was clear and the summing up adequate in the circumstances. He informed us that he had communicated this position to the applicant who fully understood the situation.

[4] Having perused the transcript of the proceedings, we agree with the conclusion arrived at by Dr Williams. In the circumstances, we refuse the application and ordered that the sentence was to commence on 7 April 2010, as had been ordered by the single judge.

[5] For the record, we state the facts briefly. The deceased and the applicant were among persons at premises 155 Church Street, Fletcher's Land, Kingston, at about 9:00 a.m. on 17 April 2007, when an argument developed between them. During the argument, the deceased told the applicant "about his mother in an angry way", according to one of the witnesses. They started to fight. After they were separated, the applicant went into his room and changed his clothes. He returned to the scene armed with a "three star ratchet knife" which he opened. He also had "a half lass" which he placed in his waist. He proceeded immediately on his return to use the knife to stab the deceased in his chest, and he then chased him while brandishing the "lass". The

deceased was unarmed at the time of the stabbing. Friends of the deceased then chased the applicant who escaped over a fence.

[6] The post mortem examination revealed that the deceased received a stab wound to the left upper anterior chest. The wound was directed downwards, backwards and to the right. It penetrated the underlying tissues and the thoracic cavity through the left fourth intercostal space cutting the lower margin of the fourth and fifth costal cartilages. The depth of the injury was five to seven centimeters. The cause of death was haemorrhage and shock due to the stab wound. In the opinion of Dr Kadiyala, Persaud, moderate to severe force would have caused the injury, and death would have occurred within 15 minutes.

[7] The applicant made an unsworn statement, in which he claimed that he did not remember the details of what had occurred that morning. However, he said that the deceased had called him a coward and had thumped him in the face. The deceased flashed a knife on him, they wrestled, and during the process they fell. The applicant said he got up and ran as he was being chased by some men.

[8] In the face of the foregoing simple factual situation, and the adequate summation by the learned trial judge, Dr Williams was constrained to concede that there was no basis for this court to be asked to interfere with the verdict which the jury returned in less than an hour of deliberation. And so we made the order set out in paragraph [4] above.