

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 12/89

BEFORE: THE HON. MR. JUSTICE CAREY, P. (Ag.)
THE HON. MISS JUSTICE MORGAN, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (Ag.)

REGINA vs. NEVILLE BECKFORD

Jack Hines for the applicant

Brian Sykes for the Crown

May 6 and 10, 1991

MORGAN, J.A.:

This is an application for leave to appeal against conviction in the Home Circuit Court on January 18, 1989, before Walker, J. and a jury for the murder of Sesashi Hewitt.

Four days before his fifth birthday, i.e. the 11th June, 1987, Sesashi was found dead on the beach at Port Royal and Harbour Streets in Kingston. He had lived with his father, Mr. Norris Hewitt, and his sisters at 11 Sutton Street in Kingston where his father worked as a cabinet-maker with the applicant as his apprentice. The applicant worked there for four years, watched television with the children, and would sometimes assist in collecting Sesashi from school when none of the family members was available. In that month of June, however, Mr. Hewitt's step-daughter Venice reported to him that the applicant had committed an act of indecency on her. Mr. Hewitt was very upset, punched up the applicant and dismissed him. As he walked away Venice heard him say that he

was going to kill all of them one by one.

Sesashi attended Alpha Infant School at South Camp Road on the 11th June, 1967. Sometime in the morning Faithlyn Johnson, the office helper, saw a man in the school-yard with Sesashi, spoke to him and sent him through the gate. At the close of school at 1:35 p.m. she saw the same man fixing Sesashi's shirt in his pants, take his lunch-pan, hold his hand and walk down the road towards the sea. Sesashi seemed comfortable with this man. She, however, failed to identify anyone at the identification parade at which he was a suspect and was only able to say at the trial that the applicant resembled the man. The learned trial judge warned that the only value of her evidence was to the effect that a man took away Sesashi that fatal afternoon from school.

Venice went to fetch Sesashi home. She could not find him. She reported to Mr. Hewitt, who made extensive searches at parks, hospitals, play areas and not finding him, in despair made a report at the Central Police Station. By 6:00 a.m. the following day the police took Mr. Hewitt to the beach where he saw the nude body of Sesashi.

Dr. Royston Clifford, the Government Pathologist, performed a post mortem examination. The brain, he said, had a minimal amount of haemorrhage which could have been caused by a blow to the head - abrasions were scattered in the forehead, cheek, chest, abdomen and buttocks. These could have been as a result of the boy being dragged along a rough surface and there was evidence of cyanosis which occurs when a person experiences difficulty in breathing. A significant amount of fluid - water - was in both chest cavities. In his opinion, death was due to drowning.

Detective Lindo saw the applicant on the 15th at the Admiral Town Police Station, cautioned him and asked him what

he knew about the killing. He said in reply that he would give him a statement. A cautioned statement was subsequently taken by Detective Inspector Owen Smith in the presence of a Justice of the Peace, Mr. Nemphard. It consisted of one line -

"I took Sesashi from school, took him down to the Mall and held him down in the water and drown him."

A series of questions were put to the applicant in which he spoke of taking the child from school, walking to the Mall, taking off his clothes, going into the water and holding the child down until he drowned, i.e., "when he stopped moving in the water"; that he felt "no way" when he drowned him. He was asked why he did it and thereafter came a series of irrelevant answers.

In his defence, he made an unsworn statement from the dock of matters irrelevant to the charge in that he spoke of Norman Manley, Shearer, Seaga, Alexander Bustamante. No real defence was put forward.

The learned trial judge gave a careful summing-up on the law as to murder, and on the facts, pointing out that the prosecution was saying that it was the applicant who, in his own words, held down the child and drowned him. He directed them thus at pages 134-135:

"You see, Mr. Foreman and members of the jury, this statement, Exhibit 1, is really the basis of the prosecution's attempt to prove that it was this accused man who killed Sesashi Hewitt. If for one moment you thought that this statement, Exhibit 1, was forced out of this accused man by a beating or threats or any promise of favour or that he was deceived into believing that what he was signing was a confession, then you are duty bound to reject this statement, which you may believe does amount to a confession because I will tell you what it says in a minute. You can only act upon this document, Exhibit 1, if you are satisfied, if you feel sure in your

"mind that it was voluntarily given. If you believe it was not, you have to reject it, and in rejecting it, you will have to find this accused man not guilty of this charge of murder. If you are in any doubt as to whether this statement was given voluntarily or not, you will have to resolve that doubt in favour of this accused man, and again you would have to find him not guilty of this charge of murder. You can only act upon this statement if you are satisfied to the extent that you feel sure that it was given voluntarily by this accused man."

He reminded the jurors of the unsworn statement and that the burden of proving the case rested on the Crown. He said at page 140:

"He pleaded not guilty in this case, which means that he has put the prosecution to prove his guilt. He hasn't put up any specific defence. It is for you to say whether you find that the prosecution has proved this case to the extent that you can feel sure that he is a guilty person."

Mr. Hines, for the applicant, indicated to us that he had carefully perused the transcript and could find nothing of merit to persuade the Court and inasmuch as it seemed to him from the records that the applicant might have been mentally unfit, he had secured an examination by a psychiatrist in order to adduce fresh evidence but the report he received was not in his favour. The doctor had no evidence from which he could find abnormality of the mind at the material time and expressed that he was malingering.

We note from the records that the applicant responded to the charge and pleaded, that there was a medical report that he was fit to plead, and that, from the transcript, there was no abnormal behaviour in the conduct of the applicant during the trial. The facts show a clear demonstration of anger by the applicant at his dismissal and a planned revenge to kill,

as the threat overheard by Venice indicated. His intention was clear and its execution swift. There is every indication that he knew what he was doing when he did it.

We are satisfied that proper directions were given by the learned trial judge on all the issues in the case and for these reasons the application for leave to appeal is refused.