

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 33/90

COR: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

R. V. ANTHONY LEHANG

Mr. Robin Smith for applicant

Mr. Samuel Bulgin for the Crown

28th January, 1991

CAREY, J.A.

At the Home Circuit Court on the 21st of February, 1990, this applicant was convicted on an indictment charging him with the murder of one Carlos Wiggan. He now applies for leave to appeal that conviction.

Mr. Robin Smith who also appeared below has indicated to us this morning that the crucial issue in the case was one of identification and on his examination of the summation, the learned trial judge's directions in this respect were unassailable and accordingly, in the circumstances he could find nothing of merit which would justify him putting forward any argument.

We entirely agree with that view which Mr. Smith has so candidly stated. Because it is an inevitable consequence of a conviction for murder that appeals are pursued to the very highest level, we are obliged to record our comments of our own in writing and we propose to do so now.

The evidence showed that Wiggan was shot to death on the 4th of December, 1988 at about 9:30 in the morning at a place on premises called H Block, Brooks Avenue in Duhaney Park in the parish of St. Andrew. The shooting was witnessed by Samuel Coffie the step-father and Dionne Coffie the sister of

the slain man. The victim's mother also gave evidence but the learned trial judge, very fairly, invited the jury to discard her evidence because he formed the view that her identification was a dock identification. It was clear that she did not know the applicant prior to this event.

On the evidence which the jury plainly accepted, the applicant was known both to the step-father and to the sister of the slain man for about two years prior to this incident as "Peter". His mother lived in the same area on premises described as L Building which was adjacent to the building where this event took place. So far as lighting was concerned, we have already stated that this incident took place in broad daylight. The distance between one eyewitness Samuel Coffie and the applicant was a matter of feet - some 13 feet or thereabouts. The applicant, having fired shots point-blank at his victim, then went out to join a colleague and then fired more shots at persons who had been attracted by the sound of all this shooting. He was in plain view of all.

As we have already said, this was a plain straightforward case and the evidence against this applicant was overwhelming. The learned trial judge as he was obliged to do, seeing that the issue was one of identification, brought home to the jury in language which we think was quite clear, fair and adequate, the dangers inherent in visual identification. He pointed out the various circumstances of identification and the learned judge at p. 30 of the record expressed himself in these terms -

" Finally now, we are going to look at this important issue of identification. I must warn you at the outset of the dangers which are inherent in visual identification. There are inherent dangers in it, because of the fact that people have been known to make mistakes in identifying other persons.

"There is a danger in it, because a person might honestly think that this is the person even though that person is mistaken. So the law says, when you come to deal with evidence of visual identification, as in this case, you must bear in mind the dangers and the risks which are involved in relying on visual identification and therefore approach the evidence with caution. Let me remind you that the law is not saying that you cannot act on and found a verdict upon visual identification. It just says you must proceed with caution, bearing in mind the dangers."

And then he dealt with the various factors to which the jury should advert their attention in making up their minds whether they were satisfied so that they felt sure that the applicant had been properly identified, in other words, that he was in fact the culprit.

The learned judge made it quite clear as he continued his directions when he said this -

" So what is important then is the quality of the identification. Look at the evidence which has been adduced. In order for you to determine the quality and cogency of the identification, you must have full regard to all the circumstances surrounding the identification."

And as we have said, he identified the varying circumstances pointing out facts of lighting, proximity and knowledge. This then was not a case of persons identifying one whom they did not know; this was a case of recognition.

Just before he completed his directions, he said this (at p. 85) -

" There are two aspects to identification: You have to consider what the person says, i.e. what each witness says he saw and then you have to consider the credit of each witness. Do you believe what each of them told you, i.e. Mr. Coffie and Dionne?

"Do they impress you as witnesses of truth? If they impress you as witnesses of truth, then you look at the evidence and weigh it up. If they do not impress you, then obviously you will have to discard their evidence."

We have said sufficient to demonstrate that the judge was at particular pains to make it abundantly clear to the jury what their responsibilities were in regard to identification evidence.

In our view therefore, the conviction cannot be assailed and the application for leave to appeal is accordingly refused.