

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 140/2009

**BEFORE: THE HON MR JUSTICE MORRISON JA
THE HON MR JUSTICE DUKHARAN JA
THE HON MR JUSTICE BROOKS JA**

ELDRA HOUZE v R

Dwight Reece for the applicant

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

31 October and 8 November 2012

ORAL JUDGMENT

BROOKS JA:

[1] On 15 December 2009 the applicant, Mr Eldra Houze, was convicted of the offence of murder. This was in the circuit court for the parish of St. James. He was sentenced to life imprisonment and ordered to serve 35 years before becoming eligible for parole.

[2] The evidence was that on 7 April 2008 at about 8:40 pm, Mr Clive Wallace, a chef and operator of a cook shop, was shot at lower Market Street in Montego Bay in the parish of St James. The police were nearby at the time and saw the applicant, among other persons, running from the area from whence the sound of the shots had emanated. One officer was suspicious of the applicant, because he was holding on to his pants' waist as he ran. The officer held on to him, searched him and found a firearm in his pocket.

[3] Mr Houze was arrested and charged and taken to the police station where he confessed to having shot "the chef". He gave a cautioned statement the following day, admitting the killing and saying that he was paid to do it. He also submitted to a question and answer session some days later and maintained his position. Both were in the presence of duty counsel. A spent shell was found on the scene the morning after the shooting and a bullet was taken from Mr Wallace's body during the *post-mortem* examination conducted thereafter. Ballistics examinations revealed that the bullet and the spent shell both came from the firearm which had been taken from Mr Houze. Swabs taken of the applicant's hands revealed that he also had gunshot residue at trace levels on his hands.

[4] His defence was that he was beaten at the scene of his apprehension, and had only admitted killing the man because of the beating. The beating stopped thereafter. His evidence was that he had heard the shots and saw someone he knew as "Paw" running from the scene. He said "Paw" gave him the gun to hold but he threw it away

and walked away. He said he had no gun on his person when the police held him, but they planted it on him and beat him until he was bloody.

[5] Mr Houze admitted having given the cautioned statement but agreed that he did not tell his lawyer at the time, that he had been beaten. He said that he did not have any confidence in the lawyer at the time because he did not know him before. He said that he had told a lie on himself in the caution statement out of fear of "Paw" who lives near his family and because of the beating.

[6] No voir dire was held in respect of the admissibility of the caution statement. None was requested. This is perhaps because there was no suggestion during the prosecution's case as to any beating or other duress being used to secure the caution statement. A suggestion was made that he was beaten but no connection was made to the cautioned statement. It is the applicant who introduced that element during his testimony.

[7] Mr Reece, appearing before us, confirmed our view that the learned trial judge had identified all the issues, especially those relating to the caution statement and to the circumstantial evidence. No complaint can properly be made in relation to the summation or in respect of the sentence. The jury's verdict is consistent with the evidence that was presented, which pointed overwhelmingly to the applicant's guilt.

[8] Based on the above, the application for permission to appeal against conviction and sentence is refused. The period of his sentence shall be reckoned as having commenced on 30 January 2010.