JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 49/96

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE PATTERSON, J.A.

REGINA vs.
RAY BLOOMFIELD

Carlton Williams for the applicant

Mrs. Vinette Graham-Allen and
Miss Lisa Palmer for the Crown

January 13 and February 19, 1997

PATTERSON, J.A.:

On the 19th April, 1996, the applicant was found guilty of manslaughter and sentenced to eight years imprisonment at hard labour. His application for leave to appeal was refused on the 13th January, 1996, for the reasons that follow.

Kareen Henry, the deceased, a 22 year old student attending Duff's Commercial School, lived at 2 Coffee Crescent, Olympic Gardens in St. Andrew. She was the girlfriend of the applicant, who lived in the same community, and she cared for his three year old daughter.

Sometime before 10:00 p.m. on the 25th September, 1994, the deceased was seen outside her house suffering from an injury to her head. Jennifer

King, who testified on behalf of the defence, said she saw the deceased "sprawled outside and I saw blood on to her face, running from the head ... she was placed in a car, she was not moving." The deceased was rushed to the Kingston Public Hospital.

Sergeant Lewis of the Olympic Gardens Police Station said he got a report at about 10:00 p.m. that night, and as a result he went to the Casualty Department of the Kingston Public Hospital. There he saw the deceased on a stretcher with a wound to her head. He knew her before as a member of the Police Youth Club in the Olympic Gardens area. He said, "I went to her and I asked her what happened, she appeared as if she was dying. She was trying to catch the last breath. She said, `Mr. Lewis, Ray shot me for nothing, and mi a go dead; call mi father for me." This bit of evidence was admitted as a dying declaration, and the prosecution placed some reliance on it in proof of the identity of the deceased's assailant. The Sergeant said he knew Ray before that night, he was from the Hill Avenue area. He left the hospital when the deceased was rushed off to the theatre. He was at the hospital for about 10 - 15 minutes, and then he left **"something to eleven" for the deceased's** home. There he made observations. He said he saw bloodstains and "a board door with indentation in it." He obtained a warrant for the arrest of the applicant, but it was not until November that he arrested him as he could not be found before then.

Shevrod Henry, the father of the deceased, lives in Clarendon, and he said he got a telephone call at 9:30 p.m. at his home, and as a result of what

he was told, his wife and his family rushed off to No. 2 Coffee Crescent and then to the Kingston Public Hospital arriving there after 11:00 p.m. He saw his daughter on a bed in the X-ray room; she was alone. He spoke to her after she was taken from the X-ray room, and she made movements "as if she understood what I was saying." However, she did not speak. Cynthia Henry, the mother of the deceased, said the deceased was breathing very hard, and she too confirmed that the deceased could not speak then. Both witnesses could not recall seeing Sergeant Lewis at the hospital that night. But that is not surprising, since the evidence clearly showed that when they got to the hospital, Sergeant Lewis would have left already.

Mr. and Mrs. Henry returned to No. 2 Coffee Crescent after leaving the hospital. Mr. Henry said he went into his daughter's bedroom where he saw a "bash on the door which was not normal." Sergeant Lewis also noticed that "bash" and the relevance of that bit of evidence becomes quite clear when viewed in the light of Mrs. Henry's testimony. She said that at about 2:30 p.m. on the 26th September, 1994, she received a telephone call. She recognised the voice of the caller to be that of the applicant. She knew him well from the Olympic Gardens area; he was a good friend of her deceased daughter. It is common ground that the applicant had spoken to her on the telephone before that day. Having recognised the applicant's voice, she asked him, "Why did you kill Kareen?" He answered, "Is almshouse business that Miss Lyn." Mrs. Henry is also known as "Miss Lyn". It should be noticed that although Mrs. Henry made a direct accusation, the applicant did not deny it. He continued

by telling Mrs. Henry that he went to the deceased's house and called her, and when she did not answer, he kicked off the door and went inside. That would account for the "bash" that both Mr. Henry and Sergeant Lewis said they saw in the door. He said that the deceased ran outside and he ran at her and they had a struggle. He told Mrs. Henry that he took out his gun to hit her and it went off. Mrs. Henry said she asked the applicant what he was doing with a gun, and why he had called the house, "Can you bring back my child?" He said, "No." Before he hung up, Mrs. Henry told him there was nothing he could do for her. He said he had to be in hiding, and begged for mercy.

It was open to the jury to accept the unchallenged evidence of Mrs. Henry, and on that evidence alone, to convict the applicant of manslaughter. On the applicant's own admission, he was engaged in an unlawful and dangerous act and from it death ensued, albeit unintentionally.

In *R. v. Larkin* [1943] 1 All E.R. 217 at 219, Humphreys J, delivering the judgment of the court, stated the established and undisputed proposition of law as follows:

> "Where the act which a person is engaged in performing is unlawful, then if at the same time it is a dangerous act, that is, an act which is likely to injure another person, and quite inadvertently he causes the death of that other person by that act, then he is guilty of manslaughter."

In *D.P.P. v. Newbury & Jones* [1976] 2 All E.R. 365, this dictum of Humphreys J was approved by the House of Lords.

The jury convicted the applicant of the offence of manslaughter, quite likely on the unchallenged evidence of Mrs. Henry. But Mr. Williams

contended that "the verdict is unreasonable and cannot be supported." His argument was based on the evidence of Dr. Martin-Clarke who testified on behalf of the defence. She is a registered medical practitioner and casualty officer at the Kingston Public Hospital. She was not the doctor who attended the deceased on the night she was admitted to the hospital, but she testified and expressed an opinion after reading the records kept at the hospital. The records disclosed that the deceased was admitted at 10:28 p.m. on the 25th September, 1994. She was unconscious; she had suffered loss of brain matter, and her pupils were dilated and unresponsive to light. There was no record of her regaining consciousness. The treatment consisted of an injection. She was X-rayed and sent to the ward. From what was recorded, Dr. Martin-Clarke expressed the opinion that the deceased could not have spoken at all. There was nothing in the records to say what was the condition of the deceased before she was admitted at 10:28 p.m. that night. Sergeant Lewis said he saw her shortly after 10:00 p.m. at the hospital and she spoke to him. Dr. Martin-Clarke gave her opinion from records which commenced at 10:28 p.m. and even then, since she was not the maker of the document, she could not speak to its accuracy. It seems clear, therefore, that her evidence could not form the basis to discredit the evidence of Sergeant Lewis and render the dying declaration nugatory.

Mr. Williams sought to support his argument by referring to the judgment of the court in *R. v. Leonard Fletcher* (unreported) S.C.C.A. No. 20/96 delivered November 25, 1996. That case was decided on its own facts

and is readily distinguishable. A doctor examined a young girl shortly after she reported that she had been sexually abused. The unchallenged evidence was that the physical examination revealed no signs whatsoever to support the young girl's uncorroborated allegation. The doctor expressed the opinion that the girl had not been sexually assaulted. On the totality of the evidence, the court concluded that the verdict could not be supported.

In our judgment, there was ample evidence adduced by the prosecution to support the verdict of the jury in the instant case. We found no merit in the arguments advanced by counsel for the applicant, and accordingly we refused the application for leave to appeal and ordered sentence to commence 19th July, 1996.