JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 102/97

BEFORE: THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE GORDON, J.A.
THE HON. MR. JUSTICE PATTERSON, J.A.

REGINA VS. PETER BROOKS

Bert Samuels for applicant

Bryan Sykes, Deputy Director of Public Prosecutions, for Crown

July 7, 8 and 27,1998

PATTERSON, J.A.:

On the 25th July, 1997, in the Circuit Court Division of the Gun Court at Kingston, the applicant was convicted of non-capital murder and sentenced to imprisonment for life. The court specified a period of sixteen years that the applicant should serve before becoming eligible for parole. He applied for leave to appeal against conviction.

The Crown relied on the evidence of an eyewitness, Herman Patterson, to establish the circumstances in which the deceased, Wendell Reid, was shot and killed. The witness said that at about 3:00 a.m. on the 9th October, 1995, he was at his gate at 35 Johns Lane in Kingston when the

applicant approached him with a gun. They spoke for about half an hour and then the applicant walked off going up Johns Lane. Just then the deceased drove on to Johns Lane, stopped in the vicinity of 37 Johns Lane, came out of his car, and handed "something like a match box" to the applicant. The applicant pulled the gun from under his shirt and pointed it at the deceased. The deceased thumped the applicant causing him to stagger and fall "on his bottom". An explosion followed and the deceased called for help and fell on the roadway. The applicant ran away up Johns Lane.

Detective Corporal Wilson said he got a report and went in the vicinity of 661/2 Johns Lane, where he saw the body of the deceased lying on the roadway. Next day, he obtained a warrant for the arrest of "Soljie". On the 24th May, 1996, the witness Patterson identified the applicant as "Soljie" and as the one who shot and killed the deceased on Johns Lane. Dr. Clifford, who performed the post mortem examination on the body of the deceased, found that a bullet had entered the lower right side of the abdomen and exited at the right buttocks. Death was due to a gunshot wound to the abdomen.

The defence was an alibi. The applicant said he was at his house at the relevant time. He denied knowing the witness, and said that the first time he saw him was at the police station on the 24th May, 1996.

The nature of the defence dictated the way in which the cross-examination of the witness Patterson proceeded. Questions were asked to

ferret out discrepancies and inconsistencies in his testimony, and to suggest that he was a user of cocaine and consequently an unreliable witness. Before us, Mr. Samuels urged that, having regard to the discrepancies and inconsistencies that emerged, the verdict of the jury was unreasonable and cannot be supported. He referred to the testimony of one Sergeant Thomas who said he took a statement from the witness and that the witness said then he lived at 99 Luke Lane. The witness, however, testified that he witnessed the crime from his gate at 35 Johns Lane.

In order to succeed on this ground, the applicant must show exactly what the statute says:

> "The Court ...shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence." [Section 14 of the Judicature (Appellate Jurisdiction) Act].

There was no complaint about the directions of the learned trial judge to the jury as to how they should assess the evidence in light of the discrepancies and inconsistencies. In our view, the directions were impeccable. The issues were properly left to the jury for them to resolve. But, quite apart from the viva voce evidence, on the insistence of counsel for the applicant, the court visited and permitted the jury to view the locus in quo, and the relevant areas were identified. That provided real evidence for the jury to consider. It followed, therefore, that they were entitled to conclude that the discrepancies as to the numbering of the street and any

inconsistencies as to the home address of the applicant did not go to the root of the case, and paled in significance. This is reflected in their verdict.

It should be remembered that an appeal to this court in a criminal matter is not by way of rehearing as in civil cases on appeal from a judge sitting alone. An appeal on the ground under review in this case involves a question of fact alone, and lies only by leave of the court. Such leave will not be granted merely by showing that there are inconsistencies in the evidence. In our view, the applicant has failed to show that the verdict appealed from is one that no reasonable jury could have arrived at, or that it cannot be supported having regard to the evidence.

The other ground attacked the directions of the learned trial judge. This is what is said:

> "The learned trial judge ought to have given specific directions regarding reliance on a witness who is a self-confessed user of cocaine, as it affects his ability to observe and to be relied upon ."

Sergeant Thomas testified that the witness told him in a statement that he frequented Johns Lane to smoke "coke", but the witness denied telling that to the police. The witness said he once used cocaine, but he had stopped and started selling it, and that his conviction "last year" was for possession of cocaine and not for smoking cocaine.

The learned trial judge, in addressing the jury on this aspect of the evidence, had this to say:

> "You can't look at this man and say because him smoke coke; you can't look at this man and say,

> 'this is a man who sell him coke,' and make judgment on him. It's not a moral judgment you are called to make whether it's right or wrong for him to sell or smoke coke. It is a judgment as to whether or not what he has told you is capable of belief."

Counsel found no fault with those directions, but he said that the learned judge should have gone further by directing the jury that the abuse of cocaine would have affected the ability of the witness to observe what he said he did. Counsel lost sight of the fact that there was no evidence to support a finding that at the relevant time, the witness was or may have been suffering from the ill-effects of smoking cocaine. In our view, the directions of the learned trial judge on this issue were adequate in the circumstances. This ground is wholly without merit.

For these reasons we refused the application for leave to appeal against conviction.