

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 11/89

BEFORE: THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

REGINA vs. EDMOND JOHNSON

Dr. Randolph Williams for the applicant

Michael Palmer for the Crown

February 4 and 11, 1991

MORGAN, J.A.:

This is an application for leave to appeal against conviction and sentence in the Circuit Court, St. James on the 10th January, 1989, before Patterson J. for the murder of Joycelyn Smith on the 22nd November, 1987, at Lattery. This was heard on the 4th February, 1991, when leave was refused.

The applicant was the boyfriend of one Beverley Kerr, the younger sister of the deceased, with whom she lived. She was at a dance in Amity that early morning when the applicant appeared and thereafter an altercation occurred with himself and her dancing partner. She left the dance to home followed by the applicant, and refused to open the door to him when he knocked. He entered forcibly through a window and in anger ordered her to return all the clothes he had given her. She responded with hurtful words, "Is only dirty man give woman things and ask them back for it".

The deceased was in bed with her boyfriend, Dennis Fray, in an adjoining room. She got up and intervened, entreated Beverley to let the applicant take the clothes, and gave her a bag in which to put them. But there was still confusion and Joycelyn left saying she was going to the police. The applicant then punched Beverley in the eye, and to her screams of "Murder", Dennis Fray responded, went to the room and ordered the applicant outside. Fray stood barring the door while heated words flew fast between the applicant outside and Beverley inside. Fray told Beverley to go to her sister's room, then, simultaneously the applicant slashed him across his belly with the knife and ran towards the main road. At that time Fray saw the deceased coming into the yard and he shouted to her, "Lord God the boy cut me cross my belly". Just then the deceased made an attempt to hold the applicant. The applicant, still holding the knife, thrust it into the deceased and escaped, as she fell to the ground dead.

The evidence of Memory Stennett, a registered medical practitioner, was that there was an incised wound of the left ventricle (part of the heart) which entered four inches deep and that, in her opinion, death was due to massive haemorrhage from this stab wound.

The applicant ran to a shop some chains away where he was chased, held, beaten by citizens and pointed out to Constable Cosmo Spence, to whom a report was made. On the way to the police station the Constable searched him and found a knife in his back pocket. When confronted with this knife, he said, "Mr. Spence a it me use stab Simms".

The applicant gave an unsworn statement and said that after the deceased threw the bag with clothes outside and left for the station, he went outside with matches to search for it. Joycelyn returned and asked, "Who this in a mi yard

a light matches?". She had a machete in her hand and grabbed him in the front of his shirt and called her friends who came and they all beat him. Beverley and Fray both came out with knife and iron so he took refuge behind the deceased who suddenly let go of him. He ran. He handed the knife to the police and he was subsequently taken to the station. The defence was that he did not inflict the wound which caused her death.

The learned trial judge gave a long, fair and careful summation to the jury in which he left all the available defences to them.

Counsel, who appeared for the defence, made a feint reference to the lack of sufficient directions on identification. He conceded that it was not an issue and said that, after a careful reading, he could find no ground that he could reasonably argue on behalf of the applicant.

The Court considered the evidence adduced and the summing-up of the learned trial judge and we entirely agree with the view of counsel.