

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 160/90

COR: THE HON. MR. JUSTICE CAREY, J.A.  
THE HON. MR. JUSTICE DOWNER, J.A.  
THE HON. MR. JUSTICE WOLFE, J.A. (AG.)

REGINA VS. PAUL LAWRENCE

Dr. L.G. Barnett & Maurice Saunders for applicant

Mr. Brian Sykes for the Crown

15th June, 1992

CAREY, J.A.

In the Home Circuit Court on the 13th of November, 1990 before Courtenay Orr, J., sitting with a jury, this applicant was convicted on an indictment which charged him for the murder of Alexander Hamilton. The victim was shot to death on the night of the 1st of February, 1988.

Having regard to the conclusion to which we have arrived, we do not propose to set out the facts in any detail or to make any comment on them save as is enough to enable an appreciation of the reasons for our conclusion.

Mr. Hamilton returned with his family to his home at Swain Spring. His son Christopher entered the house to switch on the lights to ensure their safety. When he did so, he saw some armed intruders and he also noticed that there were appliances stacked up in the house for removal. He made an alarm. In the result his father who was outside the house was fatally shot. The police found the fingerprint of this applicant upon a television set belonging to the Hamiltons which was among the articles stacked up to be removed from the house.

The Crown's case depended essentially upon visual identification and also upon the presence of the fingerprint of this applicant. The learned trial judge in his directions, advised the jury to ignore altogether the visual identification aspect of the evidence and to rely wholly upon the fact that the fingerprint was found in the house.

The gravamen of the grounds of appeal turns upon the direction given by the learned trial judge on circumstantial evidence. Perhaps we could refer to some passages wherein the judge gave such directions. At p. 297 the learned judge said this:

" It is open to you to draw reasonable inferences from such facts as you find proved and if from any set of facts more than one reasonable inference may be drawn, you as sole judges of the facts must decide which inference you will draw, having regard to the totality of the evidence that you accept."

The learned trial judge then gave an example which we do not think was apt. However, at p. 308 he deals with circumstantial evidence and he said this:

"... Circumstantial evidence is evidence of circumstances which can be relied upon, not as proving a fact directly, but as pointing to a fact."

Thereafter he went on to deal with the fingerprint evidence. At p. 310 he mentions again the fact of circumstantial evidence namely, the print, but he gave no further directions which could possibly assist the jury. At pp. 318 and 319 he deals with the primary fact of the finding of the fingerprint, but again no further directions were given. Those are the extracts which we have been able to find dealing with this matter.

It is plain that those directions on circumstantial evidence would be wholly inadequate to bring home to the jury the nature and character of circumstantial evidence. It is to be borne in mind as well, that in this jurisdiction, Hodge's case is binding on our courts and therefore trial judges, who are required to assist the jury, must have in mind the principles involved in that case. Nowhere

in the cited extracts has the learned trial judge made it clear that the circumstances, the primary facts which they find, must point in one direction and one direction only and that inconsistent with innocence.

For these reasons we treat this hearing as the hearing of the appeal which is allowed. The conviction is quashed, the sentence set aside and in the interests of justice, the Court orders a new trial in the ensuing session of the Home Circuit Court.