JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 32/90

COR: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

REGINA

VS

CHRISTOPHER PARKES

D. V. Daly, Q.C. for applicant

Miss Diana Harrison for Crown

25th February, 1st & 8th March, 1991

CAREY, J.A.

In the Home Circuit Court before Wolfe J, and a jury after a trial lasting from 12th to 15th February, 1990, the applicant was convicted of the murder of Inez Wilmot and sentenced to death.

The incident which gave rise to this charge occurred in the night of 13th November, 1987 when the victim was stabbed to death by the applicant. The sole eyewitness was a 12 year old school boy Kevin Reid who, having been examined on the voir dire, gave sworn evidence. He testified that on the night in question, he was on his way home from a shop in the company of some friends of his, including Charmaine Robinson who was called to give evidence for the prosecution but was eventually treated as hostile. They used a short-cut which avoided another path frequented by bullfrogs which brought them to the rear of Pauline Wilmot's house. Pauline Wilmot is a sister of the victim. He heard gun-shots shortly before arriving at that location. Then he heard male voices demanding of Inez Wilmot that the door be opened and to know - "where the man deh." After she opened the door, he saw "two boys"

hit her head against a stone. She managed to escape their attention but she was brought back and stabbed with an ice-pick. He overheard the victim beseeching - "a mi you a do so, Chris? You a go kill me and a me cook and gi you?" Whereupon, 'Chris' (whom the witness identified as the applicant) said that she would not tell her man to return his gun. She replied that he had gone and she did not know his whereabouts. The applicant's retort was that she be shot in.....—using a vulgarity.

The injured woman was able to escape to a neighbour and eventually taken to hospital. On her way there in response to a question, she stated that "Chris" had stabbed her and that she was not going to live. At the hospital a doctor pronounced her dead.

The medical evidence showed some five incised stab wounds, three of which were in the chest, one on the left thigh and the other on the upper left forearm. One of the injuries to the chest punctured the ascending aorta and was fatal. The medical evidence was in conflict with Kevin Reid's evidence as to the type of weapon used. It was the doctor's opinion that a knife was used.

The incident took place in darkness. However the eye-witness was no more than eight to ten yards distant from the place the attack occurred. He said he knew the applicant because he frequented the area: he was a friend of the slain woman's boyfriend whom the applicant often visited. The applicant had been accompanied by two other young men but these he did not know.

The police in their investigations, recovered two spent .45 rounds of ammunition which were handed over by a householder on the premises where the incident took place. On 13th November, 1987 when the applicant was interviewed by the investigator, he vouchsafed the information, upon caution that

he never meant to kill her but "she bad me up with her mouth." On arrest, he repeated that he never meant to kill her.

The applicant, in an unsworn statement from the dock, denied any involvement in the crime whatsoever. He denied making the incriminating remarks attributed to him by the investigating officer. He told the jury that he knew Inez Wilmot quite well and added that they lived together "like brother and sister."

The grounds of appeal were all concerned with Charmaine Robinson a witness, called on behalf of the prosecution who, by leave of the Court, was treated as hostile. We mean no disrespect to counsel's arguments which we would sum up thus: The trial judge ought not to have treated the witness as hostile and so allowed her previous inconsistent statement to be adduced in evidence. Secondly, his direction to disregard the witness' evidence altogether prejudiced the applicant. He explained the prejudice by saying that the statement affected the credit of the sole eyewitness Kevin Reid.

This is then a convenient time to outline what occurred in the course of the trial with regard to the witness Charmaine Robinson. When she began giving her evidence, she could not be heard and despite the trial judge's directions and insistence that she speak up, she was most reluctant to do so and persisted in speaking inaudibly. The trial judge ordered her taken into police custody and she was told to intimate to the police officer the moment she was disposed to speak up. Counsel for the Crown interposed another witness and at the conclusion of her cross-examination, the reluctant witness returned to the witness stand. She testified that while in the company of Kevin Reid and another girl Camille, she reached the premises in question where she heard crying but did not see who it was. Despite being pressed by the

trial judge, all that she would say was that she did not see Inez Wilmot, the victim. Upon being pressed by the trial judge, she finally admitted her signature on the statement to the police. Thereafter by leave of the trial judge, she was treated as hostile and cross-examined on her statement which was inconsistent with her evidence before the jury. In that statement, she had said that she had heard Inez Wilmot crying.

In these circumstances, it was in the absolute discretion of the judge to give or refuse leave to cross-examine the witness for the Crown. It was the duty of Crown Counsel himself to bring to the attention of the trial judge the fact of the flat contradiction between the witness' sworn statement and her previous statement. We have no doubt whatever that having regard to the conduct of the witness which we earlier outlined, she had, as section 15 of the Evidence Act provides, proved "adverse" i.e. hostile and that allowed admission in evidence of her previous inconsistent statement. We do not really think that there are any exceptional circumstances which justify the argument as to the propriety of the judge treating the witness as hostile. We find support for this approach in the words of Lord Alverstone, C.J. in **R. v. Williams** [1913] 8 Crim. App. R. 133 at p. 139 -

> "..... Having regard to the decision in Rice v. Howard 16 Q.B.D. 681; 55 L.J.Q.B. 311; 34 W.R. 532 [1886], we desire to say that there must be exceptional circumstances to justify an appeal to this Court on the ground that a witness had been allowed to be treated as hostile."

With respect to the second submission, we observe that the trial judge told the jury in emphatic terms that they should disregard entirely the evidence of the witness Charmaine Robinson.

He said in part at pp. 182 - 183 -

> ".....So what the crown has done is to destroy her. The crown has put her before you as a person no longer worthy of belief. They have destroyed her credit. So, in relation to her testimony it can't assist you. You can't use it to come to any conclusion. So, you will approach her testimony as if it was not given. And you can't use anything that she said in her - said to assist you in coming to your verdict in this case.
>
> So far as Charmaine Robinson is concerned, her testimony is worthless so don't use any of what you heard she told the police to assist you in arriving at your verdict. She was put up and the crown is saying she is unreliable - the crown called her and told you that she is unreliable then you the judges of fact have no alternative but to disregard her testimony."

Counsel submitted that in this direction, he usurped the jury's function.

The Court adverted Mr. Daly's attention to **R. v. Solomon Beckford** (unreported) S.C.C.A. 41/85 dated 10th October, 1985 in which this point was debated. In that case, the Court reviewed a number of Commonwealth decisions including one of our own on this very point including **Driscoll v. R.** 51 A.L.J.R. 731; **Deacon v. R.** [1947] 3 D.L.R. 772; **R. v. Headlam** [1975] 13 J.L.R. 113 and said this at p. 22 -

> " We take the view then that there is no rule of law that where a witness is shown to have made previous statements inconsistent with the statement made by that witness at the trial, the jury should be directed that the evidence given at the trial should be regarded as unreliable. It cannot however be too often stressed that a witness' credit is entirely a matter for the jury and not the judge. Each case will depend on its own circumstances. The explanation given by the witness for the previous statements might

> "be acceptable to the jury. But there may be other cases where no explanation is given or the explanation proferred, is so tenuous that no reasonable person could accept it, then a trial judge would be acting consistent with his responsibility to ensure a fair trial, to direct the jury that the effect of the witness' evidence is negligible.....".

In the instant case, the witness had given no evidence favourable to the defence. All she had said was that she had not seen the slain woman on the premises although she heard crying. It was no part of the defence that the victim was not on the premises at the time and accordingly, the sum total of her evidence was of the order of zero, which is less than negligible. The trial judge was acting consistent with his duty to ensure a fair trial in explaining the significance of evidence to say, as he did, that her evidence was worthless. It is far-fetched to argue that he thereby usurped the jury's functions. He clearly did not. Nor were we impressed by the submission that her evidence was in conflict with the eyewitness who testified that he saw the victim attacked on the premises. In our view, this was not a case of a conflict which the jury would have been called upon to resolve. Rather it was a case of a witness whose evidence, because of its internal conflict, had been wholly discredited and another witness whose evidence could be properly left for the jury's consideration.

In our view, there was no merit in any of these arguments. Although the grounds of appeal were somewhat expansive, Mr. Daly did not press some of his arguments when he accepted that they were lacking in substance. He did say however, all that could properly be urged in the applicant's favour.

Finally, we wish to state that although no arguments were directed at the verdict or the summing up, except in the one

respect noted, we have ourselves examined the record with care. We scrutinized the identification evidence which, even if it was not of the highest order, was supported by other cogent evidence, viz the declaration of the dying victim as to the identity of her assailant and the admission of the applicant to the investigating officer.

This is sadly, but another example of the mindless violence endemic in the society. In one sense it is domestic violence: all the parties are known to each other. But in another sense, it is part of gun violence. The victim had to die because her boyfriend had not returned an illegal firearm to its illegal owner.

The application for leave to appeal must be refused.