[2018] JMCA Crim 15

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS 67 & 68/2010

BEFORE: THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MISS JUSTICE P WILLIAMS JA

RICARDO SPAULDING &
ANTHONY JAMES v R

H Charles Johnson for the applicants

Mrs Sharon Milwood-Moore for the Crown

5 and 6 February 2018

BROOKS JA

[1] The applicants, Messrs Ricardo Spaulding and Anthony James, were convicted for murder in the Home Circuit Court on 19 February 2010 after a trial before a judge sitting with a jury. On 13 May 2010, the learned trial judge, Lawrence-Beswick J, sentenced them both to imprisonment for life and ordered that each one should serve 15 years imprisonment before being eligible for parole.

[2] The case, on which the prosecution relied, in securing the convictions, started with the scenario that on 15 May 2005 at about 2:35 pm, Mr Donovan Harris and his sister Diahanne Harris were in a barber shop at Race Course, Falmouth, in the parish of

Trelawny. While they were there, a group of between 13 and 20 persons, comprising men and boys, came from a nearby hillside to the shop. Three of the men entered the shop and dragged out Mr Harris. Among the three, were "Ricardo" and "Jermaine", whom Mr Harris' sister identified in court as the applicants, Ricardo Spaulding and Anthony James. One of the three, "Damion", had a golf club. "Ricardo" had a baseball bat and "Jermaine" had a stick. They took Mr Harris to an empty lot opposite the shop and the entire group started to beat him. They hit and kicked him on the head and all over the body. Miss Harris started to scream and "bawl out" and the men eventually ran back toward the hillside leaving Mr Harris on the ground, bleeding, especially from the head. He was taken to hospital at Falmouth, where he died from his injuries.

[3] On 4 June 2005, Miss Harris attended an identification parade and pointed out "Jermaine", that is the applicant Anthony James, as one of the attackers. Although she named "Ricardo" as one of the attackers no identification parade was held for Mr Spaulding. He was identified by her while he was in the dock in the Parish Court, during a preliminary enquiry concerning Mr Harris' death. She was the only eye-witness who testified at the trial.

[4] The two applicants and a third man were the defendants at the trial. All accused denied involvement in the assault on Mr Harris and said they were elsewhere at the time of the commission of the offence. The main issues raised in the trial were identification, joint enterprise, the fairness of the identification parade and the issue of dock identification. The jury convicted the two applicants but failed to agree on a verdict in respect of the third man.

[5] The applicants sought leave to appeal against their convictions. A single judge of this court refused their applications for leave, but the applicants have renewed them before the court. In pursuing their applications for leave to appeal before the court, Mr Johnson, on their behalf, sought and was granted permission to abandon the original filed grounds of appeal and to argue four supplemental grounds of appeal.

The supplemental grounds of appeal

> "1. The learned trial judge erred in law in failing to assist or direct the jury, adequately or properly, in relation to the discrepancies or inconsistencies which arose on the evidence for the prosecution. More particularly, the learned trial judge failed to highlight major inconsistencies and their possible effect vis-a-vis the prosecution's onus probandi and/or legal burden and standard of proof. This omission was fatal as it deprived the Applicants of a fair trial with the inevitable consequence that there was a grave miscarriage of justice.
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> 2. The learned trial judge erred in failing to assist or direct the jury adequately or sufficiently in relation to the issues or problems which adversely impacted identification and significantly weakened the prosecution's case, regarding the credibility of the process.
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> 3. The learned trial judge erred in failing to deal adequately or sufficiently with the identity process. Further, the learned trial judge failed to direct the jury that some aspects of the statements made by the witnesses is statement upon which they could act to acquit the Applicant [sic].
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> 4. The verdict is unreasonable and cannot be supported having regard to the evidence."

[6] We cannot agree with Mr Johnson in respect of these issues. Miss Harris gave cogent evidence about her observations of what each of these applicants did to her

brother. Despite the fact that there were between 13 and 20 attackers, it was three of them who entered the shop and dragged out her brother. The applicants were two of the three. They each came within arm's length of her. She saw their faces while they were dragging Mr Harris out of the barber ship. They were people whom she had known before, for years, and was accustomed to seeing on a regular basis in her community. She saw their faces for the entire time that they were in the shop, that is, two to three minutes, and thereafter until the incident ended, which took some five to 20 minutes in all.

[7] The learned trial judge gave the jury adequate directions in respect of the dangers of visual identification, reviewed the relevant evidence for them and set out the weaknesses of the circumstances of the identification. She likewise gave them adequate directions on the issues of joint enterprise, the conduct of the identification parade, dock identification, inconsistencies and discrepancies and alibi. She stressed that the case against each applicant should be separately considered. We cannot fault the learned trial judge on any of her directions in these areas. The jury having seen and heard the eye-witness, it was their assessment of her credibility which is the foundation of the conviction of the applicants.

[8] The flaws in the investigative process that Mr Johnson sought to stress could not have had any serious impact on the analysis by the jury. The applicants had a fair trial and their respective convictions cannot be said to be unsafe. In the circumstances, the application by each applicant for leave to appeal is dismissed and their respective sentence is to be reckoned as having commenced on 13 May 2010.