



IN THE CAYMAN ISLANDS COURT OF APPEAL

**Criminal Appeal 013 of 2018**  
IND. 0084 OF 2010  
SC# 08844

BETWEEN:

**LEONARD EBANKS**

**Appellant**

- and -

Her Majesty the Queen

**Respondent**

BEFORE: **Rt. Hon Sir John Goldring, President**  
**Hon Sir Richard Field, Justice of Appeal**  
**Hon Sir Michael Birt, Justice of Appeal**

Date of Hearing: 7<sup>th</sup> September 2020

Appearances: Mr. Keith Myers, Attorney for the Appellant  
Ms. Candia James-Malcolm, Office of the DPP for the Respondent

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JUDGMENT

Transcript of oral judgment dated 7<sup>th</sup> September 2020 and Approved for Release 3<sup>rd</sup> February 2021

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**Goldring, President**

1. This is the second case in which someone whose appeal against conviction failed, seeks to reopen it. The wholly exceptional circumstances in which this might happen in the Cayman Islands was considered by this Court in the case of *Anglin* 2018, 2 CILR 409. As will become apparent, this application is wholly without merit.
2. On the 30<sup>th</sup> September 2011, the Applicant was convicted of murder by the shooting of Tyrone Burrell. A crucial witness in the case against him was Arlene White.
3. On the 26<sup>th</sup> November 2012, the Court dismissed his appeal against conviction.

4. On the 8<sup>th</sup> December 2014, he was convicted of being an accessory after the fact of the murder of Frederic Bise. Arlene White was a crucial witness in that case as well.
5. On the 3<sup>rd</sup> of March 2017 this Court dismissed his appeal in respect of that conviction.
6. Mr. Myers of behalf of the Applicant, submits that in the second trial, there was adduced fresh evidence which calls into question the safety of the conviction for murder in the first trial. That evidence relates to the fact that the police were paying Arlene White sums of money and that, when giving evidence on that topic before the magistrate at the committal hearing of the first trial, she lied concerning the receipt of that money. Mr Myers submits that as Arlene White's credibility was crucial to the conviction for murder, the fact she told lies to the magistrate is of high significance and justifies reopening the conviction for murder.
7. The evidence about the payments was adduced at the first trial, as paragraphs 34 and 35 of the Court of Appeal's judgment make clear.
8. That she was cross-examined at the first trial about her suggested lies to the magistrate, is also clear, as the transcript of her cross-examination in that trial in terms sets out. While she did not actually admit to lying, her inadequate response to cogent questioning by Leading Counsel made it clear what the truth was. (See the undated transcript at tab 6 of the Prosecution Bundle) Her admission of lying in the second trial in the circumstances, hardly throws a fresh light upon these issues. It certainly does not found a basis for re-opening a previously concluded appeal.
9. What this court said in *Anglin* (paragraphs 59-60) bears repetition:

*“If, about which in light of our view of this case it is unnecessary finally to decide, this court does have the residual jurisdiction to reopen a concluded appeal, we should make it quite clear that it is a jurisdiction the exercise of which is bound to be extremely rare. All the elements identified by Gross, L.J. would have to be present. Even then, its exercise may well not be appropriate.*

*Finally, it does seem to us that any application should, as in England, normally be dealt with by the court in writing.”*
10. In *Anglin*, the Court referred to the decision of the Supreme Court Criminal Appeal in Jamaica in the case of *Grant* (2018 JMCA) and paragraph 59 of that judgment. As it is put in paragraph 40 of *Anglin*:

*“The general principles to be gleaned from the cases are that.... [sic]... neither a change in the law or fresh evidence by themselves will be sufficient for the Appellate Court to reopen the case.”*

11. In our judgment, this case falls far short of the wholly exceptional circumstances in which a conviction might be reopened. We refuse, in the circumstances, this application.