

Liberty

IN THE CAYMAN ISLANDS COURT OF APPEAL

CACR016/2012  
(Ind. 79/11)

C#04857/2011

BETWEEN:

HER MAJESTY THE QUEEN

**Respondent**

- and

**Chakane Jameile Scott**

**Appellant**

Before:

The Honorable Mr. Justice Mottley, Justice of Appeal

The Honorable Mr. Justice Conteh, Justice of Appeal

The Honorable Mr. Justice Ground, Justice of Appeal



Sasha Wass, Q.C. instructed by Lucy Organ of Samson & McGrath for the Appellant

Trevor M. Ward, Deputy Director of Public Prosecution for the Crown

Heard and Judgment delivered 25 May 2013

Reasons for Judgment released 6 August 2014

Mottley J.A.

Although Sir Richard Ground has died since Judgment on the Appeal was delivered in April 2013, these reasons reflect the basis upon which, after discussion between the members of the Court, the appeal was dismissed.

1. On 12 June 2012, the Appellant was convicted by Henderson J, sitting without a jury, of the murder of Asher McGaw. He was also convicted of having an unlicensed firearm in his possession and the illegal possession of ammunition. He was sentenced to life imprisonment for the offence of murder and concurrent terms of ten years for each of the firearms offences.
2. The prosecution's case against the Appellant was that on 22 September 2011, the Appellant, the Deceased and Antascio Rankine, the main witness for the prosecution, were together at East End. They were firing a flare gun. Shortly after the Deceased fired the flare, Rankine heard a gunshot. He saw a spark which came from immediately in front of him. Rankine ran in the direction from which they had come. As he was running away, Rankine looked back and saw the Deceased running with the Appellant pursuing him. At this stage, Rankine heard a second shot. The Deceased fell face downwards. Rankine saw the Appellant run up to the Deceased and shoot him close range. He demonstrated what he had seen – the Appellant had his left hand down towards the ground at about a 45 degree angle. The Appellant then ran off. Later that night, Rankine saw the Appellant who said to him "Don't make nobody know about this." When asked again what the Appellant said Rankine replied "Don't make nobody know nothing about it." Rankine gave the police a statement in which he said nothing at all about having witnessed the shooting and certainly did not incriminate the Appellant. Within minutes of

completing his statement, Rankine made a second statement, this time implicating the Appellant as the person who shot the Deceased.

3. Earl Hart who is the cousin of the Appellant is the only other witness who is relevant to the issues raised on appeal. He said that on the morning of 23 September 2011 around 9:30am, he saw the Appellant on a bus. The Appellant called out to him. He asked the Appellant where he was going and he replied "I am going down because up here is too hot." A few days later, Hart saw the Appellant sitting under a breadfruit tree playing dominoes. Later on the same day, Hart saw the Appellant and Rankine together. At that time, they appeared to be talking with each other. As Hart walked towards them he heard the Appellant saying to Rankine "Just hold your mouth" or something to that effect. Earlier in his evidence, Hart stated when he saw the Appellant with the Deceased and Rankine on the night of the shooting, the Appellant was wearing short black dress pants, a pair of black shoes, a gray and black fitted hat and a white shirt. When he saw the Appellant later, Hart stated that he was not wearing the same clothes which he wore earlier. The Appellant was now wearing a jeans pant which was obviously not his size as it appeared to be tight. He was not wearing a shirt but was wearing slippers.

4. The issue which the judge had to determine was whether the evidence of the witness Rankine established beyond reasonable doubt that the Appellant shot the Deceased. In delivering his oral reasons for his decision, Henderson J said:

"There is just one essential issue in this: Is the main eyewitness Antascio Rankine, who is said to be the sole witness to the death of Asher McGaw, telling the truth."

Later the judge said:

“The evidence of Antascio Rankine about the shooting is sufficiently detailed and sufficiently confirmed by other evidence that I am sure he was present during the shooting and therefore knows who did it. The sole question is whether he is lying when he says the defendant was the culprit.”

5. The judge was clearly of the view that the prosecution’s case rested solely on the evidence of Rankine. A verdict of guilty depended entirely on the view the judge took of the evidence of Rankine. The judge identified the issue which was a concern to him and which he considered could or might affect the credibility of Rankine. At the time when he gave his statement to the police and the time of the trial when he gave evidence, Rankine was facing a charge of wounding which was still pending before the court. The judge accepted that he was required to consider and to weigh Rankine’s evidence in light of this unresolved charge.
6. On appeal, it was contended on behalf of the Appellant that the judge was wrong to consider that the three aspects of evidence given by Hart were capable of amounting to corroboration of the testimony of Rankine. We earlier referred to these three portions of the evidence of Hart. Hart stated that when he saw the Appellant at about 4:00am on 23 September he was wearing clothes different to what he had been wearing when he saw the Appellant about 11:15pm on the 22 September 2011. Hart’s evidence was that on the morning of 23 September 2011, he saw the Appellant who said he was leaving the East End to go to Georgetown because the East End was “too hot”. The third portion of Hart’s evidence related to the conversation between Rankine and the Appellant he had overheard in which the Appellant told Rankine to “hold your mouth”.

7. Counsel for the Appellant pointed out that the judge reminded himself “that it would be dangerous to convict Mr. Scott based solely on the unsupported or unconfirmed evidence of Rankine”. It should be noted however that having said that, the judge went on to point out that he was required to look for reliable evidence which was independent of Rankine which supported or confirmed his credibility concerning the essential allegation that the Appellant was the person who shot the Deceased.
8. Later in his judgment Henderson J stated:

“There are other bits of potential corroboration advanced by the Crown to which I will now refer.”

The judge referred to various portions of the evidence. The evidence of both Rankine and Hart showed that on the night of 22 September 2011 before the shooting, the Appellant was wearing short black jeans or dress pants, black shoes, a gray and black fitted hat and a white shirt. When Hart saw the Appellant shortly after 4:00am outside his residence, the Appellant was wearing jeans that were tight and clearly not his size and slippers; he was not wearing any shirt. The judge expressed the view:

“that the defendant changed his pants and shoes at some point after Hart last saw him at 11:15pm on September 21 and before Hart saw him again around 4:00am when doing so, he exchanged his pants for a pair of tight jeans which were not his size and his shoes for slippers. He opted to wear no shirt at all. I consider this change of clothing to be a suspicious circumstance.”

9. The judge went on to indicate that an 18 year old Caymanian is likely to be very conscious of his appearance and would be unlikely to wear under-sized jeans and slippers

without good reasons and such as the desire to avoid recognition through his clothing. The judge concluded that the evidence suggested that the jeans and slippers were not items he had brought to Hart's residence and therefore he must have gone out of his way to obtain them at an early hour of the morning without any apparent reason. The judge observed that he considered the remark made by the Appellant (after increased activity by the police in the area?) that the East End was "too hot" after the number of police were in the area, carried a suspicious connotation.

10. The third portion of the evidence on which the judge was relying related to the testimony of Rankine that after the shooting he and the Appellant went to get some weed when the Appellant said to him "Don't let anybody know nothing about it". A few days later after, according to Hart, the Appellant had been arrested and released, he heard the Appellant say to Rankine "Just hold your mouth".
11. The judge, after indicating that Hart had impressed him as being a truthful witness with no apparent motive to tell lies on the Appellant, concluded that he was satisfied that Hart had overheard the Appellant warning Rankine against talking to others about something of importance to the Appellant. The judge indicated that he considered that the evidence supported Rankine's evidence that the Appellant had told him, in a threatening manner, shortly after the shooting, to keep quiet.
12. On behalf of the Crown, Mr. Trevor Ward, Deputy Director of Public Prosecution pointed out the circumstances why the judge had reminded himself of the need for caution when considering the evidence of Rankine.

13. At the outset of his oral reasons for his decision, the judge made it abundantly clear that the Crown's case would stand or fall on what view he took of the evidence of Rankine. He pointed out that in order for there to be a conviction he had to be sure that Rankine was speaking the truth.

14. Having reviewed in detail the evidence of Rankine the judge reminded himself how he should approach the testimony of Rankine. He observed:

“The evidence of Antascio Rankine about the shooting is sufficiently detailed and sufficiently confirmed by other evidence that I am sure he was present during the shooting and therefore knows who did it. The sole question is whether he is lying when he says this defendant is the culprit. Since Rankine was, at the time he gave his statement to the police and at the time of trial, facing a charge of wounding which has not yet been disposed of, he has a motive to co-operate with the authorities. I must be alert to the possibility that he is assisting the Crown in the hope that he will receive a more lenient sentence in due course, which in turn may cause him to lie about the defendant's involvement. I must remind myself that it would be dangerous to convict Mr. Scott based solely upon the unsupported or unconfirmed evidence of Rankine.”

15. In our view, when the judge referred to other bits of potential corroboration the judge was certainly not referring to the concept of corroboration as existed prior to it being abolished. Section 41 (1) of the Evidence Law (2011 Revision) abrogated the requirement for a court to give a warning about convicting an accused on the

uncorroborated evidence of an accomplice of the accused, a child or where the offence charged was a sexual offence.

16. In the view of the Court, the judge, being aware that Rankine had been charged with the offence of wounding which had been unresolved both at the time of making his statement and the giving of his testimony in court was doing nothing more than warning himself of the need to be cautious in these circumstances. The judge had to be sure that Rankine did not have any ulterior reason or expectation that by giving evidence which implicated the Appellant, he would gain some benefit from the prosecuting authorities.

17. This was the context in which the judge had to decide whether Rankine was telling the truth. He was doing nothing more than looking for evidence which tended to show that the witness was worthy of belief. The judge was not seeking evidence of corroboration in the formal sense – evidence which tended to implicate the Appellant in the commission of the offence. This was not required; and it must be remembered that the trial was by judge alone and the use of the word corroboration in the sense in which it was used could not be said to have had a confusing effect on a jury. The judge was in fact looking for other evidence which could support in some way the evidence of Rankine.

18. The judge found the support he was seeking in the evidence of Hart. The judge observed:

“Hart impressed me as a truthful witness. He has no apparent motive to lie about the defendant who is his cousin and someone who was trustworthy enough to be allowed to enter the residence at 3:15am while Hart and his family were asleep. I am satisfied that Hart overheard the defendant warning Rankine against talking to others about something of importance to the defendant. This is independent

support for Rankine's evidence that the defendant told him in a threatening manner, very soon after the shooting to keep quiet."

19. This shows that the judge was not seeking corroboration in the formal sense but merely evidence which supported the evidence of Rankine. At the beginning of his oral reasons the judge indicated that, in as much as Rankine's was the sole evidence on which the prosecution's case was built, he had to be satisfied that he was speaking the truth.

20. In reaching his conclusion as to the guilt of the Appellant, the judge again reminded himself of the need to be cautious especially in view of Rankine's early statement to the police. He stated:

"I acknowledge that the factors I have mentioned require a special degree of caution in weighing Rankine's testimony. I am satisfied, however, that the real reason why Rankine changed his story is not the hope of later advantage but an overwhelming feeling of guilt that he had done nothing to assist his now deceased friend. He hung his head. He cried. He needed to compose himself. His demeanour appeared "different" to Mason, who knew him. I observed Rankine's demeanor closely while he gave his evidence and I also detected an element of embarrassment and guilt as he spoke. I saw no indication in Rankine's demeanour that he was feigning. Overall, I am satisfied that the reason for his change of story is the one he gave "I couldn't hold it anymore"."

21. The Court accepts the submission of the Deputy Director of Public Prosecution that it was evident that the judge scrutinized Rankine's demeanour and the content of his evidence closely and regarded the witness as credible and truthful.

22. It was contended on behalf of the Appellant that the evidence of Rankine was unreliable and unsupported and the conviction was unsafe in all the circumstances. For the reasons set out above we do not agree with this contention. This was a trial by a judge sitting without a jury. The judge arrived at his decision having warned himself about the need for caution; and it is clear that throughout his judgment he was mindful of his admonition and only arrived at his decision having regard to Rankine's demeanour and the evidence of Hart which he found was supported by Rankine's testimony.

23. It was for these reasons that the Court dismissed the appeal and affirmed the conviction and sentence.

Mottley, J.A.

Conteh, J.A.

