

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 89 of 1975

BEFORE: The Hon. Mr. Justice Luckhoo, P. (Ag.) Presiding
The Hon. Mr. Justice Hercules, J.A.
The Hon. Mr. Justice Robinson, J.A.

R. v. LLOYD CORDWELL

W. Bentley Brown for the applicant.

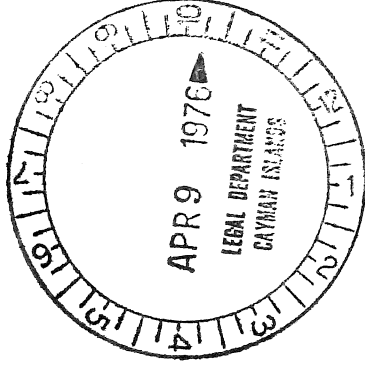
G.G. James for the Crown.

November 20, 21, 1975

Luckhoo, P. (Ag.):

The applicant Lloyd Cordwell was convicted in the Home Circuit Court on July 3, 1975 on indictment before White, J. and a jury for the murder on June 8, 1974 of Randall Keane and was sentenced to death. We refused his application for leave to appeal against conviction on November 21, 1975. We now put our reasons in writing for so doing.

The case for the prosecution was to the following effect. On Friday night, June 7, 1974 a number of persons were gathered together at the premises of one Renford Edwards at Greenwich Town in the parish of St. Andrew for the purpose of playing dominoes. Among those who took part in the games which were being played at tables on the verandah of Edwards' apartment were Edwards himself, his half-brothers Everard Smith and Lynvall Smith, one Robotham, one Sewell a member of the Jamaica Defence Force and the deceased Randall Keane. At about one o'clock on the following morning,



Saturday June 8, 1974, the playing of dominos was still in progress. The verandah was illuminated by a 100 watt electric bulb on the verandah itself as well as by a 100 watt electric bulb burning in one of the rooms adjoining the verandah, the door of the room being left open. The soldier Sewell who had earlier been on guard duty at the nearby Water Commission premises was seated at one of the tables. He had a sub-machine gun on his lap. He had previously removed the magazine from the gun and placed it in a bag. Robotham was also seated at that table. Everard Smith was seated beside the table and was the scorer. Edwards was standing beside Sewell and leaning against the verandah rail. The deceased was standing near to Edwards. While a game between Sewell and Robotham was in progress Edwards heard a voice say "Don't move" - He looked over his shoulder in the direction from which the voice came and saw three persons one of whom came up on the verandah while the other two circled around the verandah and came onto the verandah steps. The one who came onto the verandah - identified by Edwards and Everard Smith as the applicant Cordwell - said "Don't move" and had a home made gun which he pointed at the domino players. He was then about three yards away from Edwards and the deceased. One of the persons who had been watching the game in progress when the three men came upon the scene said "What happened man?" Thereupon the applicant opened fire with the home made gun and shot the deceased Keane in the face. The deceased also had looked around when the applicant said "Don't move". The deceased stumbled and fell. He got up and appeared to be trying to go along the verandah in the direction of the gate. Edwards turned around to run away when he saw another man - an Indian - with a gun pointing it into Sewell's face. According to Everard Smith that man said "Don't try anything soljje. Give me the gun" and then took away Sewell's sub-machine gun. At that point of time the applicant was standing at the same spot from which he had fired the home made gun at the deceased. Another

man armed with a knife cleared his way past one of the onlookers by prodding at the latter with his knife. Edwards ran, went across a fence and hid under a cellar next door. The other onlookers also fled the scene. Some minutes later Edwards came out from under the cellar on the approach of some soldiers and on walking towards a train line which ran a short distance from his premises he came upon the deceased's body lying near the train line. Blood was coming from the mouth. There was a trail of blood leading from the verandah by way of the gate to where the deceased's body was found, a distance of some 40 feet. Everard Smith who also fled the scene and had taken refuge in a hole being dug for the erection of a toilet also saw the deceased's body lying on its back ^{about} four yards from the train line. He said that he saw a hole in the deceased's face. On returning to Edwards' premises he observed what appeared to him to be a piece of tongue and about three teeth lying on the verandah.

Det. Cpl. of Police Morris Ashman who was on patrol in the Greenwich Town area went at about 1.30 a.m. on June 8, 1974 to the train line in the vicinity of Edwards' premises where he saw the deceased's body lying about half of a yard to one yard from the train line. He observed that the mouth was "mashed up". He wrote the deceased's name on a tag which he tied to one of the deceased's hands. Another tag bearing the deceased's name he handed to the undertakers whom he had summoned to convey the deceased's body to the Kingston Public Morgue. Det. Cpl. Ashman then went to Edwards' premises where he saw what appeared to him to be blood clots on the verandah. He observed that a trail of blood led from the verandah to where the deceased's body lay near the train line. On the ground in front of the verandah Det. Cpl. Ashman found an empty cartridge case.

Murdella Keane the deceased's mother also saw her son's body lying near the train line. She observed what she described as a big hole in one side of his face. On June 13, 1974 she went to the Kingston Public Morgue where she identified her son's body in the presence of Det. Cpl. Ashman. She observed a tag

bearing her son's name on the body and another tag with his name lying in the tray containing his body. In this regard Det. Cpl. Ashman testified that when Murdella Keane identified her son's body at the Kingston Public Morgue the tag he had put on the body on June 8, was still there. Later on June 13, 1974 he again saw the deceased's body. It was then on the dissecting table but he was not present when the post mortem examination on the body was performed. On that day he saw Dr. John Martin in attendance at the Morgue.

Dr. John Martin testified that he performed a post mortem examination on the body of a man to which was affixed a tag bearing the name of "Randall Keane". On external examination he found a gaping gun shot wound 1½" x 1" with scorched edges at the left side of the mouth. On dissection he found that the jawbone, cheek bone, tongue and all the facial muscles on that side were crushed disintegrating the entire fabric and leaving only fragments. In his opinion the cause of death was shock and haemorrhage from a wound to the face caused by the discharge of a shot gun at a range between 3 - 4 feet.

According to Det. Cpl. Ashman upon discovery of the deceased's body lying near the train line efforts were made to secure the attendance of Dr. Dawson, Medical Officer for St. Andrew, the scene of the tragedy being in the parish of St. Andrew but Dr. Dawson did not attend. He said that Dr. Martin who normally performed post mortem examinations on bodies brought from the Kingston area sometimes performed post mortem examinations in respect of bodies brought from the St. Andrew area.

Inspector of Police Rennick Samms testified that on June 20, 1974, he conducted an identification parade at Hunts Bay Police Station, the suspect on parade being the applicant Cordwell. Mrs. Rattray Gray, Attorney-at-Law, was present at the parade representing the interests of the applicant. Inspector Samms who did not have anything to do with the investigation of the case said that Renford Edwards, Everard Smith and Sewell in turn were

called and told by him to look along the line of men on parade and to go and touch anyone whom he saw to be any of the men who held up the soldier (Sewell) with a gun, robbed him of his gun and shot and killed Randall Keane along the railway line at 1.30 a.m. on June 8, 1974. Edwards picked out the applicant saying "This one" and Smith also picked out the applicant but did not say anything when he did so. Sewell picked out someone other than the applicant. In relation to the parade both Edwards and Smith testified that they pointed out the applicant as the person who had shot and killed the deceased.

The applicant in his defence testified on oath. His defence was an alibi.

A number of grounds of appeal were filed and argued. The ground listed as 9 in the supplementary grounds filed on July 16, 1975 was abandoned by Mr. Bentley Brown when the matter was called on for hearing. We considered all of the grounds urged before us and found them to be without merit. The only ground which we think merits any comment is that relating to the question of proof that the deceased died as a result of having been shot in the face. Mr. Bentley Brown contended that as neither the deceased's mother Murdella Keane nor Det. Cpl. Ashman identified the deceased's body at the Kingston Public Morgue to Dr. Martin it has not been sufficiently shown that the testimony of Dr. Martin related to the deceased's body and therefore his opinion as to the cause of death could not be related thereto. Further by reason of the deceased's body having been found near the train line it might be that the deceased's ~~death~~ death resulted from injury inflicted by a passing train. We think that quite apart from the testimony of Dr. Martin there was sufficient evidence from Edwards, Smith, Murdella Keane and Det. Cpl. Ashman from which the jury could have felt sure that the deceased died as a result of a gun shot wound to the face inflicted by the applicant. There was not a tittle of evidence that in the short interval between the discharge of the gun

and the finding of the deceased's body near the train line that any train had passed ~~by the tracks in the evidence is not to be taken~~ led from the verandah to where the body was found and there was no suggestion that any blood was observed beyond where the body lay.

In any event despite the fact that neither Det. Cpl. Ashman nor Murdella Keane identified the body to Dr. Martin as that of the deceased, the testimony of Dr. Martin and that of Det. Cpl. Ashman clearly showed that the body upon which Dr. Martin performed the post mortem examination was that of the deceased Keane. The tag bearing the name of the deceased and the date on which it was written and affixed to the body of Randall Keane near the train line was still on that person's body on June 13, 1974.

For these reasons we refused the application for leave to appeal.