

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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O N A P P E A L

FROM THE COURT OF APPEAL WEST INDIES ASSOCIATED  
STATES, SUPREME COURT

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B E T W E E N :-

JUNIOR COTTLE & LORRAINE LAIDLAW Petitioners

- AND -

THE QUEEN Respondent

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CASE FOR THE APPELLANTS

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10 1. This is an Appeal in forma pauperis from the Judgment of the Court of Appeal of the West Indies Associated States Supreme Court (Lewis, C.J. (ag) St. Bernard, J.A. and Peterkin, J.A) dated the 20th day of May 1974, which dismissed Your Petitioners' appeals against their conviction for murder in the St. Vincent High Court (Berridge, J. sitting with a jury) on the 17th October 1973, when they were sentenced to death. pp.37-55

20 2. The Appellants were jointly charged on an indictment containing three counts as follows:- pp.1-2

Indictment

"Junior Cottle also known as Spirit, and Lorraine Laidlow, are charged with the following offences:-

First Count

Statement of Offence

Murder, contrary to Section 71 of the Indictable Offences Ordinance (Cap 24).

Particulars of Offence

30 Junior Cottle, also known as Spirit, and

Lorraine Laidlow, together with another person named Marcus James, on the 13th day of May 1973 at Kingstown in this State of Saint Vincent, murdered Cecil Rawle.

Second Count

Statement of Offence

Attempted murder, contrary to Section 74 of the Indictable Offences Ordinance (Cap 24).

Particulars of Offence

Junior Cottle, also known as Spirit, and Lorraine Laidlow, together with another person named Marcus James, on the 11th day of May 1973 at Kingstown in this State of Saint Vincent attempted to murder Allenby Gaymes. 10

Third Count

Statement of Offence

Discharging loaded firearm with intent, contrary to section 59 of the Indictable Offences Ordinance (Cap 24).

Particulars of Offence

Junior Cottle, also known as Spirit, and Lorraine Laidlow, together with another person named Marcus James, on the 11th day of May 1973, at Kingstown in this State of Saint Vincent, discharged a loaded firearm at Allenby Gaymes, with intent to cause him grievous bodily harm, or maim, disfigure, or disable him. 20

Dated this 4th day of October 1973."

3. The Appellants were both convicted on the first count of murder and sentenced to death. They were both acquitted on the second count. They were both convicted on the third count and sentenced to four years imprisonment. 30

4. The facts relating to the charge of murder and the respective cases of the Prosecution and the Defence in relation thereto are summarised in the Court of Appeal Judgment as follows:

p.37 l.9  
p.41 l.13

"The Appellants were jointly charged on an indictment containing three counts. In the particulars of the first count it was alleged that 40

10 they together with another person named Marcus James on the 13th May 1973 at Kingstown in the State of St. Vincent murdered Cecil Rawle. On this count they were both convicted and sentenced to death. Each has now appealed. On the second count they were acquitted of the offence of attempting to murder one Allanby Gaymes on the 11th day of May 1973; but they were convicted on the third count which alleged that they discharged a loaded firearm at Allenby Gaymes on the same date with intent to cause him grievous bodily harm. Both of the appellants were sentenced to four years imprisonment on this count, but only the appellant Laidlow has appealed. The three appeals have been heard together by consent.

20 The case for the prosecution put very shortly is that the appellants and the man Marcus James went to the house of Cecil Rawle and in pursuance of common design fired several shots into his body on the 11th day of May 1973 and as a result of the wounds he sustained from these shots he died on the 13th of May. Mr. Rawle's assailants were not apprehended until some considerable time after they had perpetrated the attack on him. The Appellants evaded capture until the 26th or 27th of May 1973 and indeed the third man Marcus James was not captured at all but his dead body was found on the 21st of May, 1973 at about 4 p.m. in some bushes overlooking the sea in Edinboro. Assistant Superintendent of Police Felix  
30 Constantine said that when he found the body he saw a .38 special Smith and Wesson revolver bearing serial No. R501.1 lying near his outstretched right hand. This revolver was loaded with three live and three spent cartridge cases. It has been assumed that the man Marcus James committed suicide.

40 Mr. Rawle lived in a house called Fort Cottage situate on the Charlotte Road. Around 7.30 p.m. on May 11th, 1973 one of his neighbours, Marilyn Smith, heard cries of "help" "murder" coming from the direction which she thought was Mr. Rawle's house. She phoned Mr. Henry Williams who lives not too far away. He had just arrived at his own home and as a result of the telephone call he went in the direction of Mr. Rawle's house. As he was approaching the cottage and when he was about 80 yards away from it he heard a cry coming from the cottage. It was a cry for help. He stopped his car, went up the front steps and when he got to the top of the steps he found Cecil Rawle lying on his back. There  
50 were blood spots on several parts of his torso, he was naked from the waist up and seemed to be in

great pain. He asked him what was wrong with him and he told him that he had been shot. He said he had come in and was having supper, that he heard a knock at the door and that when he went to the door there were three persons standing there and he said they shot him. He identified one of the persons to be the appellant Cottle, and added that he did not know the names of the other two but that he would recognise them at sight. The witness also added that when he first went to Mr. Rawle's house and found him lying on his back he said "I am dying, take me to the hospital." Mr. Williams went for assistance and returned with two persons Hugh Toney and Hugh Antoine with whose help he lifted the injured man into his car and took him to the hospital. Mr. Williams says that these two men Hugh Toney and Hugh Antoine were together with him in Mr. Rawle's house and were in a position to hear what Mr. Rawle told him. In fact Mr. Toney says that when Mr. Williams called for him in his car around 7.30 p.m. he went with him to Mr. Rawle's house where he saw him lying on his back on the porch. He said Mr. Rawle stated "take me to the hospital I am dying" and further added that Junior Cottle and two others had shot him.

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Mr. Antoine was presented for cross-examination by the Crown and he said that on the same date, that is the 11th of May he went with Hugh Toney and Henry Williams to Cecil Rawle's house and that they met him on the porch. He said that he was bawling "help, help I am dying take me to the hospital." He further added that Cecil Rawle said that he had been shot and that Junior Cottle and two others had shot him.

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Mr. Williams and the other two witnesses arrived at the hospital with the injured man at about 7.57 p.m. Around 8 p.m. sergeant of police Lester Bacchus went to the General Hospital where he saw Mr. Rawle lying on a bed in the casualty department. This witness said he looked weak and pale and was crying and saying he was dying. Mr. Rawle made a statement to him in the presence of Henry Williams which he took down in writing, he read it over to him and he said it was correct but was unable to sign it. In this statement he said he had heard a knocking on his door and as soon as he opened it Junior Cottle and two other men had shot him.

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Defence Counsel at the trial objected to the admissibility of this statement but the trial judge admitted it on the grounds that (a) it was part of the res gestae and (b) that it was a dying declaration. The correctness of this ruling is now being challenged.

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When Mr. Rawle was taken to the hospital he was

examined by Dr. Majjeri Sunderam a medical practitioner attached to the Kingstown General Hospital. This person had left the State before the trial commenced and his deposition was read at the trial. He found the patient in extreme shock and his blood pressure was hardly recordable. On examination six external injuries were found and an X-ray of the neck and shoulder revealed that the right collar bone was cracked. There were also severe internal injuries. Special mention should be made of one wound one-sixth of an inch in diameter on the back of the right shoulder which caused a swelling on the right side of the neck. An X-ray of this part of the neck showed that an opaque object resembling a bullet was lodged on the right lateral aspect of the cervical vertebral column in the region of the seventh cervical spine. Some controversy centered around this wound and it will be referred to later in connection with the issue as to the cause of death.

Certain medical procedures (including an operation) were carried out by Dr. Sunderam who decided that it was not necessary to remove the bullet at the root of the neck on the right side, as in his opinion it was not causing any immediate threat to the life of the patient, and when the operation was completed the patient was taken to the wards for intensive medical care. In the meantime the Government of St. Vincent had obtained permission from the Government of Trinidad for a surgeon Mr. John Busby who was attached to the General Hospital of that State to come to Saint Vincent to give such assistance as he was able to offer in an effort to save the life of the injured man. Mr. Busby performed a second operation on Mr. Rawle and removed the bullet from his neck. He says that he did so with Dr. Sunderam's consent but Dr. Sunderam in his deposition denied this. Mr. Busby is a very qualified surgeon and holds the Fellowship of the Royal College of Surgeons, Edinburgh, and is also a Fellow of the American College of Surgeons. He is an associate lecturer in surgery of the University of the West Indies and has been a medical practitioner and surgeon attached to the General Hospital in Port-of-Spain, Trinidad, since 1955. He said that he was brought to St. Vincent as a Specialist/Surgeon because an operation of the nature which he performed called for skill, preferably the skill of a person with specialist surgical knowledge. Despite all efforts however the patient died on the 13th May 1973 and one of the questions which arises on this appeal is what was

the cause of his death. This question will be examined at a later stage.

The Appellants do not deny that they were in the vicinity of Mr. Rawle's house around 7.30 p.m. on the 11th May 1973. They were taken to the Fort Road together with the third man Marcus James in a car belonging to one Kelvin Lettine who drove them there himself. One Errol Russel was also in the car. According to this witness when the car got to the draw bridge on Fort Road the men asked the driver to leave them there and they got out of the car and paid the driver \$2 for the trip. This was about 7.10 p.m. The appellant Cottle made an unsworn statement from the dock in which he said that he took a taxi on the night of the 11th May and went to the Fort Road and that he did so for the purpose of borrowing the car of the deceased man Rawle who was his friend. That is his explanation for his presence near to Mr. Rawle's home. The appellant Laidlow also said in his unsworn statement from the dock that he and Marcus James and Spirit (ie Cottle) hired a taxi to go to the Fort Road to borrow Mr. Rawle's car; so he too asserts that his presence in the vicinity of Mr. Rawle's home was for the lawful purpose of borrowing his car. They both say that the person who killed Mr. Rawle was the man Marcus James who was afterwards found dead in the bush at Edinboro. In other words both appellants denied that they had any unlawful common purpose in going to Mr. Rawle's house that night."

5. The case for the prosecution in relation to the first and second counts was summarised by the learned trial judge in his summing up to the jury as follows:-

p.13 l.11  
p.16 l.7

"Members of the Jury, and now to summarise as briefly as it is possible for me to do, in order to enable you to carry out your deliberations more easily.

On that first count, the Prosecution is saying that as far as number one accused is concerned, you have the dying declaration of the deceased, that "Junior Cottle and two other men shot me". They are asking you to find that regardless of who fired the fatal shot number one accused is equally responsible for the murder of the deceased. I would come in due course to the question of the statement, the statement of number one accused before the Magistrate at the Preliminary Inquiry: and as far as that is concerned, the Prosecution is asking you to say that from the number of bullets discharged that evening - you will remember that two were found in the body of the deceased and three were found on the ground - that could not be

consistent with mistake. You will remember that the accused number one said that this shooting was done by mistake in his statement before the Magistrate, the shooting by the other man named Marcus James.

10 Now as far as the case against number two accused is concerned, and on the first count of murder, the Prosecution is saying that the deceased said in that declaration, number one accused Cottle and two others shot him, and they are asking you to find that from all the circumstances of the case that number two accused was one of those other two persons, in that by his statements, or by two of his statements which he made to the police - and which incidentally, Members of the Jury, can only be regarded as evidence against himself - by those statements he puts himself in the vicinity of the home of the deceased with Junior Cottle and James, and further that within a short period of time he puts himself also in company with number one  
20 accused and James at the Super Market and subsequently thereafter for a number of days. In other words, the Prosecution, is asking you to find that as far as the second accused is concerned, the circumstantial evidence indicates that he was one of those two men. Now I will have to tell you something about circumstantial evidence. Circumstantial evidence, Members of the Jury, is evidence of facts not actually in issue from which a fact actually in issue may be inferred. Now  
30 with direct evidence, that is the evidence of a witness who perceived certain facts, the Jury has to consider whether the witness is a witness of truth, but with circumstantial evidence the Jury will have to consider also whether from such facts it is entitled to infer the facts in dispute. By the process of inference and by the process of deduction which you apply you are permitted to infer from the facts proved other facts necessary to complete the elements of guilt or the  
40 establishment of innocence and as far as cases of homicide are concerned, however, I should tell you that the circumstantial evidence necessary to establish Murder ought to lead the Jury to such certainty as they would act in any matter of great consequence.

50 In order to convict an accused on circumstantial evidence the facts proved against him must be consistent with his guilt, and they must be utterly inconsistent with his innocence. The facts proved must show that there is something to link the accused personally with the crime or the

scene of the crime and in order to enable you to return a verdict of guilty, it is necessary not only that the inference based on circumstantial evidence should be a rational inference, but that it should be the only rational inference, that the circumstances would enable you to draw.

Now, alternatively to that as far as number two accused is concerned on that first count the Prosecution is saying, that on his own statement he was told by Marcus James and by number one accused to await them by a corner and if he saw any light coming to let them know and further in that statement it is disclosed that from where he was, he could see the other two men going to the house. The Prosecution is contending, Members of the Jury, that number one accused and the other two men who went to Rawle's house went there that night to commit murder or to inflict felonious violence and in the circumstances of this case they are contending that there was a common design on the part of number two accused, who is equally guilty they say, as the person or persons who fired the fatal shot.

Now as far as the second count is concerned the Prosecution is relying, in respect of Number one accused, that's Junior Cottle, on the evidence of Venita Sergeant who tells you that she saw them there - number one accused and two others - standing near to the Super Market then she heard the bullets go off. She is the young woman who says that she lived in the same house with him, now with him literally in the same house, but he in one room and she in another, for a period of about six weeks up to March this year. They are relying on the evidence of Gaymes who said that he knows him and he shops there. They are relying on the evidence of Ross who said that he saw him with a pistol pointing at Gaymes and that he had seen him before many times and also on the evidence of Edwards, who said that he saw the accused number one accused rush at Gaymes pull the gun and then and there shoot him. In respect of that second count in relation to the second accused the Prosecution are relying again on the evidence of the witness Gaymes who said that when number one accused approached him Laidlow was behind and further that he knows Laidlow, he knew him before that date, as he used to shop in the Super Market. He said further that he stood behind Spirit and he accompanied him. In addition, they are relying on the evidence of the witness Ross, who said that he saw number two accused standing next



to number one accused while he number one accused was pointing the pistol at Gaymes and the same Ross who says that he had seen number two accused over the past two years and every now and then he would meet him.

10 As far as the first count is concerned, Members of the Jury, if you are satisfied that both accuseds went with Marcus James to the home of the deceased that night with intent to murder him or to do him grievous bodily harm and all or any one of them discharged a fire-arm and any one of those shots killed the victim, all are guilty of murder, although there is no proof which one fired the fatal shot. On that second count if you are satisfied that both accuseds went to that Super Market for an unlawful purpose - and on the facts it is open to you to find that they went there to rob - and number one accused wounded Gaymes, then both are guilty if you find that number two accused was near enough to 20 render assistance to number one accused if he had been called upon. Now Members of the Jury, we will proceed to the Defence."

6. The Defence of both the Appellants in regard to the first count of murder was that they had gone to Mr. Rawle's house for the lawful purpose of borrowing his car, Rawle being a friend of the Appellant, Cottle. According to them, it was Marcus James (afterwards found dead in the bush) who killed Rawle without any knowledge on their part that he intended to do so.

30 7. The Defence of both the Appellants in regard to the second count was an alibi, i.e. that they were not there at all and knew nothing of the Super Market incident involving Gaymes. Both Appellants made statements from the dock.

8. The Appellant Laidlow raised an additional ground of defence in his statement to the police dated the 28th May 1973 which the learned trial judge dismissed, it is respectfully submitted wrongly, in the following terms:

40 "In that statement of the accused Laidlow dated the 28th of May, he mentioned that Spirit had a .38 gun in front of him, number two accused, and he was frightened and Spirit told him to wait for Marcus and that he had to run with them. In that statement Members of the Jury may appear a veiled attempt to rely on the Defence of Duress, that is, constraint by threats, but Duress is no defence to a charge of murder, it may be in other criminal charges but not in a charge of Murder."

p.22 11.22  
- 32

Having regard to the case of D.P.P. v Lynch [1975] A.C. H.L. 641 it is submitted that the Trial Judge erred in directing the jury that the Defence of duress could not be a defence to a charge of murder as against the Appellant Laidlow who was charged as a principal in the second degree.

p.41 l.20-  
p.55

9. The Appellants appealed to the Court of Appeal upon various grounds, dealt with in the Judgment of that Court. The Appellants rely on those grounds and more specifically rely on the first and last of those grounds, namely:- 10

p.41 l.27-  
p.45 l.20

(a) that the capital and non-capital charges could not be tried together under the law of St. Vincent, and that the said irregularity rendered the trial a nullity.

p.54 l.20-  
p.55

(b) that the trial of the Appellants on capital and non-capital charges in one indictment was highly prejudicial and too great to be overcome by any direction in the summing up.

10. It is respectfully submitted that with regard to ground (a) above the Court of Appeal erred in the following ways:- 20

(a) The Court wrongly held that the charges laid in the indictment formed "a series of offences of the same or similar character and so were properly joined in the same indictment". It is submitted that there was no connection or nexus between the first incident resulting in the death of Mr. Rawle and the second incident at the supermarket which resulted in the wounding of Mr. Gaymes. The second incident happened some one and a half hours after the first and as appears from paragraphs 4 to 8 above, the case for the prosecution and the defence of the Appellants on the first count was entirely different from that on the second count. 30

(b) The Court wrongly held that the local practice and procedure relating to the joinder of other offences in an indictment for murder is the same as in England. It is submitted that the Practice Direction issued by Lord Parker C.J. on October 12th, 1964, 1.W.L.R. (1964) 1244 can have no application in St. Vincent in view of the provisions of Sections 12 and 13 of the Jury Ordinance 1938. Indeed it is submitted that the Court implicitly agreed with this when holding "We must however state that where capital and non-capital charges are joined in the same indictment the non-capital charge should be heard separately 40

from the capital charge and by a jury of nine persons. This practice is in our opinion the correct one and should be followed in future.

(c) It is submitted that if that practice was the correct one, then it should have been the one followed in this case and not merely "in future".

11. It is further submitted that the Court of Appeal erred in holding that the joinder of the Capital and non-Capital charge was not prejudicial.

10 The result of the quashing of the conviction on the non-capital charge by the Court of Appeal is that it should not have been tried together with the murder charge. This means that the jury heard evidence on the non-capital charge which it could not have heard had the murder charge been tried alone. That evidence, it is submitted, was not only highly prejudicial, but also irrelevant and inadmissible in relation to the charge of murder. In this connection, it is submitted that the Court of Appeal wrongly applied the views expressed by Lord Goddard, C.J.,  
20 in Regina v Sims 1946 K.B. 531 at 537 to the facts of this case. Sim's case was concerned with the question of admissibility of evidence of systematic conduct, a matter which does not arise here. Further the prejudice occasioned by the admission of evidence on the other charges was, it is submitted, too great to be overcome by any direction in the summing up.

12. On the 20th May, 1974, the Court of Appeal dismissed the appeal of the Appellants against conviction on the first count but allowed their appeal  
30 against conviction on the third count.

p.55 ll.24-27

13. The Appellants were granted Special Leave to Appeal in forma pauperis to Her Majesty in Council by Order dated 25th June 1975.

pp.56-57

14. The Appellants respectfully submit that this Appeal should be allowed and that the sentence of death passed on them on 17th October 1973 should be set aside for the following, among other,

#### R E A S O N S

- 40
1. BECAUSE the capital and non-capital charges could not be tried together under the law of St. Vincent without constituting a material irregularity rendering the said trial a nullity.
  2. BECAUSE the trial of the Appellants on Capital and non-capital charges in one indictment was so highly prejudicial as to out-weigh any direction

in the summing up.

3. BECAUSE the Court of Appeal wrongly held that the charges laid in the indictment formed a series of offences of the same or similar character.
4. BECAUSE in relation to the Appellant, Laidlow, who was a principal in the second degree, the Learned Trial Judge erred in directing the Jury that the Defence of Duress could not be a defence to a charge of murder.

*C.F. FLETCHER-COOKE, Q.C.*  
EUGENE COTRAN

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27 OF 1975

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