

IN THE COLONY OF MONTSERRAT

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO.1 OF 2003

BETWEEN:

STEVE MOLYNEAUX

Appellant

and

THE QUEEN

Respondent

Before:

The Hon. Mr. Albert Redhead
The Hon. Mr. Brian Alleyne
The Hon. Mr. Michael Gordon

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

The Appellant in person
Mrs. Esco Henry Greer, Hon. Attorney General for the Respondent

2003: September 22;
2004: January 12.

JUDGMENT

- [1] **REDHEAD J.A.:** The trial of this appellant began on 6th March, 2003. He was represented by Counsel up to the 11th March, 2003 when the appellant announced to the learned trial Judge that he would like to represent himself and that he would like all documents and original statements to be handed over to him.
- [2] Mrs. Greer, learned Counsel for the respondent announced to this court that the appellant was contacted and given the opportunity to have counsel to represent him in this appeal but he declined assistance.

- [3] The appellant was prosecuted for the murder of Simeon Sealy. On 14th March, 2003 the appellant was convicted by a jury for that offence. He was sentenced to life imprisonment.
- [4] The case made out against the appellant was a strong one, as presented by the prosecution through the mouths of its witnesses, Ms. Shamecka Gray, Mr. Oscar Zapala and Mr. Earl Goddard.
- [5] Ms. Gray testified before the Judge and jury that she worked for Mr. Simeon Sealy, the deceased. The deceased at the time operated a garage and travel agency. He also provided other services.
- [6] On 7th July 2002, at about 10:30 a.m. she saw the appellant at her work place. At that time she had known him for about 1 year 7 months. She said the appellant bought a bottle of battery water. The deceased then came down from upstairs into the office. The deceased spoke to her and then went outside and spoke to someone.
- [7] The deceased was returning to the office when she heard a large explosion which sounded like a gunshot. This witness said " Mr. Sealy's body twisted and blood 'flash' out of his mouth right on the counter."
- [8] Ms. Gray also testified that she screamed, ran and hid herself in a small room. After a while she left the room and on her way outside she saw the appellant came through the front door. He had a gun in his hand.
- [9] She began to run, the appellant chased after her. She tripped and fell. The appellant pulled her by the back of her shirt while she was on the ground. He then put the gun to her back and said 'let me go'. According to the testimony of this witness, the appellant told her that if she did anything stupid, he would shoot her.

[10] Ms. Gray told the court that he then ordered her to drive one of the cars that was parked on the premises of the deceased. According to this witness when she was driving the car out of the premises the appellant said "Him locked himself up, him should dead".

[11] She said she drove the car for some distance away with the appellant in the car. While she was with the appellant he said:

"He shot after Earl and the gun stick."

[12] The two other witnesses, Mr. Earl Goddard and Mr. Oscar Zappola who were also employees of the deceased and who were present on the premises at the time of the incident gave almost identical evidence as Ms. Gray's account of the shooting.

[13] Mr. Earl Goddard testified that about 9:30 a.m. on 7th August 2002 he was at the auto parts department awaiting for the deceased to come to him. He saw the deceased come through the door towards him. This witness said he then turned around he heard the sound of a gunshot. He then saw the deceased's mouth filled with blood.

[14] Mr. Goddard said that he immediately began to run to the back of the building. He heard footsteps behind him. He looked back and saw the appellant with a black gun pointing towards the deceased and him.

[15] This witness said that he threw himself to the ground. He closed his eyes. The appellant then said " You fucker I got you". He was still on the ground when the footsteps passed him. He then heard another shot. The appellant and deceased went out through the side gate of the workshop. The appellant was then about 4-5 feet behind the deceased. This witness said he then ran and hid.

[16] The appellant appeals to this court against his conviction.

[17] In the grounds of appeal filed by the appellant on 19th March, 2003 he alleges:

"Reason for appeal is that I was convicted on a charge of murder which I did not commit.

I was convicted on fabricated photos, fabricated evidence, false witness statements, false police reports, and false police statements, false and fabricated allegation in the (P.I.) false and fabricated statement and evidence in the High Court, false and fabricated photos in evidence in High Court. All of which were sworn to be true and correct.”

[18] The appellant later filed other grounds in which he made application to this court to be allowed to call two witnesses for further examination. The appellant alleges that there was an “oversight” so far as these witnesses are concerned.

[19] The two witnesses he wished to have examined are Mr. Earl Goddard and Ms. Shamecka Gray. The former gave evidence when the appellant was still represented by his counsel. Mr. Earl Goddard was not cross-examined by appellant’s counsel.

[20] The appellant complained that Mr. Goddard gave two statements to the police. In the first statement Mr. Goddard told the police after the appellant fired the first shot at the deceased he the appellant said “you fucker I got you,” whereas in the second statement Mr. Goddard was saying that the appellant used those words after he fired the second shot.

[21] He informed this court that both statements were in his counsel’s possession. The appellant said that his lawyer had the statements on time but he did not receive them from his lawyer on time . It is apparent that after the appellant decided to represent himself the appellant’s lawyer did not immediately hand over the document to him as he ought to have done. However, at the hearing of this appeal we looked at both statements and apart from the minor inconsistency, referred to, we were of the view that both statements were the same. Moreover there was no departure from the statement in relation to the evidence given at the trial.

[22] In my judgment the appellant having not had the statements at the time of his trial did not in anyway compromise the fairness of the trial particularly having regard to what his defence was.

[23] Appellant complained also that the evidence of kidnapping was wrongly admitted in evidence by the judge. The prosecution led evidence that the appellant immediately after the shooting forced Ms. Gray at gun point to drive him away from the scene of the shooting.

[24] Mrs. Greer Attorney General argued that the evidence was relevant as it showed without a doubt that the appellant was at the scene at the time of the shooting and therefore rebuts his alibi defence. I agree.

[25] The appellant's appeal on the ground that he was convicted on fabricated evidence, fabricated witness statements and fabricated allegations is to my mind without merit. The evidence against that appellant was cogent and overwhelming. There were three eyewitnesses who knew the appellant before the incident. Two of the witnesses and Mr. Zapala spoke with the appellant the morning just before the incident. He later forced Miss Grey to drive him from the scene of the shooting for some distance away.

[26] From the evidence of Mr. Goddard and Ms. Grey the only inescapable conclusion that any one can come to is that the appellant shot the deceased, Simeon Sealy.

[27] Mr. Zapala on the other hand said that he saw the appellant shoot the deceased.

[28] In my judgment any other verdict arrived at by a jury would have been perverse.

[29] The appeal is therefore dismissed. The conviction and sentence are affirmed.

A.J. Redhead
Justice of Appeal

I concur

Brian Alleyne
Justice of Appeal

I concur

Michael Gordon
Justice of Appeal [Ag.]