GRENADA

IN THE COURT OF APPEAL

HCRAP 2007/005

BETWEEN:

NIGEL SOOKRAM

Appellant

and

THE QUEEN

Respondent

Before:

Hon. Mr. Denys Barrow, SC — Justice of Appeal
Hon. Mde Ola Mae Edwards — Justice of Appeal [Ag.]
Hon. Mr. Errol Thomas — Justice of Appeal [Ag.]

Appearances:

Mr. Anselm Clouden for the Appellant
Ms. Dion Lawrence for the Respondent

2008: March 12.

DECISION

[1] EDWARDS, J.A. [AG.]: The appellant was on the 7th March, 2007 convicted for murder and received 18 years. He appealed against his conviction. The indictment upon which he was arraigned charged that he and Denzil Charles jointly murdered John Joseph by intentionally causing his death by unlawful harm on the 20th December, 2005. The murder took place during the course of a botched robbery at the Tivoli Gas Station sometime near 9:00 p.m. when the deceased was shot in his chest by one of the two accused. During the course of the trial, his co-accused Denzil Charles pleaded guilty to manslaughter before the jury. The Crown accepted this plea. Thereafter the trial of the appellant

continued. We were told that Counsel made representation in Chambers about the trial continuing before the same jury, however, we have no record as to what took place.

[2] The crucial evidence which supported the conviction of the appellant for murder came from two of the nine prosecution witnesses, Mr. Samuel De Coteau and Mr. Nicholas John. There was also the appellant's written caution statement that he gave to Cpl. Ryan on the 23rd March, 2006 whilst on remand at the Richmond Hill Prison.

[3] In his caution statement, which Mr. Clouden described as exculpatory, the appellant explained how he reluctantly came to be involved in the attempted robbery. He placed himself at the scene masked and armed with a gun which he thought was a toy gun, while his co-accused Denzil Charles was also masked and armed with a gun. The appellant said Charles had given him the gun before they went to the gas station and told him it was a toy gun. He knew they were going to the gas station to rob. He said he did not know if Charles' gun was a real gun. Charles opened the gas station door and began fighting with the deceased and fired while he the appellant was standing behind Charles. He heard a gunshot, saw the deceased strength leaving him and he ran to the back of the building where Charles joined him about one minute later. Thereafter they escaped.

[4] There were discrepancies in the evidence of Mr. De Coteau and Mr. John concerning the events.

[5] The grounds of appeal questioned the fairness of the trial where the learned judge exercised his discretion to continue the trial with the empanelled jury who heard the co-accused Denzil Charles plead guilty to the lesser charge of manslaughter. It was contended that the appellant's trial was highly prejudicial despite the directions of the trial judge because of the way the indictment was framed with a joint charge for murder, the Prosecution address to the Jury on the joint charge, and the trial judge's direction to the jury concerning a joint enterprise.

[6] Learned Counsel Mr. Clouden advocated that in the peculiar circumstances the learned judge ought to have discharged the jury and ordered a new trial; also that the trial of the appellant ought to have been on the basis of a single accused with no joint responsibility for committing the offence of murder.

[7] The conflict between the evidence of Mr. De Coteau and Mr. John was described by learned Counsel Mr. Clouden as providing a lurking doubt for the court to wonder whether injustice has been done. Mr. Clouden contended that the learned judge's direction to the jury concerning these discrepancies were general, inadequate and did not provide any comparative analysis of such discrepancies in the evidence of the two witnesses.

[8] There is an important distinguishing feature between the factual matrix in the appellant's case and the several cases that Mr. Clouden cited and relied on, including R v Frederick, R v Dubarry and R v Hutton[1]. This distinguishing feature is the caution statement of the appellant, having regard to the charge on the indictment. This caution statement would of necessity trigger the Prosecution's assertion that there was a joint enterprise between the appellant and Denzil Charles apart from the evidence of the other Prosecution witnesses. Had Denzil Charles not pleaded guilty to manslaughter in their presence, the jury would still have had evidence before them that would have entitled them to come to the same conclusion as to the appellant's guilt.

[9] Unlike the situation in Dubarry and Hutton, the perceived irregularity identified by Counsel Mr. Clouden would not have tipped the balance against the appellant in circumstances of the appellant's trial. Had the perceived irregularity not occurred, the jury would have had ample evidence before them which would enable them to come to the same conclusion. The evidence of Mr. De Coteau and Mr. John had to be examined with great care and caution and the learned trial judge in his very careful summing up adequately gave directions and guidance concerning the important discrepancies and how the jury should approach them.

[1] [1990] Crim. L.R. 403; (1977) 64 Cr. App. 7; [1990] Crim. L. R. 875

[10] We were helpfully referred to the authority of DPP v Merryman[2] by the learned DPP, Ms. Lawrence, and the trial judge gave directions concerning joint enterprise in terms of the established guidelines in DPP v Merryman. Ms. Lawrence also referred us to the case of Frederick Pearson Moore[3] which underscored the need for the trial judge to give a direction that the Jury should disregard the fact that the co-accused had pleaded guilty. This case also establishes that it is proper for a trial judge to continue the trial before the same jury after a co-accused has pleaded guilty.

[11] The verdict of the jury reflects their understanding of the judge's directions and their appreciation of the evidence independent of Denzil Charles' plea of guilty to manslaughter.

[12] In our view, no valid objection can be made to the exercise of the judge's discretion in continuing the trial before the jury. We also find that there is no merit in the complaint that the discrepancies were not adequately dealt with. In our view, the directions given by the learned trial judge on joint enterprise were appropriate.

[13] We therefore dismiss the appeal.

Ola Mae Edwards
Justice of Appeal [Ag.]

Denys Barrow, SC
I concur. Justice of Appeal

Errol Thomas
I concur. Justice of Appeal [Ag.]

[2] [1973] AC 584
[3] [1956] Cr. App. Rep. 50, 53