

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

CRIMINAL CASE NO. SLUCRD 2010/0518

BETWEEN:

THE QUEEN

Claimant

AND

KERWIN CHARLES

Defendant

Appearances:

Mr. Leslie Mondesir, Counsel for the defendant
Mr. Giovanni James, Crown Counsel for the Crown

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2013: MARCH 6
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RULING ON VOIR DIRE

- [1]. **CUMBERBATCH, J. :** The defendant was indicted by the Director of Public Prosecutions on the 7th November, 2011 for the offence of murder contrary to section 85(a) of the Criminal Code for that he on the 27th April, 2010 caused the death of Benjamin Dalson (the deceased). At his arraignment he entered a plea of not guilty.
- [2]. The crown's case is that the defendant, whilst armed with a firearm, shot the deceased in the area of his stomach. A post mortem examination was conducted on the body of the deceased by Dr. Stephen King who opined that the cause of death was hemorrhagic shock caused by multiple gunshot wounds.

- [3]. At a case management hearing it was submitted to the court that no identification procedure was held in respect of the witnesses who purported to have identified the defendant as the person who fatally shot the deceased on the day in question. Hence the court ordered a voir dire be held to determine the admissibility of the purported evidence of identification of the defendant as the shooter.
- [4]. The crown relied on the evidence of the witness, Irvin Alexander, who in a statement to the police alleges to have known the defendant for some sixteen (16) years. He further stated that on the day in question he was 'cooling out' on the block in George Ville, Castries, when he heard about eight (8) or nine (9) loud explosions which sounded like gunshots. He then saw the deceased walking and staggering towards him holding his stomach. The deceased fell in front of him and said "that man shot me Charlie and I feel like dying". He did not identify who was the man that shot him. Whilst there, he saw the defendant about twenty (20') feet away coming towards him, with a chrome coloured firearm in his hand. On seeing this he left the scene and ran away.
- [5]. At the voir dire however, this witness sought to resile from the contents of his statement to the police and became evasive. The court ordered at the witness's request that the police officer who took his statement be present in court to read its contents to him. However, the witness remained uncooperative to the extent that the court acceded to an application by the crown for him to be deemed hostile. The witness thereafter testified that he cannot recall giving a statement to the police in which he said he saw the defendant approaching him with a chrome firearm. He went on to say that he cannot recall seeing anyone with a firearm that night when the deceased fell in front of him.

- [6]. The crown called no other identifying witness. Crown counsel, Mr. James, conceding that this is the only evidence the crown had against the defendant. Mr. Mondesir for the defendant submitted that the totality of the crown's evidence against his client amounted to no evidence and urged the court to discharge the defendant.
- [7]. In the circumstances the court finds that there is no direct or circumstantial evidence to warrant the defendant standing trial for the offence for which he is indicted. Indeed not only has the crown's sole identifying witness failed to identify the defendant as the shooter on that fateful night but he has said on oath that he did not see anyone with a firearm that night thereby making his evidence worthless and of no import.
- [8]. Accordingly, the defendant is discharged on the charge in the indictment.



FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE