JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 15/2008

BEFORE: **THE HON. MR. JUSTICE SMITH, J.A.**
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MRS. JUSTICE HARRIS, J.A.

RONIQUE BAILEY v REGINA

Miss Gillian Burgess for the Appellant.

Miss Winsome Pennicooke for the Crown

June 29, 2009

Oral Judgment

COOKE, J.A.

1. The appellant was on the 16th January 2008, convicted on two counts in the Gun Court, sitting at May Pen in the parish of Clarendon. Count 1 was in respect of illegal possession of firearm and count 2, robbery with aggravation. He received the most merciful sentences being five years on count 1 and six years on count 2 with sentences to run concurrently.

2. The factual circumstances are as follows. The virtual complainant Lawrence Richards, at about 10:20 p.m. was seated on his verandah along with his common-law wife, one Tameka Boothe. While he was there seated, an alarm was raised by his neighbour which led him to go to his car where he fetched his machete and resumed his position on the verandah. So it can be taken that he was on full alert. While he was there seated, two men soon appeared from the right side of his house, one with a mask and the other whom he swore was the appellant, Ronique Bailey. He said Bailey had a "punk rifle, with the mouth cut off". The masked person had a knife and he jumped over the verandah railing and took Richards inside on the instructions of Bailey because apparently from the instructions, Bailey knew that the money was kept in a drawer. He was robbed of some $59,000.00 and then the men escaped. That same night he made a report to the police and the inescapable inference is that he called the name "Ronique Bailey" as being the "gunman".

3. In respect of the circumstances pertaining to identification, the lighting was from a bulb estimated to be about 150 watts. Bailey was between 5 - 8 feet from Richards, and the evidence of Richards is that for most of the three minutes that the incident took place, he had his eyes on Bailey for the obvious reason that Bailey was the person with the gun. He said he saw his features.

4. There is further evidence that Bailey was well known to Richards. He had known him for some 1½ years and was used to seeing him on the Longwood Road. Lawrence lives in Longwood Clarendon. He was used to seeing the appellant in an accustomed seating position on a tyre along that road. He would see him very regularly. At times the appellant would stop him on the road begging him for money, and he would also come to his house asking for money. So it would seem that the circumstances pertaining to the adequacy of opportunity of the identifying witness, particularly in the circumstances of this case cannot be challenged.

5. What also cannot be challenged is the approach of the learned trial judge in her analysis of the evidence which was kept within the bounds of the **Turnbull** directions. The appellant made a terse unsworn statement to the fact lies were being told on him. Miss Burgess, counsel for the appellant, sought leave and obtained such leave to argue really one supplemental ground of appeal. There were two, but she abandoned one. The court is only dealing with the one which was not abandoned, which was framed in these terms:

> "that the learned trial judge erred in law by failing to give herself the directions and warning applicable to dock identification rendering the trial unfair."

That was the complaint.

In developing an argument, Miss Burgess said that she should have given a **Pipersburgh** direction. This is a direction set out in **Pipersburgh and Robateau v Queen** 2008 UKPC 11 and the learning in that case is to the effect that where there is a dock identification, it is insufficient to give the **Turnbull** directions. The judge should give directions relevant to the particular issue of a dock identification.

6. We are of the view that the **Piperburgh** directions, as you may compendiously call them, are only applicable where in the circumstances of the case, there ought to have been an identification parade. The learning in **Irvin Goldson & Devon McGlashan v the Queen**, Privy Council Appeal No. 64/ 1980 delivered on the 23rd March 1990, is to the effect that an identification parade should be held where it would serve a useful purpose. It would serve a useful purpose where there was a serious dispute as to whether or not the parties were known to each other. In this case there is no such serious dispute. Further, the evidence would tend to indicate that the appellant was not only familiar with the victim, but with the house, for he said at one point that he was paid to kill him, but "is because a you". Then there was the instruction to his fellow robber of where to go to find the money.

7. An identification parade in these particular circumstances would be of scant if any probative value since the issue would be essentially the

credibility of the virtual complainant as to his opportunity to make the identification and whether or not the tribunal could accept him within the context of the strictures of identification cases, as a witness of the truth. The learned trial judge in this case, who had the opportunity to see and hear him, was convinced so that she was sure and there is no reason to disturb her verdict.

8. The appeal is dismissed; the conviction and sentences are affirmed. Sentences are to commence as of 28th April, 2008.