NMLS

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 88/2001

BEFORE: THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE BINGHAM, J.A.
THE HON. MR. JUSTICE PANTON, J.A.

DERRICK BECKFORD
V.
REGINA

Glen Cruickshank for the appellant

Suzette Rogers, Crown Counsel (acting) for the Crown

March 17 and 20, 2003

PANTON, J.A.

1. The appellant was granted leave to appeal against his conviction in the High Court Division of the Gun Court, sitting in Kingston, for illegal possession of a firearm and wounding with intent. The convictions were recorded on May 8, 2001. On the count for illegal possession of a firearm, he was sentenced to ten years imprisonment at hard labour whereas on the count for wounding with intent he was sentenced to twenty years imprisonment at hard labour, both sentences to run concurrently. Leave to appeal was granted on the basis that the voice of the attacker played a part in the identification process but it appeared that the learned trial judge, Norma McIntosh, J., had not given herself the appropriate warning.

2. Consequent on the granting of leave to appeal, the following supplemental ground of appeal was filed, and permission was granted to argue same. It reads:

> "That the learned trial judge failed to warn herself of the dangers and the peculiarities of identification by voice as it was patently clear that the witness Sandra Francis relied not so much on the visual identification of the appellant but moreso on the voice that she heard when she was held up and wounded."

3. The complainant Sandra Francis was in the kitchen of her home in Saint Catherine on March 22, 2000, at about 4.15. p.m. when the appellant entered uninvited. Miss Francis tried to escape via the back door, but that attempt was unsuccessful. The appellant grabbed her in the region of her chest and threatened to kill her if she made any noise. He demanded money and backed up his demand with the production of a gun "from his side". Miss Francis invited him to go with her to where the money was located. She suggested that he look in her handbag in her room; whereupon, he released his hold on her thereby unwittingly enabling her to rush on to the verandah where she bawled out for murder. The appellant went on the verandah and shot her in the left side of her body towards the area of the buttock, and then rode off on his bicycle. She was taken to the Spanish Town Hospital where she was hospitalized for nine days. The incident lasted at least twenty minutes.

4. On April 19, Miss Francis identified the appellant at an identification parade held at the Hunt's Bay Police Station. In making the identification, she walked along the line and stopped in front of number 9 where the appellant

was standing. She asked that he say the words, "a the money mi come fah". He complied. Thereafter, Miss Francis said that he was the man. Miss Lilieth Farquharson, sister of Miss Francis, witnessed the incident but did not identify the appellant at the identification parade. At the trial, she made a dock identification saying that she had been too scared to point out the appellant at the parade. There was a scar on the left side of the appellant's face. This had prompted Sgt. Linton Campbell who conducted the parade to use toothpaste to disguise the scar and also to cover that section of the faces of the eight other persons on the parade.

5. The appellant gave evidence. He said that he worked as a groom at Caymanas Park. At the time of the shooting, he was, he said, building a house for his girlfriend. On April 13, 2000, he was at a betting shop at Lawrence Drive, Homestead, Spanish Town, Saint Catherine, when he was accosted by several policemen and taken to the Spanish Town C.I.B. office. Two civilians- one male, the other female-came to have a look at him, he said, while he was in custody. He denied having a scar on the left side of his face, and that it was covered with toothpaste while he was on the identification parade. However, he confirmed that he was identified by Miss Francis who also asked that he be allowed to speak.

6. Mr. Cruickshank, on behalf of the appellant, submitted that the learned judge, in assessing the evidence, ought to have reminded herself that the complainant was aided by the voice of her attacker in making the identification.

Consequently, she should have instructed herself that voices may sound alike. The reasoning of the judge, he said, was perfect in respect of visual identification but was deficient so far as voice identification was concerned in that she did not advert her mind to the attendant dangers. The sister of the complainant having failed to identify anyone at the parade was, Mr. Cruickshank felt, sufficient reason for the judge to have "gone the extra mile to deal with the request for the appellant to speak."

7. Mr. Cruickshank relied on the case **R.v. Taylor, Barrett, Hyde and Peterkin** (1993) 30 J.L.R. 100, a case of murder committed at night. The main witness for the prosecution, a female referred to as "DJ", gave evidence of being in her home, and hearing two gunshot explosions which appeared to have "come from on the road behind her house". She heard cries of "murder" and "help" coming from someone, firstly along the road and then in her backyard. She also heard a male voice (which she identified as the appellant Barrett's) saying, "shut up your mouth boy! you nuh hear me say fi stop the noise". There were two more explosions, followed by retreating footsteps, then silence. On appeal, the quality of the evidence identifying the appellant Barrett by voice was challenged. It was held that voice identification falls to be considered under the general law and there was no need for a **Turnbull**-type warning. In order for there to be acceptance of the evidence of a witness that he recognized an accused person by voice, there must be evidence of the degree of familiarity that the witness has had with the accused and his voice, including the prior

> him to speak. The sound of those words must have inched into her brain. She had already stopped by the accused as she stood under number 9 position."

10. The quoted passage indicates the view that the learned judge took of the various elements involved in the identification of the appellant. She regarded the visual identification as paramount. In view of the credibility of the complainant, she rested her judgment on the visual identification. She regarded the voice identification as additional evidence indicating that the appellant was the attacker. The key points to note in this respect are that the complainant, firstly, stopped at position number 9 and, secondly, she asked that specific words be spoken. The importance of noting these points lies in the fact that the appellant was positioned at number 9, and the words that the complainant wished to hear were the very words spoken to her at the time of the incident. In view of how the learned judge considered the evidence, there was no need for her to have done what learned counsel for the appellant has suggested.

11. The ground of appeal on which the appellant relies states that the witness Sandra Francis relied "not so much on the visual identification of the appellant but moreso on the voice that she heard..." The evidence does not support this statement. Furthermore, the learned trial judge did not form the view that the reliance was more on the voice than on the visual situation. Indeed, the judge was of the view that the voice was merely confirmatory of the person whom the complainant had seen. The attack had taken place in

broad daylight. In addition, the complainant and her attacker were at close range for approximately twenty minutes, and the identification parade was less than a month after the incident. These features distinguish the instant case from **Taylor** (referred to above).

12. In the circumstances, we are of the view that the appellant has no just cause for complaint. The issues were properly addressed by the learned trial judge in a situation in which the evidence was quite reliable and strong. We should add that in our view this was not a case in which the proviso was of any relevance. The appeal against conviction is accordingly dismissed. So far as the sentences are concerned, we cannot say as Mr. Cruickshank has urged that they are manifestly excessive. Miss Francis was the victim of a very serious attack in broad daylight within the confines of her home which ought to be a place of safety and peace. This was an outrageous attack on a defenceless lady. The sentences were not only warranted but also desirable. They are hereby affirmed and are to be reckoned from August 8, 2001.