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JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 16/90

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

REGINA

VS.

ANTHONY THOMPSON

Dr. Randolph Williams for Appellant

Hugh Wildman for Crown

January 27, 1992

ROWE P.:

The brothers Edward Thompson and Anthony Thompson were charged with the murder of Anthony Hall who died on October 28, 1987 from stab wounds admittedly inflicted by Edward Thompson. Both men were convicted of manslaughter and sentenced to a term of ten years imprisonment at hard labour. Edward Thompson has not appealed.

Evidence from two eye-witnesses for the prosecution implicated the appellant. David Williams testified that he accompanied the deceased into Majesty Gardens about 7:30 a.m. on October 28, 1987 and there he saw Edward Thompson and the appellant. He said Edward used either a knife or an ice-pick to hit the deceased in his head and said: "Hey ... nuh bother come back here come get me mixed up about nuh bicycle". Miss Juliet Malcolm, the other prosecution witness gave a slightly different version of what Edward Thompson said. In her words, he said: " ... oono still come back bout bicycle, [expletive deleted]

"oonu want get me brother mixed up and him just come from prison".

After these brief words, the appellant is alleged to have held the deceased from behind and his brother Edward walked up and used a knife or an ice-pick to stab the deceased under his left breast.

The defence of Edward Thompson was that he acted in self-defence as he was viciously attacked by the deceased and a gang of men who were armed with a machete and knives. The appellant said he had gone to seek water that morning and only heard of the incident which involved his brother Edward and Hall, the deceased. He said he was not present at, nor did he participate in the incident which led to the injury to Hall.

Prosecution witness David Williams asserted that the appellant was present but did not give any evidence of how he came to know the appellant. Juliet Malcolm said she knew the appellant for about two years.

In the course of his summing-up, the learned trial judge asked the jury to determine whether Juliet Malcolm was mistaken or was deliberately lying.

He said:

> "She said she was about some five feet away from the men who were involved in the incident. She said Squaddy and Tony are facing her and Bubbler was standing sideways from her. She said she knows both of them and she said, quote, 'Them and mi bredda is friends', unquote. So do you believe her, that 'Them and' her 'bredda is friends'? Is she mistaken when she said that she saw Anthony Thompson up there or is she deliberately lying on him when she says that he was out there? What reasons are indicated to you why she should come up with this wicked lie in relation to these men? Mark you, no reasons have to be given because a person can deliberately lie without anybody knowing what reasons they have for lying, no reasons have to be indicated, but you saw the witness. Is she mistaken, is she deliberately lying about what she told you in relation to these two men that they were there, that Anthony Thompson held the deceased and that Edward Thompson while he was being held by Anthony Thompson, plunged his knife into the chest wall of the deceased."

It will be noted from the passage quoted above that the trial judge did not once mention the special rules which have been developed for the assistance of tribunals of fact when considering visual identification evidence. In this case the only evidence connecting the appellant to the crime was that of visual identification and it was absolutely essential that the jury should be given directions on that issue. See Junior Reid et al v. The Queen [1989] 3 W.L.R. 771. Clearly, it is not sufficient when the issue of identification is raised, for the trial judge to refer to the possibility of mistake in the identification evidence and to leave it there. He must go the further mile and give the now hallowed directions which include a general warning as to the dangers of acting on visual identification evidence when it is uncorroborated, the reasons for the special danger and make reference to any weaknesses in the identification evidence.

As this aspect of the case was completely overlooked by the trial judge the application for leave to appeal will be treated as the hearing of the appeal and the appeal will be allowed. We have given anxious consideration to the question of a new trial but taking into account the fact that the appellant has been in custody since 1987 we decline to order a new trial, and will enter a verdict of acquittal.