

REPUBLIC OF
JAMAICA

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEALS NOS. 65, 66, & 67/85

BEFORE: The Hon. Mr. Justice Kerr, P. (Ag.)
The Hon. Mr. Justice Carberry, J.A.
The Hon. Mr. Justice White, J.A.

R. v.

DELROY QUELCH
ERROL REECE
ROBERT TAYLOR

Delroy Chuck for applicant Delroy Quelch
Leon Green and Miss Y. Ridguard for applicant Errol Reece
C.D. Morrison for applicant Robert Taylor
Mr. John Moodie for the Crown

October 6 & 7; November 14 &
December 15, 1986

WHITE, J.A.:

At the end of the hearing, these applications by the above-named applicants were treated as the hearing of the appeals. The appeals were dismissed; the convictions and sentences were affirmed. It is incumbent on us to set out in writing the reasons for so determining.

The three appellants had stood trial on an indictment charging them jointly with the murder of Vernal White, on the 3rd day of July, 1984. They were convicted for that offence after a trial in the Portland Circuit from the 17th to the 21st June, 1984. In so far as the Crown's case was

concerned, the prosecution relied strongly on the evidence of its principal witness, Dukie Chambers, then an Acting Corporal of Police. He placed the three appellants on the scene of the crime, and although he did not know any of them before the 3rd day of July, 1984, he later identified each of the applicants on separate identification parades. The identification parade of Quelch was held on the 2nd August, 1984, about a month after the fatal incident; while those for Reece and Taylor were held about six months after the event, on the 10th January, 1985.

As to the actual circumstances surrounding the death of Vernal White on the 3rd July, 1984, Acting Corporal Chambers deposed that on that day while he was on duty at the Millbank Police Station, the witness Jackson Shepherd accompanied by Vernal White, the deceased, came there and made a report. As a result, Acting Corporal Chambers armed himself with a rifle and a .38 revolver. He went into the car which Shepherd was driving, and with Vernal White and a groundsman at the Police Station they drove to Millbank. On approaching a bridge he saw a V.W. panel van with its front turned to a house and in the driveway to the house. A number of men - seven - were standing at the right hand side of this van. As the car in which he was being driven continued slowly towards the bridge, Acting Corporal Chambers saw the men run off towards the front of the van, and then in front of the house. He also observed two other men standing near the house. These two men were dressed in green khaki, similarly as the other seven men. These two men had M16 firearms, which were pointed at the car as it approached. Witness and his three colleagues drove on and the car was stopped at the square. The witness, White, Shepherd and the

groundsmen got out of the car. Witness went to the front of the car: from there he observed the two green khaki-clad men at a distance of about three-quarters of a chain away. Their faces were turned to him and their guns were pointed in the direction where he and the other passengers and the car were. He heard explosions as of shots being discharged from a firearm.

In this setting the acting corporal said the deceased White called to him and he handed his .38 revolver to White, and because of more explosions coming from where the men with the firearms were, Acting Corporal Chambers, Vernal White, Shepherd and the other person, identified as 'the groundsmen' took cover, by running down the road in the opposite direction from where the gunmen were. The witness Chambers, jumped on to the road bank on the right-hand side of the road, while Jackson went on to the right embankment. After further explosions, the acting corporal was able to see three men running from the direction where he had earlier been. He then saw the man in front with an M16 rifle, he was dressed in green khaki. The other two similarly dressed were unarmed.

When he saw these men approaching, the acting corporal fired two shots from his rifle at the men and then its mechanism jammed. They continued their movements, and because his firearm stuck, Acting Corporal Chambers said "I lie down same place where I was." The site was about two yards above the surface of the roadway, at the edge of which there was a ditch, a water table being below where he was. He was then prone in wild ginger, and observed the three men still running toward his direction. As these two ran passed him, he said a third man "wearing brown pants, with short sleeve shirt with black stripes" passed him. He also

was running, and held a cassette recorder in his hand. Thereafter, he saw three more men running towards him, from the direction earlier mentioned. The one in front had a .38 revolver in his hand. He described the other two men as follows: "One behind him (the first) had on brown pants, whitish coloured long sleeve shirt with light green stripes. The man in the rear (of the last trio) was dressed in green khaki." He said he saw not only the man in the front armed with the revolver, but the man in the rear had an M16 rifle. These three stopped running, looked in the direction where the witness was, spoke to each other and then ran off. He saw them jump into the bushes. By this time, after removing the round that stuck in his rifle, he was able to discharge his firearm at them once, as they ran away from him. Thereafter, he went back to where he had earlier seen Shepherd and White, only to find that White was lying down on a track on the right hand side of the road. He was bleeding from a wound at the back of his head, and appeared to be dead. He saw Shepherd also kneeling on both knees. He was bleeding from a wound at the side of his head and from his mouth. Shepherd was still alive.

Acting Corporal Chambers identified Quelch as one of the men he had earlier seen in front of the house where he had earlier seen the van parked. He saw him then for about three seconds. At that time he held an M16 rifle in his hand. He was the third man of the last trio running with the M16 rifle in his hand. While running he passed the acting corporal at two and a half yards from where the policeman was lying hidden in the wild ginger. On this occasion he had him in view for about ten seconds. On both occasions he was able to see from his face down. In fact he identified Quelch on

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the 2nd August, 1984 at an identification parade conducted by Inspector Douglas Waite at the Police Headquarters, Kingston. On that day according to the witness, Quelch's hair was trimmed, compared to the day of the incident, when his hair was 'rasta like'.

As the learned trial judge pointed out that was not the only evidence against Quelch. He so advised the jury to the extent that -

'in the case of Quelch it is not only identification evidence, but if you accept the caution statement (that) Quelch puts himself on the spot.'

The caution statement alluded to was dictated by Quelch to Detective Assistant Superintendent Herman Hutchinson in the presence of Detective Sergeant Benjamin, and Herbert Bernard a Justice of the Peace. In this statement which was admitted into evidence Quelch stated that on the 3rd July, 1984 he accompanied six men (one of whom he already knew, the other five being strangers to him) to Millbank in Portland. This of course was in contrast to his denial to Detective Sergeant George Williams that 'I don't know Portland, sir.' This was said on the 10th July, 1984 after the Detective Sergeant had cautioned him and told him of his investigations into a case of murder in Millbank in Portland, and that the detective sergeant believed he could assist him in his inquiries.

In his caution statement, Delroy Quelch said also that he saw three of the strange men armed with guns, two short and one long. While they were walking they saw a blue V.W. van, the driver of which was held up by the gunmen. At the command by the gunmen, the driver drove off the van, but the progress of the van was blocked by a suspicious looking car, two of the occupants of which were described

"like police, them have gun." There was a sound of gunshots, and in the words of Quelch's statement "I saw the two men who was in the van with me firing shots at the men on the hilltop. I walk a little distance away and the rest of the men run to where I was and said we have to move now because two men get shot and me know the area, me fi tek them out."

When he gave directions to the jury on the evidence relating to Quelch, the learned trial judge at page 299-300 of the transcript said this:

"..... what in fact the Crown is asking you to find, is that, the very important words: 'I followed them to Millbank'. Now, remember, Quelch is telling you that he was not there, that is his defence; but Dukie Chambers said he was there, pointed him out on an identification parade; and here, if you accept this aspect of the caution statement that I have been reading, he is saying: "I followed them to Millbank." Bear in mind I said this is only evidence against Quelch; so he is saying, he with other armed men went to Millbank; but that is what Dukie Chambers is saying.

Then I remind you as to the other aspect that supports the identification, the visual identification that is, is that Quelch himself said words to the effect - when cautioned by Sgt. Williams - "Is not me alone in it." Now, if you take all that together, there is evidence that is capable of, in fact, enabling you, rather, to say that Quelch was on the spot. Bear in Mind that the Crown must prove that evidence to your satisfaction that you feel sure of it; taking into account the time, the vantage point, the condition under which Chambers observed him, the fairness of the identification parade, the caution statement - if you accept it - the words he gave under caution; and against that, you balance the evidence which says: "I was not there."

If you accept his evidence, you acquit him. If his evidence makes you doubtful about the Crown's case, you also acquit him. It is only if you accept the evidence that I have just tried to bring together, to the extent that you feel sure about it, that you can return a verdict of guilty. The evidence of identification is crucial, and if you accept it, you act on it and return a verdict of guilty; and if you are not sure about it, you acquit Quelch."

Before us, Mr. Chuck for Quelch pin-pointed two main issues of fact: (1) identification, and (2) the caution statement. As to the latter he passingly questioned the propriety of the investigating officers in the case being present in the room, when and where the caution statement was being given. He did not, however, see how he could impeach the admissibility of the caution statement which was admitted on the voir dire. Nor did he find any fault with the summing-up, which we agreed with him, adequately dealt with the two points mentioned by him.

The question of the identification of the other two appellants as participants in the events on the morning of the 3rd July, 1984 loomed large. There was in addition the aspect of common design. Counsel for them criticised the evidence of identification as poor; bearing in mind that the Crown's case on that was based substantially on the evidence of Acting Corporal Dukie Chambers. Lloyd John Shepherd who had driven the police party to Millbank, gave evidence that he attended an identification parade at which he pointed out the applicant Reece "as one of the men I had seen in the gang the group of seven I saw. He was one of the last man that ran across, ran passed; he was the closest one at the car and he was looking straight in my face." He said he was able to see the face of the applicant who, at the time of his movements described, was about eight yards from the witness. However, the judge rightly directed the jury that considering that Inspector Waite, who carried out the identification parade, said Mr. Shepherd had not pointed out anyone, that they were entitled to reject the evidence of Mr. Shepherd on the point.

Reverting then to the evidence of Acting Corporal

Chambers at pages 288 - 289, the learned trial judge told the jury:

"Bear in mind that in respect of the accused Reece and Taylor, the only evidence of identification we have is from Corporal Lukie Chambers, and it is desirable, it is not necessary, it is desirable that you have supporting evidence because people sometimes make mistakes about identification, but it is for you to decide whether the identification was accurate and reliable, and if you are sure about it then you can act on it. If, on the other hand, you in fact have reasonable doubts about the identification, that it was not reliable, that it was not accurate, then in fact it would be the end of the case."

Later, on pages 289 - 290, his directions as recorded are:

"Now, in considering identification evidence, the features that you have to take into account are the time, that is the duration, what length of time, was there an opportunity to see. Now, Mr. Campbell [Counsel defending Taylor] is saying, look, I got the officer to admit that it is only a glance, and that is my recollection too - I will detail the evidence - he says, look, is it a glance you are going to use and convict my man? Because, as Miss Smith [Crown Counsel] said, if Dukie Chambers wished to lie, he could come and put guns in these other two men's hands. Miss Smith is going further, that is to show you that he is telling the truth about everything. She says, look, there wasn't any gun there with these two men. Mr. Campbell says, four seconds glance, is this what you are going to use and convict my man?"

Now, the fact is there is an identification parade, and the time is short: there is no question that four seconds is short. But Miss Smith says, look, this man is a trained police officer. It is true it is identification you are dealing with, and he is a man, but he is trained. You must decide which view of the evidence you accept. The important point is, you must decide whether the four seconds was sufficient for him to make an accurate identification, and that when he went on the parade that he was not assisted, because, you remember the defence are saying that he was in the passage there when in fact Inspector Waite was handling matters. I will deal with that in detail, but that is challenged, both Miss Ridguard [Counsel defending Reece] and Mr. Campbell are making that challenge to the identification evidence as to time."

Taking a look again at the recorded evidence of Dukie Chambers, from which, first of all, there is the reminder that he was lying on the bank in nine inches-high wild ginger, while the three men he later identified as the three appellants were passing his vantage point at a trot. While he was in that position, and they were engaged in those movements, the acting corporal said he saw the applicant Taylor for four seconds, and Reece for seven seconds. Recall also that on the 3rd July, 1984 Reece "was the man second from the rear. He was running in front of Quelch." The acting corporal saw from his face down, and he was two and a half yards from the applicant as he moved along the road.

Mr. Green's attack on this point of identification was that the evidence is unsupported by any other witness. He elaborated in this way: that taking into account the pro-procumbent stance of the acting corporal, the short time in which he saw the appellant, the holding of the parade six months after the incident; the fact that although some ten witnesses were called to the identification parade only Chambers identified Reece, whom Chambers did not know before that day; the summing-up of the learned trial judge should have been in more precise terms, in that he should have directed the jury that it was desirable to have had some other evidence supporting Chambers, and he urged us to remark on the necessity for such a direction in the instant case. At the same time he conceded that the learned trial judge had fairly told the jury to reject the evidence of Shepherd that he had pointed out Reece at the identification parade, although he left it open to the jury to use the rest of Shepherd's evidence to confirm the general nature of the event as described by Acting Corporal Chambers. Mr. Green

added to this his comment, that the only evidence against Reece was that he was running along the road at Millbank between the other two armed men, one of whom, Quelch, had an M16 rifle in his hand.

When he came to make submissions on behalf of the appellant Taylor, Mr. Morrison also argued/^{the}poor quality of the identification evidence. Indeed, his stated supplemental grounds of appeal are:

- "1. That in the light of the evidence of identity the verdict of the jury is unreasonable and cannot be supported having regard to the evidence.
2. That the learned trial judge's directions to the jury as to the evidence of identification were inadequate."

He pointed out among other things that when dealing with the evidence of identification of Taylor the learned trial judge said at page 311 that Chambers:

"..... told you Taylor was dressed in khaki, he was on the embankment, and he said he saw him for about four seconds, and he said he was able to observe from his face down, and he said he didn't know him before the incident."

This, said Mr. Morrison, was a mis-statement of what the witness had said as appears on page 46 of the transcript. The question "What section of him were you able to observe that day, Mr. Chambers?" elicited the answer "From his waist down." Mr. Morrison was frank enough in his awareness that either the shorthand writer, or the judge, was wrong in recording what the witness had said, but he said the things which were given by Chambers to underpin his identification of Quelch and Reece were different from the factors in the identification of Taylor. Taylor was identified at the second of the identification parades held on the 10th January, 1985, as one of the men who took part in the murder at Millbank.

Mr. Moodie appearing on behalf of the Crown expressed the view that it must have been the mistake of the Court Reporter, bearing in mind that the judge's words "from the face down" were not objected to by defence attorney-at-law; and one had to look at the evidence otherwise given by Chambers upon which, considering his vantage point on the embankment, it is probable that a mistake in transcription was made. The Court requested the Registrar of the Court of Appeal to ask the Court Reporter concerned to check her relevant notes as to the exact words used by the police witness. To this query the reply was received that the words as used by the judge correctly repeated the evidence of the acting corporal. In the light of this, Mr. Morrison said he was unable to maintain his submission on that point. Nevertheless, he did not leave the matter there, submitting that when one looks at the quality of the evidence of identification of the three appellants/^{that} regarding Robert Taylor was not quite as good as that relating to the other two appellants.

On the foregoing, we would direct attention to the way in which the learned trial judge dealt with this issue. He more than once counselled the jury that they should consider the evidence against each of the appellants separately before returning a verdict of guilty. At page 288 he added to that the necessity to bear in mind -

"..... that people do make mistakes in identifying people, and one of the safeguards is that you have an identification parade, and if you are satisfied that an identification parade is fair, then this will assist you in determining whether in fact the identification (parade) was accurate and reliable. But I will also tell you that sometimes in fact people do make mistakes even when they pick out persons on identification parades, so you will

"have to pay special attention to Corporal Dukie Chambers' evidence on identification, you will have to pay especial attention to Inspector Waite's evidence on identification."

He did remind the jury, (page 311), that as regards Taylor, Dukie Chambers -

"When he was cross-examined - said he was not mistaken at all - that is the evidence. Equally, he said, he was not mistaken about Quelch, and equally about Reece. He said he was not mistaken so far as the identification is concerned."

Immediately before this passage on page 311, he reminded the jury of the rival interpretations of the attorneys-at-law for the Crown and the defence regarding the value of the identification of Reece and Taylor six months after the event. Thereupon:

"You apply your common sense and in this case in particular remember: do you accept Dukie Chambers as being accurate and reliable, because in respect of Reece and Taylor there is no supporting evidence, so you have got to be sure about Dukie Chambers to have Reece and Taylor implicated."

In his further exposition of the relevant factors for identification to be acceptable according to the requisite standard of proof, the learned trial judge warned the jury as to the length of time during which the witness said he had the appellants in his view and under his observation - i.e., the opportunity to see. Another very important factor was the vantage point as well as the distance between the witness and the appellants.

We are not satisfied that there is any justification for the complaints that the issue of identification was inadequately dealt with.

This issue of course was vital to the whole case

against each of the appellants - eminently so, as from the evidence the jury had to make the further determination whether each of the appellants being there present on the 3rd of July, 1984 was acting in a common design with the others who were armed with guns, were engaged in shooting which resulted in the death of Vernal White.

The several attorneys-at-law in the appeal suggested inadequacy of the summing-up on the alleged common design. With due respect, their intimations were not followed at all with any cogent arguments in support. For fullness of treatment of the whole circumstances of the case, we think it necessary and appropriate to repeat the evidence that nobody saw Reece or Taylor with guns, but as the judge charged the jury, "in the circumstances of this case they would not have to have guns to be part of the common design. Their presence there would be aiding, that is if you find that they were there, and you find that they were there together, one in the middle, and they were running together and going together there that day, then you could infer that whatever shooting and death took place, was the responsibility of all three" (page 283). And further down at pages 283 - 284:

"So, although only one of these would have shot, you attribute his shooting to the rest, and they would all have a common plan; because when men plan to do something and they carry it out, then it must mean that they are acting in accordance with the plan, and they would have one single intention, so that would be to cause death or serious bodily harm.

Now, that is what the Crown is asking you to find. Miss Ridguard and Mr. Campbell, however, are saying: look, even if you accept - they are not saying that their men were there - even if you accept that the men were there, they were not armed, they were just running up and down. If you accept that, they would not be part of a common plan, and this is important. Now, it is important for you to

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"decide from inferences the scope of the plan, whether the plan, in fact, including the use of the firearms, if the necessity arose - and the necessity arose, because the police do not deny that they shot at these men - that these firearms would be used, whether in fact Reece and Taylor were part of a plan to use force, unlawful force, that is, to discharge the firearm; and if the firearm was discharged that day and killed, then in fact, all three would be responsible, though in fact, the direct evidence is that only Quelch was there with a firearm. So that is how you treat inferences."

Then at page 293 he tellingly drew this picture for the jury's consideration:

"I want you to pay very important attention to the formation of the men as he said he saw them; because if you find the formation as he found them, then it is for you to draw the inference as to whether they were acting in accordance with a plan; or, as has been put to you by the Defence, that even if - in particular Miss Ridguard and Mr. Campbell, they said even if their men were there, if you find they were there, they were not acting in accordance with a plan. So you must in fact, pay careful attention to the evidence as emerges, as to what the men were doing there that day, through the eyes of Corporal Dukie Chambers."

And at page 304:

"..... he told you he saw them, and he saw them running together. You have to ask yourselves when you come to draw inferences, if you are going to draw inferences for the Crown you have got to say, are these men who are always moving together acting together in accordance with some prearranged plan? Never mind that two of them never had guns, that is, Reece and Taylor. Are they acting in accordance with a plan, that is, to use force? Because the guns that they were using Dukie Chambers could see them, so you could infer that they could have planned to use force if they met with any resistance. And they did meet with resistance that day, because Dukie Chambers told you that he fired, so that in fact they were part of this common plan to use unlawful force and that unlawful force resulted in the death of Vernal White."

He was anxious to have them understand their jury function when he said, at page 304:

"It is a matter for you to find how far the common design went, if you find that there is a common design, and whether it incorporated all three, albeit two had no firearms that day."

Further on in the summing-up at page 315:

"But it is for you to find, as a matter of fact, first of all, whether there was a plan, what did this plan include, whether it includes the use of the firearm to resist that day, and whether in fact Taylor and Reece together with Quelch, were all part of this plan, and the plan was carried out, the shooting took place, and as a result of the shooting, in fact, White died. So that is how you, in fact, approach the doctrine of, in fact, common design."

We have been at pains to quote those passages from the summing-up to record by this judgment our appreciation that the learned trial judge placed before the jury in comprehensive and detailed manner the two vital aspects of the case against the appellants. Nor did he omit to place before the jury the unsworn statement of each appellant denying involvement in the crime, and setting up an alibi.

In the result, the appeal was dealt with as stated at the beginning of this judgment.