

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 84/66

BEFORE: The Hon. Mr. Justice Lewis, Ag. President
The Hon. Mr. Justice Moody
The Hon. Mr. Justice Eccleston (Acting)

R. vs ERROL D a C O S T A

Messrs. C. Orr and U.D. Gordon for the Crown

20th September, 1966.

LEWIS, P.(Ag.),

The Court having considered the summing-up in this case has come to the conclusion that it ought not to interfere with the conviction or sentence having regard to the evidence adduced. The Court has, however, observed on pages 11 and 12 of the summing-up that the learned trial judge, after referring to the fact that when the accused was put on an identification parade and pointed out as being the man who had committed the offence he said nothing, then went on to address the jury on the extent to which the silence of a person who makes no reply to a charge, or if he does make a reply the extent to which what he says, may be taken into account in considering whether or not he acknowledged the truth of the whole or any part of what is stated at the time of the accusation. He told the jury, If you come to the conclusion that the prisoner acknowledged the truth of the whole or any part of the facts stated you may take so much of the statement as was acknowledged to be true, but no more into consideration as evidence in the case generally, not because the statement standing alone affords any evidence of the matter contained in it but solely because of the prisoner's acknowledgment of its truth. Unless you find as a fact that
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there was such an acknowledgment you ought to disregard the statement altogether."

Now, this direction would be perfectly correct in the ordinary case where an accusation is made by one person in another's presence. In this case, however, as in many cases where identification parades are held, the prisoner had previously been taken into custody, arrested and cautioned, and, of course, the purpose of a caution, as everyone knows, is to tell the prisoner that he is not bound to say anything. So that when the prisoner is put upon an identification parade after having been cautioned he is not bound to say anything when an accusation is made against him by a person who comes to identify him, and it is quite incorrect, as it was in this case, for the trial judge to direct the jury in the way this judge did.

The Court, while refusing the application for leave to appeal draws attention to this misdirection because it is very important that these matters, when the Court observes them, should be brought early to the attention of the judges.