

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 29/98

COR. THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MR. JUSTICE WALKER, J.A.
THE HON. MR. JUSTICE LANGRIN, J.A.

REGINA VS. GEORGE LAWRENCE

Terrence Williams for the Appellant

Mrs. Vinette Graham-Allen for the Crown

September 20 and October 27, 1999

LANGRIN, J.A.

The appellant George Lawrence was convicted by a jury in the Trelawny Circuit Court before Clarke J. on an indictment for rape and sentenced to 20 years imprisonment at hard labour.

On the 20th September, 1999, having heard Counsel on his behalf, we dismissed the appeal and affirmed the sentence and promised to put our reasons in writing. This we now do.

According to the prosecution's case the victim of this rape who did not know the appellant before, testified that on May 23, 1997, she had finished working at the Holiday Inn when she stood outside the hotel premises along the road, awaiting a taxi to take her home to Falmouth. She saw a red Lada station wagon taxi drive up to where she was standing. She drove in the taxi from

Holiday Inn until she finally came out of the taxi in Falmouth later that night. There was no light in the taxi, but there were street lights where she was standing, waiting for the taxi which enabled her to see inside the taxi. She also said the driver came out of the taxi and she was able to see his face for about one minute. She saw his face again in Long Bay when he came out of the car to relieve himself. The next stop was along a marl road at Wilshire between Trelawny and St. James where he had sexual intercourse with her against her will. She drove with him in the front seat for about twenty minutes until he reached Falmouth when she was let off.

She went to the Police Station, made a report and gave a description of the car and the person who she said had raped her.

On the 3rd June, 1997, she attended an identification parade which consisted of nine men including the accused. There she pointed out the accused as the person who raped her.

The appellant gave an unsworn statement from the dock in which he said he was at Paradise Club that night in Montego Bay. He was there with a few friends having drinks and he did not leave there until 4:30 a.m. He is not the person who is alleged to have raped her.

With these considerations in mind we proceeded to examine the substantial complaint advanced by Mr. Terrence Williams on behalf of the appellant. That complaint reads:

"The learned trial judge ought to have ruled that there was no case to answer because the positive breaches in the conduct of the identification parade would have made the identification evidence tenuous.

In the Alternative

Learned trial judge failed to indicate to the jury that there were positive breaches in the conduct of the identification parade.

Positive Breaches

- (a) Every precaution was not taken to prevent the witness's attention being directed to the applicant in particular. The applicant was apparently the only person on the parade without a beard. Police could have paraded clean shaven men in hats, a simple remedy to ensure fairness. This was a breach of identification parade rule 7.12a.
- (b) A police officer not involved in the parade and not authorised to be on the parade attended whilst the men were assembled and left before the witness attended. This was a breach of identification parade rule 7.13vi. This breach could have led to the witness being assisted. It is not for the applicant to show that the witness was assisted but for the crown to show that the circumstances were such that the parade was patently fairly conducted."

Mr. Williams, in developing his arguments, placed great emphasis on the point that the jury was not warned, that there was a breach of the regulations governing identification parades made under the Jamaica Constabulary Force Act and in particular the amendment contained in the Jamaica Constabulary Force (Amendment) Rules 1977.

These rules in so far as is relevant state:

"7.12 IDENTIFICATION PARADES

In arranging for personal identification every precaution shall be taken:

- (a) to exclude any suspicion of unfairness or risk or erroneous identification through the witnesses' attention being directed to the suspected person in particular instead of indifferently to all persons paraded;
- (b) to make sure that the witnesses' ability to recognise the accused has been fairly and adequately tested.

7.13 It is desirable therefore that:

...

- (iii) the accused shall be placed among not less than eight persons who are as far as possible of the same age, height, general appearance and position in life;

...

- (iv) All unauthorised persons shall be strictly excluded from the place where the Identification Parade is held."

How then was this critical part of the case dealt with by the trial judge?

We quote the relevant parts of his summation:

"You will recall, members of the jury, that the police in the person of Corporal Miller told you that an attempt was made to hold an identification parade before the 3rd of June, and he told you that he received a report on the 25th of May and as a result of that he went to Montego Bay where he saw the accused man in custody at the police station there and he spoke to the accused and told

him that a parade was arranged for him.....the accused responded that he was in Paradise."

The judge went on to say that the officer told the accused that he intended to hold the identification parade on the 28th May. He reminded them that Corporal Miller had said that no parade was held because there was not enough rasta men to stand on the parade. He tried to hold a parade the next day, 29th May and again there was not a sufficient number of rastas to stand on the parade. Corporal Miller then spoke to Sergeant Daley who conducted an identification parade on the 3rd June. Sergeant Daley had spoken to the accused on the 2nd June, and at that time the accused was wearing dreadlocks and a thick growth of beard. It was then that she told him that an identification parade was to be held on 3rd June.

The learned trial judge in summing up to the jury continued:

"She told you, you will recall, that on the 3rd of June, an identification parade was, in fact, held. She said that the parade consisted of a line of eight men plus the accused, when he was bearded and had his locks on. She said that when he came on to the parade, she noticed that he was still wearing his locks but he had on no beard. That he was shaven, his jaws, his face was clean shaven; no beard on his face.

She said that she had Detective Inspector John Davis come to the parade. She spoke to him in the parade room, that is before the parade was held; before the witnesses came on to the parade, and as a result of that, Detective Inspector Davis spoke to the accused, and left the parade room where the parade was to be held."

The Sergeant testified also, and this was adverted to by the trial judge, that after she had spoken to Detective Inspector Davis and he had left, but before the witness came on to the parade, she instructed all the men on the parade including the suspect to use their locks in an attempt to cover the side of their faces. However, the Sergeant did say that it could still be discerned that the suspect was not wearing a beard but it was not as obvious as when he was not using the locks to cover the area of his beard.

Our attention was drawn to the case of *R. v. Michael McIntosh and Anthony Brown* S.C.C.A. Nos. 229 and 241/80 (unreported) delivered on 22nd October, 1991, per Forte, J.A. (as he then was) when dealing with a similar complaint had this to say at p. 35:

"The case of *Graham and Lewis* (supra) made it very clear that the Rules are not mandatory, but procedural and that any failure to adhere to any of the Rules, would go to the weight of the evidence and not to the validity of the parade. What must be the important consideration for the jury is whether in all the circumstances the identification was fair, and gave the witness the opportunity to independently and fairly and without any assistance identify his assailant."

On this aspect of the case the learned trial judge directed the jury thus:

"As I say, members of the jury, the accused, you may think, complained that the parade was not fairly held and that he objected to it; he refused to sign the parade form. First of all, was the parade unfairly conducted because the parade went on even though the accused man had on no beard? Bear in mind, that the Sergeant said he was wearing a beard on the 2nd and as a result she

went and had bearded men, who were all in locks, come on to the parade as volunteers. But low and behold, according to her, when she got to the parade and assembled the men on the 3rd, the next day, the accused was brought on the parade, came on the parade without a beard, no beard on his face, and it was thereupon that she spoke with Detective Inspector Davis and thereafter the men all of them including the accused used their locks in an effort to cover their faces.

You may say whether in these circumstances that would construe unfairness, where what should have been done was to have postponed the parade and wait for the police to assemble men in locks without any beard to match the accused who was then in locks but had on no beard.....You heard the learned defence counsel telling you that the parade could not be considered to be a fair parade because someone in the person of Detective Inspector Davis came on to the parade and left before the parade was concluded....."

It is clear from the transcript that the Inspector came on the parade because the Sergeant found herself on the horns of a dilemma and sought the advice of her senior officer.

The jury was asked to consider having regard to all the circumstances surrounding the holding of the parade whether the parade was held and conducted in such a way that afforded the witness adequate opportunity in a fair manner to identify the person who she said had sexual intercourse with her on the night of the 23rd of May.

The learned judge concluded that aspect of his summation in this way:

"All these are factors you may take into account and at the end of the day ask yourselves whether the parade was conducted in such a way that there was an adequate and fair test of the witness' ability to recognise the man who she said had sexual intercourse without her consent."

In our view that direction by the learned trial judge to the jury was fair and adequate. The tenor of the directions was alerting the jury that despite the two departures from the strict regulations it was a matter for them to say whether the parade was fairly conducted. The police made attempts to have men of generally similar appearances placed on the parade but it was the appellant who by shaving his beard at the eleventh hour caused the dilemma which confronted the parade Sergeant. The appellant, by his conscious act of removing his beard, sought to make his appearance different from that which the Sergeant conducting the parade saw it to be on the day before the parade, the 2nd of June. In addition, he sought to alter his appearance from that which the complainant saw it to be on 23rd of May, when he assaulted her, what she reported it to be and expected it to be on the parade. The appellant sought to change his appearance in an attempt to gain an advantage on the complainant. The decision by the Sergeant to have all the men on parade cover the sides of their faces with their locks was a valiant attempt in the circumstances to conduct a fair parade. It was the presence of the Inspector on the parade which culminated in the advice, to continue with the parade. He was merely seeking to

be as fair as possible both to the appellant and the complainant. It cannot be said that all the circumstances surrounding the parade were not put before the jury.

We are unable therefore to find any merit in the submission of Mr. Terrence Williams.

For these reasons, the appeal is dismissed and sentence affirmed. The sentence will commence on the 6th June, 1998.