JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL 125 & 127/96

COR: THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE GORDON, J.A.
THE HON. MR. JUSTICE BINGHAM, J.A

R v Henry Morgan
Marvin Bonner

Dennis Morrison Q.C. and Beriston Bryan for Henry Morgan

Delano Harrison, Valerie Neita- Robertson and Fara Brown for Marvin Bonner

Audrey Clarke for the Crown

19th, 20th , 21st January, 1998 and 1st May, 1998

GORDON J.A.

The appellants were convicted in the Home Circuit Court on the 10th October, 1996 for the murder of Leon Frederick Hancel on 6th June, 1992 in the parish of St. Catherine. The indictment charged both with capital murder but the jury found Bonner guilty of capital murder and Morgan guilty of non-capital murder.

The prosecution contended that on the night of 6th June, 1992 five (5) men including the appellants entered a bar at Bellas Gate in St. Catherine, executed a robbery and in the course and in furtherance of that robbery one man shot and killed the deceased.

Because of the decision at which we have arrived, it is not necessary for us to delve in detail in the evidence, be it sufficient to say that in respect of the

appellant Morgan the evidence against him was contained in a cautioned statement allegedly given by him and in Bonner's case the evidence was that of visual identification.

There were grounds of appeal which we considered unmeritorious and but for that comment we say nothing further. What gave us anxious consideration was the ground supported by both appellants that failure of the learned trial judge to edit the cautioned statement of the appellant Morgan resulted in there being placed before the jury evidence that was so prejudicial to both appellants as to lead to a miscarriage of justice.

In the statement the appellant Morgan, spoke of his involvement with his co-appellant and others in criminal activity unrelated to the charges on the indictment and not being a part of the *res gestae.* It also spoke of the appellants, being in prison at a time prior to the commission of this offence.

We find that the learned trial judge gave very lucid and correct directions on how the jury should approach their duty in assessing the evidence. Nevertheless the highly prejudicial nature of the evidence, that should have been excised by editing, persuaded us that the jury, despite the warning given by the learned trial judge, would have been hard pressed not to give some consideration to it, and so used, would have resulted in a miscarriage of justice.

We were advised that a previous trial ended in a conviction which was quashed by this court on 19th February, 1996 - (vide SCCA 33/95). In an oral judgment delivered, this court directed that the cautioned statement should in a

subsequent trial be edited. This judgment was apparently not reduced into writing and the directions of this court were not brought to the attention of the learned trial judge.

We have given much thought as to the ultimate disposal of this case. We found that the evidence of the prosecution, with the cautioned statement edited as indicated, presents a case worthy of the consideration of a jury. We therefore treat the applications as the hearing of the appeals, quash the convictions, set aside the verdicts and order that there be a new trial at the current session of the Home Circuit Court.