Judgment Book

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 111/76

BEFORE: The Hon. Mr. Justice Robinson (President)
The Hon. Mr. Justice Watkins J.A.
The Hon. Mr. Justice Melville J.A. (Ag.)

R. v LEROY HASSOCK

Howard Hamilton for the applicant
Mrs. Marva McIntosh for the Crown

JUNE 17 1977

MELVILLE J.A. (Ag.)

On the 13th day of June 1976, the applicant was convicted in the Gun Court of illegal possession of a firearm (Ct 1); robbery with aggravation (Ct II); shooting with intent (Ct 1V): illegal possession of firearm (Ct V). - He was acquitted on the 3rd Count which charged robbery with aggravation.

Counts I and II were concerned with the robbery of a Mr. Khan at gun point along Holborn Road at about 8.15 p.m. on Friday the 16th day of January 1976 of his Toyota motor car and other articles. Within a matter of four hours of the first robbery, a Mr. Wray was robbed, again at gun point, of his white Volvo motor car, at Temple Meads; the robbers making off in Mr. Wray's Volvo leaving behind a Toyota car (presumably Mr. Khan's car). Mr. Wray drove the Toyota car to the foot of Jacks Hill Road where he handed over the car to the police. This was the subject of the third Count on which the applicant was acquitted, apparently because Mr. Wray failed to identify the applicant. Approximately two hours later Corporal Johnson and Constable Walker who were on mobile patrol are chasing a white Volvo car (presumably Mr. Wray's) from along Waltham Park Road into Richmond Park. At Richmond Park Avenue, the lone occupant abandoned the Volvo and after exchanging shots with the police

made good his escape. Counts IV and V were concerned with this shooting incident at Richmond Park Avenue.

On the hearing of this application, complaint was directed at the manner of the subsequent identification of the applicant. It arose in this way. Detective Constable Grayson (the officer who investigated these complaints) received Mr. Khan's report by telephone at about 9 p.m. on Friday the 16th of January. The next a.m. at about 5 O'clock, acting on information he found the applicant lying on a truck seat at an engineering works on Maxfield Avenue. The applicant was then bleeding from his back and when questioned as to what he was doing on the premises said, "police shoot me sir". He was taken to the Half Way Tree police station by Detective Grayson, who then contacted the police radio room. Corporal Johnson's evidence was that he received a radio message that he was to get in touch with the Half Way Tree police station and accordingly he got there at about 6 a.m. on the 17th of January. Having gone into the station Corporal Johnson said he saw the applicant "going in the C.I.D. office". The circumstances of the opportunity that Corporal Johnson had to be able to identify the applicant during the 'shoot out' need not be explored except to say that at its highest, they were minimal. Suffice it to say that Corporal Johnson purported to identify the applicant as the person who discharged shots at himself and Constable Walker. Detective Constable Grayson's evidence on this aspect of the matter is that after he contacted the radio room the applicant was processed, and by 5.30 a.m. on the 17th the applicant had been taken to the cells. Yet at 6 a.m. when Corporal Johnson fortuitously arrived, - Grayson's evidence was that it was shortly after he made the call to the radio room - at that stage Grayson was in the C.I.D. office taking a statement from the applicant. It needs only be said that clearly one or the other is mistaken.

Turning to Mr. Khan's identification of the applicant, Mr. Khan's evidence is that having telephoned the police on the 16th of January he went to the Half Way Tree police station at the

request of the police on Saturday, the 17th of January at about 11.45 a.m. - Grayson puts this as 7.45 a.m. - and according to the transcript this is what transpired.

Q. "What happened when you got there?"

A. "When I went to Half Way Tree police station I went over the guard room; while I was there I saw a man came in, while I was in the guard room. I turned to the police man and said, 'Isn't that man looking like the man that held me up last night?"

His Lordships: "You said what?"

A. "That man looks like the man that held me up last night. The constable asked him to turn around, he did, he asked if I identified him as the person who held me up and I said "Yes, he is the man".

Unquestionably the applicant had been taken into the guard room by some police officer whilst Mr. Khan was present and made to turn around so as to face Mr. Khan. Assuming that Mr. Khan had spoken loud enough that others who were present could have heard, what transpired in that guard room can only be termed a grave impropriety. It was bad enough taking the applicant to the guard room in the circumstances, but unpardonable for the constable - whoever he might have been - to prompt Mr. Khan into identifying the applicant.

But that is not the end of the matter. When Mr. Khan was cross-examined about his soliloquy the following appears from the transcript:-

Q. "Were you asking a question of anybody or were you just talking out loud?"

A. "Just talking out loud".

Q. "But you asked a question, "isn't that the man".

A. "Yes, I said so to myself".

Q. "You didn't say it out loud?"

A. "No Sir".

Q. "You didn't? You said it to yourself?"

A. "Yes Sir."

Then in re-examination:-

Q. ....."When you said you spoke to yourself

> that he resembled the man or looked like the man, you said you spoke to yourself. Did you speak aloud so the officer or anybody else could have heard?"

A. "No Sir".

Although Mr. Khan is clearly contradicting himself it would be fair to say that his evidence was that he did not speak that the officers could hear. If that is so, why then, one may ask, is this constable taking in the applicant and asking him to turn around etc.? The answer can only be that there was some arrangement whereby the applicant should be brought in when Mr. Khan was present. Going one step further, Mr. Wray who, it will be remembered, failed to identify the applicant; admitted in cross-examination that at Half Way Tree he was "shown" the applicant. Unfortunately, the circumstances under which Mr. Wray was "shown" the applicant, or when that took place, were never explored. Detective Constable Grayson's explanation for the applicant being in the room when Mr. Khan was present was that the applicant was to be taken to the hospital.

When it is remembered that none of the witnesses knew the applicant before the respective incidents referred to, and that the guilt of the applicant rested solely on the visual identification by these witnesses, it became of the utmost importance that a properly conducted identification should have been held in the circumstances. The conclusion cannot be avoided that the police here had embarked on a deliberate course of confronting the applicant with the various witnesses. Not once, not twice but at least on a third occasion this course was pursued. Mere words seem inadequate to condemn behaviour of this kind.

From as far back as 1910 where a witness was allowed a view of a suspect before attending an identification parade it was said:-

> "We need hardly say that we deprecate in the strongest manner any attempt to point out beforehand to a person coming for the purpose of seeing if he could identify another, the person to be identified, and we hope that instances of this being done are

> extremely rare. I desire to say that if we thought in any case that justice depended upon the independent identification of the person charged, and that the identification appeared to have been induced by some suggestion or other means, we should not hesitate to quash any conviction which followed. The police ought not, either directly or indirectly, to do anything which might prevent the identification from being absolutely independent, and they should be most scrupulous in seeing that it is so."

See R v Dickman (1910) 5 Cr. App. R. 142-143.

In R v Gilbert (1964) 7 W.I.R. 53 the suspect was left in a room in such a position that as the witness entered he could see the suspect. This was what Lewis J.A. had to say at p. 56:-

> "The court feels strongly that this method of identification is a most improper one. This case does not stand alone in that respect. In several cases within the last few months the court has observed that there is a tendency for the police to confront a suspected person with the person who is required to identify him in circumstances in which it is possible for the identifying witness to say that he merely came upon him. Where it appears, as it must have appeared clearly in this case, that the evidence against the suspected person is going to depend to a great extent upon identification, there is a distinct duty upon the police to take every care to see that the witness who is going to identify that person is not brought into proximity with him before the identification parade is held".

Indeed it seems that this pernicious practice has intensified whereby confrontation has now become the order of the day rather than the rare exception that it ought to be in clear defiance of the warnings of Lewis J.A. It is to be hoped that the result of this appeal has given a clear indication of the course that this Court will pursue in the future under similar circumstances. Confrontation should be confined to rare and exceptional circumstances such as those in R. v Trevor Dennis S.C.C.A. 27/70; Vol. 7 p. 479. Where the Court would perhaps not be inclined to frown too unkindly on the procedure adopted there. Although it is always difficult to formulate universal rules in these circumstances, where the facts may vary so infinitely, a prudent rule of thumb would seem to be; where the suspect was well known to the witness before, there may be confrontation. That is, the witness may be asked to confirm that

the suspect is the proper person to be held. If the witness did not know the suspect before, then the safe course to adopt would be to hold an identification parade, with the proper safeguards, unless of course there are exceptional circumstances.

For the purposes of this application what has already been said would be sufficient to dispose of the application but one cannot help commenting on other matters that arose during the trial. Earlier in this judgment assumptions were made. This was so, because although Mr. Wray had delivered the white Toyota car to the police at Jacks Hill Road no evidence was forth coming from that officer as to what happened to that car. Indeed, there was no nexus to show that that car really belonged to Mr. Khan. The same applies to the white Volvo car. Corporal Johnson's evidence was that the Volvo was taken to Half Way Tree police station but no evidence was led that it was indeed Mr. Wray's Volvo. These matters seemed to have been assumed without any legal basis for the assumption. Again this applicant had injuries to his back. Corporal Johnson in his evidence said that the applicant was suffering from "gun shot wounds in his back". Both a revolver and a shot gun had been allegedly discharged at the applicant. Which, if any, caused the applicant's injuries? The matter was left to be decided on the mere say so of Corporal Johnson whose qualifications for making such a statement remain shrouded in mystery. Again it appears to be the exception rather than the rule that medical evidence is adduced in matters of this kind. Perhaps the time is at hand when the provisions of section 50 of the Evidence Act, ought to be extended to criminal proceedings in the Supreme Court.

A matter which causes even greater concern is that the fourth Count alleged that Constable Walker was the person shot at, yet for some unknown reason he was not called as a witness. He was undoubtly present at the shoot out; he was the virtual complainant yet the Court was left to rely on the evidence of Corporal Johnson alone as to what transpired at that incident. The consequence of a conviction for the illegal possession of a firearm is

mandatory life imprisonment, whilst that for any offence connected with the use of a firearm is usually a severe sentence of imprisonment. Indeed, the trial of any offence in the Supreme Court (of which the Gun Court is an extension) is fraught with serious consequences. Why then when corroborative evidence is available is it not put before the Court? It is true that justice delayed is justice denied but at the same time justice must not only be done, but it must be seen to be done.

These are matters which may seem to be carping criticisms which have unfortunately all occured in this case but it has been the experience of this Court that they occur in one way or another far more frequently than they ought to. Much more care is required in the presentation of these matters rather than the inept and slip shodded manner in which it is now being done. "Change" is supposed to be taking place all around us but if these are some of the changes in the administration of justice then they can only be for the worse, and the already tarnished image of justice can only be further tarnished by such actions. In the circumstances this Court was constrained to treat the hearing of the application as the hearing of the appeal. The convictions and sentences are set aside and a verdict of acquittal entered.