

JAMAICA

IN THE COURT OF APPEAL

CRIMINAL APPEAL No. 27/70

BEFORE: The Hon. Mr. Justice Shelley, Presiding
The Hon. Mr. Justice Fox J.A.
The Hon. Mr. Justice Edun J.A.

REG. vs. TREVOR DENNIS

Mr. E. Roy Taylor for applicant

Mr. Patrick Robinson for Crown

9th October 1970; 6th November 1970

SHELLEY J.A.

On 9th October 1970 we refused leave to appeal herein. We said we would give short reasons: We now do so. One only of the several grounds argued merit comment namely that criticising the manner in which the identification of the defendant was done.

This is a case in which the defendant was apprehended about 20-25 chains from the scene and within half an hour or so of the crime of robbery committed inside the home of a minister of religion, whom I shall call the complainant, and his family. The robbery was not hurried, it lasted 10-15 minutes. The complainant had time to observe the defendant and his accomplices. He thought he had seen the defendant before during the course of his pastoral work. He gave a description of the defendant to the police. When the police picked him up they brought him to the gate of the complainant's house. Upon seeing the defendant by the gate the complainant said: "I believe this is the one that was in our house tonight but to be very sure let us go inside the house so I can see him clearly." They went into the sitting room, the complainant looked closely at the defendant and said "Yes, I am sure this is the man."

Learned Counsel said this was identification by confrontation which, he argued, the jury should have been told was undesirable and ought to be taken into account when assessing the weight of the evidence of identity. He contended that whilst the learned trial judge made it clear

that identity of the applicant was a matter of paramount importance and rested solely on the evidence of the complainant, the judge made no comment on the unsatisfactory method of confrontation.

He cited to us R. v. Gilbert (1964) 7 W.I.R. 53 in support of his argument. In that case the prosecutor stood under a light counting his money; the accused snatched a portion of a currency note from him and ran off. The prosecutor saw the face of the snatcher: he did not know him before. Some days after the accused was taken into custody; he was in a room at the station. The policeman who had taken him into custody had a conversation with the prosecutor; as they were going up the stairs to the room where the accused was the prosecutor saw him seated there and told the policeman it was the accused who had stolen his money. Lewis, J.A. at p.56 said:

"The court feels strongly that this method of identification is a most improper one."

"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."

In the circumstances of that case we think, with respect, that those remarks were justified, but in the instant case the elements of time and distance between offence, description to the police, apprehension and identification and indeed the whole circumstances are so different as to make the above remarks inapplicable.

In R. v. Smith and Harrison - Supreme Court Criminal Appeals 23/66 and 24/66 the facts were not very different from the instant case, and the court held the identification to be satisfactory.

Perhaps identification on parade is the ideal way of identifying a suspect but it is not the only satisfactory way. The particular circumstances of a case may well dictate otherwise.

As counsel properly admitted the learned trial judge brought clearly to the jury's attention how important it was that before conviction they had to

be satisfied with the evidence of the complainant as to identification.

We are of the view that there was no misdirection.

For these reasons we refused leave to appeal.