

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 17/87

COR: The Hon. Mr. Justice Carey, J.A.  
The Hon. Mr. Justice White, J.A.  
The Hon. Mr. Justice Wright, J.A.

R. vs. TREVOR LAWRENCE

Norman D. Manley for applicant

Miss Paula Llewellyn for Crown

2nd & 14th March, 1988

CAREY, J.A.:

We treated this application for leave to appeal by Trevor Lawrence against a conviction in the Westmoreland Circuit Court on 4th February, 1987 for murder, as the hearing of the appeal which we allowed. We quashed the conviction, set aside the sentence and ordered that a new trial be held at the next session of the Westmoreland Circuit Court.

We do not propose to express any view of the facts, having regard to the conclusion at which we arrived, but will confine our attention to the non-direction as regards dock identification which arose for our consideration.

The ground of appeal as formulated, did not, in reality, concern itself with this aspect of the learned trial judge's directions but that was, in our view, the deficiency we each

detected in the summation. Counsel for the Crown was invited to address us in this regard and conceded this to be the position but invited us to apply the proviso and dismiss the appeal, as even if the correct directions were given, the same verdict must have been returned.

Nadine Studdard was on the 29th March, 1985 stabbed to death by the appellant. Three eye-witnesses who were called by the prosecution, testified to seeing the appellant stab the young woman, an incident which took place at about 10:00 o'clock in the morning. One of the witnesses, Robert Thompson, said he knew the appellant before the incident and gave the appellant's name to the police. The second witness Patrick Robinson, although he said he knew the appellant before the incident, failed to identify him on an identification parade. The third witness Roslyn Thomas did not know the appellant before and also failed to identify him on the parade. Both witnesses, however, gave evidence before the learned judge and the jury identifying the appellant as the assailant.

The learned trial judge correctly identified the issue to be identification. At page 81, she said this:

"..... This case will turn on one issue, the issue of the identification of the assailant of the deceased, ....."

Then at page 103, she gave the following directions, which we set out hereunder:

"The matter is one of identification, so Mr. Foreman and members of the jury, it is the correctness of the identification you have to look into, because the death has been established, the cause of death has been established. Who caused the death, the prosecution says that it is this man; he says it isn't he. I have to warn you, Mr. Foreman and members of the jury, of the special need for caution before convicting when you rely on the correctness of identification. The reason

"for this is that it is possible that people can make mistakes from time to time even with people whom they know quite well for a long time, we all can make that sort of mistake and many times you say, my, I could have sworn it was you down the road and the other person says, I wasn't anywhere near there, so for this reason, a witness who says he is sure can be very convincing even though he is mistaken. So, you have to examine in this case the particular circumstances in which the identification was made by each witness; you have to say how long that particular witness had of observing the incident or the person, if the witness knew the person before, the circumstances under which he knew him; how, when he knew him, how often he saw him, if it was only occasionally or often, if he had time to observe him, or if it was only fleeting glances he had of him; how long it was before the incident and the last time that he had seen that person. Was there any material discrepancy between the description of the appearance of the person and the description given to the police? All that you have to take into consideration."

These were general directions which, undoubtedly, were unexceptionable.

But having regard to the fact that two of the eye-witnesses made dock-identification, that general direction was apt in respect of the evidence given by the first eye-witness Robert Thompson, but was wholly inapplicable to the evidence of the witnesses who made dock-identification. The learned trial judge did not, at any time, alert the jury to the different considerations which should inform their assessment of dock-identification evidence, vis-a-vis the evidence of Thompson, who was previously acquainted with the appellant and gave his name to the police.

It was very necessary, in the interest of a fair trial, that the jury should be told that the evidence of the witnesses who identified the appellant in Court for the first time was suspect because both had been afforded an opportunity to identify the appellant as the assailant at an identification parade, and both had failed to do so. Indeed, one of the witnesses who said he knew the

appellant before, was one who had failed the test. Clearly, therefore, it was not enough, rather it was wholly misleading, to suggest that the considerations which we quoted earlier were equally applicable to all these witnesses.

We were satisfied that having regard to the serious nature of the non-direction, the conviction could not be allowed to stand. However, seeing that there was other credible evidence linking the appellant with the crime, we were of opinion that in the interest of justice, a new trial should be had. Accordingly, we declined to apply the proviso.