IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS. 88, 89, 90, 91 of 1991

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE WOLFE, J.A.

REGINA
VS.
IKLEY NEWRY
DAVE FRAZER
RONALD GOFFE
CORLEY MCKOY

Dennis Daly, Q.C. for Newry
Dennis Daly, Q.C. and Anthony Williams for Frazer
Lord Gifford, Q.C. for Goffe and McKoy

Lancelot Clarke, Assistant Director of Public Prosecutions, for the Crown

June 14, 15 and July 12, 1993

WOLFE, J.A.:

The four applicants were convicted for the murder of Morris Plummer before Patterson, J. and a jury in the Home Circuit Court on the 2nd July, 1991, and sentenced to suffer death in the manner authorised by law. They now seek leave to appeal against the convictions.

Morris Plummer was brutally executed on the 30th May, 1990, at a bus stop on Orange Street in the parish of Kingston. The sole eyewitness for the prosecution was Blossom Plummer, a sister of the deceased.

Miss Plummer was returning home from Cherry Gardens in St. Andrew when, by chance, she met her brother and his girlfriend at the bus stop on Orange Street in Kingston. The time was approximately 9:15 p.m. While at the bus stop, the four applicants approached from Bowery Road. Newry, Frazer and Goffe were all armed with guns. McKoy was not seen with a gun then. Newry, Frazer and Goffe pointed their guns at the

witness "as if them going to shoot me." McKoy, however, approached the deceased from behind, pulled a gun from his waist and shot the deceased at point blank range in his right ear. The deceased fell to the ground mortally wounded. Mission accomplished, the four men ran away along Bowery Road. The victim was taken to the Kingston Public Hospital where he was formally pronounced dead.

The area was well lit with "a lot of street lights." In point of fact, the witness and the deceased were standing under a street light at the bus stop. All applicants were known to the witness for a period of three years. They all lived in the Hannah Town community and were accustomed to pass by, where the witness lived, on a daily basis. This evidence was unchallenged. The applicants came within a distance of one foot from the witness. She knew them by the names "Bebe", "Whiteman", Ronald and "Sixty", respectively. This evidence was also unchallenged. The applicants remained at the scene for approximately five minutes.

Dr. Ramesh Bhatt, who performed the post mortem examination, noted the following injuries:

1. A firearm entry wound posterior to the right external auditory meatus measuring half inch in diameter. On dissection, the projectile was seen to pass through the right temporal bone with multiple fractures of the right greater wing of sphenoid. A few fragments of the projectile were seen embedded with bony spicules of sphenoid in the right temporal lobe of the brain. The right temporal lobe showed contusion.

2. There was an oblique scar four inches in length and two inches above the left. Death was due to firearm injuries to the head and brain.

Each applicant made a statement from the dock and denied being present at the scene. The defence of each amounted to an alibi. Luther Nunes, a shopkeeper, testified on behalf of the applicant Newry and supported his alibi.

Four grounds of appeal were argued before us.

Ground 1:

> "The learned trial Judge misdirected the jury in his directions (at pp. 141) the issue of identification (which was the central issue in the trial) in that -
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> (a) he failed to explain sufficiently the reasons for the special need for caution, and in particular did not, as the authorities require, draw attention to judicial experience of miscarriages of justice.
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> See Palmer vs R (P.C. Appeal 44 of 1990)
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> R vs Laidley, Allen & Whyte (SCCA 83, 85, 86 of 1991)
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> (b) he failed to draw attention to a clear weakness in the evidence of identification, namely the shortness of time available to the witness for her identification of four assailants."

Lord Gifford contended that the learned trial judge's directions on the question of visual identification were expressed in terms which were wholly insufficient in order to bring to the understanding of the jury the dangers of errors in identification evidence and the reasons for the special need for caution. He further complained that the trial judge failed to bring home to the jury the weight of judicial experience as to such dangers.

At page 141 of the transcript, Patterson, J., in dealing with visual identification, said:

> "Mr. Foreman and members of the jury, the prosecution's case against each of these defendant, these accused men, depends solely on the correctness of identification of each accused, and each accused is saying that the witness is either mistaken or telling deliberate lie on us. It is incumbent on me, Mr. Foreman and members of the jury, to warn you of the special need for caution before convicting in reliance on the correctness of the I.D. The reasons for this is that it is quite possible for an honest witness to make a mistaken identification; a notorious miscarriage of

> "justice had occurred as a result. A mistaken witness can be a convincing one and even where you have a number of apparently convincing witnesses, they can all be mistaken. Mr. Foreman and members of the jury, in your experience I am sure that you have been mistaken as to the identity of a person. Sometimes it is because you did not know that person well and you did not have a proper look at the person and other times it may be a person that you knew well but you did not get to see that person well. And of course, there is the time when you are not mistaken at all, you are quite sure that the person who you saw is the person that you have known for a long time or a person whom you can identify."
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> [Emphasis supplied]

At page 142 he continued:

> "Mr. Foreman and members of the jury, you will have to examine very carefully the circumstances in which the I.D. was made by the witness, Miss Plummer, because the prosecution's case rests solely on her evidence. This is not a case where the prosecution is saying that these four men were not known before to the witness. This is a case where the witness says that she knew all four men and she knew them for about three years; they live in the same community. She says she has spoken to them often, so it is not a case where she is seeing them for the first time. But nevertheless, Mr. Foreman and members of the jury, what you have to be sure about is that she recognised who the persons were that she said shot her brother, if you accept that she was there. Because there is also some suggestion that she was not there at all, in which case it is said that she has made up a story against these four men."
>
> [Emphasis supplied]

and then finally at page 148:

> "...this is a case where the recognition - the Prosecution is saying that the witness knew these four men well and recognised them. But let me remind you, Mr. Foreman and members of the jury, that mistakes in recognition, even of close friends at times, even of relatives, those mistakes in recognition are sometimes made in those circumstances."
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> [Emphasis supplied]

Lord Gifford urged that the failure of the learned trial judge to mention in any of the passages quoted that judicial experience has shown that there have been proved instances of miscarriage of justice arising from mistaken

identification is fatal to the conviction. In support of this proposition, he relied upon a judgment of this court in S.C.C.A. Nos. 83, 85 and 86/91 (unreported) R. v. Devon Laidley, Everton Allen and Anthony White, delivered on the 1st April, 1993, where Forte, J.A. said:

> "In the instant case though the learned trial judge told the jury that identification evidence should be approached with caution, because there are inherent dangers, one of which was that a witness can be mistaken, he never told them that judicial experience has shown that in a number of cases, erroneous identification evidence by apparently honest witnesses had led to wrong convictions and that an honest witness can be convincing witness even though he is mistaken. In the end, though the jury were aware of the fact that they had to exercise caution in acting upon the evidence of Phillips, because he may be mistaken, they were not given the benefit of judicial experience which would demonstrate effectively the real reason why they ought to exercise great caution in acting upon such testimony. We are of the view that this was a serious omission by the learned trial judge.
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> In those circumstances and in accordance with the dicta of the Board in Scott v. The Queen (1989) A.C. 1242 at 1261, unless there are exceptional circumstances to justify such a failure, the conviction ought to be quashed, because it would have resulted in a miscarriage of justice."

The cited case is clearly distinguishable from the instant case in that there was nothing said about judicial experience showing that there were proved miscarriages of justice due to mistaken identification. However, in this case the learned trial judge is recorded as saying, "a notorious miscarriage of justice has occurred as a result of mistaken identification." We doubt very much if the trial judge would have used the indefinite article in this context. Nevertheless, the mere failure to use the phrase "judicial experience" is, in our view, inconsequential. The important consideration is to convey to the jury that in the experience of the court miscarriages of justice have occurred as a result of mistaken identification. The Privy Council, in the unreported appeal No. 31/91 Anthony Ashwood

et al v. The Queen delivered on the 29th April, 1993, stated as follows:

> "When a general warning on identification evidence has to be given, it is the principle which is paramount and not a precise verbal formula... The essential need is to convey to the jury in clear terms how careful they must be when considering evidence of identification and how easy it is for an honest witness to make a mistake, even when purporting to recognise someone who is already known to him."

Whether or not a judge has adequately warned a jury in an identification case must be assessed in the light of the strength of the identification evidence. In this case, the evidence showed that the area was well lighted. The identifying witness knew all four applicants for a period of three years and saw them on a daily basis as they all lived in the same community. All of the applicants came within a foot of her on the night in question. She knew their nicknames. All this evidence was unchallenged. In addition to all these factors, by the 1st June the police were in possession of four warrants for the arrest of the applicants. Frazer and Newry were arrested on the 1st and 7th June, 1990, respectively. Goffe and McKoy were arrested on the 3rd January and 5th April, 1991, respectively. The short period of time between the commission of the offence and the arrest of the applicants, coupled with the other factors, would be cogent arguments for finding that the identification was accurate provided the jury found the sole eyewitness was an honest witness.

Lord Lowry, delivering the judgment of the Board in **Anthony Ashwood** (supra), said:

> "The criterion adopted by Lord Ackner, when delivering the Board's judgment in **Junior Reid v. R.** [1990] 1 A.C. 363 at p. 384C of 'a significant failure to follow the guidelines laid down in **Reg. v. Turnbull**' is the appropriate lodestar for appellate courts."

The question, therefore, arises whether there has been a significant failure to follow the guidelines referred to above. In

resolving the issue, regard must be had to the cumulative effect of all the passages on visual identification set out earlier on in this judgment - rather than viewing the passage which appears at page 141 of the transcript in isolation and saying that the phrase "judicial experience" does not appear therein. We are of the view that all the passages taken together clearly conveyed to the jury the degree of care which was required in dealing with evidence of identification and how easy it is for an honest witness to make a mistake even in recognition cases. This approach has been approved by a recent decision of the English Court of Appeal. See **R v. Tyler and others** (1993) Crim. L.R. 60 at 61, where the Court held that **Reid's** case (supra) was not authority for the proposition that it was necessary to warn the jury of the risk of miscarriage of justice and re-emphasised that no particular form of words was needed, provided the judge emphasised the need for caution.

In **R. v. Turnbull** [1976] 3 All E.R. 549, the court laid down certain guidelines which were to be observed in directing a jury in respect of identification evidence. Included among these guidelines was the requirement to advert the jury's attention to the **special** strengths and weaknesses of the evidence. The applicants **complain** that the learned judge failed to highlight the special weakness in the evidence, namely, the short period of time available to the witness to identify the four applicants. The witness testified that the applicants remained on the scene for approximately five minutes. This evidence was elicited during cross-examination. By a strange process of reasoning, counsel for the applicants contended that since the Crown had failed to adduce any evidence as to the length of time the witness had viewed the applicants, the evidence as to time was suspect. This reasoning does not commend itself to us. There can be no doubt that the execution of the deceased was sudden and swift but the evidence is that the applicants came up together, they conferred with each other before the execution was effected. The area was well

lighted and the applicants were in close proximity to the identifying witness. All this was pointed out to the jury and they were directed that they had to be sure that the witness was not only truthful but accurate when she said she recognised these men, whom she had known before. This was not a case of a fleeting glance. In our considered view, the evidence as to the length of time was not weakness per se. Like all the other circumstances surrounding the viewing of the applicants by the sole eyewitness, it was a factor to be considered by the jury, and the trial judge made this clear to them. We are satisfied that the directions of the learned judge were adequate and balanced and in keeping with the guidelines referred to earlier.

Ground 2

At the end of the summation the jury retired at 4:39 p.m. At 5:16 p.m. they returned to court. Enquiry revealed that they had not arrived at a verdict. The learned judge enquired of them if he could be of any assistance and informed them that their verdict had to be unanimous. He directed them in the following terms:

> "If there is any particular aspect of the law or any particular aspect of the evidence that you would like me to assist you in just confer among yourselves, Mr. Foreman and let me know and I will try to assist you. If you need no further assistance on the law or the evidence, I will have to ask you to retire again and bear in mind that you must reach a unanimous verdict if you can, a unanimous verdict and you may think that in this case you would be able to do so. What you will have to do is, you all listen to the reasoning of each other, iron out your difficulties and I am sure that you will be able to arrive at a unanimous verdict... Try and iron out your differences and arrive at a unanimous verdict."
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> [Emphasis supplied]

The jury then retired again at 5:25 p.m. without indicating to the court if they had a difficulty. They eventually returned at 6:02 p.m. with a unanimous verdict.

The complaint is that the words "iron out your difficulties and I am sure you will be able to arrive at a unanimous verdict" were coercive in nature and might have conveyed to the jury that they were bound to arrive at a unanimous verdict, that is, that they were not free to dissent. We find this submission to be wholly lacking in merit. A jury in this country would have no difficulty in understanding that "iron out your difficulties" means nothing more than discuss the matter. A similar complaint was made in **Linton Berry v. The Queen** [1992] 3 All E.R. 881, where the complaint was made that the judge exerted undue pressure on the jury by making clear his views concerning the appropriate verdict by his final remarks. The words complained of are set out below:

> "You, the judges of facts, must now consider the verdict in the light of the evidence which you have heard. The task is yours, you have to face it head on. You cannot shrink from it. You swore each and every one of you, to undertake this task, you must do so fearlessly and without fear or favour consider the evidence and let the chips lie where they fall.
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> The only consideration in this case is the evidence. Deal with it, discuss the evidence amongst yourselves and when you have arrived at your verdict please return and let me know how you find. My one wish for you is that you will be given strength and courage to deal with the matter in accordance with that great and solemn oath which you have taken."

Much stronger words, indeed, than those used in the instant case. Nevertheless, their Lordships' Board thought that nothing was wrong in instilling a measure of resolve into jurors who, even if intellectually convinced, might shrink from the unwelcome duty of convicting on a capital charge.

The final words of the supplementary charge to the jury, "Try and iron out your difficulties" clearly indicate that there was no attempt on the part of the learned judge to coerce the jury into arriving at a unanimous verdict. We emphasize the use of the word "try" in that context. To adopt the words of their Lordships in **Berry's** case (supra),

"We do not consider that the learned judge overstepped the limits of his obligation to ensure a fair trial."

Ground 3

This ground of appeal affects all the applicants except McKoy:

> "The learned Judge erred in his direction to the jury on the issue of common design, in that he failed to direct them that if they found that the killing of the deceased by one accused was an action which went beyond the authorized scope of the common design, the other accused would not be guilty of murder."

By this ground, we understood counsel to be advocating that the learned judge ought to have left the verdict of manslaughter to the jury. A summing-up, we would remind, is not an exercise in the abstract. Each summing-up must be tailored to meet the particular circumstances of the case. In the circumstances of this case, where four men armed with lethal-barrelled weapons pounced upon an unsuspecting victim and executed him, it is preposterous to suggest that the person who performed the execution might have acted outside the scope of the joint enterprise. There was no evidence whatsoever to support any inference that the joint enterprise involved any plan other than to kill or cause serious bodily harm. There was no attempt to rob or commit any other crime, which would raise the question of whether or not the killing was outside the scope of the joint enterprise to rob or commit such other crime. A reasonable jury, in the circumstances of this case, was bound to conclude that the plan was to kill or cause serious bodily harm. In the circumstances of this case, the directions of the learned trial judge on common design were, in our view, impeccable.

Mr. Daly sought to rely on the decision of **R. v. Barry Reid** (1975) 62 Cr. App. R. 109, in support of this ground of appeal. However, the circumstances of **Reid's** case (supra) are clearly distinguishable from those in the instant case. In **Reid's** case (supra), the prosecution's case against all three persons charged was that they were supporters of a terrorist

organisation, the I.R.A., and that they intended to kill the officer commanding the Otterburn training camp, a Colonel Stevenson; that in the early hours of April 8, 1974, armed with weapons they went to his house to kill him. One of them rang the bell, Colonel Stevenson opened the door, O'Conaill then shot him dead, firing three times. The three men left the scene together.

The three accused put forward different defences. O'Conaill alleged that the appellant alone was the one who intended to kill Colonel Stevenson; that he had gone with him to the house, not intending to do any harm to the Colonel, and that when the door began to open he had fired at the door, not expecting the bullets to go through it. Kane's story was that O'Conaill had suggested kidnapping the Colonel and that he had gone to the house to do just that. He had been astonished when O'Conaill fired the revolver. The appellant put himself forward as an opponent of I.R.A. terrorists. He said that he had heard the other two, who worked in the same hotel as he did, were supporters of the I.R.A. During the evening after he had a lot of drink, he decided to find out whether they were what local gossip said they were. He sought them out, pretended to be a supporter himself, found himself let into their plan to kill the Colonel and invited to go with them to do so. He went, not intending to take part in any unlawful act but in the expectation that the other two would reveal themselves as bombastic talkers, not doers of deadly deeds. Lawton, L.J., delivering the judgment of the court, said, "that on the defences put forward the judge had to direct the jury about manslaughter." Each accused gave evidence outlining the scope of the joint enterprise and that the firing of the revolver was a mere unforeseen consequence. The jury was bound to consider their evidence to ascertain the scope of the joint enterprise. As stated earlier, in the present case, the scope of the joint enterprise had to be inferred from the prosecution's case which did not admit of the approach urged by Mr. Daly.

In **R. v. David Hyde et al** [1991] 92 Cr. App. R. 134 at 135, the Lord Chief Justice, in delivering the judgment of the Court of Appeal, said:

> "There are, broadly speaking, two main types of joint enterprise cases where death results to the victim. The first is where the primary object of the participants is to do some kind of physical injury to the victim. The second is where the primary object is not to cause physical injury to any victim but, for example, to commit burglary. The victim is assaulted and killed as a (possibly unwelcome) incident of the burglary. The latter type of case may pose more complicated questions than the former, but the principle in each is the same. "A" must be proved to have intended to kill or cause serious bodily harm at the time he killed. As was pointed out in **Slack** at p. 257 and p. 781 respectively. "B", to be guilty, must be proved to have lent himself to a criminal enterprise involving the infliction of serious harm or death, or to have had an express or tacit understanding with "A" that such harm or death should if necessary be inflicted."

The dicta of Sir Robin Cooke in **Chan Wing Siu v. R.** (1985) 80 Cr. App. R. 117 at 121 is very illustrative:

> "The case must depend rather on the wider principle whereby a secondary party is criminally liable for acts by the primary offender of a type which the former foresees but does not necessarily intend. That there is such a principle is not in doubt. It turns on contemplation or putting the same idea in other words, authorisation which may be express but is more usually implied. It meets the case of a crime foreseen as a possible incident of the common unlawful enterprise. The criminal culpability lies in participating in the venture with that foresight."

The question, therefore, is, did all these four men, armed with guns and travelling together, participate in the venture with the foresight that one or other of them might have killed or caused serious bodily harm?

In the circumstances of this case, where alibi was the defence, the question of foresight or the scope of the joint enterprise had to be gleaned from the Crown's case.

What was the Crown's case: that four armed men approached the deceased and his sister, three of them trained their guns upon the sister and the fourth man snuffed out the life of the victim. The question of manslaughter on the basis that the act which resulted in death might have been outside the scope of the joint enterprise did not arise.

Ground 4

This ground affected only the applicant Ikley Newry. The complaint is that the learned trial judge unfairly prejudiced the defence of the applicant as he:

(a) directed the jury that the applicant had said that he knew who had been shot having been so informed by others and,

(b) invited the jury to speculate, contrary to the evidence that the applicant had told the witness, Luther Nunes, the name of the person who had been shot and to reject the evidence of the witness in support of the applicant's alibi.

The applicant Newry, in his unsworn statement from the dock, told the court that he was standing in the area of Luther Nunes', otherwise called Yatt, shop when he "saw a group of people running down Hannah Street. They say they shot Popsie from around in the scheme. I looked on Yatt and sey, Yatt, you don't hear that they shot a man from in our scheme."

The witness Luther Nunes said he was sitting on a stool in front of his bar looking across the street from the bar when "Bebe" (the accused is called "Bebe") said to him, "You hear dem shoot a man round Orange Street from round here." Nunes, having heard that a man was shot, left his business place, went to where the man was shot, placed the body in the trunk of his car and conveyed it to the Kingston Public Hospital and returned to his place of business without ascertaining the identity of the deceased.

The learned trial judge, when reviewing the evidence,

commented on the strange behaviour of Nunes and this is the basis of the complaint. He said at page 155 of the transcript:

> "Mr. Foreman and members of the jury, you will have to say what you make of it. Is it that **the** accused man told him who it was that got shot and that was why he went around there? He is saying he didn't know.
>
> The accused man said he knew who it was. In his unsworn statement, he told you that the people told him who it was."

Then at page 156 he continued:

> "Mr. Foreman and members of the jury, is he telling the truth? Is it that this man told him who it was? Did he go there to try and salvage a bad situation? Mr. Foreman and members of the jury, those are considerations for you. You may well ask yourselves, If other people from Orange Street could have reached around to the shop, to the bar, could it not be that the accused man was around Orange Street, too, and he reached around the bar? Is it that somebody told the accused man what was happening? If the accused was talking to the witness as the accused said he was at the time, why is it that the witness didn't hear what these people were telling the accused? It's all for you, Mr. Foreman and members of the jury, but that's what he says happened. You will have to consider it."

The learned trial judge in the above passage made it abundantly clear to the jury that what happened was entirely a matter for them and that they would have to take into consideration the evidence of both the applicant and his witness Nunes. The complaint in this ground must be viewed against the background that a judge is entitled to make comments on the evidence. A trial judge's role, in reviewing evidence, is not simply to read over in a parrot-like fashion the evidence. His foremost responsibility is to assist the jury in understanding the evidence by making such comments and giving such explanations as are necessary to ensure a fair trial. We find support for this approach in **R. v. Cohen and Bateman** (1909) 2 Cr. App. R. 197 at 208, Channel, J. stated:

> "In our view, a judge is not only entitled but ought to give the jury some assistance on questions of fact as well as on questions of law. Of course,

> "questions of fact are for the jury and not for the judge, yet the judge has experience on the bearing of evidence and in dealing with the relevancy of question of fact, and it is therefore right that the jury should have the assistance of the judge. It is not wrong for the judge to give confident opinions upon questions of fact. It is impossible for him to deal with doubtful points of facts unless he can state some of the facts confidently to the jury. It is necessary for him sometimes to express extremely confident opinions. The mere finding, therefore, of very confident expressions in the summing-up does not show that it is an improper one."

The real test, therefore, is whether the comment is such that the applicant was denied a fair trial.

The applicant had set up an alibi. The jury were entitled to be assisted on the alibi question. They were certainly entitled to consider the possibility of the applicant having committed the offence at Orange Street and returning to "Yatt's" bar. They were also entitled to consider the unusual behaviour of Yatt. . . He does not know who has been killed, nevertheless he leaves his place of business, goes to the scene of the crime, conveys the dead body to the hospital, returns to his bar and never made any enquiry as to the identity of the deceased.

In our view, the comments complained of did not exceed the bounds of permissible comment and could not have, in any way, unfairly prejudiced the defence of the applicant.

As the applications involved questions of law, we have treated the hearing as the hearing of the appeals, which are dismissed and the convictions are affirmed. With regard to the question of sentence, all the applicants were sentenced to death. In the light of the amendment to the Offences against the Person (Amendment) Act, 1992, we have considered the matter and have concluded that the killing does not fall within the ambit of section 2(1) of the Act and is, therefore, by virtue of section 2(3), non capital murder. The court, therefore, sets aside the sentence of death imposed on the applicants and substitutes therefor a sentence of imprisonment

for life in respect of each, pursuant to section 3A(1) of the Act. In accordance with section 3A(2), we would specify that each of the applicants serve a period of twenty years before becoming eligible for parole.

This court said in S.C.C.A. 77/91 **R. v. Donald Cousley** (unreported) delivered March 15, 1993:

> "That murder remains an abhorrent crime and anyone convicted of non capital murder must expect to serve a period of retribution and deterrence which must necessarily be long."

This approach finds support in the decision of **R. v. Secretary of State For the Home Department, ex parte Doody and other appeals** [1993] 1 All E.R. 151.

Cases referred to

(1) Pacmar v. R C.P.C. Annual 44 of (1990)
(2) R v Lardner-Allan and why to (unreported) (1991) (1/4/93)
(3) Anthony Ashwood et al v. The Queen SCCA 83, 85/86 of P.C. Annual 3/91 - 29/4/93
(4) R v Tyler and others (1993) Crim L.R. 60
(5) Junior Reed v R (1990) AC 363
(6) R v Turnbull (1976) 3 ALL ER 549
(7) Lantar Berry v The Queen (1992) 3 ALL ER 881
(8) R v Barry Reid (1975) 62 Cr. App R 109.
(9) R v David Hyde et al (1991) 92 Cr App R 134
(10) Chan Wing Siu v R (1985) 80 Cr App R 117
(11) R v Cohen and Backman (1909) 2 Cr App R 197.
(12) R v Donald Cousley (unreported) SCCA 77/91 - 15/3/93
(13) R v Secretary of State for the Home Department, ex parte Doody and other applicants (1993) 1 ALL ER 151