

C.A. CRIMINAL LAW — Gun Court — Illegal possession of firearm — robbery with
aggravation — Evidence — Identification —
Judge admitted through arresting constable evidence relating to
a description given by complainant in absence of appellant —
Judge referred to evidence in course of his summation in determining
guilt of appellant

J A M A I C A

Heed allowing appeal — trial judge coming to a conclusion as to
the guilt of the appellant relied upon inadmissible evidence
Conviction quashed — New trial ordered

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 130/87

No case referred to in judgment

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE FORTE, J.A.

EVIDENCE

REGINA

VS.

ORVILLE McLEOD

R. Small instructed by R. Fairclough
for the Appellant

Miss V. Grant for the Crown

June 13, 1988

ROWE P.:

We propose to treat the hearing of the application for leave
to appeal as the hearing of the appeal. We propose to allow the appeal
and in the interest of justice to order a new trial.

The appeal arose out of a conviction in the High Court
Division of the Gun Court in St. James on the 28th of July, 1987, wherein
the appellant was convicted of illegal possession of firearm and robbery
with aggravation and he was appropriately sentenced.

The incident is alleged to have taken place on the night of
the 9th of May, 1987 when a number of men invaded the home of Mr. Clayton,
behaved quite disgracefully in that house and took away property belonging
to Mr. Clayton and his brother. One robber was armed with a gun and he

terrorized Mr. Izette Clayton with the firearm. That man is alleged to have been the appellant in this case.

In the course of the trial the learned trial judge admitted through the arresting constable evidence relating to a description given by the complainant to the police officer in the absence of the appellant. It was evidence which the learned trial judge referred to in the course of his summation and it would appear he had some resort to it in determining the veracity of Mr. Clayton. There was, submitted the Crown, abundant evidence of identification, apart from this bit of inadmissible evidence, and consequently this irregularity should not lead to a clean acquittal. The trial judge in coming to a conclusion as to the guilt of the appellant relied upon inadmissible evidence. We think therefore that it is right that the conviction ought not to be allowed to stand. On the authorities cited by Mr. Small and in light of the concession made by the Crown that this is not an appropriate case for the application of the proviso, we conclude that in the interest of justice there should be a new trial.