[2011] JMCA Crim 53

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 10/2008

BEFORE: THE HON. MR JUSTICE PANTON P
THE HON. MRS JUSTICE MCINTOSH JA
THE HON. MR JUSTICE HIBBERT JA (AG)

STEVE McCALLA v R

CJ Mitchell for the applicant

Mrs Caroline Hay and Miss Keri-Ann Kemble for the Crown

3 May, 29 July and 28 October 2011

McINTOSH JA

[1] This applicant sought the leave of the Court to appeal against his conviction and sentence in the Home Circuit Court, on 16 January 2008, for two counts of robbery with aggravation, committed on 14 March 2006, in the parish of St Andrew. His application was refused by a single judge on 30 June 2009 and was renewed before the full court on 3 May 2011. Mr CJ Mitchell, who then appeared for the applicant, sought and was granted leave to abandon the original grounds of appeal filed with his application and to argue, in their stead, six supplemental grounds, two of which were subsequently

abandoned. After hearing the arguments advanced on behalf of the applicant and the Crown we refused his application, affirmed his conviction and ordered that his concurrent sentence of 10 years imprisonment on each count, commence on 16 April 2008. These are the reasons for our decision, as promised.

The Trial

[2] The prosecution's case, particularized in the indictment on which the applicant was charged, was that on 14 March 2006, he, being together with one other person and armed with an offensive weapon (a knife, according to the evidence), (a) robbed Pauline Archer of one Honda CRV motor car valued at $1,900,000.00 and a Samsung cellular telephone valued at approximately $10,000.00, among other items of value (count one) and (b) robbed Doreen Webley of a Suzuki Jimmy motor car valued at approximately $450,000.00, a Samsung cellular telephone valued at approximately $10,000.00, $20,000.00 in cash and sundry other items of value (count two).

[3] In proof of its case the prosecution adduced evidence from a total of eight witnesses two of whom, Crystal Lewis and Tashana Bloomfield, were originally charged with the applicant but they became witnesses for the prosecution when the charges against them were discontinued. Their evidence disclosed such a devilish plan that we find it necessary to recount it in some detail.

[4] Miss Lewis testified that she became friends with the applicant in January 2006 while she lived on Ashoka Road with Tashana Bloomfield. The friendship developed, she said and on a date in March of that same year he asked her to assist him in his effort to

collect a laptop computer. She was to make telephone calls for him and to this end he provided her with a piece of paper on which names and numbers were written. On 14 March 2006, he arranged to travel with her by taxi destined for 19 Seymour Avenue but, just before the journey ended, he alighted from the taxi, providing her with money which she was to use to rent an apartment at the destination, for two days. Miss Lewis said she followed his instructions and rented apartment number 45. After making checks by telephone to ensure that she had carried out his instructions the applicant arrived at the apartment and instructed her to make the phone calls. Miss Lewis testified that he further instructed her to speak only to women and to say that her name was Kimberley (she did not recall the full name) and that she needed insurance for a house or a car, arrange to meet with each woman at the apartment that afternoon and set times for the meetings, one hour apart. She made a total of seven calls in his presence, each call being answered by a woman.

[5] When the first woman arrived (later identified by her as Pauline Archer) Miss Lewis testified that she sat talking to her in the kitchen. The applicant then ran from the bathroom, came up behind Miss Archer and grabbed her. Miss Lewis said she froze from fright as she was unaware that this was the applicant's intention. He had a sheet in his hand which he used to cover Miss Archer's face but she put up a fight and the applicant asked her (Miss Lewis) to help him. She remained frozen to the spot, however, and was of no help to him. Then the applicant removed a knife from his pocket and some tape which he used to tape Miss Archer's hands, mouth and feet before taking her to another room where he put her to sit on the floor. He searched

Miss Archer's purse, took her car keys and a silver watch which she was wearing, then replaced the sheet with a pillow case, tying it around her face. He asked Miss Lewis if she wanted the watch but she declined the offer.

[6] Miss Lewis said she expressed an unwillingness to participate further as she clearly felt that this was the kind of activity which was bound to lead her into the everlasting flames of the nether-world and she told the applicant that she wanted to leave, but, Miss Lewis said he told her that the woman would see her when she left and would call the police. She said he told her that her daughter (whom she had left in Miss Bloomfield's care and whom she said was ill) would then be taken away from her. That seemingly was a fate more fearful than the everlasting flames, so, when the second woman arrived, Miss Lewis said she went out and brought her into the apartment. This time the applicant was standing behind the door as the woman entered and he approached the woman from behind with a sheet which he put over her head. The woman told the applicant to take whatever he wanted but not to take her life. He then asked her what valuables she had and whether she had a computer. (The evidence indicated that she did in fact have a computer in her vehicle and discovered that it was missing after the incident). The woman gave him her credit card and the PIN number which would provide access to her account and he took her car keys, purse and cell phone, taped up her mouth, feet and hands then carried her to the room where Miss Archer was, placing her beside Miss Archer. Miss Lewis further testified that they eventually left the apartment, travelling in the red vehicle beside which she had earlier

seen the second woman standing when she went out to her. They left the two women, taped up, in the apartment.

[7] Miss Lewis said the applicant met up with two of his friends. He gave one a cell phone and showed a silver grey jeep to the other, telling him to sell it. That friend then drove the vehicle away. The applicant eventually took her home and left but he returned later that night, giving her $7,000.00. According to her testimony she did not see him again until 23 March 2006 when she went into a vehicle with the applicant at the urging of Miss Bloomfield who was also in the vehicle and she then saw the bag that had contained the second woman's laptop computer. That same morning, they were apprehended by the police, Miss Lewis said, and taken into custody.

[8] The applicant who represented himself, and who, despite urgings from the bench to obtain assistance from an attorney at law, remained adamant in his desire to represent himself, cross-examined Miss Lewis at length. Her evidence in cross-examination revealed some discrepancies and inconsistencies relating, among other things, to a question and answer session the police had conducted with her which, at first, she denied but later recalled, as well as her admission that in that session she had denied any involvement in the incident, telling the police that at the relevant time she was downtown and in Spanish Town with her baby's father then later giving a statement that she was at the Seymour Avenue apartment. He also sought to impeach her credibility with questions about the telephone she said she had used to make the calls and her inability to identify the second woman whom she said had come to the

apartment on the afternoon in question, suggesting to her that she was lying about what happened at the apartment to protect someone but she denied that she was being untruthful.

[9] Miss Tashana Bloomfield gave evidence of seeing Miss Lewis and the applicant in a red car on 14 March 2006 but the significant part of her testimony was concerned with the 23 March 2006 when she said she, Miss Lewis and their two children went in a car with the applicant to 1 Sullivan Avenue. The applicant had given her $5,000.00 and told her to rent two rooms there, using a false name. She then told the court about instructions given to her by the applicant which bore similarities to the instructions which Miss Lewis said she had received. Acting on those instructions, Miss Bloomfield testified that she made three calls to three women arranging with them to meet her at Sullivan Avenue. She said that the applicant was with her as she made the calls but Miss Lewis was in another room. He told her what he planned to do when the women arrived but after what appeared to be an argument between the applicant and Miss Lewis they left Miss Lewis at Sullivan Avenue and went to another location where he gave her further details of his plans to kidnap "the people dem van, whatever money, laptops, credit cards and anything the ladies have worth selling". On their return to Sullivan Avenue Miss Bloomfield said she telephoned one of the women in the applicant's presence and hearing and told her not to come. She then told him that they wanted to go to the beach and while the applicant and Miss Lewis waited outside and she was packing up her things to leave, the police arrived and took them into custody.

[10] In cross-examination the applicant challenged Miss Bloomfield on differences between her evidence in the trial and the contents of her statement to the police as well as the recorded question and answer session in which she participated. She admitted to telling the police at first that the applicant had told her that he was going to the Sullivan Avenue location just to cool out, that that was the sole purpose of going there, then saying in her written statement that he told her of his plans to call the women, lure them to the house, tie them up and rob them of their valuables. There was also confusion about dates – as to what took place on 22 March or 23 March and what telephone was used to make calls and also about where and when the applicant had given her a sum of money.

[11] The evidence of Pauline Archer, a life insurance agent then employed to Life of Jamaica, supported in large measure Miss Lewis' account of the incident – for instance, the telephone call from a woman who gave her name as Kimberley (she provided the surname Francis), with the arrangement to meet, the meeting at the apartment leading to her being relieved of items of her property, including her silver Honda CRV motor vehicle which she had driven there that afternoon, the physical abuse to which she was subjected, including being bound with tape and left on the floor of a room in the apartment at 19 Seymour Avenue. Miss Archer also testified about a second person being brought into the room and told the court that it was that person who eventually assisted her in bringing her ordeal to an end, eventually enabling her to make a report at the Matilda's Corner Police Station that night. Sometime in April 2006 she went to the Half Way Tree Police Station at the request of the police and she was shown some

items two of which she identified as her property. Two women and a man were present. The man, she said, was the accused and, when he was asked if he noted her identification of her property, he spoke. Miss Archer said that she immediately recognized his voice and said to the police in his presence that that was the voice of the man who tormented her for hours at 19 Seymour Avenue on 14 March 2006.

[12] She too was cross-examined at length by the applicant who showed her photographs by which means he sought to have her identify areas of the apartment and challenged her evidence about what she was able to see although she testified that she was blindfolded, particularly, how she was able to see her assailant wiping the tape used to tape her up and the windows and door knobs as well before leaving the room and she explained that the blindfold did not extend to her nose-bridge so she was able to see by looking downward. When asked if the woman she arranged to meet had specified the type of insurance required Miss Archer testified that she was only asked about insurance and, as she was contacted and she only dealt with life insurance, she formed the view that it was life insurance that was needed. Miss Archer remained steadfast in her account of the incident she related to the court.

[13] Miss Doreen Webley, an insurance sales agent also employed to Life of Jamaica at the material time, gave an account of the events of 14 March 2006 which bore marked differences from the testimony of Miss Lewis. She said that on 14 March 2006 she had received a telephone call from a man who identified himself as Paul Daley. They had discussed insurance, which he said was for his daughter. This was a follow

up call as sometime in February he had called but they did not speak and he had left a number, in a message left on her voice mail, for her to return his call. When she called on 14 March he told her that his daughter was available to speak with her and gave her a number to call his daughter. That was the call that lured her to the apartment at 19 Seymour Avenue that afternoon with all the expectations of new business but which led instead to her being bound with tape and being relieved of items of her property including her credit card, her Samsung cell phone and her red '99 Suzuki Jimny motor vehicle which she had driven to the location that afternoon. Miss Webley testified that her assailant had asked her how much money could be obtained on her credit card and she told him $20,000.00. She gave him her PIN number and he threatened to kill her if no funds could be obtained with the card. She later discovered that a $20,000.00 transaction was charged to the card.

[14] About half an hour later she heard a male voice again, saying that the owner would come and let them out and also something about it being the wrong people. It was Miss Webley's evidence that after a while, when it was quiet, she managed to displace her blindfold and succeeded in taking the tape from her feet. When she was satisfied that no one was around she assisted the other person in the room to free herself and they went outside. She said at some point she realized that the person she had assisted was someone she was accustomed to seeing at Life of Jamaica but she did not know her name. When they went outside she did not see her vehicle, nor did she see other items of her property such as a black folder containing some insurance papers and her Samsung cell phone which she had had with her on her arrival at the

apartment. Miss Archer's vehicle which she had seen parked there when she arrived was also missing.

[15] On two occasions Miss Webley said she was requested by the police to attend two different police stations where she identified her cell phone, her black folder and other items of her property in the presence of a man and two women. Miss Webley had also attended an identification parade for a female suspect in relation to this case but she was unable to identify the suspect. She also purported to recognize the voice of the accused as her assailant when in answer to questions put to her in cross-examination she said his voice was "the same voice that called me, the same voice that held me in the room, the same voice in the room, the same voice I am hearing now". It must be stated here, however, that the learned trial judge directed the jury to place no reliance on the purported identification of the applicant's voice by Miss Archer and Miss Webley.

[16] The applicant questioned Miss Webley about differences in her evidence in the trial and in her statement to the police. She told the court that the man who had identified himself as Paul Daley had given his daughter's name as Aliyah and she had never heard the name Kimberley Francis. Miss Webley further testified that she did not sell insurance for houses and cars so if she had been told that that was what was required she would not have gone to the apartment. She disagreed with the suggestion put to her by the applicant that her failure to identify the woman she spoke of on the identification parade was because the incident she related had not taken place

and she denied that on 14 March 2006 or any earlier date she had made any arrangement with Miss Lewis or Miss Bloomfield for the services of a masseuse.

[17] The prosecution called four other witnesses including the investigating officer, Sergeant Colville Ebanks. He went to the apartment at 19 Seymour Avenue on 15 March 2006, recovered some items including the bedding on which he said he observed what appeared to be blood and some pieces of tape. There were points of discrepancy relating to the items he said he submitted for forensic testing and about the tape said to have been recovered from the scene. Evidence was also elicited from officers who were involved in the apprehension of the applicant and who spoke of where he was seen at the time he was accosted which also gave rise to discrepancies and inconsistencies (whether for instance, he was by the car or in the premises or in front of the premises). That was the prosecution's case.

[18] The applicant gave an unsworn statement and called eleven witnesses. Two women in whose company he said he was at the material time, having transported them to a wholesale, were unavailable to support him in his alibi defence, one because her house had been burnt down, he said, and the other because she was threatened with physical harm and had relocated. In his account of his actions on 14 March 2006 he told the court that he had seen Miss Bloomfield and she had asked him to withdraw some money for her at the Automated Banking Machine (the ABM), giving him her card and PIN number (to access her account). On 23 March 2006 he was arrested on Sullivan Road as he waited by his car, for Miss Lewis and Miss Bloomfield, both of

whom he admitted to knowing previously. He also recalled prosecution witnesses Webley and Archer for further questioning as well as police witnesses Colville Ebanks and Berrisford Brown, questioning them about the circumstances of his arrest and the finding of the recovered stolen items. He denied ever having them in his possession and said he knew nothing about the events related by the prosecution's witnesses, Misses Lewis, Bloomfield, Archer and Webley.

[19] Among the witnesses called by the applicant were three expert witnesses namely, (i) Dr Juliet Jackson-Wade, with regard to her findings concerning injuries said to have been sustained by Miss Archer, (ii) Dr Judith Mowatt, Director of the Forensic Science Laboratory, about tests carried out on items brought there by the police; and (iii) Major James concerning surveillance tapes at the ABM on Hagley Park Road which showed the applicant effecting a transaction there at a particular time. That was where he said he had gone at the request of Miss Bloomfield. There was also evidence from Detective Sergeant Steve Wint relating to a number which Miss Lewis said belonged to her mother. According to Sergeant Wint's evidence the telephone calls which Miss Lewis allegedly made from a telephone provided to her by the applicant were made from that number.

The Appeal

[20] The following are the grounds of appeal which the applicant pursued:

> "1. That the verdict of the jury was unreasonable having regard to the evidence.

2. That on a proper consideration of the evidence of both Krystal Lewis and Tashana Bloomfield the jury should have found both witnesses to be unreliable bearing in mind the fact that they were charged together with the Applicant; that the charges were dropped in exchange for their testimony against the Applicant; that both witnesses had very profound and personal interests to serve.

3. That the fact that the only identification of the Applicant came from the two impugned witnesses Krystal Lewis and Tashana Bloomfield and that there was no evidence that could amount to corroboration worked a great injustice upon the Applicant.

5. That on at least forty one occasions the Crown intervened in the summing up of the Learned trial Judge and sought to usurp the functions of the Learned Trial Judge. This was particularly undesirable since the Applicant was defending himself without the benefit of Counsel and thus an unfair advantage was thereby afforded the Crown in the eyes of the jury."

Grounds one, two and three

[21] The first three grounds were argued together while ground five received separate treatment. It was Mr Mitchell's contention that the actual testimony relating to the identification of the applicant as being the mastermind in the commission of the offences came primarily from Misses Lewis and Bloomfield who were accomplices having originally been charged with the applicant. The actual complainants (that is, Misses Archer and Webley) were unable to identify their assailants. So, although there is no need in law for corroboration, counsel said, it should be looked for and in this case

there was no evidence capable of corroborating the evidence of the accomplices. Further, he submitted, the women had compelling interests to serve, the Crown having entered a Nolle Prosequi against each of them in exchange for her testimony. Additionally, Mr Mitchell argued, the evidence of the two accomplices was riddled with inconsistencies and discrepancies and the jury ought to have found them unreliable. In light of all of these factors the verdict was unreasonable and against the weight of the evidence.

[22] It was Mrs Hay's contention, however, that when the case for the Crown depends in part on the evidence of an accomplice it was the duty of the learned trial judge to identify that fact and advise the jury on how to approach their analysis of that evidence. In this case the learned trial judge adequately directed the jury on accomplice evidence and on how to treat with discrepant and inconsistent evidence. She pointed out the particular interests possibly being served by these witnesses to give evidence for the prosecution, gave the required accomplice and identification warnings and gave directions on corroboration. Further, Mrs Hay contended that it was no part of the judge's function to withdraw a case from the jury because of dependence on accomplice evidence as the assessment of the believability of a witness' evidence is a matter of credit which is for the jury.

[23] There is merit in the submissions advanced on behalf of the Crown. This was a multi-issue trial and the learned trial judge correctly identified them all. Indeed, there is no complaint that she failed to do so. The learned trial judge gave adequate

directions on each issue, chief among them being identification, corroboration, accomplice evidence and evidence from witnesses with interests to serve and also dealt adequately with the applicant's alibi defence and the overarching issue of credibility. She reviewed the evidence in some detail, carefully pointing out the areas where discrepancies and inconsistencies arose and gave guidance to the jurors on how these were to be evaluated. The learned trial judge then properly left it to them, as the sole arbiters of fact, to come to their own conclusions. Many were the discrepancies and inconsistencies, not only in the evidence of the two witnesses which the learned trial judge correctly identified as accomplices, but also in the evidence of Miss Archer and Miss Webley and the police witnesses. We are of the opinion that the learned trial judge discharged her duties in highlighting these areas of the evidence and making appropriate comments where she felt they would be of assistance to the jurors in coming to their determination on where the truth was to be found. It was then for the jurors, in following her directions, to decide who and what they believed and, if after bearing in mind all the warnings and cautions she gave them, they were of the view, as the majority clearly were, that reliance was to be placed on the evidence of the prosecution's witnesses, including the two who were identified as accomplices, they were quite entitled to do so.

[24] We shared Mr Mitchell's view that the summation, taken as a whole, tended to be generous to the applicant but we emphatically disagreed with his contention that in repeating her directions on the issues, expanding them on each repeat, she may well have confused the jurors rather than assist them, resulting in a verdict which was not

supported by the evidence and, accordingly, in a serious miscarriage of justice. It is true that the learned trial judge repeated her directions on the main issues but this was clearly in an effort to achieve clarity. This court has often said that where trial judges feel it necessary to repeat directions they should strive, as nearly as possible, to use the same language throughout. In this case, while the directions may not have been expressed in the same words each time they were repeated, the meaning was clearly the same. In her directions on accomplices and the treatment of their evidence as well as on corroboration, for instance, the learned trial judge had this to say at pages 124 and 125:

> "Before I proceed any further, I must tell you that Miss Crystal Lewis and Tashana Bloomfield are both accomplices. Now, who is an accomplice? An accomplice is one and party to the crime. Here it is a crime of Robbery with Aggravation, against – sorry, here let me just go again – an accomplice is someone who is a party to a crime, of course, the crime of Robbery with Aggravation for which the accused man is charged. There may be all sort of reasons for an accomplice to tell lie and implicate other people. It is, therefore, dangerous to convict in reliance on the evidence of accomplices such as Tashana Bloomfield and Crystal Lewis unless the evidence corroborates, that is independently confirmed by some other evidence.
>
> Now, corroboration is independent evidence, that is, evidence which does not come from an accomplice, which confirms in some important respects not only evidence that the crime has been committed, but also that the defendant committed the crime. I say confirmed in some important; respects. It is not necessary that there be an independent evidence of everything that she has told you is important. It is for me to point out to you the evidence which, if you accept, is capable of independently confirming

> Crystal's and Miss Lewis evidence. I should do that later on in my summing-up, but it is for you to decide whether it does, whether the evidence that I am going to point out to you, whether, in fact, it does provide independent confirmation."

Then at page 126 the learned judge said:

> "Now, you may even observe independent evidence and accept Crystal's evidence and rely on that. That is, providing you bear in mind the danger of convicting without corroboration. Do you understand what I am saying? It is very important that you understand this. You may convict on her evidence without corroboration, but you have to bear in mind the danger of convicting without it. But you can only rely on her evidence if you are sure, because, remember, earlier on I told you that the stand you take, is that you must feel sure before you can convict. You must be sure that she is telling you the truth. You see, it must be beyond all reasonable doubt. You must be convinced, beyond a reasonable doubt, that she is speaking the truth. Now, this is very important that you bear this in mind."

Again, at page 127, the learned trial judge said:

> "Now, Tashana Bloomfield and Krystal Lewis are, one – I have to make this very clear to you, so I might repeat certain things, but it is very important. Tashana Bloomfield and Krystal Lewis are, one, accomplices; two, they were granted impunity from prosecution, their evidences consisted of discrepancies and inconsistencies. Mr Foreman and your members, in the circumstances, you have to look very carefully at their evidence to see if it is so bad that it falls on its own inhibitions, that is, it is so bad, and if the evidence – if you find that their evidence is so bad it cannot be corroborated, it falls there. That is the end of it, it falls. And if the witnesses' evidence fall so that it is – it is so full of discrepancies and inconsistencies that makes it so bad that it cannot be

> resurrected by independent evidence, that is the presence of corroborated evidence, you have to disregard that evidence. You have to ask yourselves this question – well, are the accomplices, that is Tashana Bloomfield and Krystal Lewis, believable and worthy of credit?"

And at page 128 the learned trial judge sought to re-emphasize her directions when she said to the jury:

> "With regards to the commission of the offence, if it was Miss Krystal Lewis was present and played what she called 'the lady' and she was present while the accused man hit the complainant and threw items over their heads and taped them. It is very important, you see, the very important question for you is whether she can be believed? Whether she is a credible witness? You are, therefore, to examine her evidence very carefully to determine whether she is a witness on whom you can rely and whether she is worthy of credit. I cannot overemphasize that, it is only you who will determine whether she is a credible witness or not."

[25] From all indications, the jurors showed no signs of confusion and were very attentive, even opting to break in the summation, for a fresh start on the following day, no doubt to facilitate continued attentiveness and, at one point, even seeking a repeat of the learned trial judge's direction on the rights of the applicant in the presentation of his defence. Indeed, throughout the trial, the learned trial judge sought valiantly to ensure fairness to the unrepresented applicant and sought, throughout her summation, to assist the jurors with the task that was before them. At the end of the day, there was, in our view, ample evidence upon which the jury could (and by a majority did) return a verdict adverse to the applicant and we rejected counsel's contention that the

verdict was unreasonable, resulting in a miscarriage of justice. For all of the above reasons grounds 1, 2 and 3 were therefore unsuccessful.

Ground 5

[26] The complaint in this ground is that there were more than 41 "interventions" by the Crown during the course of the learned trial judge's summation, at times even appearing to usurp the position of the judge and the jury may well have formed the view that the Crown had a more commanding position in terms of assisting the judge thereby giving the Crown an unfair advantage over the applicant who was defending himself without the benefit of counsel. In her response, Mrs Hay disagreed with the contention that the Crown had intervened in the summation, pointing out that it was the learned trial judge who repeatedly sought assistance in her review of the evidence not only from the Crown but from the applicant himself and from the court reporters and received assistance even from the foreman of the jury. This was all in an effort to ensure fairness to the applicant, she said, and this was the hallmark of her entire summation. There was no complaint that the evidence was misrepresented in any way, Mrs Hay said, and the overall effect of the summation was to crystallize the important aspects of the evidence. Further, it could not be said that the summation was in any way inimical to the applicant, counsel submitted, and there was no indication on the record that the Crown sought in any way to capitalize on the interventions. In the circumstances, Mrs Hay said, there was no disadvantage to the applicant as contended for by Mr Mitchell.

[27] There was, in our opinion, no substance to this ground of appeal. This was a trial which lasted approximately four weeks with the jury hearing evidence from a total of 19 witnesses on behalf of the prosecution and the defence. It was therefore incumbent on the learned trial judge to assist the jury with a proper review of the evidence and in so doing it became necessary to call upon the assistance from the other participants in the trial who also took notes of the evidence. The applicant was clearly one of those persons. He was in a position to assist and did assist when called upon to do so. One instance of this was to be found at page 88 of the transcript, where the learned trial judge was reviewing the evidence of Miss Archer as to how she was able to speak of certain things being done in the room after she was taped up and blindfolded (such as the wiping down of the tapes and windows after Miss Webley was brought into the room and before her assailant went away) as follows:

> (HER LADYSHIP)…. "She told us she could see partially by looking down the tape because the tape was on her nose-bridge, so she could see down ...
>
> MISS THOMPSON: I have, ... did not cover my nose-bridge. I could see partially by looking down because the tape did not cover my nose-bridge."
>
> HER LADYSHIP: Is a that so Mr. McCalla and counsel?
>
> ACCUSED: Yes, m'Lady."

[28] We saw no disadvantage to the applicant in the circumstances of this case and no injustice to him as an unrepresented defendant. He made a clear choice to represent himself and, from the record, showed himself to be quite equal to the task. He took guidance from the learned trial judge and from his comments to the judge at the end of the trial he was satisfied that she had done her best to ensure fairness. His complaint was that the jurors failed to follow her directions. At the end of the day, however, it was a matter entirely for them as tribunal of fact, as the learned trial judge emphasized in her summation.

[29] It is the well established practice in trial courts for the judge to invite both prosecution and defence to point out omissions, areas requiring expansion or corrections, at the end of the summation and we see no injustice to the applicant or advantage to the prosecution if this occurs during the course of the summation instead of at its conclusion. Accordingly, ground five also failed.

[30] After carefully reviewing the transcript of the evidence and the learned trial judge's summation, we concluded that there was no basis for disturbing the verdict of the jury. We therefore made the order referred to in paragraph [1] above.