

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS 71 & 72/2013

**BEFORE: THE HON MR JUSTICE MORRISON P
THE HON MRS JUSTICE SINCLAIR-HAYNES JA
THE HON MISS JUSTICE P WILLIAMS JA (AG)**

**DENNIS ANDERSON
TAFARI DAWKINS v R**

Ricardo Sandcroft for the applicants

Mrs Karen Seymour-Johnson for the Crown

11 February 2016 and 7 April 2017

P WILLIAMS JA (AG)

[1] On 21 June 2013, a jury convicted the applicants, Messrs Dennis Anderson and Tafari Dawkins, of the offence of the murder of Robert James, the deceased, on 8 December 2008. The convictions were the culmination of a trial at the Home Circuit Court in Kingston before Cole-Smith J, which had commenced on 5 June 2013. Consequently, on 31 July 2013 the men were both sentenced to imprisonment for life

and the learned trial judge stipulated that they should both serve a minimum of 20 years before being eligible for parole.

[2] The applicants' applications for permission to appeal against their convictions and sentence were considered and refused by a single judge of this court on 28 October 2014. On 11 February 2016 we heard the renewed applications for permission to appeal. At the conclusion of the hearing, we announced that their applications for leave to appeal against both conviction and sentence would be refused and the sentences imposed were confirmed and reckoned to have commenced on 31 July 2013. These are our promised reasons for arriving at this decision, with much regret for the delay.

The case for the Crown

[3] The deceased was shot and killed in the vicinity of a stall from which he sold CDs on the piazza at Orange Street in the parish of Kingston. The Crown's case was that four men approached that area in which the deceased had been selling, each man armed with a firearm. The men opened fire upon their approach. The deceased tried to escape from this attack but was shot by one of the men.

[4] The Crown relied on the evidence of a single eyewitness to relate the circumstances of this killing. Jervado James, the younger brother of the deceased, was that witness. He was 15 years of age at the time. He had stopped to visit with the deceased at about midday on that day. The deceased was with two other persons

known to Mr James as Kimarli and Javi. Upon speaking with the deceased, Mr James left to purchase orange juice from a shop some distance away. It was while he was returning to give the deceased the juice, that Mr James became aware of something happening when he saw the crowd moving "as if taking cover". He then saw four men approaching the area where the deceased, Kimarli and Javi stood. The men had firearms and two approached from one direction while the other two approached from another, as if they were "closing in".

[5] Mr James recognised the four gunmen as persons he had known for various periods of time in the Hannah Town area, where he had lived with members of his family for most of life. He knew them as 'Bredda', 'Connie', 'Jumo' and 'Dingo'. He stopped and watched as Dingo and Connie approached from one direction and Bredda and Jumo from another. He identified Mr Dennis Anderson as Dingo and Mr Tafari Dawkins as Bredda.

[6] Upon getting closer to where the deceased was, the gunmen started shooting first at Kimarli. The deceased moved in an apparent attempt to escape. Mr Dawkins went closer to him and pointed a firearm at him, resting it at the side of head. The deceased turned to run and in the process turned his head away. Mr Dawkins shot him in his head and the deceased fell to the ground.

[7] Mr James ran off into a nearby shop as more shots were fired. From his vantage point inside the shop, he watched as the four men ran past and eventually boarded a bus and made their escape. Mr James estimated that the entire incident had lasted

about a minute and 16 seconds. Mr James had been able to see the faces of the men for about 25 seconds.

[8] Only one of the gunmen had been wearing something on his head. Mr Dawkins was dressed in a shirt which was described as a pullover with a hood attached to it. The hood, however, was in a position which permitted a view of his face and his hair. Mr James described the hair as being "very tall at that moment" and "come dung pon him ears and dem place deh".

[9] Once the men had left, Mr James went and called a sister who lived in the downtown Kingston area. Together they returned to the scene at Orange Street where the deceased was still lying on the ground. Eventually, the police arrived and commenced their investigation by examining and processing the scene.

[10] Detective Corporal Orville Rowe was the officer from the Major Investigation Task Force (MIT), who attended the scene to process it. He received the request to do so at about 2:35 pm and he arrived at the scene at about 2:40 pm. He spoke with Inspector Cameron and then made observations of the deceased lying face down in the pavement in a pool of blood. He also observed six spent shells, two bullet fragments and one warhead on the scene. He took photographs of these items before packaging them in an envelope which he labelled. He took other photographs at the scene. On the following day, Detective Corporal Rowe went to Madden's Funeral Home where he swabbed the hands of the deceased for gunshot residue.

[11] On 10 December, Detective Sergeant Karen Perry took the envelope containing the items recovered at the scene by Detective Corporal Rowe, to the ballistics section of the Forensic Laboratory and handed it over to Deputy Superintendent Carlton Harrisingh, the Government's Ballistic Expert. Deputy Superintendent Harrisingh subsequently examined the items and concluded that six of the cartridges had been fired from three different firearms - two from a firearm of the class of a Glock 9mm Luger auto-loading pistol; two from a firearm of the class of a 9mm Luger Browning auto-loading pistol and the other two from a firearm of the class of a 9mm Luger Smith and Wesson auto-loading pistol. He also concluded that the two bullet fragments had been discharged from the barrel of a Browning auto-loading pistol and the warhead from the barrel of a 9mm Luger Smith and Wesson auto-loading pistol.

[12] On 10 January 2008 Dr S N Prasad Kadiyala conducted a postmortem examination on the body of the deceased. The body was identified by Ms Patricia Taylor, the mother of the deceased and also mother of the eyewitness. Dr Kadiyala, at the end of the examination, concluded that death was due to a gunshot wound to the head. The entrance to the gunshot wound did not have any gunpowder deposition indicating that the distance between the muzzle of the gun and the victim was beyond 2 feet at the time of the discharge of the firearm.

[13] It was not until 19 March 2008 that Mr James gave a statement to the police about what he said he had witnessed on 8 December 2007. The statement was recorded by Deputy Superintendent Lloyd Wilson. An explanation for this delay in

giving the statement came from Mr James' mother, Miss Taylor. She had initially thought her son was too young to give a statement. It was only after she had discussed the matter with a senior police officer, who she knew and trusted, that she was satisfied that her son was not in fact too young to give a statement. She accompanied him to give one and remained with him during its recording.

[14] An alternative explanation for this delay in giving the statement was suggested to both Mr James and his mother under cross-examination. The suggestions were made that in March 2008, two brothers of Mr James were implicated in the murder of Connie, one of the men who was said to have been involved in the attack which culminated in the death of the deceased. It was further suggested that it was two days after his brothers had been arrested that Mr James went to the police and gave the statement accusing the four men of killing his brother. Mr James emphatically denied these suggestions, which sought to ascribe to him a motive for making up a story because his brothers were arrested for the death of Connie. In response to the suggestion when put by the attorney-at-law who appeared for Mr Anderson, Mr James had said "Sir, bare stupidness yuh a talk, sir". Miss Taylor denied any knowledge of her children being detained for any murder and also denied suggestions that she had "got" her son, Jervado, to give the statement falsely accusing the men.

[15] Sometime after the offence had been committed, the officer who had commenced the investigations into the shooting of the deceased, Detective Inspector Cameron, retired and left the jurisdiction. On 27 March 2008 Deputy Superintendent

Lloyd Wilson was assigned the case and took over the remainder of the investigations. On 28 March the officer learnt that Mr Dawkins was in custody and went and spoke with him. Under caution Mr Dawkins asserted "mi nuh kill nobody".

[16] On 16 April 2008 Detective Inspector Steve Wint advised Mr Dawkins that he would be placed on an identification parade. This parade was conducted by Detective Inspector Wint on 17 April 2008. Mr Dawkins and the attorney-at-law who represented him at that time requested that the men participating in the parade all cover their heads with a white cloth. This was done. Mr James pointed out Mr Dawkins as the man who had shot the deceased. Upon being advised that he had been identified and cautioned, Mr Dawkins told Detective Inspector Wint "Mi nuh know nutten bout nuh killing, mi nuh know nutting bout that".

[17] On 24 July 2009, Deputy Superintendent Wilson received information that Mr Dennis Anderson was in custody. He visited the lock up where Mr Anderson was being held and spoke with him. Upon being advised of the charge against him and cautioned, Mr Anderson told Deputy Superintendent Wilson "Officer mi nuh know weh you a talk bout". No identification parade was held in relation to Mr Anderson. Deputy Superintendent Wilson explained that efforts made to locate Mr James to attend such a parade proved futile. He was however sufficiently satisfied that the Dennis Anderson who was arrested and charged was the Dingo that Mr James had referred to in his statement. Apart from the information contained in that statement, the Deputy

Superintendent got information from the mother of Mr Anderson that helped to satisfy him about the identity of Mr Anderson as being the man he was seeking.

[18] On 26 March 2012, Miss Taylor was contesting the local government election for the position of councillor for the Denham Town Division. Mr Anderson, who was then on bail, worked on her behalf as an indoor agent. She said he had approached her asking for work and she placed him at a polling division. At trial she explained that she did this because she was trying to forgive him because he had "explained" to her and asked her to do so. She said he had told her "Patsy, a long time mi sending mi number to you, to talk to you. I agree I got lock up, a charge for your son ... I have to bear my penalty because I was a part of it".

The case for Tafari Dawkins

[19] Mr Dawkins gave an unsworn statement. His narrative commenced from 2 March 2008, the day he said Connie was killed in a barbershop by "Bollo" and "Bya". On 18 March, his brother and sister told him that they "hear [mi] name a call up seh [mi] kill man down by Orange Street". He voluntarily handed himself in to the police. He described his hair as being low cut at the time he surrendered himself but it had grown over the "five years and odd" that he had spent in custody due to the fact that he did not "trim" it over the period. He ended his statement by asserting "I never was at no crime scene, I never kill no one".

The case for Dennis Anderson

[20] Mr Anderson also gave a statement from the dock. He said "on the day of questioning" he was with his mom. Mr Anderson said there were three issues that plagued him throughout the trial. The first, was the reason Miss Patsy Taylor had given as to why he had worked for her. He said it was she who approached him and asked that he work for her and it was she who asked his forgiveness for her "locking [him] up and other stuff".

[21] Secondly was the issue of why Jomo, one of the persons named as being involved in the attack, was taken into custody and then released. Deputy Superintendent Wilson had in fact given evidence that "a Jomo was picked up by the police in Denham Town" sometime in 2009. The officer indicated that there were two persons with that name in the Hannah Town area and he was not certain from the information he had that the Jomo in custody was the same Jomo to whom the witness had referred. Deputy Superintendent Wilson further testified that he had been unable to have an identification parade held in relation to the Jomo in custody since there had been some difficulty contacting the witness before Jomo was released.

[22] Mr Anderson, in his statement, now challenged this evidence by asserting that the Jomo who was taken into custody had been able to satisfy the investigating officer that he was injured at the time of the incident and so was released. Mr Anderson said that Jomo had been shot on 30 November 2007 and so it would have been impossible

for him to have been seen running on the date of the incident when he was not able to walk.

[23] During the cross-examination of some of the prosecution's witnesses this issue had been raised with suggestions that on 30 November 2007, Jomo had been shot in his foot and the foot was broken resulting in his having a cast or a plaster of paris on it at the time of the shooting of the deceased. The witnesses for the prosecution to whom these suggestions had been put, had denied them and professed no knowledge of Jomo having been shot or wearing a cast.

[24] Mr Anderson, in his statement, also stated that Jomo lived next door to "the D.C. of Hannah Town all his life and also live a hundred feet away from the Hannah Town Police Station and was also working with Rangers Security Firm 2011, 2012". Mr Anderson ultimately asserted that the officer was misleading the court when he said Jomo could not be found.

[25] The third issue which Mr Anderson said had plagued him, was that he had turned himself over to the Denham Town Police Station on 7 March and was released on the 17th. He explained that he had worked as a sub-contractor constructing a retaining wall for Chetolah Park Primary School between 2008 and 2009. He stated that "he was asked to come down went on to the Hannah Town Police Station, did so, was turned over to Denham Town Police, spend one night. Turn over to Central Police Station" and was eventually interviewed by the police. He said he "co-operated fully, to [his]

understanding", and even asked his mother to assist the investigating officer with investigations.

[26] There were seven witnesses called to give evidence on behalf of Mr Anderson. The first was Senior Superintendent Delroy Hewitt who was the commanding officer at the Kingston Western Division with offices at the Denham Town Police Station in March 2008. He did not know Mr Anderson but agreed, having checked the records, that he had ordered the release from custody of one Dennis Anderson on 17 March 2008. He could not say which Dennis Anderson the entry in the records was referring to or whether or not the entry had any bearing at all on this case.

[27] Witnesses were also called in relation to the swabs which had been taken of the hands of the deceased. Miss Nicola Brown-Baxter was the government forensic officer who had received the envelope containing the swabs from Detective Sergeant Rowe on 10 December 2007. Later, on the same day, she handed it over to Miss Marcia Dunbar, the government analyst, who performed the examination and analysis of the swabs. The test revealed the presence of gunshot residue at trace level on the swabs taken from the bag which was labelled "back of left hand of deceased Robert James".

[28] She agreed when cross-examined that trace level was the lowest level at which gunshot residue could be deposited. She also agreed that trace level could be deposited by way of secondary transfer.

[29] Sergeant Cargill Brown, the storekeeper of the Denham Town Police Station, gave evidence as to the records kept of the prisoners in custody at the station. He said that the records revealed that Kemar James and Omar James had been in custody from 23 April 2008 and remained there up to 7 May. The officer said further that the records indicated they were in custody in relation to charges for murder. He was unable to give any further details in relation to the circumstances of the offence, since the cell diary which contained that information could not be located. He also admitted that he had no idea who either Omar James or Kemar James was.

[30] Dr Clive Thomas, a consultant surgeon at the Kingston Public Hospital, gave evidence in relation to a Dave Bailey who had been a patient at that institution. The doctor who actually treated this patient was no longer at the hospital but Dr Thomas was familiar with that doctor's signature and handwriting and relied on the notes of that attending doctor which were contained in a docket. The notes indicated that Dave Bailey was admitted to the Kingston Public Hospital on 30 November 2007 with a bullet wound to the left calf, just below the knee on the lateral aspect of the leg. He also had a graze to his left buttock.

[31] The records also revealed that Mr Bailey was discharged on 1 December 2007. The discharge followed on the removal of the bullet fragment. Dr Thomas also indicated that there was no serious damage to the muscle or nerves of the leg. It was a superficial wound.

[32] Under cross-examination the doctor revealed that there had been no fractures of the patient's bone, and that he was not treated with a plaster of paris cast. He opined that there would just have been a dressing or bandage in the area of the injury. Dr Thomas said that based on the records, Mr Bailey actually walked out of the hospital upon discharge. The doctor further opined that based on the degree of the injury, Mr Bailey should have been able to walk fairly well a week after being discharged and could run short distances, if he needed to, dependent on the speed. He agreed that such an injury would have little or no impact on the mobility of the patient.

[33] Sonia Linder-Bailey, the mother of Dave Bailey, testified that her son was called Jomo. He had been shot and injured on 30 November 2007 resulting in his being taken to the Kingston Public Hospital and where he was admitted and remained until 1 December 2007. He was released with his foot "wrapped with bandage or whatever". After his release from hospital, her son was only able to "limp around, balance on the wall and balance on some of the furniture". He could not move fast or run for up to a week after being discharged.

[34] Mrs Bailey said that on 8 December 2007, her son Jomo was with her from sometime after 1:00 going up to 2:00 o'clock in the afternoon. They were in the company of a District Constable who lived beside her. They were sitting in the yard at the front of their home at Upper Oxford Street in the Hannah Town area. Whilst there, she heard some shots being fired from the direction of down town. Fifteen minutes later she heard people in the area saying "Patsy Taylor son got shot".

[35] Mrs Linder-Bailey when cross-examined acknowledged knowing Mr Anderson as Dingo, Mr Dawkins as Bredda and also knew a man named Connie. She however did not know of any other person in the Hannah Town community who was called Jomo other than her son.

[36] Kloyd Dawkins, the father of Tafari Dawkins, was also called as a witness in the case for Mr Anderson. He testified about his knowledge of Robert James who he knew as "Lecturer" and his sons Omar, Kemar and Jevardo. He also knew that one of Robert James' son, who bore the same name as the father, had been killed.

[37] It was however, in relation to his own son that Mr Kloyd Dawkins gave significant evidence, while being cross examined by counsel who represented his son. Mr Kloyd Dawkins said that his son in 2007 had his hair "cut in a little low trim". Under cross-examination by the Crown, Mr Dawkins said his son "never used to grow him hair too tough". He had no knowledge of this son wearing his hair in long twist plaits.

[38] At the close of the case for Mr Anderson, counsel who appeared for him at the trial made a no case submission which the learned trial judge rejected ruling that the matters which were raised in the submission were properly matters that should be placed before the jury.

The submissions

[39] When the matter came on for hearing in this court, on 8 February 2016, Mr Sandcroft appeared only on behalf of Mr Anderson. There was no representation for Mr

Dawkins. Mr Sandcroft offered to assist Mr Dawkins and accepted an assignment to do so. When the matter resumed on 11 February 2011, Mr Sandcroft sought and was granted permission to abandon the original grounds of appeal that each of the applicants had filed on their own behalf. Mr Sandcroft then sought to focus their appeals on the issue of identification.

[40] Without clearly formulating new grounds of appeal, Mr Sandcroft firstly submitted that the learned trial judge's directions to the jury regarding identification by recognition omitted the crucial elements of the **Turnbull** warning in the fullest sense. He noted that the learned trial judge failed to use the word "convincing" in warning the jury as to the possibility of mistakes being made by such a witness.

[41] Mr Sandcroft submitted that the basic principle from authorities such as **R v Turnbull** [1977] Q B 244; **Barry George v R** 2002 EWCA Crim 1973 and **R v Oakwell** 66 Cr App R 174, is that the special need for caution when the issue turns on evidence of visual identification means that the summing up in such cases must not only contain a warning but also expose the jury to the weaknesses and dangers of identification evidence both in general and in the circumstances of the particular case.

[42] He complained further that the learned trial judge had not sufficiently assisted the jury as to how to treat with the fact that no identification parade had been held for Mr Anderson. He referred to the case of **Aurelia Pop v R** PCA No 31 of 2002, delivered on 22 May 2003.

[43] Counsel submitted that in this instance where the quality of the identifying evidence is poor then the judge should have withdrawn the case from the jury and directed the acquittal of Mr Anderson especially given the fact that no identification parade had been held to confirm whether he was the "Dingo" of whom the eye-witness had spoken.

[44] Mr Sandcroft accepted that the direction of the learned trial judge in relation to dock identification was sufficient. However he submitted that the learned trial judge should have gone further by making clear to the jury the context in which they needed to be careful.

[45] In relation to Mr Dawkins, Mr Sandcroft further submitted that the learned trial judge failed to deal with the fact that the assailant the witness identified as Mr Dawkins was wearing a hood. It was Mr Sandcroft's contention that this fact required more being said by the learned trial judge about the need for care since the hoodie was an impediment which would have affected the identification.

[46] For the Crown, Mrs Seymour-Johnson submitted that the learned trial judge had given adequate directions on the law of identification in keeping with the **Turnbull** guidelines and carefully guided the jury through the identification evidence as it related to both the applicants.

[47] In relation to Mr Dawkins, counsel submitted that the eyewitness gave a detailed account of what had transpired that day and gave specifics of the participation of this

applicant in the murder of the deceased. She contended that the quality of the identification evidence was good and it was supported by the fact that the witness attended an identification parade and pointed out Mr Dawkins. She noted that this was a recognition case, not the identification of a stranger or someone the witness was seeing for the first time. This meant that his credibility was an issue and the learned trial judge pointed this out and gave the requisite warning and the reason for need for caution.

[48] Mrs Seymour-Johnson submitted that in relation to Mr Anderson the learned trial judge had indicated to the jury that a dock identification was in fact undesirable and also went on to explain the purpose and advantage of holding an identification parade. She conceded that the failure to hold an identification parade for Mr Anderson could be a flaw but submitted that this was not fatal to the overall case for the Crown. Counsel submitted that the evidence of identification could not be described as tenuous and such that a jury properly directed could not convict.

[49] Ultimately it was Mrs Seymour-Johnson's submission that there was no need for strict adherence to the **Turnbull** guidelines and the cumulative effect of the learned trial judge's directions made it clear to the jury that they had to scrutinize the evidence as to the identification of each of the applicants with the greatest care.

Discussion and Analysis

[50] This is yet another of those cases where the case against the defendants depended wholly on the correctness of the identification made of them which the defence was alleging was not only mistaken but a deliberate fabrication. The learned trial judge recognised this and did give the jury the requisite **Turnbull** direction on the special need for caution in approaching the evidence of identification, advising them of the reason for the warning and on more than one occasion pointed out to them the possibility of an honest witness being mistaken.

[51] Mr Sandcroft's main complaint was that the learned trial judge had failed to use the word 'convincing' when describing the possibility of the witness being mistaken. Indeed, strict adherence to the directions suggested by Lord Widgery CJ in the **Turnball** guidelines would have meant that was the word to be used. It is significant to note, however, that even at the time of giving the guidelines, it was expressly stated that a judge need not use any particular forms of words in giving the directions.

[52] It is well accepted that a significant failure to follow the guidelines as laid down in **Turnbull** will cause a conviction to be quashed if it is seen to have resulted in a substantial miscarriage of justice (see **Reid v R** (1989) 90 CR App R 121 per Lord Ackner).

[53] It is now well settled that a suitable **Turnbull** warning is required in recognition cases, as the instant case is. In **Shand v R** 1995 WIR 346 Lord Slynn of Hadley at page 351 stated:

"The importance in identification cases of giving the **Turnbull** warning has been frequently stated and it clearly now applies to recognition as well as to pure identification cases. It is however, accepted that no precise form of words need to be used as long as the essential elements of the warning are pointed out to the jury."

[54] In the instant case the learned trial judge told the jury of the need for caution in their approach to the evidence as a whole when, whilst reviewing the eye-witnesses evidence, she told them the following:

"Now, Mr Foreman and members of the jury, the issue in this case is credibility. And the sole witness, eyewitness is Jevardo James. So you have to look carefully at his evidence. He's saying that he recognised these two men there that day and the others which you have heard from, the evidence, they are no longer with us."

[55] Significantly, the learned trial judge pointed out what may be viewed as a weakness about the witness himself. She highlighted, what was clearly borne out in the transcript of the evidence, that this witness had been a difficult one. She stated the following:

"You heard Jevardo James and I must say here and now that you have to look at his demeanor when he gave evidence and you know at times he was very difficult in answering questions to the defence when he was asked a question, sometimes he was hesitant, sometimes he repeated the questions and sometimes at times he was very disrespectful, I would say to defence counsel. So you have to look at his demeanor, his evidence very carefully."

[56] It was with that background that the learned trial judge then embarked on a comprehensive review of Mr James' evidence. The jury was then given directions on the issue of identification and they were told of the special need for caution before convicting either of the applicants in reliance on the evidence of Mr James because it is possible for an honest witness to make a mistaken identification. The learned trial judge also advised them of the reason for the warning. The learned trial judge also appropriately reminded them that even where identification involves recognition, mistakes in recognition, even of close friends and relatives are sometimes made.

[57] The learned trial judge conducted an examination of the circumstances in which the identification of the applicants came to be made and reminded the jury of the possible weaknesses in the evidence. In particular she drew their attention to the length of time which the witness had to observe the applicants, and highlighted the fact that Mr James admitted that he was not able to say for how long he saw actually the faces of the assailants.

[58] The learned trial judge also did raise specifically for their consideration the fact that Mr Dawkins was said to have been wearing a hoodie. She also made reference to submissions that had been made by counsel on his behalf in the following terms:

"Learned counsel Mr Bryan demonstrated, with his gown over his head, how 'Bredda' could have had the hoodie and he saw what he says. You have to look carefully and examine the evidence."

[59] Every summing up must be tailored to the facts and issues which may arise in that particular case. The terms employed to direct the jury must be sufficiently clear to make them appreciate the important issues in the case. The failure to use the word 'convincing' in her summation in the instant case cannot be regarded as fatal. The experienced trial judge gave a summation which made it abundantly clear to the jury that they required to examine the evidence carefully and be satisfied that Mr James was not mistaken. She emphasized this need for care several times while reminding them that an honest witness can be mistaken. This was in the circumstances of this case appropriate and sufficient.

[60] The learned trial judge also dealt appropriately with the issue of the failure to have an identification parade in respect of Mr Anderson. She noted that the preferred approach was to hold a parade and commendably advised the jury that the identification parade also allowed the accused the benefit of not being identified.

[61] It was conceded by Mr Sandcroft in his submissions that the learned trial judge dealt adequately with the issue of dock identification. Although there was no dispute or challenge to the fact that the applicant Mr Anderson was in fact known as "Dingo", the connecting of Mr Anderson with the name Dingo would have been accomplished by the identification parade being conducted. Hence the failure of the police to arrange the identification parade presented a flaw in the case presented by the prosecution.

[62] In **Aurelio Pop v R**, Lord Rodger commented on a similar failure in that case and said at paragraph 9:

"The facts that no identification parade had been held and that Adolphus identified the appellant when he was in the dock did not make his evidence on the point inadmissible. It did mean, however, that in his directions to the jury the judge should have made it plain that the normal and proper practice was to hold an identification parade. He should have gone on to warn the jury of the danger of identification without a parade and should have explained to them the potential advantage of an inconclusive parade to a defendant such as the appellant. For these reasons, he should have explained this kind of evidence was undesirable in principle and the jury would require to approach it with great care. **R v Graham** [1994] Crim Law 212 and **Williams (Noel) v The Queen** [1997] 1 WLR 548."

[63] In the instant case, the learned trial judge adequately dealt with the issue in a manner in keeping with this pronouncement of the Privy Council. Any complaints in this regard therefore, had to fail.

Conclusion

[64] The complaints made about the learned trial judge's careful and generally accurate directions on identification were without merit. The emphasis, properly made in the particular circumstances of this case, on the credibility of the eye witness was appropriate. Ultimately we came to the view that the jury's finding of the applicants' guilt ought not to be disturbed. It is for these reasons that the court concluded that the applications be refused and the sentences imposed confirmed as stated in paragraph [2].