

**JAMAICA**

**IN THE COURT OF APPEAL**

**RESIDENT MAGISTRATE CRIMINAL APPEAL NO. 36/2002**

**BEFORE THE HON. MR. JUSTICE DOWNER, J.A.  
THE HON. MR. JUSTICE PANTON, J.A.  
THE HON. MR. JUSTICE SMITH, J.A.**

**R.v. WALDRON FRANCIS  
CURTIS HYLTON  
KIRK PALMER**

**Roy Fairclough for Francis and Palmer  
Clive Mullings for Curtis Hylton**

**Miss Paula Llewellyn, Senior Deputy Director of  
Public Prosecutions and Miss Rochelle Cameron,  
Assistant Crown Counsel for the Crown**

**February 3, 4 and March 3, 2003**

**SMITH, J.A.**

The appellants are members of the Jamaica Constabulary Force. On 15<sup>th</sup> March, 2002, they were convicted in the Resident Magistrate's Court, St. James, on an indictment for robbery with aggravation contrary to section 37(1)(a) of the Larceny Act. The particulars of the offence are that they on the 5<sup>th</sup> day of December, 2000 being together robbed Robert Noad of One Hundred and Fifty Thousand Jamaican Dollars (J\$150,000.00) and Ten Thousand United States of America Dollars

(US\$10,000.00). Each was sentenced to eight (8) months imprisonment at hard labour.

At the trial which lasted some fifteen days the prosecution called as witnesses the virtual complainant and seven police officers.

Mr. Noad, a farmer and musician testified that on the 5<sup>th</sup> December, 2000, about 4:30 p.m. , he and a Colombian friend whom he called Alex, were at the Blue Diamond Shopping Centre in Montego Bay. He had driven a white Toyota Corolla to the Shopping Centre. He had J\$150,000.00 made up of \$500.00 bills in a bag on the back seat of the car. He also had US\$10,000.00. This was under the passenger seat. He and his friend left the car and while they were going towards a liquor store he saw the appellant, Curtis Hylton whom he knew before as a police constable stationed at Coral Gardens. Hylton was in plain clothes and was with two other officers. The witness greeted Hylton with the words "Blessed Officer." Hylton asked, "Where you going now rasta man?" "Just going to buy some wine to drink at my apartment – me and my friend," the witness replied.

The appellant, Hylton, and his companions left. The witness and his friend after purchasing the wine returned to the car in which they left for the Seawind Hotel. He drove past the Freeport Police Station and on reaching the Boat House he was overtaken by a blue Camry motor car. The driver shouted "Narcotics pull over." To avoid this car colliding with

his, he pulled over and stopped. The driver of the Camry car was the appellant Constable Palmer. He also saw the appellant, Hylton, and another person in the car. The witness was ordered by Palmer to get out of the car. He came out with his hands on his head. His friend, the Colombian, also alighted from the car. The appellant Palmer, who was attired in civilian clothing, ordered Mr. Noad to approach him. He did. By then all three persons had alighted from the Camry. The third person was the appellant Francis. According to the witness, the appellant Palmer spoke to him in an angry tone. The witness wiped froth from Palmer's mouth and told him "to take it easy." The witness said he saw a gun at Palmer's waist – it had a full magazine which was "sticking out." The appellant Palmer, he said, took him from the car to a little tree which was about 1½ yards off. They faced each other as they talked. At that time Hylton and Francis were searching the witness' car. The witness told Palmer that he wanted to see "what was going on in my car". Palmer said, "I am a good cop." The witness returned, "Blessed." The phone in the witness' car rang. Francis answered it, took the phone to the witness and told him, "a call coming in on the phone and is a Spanish call." Francis cut off the call without allowing the witness to answer. "If you don't want me to carry you and your friend to the head office – head police office – you have to come up with US\$20,000," Palmer threatened. "Wha you a go carry me and my friend to Kingston and we a nuh wanted

men?" the witness asked. Palmer told him that he (the witness) knew what was going on "so just talk to me." The witness told him that he was not involved in any crime and he did not have any money to give to police. Palmer asked him how much money he had in the car. "I have US\$10,000 and J\$150,000" the witness replied. "Bring it to me," Palmer ordered. The witness took the money from the car and handed it to Palmer. The appellants Hylton and Francis, were standing by the car about 1 ½ yards from Palmer. Palmer took the money and placed it in the car. According to the witness the gun at Palmer's waist was still visible. Palmer "screwed" his face, the witness was scared and chanted the 23<sup>rd</sup> Psalm.

All three appellants went into the car. The witness pleaded, "imagine you going away with all the children money." Palmer asked "how much you want back out of this money?" "Give me what you want to give me," the witness replied. Palmer gave him \$50,000.00 and drove off towards the Freeport Police Station.

The witness took his friend to the Seawind Apartment and then went to the Freeport Police Station. There he made a report to Deputy Superintendent Robert Whyte. He gave a written statement to Detective Inspector Rupert Gardener. The witness saw the appellant Hylton at the station and spoke to DSP Whyte. According to the witness, DSP Whyte asked Hylton "what happen to this man's money?" Hylton started to cry

and said he was not saying anything he wanted a lawyer. The witness asked him why he took away his money. Hylton said nothing.

On the 7<sup>th</sup> December, Mr. Noad identified the appellant Hylton and Francis on identification parades as two of the men who robbed him. Subsequently, he saw Palmer among eight other men in a room and identified him. He said he asked Palmer "why you have to take away me money?" but he did not reply.

In cross-examination Mr. Noad said both Francis and Hylton could have seen him handing the money to Palmer. He said he feared Palmer would kill him if he did not give him the money. He agreed he had told police he had US\$10,000.00 and J\$200,000.00. He said he handed Palmer the money while he, Palmer, was sitting in the driver's seat of his car.

In re-examination he said he did in fact have US\$10,000 and J\$200,000.00 but the "pressure" and the passing of time caused him to be mixed-up.

Deputy Superintendent Robert Whyte was, at the time, the Crime Chief for the parish of St. James. His office was at the new Freeport Police Station. According to the Deputy Superintendent, on Tuesday the 5<sup>th</sup> December, 2000 about 5:30 p.m. Mr. Noad was taken into his office. Mr. Noad made a complaint to him. Consequently he gave instructions to Detective Inspector Rupert Gardener who invited Noad to follow him to his office.

Deputy Superintendent Whyte went to the C.I.B. office where he saw the appellant Curtis Hylton who was himself a member of the C.I.B. staff. He said he was the one responsible for Hylton being on his staff. He spoke to Inspector Gardener and returned to his office with Hylton. Noad was called in. Pointing to Hylton, Noad said, "this is one of the police who rob me." Hylton rejoined, "me rob you?" In Hylton's presence Noad gave the following narrative (p. 21).

"He said he went to airport and picked up a friend. He drove to Blue Diamond to buy liquor and he saw this policeman who usually station at Coral Gardens and two other police whose names he did not know. Said policeman called to him and he answered and went to liquor store then drove off. Whilst driving along Howard Cooke Boulevard he saw a blue Camry with same three officers he had seen before, who ordered him to stop, claiming they were Narcotics police. He was ordered out of the car and was told he had got instruction to take him and friend to Kingston. He told them he would not go to Kingston as he had not done anything. One asked him for US\$20,000.00. He told him he did not have that but had US\$10,000.00 and J\$200,000.00. They searched the car and one of them took out money. He said he asked them if they were going to take all of it and was given back \$50,000.00"

DSP Whyte told Hylton that these were serious allegations and that he would have to account. Hylton's response was, "A wha dis me get meself in?" Mr. Whyte contacted Superintendent Leon Rose who came to his office. Noad repeated the allegations in the presence of

Superintendent Rose and Hylton. DSP Whyte asked Hylton where the money was. Hylton asked to speak to Mr. Rose alone. Mr. Rose and the appellant Hylton were left by themselves for a while. When Mr. Whyte returned he again asked Hylton for Noad's money.

Hylton told him that he had some money that had been given to him by the appellant Constable Palmer. Mr. Whyte asked Hylton, why did Constable Palmer give him money. Hylton, he said, told him, "he was out by Blue Diamond with Constable Palmer when he saw the dread in a car acting suspiciously and Constable Palmer drove him down and stopped him along Howard Cooke Boulevard. Palmer came back in and gave him money."

Messrs. Rose and Whyte accompanied Hylton to his barrack room where Hylton took from a locker \$48,000.00 made up of J\$500 bills and US\$1,400 consisting of 70 U.S. \$20 notes.

On the 6<sup>th</sup> December, 2000 at about 10:00 a.m., Deputy Superintendent Whyte saw and spoke with the appellant, Corporal Waldron Francis who was also a member of the C.I.B. He told him of Mr. Noad's report and that he had received information that Francis was one of the three policemen involved. Francis said he did not know anything about it. He said he had left work at 12 mid-day, went home and had only returned to work that morning. He further said he would only give a written statement on the advice of his lawyer.

Later that day Mr. Whyte saw the appellant Constable Palmer and told him of Noad's report and that he had received information that Palmer was one of the persons who robbed Noad of cash. Palmer said he did not know what Mr. Whyte was talking about. The appellant Palmer was told that persons from The Office of Professional Responsibility (the "OPR") would be called in to investigate the complaint and that an identification parade would be held.

In cross-examination he denied that the appellant Hylton told him that he got the money from "partner draw" and the U.S. currency from his grandfather.

Detective Inspector Rupert Gardener's evidence may be summarized as follows. He was the Divisional Inspector for the parish of St. James. On Tuesday the 5<sup>th</sup> December, 2000 about 6:00 p.m. he saw Deputy Superintendent of Police Whyte with the complainant Mr. Noad. Following instructions from DSP Whyte he invited Mr. Noad to his office with a view to recording a statement from him. During this exercise Noad left his office for the bathroom.

Shortly after he left he returned and spoke to Inspector Gardener who immediately spoke to DSP Whyte. The appellant Constable Hylton was called to Deputy Superintendent Whyte's office. Inspector Gardener and Mr. Noad also went into DSP Whyte's office. Mr. Noad identified Hylton as one of the officers who had robbed him. Hylton asked "me rob



you?" Inspector Gardener's evidence supports that of Deputy Superintendent Whyte as to what took place in the latter's office up to the time when the appellant Hylton asked to speak with Superintendent Rose alone.

On Thursday, 7<sup>th</sup> December, about 2:15 p.m. Detective Gardener informed the appellant Palmer who was then in custody that he would be placed on an identification parade. Palmer told him that on the advice of his attorney-at-law he would not be going on the parade. Inspector Gardener spoke with Detective Sergeant C. Brown from the O.P.R.

About 6:15 p.m. the same day an informal parade was held in respect of Palmer. Six prisoners were taken to a room in which all three appellants were. Noad was called into the room. He was told by Sergeant Brown to look among the men in the room and if he saw the man who robbed him he should touch him. Noad went up to Palmer and said "Blessed a him take the money off a me." Palmer did not say anything.

Superintendent Leon Rose's evidence is to the following effect. In December 2000 he was the officer in command of the St. James Police Division with office at Freeport. On Tuesday, December 5, 2000 about 6:00 p.m. he was in office when he received a call from DSP Whyte. He went to Mr. Whyte's office where he saw the appellant Constable Hylton. Mr. Whyte in the hearing of Hylton told Superintendent Rose of Mr.

Noad's complaint. A gentleman, he later found out to be Mr. Noad, entered the office and identified Hylton as one of the men who robbed him.

On Hylton's request Superintendent Rose asked D.S.P. Whyte, Inspector Gardener and Mr. Noad to leave the office. Superintendent Rose and Hylton remained in the office. According to Supt. Rose the appellant Hylton told him that he had some money taken from Mr. Noad, which was given to him by another member of the team he was with. He also said the money was in the barracks. Superintendent Rose asked him why he did that. He began to cry. He said he did not rob Mr. Noad.

When DSP Whyte returned to the room, he was told what transpired and the appellant repeated what he had told Superintendent Rose to DSP Whyte. They went with Hylton to his living quarters.

Hylton identified a locker as his, opened it with a key and removed a pack of notes in local and U.S. currencies. That money, he said, he got as his portion from Constable Palmer. The money was counted by D.S.P. Whyte and amounted to J\$48,000.00 made up of \$500 notes and U.S. \$1,400.00 made up of U.S. \$20 notes. Constable Hylton was thereafter confined to barracks.

Superintendent Rose also testified that he knew all three appellants. They were under his command. They were he said, in no way connected with the Narcotics Division.

Inspector Ivan Hylton conducted the identification parade on which the appellant Francis was the suspect. The appellant's lawyer and a Justice of the Peace were present. The witness, Mr. Noad, identified the appellant, Francis as one of the men who robbed him on the 5<sup>th</sup> December, 2000.

Detective Sergeant Clive Brown and Detective Sergeant Leonard Morris from the O.P.R. also gave evidence at the appellants' trial. Sergeant Brown was the officer assigned the responsibility of investigating the complaints. He told the Court that when he read the warrants to the appellants, charged and cautioned them, each denied the charge.

I do not think it is necessary for this appeal to set out their evidence.

### **THE DEFENCE**

#### **CURTIS HYLTON**

This appellant gave evidence on oath. He recalled that on 5<sup>th</sup> December 2000, in the morning, he was travelling in a motor car which stopped at Blue Diamond Shopping Centre. On leaving the Centre he saw a "dreadlocks" known to him as Chris. He identified Mr. Noad as Chris. They greeted each other and went their separate ways. He attended the Montego Bay Resident Magistrate's Court where he had two cases. He left the Court in a motor car with the appellants, Francis and Palmer. They were on their way to the Freeport Police Station when he saw Chris driving a Toyota Corolla motor car. He was in a line of traffic.

He said Chris spoke to a man who was in the passenger seat who immediately reclined the seat and wound up the window in a hurry. The "dreadlocks", he said, came out of the line of traffic and began to overtake the long line of vehicles on the Howard Cooke Boulevard. The appellant said he spoke to his colleagues. Palmer was the driver. Francis was in the passenger seat and the appellant Hylton in the back seat. They pursued and stopped the vehicle. Chris said, "Officer a you again?" He said that he and his colleagues came out of their car. So did Chris and his friend. He and Francis searched the car which Chris was driving. He said he did not recall seeing any money in the car. They went back into their car. Chris and his friend also returned to their car. Hylton said he went to the Freeport Police Station. He was there for about three hours when he saw Chris going towards Inspector Gardener's office. He went to DSP Whyte's office. Inspector Gardener and Chris also came in. He said DSP Whyte asked the dread, that is, Chris, if he Hylton was the one who robbed him. According to him, Chris said no and that he did not even speak to him, Hylton. Inspector Gardener and Chris then left. DSP Whyte called Superintendent Rose and made a report to him. Superintendent Rose questioned him. According to him he told Superintendent Rose that he had J\$48,000.00 and US\$1,400 at his barrack room. He also told the Superintendent how he came by the money.

On the 4<sup>th</sup> December, that is, the day before the alleged robbery he had collected J\$86,400.00 as "partner money" from the "banker" one Owen Bowen otherwise called Reggae. The Jamaican money represented his mother's and his contribution. He signed a document as receiving the money. He gave Reggae \$2,000.00 and his mother \$36,400.00 and kept the balance.

As for the U.S. dollars he had received \$1,600.00 from his grandfather. He used \$200 to take care of "personal business" and had the balance in his locker. He agreed that Superintendent Rose and DSP Whyte accompanied him to his barrack room where the money was handed to DSP Whyte who counted it. He denied telling Superintendent Rose or DSP Whyte that he got the money from the appellant Palmer. He was cross-examined at length by Miss Llewellyn. In answer to counsel for the prosecution he said he had the money at the barracks because he was planning to purchase a car during the week.

Mr. Doughlin Woolery gave evidence on behalf of the appellant Hylton. He is a businessman and operates a motel at 4A Dome Street. He is also a contractor. The appellant Hylton is his grandson. He testified that in early November 2000 pursuant to a promise he gave his grandson US\$1,600.00 (70 x US\$20 and 2 x US\$100) to buy a car.

In cross-examination he said it was the first time he was giving his grandson U.S. dollars. His grandson did "the book work" for the hotel.

The appellant Hylton also called Owen Bowen otherwise called Reggae as a witness. Mr. Bowen told the Court that he ran a "partner" and operated a bus. He knows the appellant Hylton who was a member of his "partner". The appellant's mother was also a member. Mr. Bowen said he kept a record of all 'partner' transactions. A person who wanted to "make a draw" had to give a week's notice. On receipt of this "draw" the person would sign for it in the payment book. He recalled that on the 4<sup>th</sup> December 2000 the appellant Hylton collected partner money.

After refreshing his memory from the record he stated that the amount Hylton collected was \$86,000 and that he signed for it. Under cross-examination he said it was only Miss Woolery's name was in the book. He conceded that the appellant's name does not appear in the partner book as a member. However he said they paid \$1,200 a day and each "hand" was \$600 a day.

The appellant's mother Miss Donna Woolery, a pre-trained teacher, also gave evidence on his behalf. She told the court that her son and herself were both "in a partner".

On the 4<sup>th</sup> December her son, she said, brought \$36,000.00 to her. This sum she said was a loan from her son to assist in the payment of her tuition fees. According to her evidence, on the 6<sup>th</sup> December 2000 she made lodgments at the bank in respect of tuition fees. A copy of a lodgement slip to that effect was received in evidence as Exhibit 3.

Under cross-examination by Ms. Llewellyn she said her son collected his "draw" in December. They were both in partner together. She said they (her son and herself) paid \$1,200 per day for two "hands" six days per week. She knew of her son's plan to buy a car but could not say when he had intended to buy it.

### **WALDRON FRANCIS**

The appellant, Francis, made a very short unsworn statement in which he denied robbing anyone or being a party to any robbery.

### **KIRK PALMER**

This appellant made a long unsworn statement and called one witness – Mr. Eton Green – in support.

In his statement from the dock the appellant, Palmer, retraced his activities and whereabouts on the 5<sup>th</sup> December, 2000. According to him he was in the Montego Bay Resident Magistrate's Court until 2:30 p.m. He left court and went on the road to perform certain chores.

He returned to the Freeport Police Station about 4:30 p.m. From the police station he went home and remained there until 8:30 a.m. the following day when he left for work. While at the station he said he was accused by DSP Whyte of being a thief and later that said day he was taken into custody. The following day he was told he would be placed on an identification parade. On his lawyer's advice he refused to go on an identification parade. He was told that an informal parade would be

held. His account as to what took place at this informal parade is as follows:

He stated that he was in a room with appellants Francis and Hylton when Detective Sergeant Brown and Inspector Gardener brought in six men from the cell. He complained to Sergeant Brown that none of the men resembled him. While he was talking to Sergeant Brown a rasta man came in the room and looked around. Mr. Gardener asked him, "You nuh see the man, you nuh see the man?". The rasta man pointed to him and said, "See him yah". He asked this man, "You know me?" Before he could answer Mr. Brown and Mr. Gardener held on to the man and took him away. He was subsequently charged for the robbery of Mr. Noad. He denied knowing anything about this robbery.

His witness, Mr. Eton Green said he was one of the six (6) prisoners placed on the informal identification parade. He told the court that when placed in the room he was wearing underpants, merino and slippers. The other prisoners were similarly dressed – some had on shorts and merinos. According to him the rasta man who identified Palmer was in a position to see him and the other inmates before they were placed in the room. The appellant Palmer, whom he said he knew before was wearing shirt and trousers. He was not sure what Francis and Hylton who were also in the room, were wearing at the time. Under cross-examination he said he was deported from England. He was in custody on a murder charge. He had



no means of economic support. He had to rely on his relatives who were in England.

### **GROUND OF APPEAL**

Three grounds of appeal were argued before this Court viz:

- 1) The verdict is unreasonable and cannot be supported having regard to the evidence.
- 2) The Crown failed in law to establish a case of Robbery with Aggravation against the Defendant/Appellant and the learned resident magistrate ought to have upheld the submission of no case to answer.
- 3) The procedure followed in conducting the informal Identification Parade was so fundamentally flawed that the resulting Identification of the Defendant/Appellant by the complainant was unsafe and ought not to have been relied upon by the learned resident magistrate.

Grounds 1 and 2 are common to all three appellants. Ground 3 relates only to the appellant, Palmer.

We will first address Ground 2.

### **No Case Submissions**

It is the contention of counsel for the appellants that the evidence of the virtual complainant, Mr. Noad, falls short of establishing the offence of robbery. Counsel submitted that there was no evidence of force or threat of force and further that there was no evidence to suggest that Mr. Noad did not voluntarily give the money to whomsoever the person was.

Miss Llewellyn for the Crown submitted that the elements of force and fear were established on the evidence. We are clearly of the view

that the contention of counsel for the appellants is insupportable both in law and in fact. The evidence of Mr. Noad is that the person whom he identified as the appellant Palmer had a gun at his waist. This gun was clearly visible. The appellant, Palmer, he said, threatened to take him and his friend into custody if he did not come up with U.S.\$20,000.00.

Mr. Noad said he delivered the money to Palmer because he feared Palmer would kill him if he did not comply with his order to "bring the money". The learned resident magistrate in her findings of facts, paragraphs (4) and (5) stated (p. 88):

"(4) That Noad became fearful because of how Palmer was speaking to him and this fear was increased because he observed the gun that Palmer had already displayed at his Palmer's waist.

(5) That it was because of his being put in fear that Noad felt compelled to relinquish his money when requested to do so. The fact that the other two men who were with Palmer did not actively participate in speaking to Noad, their presence and position could be seen as contributory to Noad being of the opinion he had no choice but to hand over the money."

There can be no doubt that the evidence of Mr. Noad supports these findings of facts.

The learned resident magistrate was entitled to conclude that there is credible evidence that Mr. Noad delivered up the money to Palmer

under the compulsion of fear and apprehension and therefore against his will.

The case of **R.v. Taplin** 2 East P.C. 712 is instructive. In that case a mob, headed by the prisoner, went to the complainant's house and demanded half-a-crown, which the complainant from fear of the mob, gave him. This was held to be robbery although no threats were uttered.

Mr. Mullings for Hylton further submitted that the evidence of Mr. Noad only established the mere presence of the appellant Hylton at the scene of the crime. Nothing, he submitted, was said or done by Hylton to suggest that he was acting in concert with others or aiding and abetting the offence. The search, he argued, conducted by Hylton and Francis was not unlawful and cannot make them culpable.

Mr. Fairclough adopted this argument on behalf of the appellant, Francis, against whom he said, there was no evidence.

Now what is the evidence against Hylton? It is common ground that Mr. Noad and Hylton knew each other. They had seen and greeted each other earlier that day. Hylton was in the car which forced Noad to stop his car. Hylton and Francis searched Noad's car after he was taken some 1½ yards away. The evidence does not suggest that it was a legitimate search. Hylton was there when Palmer ordered Noad to "bring the money". Later at the police station when Noad confronted Hylton in the presence of DSP Whyte Hylton said, "a wha this me get me self in." He

subsequently took DSP Whyte to his barrack room and handed him J\$48,000.00 and U.S.\$1,400.00 which he said Palmer gave him as his portion. We agree with Miss Llewellyn that the evidence above is ample prima facie evidence that Hylton was there aiding and abetting the offence and/or that he was a party to a criminal enterprise.

We now turn to Francis. The evidence against him is that, he was in the car with Hylton and Palmer when one of them shouted, "Narcotics – pull over." Noad was forced to stop. He and Hylton engaged Noad's friend's attention while Palmer took Noad aside. He assisted in the unlawful search of Noad's car. He answered Noad's phone, took the phone where Noad and Palmer were and told them that a "Spanish call" was coming in. He did not give Noad a chance to answer the phone. Francis could have heard Palmer threatening Noad to take him and his friend to head office if he did not come up with U.S.\$20,000.00. He offered no opposition to Palmer, though as the senior officer there he might reasonably be expected to prevent him or at least to express his dissent.

We entertain no doubt that the learned resident magistrate was right in rejecting the no-case submissions made on behalf of the three appellants.

### The Informal Identification Parade

This ground concerns Palmer only. Mr. Fairclough submitted that the procedure used to identify the appellant Palmer was woefully bad. It is counsel's contention that the self-induced informality was well grounded in law in that the manner in which it was contemplated to conduct the formal parade would have been completely bad. This submission is based on the evidence that the persons who came to Palmer seeking to arrange the parade and inviting him to stand on the parade were investigating officers and as such were not entitled to conduct the parade. Accordingly, he contends that Palmer was entitled in law to say he would not co-operate.

We are of the view that the reason a suspect gives for refusing a formal identification is of no moment. The police may adopt any satisfactory identification procedure in respect of a refractory suspect. One such procedure is group identification held covertly without the suspect's consent. This procedure is often referred to as an informal parade. Any number of suspects may be identified at the same time. Care should be taken so that the conditions are fair to the suspect in the way they test the witness' ability to make an identification. In **R v Dave Sewell** SCCA No. 50/98 (unreported) July 30, 1999, this court per Panton J.A. said: "It is unrealistic for it to be expected that an informal parade would be conducted on lines equivalent to a regular formal parade."

Mr. Fairclough submitted that the procedure followed in conducting the informal parade was flawed and unfair in that:

- (i) the other two appellants were in the room where the group was assembled;
- (ii) the investigating officer Sergeant Brown took part in organizing the informal parade;
- (iii) the inmates wore prison uniform whereas the suspect was not similarly attired and none of them resembled the suspect.

The complaint at (iii) is based on the evidence of Mr. Eton Green, the deportee, and the unsworn statement of the appellant Palmer. According to Detective Sergeant Brown they were all dressed in plain clothes. He also told the court that the appellant refused to co-operate at the informal parade. The learned resident magistrate in her findings of fact said she found Green unimpressive and unbelievable. She rejected the unsworn statement of Palmer. She accepted the evidence of Sergeant Brown and Inspector Gardener, and found that the informal parade was fair and afforded an adequate test of Noad's ability to pick out unaided the appellant Palmer. This point is lacking in weight.

As to point (i) we do not think that the mere fact that the appellants Francis and Hylton were also in the room constitutes a breach of any rule or code in the circumstances of this case.

As to point (ii) it is important that the safeguards applicable to identification procedure should be followed if it is practicable to do so, in

all the circumstances. However, it is equally important to see whether any unfairness resulted from the breach. We have considered carefully the submissions of counsel and are not persuaded that the involvement of Sergeant Brown in organizing the informal parade resulted or might have resulted in any unfairness to Palmer. And having regard to the unchallenged evidence of the appellant Hylton, that the appellant Palmer was there and was in fact the driver of the car which pursued the car driven by Noad, this Court is satisfied that there was no miscarriage of justice in the magistrate's finding as a fact that the appellant Palmer was one of the robbers. This ground therefore fails.

### **VERDICTS UNREASONABLE**

#### **The appellant Hylton**

Mr. Mullings submitted that the appellant, Hylton, brought witnesses who were credible whereas the evidence of Superintendent Rose was equivocal. It is counsel's contention that in the light of such equivocation the magistrate erred in accepting the evidence of Superintendent Rose over that of the appellant, Hylton and his witnesses. Accordingly, he submitted, the verdict against Hylton is unreasonable and cannot be supported having regard to the evidence.

The learned resident magistrate at No. 11 of the findings of facts found that Hylton admitted his knowledge of the incident to Superintendent Rose and handed over the money he had received. She

also accepted Superintendent Rose's evidence that Hylton did tell him about the money he had got from a partner, but found that the partner money was different from that which was handed over to Superintendent Rose. She found that Hylton handed over money as being his "cut" from the robbery. She held that the evidence of Hylton's witnesses did not affect that fact. These findings of facts by the magistrate were founded on the evidence led. This Court has said ad nauseum that it will only interfere with a trial judge's findings of facts if it is shown that such findings are obviously and palpably wrong – see for example, **R.v. Joseph Lao** (1973) 12 JLR 1238 and **R.v. Keith Pickersgill** RMCA No. 28/2000 delivered June 7, 2000.

The learned resident magistrate found that the appellants were acting in concert and also that Francis and Hylton aided and abetted Palmer in the commission of the offence charged. She found that Hylton, who admitted to searching Noad's car, was unimpressive and unbelievable in his account of what took place after the car was stopped. She found that Hylton having searched the car stood by without preventing Palmer from intimidating and relieving Noad of his money. Importantly she found Robert Noad to be a witness of truth.

We are unable to say that the verdict was "obviously and palpably wrong".



**The appellants Francis and Palmer**

The appellant Francis was pointed out by Noad on an identification parade. The fairness of this parade is not in issue. The learned magistrate in her findings of facts stated that it was significant to note that Francis did not deny being there but merely stated that he did not rob anyone nor did he see anyone take any money from anyone and he did not partake of any money.

The evidence of Noad identifying Francis as one of the officers in the car which forced him to stop is supported by that of the appellant Hylton.

The appellant Palmer was pointed out by Noad on an informal parade. As we have said before the identification of Palmer by Noad was supported by the evidence of Hylton. Nevertheless, the learned magistrate demonstrated in her findings that she had in mind the possibility of mistaken identification and the special need for caution. She rejected Palmer's unsupported alibi and observed that Palmer's major concern seemed to be his mistreatment at the hands of his colleagues. She accepted Noad's account as to what took place on the 5<sup>th</sup> December, 2000.

At finding number 8 (p. 89) the magistrate stated:

"8. The following facts provided circumstances from which it was found that three men were acting together and abetting in the robbery:

- (a) The three followed Noad pass (sic) what would have been their destination – i.e. their police station – suggesting that if any of them did not know what was going on they would not have continued in pursuit.
- (b) The ruse used to get Noad to stop – by saying “Narcotics” – each man well knew that they were in no way related to that division.
- (c) Francis and Hylton having searched the car stood by without attempting to prevent Palmer from intimidating Noad and relieving him of the money.
- (d) They being police officers could be reasonably expected to express their dissent to Palmer's action and certainly have the power to stop him.
- (e) Palmer seemed to have been the acknowledged leader as when Noad's phone rang Francis answered it and acquiesced in preventing Noad from (taking) the call.”

We have given anxious consideration to the submissions made by counsel and are unable to say that the verdicts were so against the weight of the evidence as to be unreasonable or insupportable.

These grounds also fail.

### **Conclusion**

The appeals are dismissed. The convictions and sentences are affirmed.