**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO. 107/92**

**BEFORE: THE HON. MR. JUSTICE RATTRAY, PRESIDENT
THE HON. MR. JUSTICE GORDON, J.A.
THE HON. MR. JUSTICE PATTERSON, J.A. (AG)**

**R. V. CLIFFORD MCLAWRENCE**

**Berthan Macaulay, Q.C. and Wentworth Charles for the Applicant**

**Walter Scott for the Crown**

**March 14, 15, 16, 17 and June 26, 1995**

***RATTRAY P.:***

On the 17th March 1995 we completed the hearing of submissions made on behalf of the applicant Clifford McLawrence on an application for leave to appeal against his conviction and sentence in the Home Circuit Court on the 25th of November 1992 on a charge of capital murder. We then reserved our decision. There were seventeen grounds of appeal filed but we deal only in any detail with the actual

grounds argued although we have given due consideration to all the grounds filed.

The indictment charged that on the 8th day of July 1991 in the parish of St. Andrew Clifford McLawrence murdered Hope Reid. The murder it was alleged was capital in that as the evidence relied upon by the crown was to disclose it had taken place in the course or furtherance of burglary or housebreaking. (See section 2(1)(d)(ii) of the Offences against the Person (Amendment) Act 1992.

When the jury was empanelled the Registrar in the usual manner asked the jurors to confer amongst themselves and select a foreman. When the Registrar called upon the person selected as foreman to stand no one did. Thereupon the trial judge nominated one of their numbers to be foreman, and the proceedings continued without demur. This procedure was however to form one of the grounds of appeal as follows:

> "The learned trial judge appointed a foreman of the jury, a few minutes after the jury had begun to deliberate on the choice of the foreman and before they had time to complete such a deliberation, quite contrary to Section 34 (1) of the Jury Act."

It was not alleged that the selection of the foreman by the trial judge at the time and in the circumstances in which he did so in any way adversely affected the accused

in a determination of his guilt or innocence. Indeed as we have pointed out the course adopted led to no objection by experienced counsel representing the applicant in the court below and before us on this appeal. The provisions of section 34(1) of the Jury Act are clear. The sub-section reads as follows:

> "When the jurors have been duly sworn they shall appoint one of their number to be foreman. If a majority of the jury do not, within such time as the Judge may think reasonable, agree in the appointment of a foreman, he shall be appointed by the Judge."

The trial judge exercising his discretion given by the statute appointed a foreman and we find no merit in the objection being taken at this stage as to the procedure then followed.

The deceased Hope Reid resided with her husband and their two children at 5C Montgomery Way, Stony Hill in the Parish of St. Andrew. On the 7th July, 1991, she drove her husband to the airport along with their son and daughter as all three were travelling by air to the United States of America. She left them at the airport and her husband never saw her alive again. He telephoned his home at 5:00 p.m. that day without getting any response. He

repeated the telephone call next day at about 6:45 a.m. and also got no answer. He again repeated the call which was after some time received and responded to by Miss Dorothy Campbell, the household helper, who after looking through the house gave him the tragic news of his wife's murder. Miss Campbell lived on those premises as well.

At about 5:15 a.m. on the 8th July, 1991 Miss Campbell heard the sound of a motorcar leaving the driveway of the home on Montgomery Way. She recognized the car by the sound of the engine to be the black Cressida motorcar, owned by the Reids and which had been locked in the garage when she had retired to her bedroom on the premises at Montgomery Way the night before. She fell back asleep but was awakened by the ringing of the telephone upstairs the house. The telephone stopped ringing before she could reach it but re-commenced shortly after. On going upstairs to answer the telephone she noticed that the carport door was unlocked and that beneath where the lock was situated, the area had been dug out.

The telephone call was from Mr. Reid. On his instructions she went searching in his bedroom, and in the bedroom, occupied normally by Mr. & Mrs. Reid, she noticed that everything was in disarray and that Mrs. Reid was not in her bed. Eventually she discovered the dead body of Mrs. Reid in a closet in the bedroom. Mrs. Reid was

dressed in her night gown, and there was an electric cord tied around her neck. She had obviously been strangled. Miss Campbell gave this gruesome information to Mr. Reid on the telephone. She alerted the neighbours and called the police who responded with their presence. She noticed that the black Toyota Cressida motorcar registered 0885 AP was missing. A television set and a video were also missing from Mrs. Reid's bedroom.

On that same day at about 7:45 a.m. Cpl. Asticot Thompson was driving a police service vehicle in the company of a soldier along Harbour Street, Kingston, when he was signalled to stop by a man who made a report to him. Consequently, he drove to a deep bend behind the ice factory on Port Royal Street and found parked there a black Toyota Cressida motorcar 0885 AP, with the left front door, the passenger side, ajar. He gave instructions to the soldier to drive the car to the Central Police Station.

On Mr. Reid's return to Jamaica later that day he noticed at his home the door jamb of the garage dug out where the locks enter the jamb. The metal apparatus into which the locks fitted was lying on the ground. The black Cressida was missing, as well as the television set and video machine, and all the equipment for a satellite dish. The turntables were all disconnected, the mixing machine

missing as well as the pre-amplifier. Part of the electronic equipment was plugged out as well as the equalizer. Other electronic equipment was also missing.

Two or three days after his return he identified his Triniton television set, his G.E. video and the Newark turntable mixer at the Constant Spring Police Station. He had a surge protector on the stereo equipment in the music room and also on the satellite dish equipment.

On the 7th of July Mr. Courtney Ellis saw the applicant whom he knew as `Tall Man' at a barber shop on York Street and the applicant asked him if he knew anyone who wanted a television set to buy. He told him yes. Next morning the applicant came to his home with a television set. He called his neighbour Osbourne Taylor, otherwise called `Ossie' whom he knew wanted a television set to buy and he took the television to `Ossie'. He told the applicant to check `Ossie'. The applicant asked him if he knew anyone who wanted an equalizer and he said he would check the sound man down the road about the equalizer. The applicant was driving a new deep blue colour motor car. The applicant went to the car and brought the equalizer and gave it to Mr. Ellis who took it to `Dellie' the sound man. The applicant said he would check him for the money and if he could not come he would send someone else.

On the 10th of July 1991 a policeman, Mr. Hewitt, spoke to him. Consequent on the conversation he took Mr. Hewitt to `Ossie' and Mr. Hewitt took possession of the television set. He also took him to `Dellie' and the police officer took possession of the equalizer. These items were identified by Mr. Reid as amongst those missing from his home on his return from the United States of America. Mr. Ellis was arrested and charged with receiving stolen property.

One Owen Anderson gave evidence that on the 8th July in the afternoon the applicant came to his home and left with him a video to be fixed. He could not fix it because the circuit board was broken.

Deputy Superintendent Raymond Harrison, a fingerprint expert of twenty-seven years experience attended the scene of the murder on the morning of the 8th July and in the music room of the home he saw a power surge protector which he dusted for latent fingerprints. These fingerprints were photographed by Detective Corporal Crawford. There were four impressions of fingerprints from a right hand. These were photographed and enlarged. He later compared them with the rolled ink fingerprint impression of the right middle finger of the applicant who had impressed this on a C.I.B. 2-I form when he was later taken into custody, and he found them to be identical.

On the 10th July 1991 Det. Supt. Anthony Hewitt who was the police officer in charge of the investigation recovered the video recorder from Mr. Owen Anderson, and a television set from the room adjoining Mr. Ellis' at 131/2 Deanery Terrace occupied by Mr. Osbourne Taylor and these were identified by Mr. Reid as items missing from the home at Montgomery Way. Later in the day he went in search of the applicant and found him at Cumberland Avenue and Albert Street in Franklyn Town. The applicant was taken to the Constant Spring Police Station where he was cautioned and charged. On being cautioned the applicant said:

> "A people mek mi do it, because me father dead and leave money and them no give me any."

A cautioned statement in writing was also taken from the applicant.

In order to test the voluntariness of the statement and arrive at its admissibility a voir dire was held by the trial judge. The jury remained in court during the hearing of the voir dire because of the stated request of the leading counsel for the applicant when the trial judge was sending out the jury, that he wished the jury to remain.

Supt. Hewitt in the voir dire related the normal preconditions to voluntariness, that is, that there was no

threat, coercion, promise of favour or reward or force used in respect to the applicant with regard to either the oral cautioned statement or the written cautioned statement which was dictated by the applicant, taken down by Superintendent Brown, signed by the applicant and witnessed by Superintendent Hewitt.

The cross-examination of counsel for the applicant was directed to establishing that the applicant gave no statement and indeed signed no statement at all. Indeed Mr. Berthan Macaulay, Q.C. put the case as follows to the witness Superintendent Hewitt:

> "Q: ... I am putting it to you that the accused man never made that statement, never signed it, never made it either. Do you agree?
>
> A: No sir."

Thus although a narrative of police violence which was denied was put to the witness from the time the applicant was taken into custody in Franklyn Town at 4:15 p.m. on the 13th of July, 1991, arriving at the police station, at 4:45 p.m., and at the police station, the defence was not positing that this violence, denied by the prosecution witnesses, led to the making of any statement which would therefore be involuntary. The defence was saying that no statement oral or written was ever given by the applicant.

The evidence of Supt. Hewitt was supported by Supt. Donald Brown who was the officer taking down the statement, the recording of which took from 5:00 p.m. to 6:30 p.m.

The applicant gave evidence on the voir dire of being picked up and taken in the police car to the Constant Spring Police Station. He gave a narrative of being beaten at the police station and that electric shock was applied to his testicles. He was asked by his counsel:

> "Q: Now, while you were in that room with them, did you at any time tell them that you want to make a statement?
>
> A: No, them never asked me anything about statement, nor them tell me that them charge me or anything."

He denied making either the oral or written statement.

Further questioned by his counsel:

> "Q: Did you ever sign a statement?
>
> A: No, me no sign no paper to nobody at all, more than when them take the fingerprint me sign mi paper, that is the only time me sign, them take mi fingerprint, that is the only time me sign."

He was here referring to his signature and fingerprint taken on the C.I.B. form 2-I.

He was cross-examined as to the signature:

> "Q: ... Now Mr. McLawrence, all the

> " signature there marked Clifford McLawrence with the date?
>
> A: Yes.
>
> Q: Aren't those your signature, or do they resemble your signature?
>
> A: They resemble my signature, but not my signature."

The applicant insisted throughout that he saw his name on the statement, it resembled the way he signed his signature, but he did not sign any statement.

So as to make it crystal clear as to what the defence was positing the trial judge asked counsel for the defence the following:

> "**HIS LORDSHIP:** Before we go on Mr. Macaulay am I to understand that what the defence is saying is that the accused did not sign the statement at all.
>
> **MR. MACAULAY:** Certainly.
>
> **HIS LORDSHIP:** And that the accused did not make any such statement?
>
> **MR. MACAULAY:** Yes."

After lengthy submissions by counsel on behalf of the applicant the trial judge determined that:

> "There is no issue therefore here for the Trial Judge to make a decision as to voluntarinesss of that statement. The Court therefore

"rules that the voir dire is hereby at an end and the main trial shall continue hereafter."

Before us submissions were made by both Mr. Macaulay, Q.C. and Mr. Wentworth Charles, counsel for the applicant, that the termination by the trial judge of the proceedings on the voir dire already begun by him was wrong in law in that:

(a) he failed to appreciate the principles established by the relevant authorities which establish the need for or duty of a Trial Judge to rule on the admissibility of an oral or written confession when the evidence led by the prosecution as to the voluntariness is challenged in cross-examination by the defence or evidence has been given by the accused person contradicting the evidence adduced by the prosecution.

(b) he terminated the proceedings on the voir dire without determining the question of voluntariness which was a pre-requisite to the admissibility of the oral and written statements and in so doing failed to consider the effect of the evidence given by the accused as to torture or physical violence meted out to him during the period when the challenged oral and written confession were allegedly made.

The principles governing the respective functions of judge and jury in respect of incriminating statements made by an accused person which are tendered in evidence by the

prosecution were fully addressed in **Seeraj Ajodha v. The State** [1981] 3 W.L.R. p. 1. In the four possible situations examined by Lord Bridge of Harwich in the judgment of the Board at p. 12, it is proposition (4) which has to be considered. This reads as follows:

> "On the face of the evidence tendered or proposed to be tendered by the prosecution, there is no material capable of suggesting that the statement was other than voluntary. The defence is an absolute denial of the prosecution evidence. For example, if the prosecution rely upon oral statements, the defence case is simply that the interview never took place or that the incriminating answers were never given; in the case of a written statement, the defence case is that it is a forgery. In this situation no issue as to voluntariness can arise and hence no question of admissibility falls for the judge's decision. The issue of fact whether or not the statement was made by the accused is purely for the jury. In so far as the dissenting judgment of Crane J.A. in **State v. Ramsingh**, 20 W.I.R. 138, the concurring judgments of Crane and Luckhoo JJ.A. in **State v. Gobin**, 23 W.I.R. 256 and the judgment of the Court of Appeal of Jamaica in **Reg. v. Glenroy Watson** (1975) 24 W.I.R. 367 are at variance with the propositions set forth in this paragraph, their Lordships are respectfully unable to agree with them."

On the prosecution's case there was absolutely nothing to suggest that the statement was other than voluntary. The evidence of the making of an oral statement, the dictating by the applicant of any written statement which was recorded by the police and the signing by the applicant of any such written statement, is completely denied by the defence. The applicant by sworn evidence maintains that he never made the oral statement attributed to him by the police witnesses. He dictated no statement which was taken down by Superintendent Brown nor did he sign any such statement. The defence is not alleging that the applicant gave a statement as a result of violence applied to him by the police. It alleges in fact that the document is completely fabricated, and the signature is a forgery. No issue of voluntariness is therefore in these circumstances posed for the determination of the judge on the voir dire.

The relevant question then is whether or not the applicant made either the oral or the written statement attributed to him by the police or both. This is an issue of fact for the jury, not an issue of admissibility for the trial judge.

In so far as counsel for the applicant relied upon the following passage in **R. v. Glenroy Watson**, 24 W.I.R. 367 [per Luckhoo P. (Ag.)]at p. 380:

> "Such an issue (as to voluntariness) may be raised directly by or on behalf of the accused when the statement is sought to be tendered in evidence but if not so directly raised it might nevertheless be raised by material contained in the evidence so far adduced or by the nature of the cross-examination of the prosecution's witnesses and this so even if such an issue might appear to be in conflict with the ground of objection actually taken to the admissibility of the statement by or on behalf of the accused. This is so because the trial judge or magistrate is always required to be satisfied beyond reasonable doubt as to the voluntariness of the statement before he can proceed to admit it in evidence. Such a course indeed avoids the untenable situation which would otherwise arise if objection were taken to the admissiblity of a statement on the sole ground that it was not made by the accused and after its admission in evidence further testimony shows that it was not or might not have been given voluntarily,"

this is specifically disagreed with in the judgment of the Board delivered by Lord Bridge of Harwich in **Ajodha**.

The evidence therefore of the applicant, denied by the police witnesses, that the applicant was subjected to violence when taken to the police station and on his way thereto has to be considered in the context that the

applicant is not saying that because of any violence meted out to him he made an oral statement which was not voluntary, or signed a written statement obtained by duress, but rather that in fact he made no oral or written statement and the signature on the written statement is not his own. These matters constitute questions of fact for the jury.

As was said by Ross J.A. in **R. v. Hemsley Ricketts,** S.C.C.A. No. 111/83: a judgment of this Court delivered on the 9th May, 1985 in a case in which the applicant denied making the oral statement attributed to him by the prosecution, but in the voir dire counsel for the defence suggested to the police officer to whom the statement was allegedly made that he had questioned and behaved in a "menacing fashion" to the applicant, which was denied:

> "The instant case is within the fourth category as there was no evidence capable of suggesting that the statement was other than voluntary and the defence was an absolute denial of the evidence of the prosecution. This being so, no issue as to voluntariness arose and therefore no question of admissibility fell to be considered by the judge. As soon as it became clear at the end of the cross-examination that no issue of voluntariness was being raised by the defence the learned

> "trial judge quite rightly terminated the inquiry and admitted the statement in evidence for the consideration of the jury as to whether or not the statement was made by the appellant and how much weight should be given to it."

[See page 7 of the judgment]

In the circumstances therefore the trial judge was correct in terminating the voir dire once it became clear that what was in issue was not the voluntariness of the statements but whether they were in fact made.

Having so noted in his summing-up he left to the jury not only this fact but asked them also to consider for themselves the question of whether or not the alleged confessional statements were voluntary.

We can find nothing wrong in the manner in which the trial judge dealt with the issue either on the voir dire or in the summing-up. Consequently, this ground of appeal therefore however energetically pursued must fail.

We find also no merit in the submission that the trial judge was in error in asking the jury to look at the signature of the applicant on the C.I.B. form [Exhibit 16] and the signature on the alleged voluntary statement to assist them in determining whether or not the applicant signed the challenged statement.

In referring to the statement in the summing-up the trial judge said inter alia:

> "And the prosecution said it was signed by the accused man Clifford McLawrence. Counsel for the Crown addressed you on that aspect and showed you the C.I.B. form and also the caution statement. Well, I did not allow her to say that you could use comparisons. Now when it comes to comparison - evidence of handwriting, and counsel for the defence addressed me also in this respect, the law is, and this is the general law, that the comparison of handwriting by a jury must be done with the assistance of an Expert who is an Expert in handwriting and it was held that even amateurs who make it their duty over the years to study handwriting can be asked to give evidence to assist in the examination of hand-writing when it comes to comparison. But of course, these two handwritings are before you. There is no Expert evidence to assist you, but you just look at the articles. You have them and you come to your own conclusions as a matter of fact, as to whether or not you find that the accused did sign, and what weight you will attach to the respective documents that you see that are alleged to have been signed."

In John David O'Sullivan, 53 Cr.App.R. 274, Winn L.J. in the judgment of the court at page 280 dealt with the

situation when a jury is left with probative material which includes disputed handwriting. He cited the judgment of Astworth J. in **Tilley** [45 Cr.App.R. 364] as follows:

> "This Court endorses and re-affirms the statement of principle to be found in Salter J.'s judgment on behalf of this Court in **RICKARD** (1918) 13 Cr.App.R. 140, at pp. 142-143. A jury should not be left unassisted to decide questions of disputed hand-writing on their own."

He then continues:

> "The question arises whether within the proper under-standing of those words in the instant case the jury was `left unassisted to decide questions of disputed hand-writing.' The document had to go before the jury in the instant case since it formed part of the probative material establishing the visit by the man who took away the wallet and the fact that he had entered somebody's name in the register of the bank. The jury was not in the instant case invited to make any com-parisons, as the jury had been in **Tilly** (supra). The learned Deputy Chairman in the instant case did not himself purport to make any comments of any kind about similarities or dissimilarities, as had been done by the learned Deputy Chairman in **Tilley** (supra). The jury were warned very, very carefully and strin-

> "gently not to make these comparisons.
>
> In the circumstances, it does not seem to this Court that the jury in the instant case can be said to have been left to decide questions of disputed handwriting on their own. It is true they were not effectively prevented from doing it. What could possibly have been done effectively to prevent them from making the comparison passes the comprehension of the Court. It can hardly be right to suppose that the documents already before them for a legitimate, proper and necessary purpose should have been snatched away from them, since that could only have aroused dissatisfaction and grave doubt in the minds as to the fairness of the proceedings which were being conducted before them."

Unlike the case of **Thomas Rickard**, 13 Cr.App.R. p. 140 in which Slater J. at p. 142 stated:

> "It is clear therefore that the result attended mainly on the question of handwriting,"

this cannot be maintained in the instant case. There was evidence of the police witnesses which if the jury accepted would lead to the conclusion that the applicant had signed the disputed cautioned statement. The direction of the trial judge in the summing-up in this particular area cannot be looked at in isolation from his directions in

respect to the voluntariness of the statement. Specifically the trial judge directed:

> "The prosecution needs to satisfy you that it was made, that it was made voluntarily. It is a question of fact for you to say whether it was in fact made and if you so find, whether or not it is true, and what weight you will attach to it."
> [Page 749 of the Record]

It cannot therefore be said that the jury was "left unassisted to decide questions of disputed handwriting." This ground of appeal must therefore likewise fail.

Very shortly after the judge had commenced his summing-up counsel for the crown addressed the court as follows:

| | |
|---|---|
| **"MISS LLEWELLYN:** | I was just indicating to the court that my learned friend is taping the proceedings ... |
| **MR. MACAULAY:** | I only know it is photograph we are not permitted by law to take. If Your Lordship says that I should not, I will not. The section deals with photographs. If Your Lordship says I must not I will not. If Your Lordship doesn't want me to, I will not. |
| **HIS LORDSHIP:** | Take it out of the courtroom. Please turn it off." |

Counsel for the applicant has submitted that the refusal to permit him to tape the summing-up is not provided for by law and that the judge's ruling "contravenes indirectly the applicant's fundamental rights in section 20(6)(b) of the Constitution."

The Criminal Justice Administration Act prohibits the photographing or the making of any portrait or sketch of a person in any court, but is silent as to the taping of the proceedings. However there is an inherent power in a judge to determine what is permissible to counsel in his court in the course of a criminal trial so long as the decision does not breach any common-law or statutory right or lead to unfairness or an injustice to the accused. As the judge's summing-up is taken down verbatim by the court reporters and forms a part of the official record of appeal the injustice or unfairness to the accused which could be caused by the judge forbidding counsel to tape the summing-up eludes me. Indeed to the contrary the trial terminated on the 25th of November 1992 and detailed grounds of appeal forming the bases of the submissions before us were filed in the Court of Appeal on the 30th of November 1992.

Section 20(6)(b) of the Jamaican Constitution enshrines the right of every person charged with a criminal offence to be given adequate facilities for the preparation of his defence. Counsel for the applicant failed

to enlighten us in what way the applicant was deprived of any facility for the preparation of his defence by the judge's ruling. This ground of appeal therefore is also without merit.

The final ground of appeal urged upon us complained that the trial judge failed to deal in any meaningful way with gaps in the evidence relating to fingerprint.

It will be recalled that in the music room a surge protector was found which when dusted for fingerprints revealed a right hand print of fingers, which matched the fingerprint of the applicant taken for official police purposes on the C.I.B form. The prints were photographed and enlarged, and the evidence of the expert established by comparison with an enlargement of the fingerprint on the C.I.B. form that the fingerprint found on the surge protector was that of the applicant.

The trial judge told the jury:

> "The accused man's prints were found at the bottom of the surge protector. Mr. Reid told you that the surge protector had been in his music room. In the surge protector [Exhibit 8] were plugged in Exhibit 8 and Exhibit 14. That is the mixer and the video machine, and counsel for the crown is saying to you, well demonstrate it yourself because it means that if one holds a surge protector to remove

> "these plugged in appliances one would grip it like this, at the top where the plugs are turned upwards to pull them out and so the four fingers would invariably be on the surge protector and this is where the prints of the accused man were found."

He reminded the jury of the evidence of the fingerprint expert, Detective Harrison with twenty-seven years experience in examining and comparing fingerprints. Having narrated in detail the fingerprint evidence the trial judge said:

> "Now, that is the evidence in respect of the fingerprints, and the prosecution is asking you to draw the inference that the presence of the fingerprints on the power surge protector as found in the house where the articles had been unplugged from it and the prints having found to be that, at least the right middle finger of the accused, to infer that he is the one who went in the house, removed those articles and also committed the act that day."

The trial judge's direction on the fingerprint evidence was careful and cannot be faulted. The ground of appeal in relation to this also fails.

There were several other grounds of appeal in the written grounds which were not elaborated upon by counsel for the applicant. The court was however requested to give consideration to them notwithstanding the absence of argument.

Of these only one ground would require our attention. The complaint is that the prosecution called as witnesses Courtney Ellis and Owen Anderson described as accomplices against whom criminal proceedings were still in process without indicating that these proceedings were to be discontinued. The trial judge it is maintained ought to have warned the jury of the likelihood that the witnesses would be unreliable and that little or no weight should be attached to their evidence, which he did not. Reliance was placed on **R. v. Pipe** [1967] 51 Cr.App.R. at p. 17.

Neither Courtney Ellis nor Owen Anderson could be said to be accomplices to the applicant in respect to the commission of the murder for which he was charged. Ellis it will be recalled was the person to whom the applicant took the television set on the 8th of July and who carried the set to his neighbour `Ossie' Osbourne Laylor and left it with him because he had said that he wanted a television to buy. Ellis was also given the equalizer by the applicant and took it to the sound man `Dellie' and left it with him. The charge pending against him was receiving

stolen goods, and so likewise was the charge against Owen Anderson. The applicant according to Anderson's evidence had given him a video to be fixed. The video as well as the equalizer and the television set were items stolen from the Reid's home at the time of the murder. It cannot be said that either Anderson or Ellis were persons participes criminis in respect of the crime or persons aiding or abetting the applicant in the commission of the crime.

Notwithstanding this the trial judge did caution the jury in respect to Ellis and Anderson as follows:

> "Now, because of the fact that the two witnesses, Ellis and Anderson are still under charges of receiving stolen property, because the articles were in fact traced to them, it means that they have a charge pending over their heads. So they have what is called an interest to serve. That is, they have to try to protect themselves, and so you have to examine their evidence very carefully, and I must tell you that it is dangerous to act on the evidence of a person of that nature. That is, Ellis and Anderson, unless you have any other evidence to support their evidence that they received the articles from the accused. But even though there is no other evidence, if there is no other that goes towards supporting what Ellis has told you and what Anderson has told you in this Court, if you believe that they are speaking the

> "truth, then you can act on what they have told you, once you believe they are speaking the truth, even though they have a charge over them, even though they are the ones to whom the articles were actually traced, as long as you find they are speaking the truth, then even though they have an interest to serve, then you can act on it and say what you find."

In my view the trial judge gave an appropriate caution in respect of the evidence of Ellis and Anderson who were witnesses "with an interest to serve" and this ground of appeal must therefore fail.

A careful perusal of the remaining unargued grounds reveals the absence of the need to deal specifically with any of them and upholds the decision of counsel for the applicant not to make an oral presentation in their support.

The crown's case was a very strong one and it certainly cannot be said that the verdict of the jury was unreasonable.

For all these reasons the application for leave to appeal is hereby refused.