JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 131/3

COR: THE HON MR JUSTICE FORTE J A
THE HON MR JUSTICE GORDON J A
THE HON MR JUSTICE PATTERSON J A

R v DELROY WILKINS

Bert Samuels for Applicant

Miss Vivene Hall for Crown

23rd November 1994 & 19th June 1995

GORDON J A

The applicant was on 2nd December 1993 tried and convicted in the Gun Court Division of the St. James Circuit Court for illegal possession of firearm, robbery with aggravation and assault. On 8th December, 1993 he was sentenced to 7 years hard labour on the first count, 15 years hard labour on the second count and 3 years hard labour on the third count. His application for leave to appeal was refused on 23rd November, 1994.

Mr. Samuels for the applicant submitted that the learned trial judge failed to warn himself of the dangers and the need for caution in assessing the evidence identifying the appellant as the offender. The learned trial judge, he further submitted, misdirected himself in concluding that there were exceptional circumstances justifying his failure to give clear warning of the dangers of mistaken identification of the applicant.

On these two grounds Mr. Samuels moved the Court to grant the application, allow the appeal and quash the conviction.

The Crown's case was contained in the evidence of two complainants, William Golding, a craft vendor and Cosmo Spence an acting Corporal of Police. At about 5.00 a.m. on 6th September 1993 both men with others were at the taxi stand at Holiday Inn in St. James. They were in a room where a game of dominoes was being played by others. Golding left the room and was held at gun point and knife point and robbed. The applicant he said was the knife man. He was taken back to the room where the gunman pointed the gun at Cpl. Spence and attempted to discharge shots from it. Only sounds of "clicks" were heard. Cpl. Spence then drew his service revolver and fired two shots at this gunman. The robbers fled, pursued by Cpl Spence and others. Golding said he followed the applicant as he went one way and Spence the gunman who went another way. Golding saw when the applicant was held and beaten. The gunman escaped. When charged with the offences the applicant said "Boss mi never have nuh gun sah."

In his defence the applicant said he was at the taxi stand. He saw Golding, he was a victim of the robbery and when he heard the alarm he went on the road and was held. He had no part in the robbery other than as a victim. He was severely beaten by the crowd.

In his reasoned assessment of the evidence in the case Cooke J said at page 59:

> "...the question now is 'was the accused the knife-man?' There was evidence as to aspects which would go to the quality of

> "identification, but this Court is not going to be unduly troubled or troubled at all by those critical aspects of the vexed question of identification. The reason for this, is that, the accused man has said he was present. And, in his sworn evidence, he even told how the gunman marched, my words, Golding to the taxi stand. It was a room fourteen by fourteen with a light bulb in it, where persons were engaged, perhaps the most popular indoor sports, the game of dominoes. Since this Court is not going to be troubled as to the question of identification, he, having put himself on the scene, the resolution of this issue will be determined by this Court's assessment of the credibility, the credit worthiness of the witness put forward by the crown."

This approach of the learned trial judge was challenged by the applicant who urged that the learned trial judge had failed to follow the guidelines laid down by the Privy Council in **Junior Reid & Others vs. The Queen** 1989 3 W.L.R. 771. This omission Mr. Samuels urged must result in the appeal being allowed in accordance with the clear dicta of **R. v. Turnbull** (1976) 3 W.L.R. 445 as applied and approved in **Junior Reid** supra. The dicta requires that in cases where the evidence connecting the accused with the commission of the crime rested solely on the testimony of witnesses as to visual identification the trial judge should warn the jury (himself) of the dangers inherent in visual identification and the possibility of error in mistaken identification.

On the evidence identification was not an issue. On the Crown's case the applicant robbed, fled, was chased held beaten. On the defence the applicant admitted being on the scene of the crime. He said he was a victim of the robbers, he

did not run from the scene but was held by citizens as he stood in the road looking at the robbers fleeing the scene. It was therefore for the learned trial judge to address the issues on the credibility of the witnesses. This he did as the passage referred to above indicates.

In our view the learned trial judge did not have to consider or deal with identification as an issue. What he did in his summation was eminently appropriate. These grounds of appeal therefore failed. The application is unmeritorious. The sentences are to commence on 23rd November, 1994.