[2012] JMCA Crim 30

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 64/2009

BEFORE: THE HON MR JUSTICE MORRISON JA
THE HON MISS JUSTICE PHILLIPS JA
THE HON MRS JUSTICE McINTOSH JA

ALCOTT SMITH v R

Ian Wilkinson and Miss Shanique Scott for the appellant

Miss Sanchia Burrell for the Crown

27 September, 7 October 2011 and 31 July 2012

MORRISON JA

[1] The appellant and another were tried by Sykes J, sitting as judge alone in the High Court Division of the Gun Court at the Clarendon Circuit Court, for the offences of illegal possession of firearm (count one) and robbery with aggravation (count two), both allegedly committed on 24 March 2009. On 22 May 2009, the appellant's co-defendant was found not guilty and discharged on both counts. The appellant was convicted on both counts and sentenced to seven years' imprisonment on count one

and 10 years' imprisonment on count two. The court ordered that these sentences should run consecutively.

[2] The appellant's application for leave to appeal against conviction and sentence was considered on 11 March 2011 by a single judge of this court, who refused leave to appeal against the conviction, but granted leave to appeal on the question of sentence.

[3] On 7 October 2011, this court dismissed the application for leave to appeal against conviction, but allowed the appeal against sentence. The learned trial judge's order that the sentences on counts one and two should run consecutively was set aside and the court substituted an order that the sentences should run concurrently, from the date of conviction, that is, 22 May 2009. These are the promised reasons for that decision.

[4] The complainant, Mr Christopher Wilson, gave evidence that a quantity of cash, a cellular telephone, a wedding band and an audio compact disc were taken from him during the robbery on 24 March 2009. On that day, at some point in mid-afternoon, Mr Wilson left his home in the Green Bottom area of Clarendon, accompanied by his infant son. He was travelling on foot. On his way out of the area, he was approached by three men, two of whom were armed with guns. One of the armed men stopped directly in front of him, while the other was right behind him. The man who was in front of him took from him $1,000.00, which he had in his hand, as well as the ring he was wearing on the fourth finger of his left hand, his wedding ring. On the inside of the ring, his and his wife's initials ("JW to CW") and the date of his wedding (3 May

2008) were inscribed. Mr Wilson's evidence was that the man who was behind him then slapped him "cross way" his face and took away his cellular telephone. The same man also took Mr Wilson's wallet and compact disc from his pocket and hit him in his face again, this time on the other side, causing him "some pain".

[5] None of these men were known to Mr Wilson before. The actual robbery, which took place on a sunny day, lasted for about three minutes in all. During that time, the man who was directly in front of Mr Wilson was within touching distance and he was able to observe his face and his entire body. Mr Wilson went on to say, "a noh like it tek a long, long time" and, when asked to explain, he said for a "couple seconds or so", "[m]aybe 15 seconds". However, his view of this man was to some extent obscured by a "peek" [sic] cap which the man was wearing, which was pulled down over the top part of his face. As a result, Mr Wilson said, he was only able to see the "lower part" of the man's face, from the eyes down.

[6] Mr Wilson testified that a third man was involved in the robbery, but was under a tree about 50 feet away. He did not know this man before, but he was also able to see "di whole of him". Asked for how long, Mr Wilson's first answer was "Not long", and then, when pressed, "About 10, 15 seconds".

[7] After the various items had been taken from Mr Wilson, the man with the gun who was directly in front of him told him "fi walk fast gwaan", whereupon he went to the nearby home of his sister-in-law, where his step-mother summoned the police. Within about 20 minutes a police patrol car arrived, followed in due course by another.

After receiving a report on the robbery from Mr Wilson, Sergeant Donnovan Grant, who was the driver of the first vehicle, directed Mr Wilson to the other vehicle, which took him to a bus stop from which, about 20 minutes later, he made his way to the May Pen Police Station. In the meantime, as a result of Mr Wilson's report, Sergeant Grant proceeded by car to the Savannah Cross District, which is a district next door to Green Bottom District. There, as the vehicle approached a lane, he saw three men, who, after looking in his direction, ran off, one into a nearby house and the other two towards the bushes. Giving chase, Sergeant Grant managed to catch up with one of the two men going towards the bushes and the other, who had gone into the house, was apprehended by another member of the police party. A ring marked "JW to CW" was taken by Sergeant Grant from one of the men and both men were taken to the May Pen Police Station.

[8] Mr Wilson's evidence was that, upon his arrival at the police station, he was sent to an office, where there was a man sitting at the front desk. As he began telling this man what had happened to him, he saw two men sitting in a corner of the room and immediately pointed out one of them as the man who had stolen his things from him at Green Bottom earlier that afternoon and the other as the man who had stood under the tree during the course of the robbery. The appellant was identified by Mr Wilson as the first of these two men, that is, the man who stood directly in front of him during the robbery and actually took his wedding ring from him. The appellant then said, according to Mr Wilson, that this was the first time he was seeing him. In the presence

of the two men, Mr Wilson identified a ring shown to him by Sergeant Grant, who had entered the room, as his, at which point the appellant asserted that the ring was his.

[9] Cross-examined by counsel for the appellant on this encounter at the police station, Mr Wilson denied that it was after Sergeant Grant had told him that the ring had been taken from the appellant that he indicated that the appellant was the man who had robbed him. He insisted that, at the point when he was shown the ring, he had already pointed out the appellant and the other man. He also insisted that the appellant did say that the ring was his, but he was unable to recall, as was suggested to him, that what the appellant had actually said was that he had found the ring.

[10] Sergeant Grant's account of what happened at the police station was essentially similar. Upon arrival there with the two men who he had apprehended at Savannah Cross, he placed them in the Criminal Investigations Branch ('CIB') office and went to speak with the sub-officer in charge of the station in his office. When he returned, he saw Mr Wilson in the CIB office. Pointing to the men, Mr Wilson then said, "Officer, si di man dem who rob mi here." Sergeant Grant then showed the ring which he had taken from one of the men to Mr Wilson, who identified it as the wedding band which had been taken from him during the robbery earlier that afternoon. The man in whose possession the ring had actually been found, who was the appellant, responded by saying that the wedding band was his and that he had been married abroad. The appellant and the other man were in due course arrested and charged with the offences of illegal possession of firearm and robbery with aggravation. The ring was duly tendered and admitted in evidence as an exhibit.

[11] Cross-examined, Sergeant Grant said that by the time he and the two men who he had apprehended at Savannah Cross got back to the May Pen Police Station that afternoon, about an hour and a half had elapsed from when he had told Mr Wilson to go to the station to make a report. When he arrived there with the two men, he was therefore aware that Mr Wilson might already be there. He agreed that the CIB area at the station was a public area and that this was where he took the two men to be processed upon his arrival there. He denied that, before Mr Wilson identified the appellant as one of the robbers, he had told him, in reference to the appellant, that "I took this ring out of his right front pocket", and insisted that he only made that statement after the appellant had been identified by Mr Wilson. The appellant did say that he got married abroad and that the ring belonged to him and he could not recall the appellant having said that he had found the ring.

[12] Constable Jermaine Edwards was on duty at the CIB office at May Pen Police Station that afternoon and his evidence supported Sergeant Grant's in most respects. He confirmed that Mr Wilson had said, in the presence of the two men brought there by Sergeant Grant, that the appellant was one of the men armed with a gun during the robbery, while the other man had stood under the tree. Constable Edwards also said that, upon Sergeant Grant telling him that he had taken the ring from the right front pocket of the appellant's trousers, the appellant had said, "Officer, a fine mi fine di ring." Shown the station diary in cross-examination, Constable Edwards accepted that his entry for the afternoon in question only referred to the complainant being robbed by

two men armed with handguns, but did not mention anything about a third man under a tree.

[13] That was the case for the Crown, at the end of which an unsuccessful submission of no case was made on behalf of both the appellant and his co-defendant. The appellant gave sworn evidence in his defence, in addition to which he called a witness. The appellant told the court that he was a resident of Savannah Cross. He denied that on 24 March 2009 he and others, armed with firearms, had held up and robbed Mr Wilson. At the time of the alleged robbery, he was probably at or leaving the shop where he had gone to buy a cigarette. The first time he had seen Mr Wilson was when he and Sergeant Grant had come to the lane where he lived. At that time, when Mr Wilson was asked by Sergeant Grant if the appellant was the person who had held up and robbed him, Mr Wilson had responded in the negative. But when the appellant was searched by Sergeant Grant, a ring was taken from his pocket and this ring was identified by Mr Wilson as the ring which had been taken from him by the robbers. He had actually found the ring on the lane earlier that afternoon, on his way back home from buying the cigarette. Later, at the police station, he heard Mr Wilson tell the police that the appellant was one of the persons who had robbed him that afternoon.

[14] The appellant's aunt, Miss Collet Smith, also gave evidence in his defence. On the day in question, Miss Smith was at her home in Savannah Cross. With her, were the appellant, who had lived with her for more than a year and had been at home all day, and her four year old son. The appellant did not leave the house that day until

about 3:30 p.m., when he left to buy a cigarette at the shop. Shortly after he left, she saw policemen outside in the lane, the appellant with them, with his hands in the air. Two policemen ran past her gate firing shots down the lane and after a while the appellant was taken away in one of the police vehicles on the scene.

[15] After summing up the case, the judge considered that, in relation to the appellant's co-defendant, the identification evidence was not "good enough for the criminal standard" and he was accordingly found not guilty on both counts. However, as regards the appellant, Sykes J considered that, although the identification of the appellant was not ideal, the evidence that the appellant was found in possession of Mr Wilson's wedding ring was "significant" and that "the doctrine of recent possession is able to assist the Prosecution". Thus, although considering that this was "not the strongest case of visual identification", the learned judge took the view that the identification evidence was supported by the finding of the ring in the appellant's possession shortly after the robbery. On this basis, he therefore found the appellant guilty as charged and sentenced him in the manner already indicated (see para. [1] above).

[16] When the appeal came on for hearing on 27 September 2011, Mr Wilkinson for the appellant sought and was granted leave, without objection from the Crown, to argue a number of supplementary grounds, which were as follows:

> "1. The learned trial judge erred in failing to deal sufficiently with the issue of visual identification evidence and to highlight or link the effect of a number of serious

weaknesses in the prosecution's case on the prosecution's burden of proof.

2. The learned trial judge erred in law in discounting the weakness of the visual identification evidence and consequently placed a disproportionate amount of reliance on the Applicant's possession of the wedding band and the principle of "recent possession" to establish the Applicant's guilt.

3. The learned trial judge failed to deal adequately or properly in relation to the principles relevant to the defence of alibi especially in the context of the Applicant's sworn testimony, that of his supporting witness and having regard to the lacunae on the prosecution's case regarding the visual identification evidence. This omission was fatal as it deprived the Applicant of a fair trial with the inevitable consequence that there was a grave and substantial miscarriage of justice.

4. The learned trial judge erred in law failing to deal adequately or properly with the discrepancies or inconsistencies which arose on the evidence for the prosecution. More particularly, the learned trial judge failed to highlight major inconsistencies and their possible effect vis-à-vis the prosecution's onus probandi, legal burden and/or standard of proof. This omission was fatal as it deprived the Applicant of a fair trial with the inevitable consequence that there was a grave and substantial miscarriage of justice.

5. The verdict is unreasonable having regard to the evidence.

6. The learned trial judge erred in law in ruling that the sentences imposed were to run consecutively. Consequently, the sentence is manifestly excessive having regard to the "evidence" and the law."

[17] With his customary flourish, Mr Wilkinson made a number of submissions in support of these grounds. Grounds one, two and three all raise issues relating to the identification of the appellant as the person who robbed Mr Wilson on the day in

question. Mr Wilkinson's primary complaint in this regard was that the learned trial judge did not deal properly or adequately with the issue of visual identification, bearing in mind that this was not a recognition case and that there were a number of weaknesses in the identification evidence. Among the matters which the judge had not dealt with sufficiently were that, on Mr Wilson's evidence, the face of the man who stood in front of him during the robbery must have been partially obscured by the cap which he was wearing; the entire incident clearly took place very quickly and could therefore be described as one of a fleeting glance only; Mr Wilson received a blow to his head during the incident, which caused him pain and affected the vision in his right eye, thus compromising his ability to identify the man who stood in front of him; the confusion as to whether there were two or three assailants; and the failure of the police to hold an identification parade, but instead exposing the appellant to Mr Wilson when he went to the police station. Against this background, the learned judge had accorded too much weight to the finding of the ring in the appellant's possession, particularly bearing in mind the appellant's account of how he came into possession of it. Further, it was submitted (as the appellant's ground three complained), the judge had failed to deal with the appellant's defence of alibi, including the supporting evidence of his aunt, Miss Collet Smith.

[18] On ground four, Mr Wilkinson submitted that there were some "crucial discrepancies and inconsistencies on the prosecution's case that…totally undermined the evidence". However, the only one of these that he felt it necessary to bring to our attention was Mr Wilson's having at one point spoken of two men robbing him and

then, at another, of three. The submission on ground five was that, based on all the other matters complained of, the verdict of the learned trial judge was unreasonable having regard to the evidence.

[19] And on ground six, which challenged the imposition of consecutive sentences by the judge, Mr Wilkinson submitted that this approach was incorrect and contrary to the clear guidance given by this court on several previous occasions.

[20] In support of these submissions, Mr Wilkinson referred us to a number of authorities, placing particular reliance on ***R v Turnbull*** [1977] 1 QB 224 and ***R v Oliver Whylie*** (1977) 15 JLR 163.

[21] In response to Mr Wilkinson's submissions on grounds one and two, Miss Burrell for the Crown made the point that, although Sykes J did not give a "standard" ***Turnbull*** direction on identification in this case, he nevertheless demonstrated his appreciation of the need to deal with the issue, as well as the applicable rules. She submitted that the judge was entitled, as he did, to regard the finding of the appellant in possession of Mr Wilson's ring as evidence which bolstered the identification and referred us to the decision of this court in ***Ashan Spencer v R*** (SCCA No 14/2007, delivered 10 July 2009), as supportive of the approach of the judge in this case. She pointed out that the judge referred to and accepted the undesirability of confrontation in his review of the evidence of the circumstances in which Mr Wilson identified the appellant at the May Pen Police Station.

[22] As regards ground three, Miss Burrell also accepted that the judge could have given a "clearer" direction on the treatment of the appellant's alibi evidence, but pointed out that the evidence itself, as well as that of the appellant's aunt, had been considered by the judge. And finally, on ground four, Miss Burrell submitted that there was no rule that obliged the judge to rehearse all the evidence in his summing up and all that was necessary was that it should be clear from the summing up, as it was in the instant case, that the judge had applied the correct principles.

[23] There can be no question that the correctness or otherwise of Mr Wilson's visual identification of the appellant as one of the robbers was the critical issue in this case. None of the robbers were known to Mr Wilson before and the circumstances clearly called for a warning on the special need for caution before conviction of the appellant in reliance on the correctness of the identification, along the lines of Lord Widgery CJ's famous guidance in ***Turnbull*** (at page 228):

> "First, whenever the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Provided this is done in clear terms the judge need not use any particular form of words.
>
> Secondly, the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation? At what distance? In what

> light? Was the observation impeded in any way, as for example by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance? If in any case, whether it is being dealt with summarily or on indictment, the prosecution have reason to believe that there is such a material discrepancy they should supply the accused or his legal advisers with particulars of the description the police were first given. In all cases if the accused asks to be given particulars of such descriptions, the prosecution should supply them. Finally, he should remind the jury of any specific weaknesses which had appeared in the identification evidence.
>
> Recognition may be more reliable than identification of a stranger; but even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made."

[24] In the decision of the Privy Council, on an appeal from this court, in ***Scott & Walters v R*** (1989) 37 WIR 330, 343, Lord Griffiths, giving the judgment of the Board, emphasised the importance of the judge discussing with the jury the fundamental danger in identification evidence of the honest but mistaken witness, who is convinced of the correctness of his identification, giving impressive evidence:

> "…if convictions are to be allowed upon uncorroborated identification evidence there must be a strict insistence upon a judge giving a clear warning of the danger of a mistaken identification which the jury must consider before arriving at their verdict and that it would only be in the most exceptional circumstances that a conviction based on

> uncorroborated identification evidence should be sustained in the absence of such a warning."

[25] That such directions are equally required in the case of a judge sitting alone as judge and jury in the Gun Court was confirmed by this court, after a full review of the earlier decisions on the point, in ***R v Simpson, R v Powell*** [1993] 3 LRC 631, where Downer JA said this (at page 641):

> "…the trial judge sitting without a jury must demonstrate in language that does not require to be construed that he has acted with the requisite caution in mind and that he has heeded his own warning. However, no particular form of words need be used. What is necessary [is] that the judge's mind upon the matter be clearly revealed."

[26] In the instant case, after rehearsing Mr Wilson's evidence that he had never seen the man whom he identified as the appellant before the day of the robbery and that he was able to see the lower part of the man's face, "from his eyes down", for "about 15 seconds or so", the judge commented as follows:

> "…so it may give a greater risk here of mistaken identification, since we now know that in ideal circumstances to identify someone whom you have never seen before, to identify the person, so there may be a departure from the ideal [sic].
>
> Anyway, he said the day was sunny. So what he is saying is that the lighting condition was good. This gentleman was half way away. The cap was pulled down, but he could see from the eyes down."

[27] The learned judge then went on to recount the evidence in some detail, including the circumstances in which the appellant was apprehended in Savannah Cross and pointed out by Mr Wilson at the police station. He observed that, based on the authorities, "the ideal circumstance is an identification parade where the witness' ability to independently identify the accused – meaning unprompted and unaided by anyone or anything – is tested, and if at the end of the exercise, assuming the parade was properly conducted, then it could be said that the witness is quite likely making a correct identification".

[28] The judge then considered the case against the co-defendant, who was previously unknown to Mr Wilson and was "supposed to be on the lower limb of a tree from a distance away", and concluded that the identification evidence against him was not "good enough for the criminal standard".

[29] Turning to the case against the appellant, the judge made the comment, as regards the circumstances in which he was identified by Mr Wilson at the police station, that "this was [not] let's say an ideal circumstance", before embarking on a full review of the identification evidence in these terms:

> "However, there is the question now of this ring and the recovery of this ring.
>
> I accept the evidence of Mr. Grant that this ring was indeed recovered from Mr. Smith. In fact, that is not really being disputed between Mr. Smith and the police. So both Mr. Smith and the police officer agreed that the ring was indeed taken from him. The question then now, becomes now, how did he then come by this ring? Mr. Smith is saying he found it. Mr. Wilson is saying, no, he took it.

When one looks at the evidence of identification of Mr. Smith again – of Mr. Smith by Mr. Wilson – we have a circumstance in which the evidence of prior knowledge is non-existence [sic]. We have a peek cap [sic] which did not give the witness an unimpeded view, but he said that he could see from the eyes down. He said that when he turned around he saw two men approaching him initially and then one came in front and that was Mr. Smith. He said the time of which he saw the men approaching him somewhere in the vicinity of a few seconds [sic], because he pointed about 16 feet away. They were walking in front of him that merely about a few seconds he said that Mr. Smith was in front of him. And then he said he was struck on the right side of the face. And then whoever struck him there – that is the one from behind – whatever was used, caught him in the right eye and so, in effect, he said he wasn't really staring at Mr. Smith. So, his opportunity to see Mr. Smith was reduced. Now, the witness insisted and this is where now he looked.

On the witness' evidence, we have to distinguish between liable (inaudible) [sic] if a [sic] honest witness is really a convincing witness, because having made that distinction now, the witness in my view is an honest witness, in that he is not seeking to make the circumstances of his identification of Mr. Smith anything better than what it was. And in fact, he has untold opportunity to remove the cap and to he say, "Goodness, I saw him there for an extended period, all of him". But he did not seek to do that. In fact, he increased the difficulty of him being able to see Mr. Smith. So that would tend to suggest that the witness is really giving a true narrative and not trying to strengthen the case.

The question of the ring now is significant. But I accept the witness' evidence and I'm sure about this, that the sequence of the event in terms of identification at the police station is as he said. Identification man. The ring. And after the identification of the ring the source of the ring is then said. So, this is a situation in which the man was robbed – the victim – at approximately 3:30 and within a couple of hours, Mr. Smith has his ring. I don't know if the police officer, Mr. Edwards [sic], gave a time of which he went into the area. I don't think I have that, but certainly by 5:00, 5:30, everybody is at the station, so at least within a couple of hours.

> It is my view that in the circumstances that the Prosecution is relying on recent possession. I do not accept Mr. Smith's account when he said that he found this ring. What I am sure about is that he had this ring, because he was the gentleman who was standing in front of Mr. Wilson at the time when the ring was being removed, among other items from the possession of Mr. Wilson. While the identification is not ideal, it is supported by this item that was stolen, robbed from him and found in Mr. Smith's possession."

[30] While it is clear that, as Miss Burrell readily accepted, Sykes J (an experienced and ordinarily careful judge) did not give a 'standard' ***Turnbull*** direction on identification in this case, we consider that she was also right in submitting that he nevertheless demonstrated his appreciation of the need to deal with the issue, as well as the applicable rules. Thus, in the passages from the summing up quoted at paragraphs [26] – [29] above, the judge plainly had in mind most of the important ***Turnbull*** requirements, such as the special need for caution; the absence of prior knowledge of the defendant; the state of the lighting; the opportunity for observation; the period of observation; the nature of any obstruction; and the necessity to distinguish between honest and reliable evidence of identification.

[31] Sykes J also considered that, by virtue of the fact that the appellant was found in possession of the wedding ring taken from Mr Wilson by one of the robbers, "the doctrine of recent possession is able to assist the Prosecution". As was pointed out by this court in ***Ashan Spencer***, the doctrine of recent possession, properly so called, which is in fact purely evidentiary in effect, allows the prosecution, on a charge of receiving or stealing, to pray in aid the fact that the defendant was found in recent possession of the stolen goods in support of the inference that he is either the receiver

or the thief, in the absence of an explanation from him (see para. 25). However, even in a case other than one concerned with a charge for receiving or stealing, in ***Ashan Spencer*** the court was of the view (applying its earlier decision in ***R v Alfred Flowers***, SCCA No. 4/1997, judgment delivered 14 July 1998) that "there should be no obstacle treating evidence of unexplained (or unsatisfactorily explained) possession of recently stolen goods as a factor bolstering the evidence of visual identification" (see para. 30). This was, the court went on to observe, "a matter of common sense".

[32] In the instant case, the appellant's explanation for being in possession of the ring having been expressly rejected by the trial judge, we are clearly of the view that he was entitled to treat this as additional evidence tending to support the correctness of the identification of the appellant as one of the armed robbers. [In ***Turnbull***, Lord Widgery CJ had indicated – at page 230 – that such "other evidence" was capable of saving even a case in which the identification evidence was "poor" from being withdrawn from the jury at the close of the prosecution's case. This leads us to think, in retrospect, that the statement in ***Ashan Spencer*** that "even in a case in which reliance is placed on the doctrine of recent possession, the identification evidence must itself be of sufficient quality to enable the judge to leave the case to the jury" (para. 30), may not have made a sufficient allowance for the potential of such evidence to strengthen evidence of identification in a proper case.]

[33] Sykes J also clearly had in mind the implication of confrontation to which the circumstances in which the appellant was identified by Mr Wilson at the police station naturally gave rise (see para. [27] above). One of the authorities referred to by the

judge in this context was ***R v Trevor Dennis*** (1970) 12 JLR 249, in which this court, while reiterating that an identification parade was generally the ideal way of identifying a suspect and deprecating identification by confrontation, nevertheless considered that "[t]he particular circumstances of a case may well dictate otherwise" (per Shelley JA, at page 250). That was a case in which the defendant, who was apprehended by the police within half an hour after he had allegedly committed a robbery at the complainant's house some 20 to 25 chains away, was taken back to the complainant's house, where he was identified by the complainant as the robber. The court held that in these circumstances the identification was unobjectionable. Similarly in the instant case, there being no real suggestion that the identification of the appellant at the police station was anything other than spontaneous, we consider that the learned judge was fully entitled, having explicitly alerted himself to the inherent dangers, to conclude that no fault could be found with the identification in the circumstances.

[34] While it is a fact that in this case Sykes J may not have covered all the ground that could have been expected in a case such as this (by, for instance, giving an explicit direction on the appellant's alibi defence or by giving the usual directions as to the treatment of discrepancies and inconsistencies), we do not think that the judge can be faulted for his overall conclusion on the evidence in the case, which was that "what you have here is visual identification, although not the strongest case of visual identification, but it doesn't stand alone it is also supported by this item found with Mr. Smith shortly after the robbery and also…to bolster the credibility of the witness…".

[35] As regards sentence, the appellant was given leave to appeal from the judge's imposition of consecutive sentences on counts one and two. In ***Kirk Mitchell v R*** [2011] JMCA Crim 1, Brooks JA (Ag) (as he then was), speaking for the court, after a full and careful review of all the relevant authorities, concluded that "[i]n the circumstances of the ordinary case, therefore, where the offences arise from a single transaction, there is…no need to resort to imposing consecutive sentences" (para. [56]). Thus where, as in that case, the offences for which the defendant was charged were "all committed in the course of the same transaction, including the average case where an illegally held firearm is used in the commission of an offence, the general practice is to order the sentences to run concurrently with each other" (para. [57]).

[36] In the instant case, the appellant was charged with and convicted of the offences of illegal possession of a firearm and robbery with aggravation, both offences arising out of the single transaction in which Mr Wilson was held up with an illegal gun and robbed of items of property belonging to him. In our view, there was in these circumstances absolutely no warrant, either in principle or on authority, for the imposition of consecutive sentences and it is for this reason that the judge's order that the sentences on counts one and two should run consecutively was set aside and an order that the sentences should run concurrently substituted in its stead.

[37] These are the reasons for the decision which was announced by the court on 7 October 2011 (see para. [3] above).