JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 57 OF 1999

BEFORE: **THE HON MR JUSTICE FORTE, P.**
THE HON MR JUSTICE HARRISON, J.A.
THE HON MR. JUSTICE COOKE, J.A. (AG)

Bryan Sykes and Mrs Jeniece Nelson-Brown for Crown

Leroy Equiano for Appellant

REGINA V CARLTON TAYLOR

November 22, 2000 and December 20, 2001

HARRISON, J.A:

This appellant was convicted in the Home Circuit Court on the 10th of March 1999, of the offence of murder of Paul Harris on 13th October 1996, and sentenced to a term of imprisonment for life. Having heard the arguments we allowed his appeal, quashed his conviction and sentence and entered a verdict of acquittal. These are our reasons in writing.

The facts are that on 13th October 1996, at about 1:30 p.m. prosecution witness, Det. Inspector Derrick Knight, was driving his private Volkswagen motor car along Langard Avenue, in the parish of St. Andrew, going towards Maxfield Avenue. He reached in the vicinity of Gold Crown bar, a spirit licensed premises, when he heard two explosions. He stopped his motor vehicle in front of the

premises. He saw two men, each with a gun in his hand, run from the premises. He recognized one of them, the appellant known to him as "John Bull". He had known him for about four years. He would sometimes see him twice weekly and sometimes once monthly. He last saw him "a week or two" before the incident. When he first saw the men run from the bar, they were 15-18 feet from him. He reached for and pulled his gun from his foot holster. When the men were then 10-12 feet from the witness they turned aside and ran down Langard Avenue. He chased them. He was then able to see the sides of the men's faces and backs only. They ran into premises. The witness ran back towards his car, entered the bar and saw the body of the deceased lying on the floor, on the customer's side with gunshot wounds. Other police officers were summoned. They searched the area, but did not find the appellant. A warrant was prepared for his arrest. On 28th October 1996, Det. Inspector Knight saw the appellant sitting in the C.I.B. office at the Hunts Bay Police Station, and pointed him out as one of the men whom he saw run from the said bar with a gun on 13th October 1996.

Mr. Equiano, with the leave of the court argued the following grounds:

1. The learned trial judge ought to have stopped the case at the end of the prosecution's case.

2. Having allowed the case to proceed the learned trial judge failed to point out the weakness in the Crown's case of identification.

3. Learned trial judge did not deal adequately with case for defence.

In advancing his argument on ground 1, Mr. Equiano stated that even though the witness is alleged to have recognized the appellant, he did so whilst the appellant was running over a distance of at most 8 feet. Consequently, it is erroneous to say that he was able to observe the appellant for a period of as much as 4-5 seconds. This was a mere fleeting glance. On the principle of the ***Turnbull*** guidelines the appellant should not have been called upon at the close of the prosecution's case.

In our view this is a well-worn path. This Court has consistently adopted and followed the principles laid down in ***R v Turnbull*** [1976] 3 All E.R. 549, with regard to the proper approach of the trial judge in a case dependent on visual identification. Whenever the evidence connecting the accused to the crime consists of visual identification in circumstances which amount to a mere fleeting glance, and there is no other evidence in support thereof, the learned trial judge has an obligation, on his own initiative, to withdraw the case from the consideration by the jury, at the close of the prosecution's case.

In the instant case, on a consideration of the facts most favourable to the prosecution, the prosecution witness was able to observe the appellant for a period of time while he the appellant traversed, running, a distance of approximately 8 feet. The witness would have been 18 feet away when he first saw the appellant, and 10 feet away when the appellant turned aside. In those circumstances, we agree with the observation of counsel for appellant that, whilst running, the appellant would have taken about two or three strides to

cover the distance of 8 feet. The witness could not therefore have been able to see the appellant's face for "4 to 5 seconds", but for a much less period of time. While the men were being chased by the witness, he saw their backs, and a side view for about three to four seconds. In our view, the opportunity which the witness had to see who he claimed to be the appellant was a mere fleeting glance.

The rationale for this approach is the appreciation that mistakes are made in the conduct of ordinary human affairs. This is so even in instances of cases of recognition where the accused is alleged to have been known previously by the identifying witness. Consequently, in ***R v Turnbull*** (supra) Lord Widgery, C.J., enunciating the guidelines for a trial judge, at page 543, said:

> "When in the judgment of the trial judge, the quality of the identifying evidence is poor, as for example when it depends solely on a fleeting glance or on a longer observation made in difficult conditions, the situation is very different. The judge should then withdraw the case from the jury and direct an acquittal unless there is other evidence which goes to support the correctness of the identification."

A trial judge is therefore required himself to make an assessment of the quality of the evidence, as a preliminary issue, and then make a further determination whether or not to leave it to the jury for them to decide the ultimate issue of guilt or otherwise of the accused. Consequently, he has to consider certain factors in order to make that determination, namely, inter alia, the lighting at the relevant time, the length of time the witness had to observe the assailant, the circumstances existing when the observation was made, whether or not the

assailant was recognized as known before by the witness and whether there is any other evidence "to support the correctness of the identification." A mature consideration of those factors will usually assist the trial judge in coming to a proper conclusion as to whether or not he should withdraw the case from the jury. (See also ***Evans (Kenneth) v R*** (1991) 39 WIR 290).

On the facts of the instant case, the learned trial judge had a duty to take away the case from the consideration of the jury at the close of the case for the prosecution and he failed to do so. This ground therefore succeeds.

In view of our decision on this ground, we deem it unnecessary to expose our thoughts on the remaining ground of appeal.

Accordingly, the appeal is allowed, the conviction and sentence are set aside and a verdict of acquittal is entered.