[2012] JMCA Crim 14

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 68/2009

BEFORE: THE HON MR JUSTICE MORRISON JA
THE HON MR JUSTICE DUKHARAN JA
THE HON MRS JUSTICE McINTOSH JA

RICHARD CRAWFORD v R

Ravil Golding for the applicant

Mrs Tracy-Ann Johnson and Miss Christine Johnson for the Crown

24 November 2011 and 30 March 2012

MORRISON JA

Background

[1] The applicant seeks leave to appeal against his conviction and sentence for the offence of murder in the Home Circuit Court on 20 May 2009. He was sentenced to imprisonment for life and the learned trial judge, Beckford J, stipulated that he should serve 35 years before becoming eligible for parole.

[2] The application for leave to appeal was initially considered on paperon 29 September 2009 by a single judge of this court, who refused leave on the ground that the trial judge had dealt adequately with the issues of identification and credibility

which arose in the case. The applicant has now, as he is entitled to do, renewed his application before the court itself.

The trial

[3] The facts of the case as they emerged at the trial can be shortly stated. The deceased is Mr Ainsworth Charlton, also known as 'Preckle'. He was shot and killed on 10 October 2004 at a dwelling house on Acacia Avenue in the parish of St Andrew and the applicant's conviction for his murder was based on the evidence of a single eye-witness, Miss Melrose Copeland.

[4] Miss Copeland testified that at about 8:30 on the night in question the deceased, who was her very good friend, was visiting with her at her home at Acacia Avenue. She left the house, accompanied by the deceased, to summon a taxi to take her mother and her daughter, who were also visiting, to their home. When she returned with the taxi to collect them, the deceased walking behind her while talking to her, she saw two men in her yard, standing right beside the verandah, at a distance pointed out by her in court and estimated to be about 14 feet. She was able to see the men from a light on her verandah which, she said, focused into the yard close to where the men were standing. Further illumination was provided by a street light at the gate to the premises about 20 feet away from the verandah. The two men then approached her from the verandah and stepped across the gate, at a distance of about 2 feet from her while she and the deceased stood there talking still. The deceased then announced that he too

and the deceased stood there talking still. The deceased then announced that he too was going home and turned towards the house, when Miss Copeland saw the two men, who were now on either side of her, "dip in dem waist" and "go up on" the deceased as he went on to the verandah. And then, she said, "I hear pure shot start fire, and I hide and looking at them". From where she took refuge beside the taxi, she continued to observe the two men and after the shots had subsided she saw them, at this point from a distance of about 23 feet, "jump on two bicycles and ride away". Afterwards, she observed the bleeding body of the deceased lying on the ground and he appeared to be dead. The subsequent post mortem examination revealed that the deceased had succumbed to multiple gunshot wounds to his body (a total of eight in all).

[5] Miss Copeland identified the applicant, who was known to her as 'Red Rat', as one of the two men and the other as a man known to her as'Lussan'. Her evidence was that she had had the applicant under observation for about "10 or 20 minutes"while he was standing by the verandah in her yard, though she agreed in cross-examination that "the whole thing happened very quickly" and that she had spent most of the time hiding to avoid being shot herself. She nevertheless insisted that the applicant and Lussan were the men who had shot the deceased in her yard on the evening in question. Asked how long she had known the applicant before the day of the murder, Miss Copeland's answer was that "I don't really know him, I only see him, a long time"; that is, she said, "about two years". She would usually see him every day on Friendship Lane, which was very close to Acacia Avenue, and she had last seen him face to face on

the Friday before the incident, though she did not speak to him. She knew that the applicant had a child living in the area and that the child's mother's name was 'Bev' (the mother's name, but not the child, was disputed by the defence). In cross-examination, it was put to Miss Copeland, who agreed, that at the preliminary enquiry she had said that she had first started seeing 'Red Rat' "earlier in 2004". But at the trial she nevertheless maintained that she knew the applicant before 2004, and when it was suggested to her that maybe she did not know him at all, her answer was an emphatic, "Mi know him, mi know him."

[6] Miss Copeland did not make a report to the police immediately after the killing because, she told the court, she was afraid. But on 26 May 2005, some seven months later, after the applicant had been picked up in a police operation in the area, Miss Copeland received a telephone call from Detective Sergeant Leighton Bucknor, as a result of which she went, firstly, to the Stadium Police Station, where she gave a statement, and then to the Half-Way-Tree Police Station. There, she saw and pointed out the applicant, who was then in police custody, as 'Red Rat', one of the two persons who had shot and killed the deceased on 10 October 2004.

[7] Sergeant Bucknor's evidence was that on 26 May 2005 he was a member of a team of policemen and military personnel conducting a raid on the Friendship Lane area of Kingston. Several men were taken into custody during the raid. As Corporal Bucknor escorted a group of about three of them to a waiting military truck, a lady came up to him, said something and then pointed out one of these men to him. As it turned out,

according to the officer's testimony, this lady was Miss Copeland and the man she had pointed out was the applicant. The applicant identified himself to Sergeant Bucknor as "Richard Crawford otherwise called 'Red Rat'". Both Miss Copeland and the applicant were then taken by Sergeant Bucknor to the Stadium Police Station and handed over to other police officers there.

[8] When he was cross examined, Sergeant Bucknor categorically denied having made contact with Miss Copeland by telephone before or on 26 May 2005; having spoken to her on that day at the Half-Way-Tree Police Station; or having seen her point out the applicant at the station on that day. He maintained that Miss Copeland had in fact pointed out the applicant to him on Friendship Lane in the circumstances he had already described. In response to a suggestion put to him, Sergeant Bucknor accepted that he had said in his police statement that, in the presence and hearing of the applicant, Miss Copeland had said to him that "...this man known to me as Red Rat and another man known as Bomb Blast shot and killed [the deceased]". However, in cross-examination, he insisted that that was an error on his part, as Miss Copeland had not mentioned the name 'Bomb Blast' to him at all.

[9] Giving sworn evidence in his defence, the applicant denied any involvement in the deceased's murder and set up an alibi, which was that at the material time he had been at his aunt's home on Friendship Lane assisting her with her cooking. He was not called 'Red Rat' and he did not tell Sergeant Bucknor that he was known by that name. He did not know Acacia Road and the first time he had ever seen Miss Copeland was at

the Resident Magistrate's Court in Half-Way-Tree. He was, he said, being framed by Miss Copeland and Sergeant Bucknor.

[10] The learned trial judge then summed up the case to the jury, after which the jury returned a verdict of guilty and sentence was passed on the applicant in the manner already indicated.

The appeal

[11] Mr Golding initially sought leave to argue three supplemental grounds of appeal as follows:

> "1. The Learned Trial Judge did not adequately assist the jury in identifying the major discrepancies and inconsistencies contained in the evidence of the witnesses and how to deal with them thus resulting in the Applicant not receiving a fair trial.
>
> 2. The Learned Trial Judge fell into error when she directed the jury thus: "So, I can't tell you what inference you must draw. Where the evidence is capable of two interpretations I leave the two interpretations to you and you look over the whole picture and decide which one you are going to take."...The Learned Trial Judge was thereby implying that the jury was obliged to accept one of her interpretations.
>
> 3. The sentence of life imposed on the Appellant with the recommendation that he should spend thirty-five (35) years before being eligible for parole was manifestly excessive having regard to the fact that the Appellant had at the time of sentence spent four years already in custody."

[12] On his feet, Mr Golding added a fourth ground, which he formulated in this way:

> "The learned trial judge fell into error when she failed to direct the jury that, in the circumstances of this case an identification parade was necessary and that the absence of such a parade deprived the applicant of the advantage of an inconclusive parade."

[13] Leave having been granted as prayed in respect of all four supplemental grounds,Mr Golding made an omnibus submission, embracing grounds one and two and the added ground four. He referred us to the conflict between the evidence of Miss Copeland, who said that the applicant had been known before by her for two years as 'Red Rat', and the applicant, who denied that he was known by that name and also denied that he and the witness were previously known to each other. He pointed out the discrepancy between the evidence of Miss Copeland and Sergeant Bucknor as to the circumstances in which the applicant had been identified to the police officer by Miss Copeland and complained that the trial judge had misdirected the jury as to how to "deal with discrepancies", in that the judge had implied to the jury that they were obliged to accept one or other of two interpretations of the evidence advanced by her. And lastly on these grounds, Mr Golding complained that, in the light of the uncertain circumstances in which the applicant was identified by Miss Copeland, an identification parade should have been held and that, by the failure to do so, the applicant had been deprived of the potential advantage of an inconclusive parade. At the very least, Mr Golding submitted, the judge should have advised the jury of the desirability of holding an identification parade and explained to them the disadvantage which the applicant had faced as a result of one not having been held.

[14] On ground three, Mr Golding submitted that the trial judge's stipulation of 35 years as the minimum period before eligibility for parole rendered the sentence imposed on the applicant manifestly excessive.

[15] Responding for the Crown, on ground one, which related to the judge's treatment of inconsistencies and discrepancies, Mrs Johnson submitted that the judge had dealt adequately with this issue in her summing up. In this regard, she identified a number of passages in the summing up, to some of which we will in due course return, in which, it was submitted, the judge had addressed the matter. Mrs Johnson also referred us to the decision of this court in ***Rudolph Fuller v R*** (SCCA No 55/2001, judgment delivered 19 December 2003).On ground two, Mrs Johnson referred us to the decisions of this court in ***R v Warwar*** (1969) 11 JLR 370 and ***R v Fray Deidrick*** (SCCA No 107/1989, judgment delivered 22 March 1991), in which directions in terms virtually identical to those given by Beckford J in the instant case were explicitly regarded as acceptable by this court. Mrs Johnson urged similar treatment of the summing up in this case. And finally, as regards ground four, Mrs Johnson submitted that an identification parade would have served no useful purpose and, on the alleged confrontation, she referred us to ***R v Trevor Dennis*** (1970) 12 JLR 249, which was a case in which this court gave some guidance on the issue. In any event, Mrs Johnson submitted, the judge had dealt with the issue, not only adequately, but generously, in her summing up on the point.

[16] In a brief reply, Mr Golding sought to distinguish ***R v Trevor Dennis*** on its facts, pointing out that in that case the confrontation of which complaint was made had occurred not too long after the incident in question.

Discussion &analysis

Ground one (inconsistencies and discrepancies)

[17] The learned trial judge dealt with the issue of inconsistencies and discrepancies at several points in her summing up. Mrs Johnson very helpfully identified some of the relevant extracts as follows.

[18] Early in the summing up, the judge told the jury this:

> "Now, in most criminal trials it is always possible to find inconsistencies and or contradictions in the evidence of witnesses.
>
> These may be slight or serious, material or immaterial. If the inconsistencies, for example, what do I mean? I mean where a witness would say one thing at one point, in examination-in-chief, for example, the witness may say, I didn't go into the car but in cross-examination she said she went into the car, that is an inconsistency. You understand? I am trying to give [an] example.
>
> Now, if you find that it is a slight inconsistency and doesn't really affect the credibility of the witness at all, that is what you have to find. Though, you know, I can't tell you that it is slight and I can't tell you that it is serious. It is you, as judges of the facts, have to determine for yourself [sic] whether or not a particular inconsistency is slight or serious. If the inconsistency is slight, you the jury, will probably think that it doesn't really affect the credibility of the witness concerned.

> On the other hand, if they are serious, if you say, no, no, this is a very serious discrepancy or inconsistency, you may say because of it, it is not safe to believe the witness on that point or at all."

[19] To this general admonition, the judge added the following shortly afterwards:

> "Now, differences in the evidence of witnesses are to be expected since in observation, recollection and expression, the acts of individuals vary. The purpose of cross-examination is to seek out conflicts in the evidence and to provide material for the suggestion that the truth has not been spoken.
>
> But whether there has been an honest mistake or a wicked invention is a matter only for you, only you can determine that. You are the sole judges of the facts. So, I have given you the basic tenets on which you are going to look at the evidence that was adduced."

[20] Later still, this time in the context of her review of the evidence, the judge reminded the jury of Miss Copeland's evidence in cross-examination, in which she had admitted that at the preliminary enquiry she had told the court that the first time she had seen the applicant was early in the year 2004, as against her evidence at the trial that she would usually see him every day for about two years and that she had last seen him on the Friday before 10 October 2007. This was, the learned judge said, "a discrepancy, you have to look at that".

[21] After a detailed review of the evidence, the judge then returned to the question of discrepancies and inconsistencies, saying, "I do not intend to comb through the evidence and deal with every discrepancy but I will point out some of them and if you

remember others that I have left out then you deal with them in the manner I have told you". The jury were then specifically reminded of the unusually stark discrepancy between the evidence of Miss Copeland and Sergeant Bucknor as to whether they had been together at the Half-Way-Tree Police Station at any time; and they were also reminded of the inconsistency in the evidence of Sergeant Bucknor as regards whether the witness had told him initially that another man known as 'Bomb Blast' had killed the deceased.

[22] The learned judge then posed a rhetorical question to the jury, "[s]o what is the purpose of it?", to which she provided the answer as follows:

> "Purpose of it is this, that you use it to determine whether or not a witness is a believable person. Because you are saying if the person said something this time and says a different thing at another time, it is likely that the person is not speaking the truth. So, that is what I meant when I say cross-examination is to put out evidence to say the truth has not been spoken. So, that is what these bits of evidence are put before you for. Remember, I told you you are going to deal with the question of credibility. And, I have told you that the evidence or the statements of witnesses can vary."

[23] And finally, the judge said this:

> "I cannot assist you more than to point it out to you that these are discrepancies in the evidence and you will have to determine how you deal with those things because they are discrepancies, because she is saying different things to you. It is not a matter of what she is saying to somebody else it's what she is saying to you. She giving [sic] two different versions as to where she was. Because why I point this out, because remember it is going to be important in terms of helping to assist with the identification because she is saying

> she was there hiding she saw the men shooting. Remember she say [sic] she saw them jump on bicycles and ride away. But, of course, it is a matter for you what weight you put on it. I can't tell you, you must say it is serious or I can't tell you to say it is slight. You alone can determine what weight to put on it, I only bring them forward for your attention.
>
> You remember I told you that when you -- I think I just told you, that when a person says one thing at one time and another thing at another time unless the person admits that what they said at the other time is the truth, then you cannot say that is the truth. And, it is for you to determine whether any or all of these inconsistencies cause you to find the witness believable or unbelievable. A matter for you.And, I told you before you have to be very careful in relation to both the identification as well as the credibility evidence because Miss Copeland is the sole eyewitness, all right."

[24] In ***Rudolph Fuller v R***, Panton JA (as he then was) referred to and quoted with approval (at page 14) the following statement by Carey JA(at page 9) in ***R v Fray Deidrick***:

> "The trial judge in his summation is expected to give directions on discrepancies and conflicts which arise in the case before him. There is no requirement that he should comb the evidence to identify all the conflicts and discrepancies which have occurred in the trial. It is expected he will give some examples of the conflicts of evidence which have occurred in the trial, whether they be internal conflicts in the witness' evidence or as between different witnesses."

[25] We consider that this statement is equally applicable to the instant case. In our view, the passages from the learned trial judge's summing up to which we have referred above were more than adequate to bring home to the jury the importance

which they should attach to discrepancies and inconsistencies. This ground of appeal accordingly fails.

Ground two (the judge's directions on inferences)

[26] Mr Golding's complaint on this ground was that, by directing the jury that "I can't tell you what inference you must draw...[w]here the evidence is capable of two interpretations I leave the two interpretations to you and you look over the whole picture and decide which one you are going to take", the judge was telling the jury that they were bound to accept one of her interpretations. In considering this complaint, it may be helpful to recall the context in which the learned judge's remark was made, which was at the outset of her directions on the drawing of inferences. The full passage reads as follows:

> "Now, drawing inference amounts to finding facts, and I cannot tell you what facts you are to find. So, I can't tell you what inference you must draw. Where the evidence is capable of two interpretations I leave the two interpretations to you, and you look over the whole picture and decide which one you are going to take."

[27] Taken in context, it appears to us that the statement complained of by Mr Golding is wholly innocuous, the judge having made it clear to the jury that the drawing of inferences, subject only to the question of reasonableness, was a matter entirely for them. A direction along similar lines was in fact expressly approved by this court in ***R v Fray Deidrick*** (see per Carey JA at page 12; see also ***R v Warwar***, page378 – 379).

[28] But in any event, it also seems to us that this complaint must be regarded as a purely academic or theoretical one, in light of the fact that, despite his criticisms of Beckford J's formulation, Mr Golding found himself quite unable to call to our attention any interpretation of the evidence which was potentially favourable to the applicant but was not dealt with by the judge in her summing up. This ground must therefore fail as well.

Ground four (identification)

[29] The defence being one of alibi, identification was clearly the critical issue in the case. No complaint is - or could possibly be - made of how Beckford J dealt with the issue of identification in general, in the light of her full and careful directions on identification along standard ***Turnbull*** lines (***R v Turnbull*** [1976] 3 All ER 549). Thus, the jury was warned as to the special need for caution before convicting in reliance on evidence of identification; the reason for this, that is, the possibility that an honest witness and "even an apparently convincing witness can be mistaken", was explained to them; and the jury was told that this caution was equally applicable to recognition cases, of which the instant case was one. After inviting the jury to "examine carefully the circumstances in [which] the identification witness, Melissa Copeland, made her identification", the judge then reminded them in admirable detail of Miss Copeland's evidence as regards (i) the time during which she had had the applicant under observation; (ii) her state of mind during the attack on the deceased; (iii) the distance from which she was able to observe the applicant; (iv) the state of the lighting; (v)

whether her view of the applicant was obstructed in any way; and (vi) whether the applicant had been previously known to her.

[30] However, Mr Golding did complain (albeit somewhat faintly, as he did not file a ground specifically raising this point) that, on Miss Copeland's version of the circumstances in which she had first pointed out the applicant to Sergeant Bucknor, there would have been an improper confrontation.

[31] In giving the judgment of the court in ***R v Trevor Dennis***, Shelley JA made reference to ***R v Gilbert*** (1964) 7 WIR 53. That was a case in which a portion of a currency note was snatched from the complainant by a man who was subsequently identified as the defendant. A few days afterwards, the complainant, who did not know the robber before the incident, went to the police station, where he saw the defendant sitting in a room in the station and immediately identified him as the person who had robbed him. The defendant's appeal was allowed, Lewis JA, who spoke for the court, observing (at page 56) that "[t]he court feels strongly that this method of identification is a most improper one…".

[32] On the other hand, in ***R v Trevor Dennis*** itself, the complainant and his family were robbed at home in an incident which lasted for some 10 – 15 minutes. Immediately after the robbery, the complainant gave a description of the robber to the police and, within half an hour or so, the defendant was apprehended by the police about 20 – 25 chains from the complainant's home. The police then brought the defendant back to the complainant's home, where he was positively identified by the

complainant as the robber. In response to the defendant's complaint on appeal that this was an impermissible confrontation, Shelley JA observed (at page 250) that, although "identification on parade is the ideal way of identifying a suspect...it is not the only satisfactory way...[t]he particular circumstances of a case may well dictate otherwise". In that case, the court therefore considered(at page 250) that "the elements of time and distance between offence, description to the police, apprehension and identification and indeed the whole circumstances are so different as to make ***[R v Gilbert]*** inapplicable".

[33] In the instant case, it seems to us that there can be no doubt that, if the applicant was identified by Miss Copeland on Friendship Lane in the aftermath of the police raid on 26 May 2005, in the circumstances described by Sergeant Bucknor, the case would be governed, as Mrs Johnson submitted it was, by the authority of ***R v Trevor Dennis***. It would have been a spontaneous and unavoidable confrontation, which could not possibly be said to have been unfair to the applicant. But equally, it also seems to us, there can be no doubt that, if the circumstances of the identification were as described by Miss Copeland in her evidence, that is, that she identified the applicant while he was in police custody at the Half-Way-Tree Police Station, consequent upon Sergeant Bucknor's summons to her to go to the station, this would have been a wholly impermissible confrontation. Further, it would call for, at the very least, strong critical comment from the trial judge.

[34] Beckford J was clearly aware of the effect of a finding by the jury that the circumstances in which the applicant had been identified by Miss Copeland were as stated by her, rather than as stated by Sergeant Bucknor and she sought to deal with it in the following passage in her summing up:

> "Now, if you find that she did not point out the accused man at Friendship Lane but rather at Half-Way-Tree Police Station when she was taken there by Corporal [sic] Bucknor, then you may well come to the conclusion that such identification was unfair and unsafe; in which case, you would have to resolve the case in favour of the accused."

[35] It appears to us that in this passage the learned trial judge was not as expansive on the point as might well have been expected in the circumstances. (For instance, the jury might well have been further assisted by some kind of amplification of the reasons why identification in these circumstances was "unfair and unsafe".) In our view, however, what the judge did tell the jury was not only adequate, but not ungenerous to the applicant, since the crucial question for the jury's determination remained whether Miss Copeland was able to make an accurate identification of the applicant as one of the participants in the killing of the deceased.

[36] But the main thrust of Mr Golding's complaint on identification was that it would have been desirable for an identification parade to have been held in this case and that, none having been held, the judge ought to have given some directions about the omission to the jury. A similar situation arose in ***Goldson & McGlashan v R*** (2000) 56 W1R 444, a decision of the Privy Council on appeal from this court. There, as in the

instant case, everything turned on the correctness of the identification of the defendants by a single eye witness, who also claimed to have known them both for some time before the incident in question. It was contended on their behalf that an identification parade ought to have been held, in part because the defendants disputed the witness' claim that they were known to her before.

[36] The Board considered (at para. 18, per Lord Hoffmann) that, in determining whether an identification parade should be held or not, the principle to be applied was that stated by Hobhouse LJ (as he then was) in ***Reg v Popat*** [1998] 2 Cr App R 208, 215: that is, that in cases of disputed identification, "there ought to be an identification parade where it would serve a useful purpose". The Board confirmed that, where a defendant is well known to the witness, an identification parade would ordinarily be unnecessary and could indeed mislead the jury into thinking that it somehow supported the witness' identification of the defendant. Applying that test to the case under consideration, the Board concluded that, certainly in relation to one of the defendants, an identification parade might have been useful as a matter of good police practice in resolving the dispute whether the defendant, who had been identified solely by a nickname, was previously known to the witness. However, in the final result, the appeal on this point was dismissed, the Board taking the view that if the identifying witness was found by the jury to be a credible witness, after appropriate directions from the judge, the identification evidence had been clearly sufficient to support a conviction.

[37] In ***Ebanks v R*** [2006] UKPC 6, a later decision of the Privy Council to which Mrs Johnson quite properly referred us, the Board confirmed that in ***Goldson & McGlashan*** it had "accepted the proposition advanced...that the holding of an identification parade was desirable where the witness's [sic] claim to have known and recognised the subject is disputed", for the purpose in such a case of testing the honesty of the witness in her assertion that she knew the defendant (see per Lord Kerr, at para. 17).

[38] The Board returned to this issue again in ***Tido v The State*** [2011] UKPC 16, an appeal from the Court of Appeal of The Bahamas, in a judgment also delivered by Lord Kerr. The Board said (at para. 21) that -

> "...it is important to make clear that a dock identification is not inadmissible evidence per se and that the admission of such evidence is not to be regarded as permissible in only the most exceptional circumstances. A trial judge will always need to consider, however, whether the admission of such testimony, particularly where it is the first occasion on which the accused is purportedly identified, should be permitted on the basis that its admission might imperil the fair trial of the accused. Where it is decided that the evidence may be admitted, it will always be necessary to give the jury careful directions as to the dangers of relying on that evidence and in particular to warn them of the disadvantages to the accused of having been denied the opportunity of participating in an identification parade, if indeed he has been deprived of that opportunity. In such circumstances the judge should draw directly to the attention of the jury that the possibility of an inconclusive result to an identification parade, if it had materialised, could have been deployed on the accused's behalf to cast doubt on the accuracy of any subsequent identification. The jury should also be reminded of the obvious danger that a defendant occupying the dock might automatically be assumed by even

> a well-intentioned eye-witness to be the person who had committed the crime with which he or she was charged."

[39] In the instant case, although Miss Copeland's evidence was that the applicant was known to her for about two years before 10 October 2004, she delayed making a report to the police identifying him as one of the participants in the murder on that day for a full seven months after the event and, even then, again on her evidence, only as a result of her having been called to the police station, where she pointed out the applicant, who was in custody, to Sergeant Bucknor. The applicant not only denied knowing her before, but he also denied that he was known as 'Red Rat'. In these circumstances, we do not think that it can be said that an identification parade would have served no useful purpose. Given the time that had elapsed from the date of the murder, an identification parade would have fulfilled, firstly, what the Board described in ***Goldson & McGlashan*** (at para. 14) as its "normal function", that is, "to test the accuracy of the witness's [sic] recollection of the person whom [s]he says [s]he saw commit the offence"; and secondly, it would have served to test the honesty of Miss Copeland's assertion that she knew the applicant before 10 October 2004. No identification parade having been held, the applicant was therefore deprived of the potential advantage of an inconclusive parade. We accordingly consider that, in agreement with Mr Golding on this point, the judge should also have advised the jury of the desirability of holding an identification parade, explained to them the disadvantage which the applicant had faced as a result of one not having been held and reminded

them of the obvious danger that the applicant in the dock might automatically be assumed by the witness to be the person who had committed the crime.

[40] So the question that remains is, as in ***Goldson & McGlashan*** (para. 19), "whether the failure to hold a parade has caused a serious miscarriage of justice"? It seems to us that the answer to this question turns entirely, again as in that case, on whether, in the absence of a parade, the evidence of identification adduced by the prosecution was "too weak to support a conviction". In our view, once Miss Copeland was accepted by the jury, after appropriate directions from the judge, as a credible witness, her evidence clearly provided a sufficient basis for the applicant's conviction. On her evidence, the applicant was previously known to her, they were both residents of the same area of Kingston and the circumstances in which she identified him as a participant in the killing – which were not challenged in any way - were not such as to suggest that she could not have been in a position to make a reliable identification of the applicant. In a word, as Mrs Johnson submitted, the identification evidence in this case was strong. In the result, the jury believed Miss Copeland, as, having received careful and accurate directions from the learned trial judge, they were fully entitled to do. In our view, this ground therefore also fails.

Ground three - sentence

[41] At the time of his conviction in May 2009, the applicant was just a couple months short of his 26th birthday. He admitted to four previous convictions, arising out of two separate incidents, one in 2003 and the other in 2004. Both incidents involved

the use of violence by the applicant. The substantial consideration urged on his behalf in mitigation at his trial was that also advanced by Mr Golding on the hearing of this application; that is, that the applicant had been in custody for almost exactly four years before the trial. In passing sentence upon the applicant, the learned trial judge stated that she would take that fact into account, but that, in the light of the fact that the applicant had shown "absolutely no remorse", and the brutal nature of the attack on the deceased, she considered that a sentence of life imprisonment, in respect of which the applicant would be obliged to serve 35 years before becoming eligible for parole, was appropriate.

[42] In our view, no basis has been shown to disturb the sentence imposed by the learned trial judge. This was indeed a brutal and apparently unprovoked murder and we cannot say that the judge's stipulation of a minimum period of 35 years before parole was manifestly excessive in the circumstances.

Disposal of the case

[43] The application for leave to appeal is accordingly refused. The applicant's sentence is to commence from 20 August 2009.