JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 52/2003

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

STEVE REID v. R

Alanzo Manning for Appellant

Miss Paula Llewellyn, Deputy Director of Public Prosecutions and Mrs. Isolyn Reid Crown Counsel for the Crown

Oral Judgment

October 31, 2005

McCALLA,, J.A. (Ag.)

The Appellant was convicted in the High Court Division of the Gun Court in Montego Bay, St. James on the 11th September, 2003. Sentence was imposed of ten (10) years imprisonment on Count 1 and eighteen (18) years on Count 2. Mr. Jermaine Mowatt, the complainant, gave evidence that on the 10th of August 2002 at about 8 pm he was at the top of a street called 'Blood Lane', in St James when the appellant came up and shot him twice. At that time he had been speaking to a young lady and he told the court that he had known the appellant as 'little Stevie' for some ten to twelve years and he was accustomed to seeing

him every day during the week and that he knew him to live on 'Blood Lane' and also he gave the name of his (the appellant's) girlfriend.

His evidence was that he had seen the appellant some two hours before on the same day. On the night that he was shot, he told the Court that he was able to see his (appellant's) face. He was at arms length, and he had the opportunity to look at his face for about two minutes. This was after the appellant had shot the complainant.

In October 2002 the police took the complainant to the appellant and he was identified as being the person who had shot him and after the complainant identified him the appellant said "you don't get shot yet ?" and threatened to shoot him again. In cross examination the complainant was confronted with a police statement in relation to the time that he (the appellant) was alleged to have pulled his tam over his face whether it was before or after he had shot him. This was in contrast to the evidence that he had given in court that the tam had been pulled down after he was shot. The learned trial judge gave careful consideration to this discrepancy, in her summation. She dealt with it, she correctly identified the question of visual identification by recognition and she warned herself appropriately and her summation also revealed that she was aware that the appellant had been confronted by the police. During her summation she said that she was guided by the guidelines which were laid down in the case of ***R. v. Gavaska Brown and others.*** She was mindful of those

principles and said that in the particular circumstances of the case the fairness of the identification process was not was affected. She also in her findings accepted the words which were attributed to the appellant after he had been identified. Before us, Counsel Mr. Manning argued, that the trial was unfair because the learned judge did not properly advise herself on the guidelines laid down by the Court of Appeal in the ***Gavaska Brown*** case. The transcript clearly shows that Learned Trial Judge did refer to those guidelines and she said that she had the guidelines in mind. We are of the view that this Ground of appeal has no merit.

During the course of counsel's submissions he also dealt with Ground B which is to the effect that there was insufficient evidence to warrant conviction and sentence. Counsel pointed out to us the circumstances under which the identification was made and also the conflict in the evidence of the complainant between the statement given to the police and the evidence which was adduced before the court.

We are of the view that the learned trial judge took that into consideration and appropriately warned herself about the discrepancy. In our view there is no merit in that ground of appeal as well. With regard to the sentences imposed, we have regard to the circumstances under which the offences were committed where in a very brazen manner the appellant went up to and shot the complainant twice. Also having been identified, he spoke the words the Learned Trial Judge found that he did.

Under the circumstances we are not of the view that the sentences imposed were manifestly excessive. Consequently the appeal is dismissed and the convictions and sentences are affirmed. Sentences to run from the 11th of December 2002.