

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 130/94

BEFORE: THE HON. MR. JUSTICE RATTRAY, P.
THE HON. MR. JUSTICE PATTERSON, J.A.
THE HON. MR. JUSTICE BINGHAM, J.A.

REGINA vs. KERNEL SCOTT

Richard Small and Miss Tana'ania Small for the appellant

Hugh Wildman, Deputy Director of Public Prosecutions, and
Miss Donna Marie Parkinson for the Crown

February 16 - 20 and June 2, 1998

PATTERSON. J.A.:

On the 30th November, 1994, the appellant was convicted in the Home Circuit Court of the murder of Roland Gurdon on the 4th December, 1993, in the parish of St. Mary. On the 20th February, 1998, we allowed his appeal, quashed the conviction, and set aside the sentence. In the interest of justice, we ordered a new trial to take place at the next ensuing session of the Home Circuit Court. These are our reasons for so doing.

The most important issue in the case was the identification of the appellant. The Crown's case was based partly on circumstantial evidence and partly on the evidence of Jason McLean, a thirteen year old boy, who testified seeing the appellant stab the deceased three times in the stomach. He did not

know the appellant before that day, and he failed to point him out on an identification parade held on the 14th December, 1993. However, he made a dock identification of the appellant at the preliminary hearing into the charge and at the trial. Another witness, Leslie Hinds, supplied an important link in the circumstantial evidence. He testified seeing the appellant at the relevant time in close proximity to the murder scene. He did not attend an identification parade, but he made a dock identification. The appellant's case was that the witnesses were mistaken in their identification and he put forward an alibi.

The main ground of the appellant's appeal against conviction was directed at the admission of the dock identification evidence and the way in which the learned trial judge left the issue to the jury. It was also contended that the learned trial judge misquoted the evidence and misdirected the jury in his summing-up of the case.

In light of the court's decision, we do not wish to give details of the Crown's case, and of the learned trial judge's summing-up. Suffice it to say that we were of the view that the learned trial judge misdirected the jury on material aspects of the evidence and also on the question of certain aspects of the law. This court will not lightly interfere with the verdict of a jury, but where there are material misdirections by the judge, the appeal must be allowed and the verdict of the jury set aside. In our view, the evidence adduced by the prosecution was sufficient to justify a conviction by a reasonable jury, properly directed. In ordering a new trial, we were not unmindful of the length of time that has elapsed since the committal of the offence, but having regard to the

strength of the evidence, and the seriousness of the offence, we concluded that the interest of justice required that a new trial be ordered. We were guided by the principle that "the interest of justice that is served by the power to order a new trial is the interest of the public in Jamaica that those persons who are guilty of serious crimes should be brought to justice and not escape it merely because of some technical blunder by the judge in the conduct of the trial or in his summing-up to the jury" (per Lord Diplock in *Reid v. R.* [1978] 27 W.I.R. 254 at 258). We would like to make it abundantly clear that we express no views as to the guilt or innocence of the appellant; that is a matter for the jury that will hear the case.