COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
MCCrApp No. 109 of 2022

B E T W E E N

JAVAUGHN CHARLTON

Appellant

AND

THE COMMISSIONER OF POLICE

Respondent

BEFORE: **The Honourable Sir Michael Barnett, P**
The Honourable Mr. Justice Isaacs, JA
The Honourable Madam Justice Crane-Scott, JA

APPEARANCES: **Mr. Ryszard Humes, Counsel for the Appellant**

Ms. Linda Evans, Counsel for the Respondent

DATES: **24, 26 October 2022; 10 November 2022**

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Criminal appeal – Possession of an unlicensed firearm – Identification – Quality of the identification - Dock identification – Fleeting glance – Uncorroborated identification in fleeting circumstances

Around 9:30pm on 11 January 2020 a vehicle with three people traveling therein was stopped by the police. One of the persons exited the vehicle and ran away. That person was chased by one of the officers who saw him discard an object. The officer did not catch the person. The discarded object was retrieved and was discovered to be a firearm. The appellant was identified by the officer as the person that exited the vehicle and ran away. He, along with two others, those alleged to have remained in the vehicle, were arrested and charged with possession of an unlicensed firearm and possession of ammunition.

The officer's evidence was that during the chase the appellant looked back at him for about two to three seconds, and this was not the first time he had seen the appellant. The appellant was convicted of possession of an unlicensed firearm and appealed his conviction and sentence.

Held: appeal allowed. Conviction and sentence quashed.

The locus classicus case of R v Turnbull outlines the factors to be considered whenever a case depends on identification evidence. These factors require a consideration of the circumstances in which the identification was made and affect the quality of the identification.

Relative to the officer's identification of the appellant, no identification parade was conducted; the officer identified the appellant in the dock. No evidence was led as to how long the officer knew the appellant or the last time he saw him. The identification of the appellant was a fleeting glance, made at night. In essence, the identification evidence was poor and was uncorroborated. In the circumstances, the Court determined that the conviction was unsafe.

Junior Reid v The Queen [1990] 1 A.C. 363 applied
R v Turnbull [1977] Q.B.224 applied

REASONS FOR DECISION

Delivered by the Honourable Sir Michael Barnett, P:

1. On Wednesday, 26 October 2022 we allowed the appeal by the appellant against his conviction for possession of an unlicensed firearm.

2. We gave a brief explanation for our reason for doing so and undertook to give a fuller judgment as to why we allowed the appeal.

3. The appellant was charged with two other persons as being concerned together in the possession of a firearm and in possession of ammunition without a licence.

4. The prosecution's case was that around 9:30 pm on 11 January 2020 the three persons were in a vehicle. The car was stopped by the police. A person alleged to be the appellant exited the car and a policeman, Officer Rolle, gave chase. He saw the person throw an object to the ground which was recovered and said to have been a firearm.

5. Officer Rolle did not catch the person. At the trial he identified the person as the appellant. In his judgment, the magistrate summarily summed up the evidence of identification as follows:

> **"The issue of whether it was a 'fleeting glance' can be answered in the words of the witness PC Rolle 'this is not the first time I saw him'. 'He looked back at me for about three seconds then run (sic). He was faster than me!'**
>
> **Therefore I conclude that the issue can be answered as 'no' and the identity of the defendant Javaughn Charlton**

was not only by dock identification. No ID parade was held and does no real damage to the identification."

6. He went further:

> **"The credibility of the witness P/C Rolle was not challenge (sic) by the defence as to his honesty or even his mistaken beliefs, as the question of reliability and credibility as deliberately lying. No indication even of motive of this police officer fabricating a case against (sic) Defendants. Noted in Turnbull case and Brown vs The State 2012 UKPC2."**

7. The evidence led by the prosecution was that the lighting came from a headlight of the car and a porch, and that the appellant was 2 to 3 feet in front of him.

8. The only evidence of identification was the evidence of Officer Rolle, elicited under cross examination by attorneys for the other defendants, that the appellant, Charlton, turned around for three seconds and that this was not the first time that Officer Rolle saw the appellant.

9. Officer Rolle was not re-examined. No evidence was led as to how long Officer Rolle knew the appellant or the last time he saw the appellant.

10. Officer Rolle never identified the appellant in an identification parade. The first time Officer Rolle identified the appellant was the dock identification made during the trial.

11. In **R v Turnbull** [1977] Q.B. 224 the jurisprudence with respect to identification evidence was discussed. Lord Widgery said at page 228:

> **"Each of these appeals raises problems relating to evidence of visual identification in criminal cases. Such evidence can bring about miscarriages of justice and has done so in a few cases in recent years. The number of such cases, although small compared with the number in which evidence of visual identification is known to be satisfactory, necessitates steps being taken by the courts, including this court, to reduce that number as far as is possible. In our judgment the danger of miscarriages of justice occurring can be much reduced if trial judges sum up to juries in the way indicated in this judgment.**
>
> **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? …

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.

All these matters go to the quality of the identification evidence. If the quality is good and remains good at the close of the accused's case, the danger of a mistaken identification is lessened, but the poorer the quality, the greater the danger.

In our judgment when the quality is good, as for example when the identification is made after a long period of observation, or in satisfactory conditions by a relative, a neighbour, a close friend, a workmate and the like, the jury can safely be left to assess the value of the identifying evidence even though there is no other evidence to support it: provided always, however, that an adequate warning has been given about the special need for caution…

…

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…" [Emphasis added]**

12. In this case, there was a fleeting glance of three seconds that occurred at night.

13. In his judgment, although he refers to **Turnbull,** the magistrate does not record that he had any regard to those factors, which, if it were a jury trial, a trial judge would have been obliged to draw to the attention of the jury, particularly how long Officer Rolle knew the appellant and how often had he seen him. Had he seen him only once before? Was the last time two or three years ago? How close was he to the appellant when he saw him before? As this was a summary trial by magistrate alone, the issue of prejudice does not arise.

14. Moreover, there was no explanation given as to why an identification parade was not held to enable Officer Rolle to pick out the appellant from "like looking persons". In her submissions in support of the conviction by the magistrate, counsel for the respondent said:

> **"It is respectfully submitted that the Learned Magistrate did not err when he allowed the identification as the officer who identified the Appellant was not seeing him for the first time in Court and he was known to him. If the witness was a civilian witness who had allegedly witnessed the transactions but did not attend an Identification Parade that would not have been permissible without the proper foundation being laid."**

15. It is not clear what counsel for the Crown was advancing in that part of her submission. To the extent that it was suggesting that because Officer Rolle was a police officer his uncorroborated identification in fleeting circumstances was sufficient without more to support a conviction, we can do no more than to repeat what the Privy Council said in **Junior Reid v The Queen** [1990] 1 A.C. 363 at 392:

> **"…In their Lordships' view this was a classic case where the uncorroborated identifying evidence was so poor, depending solely on fleeting glances and further made in difficult conditions, that the judge should have withdrawn the case from the jury at the end of the prosecution evidence and directed an acquittal. Although the judge stressed that the witness was a police officer, and suggested that his ability to identify people could well be greater than that of an ordinary member of the public, experience has undoubtedly shown that police identification can be just as unreliable and is not therefore to be excepted from the now well established**

> **need for the appropriate warnings. [The DPP] very properly accepted that if these appeals were to be allowed and the convictions quashed for the reasons set out above, it would be quite inappropriate to order a retrial."**

16. In that case the police officer had the suspects under observation for seven seconds and four seconds respectively.

17. In our judgment, the fact that the identification witness was a police officer did not negate the need for an identification parade. The magistrate's observation in his judgment that the failure to hold an identification parade did "no real damage to the identification" is, in our judgment, simply wrong.

18. If this were a jury trial, given that there was no other evidence of identification other than the fleeting glance and the police saying, without more, that this was not the first time that he saw the appellant, a judge would have been obliged to withdraw the case from the jury and direct an acquittal.

19. For these reasons, we considered the conviction as unsafe and allowed the appeal and quashed the conviction and sentence.

The Honourable Sir Michael Barnett, P

The Honourable Mr. Justice Isaacs, JA

The Honourable Madam Justice Crane-Scott, JA