IN THE COURT OF APPEAL OF BELIZE A.D. 2024
CRIMINAL APPEAL NO. 15 OF 2018

CACVAPP2018-015

BETWEEN:

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ORVIN WADE

APPELLANT

AND

THE KING

RESPONDENT

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Before:

The Hon. Mde. Louise Esther Blenman	Chief Justice
The Hon. Mde. Sandra Minott-Phillips	Justice of Appeal
The Hon. Mr. Peter Foster	Justice of Appeal

Appearances:

Hubert Elrington, Senior Counsel, and Mr. Norman Rodriguez, on behalf of the Appellant

Mr. Cecil Ramirez, Senior Crown Counsel, on behalf of the Respondent

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2024:   March 6

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NOTE OF ORAL JUDGMENT

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Introduction

[1]   **BLENMAN, CJ:** This is the unanimous ruling of the court. This is an appeal by Mr. Orvin Wade ("Mr. Wade") against his conviction for the murder of Ms. Keisha Buller, where he was sentenced by Moore J. (the "Learned Trial Judge"), to life imprisonment with possibility of parole after twenty-five (25) years.

Background

[2]   Mr. Wade was charged with the offence of murder of Ms. Buller. The main eyewitness was Mrs. Humes, who had known Mr. Wade for eight years.

[3]   In the Court below, the case turned primarily on the identification evidence of the accused. Mr. Wade was tried in the absence of a jury, in accordance with **Section 65(A) of the Indictable Procedure Act, Cap. 96 of the Substantive Laws of Belize (Revised Edition),** as amended. The Learned Trial Judge was therefore the sole trier of fact and law.

[4]   There were a number of compelling circumstances that supported the eyewitness' evidence. He was convicted.

[5]   Mr. Wade having been convicted, appealed.

Grounds of Appeal

[6]   Three grounds of appeal arose, namely: (i) the verdict of the Learned Trial Judge was unsafe and unsatisfactory, and should therefore be set aside; (ii) the Prosecution did not prove, beyond a reasonable doubt, that the main witness had good enough eyesight to visually identify Mr. Wade properly and The Learned Trial Judge erred by permitting the prosecution to use dock identification as the means by which to prove that Mr. Wade was the person who inflicted the stab wounds on Ms. Buller; and (iii) the Learned Trial Judge did not properly direct the herself in relation to reliability of the identification evidence.

Issue on Appeal

[7]   From the grounds of appeal, the main issue that can be distilled is the treatment of the dock identification evidence by the Learned Trial Judge and whether the Learned Trial Judge acted lawfully in allowing the dock identification of Mr. Wade.

[8]   Learned Senior Counsel, Hubert Elrington S.C., and Learned Counsel, Mr. Norman Rodriguez, both filed written submissions and submissions in reply on behalf of Mr. Wade. Additionally, the Court benefited from the oral arguments of both Learned Counsel.

[9]   On behalf of the Crown, the appeal was resisted by Learned Senior Crown Counsel, Cecil Ramirez S.C., of the Office of the Director of Public Prosecutions, who also filed written submissions and advanced oral arguments to this Court.

Appellant's Submissions

[10]   In relation to the identification evidence relied on at trial, the gravamen of Elrington S.C.'s and Mr. Rodriguez's argument was that the Learned Trial Judge did not properly direct herself concerning the reliability of the dock identification evidence. They argued that that the verdict of the Learned Trial Judge was unsafe and unsatisfactory, and should therefore be set aside.

[11]   Elrington S.C. and Mr. Rodriguez relied on the **Archbold Criminal Pleading, Evidence and Practice 2008** at page 1505, which states that there is special need for a caution by the judge to the jury before convicting the accused in reliance on the correctness of the identification, and the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made.

[12]   In support of their arguments they relied on the decisions of **R v Turnbull (1977) QB 224, (1976) 3 ALL ER 549** and **R v Aurelio Pop (2003) UKPC 40.** In **Turnbull,** it was held that identification evidence can be unreliable and courts must take steps and give directions to the jury to reduce injustice. In **Aurelio Pop,** it was established the principle that a judge should direct the trier of fact of the dangers where no identification parade had been held and where a dock identification has been permitted.

[13]   Lastly, Elrington S.C. and Mr. Rodriguez also relied on the **Police Identification Parades Regulations of Belize, S.I. 118 of 2006** at paragraph 2, which credits identification parade evidence as being obtained in a fair and transparent manner so as to eliminate any risk if misdirection and miscarriage of justice. With that said, Elrington S.C and Mr. Rodriguez argued that an identification parade ought to have been held, which was purported to be the normal practice in Belize.

Respondent's Submissions

[14]   Senior Crown Counsel, Ramirez S.C., submitted that the Learned Trial Judge did not err in law when she allowed the Prosecution to use dock identification as a means to prove that the Appellant was the accused. Ramirez S.C. maintained that the Learned Trial Judge properly directed herself and fulfilled the requirements as indicated in the decision of **Max Tido v R [2011] UKPC 16,** as demonstrated in paragraphs 17 to 29, and paragraph 33 of the judgment.

[15]   Ramirez S.C. also pointed out that at paragraphs 24 to 29 of the judgement, the Learned Trial Judge addressed all the warnings a judge would normally direct jurors, and relied on the authorities of **R v Turnbull (1977) QB 224,** and **Aurelio Pop (2003) UKPC 40** respectively.

[16]   Ramirez S.C. made reference to the decision of **Max Tido v R [2011] UKPC 16,** which established that as a general rule, where the trial judge decides to admit the dock identification evidence, it is always necessary to give the jury careful directions on the dangers of relying on that evidence, warning the jury of the obvious danger that a defendant occupying the dock might automatically be assumed to have committed the accused crime. Counsel for the Respondent argued that the learned trial judge appropriately warned and directed herself in keeping with the principles in **Tido v R.**

Court's Analysis and Decision

[17]   This Court gave deliberate consideration to the oral arguments and written submissions of both sides, and also paid close attention to the record of the appeal and importantly, the judgment of the Learned Trial Judge, Moore J.

[18]   In relation to the main issue on appeal, on the question of the dock identification, and recognition, we are of the view, that having reviewed the evidence and having carefully perused the judgment of the Learned Trial Judge, we are satisfied that at paragraphs 16 to 33 of the closely reasoned judgment, the Learned Trial Judge was alive to her role as the trier of fact and law in the particular circumstances of this case.

[19]   The Learned Trial Judge said clearly that the case turned on the quality of the identification evidence and accepted that the recognition evidence to be interrogated was that of Mrs. Humes.

[20]   We have given further consideration to the complaints that were made during the oral submissions by Elrington S.C. and Mr. Rodriguez, and we are of the view that there is no basis on which we can properly impugn the judgment of the Learned Trial Judge.

[21]   At paragraphs 17 to 33 of the judgment, the Learned Trial Judge was very careful in her assessment of the evidence of Mrs. Humes both in examination-in-chief and cross-examination. Critically, the Learned Trial Judge was at all times alive to the relevant principles of law that were enunciated in **R v Turnbull (1977)** as well as **R v Aurelio Pop (2003) UKPC 40.**

[22]   In keeping with the principles of **R v Aurelio Pop (2003) UKPC 40,** the Learned Trial Judge warned herself appropriately and at all times about the care and caution that should be observed in circumstances where there is dock identification.

[23]   The Learned Trial Judge was also careful place on record the self-caution in so far as the conditions under which that identification/recognition was made. In this

regard, the Learned Trial Judge guided herself by the principles that were enunciated in **R v Turnbull (1977) QB 224.**

[24]   When one looks to the evidence at trial, and given the fact that Mrs. Humes had known the Mr. Wade previously for eight years, as well as all of the other circumstances in which the Ms. Buller was killed, in our view, the Learned Trial Judge was very careful in applying the relevant principles of law to the facts. This can be said in relation to the identification evidence and, more critically, as the Judge quite properly indicated, it was a case of the recognition branch of the **Turnbull** principles, on the basis that the main witness or the eyewitness had known the Mr. Wade for over eight years.

[25]   This Court, taking into account all of the circumstances, including the careful treatment of the evidence by the Learned Trial Judge, as well as her self-caution and analysis, the weighing and assessment of the evidence, and also the application of the legal principles, in our view, there is no basis on which we can properly impugn the very fair, careful, closely balanced and reasoned judgment of the Learned Trial Judge. In the totality of the circumstances, it was clearly open to the Learned Trial Judge to conclude that beyond a reasonable doubt, Mr. Wade was guilty of the offence as charged.

Conclusion

[26]   In all of the circumstances, the Court is of the unanimous view that Mr. Wade's appeal against his conviction and sentence must be dismissed. Consequently, the judgment of the Learned Trial Judge hereby is affirmed in its entirety.

[27]   We thank Learned Counsel on both sides for their assistance.

Hon. Mde. Louise Esther Blenman
Chief Justice

Hon. Mde. Sandra Minott-Phillips
Justice of Appeal

Hon Mr Justice Peter Foster
Justice of Appeal