Easter Term

[2015] UKPC 18

Privy Council Appeal No 0071 of 2013

JUDGMENT

Duporte (Appellant) vThe Queen (Respondent) (Saint Christopher and Nevis)

From the Court of Appeal of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis)

before

Lord Kerr

Lord Sumption

Lord Hughes

Lord Hodge

Sir Nigel Davis

JUDGMENT GIVEN ON

20 April 2015

Heard on 16 March 2015

Appellant	Respondent
James Wood QC	Travers Sinanan
David Rhodes	Giovanni James
(Instructed by Simons Muirhead and Burton Solicitors)	(Instructed by Myers Fletcher and Gordon Solicitors)

SIR NIGEL DAVIS:

Introduction

1.
On 29 June 2006 the appellant Travis Duporte, after a trial lasting three days before Belle J and a jury sitting in the High Court of Justice in St Christopher and Nevis, was convicted of murder. On 20 July 2006 the trial judge ordered that he be sentenced to death.

2.

On 6 March 2009 the Court of Appeal of the Federation of St Christopher and Nevis (Edwards, Gordon QC and Hariprashad-Charles JJA) dismissed his appeal against conviction. His appeal against the death sentence was allowed, however, and a sentence of life imprisonment was substituted.

3.
He now, by permission of the Board granted on 11 February 2014, appeals against the decision of the Court of Appeal dismissing his appeal against conviction. In essence, he seeks to argue that certain evidence was wrongly admitted or at all events was not the subject of appropriate directions from the trial judge; and that the summing-up was deficient in the treatment of identification evidence and failed properly to deal with alleged inherent contradictions and discrepancies within such evidence. It is argued that the conviction was, for any one or all of those reasons, thereby rendered unsafe.

Background facts

4.
Sattora Williams, also known as “Shakabee”, lived at an address in Newtown, near the capital city of Basseterre. At around 6.30 am on the morning of 28 June 2004 he was shot dead outside his house. The prosecution case was that it was the appellant who shot him, having travelled from his own home, armed with a pistol, for that purpose.

5.
That Shakabee had been murdered was not in dispute. The unchallenged medical evidence was that the cause of death was a single gunshot entry to the front of the chest, which had passed through the right lung and into the right atrium of the heart. The issue was whether the prosecution could prove, to the criminal standard, that it was the appellant who had killed Shakabee. The prosecution adduced no ballistic or other forensic evidence in support of its case that the appellant was the gunman. It adduced no direct evidence of motive. Its case depended on the evidence of certain witnesses in the immediate vicinity (although only one witness – a nine year old boy – actually saw the shooting itself). Two of those witnesses knew the appellant. Their evidence was to the effect that they both had seen him very shortly before and (in the case of Tweed) very shortly after the shooting.

6.
A witness called Shane Degrasse (“Toasting”) said that around 6 am on that morning he was in the vicinity of Sandown Road in Newtown, looking for some breakfast. He was there approached by the appellant. He had known the appellant for about two months, by the name of “Darkman”. He said that Darkman tried to “beg” two dollars from him and also asked where two people lived – a man called “Sword” and Shakabee. Toasting walked with Darkman for a while and showed him the road where Shakabee lived (although not his precise house). They walked together to a bakery and then, after going down Sergeant Hector Alley, Toasting collected some change on a street near to where Shakabee lived. He gave Darkman two dollars. Toasting then left him in order to find some breakfast. When he came back afterwards he saw Shakabee “lying on the floor”.

7.
Toasting described the man who he said was Darkman as wearing “short blue jean pants, a black shirt and a white shirt over his head”. He was very briefly cross-examined as to what the man who he said was Darkman was wearing. It was not suggested to him that he was lying or making things up. Toasting also said in cross-examination that he had not seen Darkman with any gun. In answer to questions from the jury he said that although the appellant had a white shirt “over his head” he could have seen his face.

8.
A witness called Ashton James who was nine years old at the time of events (and 11 years old at the time of the trial) gave evidence. He did not know the appellant. He was the only person actually to witness the shooting. Both counsel for the prosecution and counsel for the defence in their closing speeches at trial were very complimentary about his intelligent and articulate manner. He was at a water pipe close to Shakabee's house. He saw a man who he described as wearing a "white shirt over his head, a black shirt and blue jean pants". He said that the man had a black pistol. The man called Shakabee out from his house and the two spoke. Shakabee went back towards the house and the man then shot him in the back [sic]. Ashton James moved quickly away down Sergeant Hector Alley. The man walked behind him: according to Ashton James he had by now "fixed the gun inside of his waist". Ashton James saw his sister as he came out of the alley; and he saw the gunman go down an alley near where his sister was standing.

9.
In cross-examination, Ashton James said that he could not recall how many shots were fired. He described the gunman as having "fair skin" and as being "slim". All he had seen was his eyes. He agreed that, at the preliminary hearing in the magistrate's court, he had said that he did not see in that court the man who had shot Shakabee. At no stage, therefore, did he identify the appellant as the gunman.

10.
Evidence was also given by Kishama Tweed, the older sister of Ashton James. Her evidence was that she knew the appellant, having been to primary school with him. Although the record is not entirely clear, it seems that she said that she had known him for at least seven to eight years before the incident. She knew Shakabee as he lived in the same neighbourhood as her.

11.
Her evidence was that around 6.30 am she was by her house in Lower Pitcairn Street in Newtown. She saw the appellant with Toasting, who was a friend of hers, heading down Sergeant Hector Alley. She recognised the appellant because she had been at school with him and had known him for seven or eight years. She described the appellant (calling him "Travis") as wearing "blue pant[s] or black shirt or black pants or blue shirt and he had a white shirt over him but [it] was just over him, just the neck part was over him. I saw his face, I saw his hands and I saw a couple of inches of his chin ...". She did not know where the two were going. After that, she saw the man who she said was the appellant by Shakabee's gate. Toasting was not now with him.

12.
A short while after that she went to the end of Lower Pitcairn Street to look for her brother. She heard a gunshot. She then saw the same man coming up the alley, putting a gun in the waist of his trousers. She said that as he passed her he put his hand to his ear and screamed "Ah!" and then he ran off. She was cross-examined at some length. In cross-examination she said, among other things, that she saw the handle of the gun, which was a black gun. She said that nothing had blocked her view. She confirmed that she had not seen the actual shooting. She repeated her description of what the man was wearing (she also repeated that she had known the appellant since school and said that she knew his brother Jason). She said that she could see the appellant's face when he was with Toasting. She could not see his face, save for his eyes, on the second occasion as the shirt had by then been pulled up to cover his face; but she knew that it was the same man because, as she told the jury, he was wearing the same clothes.

13.
Quincy Williams, a brother of Shakabee, gave evidence to the effect that he lived with Shakabee on Sandown Road. That morning he looked out and saw the “partner” or “friend” of Shakabee standing near the gate. He explained: “I said is he friend because he does come by Shakabee all the time”. He described hearing the man calling for Shakabee. Shakabee went out and the two talked. At one stage he heard Shakabee say: “Don’t play wid me, boy”. Then he heard a shot. He looked out again and saw Shakabee coming to the house holding his stomach. When asked to describe the man’s clothing he said he had on “black pant(s) and a shirt. I believe the shirt was red”. There was no cross-examination. In answer to a question from the jury, he said that he had seen the face of the “friend” as he stood by the gate.

14.
The prosecution also called a witness called Steven Thomas (“Lick Shot”). He had signed a deposition, taken before the magistrate, on 8 November 2004. In the deposition he had, among other things, stated that on 28 June 2004 during the day the appellant, whom he knew, told him that he had come from town and “he just make a little move in a town … he just make a little move on some Shakabee. He said [he] call him out and he shoot him …” He also said in the deposition that the police had shown him a gun; but he could not really remember if he had ever seen the appellant with a gun and said that he and the appellant had not talked about any gun before the police came.

15.
In the event, when Thomas gave evidence at trial he denied ever having any such conversation with the appellant that day. The judge gave leave for him to be treated as a hostile witness. His deposition was then put to him. He agreed that he had signed it and had said to the magistrate’s court that it was correct. But he said that he had had no choice, he was fearful for his own position (he claimed that he himself had been accused by the police of the murder) and it was what he had been told to do: he was “hypnotised”. In cross-examination, he repeated that the appellant had never said to him that he had made a move on Shakabee and had never said that he had shot Shakabee. He was asked questions by the jury and (at some length) by the judge. He maintained that his deposition was not true. The actual making of that deposition and the circumstances in which it was taken were subsequently the subject of the evidence of a magistrate’s court clerk, Kilene Belgrove.

16.
The way in which the evidence of Steven Thomas was thereafter treated at trial forms one of the present grounds of appeal.

17.
Evidence from Sergeant Sutton was also adduced. This included evidence to the effect that, when initially questioned under caution on 1 July 2004, the appellant had volunteered that he could tell the police where he had been at the time: indicating that it was not in Newtown but in Carnival City.

18.
The appellant did not give evidence at trial. He advanced no positive case of alibi. The jury were in due course directed that his not giving evidence in no way counted against him.

The summing-up

19.
Counsel for the prosecution and for the defence gave full speeches to the jury. There were various points open to be made on behalf of the defence. For example, there was no forensic evidence. As to

the identification evidence, only Ashton James had seen the actual shooting and he had described the gunman as fair-skinned and slim, whereas it seems that the appellant was dark-skinned and stocky. It was also said that the white shirt being over the man's face, or part of it, would have made identification difficult. Further, Quincy Williams had described the gunman as a friend of Shakabee who came by regularly: if that were so, it was asked, why would the gunman need to ask for directions from Toasting? The point could also be made – but was not made – that Quincy Williams, alone of the witnesses, said that he "believed" that the man was wearing a red shirt.

20.
As to the evidence of Thomas, counsel for the prosecution and counsel for the defence had had a lengthy discussion with the judge about his evidence in the absence of the jury. They were agreed that he had no credibility. When addressing the jury, counsel for the prosecution bluntly said that Thomas had spoken not one word of truth. Counsel for the defence described Thomas as "obviously a pathological liar"; he could not be believed "even when he says his name is Steven Thomas": his evidence was thus to be put to one side.

21.
When he came to sum up, the judge reviewed the evidence very fully, going through some aspects of it more than once. He gave, in some detail, a warning as to the dangers of identification evidence. He reviewed the evidence in this regard. As to Thomas, he emphasised that counsel agreed that his evidence could not be relied upon. The judge said that he had to be deemed a liar and treated as such and that nothing he said could be counted on as proving facts in the case.

22.
In the result, the jury convicted.

The appeal to the Court of Appeal

23.
In the Court of Appeal, it was argued that the trial judge had failed sufficiently to direct the jury as to the weaknesses in the prosecution case, thus resulting in an unbalanced and unfair summing-up; that the trial judge had failed to highlight the inconsistencies in the prosecution case; and that the trial judge had failed to give a sufficiently full and strong direction on identification (including recognition) in accordance with the principles laid down in R vTurnbull[1977] QB 224.

24.
The Court of Appeal rejected the points made. It was acknowledged that the judge had not specifically addressed the jury on identification involving recognition, in that he had not reminded the jury that mistakes in recognition, even of close friends and relatives, are sometimes made. It was however held that the quality of the identification evidence was "exceptionally good" and the possibility of mistake "very small". The Court of Appeal, citing Freemantle v R[1994] 3 All ER 225, concluded that notwithstanding the omission the judge had "discharged [the] duty" prescribed in Turnbull.

25.
The Court of Appeal went on to hold that the judge had sufficiently reviewed the evidence in his summing-up and had sufficiently identified the defence case as to the asserted weaknesses in the prosecution evidence. The Court of Appeal further considered that there was no lurking doubt as to the safety of the conviction.

The grounds of appeal

26.
The arguments as ultimately presented on this appeal advanced three grounds:

(i)
There had wrongly and prejudicially been produced before the jury a gun (with one spent bullet in the chamber) when there was no evidence of any kind linking that gun to the appellant. The jury should thus have been discharged once this evidence was given; or at all events should have been given much firmer instruction in the summing-up on the point than in fact occurred.

(ii)
With regard to Steven Thomas, it was said that the jury should have been discharged. Alternatively, the judge should have given a much more specific direction to the jury: either the jury were to be instructed that the evidence of Thomas was to be disregarded for all purposes and that his prior deposition had no evidential status or, at the least, the jury should have been given strong warnings as to how to approach his evidence and deposition.

(iii)
The inconsistencies and discrepancies within the evidence of the prosecution witnesses were unsatisfactorily and insufficiently dealt with in the summing-up.

27.
Overall it was said that, whether taking the grounds individually or cumulatively, the conviction was unsafe; and there existed a lurking doubt.

The first ground – the production of a gun at trial

28.
The first ground advanced on this appeal raised a point not presented or argued before the Court of Appeal.

29.
As has already been indicated, there was no ballistic or other forensic scientific evidence of any kind adduced at the trial. However the prosecution at trial adduced the evidence of a police constable called Owen Browne. He explained that on 15 September 2004 he was handed by a police sergeant an envelope which contained a .375 magnum revolver, three rounds of standard magnum cartridges and one spent “warhead”. He described how he then, as instructed, took the package to a Sergeant Husbands of the Barbados Police. Sergeant Husbands examined the revolver and cartridges and in due course returned them to him, with a written report. Constable Browne produced before the jury the revolver and cartridges. It was noted that the revolver in question had a brown handle.

30.
It then further emerged that the prosecution were in any event not proposing to call Sergeant Husbands. The prosecution, however, indicated an apparent intention to seek to call further police evidence (not adduced before the magistrate) in relation to the gun, Constable Browne seemingly being intended to be the first part of continuity evidence in that regard. The prosecution were not permitted to do so. During the course of argument in the absence of the jury the judge, when told that Sergeant Husbands was not to be called, had pertinently asked: “So what is the relevance of the gun?” no clear answer was ever given. In truth, there was no answer. It was conceded that the prosecution were in no position to advance any case that the gun produced by Constable Browne was the gun used to kill Shakabee. The prosecution rather vaguely said that the production of the gun was

“just the completion exercise”. The judge then indicated that if the gun was not connected either to the killing or to the appellant its production was prejudicial rather than probative. The prosecution did not seek to controvert that; indeed it expressly accepted that there was “no connection to the deceased in relation to this particular weapon”. That being so, quite what the prosecution had thought they were doing at the trial in even going down this route in the first place is not explained. But there was and is no allegation of bad faith in this regard. It may also be noted that in due course in his closing speech counsel for the prosecution accepted before the jury that the gun used to kill Shakabee had not been produced at trial and was not relevant.

31.
It is nevertheless said that the production of this (irrelevant) gun at trial caused irremediable prejudice to the appellant. As identified by the judge at a later stage in the trial, it seems that there was heightened sensitivity towards gun crime amongst the local population: and the production of a gun at trial in this way might, it was said, further heighten the “fears” of the jury. It was also suggested that the jury might be placed under the “stress” of speculating where this particular gun had come from. In such circumstances, it is now said, the only proper course was for the judge to discharge the jury: that was the responsibility of the judge, even though no application to discharge was in fact ever made to the judge.

32.
In support of this argument, counsel for the appellant cited the decision of the Court of Appeal in R v Lawson[2007] 1 WLR 119. That was an example of a case where, on the particular facts, the jury should have been discharged. But the general principle is there clearly stated – and as indeed is well established – that whether or not to discharge the jury is a matter for evaluation by the trial judge on the particular facts and circumstances of the case: see para 65 of the judgment.

33.
In the circumstances of the present case there was no requirement for the jury to be discharged. There may have been heightened local sensitivity about gun crime; but the incontrovertible fact already before this jury was that Shakabee had indeed been shot dead by use of a gun. To produce thereafter at trial a gun – not said to be the actual murder weapon – could have had no further real effect. To say that irremediable prejudice was occasioned by the production of the revolver at court is unjustified.

34.
It was then argued that when he came to sum up the case to the jury the judge did more harm than good when directing the jury about the gun. What the judge said was this:

“Then there is the issue of the gun. You would have seen a gun come before the court. It was identified but it was not admitted in evidence. You would not be shown this gun; indeed there was no basis in putting the gun in evidence and it proves nothing in this case. So you should really disregard it as [evidence] because it was simply, I think at the time it was brought, based on the hope that other evidence would be brought. But that’s it and nothing else came so, you have to disregard the evidence in relation to the gun. It is in no [way] linked to the accused, cannot prove the accused’s guilt or anything in relation to the accused. And you should therefore disregard its appearance in this case. We know that this is a country right now in which persons are to some extent fearful of the extent of gun crime and the very appearance of a gun can make you shake but you shouldn’t allow that [to] influence your decision in the case because it hasn’t been connected to the accused and should therefore be disregarded. It proves nothing.”

It is said that by such passage the judge only served to highlight the (prejudicial) fear of gun crime: and indeed, by suggesting that the prosecution may have been “hoping” that other evidence on the point would be brought, the judge may have encouraged the jury to speculate.

35.
There is nothing in this either. Possibly some judges might, with advantage, have chosen to be rather more concise in dealing with this point to avoid any impression of over-emphasis. But there can be no doubt at all that the jury were, in explicit terms, told that the gun produced in court proved nothing, should not influence their decision and was to be disregarded. At the very end of the summing-up, moreover, the judge said again that the jury were to disregard the gun. There is no reason to think that the jury could not be trusted to abide by those explicit directions and there is no reason to think that the production at trial of such a gun would have encouraged the jury to speculate.

Second ground – the evidence of Steven Thomas

36.
The second ground relates to the way in which the judge dealt with the evidence of Steven Thomas in his summing-up to the jury.

37.
As initially advanced in the written case of the appellant, the argument was that the approach of the prosecution was, whilst disavowing Thomas as an out and out liar, nevertheless to seek to leave to the jury the contents of his original deposition – containing the purported admissions of the appellant – as representing the truth. This was, it is said, reinforced by the prosecution adducing the evidence of the court clerk, Kilene Belgrove, to confirm the formal circumstances in which Thomas’ deposition was taken. It was said, however, that under the principles of the common law that deposition (which had been entirely repudiated by Thomas in his actual evidence at trial) could not be relied upon as evidence of the truth of its contents against the appellant.

38.
However the researches of counsel for the respondent entirely undermined that particular formulation of the argument. The common law position had been altered by the provisions of section 3 of the Criminal Procedure (Amendment) Act 2005 (No 3 of 2005) which had come into force in St Christopher and Nevis on 4 March 2005. That is to the effect that a statement made by a witness who is declared hostile in any relevant proceedings shall be admissible as evidence of the truth of any facts contained therein. It is now conceded on behalf of the appellant that that was indeed the law at the time of the trial. Accordingly, the deposition of Thomas was legally admissible in evidence.

39.
Objection is nevertheless maintained, by way of an alternative argument, as to the way in which the evidence of Thomas was left to the jury. It is said that at no stage during the trial did counsel for the prosecution or counsel for the defence or the judge himself address the evidential status of the deposition of Thomas (certainly there was no express reference by anyone to the Criminal Procedure (Amendment) Act 2005); and the directions of the judge to the jury, perhaps in consequence, were, it is said, inadequate on this.

40.
This point too is devoid of substance.

41.

At trial, counsel for the prosecution in his closing speech had been explicit – as had been counsel for the defence – that Thomas was to be regarded as speaking not one word of truth. Counsel for the prosecution at no stage in his closing speech made reference to the contents of the deposition. At no stage did he seek to invite the jury to place any reliance on anything Thomas had said. To the contrary, he disclaimed the entirety of Thomas' evidence. The judge himself was no less explicit in his instruction to the jury. He said this:

"There is the witness Steven Thomas. I think counsel both for the prosecution and the accused have agreed that his evidence cannot be relied upon, as they said, even to prove his name. So this is an individual who said under oath here that he lied under oath in the magistrate court. He talked about being hypnotized, and threatening him and so on and he had to say certain things and he said things from the top of his head. Well, we don't know what he is saying from the top of his head up here, so he's really a witness that has to be - that type of witness it makes no point trying to determine which part of what he's saying is true. He has to be deemed a liar and you have to treat him as such. I think that there is no other way to advise you on a witness such as that. At the end of the day the facts as I said are for you to determine. So I have to leave that in your hands. But I can only tell you that based on everything that has happened in relation to that witness he is the kind of witness that we call totally unreliable and therefore he's really - nothing that he is saying can be counted on as proving facts in the case."

42.
It is complained that by saying to the jury that the facts were for the jury to determine and "I have to leave that in your hands" the judge had "opened the box" and thereby was leaving it to the jury to take into account what Thomas had said in the deposition. That is a misreading of the passage. The judge was (rightly) saying that the facts were for the jury. In general terms indeed they were. But he was explicit that, when it came to Thomas, "nothing that he is saying can be counted on as proving facts in the case". Yet further, and for good measure, the judge at the end of the summing-up, having told the jury to disregard the gun, again told them "Steven Thomas, don't even believe that his name is Steven Thomas". Overall, here too there is no reason to think that the jury could not be trusted to follow the instructions of the judge.

43.
Nevertheless it is now said, with regard to Thomas' evidence, that the judge should have given a full legal direction as to how the jury should approach the contents of the deposition: including strong warnings as to the reliability of the deposition, as to the need for the jury to be sure of its truth if they were to place any reliance on it and as to the possible motivation of Thomas for falsely implicating the appellant. But to do that would, given the course which the trial had taken, have potentially been both contradictory and confusing for the jury. Indeed it would have diluted the instruction given by the judge to the jury: as it would have involved inviting them to consider accepting, if they saw fit, the truth of the deposition whereas the whole emphasis of the summing-up (consistent with the approach of counsel) was that Thomas' evidence could be relied upon for nothing and was to be entirely disregarded. This, in reality, was the instruction most favourable to the defence: complaint cannot now be made of it.

44.
Concern was also expressed by counsel for the appellant that in his deposition Thomas had made reference to being shown a firearm by the police. Anxiety was expressed that the jury might, in some way, link this to the revolver produced in court, to the prejudice of the appellant. That is unfounded speculation, given that the jury had been told both that that revolver was irrelevant and that the

evidence of Thomas was to be entirely disregarded (although in any event, as it happened, Thomas in his deposition had not even sought to link the appellant to any particular gun).

The third ground – the adequacy of the summing-up on identification

45.
The final ground relates to the adequacy of the summing-up. The identification evidence was, of course, central to the prosecution case: and it is said that the various weaknesses and discrepancies in such evidence were not adequately marshalled or deployed before the jury in the summing-up.

46.
As has already been noted, the judge gave the jury a Turnbull direction. He stressed the need for caution. He pointed out that a mistaken witness or witnesses can be a convincing witness or witnesses. He stressed the importance of the need to approach identification evidence carefully; and he reminded the jury of the need to be sure that the identification was accurate.

47.
As observed by the Court of Appeal, the judge did not specifically address the jury on the issue of identification where it involved recognition (as it did in the case of the witnesses Degrasse and Tweed). But the Court of Appeal held that in the circumstances, despite that failure the duty adequately to instruct the jury as enjoined by the court in Turnbull had been discharged in this case: and, realistically, no further challenge to the adequacy of the summing-up on that particular point as to recognition is now pursued. It was, it may be added, briefly suggested that at one stage of the summing-up the judge in effect reversed the burden of proof. But, taking the summing-up as a whole, there is no substance in that point.

48.
What is maintained, however, is that the judge did not in his summing-up specifically identify certain of the weaknesses in the prosecution evidence. However, at various stages in the summing-up the judge in general terms had instructed the jury of the need to make "determinations … because of the differences between what some of the prosecution witnesses are saying", and had reminded them of "this issue of discrepancies or differences between the particular facts that are put forward by the prosecution witnesses". As to Ashton James, that witness had not purported to identify the appellant as the gunman. Furthermore, it obviously was a material point for the defence that Ashton James had described the gunman as "fair skinned" and "slim". That point was, however, duly drawn to the attention of the jury in the summing-up, as was the fact that Ashton James had not at the magistrate's court identified the appellant as the gunman. So there can be no complaint on that score.

49.
Complaint is made as to the summing-up on Quincy Williams' evidence. As to that evidence (unchallenged by cross-examination) the judge reminded the jury of his evidence that the man by the gate was the "friend" of Shakabee who "came by Shakabee all the time". The judge added: "The question that may arise is if it is Shakabee's friend why would he be asking directions to Shakabee's house, it's a matter for you". It is true that Quincy Williams had (in contrast to the other witnesses) made no mention of a white shirt over the face of the man whom he saw: but that was not explored further in cross-examination and in any case what he said may well have reflected what he recalled seeing at the time. That point did not require further highlighting by the judge. As to Quincy Williams saying that he "believed" that the man whom he saw wore a red shirt, it is not at all clear how hesitant Williams had been in giving that evidence (counsel for the defence, at all events, had not thought it necessary to refer to that piece of evidence in his closing speech): and the point was in any

case there for the jury to consider, without the need for a specific reminder of it from the judge, in what had been a short trial.

50.
The reality is that the judge reviewed all the oral evidence very fully. Overall, the summing-up was sufficient for its purpose: and the grounds of appeal acquire no greater weight when taken cumulatively than they have when taken individually. Further, the Court of Appeal held that this was a strong case. Degrasse, Tweed and Ashton James were all essentially agreed as to what the man they saw was wearing. It was not disputed in cross-examination that Degrasse and Tweed knew the appellant. They both had said that they recognised him on that morning: furthermore Degrasse, whose evidence was not really challenged, was with the man who he said was the appellant and was speaking to him for some period of time shortly before the shooting. Tweed, immediately after hearing the gunshot, described the same man, wearing the same clothes, returning with a gun placed into his waist. The conclusion of the Court of Appeal that there was no lurking doubt and that the conviction was safe was justified.

Conclusion

51.
For these reasons the Board will humbly advise Her Majesty that this appeal should be dismissed.