

IN THE COURT OF APPEAL OF BELIZE A.D. 2026

CRIMINAL APPEAL NO. 3 OF 2021

BETWEEN:

DEAN GALVEZ

Appellant

and

THE KING

Respondent

Before:

The Hon. Mme. Louise Esther Blenman

Chief Justice

The Hon. Mme. Sandra Minott-Phillips, KC

Justice of Appeal

The Hon. Mme. Michelle Arana

Justice of Appeal

Appearances:

Mr. Norman Rodriguez, for the Appellant

Mrs. Cheryl-Lynn Vidal SC, Director of Public Prosecutions and

Ms. Natasha Mohamed, Senior Crown Counsel, for the Respondent

2026: June 3;
July 16.

JUDGMENT

Introduction

- [1] **BLENMAN, C.J.:** This an appeal by Mr. Dean Galvez (“Mr. Galvez”) against his conviction for the offence of murder, contrary to **section 117 read together with section 106(1) of the Criminal Code.**¹ Mr. Galvez was convicted of the murder of Ronnie Omar Cassasola Jr. (“the deceased”) by the Honourable Mr. Justice Francis Cumberbatch (“the learned trial judge”), sitting without a jury, in accordance with **section 65A(2)(a) of the Indictable Procedure Act.**² Mr. Galvez was subsequently

¹ Cap. 101 of the Substantive Laws of Belize (Revised Edition) 2020.

² Cap. 96 of the Substantive Laws of Belize (Revised Edition) 2020.

sentenced to life imprisonment with the possibility of parole after serving twenty-five years.³ The prosecution resists his appeal.

- [2] To provide greater context on the matter it is apposite to briefly outline the background.

Background

- [3] The prosecution's case was that, on 5 May 2018, Mr. Galvez and his companions spent a portion of their evening at the Pedrigal Bar, situated in San Mateo in St. Matthew's Village, in the Cayo District. While there, an altercation arose between Mr. Galvez and his companions, on the one hand, and members of the Cassasola family ("the Cassasolas") and their acquaintances, on the other. Following the altercation, all the parties departed the bar. Exchanges between the groups continued as the Cassasolas made their way towards the vicinity of their home, whereupon, Mr. Galvez retrieved a firearm from his waist and discharged multiple rounds of ammunition in the direction of the Cassasolas. Mr. Galvez is said to have retreated but later returned and discharged a second round of shots. During the incident, the deceased sustained a fatal gunshot wound.

Prosecution's Case

- [4] The prosecution relied principally upon the identification evidence of five witnesses who were at the scene at the time of the incident. Each of them identified Mr. Galvez as the shooter. The witnesses testified of their prior acquaintance with Mr. Galvez which spanned a few months to two years. They also stated that they encountered Mr. Galvez in the vicinity where the incident occurred multiple times per week. They said that on the night of the incident, they first observed Mr. Galvez during the bar altercation and subsequently, during the shooting from a distance of approximately twenty to thirty feet. The witnesses were adamant that the scene was illuminated by street lampposts, with an unobstructed view.

³ Record of Appeal page 266, lines 6 – 8.

Defence

- [5] In the court below, Mr. Galvez maintained his innocence and challenged the propriety of the dock identification evidence relied on by the prosecution. The defence urged the learned trial judge to reject the visual identification evidence adduced by the prosecution's witnesses given that there was no identification parade.
- [6] Mr. Galvez alleged that on the night in question, he was at Ms. Claudia Martinez's house with companions and later went to the Pedrigal Bar. He asserted that he was not present at the scene of the crime, neither did he shoot the deceased. He maintained that upon hearing gunshots, he ducked for cover, jumped over a fence and ran to Mr. Manuel Soto's house where he spent the remainder of the night.
- [7] Mr. Galvez called Mr. Mario Alberto Avelar ('Mr. Avelar') as his alibi witness. Mr. Avelar testified that he was with Mr. Galvez on the night of the incident. According to Mr. Avelar, after leaving the bar, the deceased attacked Mr. Galvez with a galvanised pipe. He further testified that a female member of the Cassasolas family also attacked him using the same pipe. Mr. Avelar stated that upon hearing the gunshots, both he and Mr. Galvez ran. Mr. Avelar testified that he did not see Mr. Galvez jump a fence but saw him running in the same direction as he was.

Issue and Judgment of the Court below

- [8] The central issue before the learned trial judge was whether the prosecution had proved beyond reasonable doubt that Mr. Galvez was the individual who discharged the firearm which fatally wounded the deceased.
- [9] The learned trial judge undertook a careful assessment of the identification evidence, warning himself of the special need for caution in reliance upon visual identification. The learned trial judge considered the duration of observation, the distance from which the witnesses observed Mr. Galvez, the lighting conditions and the witnesses' prior familiarity with Mr. Galvez.

[10] The learned trial judge visited the *locus in quo* where he observed the proximity of the streetlights. In his judgment, the learned trial judge found that the light from the three lampposts enabled sufficient visibility of the surroundings. The learned trial judge rejected the *alibi* evidence advanced by Mr. Galvez, finding a material discrepancy between his testimony (that he jumped fences to reach Mr. Manuel Soto's house) and that of Mr. Avelar (that Mr. Galvez ran directly home without jumping any fences). The learned trial judge, then properly directed himself that rejection of the *alibi* did not prove that Mr. Galvez was the shooter and returned to the prosecution's case to determine whether he was satisfied of Mr. Galvez's guilt to the extent that he felt sure.

[11] The learned trial judge accepted the evidence of the prosecution's witnesses and emphasised that the witnesses were sufficiently familiar with Mr. Galvez to render an identification parade otiose. On the strength of that evidence, the learned trial judge found that Mr. Galvez was the shooter that killed the deceased and that the prosecution had proved its case beyond a reasonable doubt.

Ground of Appeal

[12] Mr. Galvez has raised a single ground of appeal viz., that the learned trial judge was wrong in law to conclude that the identification evidence elicited was sufficient to prove that Mr. Galvez was the person who discharged the firearm which fatally wounded the deceased.

[13] With due appreciation for the industry and cogency of learned counsel Mr. Norman Rodriguez's ("Mr. Rodriguez") single ground of appeal, coupled with the oral arguments that were advanced in support of the ground, I am of the considered view that the following points emerge for consideration; namely, whether:

- a. The learned trial judge failed to properly treat with the identification evidence;

- b. The learned trial judge failed to properly distinguish identification and recognition;
- c. The learned trial judge erred in finding that an identification parade was unnecessary in light of the witnesses' prior knowledge of Mr. Galvez;
- d. The learned trial judge failed to properly treat with the evidence from the locus in quo; and
- e. The conviction of Mr. Galvez is unsafe.

Issues

- [14] Having itemised the ground of appeal into five parts, I will treat with parts a., b., and c., together under the head "*Identification*" since they are inextricably linked. I will then consider the *locus in quo* issue in part d. under the head "*Visit to the locus in quo*", before finally determining part e. under the head "*Safety of the Conviction*".

Submissions on behalf of Mr. Galvez

- [15] Learned counsel, Mr. Rodriguez has challenged the learned trial judge's treatment of the identification evidence and his findings of fact in relation to the identification of the shooter.
- [16] The nucleus of learned counsel Mr. Rodriguez's arguments is that the prosecution failed to discharge its burden of proving that Mr. Galvez was the person who killed the deceased. Learned counsel, Mr. Rodriguez pointed to perceived deficiencies by the prosecution in linking Mr. Galvez to the altercation at the bar and the shooting near the vicinity of the Cassasolas. Mr. Rodriguez submitted that the prosecution failed to prove that Mr. Galvez was the same person seen by members of the Cassasolas family during the earlier bar fight and later identified as the shooter who

killed the deceased. Moreover, learned counsel Mr. Rodriguez took issue with the lighting circumstances under which the witnesses purported to identify Mr. Galvez. Learned counsel, Mr. Rodriguez also averred that the prosecution failed to establish the critical *actus reus* element for murder viz., that Mr. Galvez was the person who fired the gunshot. Consequently, Mr. Rodriguez contended that the learned trial judge erred in finding that Mr. Galvez was the shooter, as the learned trial judge could not be sure that the witnesses had seen and subsequently identified Mr. Galvez.

[17] Learned counsel, Mr. Rodriguez argued that the postmortem report showed that the fatal shot was fired from behind the deceased. He submitted that the witnesses gave evidence of seeing Mr. Galvez on three occasions on the night of the shooting: first, when Mr. Galvez and his companions engaged in an altercation with the Cassasolas at the bar; second, after Mr. Galvez departed from the bar and fired two shots from the area in front of the bar; and third, when Mr. Galvez fired a shot from in front of the deceased. Learned counsel, Mr. Rodriguez contended that the learned trial judge's use of the word '*previous*' in recalling the events acknowledges that he appreciated that the incidents involved different individuals.

[18] In his written submissions, Mr. Rodriguez relied on the principles enunciated in **Woolmington v DPP**⁴ and **R v Turnbull and others**.⁵ He asserted that the learned trial judge erred by accepting the identification evidence without addressing, what he asserts, was a critical gap between the different sightings.

[19] Learned counsel, Mr. Rodriguez also challenged the learned trial judge's findings on the sufficiency of the lighting conditions. He contended that Ms. Khadijah Thimbriel ("Ms. Thimbriel"), the Crime Scene Technician, gave independent and objective evidence that the lighting was poor. On that basis, he submitted that the learned trial judge was wrong to find that the lighting was sufficient to allow the

⁴ [1935] AC 462.

⁵ [1976] 3 All ER 549.

witnesses to identify Mr. Galvez.

[20] Further, learned counsel Mr. Rodriguez contended that the learned trial judge failed to properly treat with the witnesses' prior knowledge of Mr. Galvez. He submitted that the learned trial judge erred in relying on the witnesses' previous familiarity with Mr. Galvez, as support for their visual identification evidence. Learned counsel argued that the learned trial judge failed to distinguish between the principles of recognition and identification. He asserted that their previous knowledge does not automatically validate the witnesses' subsequent identification, particularly in unfavourable conditions. He contended that the prosecution failed to directly link the witnesses' recognition of Mr. Galvez during the altercation to the identification of the shooter who killed the deceased.

[21] Mr. Rodriguez also contended that the learned trial judge failed to properly consider the weaknesses in the visual identification, particularly the:

- (i) poor lighting conditions on the night of the shooting;
- (ii) distance between the shooter and the witnesses; and
- (iii) failure to connect the three separate individuals involved that night.

[22] Mr. Rodriguez submitted that, considering the identification evidence as a whole, the prosecution did not discharge its burden to prove beyond a reasonable doubt that Mr. Galvez caused the death of the deceased. Therefore, the learned trial judge could not have safely concluded that Mr. Galvez killed the deceased. Mr. Rodriguez argued that the verdict is therefore unsatisfactory and unsafe.

Submissions on behalf of the prosecution

[23] Learned Director of Public Prosecutions, Mrs. Cheryl-Lynn Vidal SC ("Director of Public Prosecutions") submitted that the learned trial judge carefully considered all relevant factors, made no errors in his conclusions and properly directed himself on

all relevant issues. The learned Director of Public Prosecutions maintained that the verdict of the learned trial judge was supported by the evidence of the prosecution, which he accepted.

- [24] The learned Director of Public Prosecutions highlighted the fact that the prosecution called eight witnesses in total; including five fact witnesses, the Cassasolas, who were all well acquainted with Mr. Galvez prior to the incident and observed him during the shooting incident in favourable lighting conditions. The learned Director of Public Prosecutions stressed that the fact witnesses testified that (i) the lighting was clear due to moonlight and the illuminated lampposts; and (ii) they had an unobstructed view of Mr. Galvez, as they were approximately twenty to thirty feet from him during the incident and observed him for five to six minutes.
- [25] The learned Director of Public Prosecutions contended that the learned trial judge properly recognised the central issue as that of identification and gave the requisite warnings both in relation to identification and *alibi*. Learned Director of Public Prosecutions pointed out several paragraphs in the judgment of the court below, where the trial judge rejected Mr. Galvez's *alibi*, returned to the prosecution's case and treated with the evidence from the prosecution's witnesses of fact.⁶ According to the learned Director of Public Prosecutions, the trial judge considered the inconsistencies, discrepancies and lacunae in the prosecution's evidence and weighed the strengths and weaknesses of the prosecution's case.
- [26] Learned Director of Public Prosecutions underscored the fact that it is legally impermissible for the prosecution to elicit evidence of the description of the shooter. Learned Director of Public Prosecutions found support for this proposition in the decision of Carey JA in **Lambey and Smith v The Queen**.⁷ Given this prohibition, the learned Director of Public Prosecutions argued that Mr. Rodriguez's submission is unsustainable.

⁶ Paragraphs 8 -25 and 59 - 62 of the judgment.

⁷ Criminal Appeals No. 13 and 15 of 2004 at [22].

- [27] The learned Director of Public Prosecutions also challenged Mr. Rodriguez's submissions concerning the lighting conditions. She noted that the Crime Scene Technician, Ms. Thimbriel, when re-examined, testified that although the lighting was poor because it was 1:00 am, she was able to see the immediate surroundings of the crime scene. The learned Director of Public Prosecutions submitted that this was consistent with the evidence of the five fact witnesses, all of whom testified that the lighting was sufficient for identification. The learned Director of Public Prosecutions reiterated that, in so far as learned counsel, Mr. Rodriguez bases his argument on the "poor lighting condition", such submission is untenable.
- [28] The learned Director of Public Prosecutions submitted that the five fact witnesses called by the prosecution had known Mr. Galvez before the incident, named him, testified as to the lighting, distance, duration and absence of obstruction when they viewed him face on.
- [29] Learned Director of Public Prosecutions also asserted that the learned trial judge visited the *locus in quo* and saw the lampposts and the distances from which the witnesses testified that they observed Mr. Galvez. The learned trial judge included this in his analysis and at the end of this process concluded that he was sure that Mr. Galvez was the shooter. In these circumstances, the learned Director of Public Prosecutions submitted that the arguments advanced on behalf of Mr. Galvez in relation to his conviction are unsound. She urged this Court to dismiss his appeal.

Discussion & Analysis

- [30] I have considered all the submissions advanced by learned counsel and the learned Director of Public Prosecutions in this appeal. The following represents my analyses and conclusions.

Identification (Part A, B, and C)

[31] The scope of this Court's inquiry under this head involves an assessment of the learned trial judge's approach to the identification evidence before him. I must consider whether the learned trial judge satisfactorily treated with the nuances between identification and recognition as principles in evidentiary law. It is important to ascertain whether the learned trial judge erred in his finding that an identification parade was unnecessary considering the witnesses' prior knowledge of Mr. Galvez. These points are all interrelated and intertwined.

Legal principles governing Identification Evidence

[32] It is necessary to first outline the well-settled rules and principles which must guide a trial judge in the treatment of identification evidence.

[33] By virtue of **section 4 of the Evidence Act**,⁸ the common law rules and principles of evidence of England continue to apply in Belize, so far as they are applicable to local circumstances and do not offend the provisions of the Evidence Act or any other statute. **Section 4 of the Evidence Act** provides:

“Subject to the provisions of this Act and of any other statute for the time being in force, the rules and principles of the common law of England relating to evidence shall, so far as they are applicable to the circumstances of Belize, be in force therein.”

[34] Consequently, where the prosecution relies wholly or substantially on identification evidence, the trial judge's duties continue to be informed by the authoritative guidelines established by the Court of Appeal of England and Wales in **R v Turnbull**.⁹ This Court has routinely recognised the applicability and usefulness of the **Turnbull guidelines** in cases involving disputed visual identification. Most recently in **Fitz Harris Howard v The King**,¹⁰ this Court had yet another occasion to do so.

⁸ Cap. 95 of the Substantive Laws of Belize (Revised Edition) 2020.

⁹ [1976] 3 All ER 549.

¹⁰ Criminal Appeal No. 20 of 2022 (unreported, delivered on 28 August 2025) at [18].

[35] The detailed instructions of Lord Widgery CJ's guidance in **Turnbull** are as follows:

"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? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance? If in any case, whether it is being dealt with summarily or on indictment, the prosecution have reason to believe that there is such a material discrepancy they should supply the accused or his legal advisers with particulars of the description the police were first given. In all cases if the accused asks to be given particulars of such descriptions, the prosecution should supply them. Finally, he should remind the jury of any specific weaknesses which had appeared in the identification evidence. 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. Were the courts to adjudge otherwise, affronts to justice would frequently occur."

- [36] The thorniness of the reliability of identification evidence has arisen for consideration in several cases. Its prevalence has not evaded even our apex court. In **Carlton Junior Hall v The Queen**¹¹ the lead judgment of Anderson JCCJ, as the President then was, lamented on the '*perennial problem of identification evidence*'.
- [37] The **Turnbull guidelines** make it clear that caution must be exercised where the prosecution's case depends primarily or exclusively on visual identification evidence. The guidelines recognise the special need for caution in relying on such evidence, because even an honest and convincing witness may be a mistaken one. It requires the judge to warn the jury of the danger of mistaken identification and direct them to carefully examine the circumstances in which the identification was made. Where the quality of the identification evidence is satisfactory, or to adopt the parlance used by the learned Lord Chief Justice Widgery in **Turnbull**, '*good*', the evidence may safely be left to the jury to assess its value, provided the appropriate warning is given. Conversely, where the quality of the identification evidence is unsatisfactory, or '*poor*' and there is no other evidence capable of supporting it, a conviction may prove unsafe and unjust.
- [38] Importantly, there is no precise term of art which a trial judge is required to deploy when directing on identification evidence, provided that the words in the direction prove sufficient in conveying the dangers associated with the visual identification evidence. This Court recently had occasion to pronounce on this point in **Fitz Harris Howard**¹² noting:
- "Principally, what is required is for the trial judge to squarely put before the jury the applicable principles using words which convey to the jury the dangers that are associated with the issue of identification/recognition."
- [39] Appeals which challenge identification evidence, frequently turn on the propriety and correctness of the trial judge's treatment of that evidence and whether the judge

¹¹ [2020] CCJ 1 (AJ) at [1].

¹² (n 10) at [16].

properly applied the **Turnbull guidelines**.¹³ A tribunal of fact must engage in a structured evaluation of the quality of the evidence, with reference to conditions under which the visual identification took place; including, the opportunity for observation, the duration of the encounter, the distance between witness and suspect, the prevailing lighting conditions, the presence or absence of obstruction, the lapse of time between observation and identification, prior familiarity, and any material inconsistencies in description or account.¹⁴

[40] **May, Powels & Waine's Treatise on Criminal Evidence**¹⁵ makes plain that these factors are not a checklist to be mechanically recited but are matters which must be weighed cumulatively. The question is always one of overall quality, particularly, whether having regard to all the circumstances, the evidence is sufficiently cogent to be safely relied upon.

[41] The foregoing principles apply with equal force, in the appeal at bar, where the evidence is one of recognition. Accordingly, having outlined the general principles governing visual identification, the Court now turns to the related principles applicable to recognition evidence, which are of particular relevance in the present appeal given that the identifying witnesses were clear that they knew Mr. Galvez prior to the incident.

Recognition

[42] It is equally well established that recognition is not conceptually distinct from identification, but rather a subset of it. The governing principles remain the same; what differs is the weight that may be attributed to prior familiarity, provided that the surrounding circumstances of observation do not degrade the reliability of the

¹³ R. v. Cameron S.C.C.A. 77/88 delivered 30/11/89 (unreported); R. v. Anthony Wilson S.C.C.A. 128/89 delivered 3/12/90 (unreported).

¹⁴ Criminal Bench Book for Barbados, Belize and Guyana (2023) The Caribbean Association of Judicial Officers (CAJO), at p 223.

¹⁵ Steven Powles, Lydia Waine and Radmila May, May on Criminal Evidence (6th edn, Sweet & Maxwell 2015) p 417 para 14-07.

recognition itself. This principle received judicial acknowledgment in **Fitz Harris Howard**, where this Court stated:

“Recognition is an aspect of identification. Recognition occurs where the persons knew each other before, while identification can be where the persons may not have known each other before. It is the law that the Turnbull guidelines should also be given by the trial judge in recognition cases. Support for this can be found in Blackstone’s Criminal Practice 2025 6 where it is stated that the general rule is that an appropriate Turnbull warning should be given even in cases of alleged recognition and that ‘[a]s the guidelines themselves explain, **recognition evidence will often be more reliable than identification of a stranger, but may still be erroneous**’. Even where the parties had known each other for many years, it was advisable to warn the jury of the possibility of honest mistake and the reasons why that possibility existed. Lord Lane CJ elaborated in *R v Bentley* [1991] Crim LR 620:

“Many people have experienced seeing someone in the street whom they knew, only to discover that they were wrong. The expression, ‘I could have sworn it was you’ indicated the sort of warning which a judge should give, because that was exactly what a testifying witness did – he swore that it was the person he thought it was. But he may have been mistaken ...” (emphasis mine)

- [43] The Courts have repeatedly cautioned against the assumption that familiarity inoculates identification against error. The Court of Appeal of the Eastern Caribbean Supreme Court emphasised this in **Yourrick Furlonge v The Queen**:¹⁶

“[A] trial judge is required to highlight the strengths and weaknesses of the prosecution’s case in relation to the identification/recognition evidence.”

- [44] Prior knowledge is therefore not a substitute for compliance with **Turnbull**, but a factor which may, depending on the case, strengthen or merely contextualise the identification evidence.

- [45] Therefore, it is evident that the **Turnbull guidelines** are critical in both cases of identification and recognition to mitigate the risk of error. The Privy Council

¹⁶ ANUHCRA 2009/0006 at [15].

reaffirmed this approach in **Pop (Aurelio) v R**,¹⁷ where it referred with approval to its earlier decision in *Shand v R* (1995) 47 WIR 346, in which Lord Slynn of Hadley observed:

“The importance in identification cases of giving the *Turnbull* warning has been frequently stated and it clearly now applies to recognition as well as to pure identification cases. It is, however, accepted that no precise form of words need be used as long as the essential elements of the warning are pointed out to the jury. The cases in which the warning can be entirely dispensed with must be wholly exceptional, even where credibility is the sole line of defence. In the latter type of case the judge should normally, and even in the exceptional case would be wise to, tell the jury in an appropriate form to consider whether they are satisfied that the witness was not mistaken in view of the danger of mistake referred to in *Turnbull*.” (emphasis added)

[46] It is trite that the trial judge is not bound to a rehearsed script, but has a duty to recount the evidence with accuracy, to present the defence fully and fairly and, in directing the jury on the issue of visual identification, to have regard to, and point out, the strength and weakness of that evidence.¹⁸ The warning may be adapted to the circumstances of the case, but its essential elements, namely, the risk of mistake and the need for close scrutiny of the circumstances of observation, must remain present in substance. This principle also reflects the guidance contained in the **Criminal Bench Book for Barbados, Belize and Guyana**.¹⁹

[47] Properly understood, recognition is capable, in appropriate circumstances, of strengthening the reliability of identification because it may reduce the scope for error in perception or recall. However, it does not displace the need to examine the conditions under which the alleged recognition occurred. Familiarity does not immunise against misidentification, particularly where lighting, distance, duration, or situational stress may compromise accurate perception. The procedural safeguards remain fully engaged; what varies is the weight to be accorded to the evidence once

¹⁷ (2003) 62 WIR 18.

¹⁸ Criminal Bench Book for Barbados, Belize and Guyana (n 1) 222.

¹⁹ *ibid* at 226.

the totality of the circumstances is properly evaluated.

Treatment of directions in Judge-alone/Bench trials

- [48] It is a distinctive and positive feature of our criminal justice system that the offence of murder is tried by a judge alone, in what are also referred to as '*Bench trials*'. As the name suggests, there is no jury serving as the trier of fact. Instead, it is the trial judge who assumes the dual role of arbiter of the law and finder of fact. This feature gives rise to questions concerning the need for the possible modification of detailed **Turnbull guidelines** for reasons which will become obvious shortly.
- [49] Directions, instructions and warnings given by a trial judge to a lay jury, are premised on the recognition that such jurors require guidance on the proper treatment of evidence in arriving at their findings of fact, to safeguard against arbitrary conduct, reduce the risk of unfairness and ensure that the verdict is rendered in accordance with the law.
- [50] In a judge alone trial, some of those considerations do not apply. The trial judge, being both the arbiter of law and finder of fact, must be presumed to know the applicable legal principles, evidential rules and procedural safeguards necessary to arrive at a sound verdict. Accordingly, appellate courts do not insist upon the same level of detailed, rehearsed, formal rigidity concerning instructions, directions and warning that would be necessary in a summing-up to a lay jury. What an appellate court demands, is that the reasons read as a whole, demonstrate that the trial judge appreciated the relevant legal principles, treated the evidence with the necessary care, and correctly applied those principles in reaching the verdict.
- [51] The above position that was enunciated by the Court of Appeal of Northern Ireland in **R v Thompson**,²⁰ has been approved by the Caribbean Court of Justice in

²⁰ [1977] NI 74.

Dioncicio Salazar v The Queen.²¹ It proves most instructive to my assessment. There, the Court of Appeal of Northern Ireland proffered:

“[the Judge] has no jury to charge and therefore will not err if he does not state every relevant legal proposition and review every fact and argument on either side. His duty is not as in a jury trial to instruct laymen as to every relevant legal aspect of the law or to give (perhaps at the end of a long trial) a full and balanced picture of the facts for decision by others. His task is to reach conclusions and give reasons to support his view and, preferably, to notice any difficult or unusual points of law in order that if there is an appeal it can be seen how his view of the law informs his approach to the law.”

[52] Wit JCCJ (as he then was) noted in **Dioncicio Salazar** at [29]:

“Equally, a judge sitting alone and without a jury is under no duty to “instruct”, “direct” or “remind” him or herself concerning every legal principle or the handling of evidence. This is in fact language that belongs to a jury trial (with lay jurors) and not to a bench trial before a professional judge where the procedural dynamics are quite different (although certainly not similar to those of an inquisitorial or continental bench trial). As long as it is clear that in such a trial the essential issues of the case have been correctly addressed in a guilty verdict, leaving no room for serious doubts to emerge, the judgment will stand.”

Identification Parade and Dock Identification

[53] Finally, under this head, I now turn to the related but distinct question of identification procedures, in particular the absence of an identification parade and the reliance upon dock identification at trial.

[54] The English practice relating to identification parades has been adopted and is ordinarily followed by courts in our region as the appropriate safeguard against mistaken identification.²²

²¹ [2019] CCJ 15 (AJ) at [28].

²² Pop (n 17) at [23].

[55] The utility of identification parades and dock identification has been succinctly captured by the Privy Council in **John v The State of Trinidad and Tobago**,²³ where Lord Brown speaking for the majority of the Board opined at [14] to [15]:

“As a basic rule, an identification parade should be held whenever it would serve a useful purpose. This principle was initially stated by Hobhouse LJ in *R v Porat* [1998] 2 Cr App R208 and endorsed by Lord Hoffmann giving the judgment of the Board in *Goldson and McGlashan v R* (2000) 56 WIR 444, [2000] UKPC 9. Plainly an identification parade serves a useful purpose whenever the police have a suspect in custody and a witness who, with no previous knowledge of the suspect, saw him commit the crime (or saw him in circumstances relevant to the likelihood of his having done so, for example en route to a robbery). Often, indeed usually, that is the position and, when it is, an identification parade is not merely useful, but assuming it is practicable to hold one, well-nigh imperative before the witness could properly give identifying evidence. In such a case, Lord Hoffmann said in *Golson*, ‘a dock identification is unsatisfactory and ought not to be allowed’, although he added: unless the witness had provided the police with a complete identification by name or description, so as to enable the police to take the accused into custody, the previous identification should take the form of an identification parade.

At the opposite lies a case where the suspect and the witness are well known to each other and neither of them disputes this. It may be, of course, that on the critical occasion when the witness saw the crime being committed (or, for example, the person concerned en route), he thought it was the person he knew but was mistaken as to this. An identification parade obviously cannot help in this situation. Indeed, as Lord Hoffmann pointed out in *Goldson*, a parade then would be not merely unnecessary but could be ‘positively misleading’. (Emphasis mine)

[56] It is apparent that a formal identification parade will normally be required where a witness has identified a suspect, professes an ability to identify the suspect, or there is a reasonable prospect of a positive identification, provided the suspect disputes being the person seen. The purpose of the procedure, in the main, is to test the reliability of the witness's identification in a fair and objective manner.²⁴

²³ [2009] UKPC 12 (unreported, delivered 16 March 2009)

²⁴ *Myvett and Santos v R* (1994) (unreported).

[57] However, an identification parade is not an inflexible requirement to be routinely deployed in every case. The question on whether to utilise the procedure is one that must always be rooted in fairness²⁵ and recognition of the evidential utility of its deployment in the circumstances of the particular case.

[58] Where, however, the prosecution relies substantially upon visual identification, the failure to hold an identification parade may assume heightened significance. The court must then examine whether, in the absence of such a procedure, the remaining circumstances of identification are sufficiently cogent to satisfy the **Turnbull** standard of reliability.

[59] The above approach is reflected in the decision of the Privy Council in **Goldson and McGlashan v R**,²⁶ where Lord Hoffman, speaking on behalf of the Board, recalled:

“The court [in *R v Fergus* [1992] Crim LR 363] said that 'The case where the complainant had seen the assailant only once or on a few occasions before might well be treated as that of identification rather than recognition'. An identification parade should have been held and the dock identification made the verdict of guilty unsafe and unsatisfactory.”

[60] **Goldson** is authoritative on the point that the existence of some prior acquaintance does not, without more, eliminate the need for an identification parade. Rather, the extent and quality of the witness' prior familiarity with the accused may be relevant in determining whether such a procedure would have been meaningful or necessary, but it does not, of itself, conclusively answer the question.

[61] The decision in **Goldson** also underscores that the failure to hold an identification parade does not, however, automatically render a conviction unsafe. The ultimate question is whether the omission has resulted in a serious miscarriage of justice. That assessment depends upon the strength and reliability of the identification evidence viewed as a whole. Where the evidence of identification is weak and an

²⁵ *Holland v HM Advocate* [2005] UKPC D 1.

²⁶ (2000) 56 WIR 444.

identification parade could have tested its reliability, the absence of such a procedure may render a subsequent dock identification insufficient to support a safe conviction. Conversely, where the witness' prior familiarity with the accused is established and the identification evidence is otherwise cogent and credible, the absence of an identification parade will not necessarily undermine the fairness of the trial or the safety of the conviction.

[62] Dock identification has long been eschewed as an undesirable practice.²⁷ It is inherently weaker as a form of proof because it occurs in a suggestive setting, after the accused is already presented in the formal position of the dock, thereby increasing the risk that identification is influenced by the very fact of the accused being charged. For that reason, dock identification is ordinarily regarded as carrying limited probative value, unless it is supported by prior unequivocal recognition or other compelling evidential features.

[63] Generally, a dock identification is unsatisfactory and ought not to be allowed unless the identifying witness has made a previous identification of the accused.²⁸ The authorities nonetheless recognise that dock identification is admissible in appropriate circumstances. However, its weight will depend upon the totality of the surrounding circumstances, including whether the witness had prior knowledge of the accused, the quality of the earlier opportunity for observation, whether the identification is consistent with other independent strands of evidence and whether the dock identification is *'purely formal confirmation that [the accused] was the [person] in the dock'*.²⁹

[64] Accordingly, the proper approach is not to treat the absence of an identification parade or the presence of dock identification as determinative in isolation, but to

²⁷ James Richardson (ed), *Archbold: Criminal Pleading, Evidence and Practice* 2023 (Sweet & Maxwell 2023) para 14-59.

²⁸ Goldson (n 26) at [466].

²⁹ *ibid* at [468].

assess whether, viewed in the round, the safeguards contemplated by **Turnbull** have been satisfied to guarantee a fair trial.

Application of legal principles to the appeal at bar

[65] By virtue of the incorporative effect of **section 4 of the Evidence Act**, the first requirement of the **Turnbull guidelines** is that the tribunal of fact must be warned by the trial judge of the special need for caution before convicting on the basis of disputed identification evidence. The warning must explain why such caution is necessary by recognising that an honest witness may nevertheless be mistaken on identity and that several honest witnesses may all make the same mistake.

[66] The authorities, which I have already referred to, make it pellucid that in circumstances of a bench-trial, the trial judge is not obliged to set out all the laws, warnings and directions he would have set out had he been before a lay jury, provided the learned trial judge appreciated the relevant laws when arriving at the verdict. To this end, I am of the considered view that the learned trial judge, to the credit of his erudition and experience, went well beyond what was required. The learned trial judge directed and warned himself using **Turnbull** language of all the matters which he ought to have considered when assessing the visual identification evidence. Paragraph [52] of the learned trial judge's decision demonstrates the caution and rigour with which he approached the identification evidence and reinforces the certainty in my conclusion:

“To avoid the risk of injustice, I have warned myself of the special need for caution before convicting the Accused on the visual identification in this case. A witness who is convinced in his own mind that the person he saw is the Accused may as a result be a convincing witness but may nevertheless be mistaken. Mistakes can also be made in recognition of someone well-known to the witness such as a close friend or relative. So I must carefully examine the circumstances in which the identification was made, for how long was the Accused under observation by the witness, at what distance, in what light, and whether anything interfered with his observation. The fact that the Accused is also relying on the defense of an alibi is another factor to be taken into consideration in determining whether

or not the Accused was the shooter that night. The Court must be extra careful in its consideration of the evidence of visual identification.”

[67] The above paragraph demonstrates that the learned trial judge appreciated the applicable legal principles of identification in **Turnbull**, and the special danger in relying on disputed visual identification as highlighted in **Carlton Junior Hall** and **Fitz Harris Howard**. Further, the learned trial judge was properly alerted to the core factors which he was required to consider to properly examine the quality of the identification evidence in accordance with the second limb of the **Turnbull guidelines**. The learned trial judge noted all the relevant circumstances under which the visual identification was made by the prosecution’s fact witnesses. The learned trial judge appreciated that mistakes occur in identification and even noted that “mistakes can also be made in recognition of someone well-known to the witness such as a close friend or relative.” This closely mirrors the language in **Turnbull**.

[68] Importantly, the learned judge did not assume that recognition evidence was inherently reliable merely because the witnesses knew the accused. He correctly acknowledged that recognition itself carries a risk of error.

[69] Based on the **Turnbull guidelines**, the trial judge then quite properly undertook a close examination of the circumstances in which each identification was made. I am satisfied with the learned trial judge’s treatment of the relevant safeguards and critical assessment of the reliability of the evidence.

[70] The learned trial judge paid particular attention to the lighting conditions in accordance with the guidance provided in the **Criminal Bench Book for Barbados, Belize and Guyana; May on Criminal Evidence**; and **Archbold**. He considered the evidence that Mr. Galvez was standing directly beneath a functioning streetlamp, the evidence of the Crime Scene Technician that the streetlights were operational, and his own observations during the visit to the locus in quo. This was a significant factor supporting the quality of the identification evidence.

- [71] The learned trial judge examined the distances of the witnesses from Mr. Galvez and repeatedly referred to the witnesses' evidence that nothing obstructed their observations. The evidence established that each identifying witness knew Mr. Galvez before the incident and Mr. Galvez testified that he also knew the witnesses. The learned trial judge examined the nature and frequency of those prior interactions before concluding that the witnesses were recognising someone well known to them rather than identifying a stranger. Accordingly, the learned trial judge critically addressed all of the relevant factors identified in **Turnbull** for assessing the quality of visual identification.
- [72] **Turnbull guidelines** do not only require an examination of favourable circumstances; they equally require the judge to identify the specific weaknesses appearing in the identification evidence. The learned judge expressly acknowledged a number of weaknesses. He referred to Nadia Romero's omission from her police statement that she had seen Mr. Galvez draw the firearm from his waistband. He also noted discrepancies between Angelita Cassasola's evidence and that of other witnesses concerning the sequence of events immediately before the shooting. Rather than ignoring these matters, the judge expressly considered them before concluding that the evidence of Harvey Cassasola and Elizabeth Chiquillo remained "very powerful" because of the favourable conditions under which they observed Mr. Galvez. This reflects a thorough engagement with the cumulative effect of the weaknesses in the testimony of the prosecution's witnesses.
- [73] Having regard to the comprehensive and careful treatment of the identification evidence by the learned trial judge I find no merit in learned counsel Mr. Rodriguez's objection to the learned trial judge's assessment of the quality of the evidence.
- [74] For completeness, it is apposite to state that the learned trial judge also correctly appreciated that the prosecution's case rested principally upon recognition evidence. His analysis demonstrates that he did not treat the witnesses' previous

acquaintance with Mr. Galvez as determinative of identity. Rather, he expressly reminded himself that "mistakes can also be made in recognition of someone well-known to the witness such as a close friend or relative." In doing so, the learned trial judge's assessment was consistent with this Court's approach in **Pop** and **Fitz Harris Howard**, each of which makes clear, reaffirming **Turnbull**, that recognition evidence remains susceptible to honest mistake notwithstanding prior familiarity.

[75] Contrary to what was advanced, the learned trial judge did not rely upon recognition in isolation. Instead, he examined the surrounding circumstances in which the recognition occurred. The judge considered that each of the principal eyewitnesses had known Mr. Galvez before the incident but also evaluated the conditions under which they observed him on the night in question, including the duration of their observations, their proximity to him, the lighting conditions, and whether their view was obstructed. Recognition was therefore treated as one factor bearing upon reliability rather than as a substitute for the structured enquiry set out by **Turnbull**.

[76] It is noteworthy that the learned trial judge found that Ms. Angelita Cassasola had known Mr. Galvez for approximately eight months, Mr. Harvey Cassasola for approximately two years, while Ms. Elizabeth Chiquillo and Ms. Elvira Cassasola were likewise acquainted with him before the incident. The learned trial judge also pointed out that Mr. Galvez himself accepted that he knew members of the Cassasola family. These findings were not employed to dispense with the need for caution but to explain why the witnesses were able to recognise, rather than identify, a stranger.

[77] By way of emphasis and contrary to learned counsel Mr. Rodriguez's submissions, the learned trial judge did not equate prior familiarity with infallibility. His repeated consideration of the objective conditions of observation demonstrates that the learned trial judge appreciated the principle enunciated in **Yourrick Furlonge**, namely, that a court must identify both the strengths and the weaknesses of recognition evidence before determining whether it is sufficiently reliable.

- [78] While it is true that the learned trial judge ultimately regarded the witnesses' previous familiarity with Mr. Galvez as strengthening the prosecution's case. That conclusion was one which was reasonably open to the judge on the evidence.
- [79] Recognition is capable of reducing the likelihood of mistake where, as here, the witnesses observed a person whom they already knew under conditions which the judge found were conducive to reliable observation. That does not offend the principles in **Turnbull**; indeed, it accords with Lord Widgery CJ's observation that recognition "*may be more reliable than identification of a stranger*", provided that the tribunal remains alert to the continuing possibility of honest mistake.
- [80] I remain unpersuaded by Mr. Rodriguez's contention that the learned trial judge failed to distinguish between the individual encountered during the altercation and the person who later fired the fatal shot. The judgment reveals that the learned trial judge was alive to the chronology of the events and carefully evaluated the eyewitness evidence as a continuous narrative. Having accepted the evidence that Mr. Galvez repeatedly returned to the scene and remained under observation throughout the sequence of events, the learned trial judge was entitled to conclude that the witnesses' recognition extended to the person whom they identified as the shooter. That conclusion was founded upon his assessment of the witnesses' credibility and the quality of their observations rather than upon prior familiarity alone.
- [81] This Court is satisfied that the learned trial judge correctly directed himself on the law relating to recognition evidence. He recognised that familiarity did not eliminate the possibility of mistake, evaluated the objective circumstances in which the recognition occurred, and treated prior acquaintance as strengthening, but not replacing, the overall assessment of reliability. Mr. Galvez has therefore failed to establish any error of principle in the trial judge's treatment of the recognition evidence.

Identification Parade and Dock Identification

- [82] Moreover, it is well established in the authorities that dock identification is, as a general rule, an inherently weak form of evidence. The courts have consistently cautioned against sole reliance upon dock identification due to its inherently suggestive character, since the accused being already presented in the dock may influence a witness's identification. Consequently, dock identification ordinarily attracts limited independent probative weight unless it is supported by reliable prior identification or recognition evidence.
- [83] However, as emphasised by the Privy Council in **Goldson**, and the broader line of authority addressing identification procedures, including **R v Fergus**,³⁰ the question is not to be determined in the abstract. The absence of an identification parade does not automatically render a conviction unsafe. The decisive question is whether the omission, viewed in the context of the evidence as a whole, has led to a serious miscarriage of justice. Where there is sufficient prior familiarity or other cogent circumstances supporting recognition, the failure to hold a parade will not necessarily undermine the safety of the conviction.
- [84] In the present case, the evidence did not depend upon dock identification as its foundation. The learned trial judge accepted that each of the identifying witnesses had sufficient prior familiarity with Mr. Galvez and purported to recognise him at the time of the incident itself. The identification evidence was therefore properly treated as one of prior recognition rather than first-time identification in court. In that context, the dock identification did not operate as an independent evidential basis of identification but was consistent with the witnesses' account of earlier recognition.
- [85] The above approach adopted by the trial judge is also consistent with the principles

³⁰ [1992] Crim LR 363.

in **R v Popat**,³¹ which confirms that an identification parade ought to be held where it would serve a useful purpose, but not where it would be devoid of utility (as in the case at Bar where the Cassasolas said Mr. Galvez was well known to them and Mr. Galvez admitted knowing them).

- [86] In those circumstances, it is apparent that the dock identification did not constitute the foundation of the prosecution's case but merely reflected the witnesses' evidence that they had recognised Mr. Galvez at the material time. The learned trial judge did not elevate the in-court identification into independent proof of identity. Rather, he evaluated its weight by reference to the earlier opportunities for observation, the witnesses' prior familiarity with Mr. Galvez, and the surrounding objective circumstances. That approach accords with principle as stated above.

Visit to the *Locus in Quo*

- [87] The Court must next address the significance of the visit to *the locus in quo*, which forms an important but sometimes misunderstood feature in the evaluation of identification evidence.
- [88] A visit to the *locus in quo* is entirely a matter of judicial discretion reposed in the hands of the trial judge. Consequently, where the discretion has been judicially exercised, there is nothing an appellate court can do to interfere with the decision. The point is well settled and the decision in **R v Herman Williams**³² provides sufficient clarity on the strictures of appellate enquiry on such grounds. Moreover, such a visit is not an evidential substitute for testimony, nor is it intended to operate as an independent source of proof. Its function is more modest, though not insignificant: it serves to assist the trial judge in assessing the plausibility and coherence of the oral evidence concerning the physical environment in which the events are said to have occurred.

³¹ [1998] 2 Cr App R 208.

³² (1971) 17 WIR 369 at 372.

- [89] The utility of a *locus in quo* inspection lies in its capacity to clarify the court's appreciation of the evidence given.³³ The Court of Appeal of Jamaica acknowledged in **R v Warwar**³⁴ *'the object of a view or visit to the locus in quo should be for the purpose of enabling the jury to better understand the questions being raised, to follow the evidence and to apply the evidence, and was not a substitution for such evidence'*. In **Herman Williams**, it was saliently opined that *"it is not wrong to treat it as something which enables a better understanding of the evidence given by witnesses in court."*³⁵
- [90] In **Henry v The Queen**,³⁶ this Court repeatedly emphasised that the purpose of the visit to the *locus in quo* in a jury trial was to enable the jury to appreciate matters such as distance, visibility and vantage point for themselves. After the visit, the critical question was not whether the judge's estimate of the distance was correct, but whether the jury, having seen the *locus*, could determine for themselves whether the witness was capable of making the identification. The *locus* therefore functions as an aid to the evaluation of oral evidence, not as independent evidence. Where the *locus* has been viewed, the ultimate evaluation of what could reasonably have been seen remains a matter for the factfinder, informed by both the oral evidence and the observations made during the inspection.
- [91] Ultimately, in a judge-alone trial the visit to the *locus in quo* assists with achieving the objective of the **Turnbull guidelines**: it is one of several tools available to the trial judge in assessing whether the quality of the identification evidence is sufficiently reliable. It neither displaces nor diminishes the central obligation to scrutinise the evidence given but rather assists in determining whether that evidence withstands careful judicial scrutiny when measured against the realities of the physical setting. It is not evidence itself, nor may it be employed to fill evidential gaps left by the parties; its function is confined to enabling the tribunal of fact to

³³ R v Manning (Kirk) JM 2000 CA 14.

³⁴ (1969) 15 WIR 298.

³⁵ (1971) 17 WIR 369 at 372.

³⁶ BZ 2005 CA 18.

appreciate the physical setting against which the oral testimony falls to be evaluated and thereby to assess the plausibility of competing accounts.

[92] The closely reasoned judgment below demonstrates that the learned trial judge remained faithful to those principles. His observations at the visit to the *locus in quo* were not treated as an independent source of proof but as an aid in evaluating the witnesses' descriptions of the scene. In particular, the inspection assisted him in assessing the relative positions of the streetlamps, the distances between the witnesses and the shooter, and the unobstructed nature of the witnesses' lines of sight. Those matters had already formed part of the evidence before the court and were simply illuminated by the inspection.

[93] The learned trial judge did not substitute his own observations for the sworn testimony. Rather, he considered his observations from the *locus in quo* alongside the evidence of the Crime Scene Technician and the eyewitnesses before reaching his findings concerning visibility and opportunity for observation. That was entirely consistent with the proper use of a judicial inspection. There is no basis to impugn the learned trial judge's approach to the visit to the *locus in quo*.

[94] By way of emphasis and having considered the evidence in its totality, this Court is not persuaded that the learned trial judge fell into any error of principle in his treatment of the visual identification evidence. The judge in exercising his discretion to conduct a *locus in quo* and viewing the scene relative to the evidence adduced by the prosecution and the defence, had the benefit of a proper analysis of the evidence that an appellate court would be slow to disturb.

Safety of the Conviction

[95] This Court is mindful of its role when reviewing a trial judge's findings. **Section 216 (1) of the Senior Courts Act**³⁷ provides that:

³⁷ No. 27 of 2022.

“216.-(1) The Court on any such appeal against conviction shall allow the appeal if it thinks that the verdict of the judge or jury, as the case may be, should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal,

Provided that the Court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.”

[96] The appellate enquiry is therefore whether the trial judge erred in principle or reached a conclusion that was unreasonable on the evidence, and definitely not whether the appellate court agrees with the trial judge’s findings. The appellate court will assess the relevant circumstances in each case which may include the significance of the issue of identification to the case against and for the defendant; the strength of the identification and the supporting factors; and the number, nature, complexity and force of the points that are capable of undermining the reliability of the identification.

[97] An appellate court must accord appropriate deference to the trial judge's evaluation of the evidence. Unlike the trial judge, it has not had the advantage of seeing and hearing the witnesses testify. Consequently, it will not readily interfere with the trial judge's assessment of the quality of the identification evidence unless satisfied that there has been an error of law or that the conclusion reached cannot reasonably be supported by the evidence. As the Court concluded in **R v Hayes**,³⁸ even in a borderline case, the Court will decline to disturb the trial judge's decision to leave the case to the jury. Once the Court is satisfied that, had the judge entertained any genuine doubt as to the reliability of the identification evidence after observing the witnesses, he would have withdrawn the case from the jury.

³⁸ (1967) 64 Cr.App.R.194.

- [98] Analogously, the appellate court must exercise restraint in seeking to disturb the trial judge's findings of fact in relation to the reliability of identification evidence as the judge would have had the benefit of hearing and observing the witnesses. The overarching enquiry on this appeal is therefore whether the conviction is safe having regard to the quality of the identification evidence and the way it was assessed by the trial judge.
- [99] This Court is required to evaluate whether the learned trial judge observed the requisite safeguards and whether the resulting conclusion was one reasonably open to him.
- [100] By way of summary of the above, the learned trial judge carefully considered the dangers inherent in visual identification. The learned trial judge expressly 'warned' himself of the special need for caution, recognised that honest witnesses may nevertheless be mistaken, and reminded himself that recognition is not immune from error. The judge then proceeded to evaluate the quality of the evidence by reference to the objective circumstances in which the observations were made, including the duration of the observations, the distance between the witnesses and Mr. Galvez, the prevailing lighting conditions, the absence of any material obstruction, and the witnesses' previous familiarity with Mr. Galvez. He further identified and considered the inconsistencies relied upon by the defence before determining that they did not undermine the reliability of the evidence as a whole.
- [101] Equally, the learned trial judge did not impermissibly rely upon dock identification, nor did he misuse the visit to the *locus in quo*. Both matters were treated consistently with their proper evidential function. The former was regarded merely as confirming evidence of prior recognition, while the latter served only to assist in evaluating the physical circumstances disclosed by the oral testimony.
- [102] Having subjected the identification evidence to the requisite scrutiny, it is clear that it was open to the learned trial judge to conclude that its quality was sufficiently

cogent and reliable to establish beyond reasonable doubt that Mr. Galvez was the person who fired the fatal shot. The judgment was closely reasoned and coherent.

[103] Given the totality of the circumstances, I am of the considered view that Mr. Galvez has failed to satisfy this Court that the conviction is unsafe. Mr. Galvez's complaints challenging the learned trial judge's treatment of the identification and recognition evidence, the absence of an identification parade, the dock identification, and the reliance placed upon the visit to the *locus in quo* are unsustainable and must therefore fail.

Conclusion

[104] For the foregoing reasons, I hereby dismiss Mr. Galvez's appeal and affirm his conviction and sentence.

[105] I gratefully acknowledge the helpful assistance of all learned counsel.

Louise Esther Blenman
Chief Justice

I concur.

Sandra Minott-Phillips, KC
Justice of Appeal

I concur.

Michelle Arana
Justice of Appeal