



3. The car was driven to Hermitage Road in Devonshire. On arrival there, Mr. Williams parked the car in a parking lot outside of SAL. He said it was dark but there were streetlights there. They had gone there to purchase marijuana.
4. Miss DeCoute contacted the person they were going to meet. About five minutes later, Mr. Williams testified, that he saw a man come towards the parked car. The man came to the driver's side of the car. The window was down; the door was closed but not locked.
5. Another man came towards the car and the first man opened the driver's door. He had a knife in his right hand and he tried to stab Mr. Williams around his head and chest area. Mr. Williams tried to grab the knife. The second man was attempting to punch him in his face.
6. The first man told the second man to search Mr. Williams' pocket. A Blackberry phone valued at \$300 was taken from his pocket by the second man.
7. Mr. Williams and Miss DeCoute exited the car and there was a struggle for the knife. He saw a third person, a woman, come towards them from the same direction the others had come from. She had a sword like object and she was trying to hit Mr. Williams. He put the first man in the way and he was hit with the sword like object by the woman. The men and the woman ran off towards Boundary Terrace, the direction they had come from.
8. The incident lasted a couple of minutes. He described the woman as being five-seven, yellow skin, braids straight to the back and thick lips.
9. Mr. Williams further testified that he had seen this woman before as she used to live in Deepdale Road and that he had seen her there in a yellow house. He does

not recall having spoken to her before. He could see their faces because nothing was obstructing his view and he did not give them permission to take his cell.

10. Mr. Williams went to the hospital and was treated for injuries he had received. He subsequently, on 31<sup>st</sup> August 2011, attended an identification parade where he identified the appellant as the woman who had the sword like object.
11. Victoria DeCoute also gave a description of the female who she said snatched her jewellery from around her neck. Later that night Victoria DeCoute went to the hospital where she said she saw two of the persons who had robbed them. One was a man and the other a female. On 31<sup>st</sup> August she attended at the police station where she identified the appellant as the female who had snatched her chain. She further testified that from the time the robbers came to the time they ran off was about five minutes.
12. The appellant admitted being at the hospital that night but said that she had gone there because she got a call from one Miss Hollis that Ararat, one of the defendants in the case, had been badly hurt and she wanted her to keep her company.
13. Miss DeCoute admitted in cross-examination by Mr. Daniels, that she did not point out to her mother or godmother who was with her at the hospital, that she had seen the appellant at the hospital. In her statement to the police she did not mention the appellant by name, or that she saw a female at the hospital who resembled the female at Hermitage Road. She also did not inform the police who were at the hospital that she had seen the female robber at the hospital.
14. The appellant gave sworn evidence in her defence. She denied that she was involved in the robbery. She knew the two male defendants who were charged

along with her. She spoke to the defendant Williams at the hospital by nodding her head. She also stated that she got to the hospital about two minutes after defendant Williams got there. She agreed that she did live in Deepdale Road, that her house was yellow. She also said that Kenneth Williams knew of her and recognised her from being in a previous case.

15. She denied being at Hermitage Road on the 27<sup>th</sup> August 2011, that she did not snatch any jewellery from Victoria DeCoute's neck, and that on the evening of the 27<sup>th</sup> August 2011, she was at her father's house in Deepdale. She did not tell the police this because she did not trust the police. No one else was present at the house at this time.
16. Mr. Marc Daniels submitted two grounds of appeal on behalf of the appellant.

These were --

- (i) That the learned trial judge erred in law, in failing to acquiesce to the defence counsel's submission that there was no case to answer and therefore, withdraw the case from the jury.
- (ii) That the learned judge erred in law in his directions to the jury on identification.

### **Ground 1**

17. Mr. Daniels submitted that the identification of the appellant was made under difficult circumstances. The identification of the appellant was a fleeting glance. He further submitted that Kenneth Williams' attention was focussed on the knife and this would have affected his being able to identify the female robber.

18. Mr. Daniels also argued that the evidence of Miss DeCoute was not credible. Her failure to point out to the police at the hospital that she had seen the female robber there affects her credibility.
19. Mr. Byrne on behalf of the crown submitted that Mr. Kenneth Williams identification cannot be regarded as a fleeting glance case. His evidence is that he had two minutes to observe the robbers. The appellant had stated that he would have recognised her because of her involvement in a previous high profile case. He had seen her at a yellow house in Deepdale prior to the incident.
20. Mr. Byrne submitted that the evidence of Miss DeCoute was evidence that the jury could consider in support of the identification by Mr. Kenneth Williams. The appellant's acceptance that she was at the hospital soon after the incident and her explanation as to why she was there was a matter for the jury to decide whether she went there, having committed the robbery or whether they accepted her explanation as to why she went there. Defendant Williams was at the hospital having received injuries during the robbery.
21. Mr. Daniels referred the court to the well-known case of *R. v. Gallbraith* [1981] 2 ALL ER 1060; Blackstones' Criminal Practice 2007 at paragraph D14-13 to support his submission that taken together the evidence tendered by the crown is such that, taken at its highest a jury properly directed could not properly convict upon it.
22. Having considered the evidence which was before the jury at the close of the crown's case, we are satisfied that there was a case to go to the jury and that the judge was not in error in rejecting the submissions of no case to answer.

**Ground 2**

23. In his submissions Mr. Daniels referred the court to page 29 line 15 of the summation where the learned trial judge gives his directions on identification. He was unable however, to identify any mis-direction or non-direction which would lead the court to come to the conclusion that the learned trial judge erred in his directions on identification. This ground of appeal fails.
24. The evidence led by the crown was sufficient to enable the jury to decide whether they accepted the evidence of Mr. Kenneth Williams and Miss Victoria DeCoute as to the identity of the appellant as the female robber. Having convicted the appellant on both counts, the jury must have accepted the evidence as being reliable as to the identity of the appellant being the female robber.
25. For the above reasons we dismissed the appeal against the convictions. There was no appeal against the sentences. The convictions were affirmed.

Signed

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Zacca, P

Signed

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Evans, JA

Signed

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Baker, JA