NWILS

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 95/95

BEFORE: THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE WOLFE, J.A.
THE HON. MR. JUSTICE HARRISON, J.A. (Ag.)

ROLAND ECCLES vs. REGINA

Delano Harrison for the applicant

Kent Pantry, Q.C., Senior Deputy Director of Public Prosecutions, and Miss Janice Gaynor for the Crown

March 18 and May 6, 1996

WOLFE, J.A.:

On March 18, 1996, we granted the application for leave to appeal, treated the hearing of the application as the hearing of the appeal and ordered that the appeal be allowed, the sentence set aside and judgment and verdict of acquittal entered.

Roland Eccles was tried in the Circuit Court for the parish of Portland before Panton, J., sitting with a jury, on the 28th day of June, 1995. He was

indicted for the offence of capital murder arising out of the death of Jeffrey Baugh on the 9th day of February, 1994.

This was a case of visual identification. The Crown's case rested entirely on the evidence of Carlton Baugh, brother of the deceased, who testified that on the early morning of February 9, 1994, at approximately 1:30 a.m. he was awakened from his sleep by a loud bang on the door of his house. This bang was followed by an explosion which sounded "like a gunshot". Upon getting awake he saw the appellant inside the doorway of the room; armed with a firearm. There was electric light burning in the room and the appellant was under observation for some two to three minutes. The appellant was wearing a mask which covered the area just below the nose thereby covering the mouth of the appellant. He also wore "a handkerchief, which was tied up to the top of his head". As a result, the witness was able to see "from his hair line to his head back". The appellant was unknown to the witness prior to the incident.

It was in the circumstances adverted to above that the witness purported to recognize the appellant so as to be able to point him out on the 24th May, 1994, to Detective Corporal Riley, some three months after the incident.

At the close of the case for the prosecution, counsel for the appellant submitted that the evidence of identification was poor and ought not to be left for the consideration of the jury. The submission did not meet the favour of the learned trial judge.

On appeal, a lone ground of appeal was argued, to wit:

> "1. The learned trial judge erred in law in declining the submission, at the close of the prosecution case, that the quality of the visual identification evidence was so poor that there was no case for the Appellant to answer."

Mr. Pantry, Q.C. for the Crown, in the highest traditions of the bar, readily conceded that the identification evidence was so poor, in his view, that the learned trial judge ought to have acceded to the submission of no case.

We entirely agree with Mr. Pantry. The conditions under which the witness purported to have identified the appellant were indeed poor. Only a portion of the intruder's face was visible to the witness. The witness was suddenly awakened from his sleep and was put under great pressure by the armed intruder. The circumstances of the identification may be categorised as "observation made in difficult conditions" and as Lord Widgery, C.J. said in ***R. v. Turnbull*** [1977] 1 Q.B. 224:

> "...in such circumstance, the judge should withdraw the case from the jury and direct an acquittal unless there is other evidence which goes to support the correctness of the identification."

In this case, there was certainly no evidence to support the identification evidence.

It is for the reasons contained herein that we allowed the appeal.