

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEALS NOS. 66 & 67/1983

BEFORE: The Hon. Mr. Justice Carberry, J.A.
The Hon. Mr. Justice Wright, J.A.
The Hon. Mr. Justice Downer, J.A. (Ag.)

The Queen v. Everalld Douglas & Eustace Henry

Enoch Blake for the applicants

G. McBean for the Crown

16th & 31st October, 1986

CARBERRY, J.A.:

This was an appeal from the verdict of a jury in a case tried by Bingham J in the Home Circuit between the 7th and 13th June 1983. Both applicants were convicted of the murder of Maria Douglas on the 31st July, 1980.

The evidence showed that the murder was part of a deliberate and calculated plan to murder an entire family, and apparently for no better reason than that they were thought to belong to a political party which was opposed to that of the applicants.

In the early morning hours of Sunday 6th July, 1980, the Douglas family were in bed sleeping in their home on Lawrence Drive, in an area known as Homestead on the outskirts of Spanish Town, in the parish of St. Catherine. Their home had two bedrooms, separated from each other by a partition that stopped short of the roof or ceiling, and ran from one wall towards the other but stopped short leaving an opening, a potential doorway but at that time left open without even a screen for privacy. Both bedrooms had backdoors opening out into the backyard. In one room

slept the mother of the family Mrs. Dottie Douglas, and with her on the bed two of the younger children. In the other bedroom there slept Elsie Douglas, who had a young baby sleeping in a crib at the head of her bed. In the same room, on the other bed, there were sleeping two girls, Rosalie and Maria, and their younger brother Basilton. The father of this household was away from home, and had been absent for some months. In his absence the family slept with the electric light, situate in the mother's bedroom, lighted.

At about 12:30 a.m. Elsie Douglas, a light sleeper, probably because she had her baby sleeping beside her, woke to the sound of voices outside her window. This was followed by a gun shot (aimed presumably at the lock of the back door to her mother's room). The door flew open and she saw the applicant Eustace Henry enter, gun in hand. He went towards her mother's bedroom, and was followed by the other applicant Everald Douglas, and in all she saw enter or stand at the doorway some six men armed with guns, but was able to identify only the two applicants. She heard the sound of gunshots from her mother's room. Then saw Everald Douglas go back outside, while Henry came into her own room. Elsie pretended to be asleep, and watched proceedings through half closed eyes. She saw Henry put his gun over the body of her younger sister Maria and heard more than one shot. He then came to the head of her bed and so outside of her range of vision. There he stayed for some minutes (she says 20 minutes). Then, to use her own words "He come over my face with the gun.... and when Ah hear it fire off a jus' feel something stan' up here so." She was shot by a bullet that passed through or beside her nose and exited through the back of her neck. Henry then ran out of the house.

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Elsie put her hand up to her nose: it was covered with blood. She struggled to her feet and went over to her sister Maria. She tried to waken her -- Maria did not respond. She succeeded in waking her smaller brother Basilton (he had to be shaken to wake up: a sound sleeper who slept through all of this shooting!). Both then ran out through the backdoor that had been broken down. Passing through her mother's room in making this escape, she saw her mother lying on her bed, covered with blood. Making her way through the premises of a neighbour she and Basilton reached the main road, the Old Harbour Road. Elsie knows very little of what happened thereafter. She was picked up by a passing car, and later found herself in the Spanish Town Hospital.

The passing car was an unmarked police vehicle driven by Detective Acting Corporal Bertram Lee. He saw Elsie waving him down by the side of the road, stopped, spoke to her, picked her up and went to her home. There he saw her mother, bleeding from a wound to the head; she fainted when he spoke to her. In the adjoining bedroom he found Maria lying face down on a bed; she was dead. She had been shot in the neck.

Mr Lee then took, or arranged to have the mother and Elsie taken to the Spanish Town Hospital, and the body of Maria to the morgue at that hospital.

Later on that same morning (31st July, 1930) warrants were issued for the arrest of the two applicants. This clearly was on the basis of information supplied by Elsie, though she has no recollection of speaking to the police or of what she could have told them when they found her on the Old Harbour roadside that morning.

The mother, Mrs. Dottie Douglas, survived the shooting. She gave evidence but was able to add little to the main story. She did not know who had shot her nor did she see them. She woke when shot, and staggering out found Maria dead, and the other daughter, Rosalie, "like she turn fool". She picked up the two "little ones" and went out into the yard, where she met the police and Mr. Lee took her to the hospital.

In this case therefore the evidence against the applicants rested on the visual identification of them made by a single eye-witness, Elsie Douglas. She claimed to have seen Henry for some 25 minutes, and Douglas for 10 minutes, and put the whole incident at upwards of 30 minutes. These periods of time are probably incorrect, but represent "relative time". Henry she had known for some eighteen years: he lived in the area and she had seen and spoken to him from day to day. They had once been members of the same Youth Club before it foundered on the rock of political dispute. Maria too had been a member before it broke up, and some months before had had a dispute with Henry into which her mother and father had intervened. Her father had had a dispute with Henry some years before this incident. She denied that her family were supporters of a rival political party, and that that was the reason why she had identified Henry as one of the gun men. She did however identify him as an "activist". To use her own words "Him a fight politics". However, up to the time of the incident Henry and herself used "to talk good".

Elsie testified that she had known the other applicant Everal Douglas for some five years. He too had lived in the Homestead area. That night she saw "all" of

Ferry, but Douglas she saw only from his shoulders up. As to the other men she remarked "I never recognize them, I only see the pants and so forth going from the doorway". These others did not apparently enter the house, and it would appear that lying on the bed with her eyes "slitted" they did not come within her range of vision as did the applicants. This observation founded the suggestion, canvassed below and on appeal, that Elsie had hidden under the bed. She had heard the talking outside, the breaking down of the door, and the suggestion is that she had hidden herself. This was to found an argument that her vision of the two applicants was obscured, and her identification based on the premise of political dislike. The argument was fully canvassed below and carefully left to the jury for their consideration. It seems to have foundered on the simple fact that blood was found on her bed, on its upper surface. Had she been shot while underneath the bed it is not easy to explain how she bled on top of it, and no explanation seems to have been offered for this.

The defence went to the question of mistaken identity. Everald Douglas made an unsworn statement to the effect that he knew nothing about this episode, and further that he himself had been the victim of a political shooting some weeks before. He had suffered no less than eight bullet wounds, but had survived and made what his doctor described as an excellent recovery. Douglas stated that his shooting had occurred on the 20th June, and that he had been discharged from the Spanish Town Hospital on the 30th June, 1980. Maria's murder took place on the 31st July, and at that time Douglas claimed that he was not only still attending the outpatients' department for

treatment, but that he was walking with great difficulty, "hunched up". He was in no position to go ^{on} a shooting spree of the sort described by Elsie. He called three witnesses in support. The first was a ward attendant at the Hospital who had helped on his admission, and paid some attention to his wounds as she also lived in the Homestead area and knew him. She supported his relative disability, and described his gait at that time as "crouching, holding up his belly". He continued to suffer in this manner from his wounds through till September of that year. The second witness was his common law wife, who gave evidence that Douglas had been shot when gun men broke into his house and murdered his sister and shot him no less than eight times. She said that at the time of the incident in July when Maria was murdered, Douglas was incapable of walking more than 20 yards unaided. She too lived with him in the Homestead area and had heard of Maria's death over the Radio midday news on the day that it had happened. She stated that Douglas was at home that entire night and never left the house. She could confirm this because she had to nurse him with cups of mint tea through the nights in this period. The third witness was the surgeon who attended Douglas at the hospital. He confirmed the extent of his injuries and that he had had major surgery, and subsequent to his discharge had had to return for outpatient treatment when he developed a wound infection. This did not incapacitate him however, and he had made an excellent recovery. His wounds had to be dressed but he was fully mobile otherwise, and should have been able to walk normally within four to six weeks from his injury. He would not have been discharged from the

hospital unable to walk.

Eustace Henry also made an unsworn statement. He said that he knew nothing about the incident, and that he had moved from the Homestead area to Majestic Gardens in Kingston some months before the incident. He was supported by a witness who lived near him in Majestic Gardens, and who described him as a regular visitor to her home, where he came to play dominoes with her son. She claimed to remember the 30th July, 1980, (a Saturday), because she had bought a television set on that day and produced the receipt for the down payment. She stated that the applicant had visited her home that evening, and along with her son had watched the television the entire evening. When the programme had been completed for the night, she had served snacks and all present had continued playing dominoes until about 6:00 a.m. the next day (the 31st July). A curfew had been imposed on that area at that time, and it would have been unsafe for any one to walk the streets at night in that period. At that time or period she described herself as keeping watch all night for fear of gun men, doing her sewing and housework at nights and then sleeping in the day.

Both applicants were arrested on the warrants on or about the 21st January, 1981, at the Spanish Town Police Station lock up. It is not clear when they were first taken into custody. Cautioned, neither made any statement. It was suggested by way of explanation for the delay in executing the warrants that that period had been an exceptionally busy one for the police, engaged as they were in trying to contain the political violence being daily experienced at that time.

The summing up by the trial judge was long and careful. He made it abundantly clear that the entire case rested on whether the jury accepted the evidence of the sole eyewitness on the question of identification of the applicants, and pointed out that there was no corroboration of that evidence, and that it had to be weighed most carefully. He reviewed with them the difficulties attendant on the identification, the lighting, the opportunity to see and recognize at night and in the terrifying circumstances that had existed. He put before the jury the defences of the two applicants and their supporting witnesses. The jury appeared to have had no difficulty in accepting the identification evidence and rejecting the evidence offered by the applicants.

Before us counsel for the applicants (he did not appear for either of them below), found great difficulty in finding material to support an argument that there had been any failure to adequately direct the jury on the issue of identification or at all. We found no reason to disagree with the jury's verdict, nor any valid complaint as to the conduct of the trial. We accordingly dismissed the application for leave to appeal, and as this is a murder case we have put our reasons for the decision in writing.