JAMAICA

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL NO: 49/88

BEFORE: The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Forte, J.A.
The Hon. Mr. Justice Downer, J.A.

R. v. JEREMIAH MUSCHETTE

Leon Palmer for Appellant

Garth McBean for Crown

November 25, 1988

CAMPBELL, J.A.

The appellant a police officer stationed at Lucea Police Station in Hanover was convicted of robbery with aggravation and sentenced on the 19th of July, 1988 to three years at hard labour. The offence was committed at a place called Woodchurch in Hanover. The time was 3.00 a.m. Cheryl and Evan Peart were asleep in their wooden house when they heard sounds calling on them "Open up, Muschette from Lucea." The door was kicked down and they were ordered to open the bedroom door; this was done, two men came in, one was tall and had a gun, this person Cheryl identified as the appellant. He using expletives ordered Evan Peart the boyfriend of Cheryl now her husband to get out of the room. Evan Peart was ordered to lie outside on the concrete, Cheryl was addressed in derogatory terms and ordered to come out. Thereafter for the space of about five minutes when she was in close proximity to the applicant, no more than one foot away, the appellant searched a suitcase which he had taken from the room and in the course of so doing he frequently asked Cheryl the nature

of certain items therein, in particular he seemed to have been interested in a diaphragm. During this time, he had a large flashlight which he was using to search for things in the suitcase, the beam of light from the flashlight reflected on his face and Cheryl was able to recognize that the appellant had a heavy lower lip. About six o'clock the same morning which was 25th of August, 1987, Cheryl and Evan proceeded to Lucea Police Station to make a report. While they were there, the appellant came in and this evoked a spontaneous response from Cheryl that the appellant was the man who came to their place earlier that morning and had robbed them of certain items.

The appellant in his defence denied having gone there, he set up an alibi that he was at home with his girlfriend and the girlfriend's sister. He also in his testimony stated that when he reached the police station he saw the complainants there. He the appellant said he immediately stated loudly that he is alleged to have gone to Dias and to have robbed persons and whether they his colleagues are not going to arrest him. By this evidence he implied that Cheryl identified him solely because of his outburst. He brought witnesses to support him that they heard him say so. Of course, the complainant denied ever hearing him use these words and denied the suggestion that they referred to him the appellant as the person who had robbed them, solely because he had uttered these expressions. The learned Resident Magistrate who had the opportunity of observing the demeanour of the witnesses in a very comprehensive statement of the evidence and an equally comprehensive finding of facts relative to every aspect of the matter, accepted the complainant's version, rejected the defence and as earlier stated found the appellant guilty. The live issue in the case was identification and the learned Resident Magistrate highlighted all those aspects relevant to identification as stated in the locus classicus namely R. v. Oliver Whylie. Mr. Palmer before us has submitted that the evidence of identification was tenuous also that the defence ought not to have been rejected because there was no basis on which the alibi could be impugned. We heard his submission, we appreciate his effort but at the end of the day we remain satisfied that

there was nothing that could be submitted which would indicate that the learned Resident Magistrate had in any way erred or that her findings and conclusion were not supported on the evidence before her. Accordingly, we find no merit in the appeal and it is dismissed.