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22nd September, 1965.

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IN THE COURT OF APPEAL

R.H.C.A. No. 81/65

BEFORE: The Hon. Mr. Justice Henriques (Presiding)  
The Hon. Mr. Justice Waddington  
The Hon. Mr. Justice Moody (Acting)

R. vs. KEITH DAVIS

Mr. E. L. Miller appeared for the Crown.

Mr. Anthony Spalding appeared for the appellant.

WADDINGTON, J.,

The appellant was convicted on two counts of an indictment, the first charging him with shop-breaking and larceny and the second, with wounding. The conviction was in the Resident Magistrate's Court for the parish of Kingston on the 14th of April this year, and on the first count the appellant was sentenced to 12 months imprisonment at hard labour and on the second count he was fined £10 or three months imprisonment at hard labour.

The case for the Crown was that on the night of the 15th of July, 1964 at about 9:00 p.m., John Edwards was asleep in the Rialto Theatre along the Windward Road. Edwards had gone there to visit Sterling Marston, the watchman, and whilst sleeping at about 3:30 the following morning, he was awakened out of his sleep to see two men in front of him, one with a knife in his hand, who was the accused, according to Edwards. He said that the accused slashed at him with this knife, that he put up his right hand to ward off the blow and got a cut on

/the back...

the back of his right forearm. After this happened, both the accused and the other man ran from the theatre to the car park; and shortly after, a motor car was heard to be moving off. According to Edwards, he was able to see the two men from the electric lights which were burning in the theatre at the time. In addition to this, Edwards said that for about a month prior to this he had seen the accused on two occasions coming to shows at the theatre.

Edwards subsequently attended an identification parade and from a line of men he identified the accused as being one of the men whom he had seen in the theatre and who had wounded him.

After the men had run from the theatre, it was discovered that the canteen of the theatre had been broken into, locks had been broken off, it appeared to have been ransacked and, according to Gertrude Brown, who was the person in charge of the canteen, beers, cigarettes, chocolates and peanuts totalling £30 were missing from the canteen.

In his defence, the appellant denied that he was one of the men in the theatre that night. He said that he was going home one night along with two other men Dick Brown and Courtney Allen, when he was accosted by the police. He told them that he was coming from Kings Theatre, and he was told that he would be taken in custody. Two days later, he said, two identification parades were held, one for Dick Brown and the other for himself and Courtney Allen, and that two witnesses came in. One witness in the first parade said he didn't see any of the men there and the other witness pointed to him and said, "This is the man."

He said that at the time the theatre was broken he was actually at home although he couldn't clearly remember the morning of the 16th of July, but he was quite positive he was not near the theatre that morning.

Mr. Spaling, counsel on behalf of the appellant, has urged that the evidence disclosed that the appellant was suffering from a scar on his right nostril at the time of the identification parade and he complains that the Inspector who conducted the parade ought to have taken some precaution such as, by putting a patch on the faces of the other men in the parade to make this scar which was on the appellant's nostril, less apparent to the person who was to identify him.

We have considered the matter very carefully and it is our view that having regard to the evidence as a whole in the case, and particularly to the evidence of Edwards that he had seen this accused on two occasions before, coming to the theatre, there is really nothing in this ground of appeal. It seems to us that Edwards had ample opportunity on the night in question to have identified the appellant, coupled with his previous knowledge of the appellant. Apart from this, it must be a difficult matter for an Inspector of Police who is conducting an identification parade to properly conceal any physical features of the person to be identified. It seems to us for one thing that if he had put patches on the faces of all the men in the parade that that would perhaps have brought more to mind to the person who was to identify the appellant, that there was something wrong with that particular part of the features of the person to be identified and it might very well be that if the witness had known the person to be identified before and perhaps known of that scar - of that feature being concealed, that would be something that would help him to identify the person to be identified. We think that there was sufficient evidence for the learned Resident Magistrate to have found the appellant guilty on both of these counts of the indictment and we see no reason, therefore, to interfere with the conviction. The appeal is therefore dismissed.

*B. E. Waddington*  
J.H.