

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 143/95

**COR: THE HON. MR. JUSTICE CAREY, J A
THE HON. MR. JUSTICE WOLFE, J A
THE HON. MR. JUSTICE BINGHAM, J A (AG.)**

**REGINA V SILBERT DALEY
o/c Silbourne Bailey**

C. Dennis Morrison, Q.C. for the Applicant

Ralston Williams for the Crown

July 15, 22, 1996

WOLFE, J A

The applicant, who was tried in the Home Circuit Court before Reckord J, sitting with a jury, for the offence of capital murder, was convicted on the 26th day of October 1995 and sentenced to suffer death in the manner prescribed by law. He now seeks leave to appeal the conviction.

The indictment charged that on the 24th day of November 1988 in the parish of St. Andrew he murdered Neville Burnett, in the course or furtherance of a robbery.

The deceased Neville Burnett was employed to Guardsman Courier Service as a clearance delivery driver. His duties included picking up data, cancelled cheques and other bank documents from the Canadian Imperial Bank

of Commerce. His tour of duty commenced at about 4.00 a.m. daily Monday through Friday.

On Thursday November 24, 1988 the deceased went to the Twin Gates Plaza branch of the Canadian Imperial Bank of Commerce to make a delivery of cancelled cheques. The sole eyewitness to the killing, Dennis Dias, testified that the deceased was in the process of opening the night deposit with a key when the applicant approached from behind and shot him. Having shot the deceased he removed from the waist of the deceased a firearm and made good his escape with the firearm and a bag which the deceased had with him.

The applicant entered a Marina motor car which was parked along Eastwood Park Road. The car sped away along Red Hills Road. Dias followed the car. The applicant and another man alighted from the car at 85 Red Hills Road.

The applicant was known to the witness Dias for several years. They both attended the Little Mt. Olive Basic School at 100 Red Hills Road. A Basic School is a pre school institution for children between the ages of four and seven years of age. The witness and the applicant lived within close proximity of each other and saw each other often. The incident took place sometime around 7.00 a.m.

A report was made to the police at Half Way Tree and the same day a warrant was obtained for the arrest of Junior White o/c Sleepy Boy. Dias had testified that he knew the applicant as "Junior" or "Sleepy Boy". He was not

arrested until some three (3) years after the incident as efforts to locate him proved futile. On September 12, 1991 the applicant was apprehended based upon information given to the police by the witness Dias.

The applicant in an unsworn statement denied any knowledge of how Neville Burnett came to his death.

It is clear from the summary of the evidence that the sole issue for determination was the identification of the killer.

Mr. Dennis Morrison Q. C. filed a lone ground of appeal, to wit:

1. That in the light of the fact that the evidence against the Applicant consisted of that of a sole, uncorroborated, witness, the directions of the learned trial judge on the correct approach to that evidence were inadequate."

The Court having granted leave to argue this ground, Mr. Morrison, with his usual candour, confessed that upon reading carefully the summation of the learned trial judge on the issue of identification he could not support the ground of appeal.

We too are of the same view. The language of the learned trial judge might not have been as precise as one would have expected, but he certainly alerted the minds of the jury of the need to approach the evidence of identification with the utmost caution, and the reasons for such caution. This was clearly a recognition case under circumstances which could not in anyway

be considered as difficult. This was not a fleeting glance case. Visibility was excellent.

Because of the gravity of the offence we have carefully examined the transcript of evidence and the summation and we are satisfied that there is no basis for complaint by the applicant. The evidence was overwhelming. The verdict was inevitable.

The application for leave to appeal is therefore refused.