

NALCS

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 65/95

**COR: THE HON MR JUSTICE CAREY JA
THE HON MR JUSTICE PATTERSON JA
THE HON MR JUSTICE HARRISON JA (AG)**

NOEL RILEY V REGINAM

Ernest Smith for appellant

**Miss Paula Llewellyn Deputy Director of
Public Prosecutions for Crown**

13th & 20th May 1996

CAREY JA

On 13th May we treated the hearing of the application as the hearing of the appeal which we allowed, the conviction was quashed, the sentence set aside and a verdict and judgment of acquittal entered.

The appellant after a trial begun on 24th April 1995, in the Home Circuit Court before Chester Orr J and a jury was convicted on 1st May 1995 for capital murder, i.e. the murder of Norris Rayam in the course or furtherance of robbery and sentenced to death.

Mr. and Mrs. Rayam, U.S. citizens arrived in this country as tourists on 30th May 1994, to spend a week long vacation after two years of marriage. The trip was in celebration of that event. Mrs. Rayam is a news

reporter and anchor for Fox television in the U.S.A. Her husband was an author and programme director. They were staying at a villa in Runaway Bay in the parish of St. Ann, called Villa Bel Mar. In the early morning of 1st June, Mr. Rayam was fatally shot by an intruder who broke into the Villa. Mrs. Rayam was also hit on her head by what she described as a silver object presumably a firearm which caused a wound which bled quite profusely. She was robbed of her purse containing a trifling amount of cash.

The Crown's case depended entirely on her uncorroborated evidence identifying the appellant as the assailant, and it is her evidence which caused us no little concern. Mr. Smith, arguing that the learned trial judge erred in refusing to uphold the submission of no case to answer made at the close of the prosecution's case, focused on the quality of that evidence.

It will be necessary therefore to set out the circumstances of the murder in some little detail. But first the location of the villa. It is situated about a half mile from a hotel, Jamaica Jamaica in Runaway Bay and is adjacent to the highway. The villa consists of three bedrooms, one of which, the master bedroom was used by the couple. That room is set behind the dining room or living room area in which there is a bar section. The lighting in the living room was quite bright, illuminating not only the living room cum bar but it streamed into the master bedroom. That light

was left on at nights and switched off by the housekeeper in the morning. Between that bedroom and the living room area was a solid wooden door which was locked when they retired to bed on 31st May.

In the early hours of the following morning, Mrs. Rayam was awakened by a noise. She looked out the window and observed movements of perhaps one or two persons going back and forth. She leapt out of the bed yelling "hey you, get out of here." The forms did not go away. Her scream awakened her husband who also jumped from the bed towards the window and at the same time someone screamed, "it's the police, it's the police." The couple stood by the door. As her husband placed his hand on the door-knob, the door opened sufficiently to enable whoever was outside, to insert his left arm, left leg and side into the opening. The couple tried bracing against the door but the intruder clobbered her over her head with a silver object, presumably a gun. During this exercise, she heard what sounded like a pop. That sound was described to the jury. It must have been the sound of a gunshot. Her husband's efforts at bracing the door became weaker, and she found herself slipping on the floor as blood was under-foot. Their efforts were ineffectual, the assailant finally forced his way through the door.

By this time, she had slipped to the floor on her knees in blood and she had reached by the bed. It was at this stage that she found herself looking up at the intruder who was standing over her. She was able to

make out this person by the light provided from the living room area. There was also natural light from outside the room and light from a building across the street and also from cars passing over on the highway. The person was less than arm's length of her at that point. This person demanded money and she grabbed her purse and threw it at him, begging him to leave. He made his exit by running from the bedroom. The period which she had for observing the intruder, she estimated in total at two minutes.

Thereafter, quite distraught she herself ran from the villa to the housekeeper's quarters and made an alarm. Thus roused, the housekeeper Molly, went to get help. When Mrs Rayam returned to the bedroom, her husband appeared to be unconscious. She made efforts to revive him, but when those were unavailing, she ran outside hysterically screaming for help. She ran into a young man from an adjoining villa, pleadingly asking if he knew who did this? She described her mental state and her physical condition. She said she was alert but she had a head injury which was bleeding. Police officers were trying to calm her down.

She identified the appellant as the assailant whom she had met on five occasions prior to the night of the murder. The first was on the 31st at about 9:30 in the morning when he approached the couple and introduced himself as Charley and tried to sell them his wares. He was a craft

himself as Charley and tried to sell them his wares. He was a craft vendor. They were not interested. That evening he returned offering to sell them straw bags. The couple declined his offer. On the morning following, he again entered an appearance, this time soliciting charity. He even drew their attention to a shower used by swimmers and for this unsolicited service, he sought to receive a dollar. But he was rebuffed and told that they would look at his stuff later. That same morning after breakfast, they again saw and spoke with him on the beach. His theme on this occasion was that he had children whom he was trying to support and needed money. On this occasion, he was rewarded with two U.S. dollar bills. The fifth occasion was at 5:30 p.m. while they were swimming. Charley approached with a friend offering horse-back riding which they declined. She described Charley as having missing front teeth and pronounced cheek-bones.

On 3rd June 1994 she returned to this country and at an identification parade held at the Runaway Bay police station, she pointed out the appellant as the man who had entered the Villa Bel Mar a year or so before and killed her husband.

When the witness was cross-examined, it emerged that in the very first written statement which she gave the police, she did not mention the appellant as being implicated in her husband's death. The statement records her as saying:

and it appears as if his front teeth are missing."

On 13th February 1995 another statement was given to the police. It was described by her as an addendum because she had prepared another written statement for her attorney. She had sat down with a police officer (Inspector White) compared her first statement, which she referred to as the wrong statement, with the statement to her attorney, "worked out and pinpointed the differences." That was her second statement in which she is noted as saying:

"... I gave Detective White a description of the man I saw in my room and told him that he resembles Charlie."

We think that the circumstances in which the witness would have made any identification, can only be described as difficult. In the first place, the lighting was far from ideal. The fact that Mrs. Rayam said she relied on natural light as a source in addition to the other light sources which we have identified, inclines us to think that she was not able to see very well. Secondly, we would comment that facing a stronger light source from the living room would put her assailant in the shadows, thus making identification impossibly difficult. Thirdly, the opportunity for observing features in that lighting was of the shortest duration, she said two minutes. That estimate, we venture to suggest, is a charming understatement meaning for a short time. Mr. Smith in argument categorized the period as no more than a fleeting glance. However

described, the impression conveyed to any reasonable mind is that, it was not for an appreciable time. Finally, there is little doubt that Mrs. Rayam had a harrowing experience. She was attempting to recognise or observe someone whom possibly she had never seen before in her life in most terrifying circumstances. Her husband had been shot, had fallen and bled so extensively, she was slipping in his blood on the floor. When she set eyes on the intruder after he had entered, she was on her knees in blood looking up at a man looming over her with a gun. She would have been in shock and her conduct after her husband's slayer had made off, confirms her psychological state. That evidence was weak by any reckoning. It had no strengths. The fact of her proximity to the intruder when he entered has little weight in the context of the circumstances we have detailed. The Crown's case was predicated on the basis of a recognition case. But that concept lacked any real substance when it was clear on the evidence that in fact the sole eyewitness, never mentioned the appellant in any written statement given by her either to the police or her lawyer.

In the light of her evidence that she had seen the appellant on at least five occasions before the event, it would be expected that her identification of this appellant would have been more positive. But from the very beginning of her recounting the traumatic events of that morning, she expressed uncertainty and doubt as to the identity of the assailant.

There is one other matter which for completeness, we should mention. Although she testified before the jury that she had told the police it was Charley i.e. the appellant, that assertion was not confirmed in either of her statements. Inspector White gave evidence that after reports made to him he went in search of Charley, a fact which might suggest that in fact Mrs. Rayam had named the appellant. But that was not the case because Mrs. Rayam had also said that she did tell the police they should speak with Charley. We do not think, that this evidence added one whit to the Crown's case. The learned trial judge did not have to resolve any conflict and determine who was being truthful and who was not. The weight of the evidence was all one way, the evidence linking the appellant to the crime was weak and on that ground there really was no case for the appellant to answer.

The law is now well settled. In cases where the Crown's case depends on uncorroborated identification evidence and that evidence is weak, there is a positive duty cast upon the trial judge to withdraw the case from the jury. Lord Widgery in **R v Turnbull** [1976] 3 All ER 549 observed at p. 553:

" When, in the judgment of the trial judge, the quality of the identifying evidence is poor, as for example when it depends solely on a fleeting glance or on a longer observation made in difficult conditions, the situation is very different. The judge should then withdraw the case from the jury and direct an acquittal unless there is other

evidence which goes to support the correctness of the identification."

The Judicial Committee has laid it down definitively in **Scott v R** [1989] AC 1242 and **Reid v R** [1989] 3 WLR 771 that we are bound by the law as enshrined in **Turnbull** in all respects.

Learned Crown Counsel did essay valiantly and vainly to defend the indefensible but eventually with commendable candour acknowledged that the quality of the identifying evidence was less than satisfactory. We have no hesitation in saying that the trial judge in the face of the uncertainty which was manifest in the evidence, should have withdrawn the case from the jury.

The circumstances of this murder were, of course, appalling, but by leaving such poor evidence to the jury, the result is a miscarriage of justice. It is precisely because of the risk a miscarriage in cases depending on the correctness of visual identification is especially high, that a positive duty is placed on the judge to withdraw the case from the jury where the identification evidence usually unsupported by other evidence, is poor or weak.

These then are the reasons for our decision which we gave on the 13th instant and appears at the commencement of the judgment.