

Privy Council Appeal No. 50 of 1993

Carl Brissett

Appellant

v.

The Queen

Respondent

FROM

THE COURT OF APPEAL OF JAMAICA

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE  
29TH NOVEMBER 1994  
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*Present at the hearing:-*

LORD JAUNCEY OF TULLICHETTLE  
LORD GRIFFITHS  
LORD MUSTILL  
LORD WOOLF  
LORD NICHOLLS OF BIRKENHEAD

*[Delivered by Lord Griffiths]*

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On 2nd February 1984 the appellant was convicted of the murder of Richard Williams committed on 9th March 1981. On 3rd May 1986 the Court of Appeal dismissed the appellant's application for leave to appeal against his conviction: he now appeals by special leave granted on 10th June 1993. Their Lordships do not have the advantage of seeing the reasons given by the Court of Appeal for refusing the application for leave to appeal: no doubt they were given orally and have not survived the years that have elapsed before this appeal was brought before the Board.

The facts.

On the night of 8th/9th March 1981 Richard Williams was the front seat passenger in a car driven by Alford Francis in the course of their duty as security guards. Patricia Garrison, the fiancée of Alford Francis, was a passenger in the back seat. Shortly after midnight Francis drove the car to 5 Montclair Drive, Beverley Hills to make a spot check on the premises. Francis drove into the car port of the house and as he stopped a man armed with a gun approached the driver's door from the house and said "Don't move, if you move you dead" or words to that effect. Williams drew a gun and fired at the man who leapt

back, ran to the front of the car and fired shots through the windscreen that killed Williams. The assassin, together with another man who had broken into the house, then made their escape. Francis and Garrison were uninjured due to the fact that Francis flung himself out of the driver's door and Garrison lay flat on the rear seat after the first shot was fired through the windscreen.

Six months later, on 8th September 1981, the appellant was put upon an identification parade. Francis said he could not identify any of the men but Garrison identified the appellant as the man who shot Williams.

At the trial the prosecution case rested solely on the uncorroborated identification evidence given by Patricia Garrison. Francis was called as a witness but said he was unable to identify the appellant as he was looking at the gun in the man's hand rather than his face. Garrison's evidence was that she saw the man as he approached the car in the light shed by a light in the car port, a light outside the house and the lights of the car. She saw the man was holding a gun and heard him threaten them, saying when close to the driver's door "Don't move, or you gonna dead now" or something like that. As the man approached she saw Williams draw a gun, lean across and fire at the man immediately after he uttered the threat. The man ran from the side of the car to the front still pointing the gun, she heard another explosion and threw herself flat on the rear car seat where she had been sitting, there she lay hearing another explosion and the windscreen smashing. She then heard the car reversing and saw Williams slumped and bleeding. She estimated that she had the appellant under observation for about ten minutes but agreed she did not see him again after she had thrown herself flat on the rear seat of the car. She identified the appellant in the dock as the man she had identified on the identification parade, and as the man she saw that night. The judge asked her "Did you observe anything particular about his appearance or anything at all about him" to which she answered "When he was talking, a see like he wears a denture but is something of gold in his mouth" asked to repeat her answer she said "When he was talking I observe he wearing like a gold teeth in his mouth". Asked by the judge "Anything else, anything else you observed about him" she shook her head. She said, however, that she had not seen the gold tooth on the identification parade and had not relied upon it to identify the appellant.

On the morning of the shooting she described the man to the police as about her height (5'4½"), of dark complexion with a stout build. The police agreed the appellant's height was 5'10½".

The defence called no evidence but the defendant made a statement from the dock, which commenced with the words "My Lord, I know nothing about this case that I charge with, sir" and ended "I don't know nothing about this case,

sir". The rest of the statement consisted of a complaint about the behaviour of the police towards him and his girlfriend when they were taken into custody on 11th August 1981.

Counsel on behalf of the appellant has made a number of substantial criticisms of the summing up. In the first place it is submitted that the judge failed to give an adequate direction on the dangers of relying upon one uncorroborated witness of identification, and in particular failed to warn the jury that an honest witness may appear very convincing yet be mistaken. Their Lordships consider that there is considerable force in this criticism. This was not a recognition case and whereas it could not fairly be described as a "fleeting glance" case the opportunity to see the man was limited to what must have been a very short period of time in terrifying circumstances; it clearly could not have been anything approaching the time of ten minutes estimated by the witness. Nor can one lose sight of the fact that Francis, the driver, was unable to identify the man although he would have had a better line of vision than the back seat passenger; furthermore six months had passed before the identification parade was held.

In these circumstances it was of the first importance to require the jury to consider most carefully the possibility that although Patricia Garrison might have been an honest and convincing witness she might yet have been mistaken in her identification of the accused, before they convicted on her evidence alone. Although the judge did refer to the possibility of a mistake in his summing up, it was not with the emphasis that is now to be expected in the case of a single identifying witness in circumstances like those in this case.

The passages dealing with mistake appear at different places in the summing up and are as follows:-

"In a serious charge like this, where one witness is the person put forward by the Crown, and the case is going to stand or fall on the credibility of the witness, there is nothing wrong in putting forward the argument that the jury should be careful in examining the evidence of that witness to see whether you can safely rely on that witness."

"Well it's possible for people to make mistakes and may look at a person and believe that it's somebody else. That's possible. There is no doubt about that."

"Now, our Court of Appeal in a decision in 1977 said that the Judge should alert the jury that there is a possibility that a witness may be mistaken when it comes to visual identification. Well, I have already told you that it's possible you have mistake."

the conclusion that this summing up was so unsatisfactory that it would be unsafe to allow this conviction to stand. They will accordingly humbly advise Her Majesty that this appeal should be allowed and the conviction of the appellant should be quashed.



