

**EASTERN CARIBBEAN SUPREME COURT
ANGUILLA**

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

**CLAIM NO. AXAHCV2024/0088
BETWEEN**

REX

v

REINY POLANCO CHALAS

Before: His Lordship the Honourable Justice Ermin Moise

Appearances:

Mr. Terrence William KC and with him Ms. Erica Edwards and Ms. Jordia Hodge for the Crown
Mr. Thomas Astaphan KC and with him Mr. Devin Hodge for the Defendant

2024: November 12.

DECISION ON NO CASE SUBMISSION

- [1] **MOISE, J.:** Mr. Reiny Polanco Chalas (Mr. Chalas) was indicted on one count of attempted murder of Ms. Samantha Wright (Ms. Wright), one count of illegal possession of a firearm and one count of illegal possession of ammunition. At the close of the case for the prosecution, counsel for Mr. Chalas made a submission that there was no case for him to answer. I upheld that submission and undertook to put the full extent of my reasons in writing. I do so now.

The Facts

- [2] At approximately 1:50 on the morning of 24th June, 2018 Ms. Wright was shot whilst in her car in her yard at Cauls Bottom, Anguilla. She was returning home from a music festival which she had attended the night before. It was her evidence that during her drive home she was on her mobile phone in a conversation with a friend named Crispin Brooks. She remained in conversation with him throughout the incident.
- [3] It was Ms. Wright's evidence that she approached her yard, which was fully fenced. Once at the western end of the gateway, she slowed her vehicle down. There was a lamp post right on the corner of the gateway. She turned left into her yard and then immediately faced her car pointing east. Ms. Wright states that her car was a right-hand drive, and that it was parked parallel to the road with a 10-to-12-foot gap between it and the road itself. At that point, the window of her car was down.
- [4] Ms. Wright stated that the weather was clear on that night. It wasn't raining or windy and the lamp post was new. It had been replaced in October 2017 because Hurricane Irma snapped the first one. It was bright and it allowed her to see into the road very clearly. It was about 5 to 6 feet towards the rear of her car. It was very close.
- [5] Ms. Wright went on to state in her evidence that her attention was drawn to the sound of people or somebody running on the road. She looked to her right and saw two people on the road, coming from an easterly direction, running towards her gateway. It was her evidence that she could not clearly see the person who was furthest away from her. She was unsure whether it was male or female but there was somebody there. The person who was nearest to the fence, and nearest to her, momentarily looked at her and she looked at him for probably about a second or so.
- [6] Ms. Wright described this person as being slim, not athletic built. He was about 5 feet 10 inches tall. She stated that where her car was parked was slightly lower than the road, so he may have been taller, but she reasoned that her assailant was approximately 5 feet 10 inches tall. He had brown skin and was wearing a bandana on his face. The bandana was located on the bridge of his nose. Ms. Wright noted that she could see his eyes, his forehead and his hair. The bandana looked to be a bluish color with white detail. She could not see what that detail was, but it had white in it. His eyes

were dark coloured, but it had a sleepy look about them. He had quite a pronounced long or tall forehead.

- [7] She went on to describe this person by noting that his hair was dark, and it appeared to be in twigs, short dreads or plaits or something like that, but she could see it sticking out. He was wearing what she could see was dark clothing. He seemed to her to have a clumsy gait. She stated that what she meant by that was how he was placing his foot on the tarmac as he was running. It was like he was slapping the road, like heavy footed as he ran.
- [8] This initial observation of Ms. Wright's assailant was made through a fence which contained a fair amount of foliage along it. She stated that there was a gap in the foliage and that it was through that gap, coupled with the lighting from the lamp post at approximately 10 to 12 feet away, she was able to see her assailant.
- [9] Ms. Wright goes on in her evidence to state that when she saw these two people coming towards her yard the car engine was still running. Her mobile phone was still in her hand and Crispin Brooks was still on the line. She locked her car door and pressed the electric window closed. She then threw herself across her car seat to the passenger side. Her car was an automatic vehicle, and its gear stick was on the steering wheel, and not in the middle. That allowed her to lie down to the left on to the passenger seat.
- [10] Ms. Wright states that whilst lying down on the car seat she looked or peaked over her shoulder and saw the same man that she had described with the bandana at the side of her car at the right-hand driver's side. That observation was held for merely a second. It was at that point she was shot. She was hearing gunshots and bullets. She was screaming. The bullets just kept coming, one after the other. Ms. Wright states that she was screaming "don't kill me, please stop, I am a mother" but they just kept on coming. She eventually decided to play dead until her assailant ran away.
- [11] In her evidence, Ms. Wright noted that she still had her phone which was then underneath her and she could hear Crispin shouting to her. She answered and said a couple of things to him and then he hung up. There was a lot of blood on her phone, so she kept as calm as she possibly could and dialed 911. She spoke to a police officer and told him about what happened and where she was.

After that she called Haslyn Patterson, who was then an Inspector of Police, and told him what happened. After that, she hung up and just laid quietly, telling herself to be calm and not panic.

- [12] The police arrived at the scene about 5 minutes later. Ms. Wright could hear a vehicle in the yard and saw the blue lights. She heard people in the yard calling her name. She went on to state in her evidence that, at that time, she couldn't move her legs. She was bleeding. However, she was as alert as she could be but was obviously losing blood. She described herself as being calm. She was alert enough to remember phone numbers and made phone calls to say the things she needed to say to save her life. Breathing was getting hard. She knew it was serious. She knew it was life or death.
- [13] It is important to note at this stage that, notwithstanding having spoken to her friend Crispin, a police officer, in addition to Inspector Haslyn Patterson and other persons who she was alert enough to call on that evening, Ms. Wright did not initially identify Mr. Chalas as her assailant on that night to anyone. She was taken to the hospital and eventually transported to the Cayman Islands for medical care. It was there, on 2nd July, 2018, that Ms. Wright first identified Mr. Chalas as her assailant.
- [14] In a video taped interview at the hospital in the Cayman Islands, Ms. Wright first mentioned Mr. Chalas to the police. She stated that at the time of the shooting she focused on herself and that it was probably a few days after the incident she kept saying that she knew this person. She thought long and hard and then it became apparent to her that it was Mr. Chalas. She made a similar statement in an interview dated 6th July, 2018 when she noted then that it was a few days after the incident that it became apparent that it was Mr. Chalas who had attacked her. In her video recorded interview she was asked by a police officer whether there was any other person she could think of. She replied by stating that she hoped there was nobody. She stated *"I've had my thoughts, but I just don't see. I just don't see the logic of them doing it. I don't have any enemies as such. I always work for everybody. I'm a friendly lawyer. I do my very best. I don't charge too much. I don't know."*
- [15] In cross examination Ms. Wright also acknowledged sending a WhatsApp message to a lawyer's group asking for information about the shooting. This message was allegedly sent between 24th June and 13th July 2018 and stated that *"if any of you have any information about it, even if it's your husband, please send it to the police."* She stated that she also sent a similar message to the parents' group of the school where her son attended at the time. Ms. Wright acknowledged having a conversation with one other person who gave an alibi for a close family member. It was put to her,

that this person may well fit the description of her assailant. She rejected that suggestion and indicated that the conversation with this particular person was unsolicited. Generally, however, it appears from her own responses to the questions in cross examination that Ms. Wright was, at that point, seeking information regarding her assailant. She did not then identify Mr. Chalas as being the perpetrator.

[16] Ms. Wright in fact had a prior professional relationship with Mr. Chalas. She stated in her evidence that she had represented him in matters before the criminal courts in Anguilla. She first met him in 2015, and he had been to her office since then. She also stated that she met him at the courthouse as well. She represented him in court between 2015 and October, 2017. She stated that she would have seen him in her office a number of times and at court. From her recollection, she stated that he had 2 or 3 cases with her during that period and some bail matters. She noted, however, that none of these matters related to violent offences.

[17] Up until around October, maybe September 2017, Ms. Wright had no concerns about Mr. Chalas. It was her evidence that he had always been a very polite person. He would come to her office sometimes with his mom and sometimes on his own. But the relationship changed. Hurricane Irma happened on 6th September, 2017 and Mr. Chalas began contacting Ms. Wright. As a result of that discussion her representation of Mr. Chalas ended. He went to another law firm. After that, she didn't have any contact with Mr. Chalas until around April 2018. Ms. Wright stated that she was at court, dealing with matters. She had a client named Levi Lewis with whom she was speaking. Mr. Chalas was close by, and he began to get upset, asking Ms. Wright why she couldn't have represented him. He asked her why she couldn't have worked for him how she had worked for others. He was suggesting that Ms. Wright had delayed things for him.

[18] Ms. Wright went on to state that she had to tell Mr. Chalas to behave himself and that she was dealing with someone else. She stated that she believed Mr. Lewis also told him to cool out and then she left it alone. She went back into the courtroom and had nothing more to do with him. It was her evidence that Mr. Chalas was aggressive. He looked like he was frustrated and aggressive. It seems like he was taking it out on her while she was not his lawyer at the time. She described his voice as being rapid, getting louder; kind of in her face. She just told him to behave himself and to stop. Ms. Wright also stated that when she spoke to him, he didn't seem to like her words. He looked at her, but then

she just left. She didn't have anything more to say. It was pointless trying to speak to her client in that environment. She also stated that she told him he needed to behave himself and that he needed to take responsibility for his actions, stop blaming other people and to grow up and that if he didn't like his circumstances then he needed to take care of his own business. Something along those lines.

[19] It is important to note that on 2nd July, 2018 Mr. Chalas voluntarily visited the Police Station in The Valley, Anguilla. He agreed to give a statement to the police and waived his right to have an attorney present in doing so. He denied having any involvement with Ms. Wright's shooting. He stated that he was at home in Stoney Ground at the time. He lives there with his parents. In a police interview on that same date, he again denied any involvement with the incident. He stated that he was at home and did not go out that night. He stated that he does not attend the shows and that he dropped his girlfriend off to work at 6:00am on 24th June, 2018.

[20] The crown led evidence from Special Police Constable Peter Boland. SPC Boland gave evidence which states that he was on duty on the night of 23rd June, 2018 and was present at the venue where the music festival was being held. It was his evidence that he had witnessed Mr. Chalas and two other young men enter the venue of the music festival at approximately 12.45am on that night. SPC Boland stated that he had known Mr. Chalas for a number of years and that on that evening he held him in observation for about 6 seconds. Although he initially stated that he observed Mr. Chalas and the 2 young men leaving the venue, when pressed with his previous deposition and witness statement, he acknowledged that he had previously stated that he did not see Mr. Chalas leave the venue that night. He therefore accepted in cross examination that he did not witness Mr. Chalas leaving the venue. SPC Boland also claims to have met and spoken with Ms. Wright on that evening. Ms. Wright corroborates this by stating that she spoke briefly with him while exiting the event.

[21] SPC Boland's evidence was mired in inconsistencies and a lack of memory. From the very onset of his evidence he stated that he did not remember the events of that evening. Even after being granted leave to refresh his memory from his statement, his responses were at times evasive and contradictory. Whilst he initially claimed that he didn't remember the events he was later adamant that he saw Mr. Chalas on that evening, although he was unable to recall what he was wearing, the hairstyle he carried or whether he walked with a gait.

- [22] SPC Boland also stated that he knew Ms. Wright before the incident and acknowledged that he had done work for her as a process server on occasion. He denied having any close relationship with her. Overall, it would be difficult to describe SPC Boland's evidence as anything other than unreliable in many ways.
- [23] Evidence was also led by the medical doctor who examined Ms. Wright at the Princess Alexandra Hospital on that evening. It is not necessary to repeat that evidence in full here. It would suffice to say that Ms. Wright was in serious need of additional care which was not available here in Anguilla. She was then transported to the Cayman Islands.
- [24] Evidence was also led by Police Sergeant Godfrey John. Sgt. John, along with one other police officer, conducted the interview with Mr. Polanco at the Police Station on 2nd July, 2018. He acknowledged in cross examination that Mr. Polanco was not under arrest at the time and that he attended the police station voluntarily. He also acknowledged in cross examination that he did not personally interview or speak with Mr. Polanco's parents in order to ascertain whether his alibi was true. He did not recall Mr. Polanco saying that his girlfriend was at home with him on that night, but he did not investigate whether Mr. Polanco had dropped her off at work the following morning. Sgt. John was not aware as to whether any other police officer had made such enquiries. He did not search Mr. Polanco's home for clothing or any other items which would have assisted with the investigation.
- [25] When pressed with photographic evidence of Mr. Polanco, taken at the police station on 7th July, 2018, Sgt John acknowledged that Mr. Polanco did not wear twigs, locks or plaits in his hair. He acknowledged that this was also the case on the date of the interview.

Is there a Case to Answer?

- [26] Given the nature of the prosecution's case, the defence submits that Mr. Chalas has no case to answer. The submission is premised on the fact that for the crown to succeed, Ms. Wright's identification of Mr. Chalas as her assailant is crucial. If the jury is unable to rely on that evidence,

then there can be no conviction. The court is therefore called upon to consider the principles laid down in 2 cases. Firstly, in the case of **Galbraith**¹ it was stated that:

“(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury... There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge.”

[27] It cannot be said that there is no evidence that Mr. Chalas was responsible for shooting Ms. Wright. The issue, however, is that the evidence of this is presented by Ms. Wright herself in identifying him as her assailant. In cases such as the present, where the issue is of identification under difficult circumstances, the test under **Galbraith** becomes somewhat deficient in that it states, among other things, that where the strength or weakness depends on the reliability of the witness the matters are best left for the jury to decide. As has been recognized by the common law for quite some time, a witness can be honest but mistaken. Where identification is concerned, a witness can come across as being very credible and reliable but mistaken as to the identity of a person accused of committing an offence. Counsel for Mr. Chalas referred the court to the case of **Rex v. Jemore Athill**² where Ramdhani J(ag) highlighted the challenge in stating that:

¹ [1981] 2 All ER 1060

² ANUHCR2015/0103

“Over the centuries, the experience of the common law had shown that faulty and unreliable identifications had led to many wrongful convictions and grave travesties were being perpetuated by the very law that sustained our system of public justice. Today, the courts are regularly called upon to treat with such evidence, and in every case these courts remind themselves of the dangers of such evidence.”

- [28] Ramdhani J also went on to note that ***“[t]he experience of the common law has led to a recognition that the problem with such evidence is one of reliability as many honest witnesses bent on telling the truth and being very convinced about it, have erred in identifying persons who he or she swears he or she saw.”*** It is in light of this, the decision in *Turnbull*³ has come to augment the broader principles expressed in *Galbraith* where the issue before the court is that of the quality of the identification evidence presented. The judgment states as follows:

“Where the quality of an identification is good, the jury can safely be left to assess the value of the identifying evidence even if there is no other evidence in support, provided always that an adequate warning has been given about the special need for caution. However, where in the opinion of the judge the quality of the identifying evidence is poor, he should withdraw the case from the jury and direct an acquittal unless there is other evidence which supports the correctness of the identification. That other evidence may be either corroboration in the legal sense or something which convinces the jury that the identification is not mistaken; any odd coincidence, if unexplained, may be supporting evidence.”

- [29] It cannot be said here that the quality of Ms. Wright’s identification of Mr. Chalas is good. Firstly, the incident took place at approximately 1:50am. It was dark, save for the light of a lamp post. Secondly, there was foliage along the fence through which Ms. Wright claims she was able to see her assailant for one or two seconds. Thirdly, at the point where the assailant was standing near her vehicle, she was laying on the seat in the opposite direction of the window and glanced over her shoulder for merely a second. Fourthly, whoever shot Ms. Wright was wearing a bandana across the bottom part

³ [1977] QB 224:

of his face. And, fifthly, Ms. Wright did not make this identification until she had left the island and was in the hospital in the Cayman Islands. That was 8 days later.

[30] I take into consideration that Mr. Chalas was known to Ms. Wright before. This no doubt is a factor which may, in some circumstances, strengthen the identification evidence. However, I also make the observation here, that many aspects of the description which Ms. Wright gave of her assailant do not fit the description of Mr. Chalas; or at the very least there was no evidence of this presented. She said her assailant was wearing twigs, dread locks or plaits in his hair. There is no evidence that Mr. Chalas ever wore such a hairstyle, and he does not wear one at the moment. She said that her assailant ran with a gait. Again, there is no evidence that Mr. Chalas walks or runs with a gait. Ms. Wright, who had been familiar with Mr. Chalas before, said that she had never noticed such a feature in him. When pressed in cross-examination she stated that she had never seen Mr. Chalas run. The only thing which could be left to the jury here was that her assailant allegedly had droopy eyes and a long forehead. This could hardly be a description which goes far in assisting the jury when balanced against the evidence in general.

[31] Finally, as it relates to the identification, one must take into account Ms. Wright's interview with the police. She indicated that she had given thought as to who her assailant could be. Although it appears that she was using the description of the person she saw that night to assist her in jogging her memory, she goes on to speak of whether the attacker could have been someone else. She told the police that she had thought about it but that she was a good lawyer and couldn't think of anyone else who would do this to her. In addition to that, she sent out WhatsApp messages to her colleagues and those persons from her son's school seeking information about her attacker.

[32] In keeping with the principles established in **Turnbull**, I am of the opinion that this identification evidence is poor and that the case should be withdrawn from the jury, and an acquittal directed, unless there is other evidence which supports the correctness of the identification. That evidence could be corroboration in the legal sense or something which convinces the jury that the identification is not mistaken; any odd coincidence, if unexplained, may be supporting evidence.

[33] In the case of *Dwayne Knight v. R*⁴ the Court of Appeal of Jamaica noted that the trial judge had “**a non-delegable duty to assess the weaknesses in the identification evidence at the close of the prosecution’s case. It was incumbent on him, before calling upon the applicant to state his defence, to demonstrably consider the cumulative effect of such weaknesses on the quality of the identification and to ensure, at the end of his assessment, that there was a substantial evidential basis upon which the identification could be found to have been correct.**” It is my view that in ensuring that there is a substantial evidential basis in finding that the identification could have been correct, the court is ensuring that the trial process itself is fair. This is an overarching duty and responsibility of a trial judge in such circumstances.

[34] I draw reference from the judgment of JCCJ Witt in the Caribbean Court of Justice (CCJ) case of *Jephth Bennet v. the Queen*⁵ where he stated that “**a procedurally fair process leading to an obviously inaccurate result can hardly be called fair, especially if the verdict is a conviction of a possibly innocent person. It is therefore obvious that the judge’s duty to ensure a fair trial must also include safeguards against reaching an inaccurate or wrong conviction.**” Although the issues in that case were broader than the mere weakness of the identification evidence, I am of the view that the three factors which the court was called upon to consider are in line with the test in *Turnbull* and it helps to place them within the overall context of the fairness of the trial. JCCJ Witt noted that the court should consider (1) the importance of the evidence, (2) the risks of unreliability and (3) the extent to which the reliability of the evidence can safely be tested and assessed by the jury.

[35] There is no doubting the fact that the identification evidence of Ms. Wright is crucial to the prosecution’s case. Without it there can be no conviction of Mr. Chalas. Its probative value to the prosecution is very high. Given the weakness of the identification evidence there is a real risk of its unreliability. It is not that Ms. Wright is unreliable in the sense of there being any reason to doubt her honesty. That in and of itself is a matter for the jury. It is the evidence and the circumstances of the identification which renders it unreliable. The question is whether the reliability of the identification

⁴ [2017] JMCA Crim 3

⁵ [2018] CCJ 29 (AJ)

evidence can safely be tested and assessed by the jury. What are the evidential tools available which will assist the jury in determining whether the identification is not mistaken.

- [36] Counsel for the crown argues that there is evidence of motive which can assist the jury in determining whether Ms. Wright correctly identified Mr. Chalas. I have referred earlier to the evidence led regarding the breakdown of the relationship between Mr. Chalas and Ms. Wright and will not repeat it in full here. However, I note that this breakdown had to do with Mr. Chalas' expressed dissatisfaction with Ms. Wright's representation of him and his view of her apparent lack of assistance in securing his freedom from prison. During the incident in April, 2018 at the courthouse, Mr. Chalas was allegedly agitated and aggressive towards Ms. Wright. She said certain things to him in that conversation which further agitated him.
- [37] In my view, what is necessary for the court to consider is whether this evidence assists in supporting the correctness of Ms. Wright's identification. The question is whether this amounts to corroboration in the legal sense or is something which convinces the jury that the identification is not mistaken. Is it an odd coincidence that someone else would shoot Ms. Wright when the only person she allegedly had an argument with prior to this incident was Mr. Chalas?
- [38] For my part, I make 2 observations here. Firstly, it may very well be the case that motive can assist in strengthening the identification evidence presented in a case. However, in some circumstances evidence of motive may also serve the purpose of increasing the potential for mistaken identity. In a case such as this one, a prior argument may further cement in the virtual complainant's mind that it was the defendant who did it and draw her to concluding that it was the defendant she saw on that night. The very nature of her exchange with the police at the hospital in the Cayman Islands and the WhatsApp messages to colleagues underscores this.
- [39] Secondly, I find the evidence of motive in this case to be somewhat tenuous to begin with. Mr. Chalas was unhappy with Ms. Wright's representation of him and took his case file to another attorney. He confronted her about his dissatisfaction in the courthouse in April 2018. That was two months prior to the incident. There is no evidence of any threat of violence against Ms. Wright. No reason has emerged from that evidence to show anything other than Mr. Chalas' dissatisfaction; albeit with some

measure of aggression and agitation. This cannot serve the purpose of assisting a jury in determining whether or not Ms. Wright's identification of him was mistaken.

- [40] The other issue which emerges from the evidence is that of alibi. Insofar as that is concerned two issues arise based on the evidence. One is that no evidence has been presented to show that the police had investigated any of the facts raised by Mr. Chalas in his interview regarding his whereabouts that night. The only evidence of an investigation was presented by Sgt. John. He did not interview Ms. Chalas' parents and admitted to not having spoken to his girlfriend in an attempt to verify the truth of what was said.
- [41] I pause here to note, however, that during submissions it was brought to the court's attention that there had in fact been a police interview of Mr. Chalas' girlfriend. There was some debate among counsel as to the nature of this statement and its disclosure. It was stated that an interview under caution was conducted in circumstances where she was under investigation. This statement was not disclosed to the court or presented in evidence. It is unclear as to whether this was corroborative of or contradictory to Mr. Chalas' evidence; or whether it was just unhelpful either way. The court expressed some concern here. It is the duty of the police to investigate an alibi. If there was indeed an interview with Mr. Chalas' girlfriend, then it would perhaps have assisted in the court being able to ascertain the proper circumstances under which this was done. There was also no interview disclosed of Mr. Chalas' parents.
- [42] The second observation I make is that the only evidence which may serve the purpose of contradicting Mr. Chalas' alibi was that of SPC Boland who stated that he saw Mr. Chalas at the event that night. Although this would not prove that Mr. Chalas was at Ms. Wright's residence at 1.50am that night, if it were to be believed by the jury, it would prove that he had lied about the fact that he had not left home.
- [43] The issue of alibi as a self-incriminating factor which can support identification evidence was addressed in **Turnbull**. Lord Widgery stated the following:

"Care should be taken by the judge when directing the jury about the support for an identification which may be derived from the fact that they have rejected an alibi. False alibis may be put forward for many reasons; an accused, for example, who has only

his own truthful evidence to rely on may stupidly fabricate an alibi and get lying witnesses to support it out of fear that his own evidence will not be enough. Further, alibi witnesses can make genuine mistakes about dates and occasions like any other witnesses can. It is only when the jury is satisfied that the sole reason for the fabrication was to deceive them and there is no other explanation for its being put forward can fabrication provide any support for identification evidence. The jury should be reminded that proving the accused has told lies about where he was at the material time does not by itself prove that he was where the identifying witness says he was.”

[44] In the present case, the only evidence which the jury can rely on where the issue of alibi is concerned is that of SPC Boland. As I have stated before, his evidence is itself riddled with inconsistencies and contradictions. SPC Boland’s demeanour and his general approach to the evidence in this case left much to be desired; especially for one serving as a police officer. Whilst I do accept that the reliability of his evidence and the question of whether he was telling the truth is a matter for the jury, in general I am not satisfied that even if properly directed, a jury would be able to rely on this evidence as a tool in assisting in their determination of whether Ms. Wright was mistaken in her identification of Mr. Chalas on that evening.

[45] One final issue which I have considered is that of recognition. The evidence is that Mr. Chalas was known to Ms. Wright. As I have mentioned earlier, there is no doubt that recognition is a factor which can be used to consider the strengths of the identification evidence. However, on that issue I consider the case of ***Dwayne Knight v. R***, where the following was noted at paragraph 33:

“... once the learned trial judge had accepted, as he did, that the sighting of the applicant was no more than three seconds by either witness in the conditions as existed, he should have recognised that that, in itself, was a weakness in the case, that warranted close consideration of the circumstances surrounding the purported identification. In other words, that specific weakness as to the short time for viewing ought then to have been evaluated within the context of other evidence or weaknesses in the case, in assessing the ultimate quality of the purported identification. The mere fact that the applicant was well known to the witnesses before, was not by and of itself, a sufficient basis to make such a finding.”

[46] The fact that Ms. Wright had known Mr. Chalas before is not by and of itself sufficient evidence against which the weaknesses in the identification could be cured. Having assessed the evidence in its totality I note that the court has an overarching duty to ensure that the trial process is fair. As JCCJ Witt notes, **a fair trial must also include safeguards against reaching an inaccurate or wrong conviction.** In my view, that is precisely what the test in **Turnbull** is trying to avoid. This is further underscored in the case of **Daley v. R** where Lord Mustill noted that:

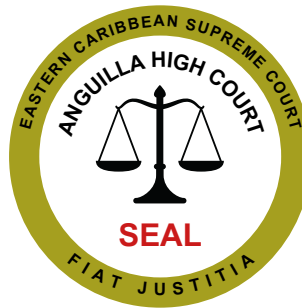
***“... in the kind of identification case dealt with by R v. Turnbull, the case is withdrawn from the jury not because the judge considers that the witness is lying, but because the evidence even if taken to be honest has a base which is so slender that it is unreliable and therefore not sufficient to found a conviction: and indeed, as R v. Turnbull itself emphasized, the fact that an honest witness may be mistaken on identification is a particular source of risk. When assessing the ‘quality’ of the evidence, under the Turnbull doctrine, the jury is protected from acting upon the type of evidence which, even if believed, experience has shown to be a possible source of injustice.*”**

[47] In essence therefore, the court must consider these principles in light of its duty to preside over a fair trial and ensure that injustice is not done. In the circumstances of this case, where the quality of the identification evidence is weak, to rely on the allegation of motive and the evidence of SPC Boland to refute Mr. Chalas’ claim of an alibi in order to substantiate the identification evidence is problematic to say the least. So too, is the fact that Mr. Chalas was known to Ms. Wright before.

[48] There is little to no evidence here to suggest that the police had even attempted to investigate and ascertain Mr. Chalas’ alibi. His parents were not interviewed, and his home was never searched. In such a circumstance the court would have to warn the jury that even if they had found Mr. Chalas had told lies to the police about where he was at the material time, this does not by itself prove that he was where Ms. Wright says he was at 1.50am. The allegations of motive are also tenuous, and Ms. Wright’s prior knowledge of Mr. Chalas does not assist in curing the inherent weaknesses of her identification of him. Taken at its highest, I am not satisfied that a jury, if properly directed could rely on that evidence to draw a conclusion that her identification was not mistaken.

[49] In the circumstances I have found there is no case to answer on all charges. A conviction in the firearm offences would have been contingent on the first count on the indictment. The jury was therefore directed to enter a verdict of not guilty on all charges on the indictment.

Ermin Moise
High Court Judge



By the Court

Chanelle Pety Barrett

Registrar