

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO 116/2010**

**BEFORE: THE HON MR JUSTICE PANTON P  
THE HON MRS JUSTICE McINTOSH JA  
THE HON MR JUSTICE BROOKS JA**

**ERROL BARRETT v R**

**Applicant not present or represented**

**Ms Sasha-Marie Smith for the Crown**

**ORAL JUDGMENT**

**1 October 2014**

**BROOKS JA**

[1] On 22 December 2007, Ms Janice Wright and her mother Ms Grace Walker were at Gray's Shopping Centre at the junction of Seaward Drive and Molynes Road, in the parish of Saint Andrew, when a man armed with a gun approached them and opened fire. His attack left Ms Walker dead and Ms Wright seriously injured. Ms Wright was taken to hospital where she was admitted suffering from paralysis of all her limbs due to the gunshot injuries.

[2] On 7 January 2008, while she was in hospital, police officers visited her and took a statement from her. In her statement she described the attack on her and her mother. She identified the person who had shot her as someone whom she knew before from the area where she lived. She knew him by the names, "Errol", "Bomber" and "Cableman". She said she had known him since he was a child.

[3] Because of her inability to move any of her limbs, Ms Wright was unable to sign the statement that the police had recorded. A police officer signed as witnessing that the statement had been taken by his colleague. Ms Wright died on 5 May 2008. Her death was connected to the injuries that she had received during the attack, mentioned above. She did not regain movement of her limbs and was not discharged from hospital before she died.

[4] On 7 January 2008 the police arrested and charged the applicant Mr Errol Barrett, for the death of Ms Walker and the wounding of Ms Wright. He was later charged for Ms Wright's death and tried for the offence of murder in respect of both deaths.

[5] At his trial, Ms Wright's statement was read into evidence after a *voir dire*. Apart from the statement there was no testimony as to how the incident occurred. Among the witnesses who testified for the prosecution were the police officers involved in the taking of the statement and one of the doctors who treated Ms Wright in hospital.

[6] In an unsworn statement, Mr Barrett said that he did not know Janice Wright and that he had nothing to do with the killings. He told the jury that he was “a hardworking cable man”.

[7] He was convicted on 23 September 2010 in the Home Circuit Court for both offences of murder and on 29 October 2010 sentenced to imprisonment for life in respect of each count. The learned trial judge, Hibbert J, ordered Mr Barrett to serve 35 years imprisonment before he could become eligible for parole.

[8] In his application for permission to appeal Mr Barrett set out four grounds on which he contended that the convictions ought to be set aside, namely:

- “(a) **Unfair Trial:** - That the evidence and testimonies upon which the learned trial judge relied on [sic] for the purpose to convict me lack facts and credibility thus rendering the verdict [sic] unsafe in the circumstances.
- (b) **Lack of Evidence:** - That the prosecution failed to put forward any piece of material, ballistic [sic], or scientific evidence to link me to the alleged crime.
- (c) **Misidentity by the Witness:** - That the prosecution witness wrongly identified me as the person or among any persons who committed the alleged crime.
- (d) **Miscarriage of Justice:** - That the prosecution witness failed to recognize [sic] the fact [that] I had nothing to do with the alleged crime for which I was wrongfully convicted of [sic].”

[9] The issues raised during the trial concerned the treatment of a *voir dire* (trial within a trial) in respect of the admission of Ms Wright’s statement, the directions concerning that statement, considering her absence from the trial, the identification

evidence in her statement, Mr Barrett's character and the question of alibi. The learned trial judge gave full and correct directions in respect of each of these matters and it cannot be said that there was any miscarriage of justice.

[10] We note that Mr Barrett has complained that no scientific evidence was produced to link him to the crime. Although the prosecution produced no such scientific evidence, it cannot be said that that is a weakness in the case. Despite the advances in technology, it is not in every case that there will be scientific evidence concerning crime scenes. If eyewitness testimony is all that is available to the court, then that is the evidence that will have to be assessed for its credibility, bearing in mind at all times the weaknesses inherent in such testimony.

[11] The members of the jury, after considering all the evidence and the directions of the learned trial judge, were convinced of Mr Barrett's direct involvement in these killings. After considering the submissions of Ms Smith for the Crown we agree that their decision should not be disturbed.

[12] The application for permission to appeal is refused. The sentences are deemed to have commenced on 29 October 2010, and it is so ordered.