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*(subject to editorial corrections)**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

CHRISTOPHER STOKES

MARTIN STOKES

AND

EDWARD STOKES

Appellants

Before: Morgan LCJ, Higgins LJ and Coghlin LJ

MORGAN LCJ (delivering the judgment of the court)

[1] The three appellants were convicted at Belfast Crown Court on 15 and 16 December 2009 of the murder of John Mongan. The appellants Christopher Stokes and Edward Stokes were convicted unanimously. Martin Stokes was convicted by a majority verdict [10-2]. Leave to appeal against conviction in respect of all three appellants was granted by the single judge.

[2] The Crown case was that on 7 February 2008 at least 4 persons forced entry into the home of John Mongan at 21 Fallswater Street, Belfast. Mr Mongan and his wife, Julia Mongan, were in an upstairs bedroom. Their two young children were in a separate bedroom. One of the intruders allegedly shouted, "Hello, hello, where are you?" before they made their way up to the bedroom. By this time John Mongan and his wife had pushed a bed in front of the closed bedroom door. The intruders forced their way into the bedroom and attacked John Mongan with weapons such as hatchets and other bladed implements. There were three men inside the bedroom and at least a fourth one in the landing area. The attack upon Mr Mongan continued for some time during which all three men in the bedroom took part. The Crown case was

that these three men were Christopher, Edward and Martin Stokes. As the men left the bedroom, one of them attacked Julia Mongan causing her injuries. The men then attacked John Mongan's car which was parked outside before leaving the scene. John Mongan died at the scene as a result of considerable loss of blood.

[3] In support of its case against Christopher Stokes the Crown relied upon mobile phone cell site evidence related to phone 315. This evidence tended to show that a phone connected to Christopher Stokes made a journey from Derry to Belfast at times consistent with the murder and thereafter travelled to Irvinestown close to Kesh where a burnt out Isuzu Trooper motor vehicle was found in the early hours of the morning of the murder. A similar vehicle was identified at the scene of the murder. The cell site evidence could not place the phone in Fallswater Street at any time. There was also supporting evidence put forward against Edward Stokes in that a small bloodstain on a shirt seized from him contained DNA that matched that of the deceased. There was evidence that an Isuzu Trooper motor vehicle similar to that identified at the scene and later found burnt out was parked outside the house of Martin Stokes in Derry on the evening before the murder but it was accepted that his was not of weight as supporting evidence.

The direction application

[4] The principal evidence against all three appellants was the eyewitness account of Julia Mongan. She gave evidence that the three appellants entered the bedroom and each participated in the attack in which her husband was killed. Crucially she stated that each of the appellants was unmasked and that she could see their faces. She recognised each of them having met them on many occasions over the years at family gatherings. It was contended that there were a range of inconsistencies and contradictions in her evidence which ought to have led to the case being withdrawn from the jury. If that was wrong it was submitted that the charge of the learned trial judge was confusing and contradictory in general and in respect of each appellant it was argued that the jury were misled or misdirected on critical issues. We shall deal first with the issue of whether the case should have been withdrawn from the jury.

[5] The murder occurred at approximately 2.30 am on 7 February 2008 and mobile police units were first directed to the location of the attack at approximately 2.36 am. The first police officer to enter the house was Constable Bryson. He made his way up the stairs followed by Constable Coyle. He noted that the landing light was on but the light was not on in the front bedroom where the deceased was lying in a corner and Julia Mongan was screaming. Constable Bryson asked her who had attacked her husband and she said it was four men in balaclavas who left in a taxi. He relayed that information to uniform control.

[6] Constable Coyle took Julia Mongan downstairs to the living room of the house. The constable established her phone number and the date of birth of herself and her husband. She stated that it was difficult to get an answer from Julia Mongan due to her emotional state. She said that four or five men had burst into the house with hatchets and one of them hit her on the head but she did not know which one. She named two of the assailants as Martin Stokes and Christie Stokes from Derry.

[7] The next police officer to speak to Julia Mongan was Sergeant Newman. She interviewed her in the living room. Julia Mongan informed her that four men in balaclavas kicked the front door in. She said that she could not identify them but recognised the voices of two of them as Christie and Martin Stokes from Derry. She said that this attack was part of a feud but she did not know what the feud was about. Sergeant Newman noted that she was hysterical and not making sense during this interview. She then established that Julia Mongan did not know at this stage that her husband was dead and decided to tell her. Julia Mongan became very hysterical, screaming loudly and biting her arms.

[8] The fourth police officer to speak to Julia Mongan at the scene was Constable McGrath. She noted that Julia Mongan was not making much sense and was constantly screaming "please don't die John, please don't die". She observed a large gash of approximately two inches on the right side of her head and a slice mark on the right side of her back at the shoulder blade where she had apparently been attacked. All of the witnesses noted that she was very heavily pregnant and was due to be induced that morning. She told Constable McGrath that she recognised two of the attackers as Christie and Martin Stokes from Derry by their voices and that she had known them all her life. Constable McGrath noted that when the ambulance came to take her hospital she was disorientated and was repeating that her husband was coming for her in the morning.

[9] Shortly after her admission to hospital she was transferred to the maternity unit at the Mater hospital. At approximately 5.30 am she was interviewed by Detective Constable McCauley. She said that she and her husband were in bed. The television was on and the light was on in the landing. She heard the footsteps of the attackers and recognised Christie Stokes' voice. She described each of the appellants as the three attackers who had entered the bedroom and Edward Stokes as the person who attacked her as they were leaving. She gave a description of each appellant and an account of the role each of them played in the attack on her husband. She confirmed that she saw the faces of the attackers and that their faces were not covered in an interview with counsel and police officers on 28 August 2008 and she maintained that position at the trial during her six days of evidence.

[10] She was naturally and properly cross-examined about why she had given an earlier account in which she claimed that the attackers were masked. She said that she did not remember giving that account but that she did remember thinking that she should not give information to the police about the attack until she had spoken to her husband whom she believed still to be alive. She said that all of those involved were from the travelling community and that she understood that these issues were generally dealt with within the community rather than by involving the police. She was asked to explain why in those circumstances she had indicated that she recognised the voices of Christie and Martin Stokes but was unable to give any explanation. She agreed that she had spoken to her father on the telephone shortly after the attack and described the attackers as "them yokes from Derry". She did not identify the particular persons involved by name. She also agreed that her brother-in-law Brian Mongan was with her within an hour of the attack but that she had not told him the names of the attackers although he said that she had mentioned the name Stokes.

[11] The noise of the attack had naturally disturbed neighbours in the vicinity. Mr and Mrs Donnelly lived a few houses away. Each of them looked out of their bedroom window and saw the deceased's car being attacked after the murder. Each of them described those participating in the attack as masked and wearing balaclavas. When asked to explain this Julia Mongan said that the attackers had hats on but that when they were inside the house carrying out the attack their faces were uncovered. Each of the appellant's submitted that if that were correct it is difficult to see how Julia Mongan could have given the description about the hair length of each appellant that she gave.

[12] Julia Mongan also agreed that she had made a deliberately untruthful statement to police on 4 July 2007 at the instigation of her deceased husband in order to obtain the return of a motor vehicle which had allegedly been used in an extortion crime. She alleged that she had given a loan of the vehicle to a person with whom she was having a relationship. She agreed that all of this was untrue and that she made the statement solely with a view to obtaining the return of the motor vehicle. She described how she met the person to whom she had given the vehicle in restaurants and bars but agreed that this also was a lie. She had signed a declaration noting that she would be liable to prosecution if the statement was untrue.

[13] The appellants also contended that there was clear evidence that Julia Mongan had deliberately lied in the course of her evidence. It is agreed that in the course of the investigation she had been informed that a small spot of blood found on a checked shirt belonging to one of the alleged attackers had been identified by DNA analysis as the blood of the deceased. In the course of her evidence she alleged that Edward Stokes was wearing a checked shirt at the time of the attack. She then went on to allege that each of the

appellants was also wearing a checked shirt at the time. When she had been interviewed by police she had given descriptions of the clothing worn by each of the appellant in which she had described each of them as being dressed all in black. She claimed that she had told police about the checked shirt prior to giving evidence but this was clearly incorrect.

[14] The 315 phone was connected to Christopher Stokes on the basis that he had given that number as a contact number for Social Services. Cell site analysis shows that this phone was active in Londonderry on evening of 6 February 2008. At 42 minutes past midnight on 7 February 2008 it used a site at Campsie just outside the city and at 1.25 am used a site at Castledawson. It was used in the Shankill and Falls areas between 2.06 am and 2.11 am on the morning of 7 February 2008 shortly before murder. Between 4.00 am and 6.48 am on that morning it used a site at Irvinestown. It was noted using a site at Castlederg at 7.36 am and was back in Londonderry at 9.08 am on the morning of 7 February 2008. All of these events are consistent with a phone that left Londonderry around midnight on 6 February 2008, travelled to Belfast via Castledawson and arrived in west Belfast some time after 2.00 am on 7 February 2008. The use of the phone in Irvinestown from 4.00 am is consistent with leaving Belfast some time after 2.30 am, travelling to Kesh where the Isuzu Trooper was found burnt out and then back to Londonderry early that morning.

[15] Christopher Stokes was arrested at 43 Glengalliagh Park, Londonderry at 10.54 am on 7 February 2008. Ellen and Tom Stokes, who is disabled, were also there. Ellen and Tom left while a search was being conducted. They returned to the house that afternoon and Ellen was arrested. The 315 phone was found among her possessions.

[16] As already indicated police found a checked shirt among the possessions of Edward Stokes. A spot of blood was located on the shirt and the likelihood that another unrelated individual would have this combination of DNA characteristics was calculated as less than one in a billion. Although there was some general evidence about close relationships among the travelling community there was no evidence to suggest any familial relationship between Edward Stokes and the deceased.

[17] The blood spot was located at the back of the shirt and the evidence indicated that it was not consistent with projected blood. Mr Logan was a Principal Scientific Officer at the Forensic Science Agency Northern Ireland and he concluded that this was a superficial transfer stain caused as a result of the portion of shirt coming into contact with something else which had a portion of blood on it. He was cross-examined about the circumstances in which blood might be transferred. In particular he accepted the transfer might occur as a result of contact with wet blood or alternatively as a result of contact between a damp or wet shirt and dried blood. This was to lay the

foundation of a submission that since members of the travelling community met regularly at social events and fights often occurred it followed that the transfer could have occurred on one those occasions.

[18] The evidence was that the deceased and Edward Stokes had not been at a social event together for a period in excess of a year. In re-examination Mr Logan indicated that if such a transfer had taken place as a result of contact with wet blood and the shirt had thereafter been worn by the owner he would expect to see evidence of the owner's DNA producing a mixed profile at the site. He did not find such a mixed profile. He also indicated that if this had been caused as a result of contact between a damp shirt and dried blood he would have expected to see a diluted sample on the shirt. That was not what he found. The shirt appeared to be relatively clean and in good condition.

[19] It was common case that the prosecution could only succeed if it established beyond reasonable doubt that the appellants were unmasked and the learned trial judge so directed the jury. On that issue there could be no supporting evidence and the case depended, therefore, on whether the jury were satisfied to the required standard on the evidence of Julia Mongan. It was submitted that this case should have been withdrawn from the jury as it fell within the second limb of the proper approach to such applications set out in R v Galbraith 73 Cr App R 124.

> "(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 Crown's evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case. (b) Where however the Crown's 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 on 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."

[20] It is accepted that the learned trial judge identified the correct test but submitted that he failed to apply it properly in this case. In particular it was

contended that the identification by Julia Mongan of two of the assailants by voice at an early stage undermined any suggestion by her that she was declining to co-operate by naming those involved. The only rational conclusion was that she did not identify them by their visual appearance at that early stage because the assailants were indeed masked. The conclusion that they were unmasked was contradicted by the evidence of the neighbours who witnessed the attack upon the deceased's vehicle.

[21] The learned trial judge rejected this submission and in our view he was right to do so. When Julia Mongan spoke to police officers shortly after the murder there was evidence that she was deeply upset and on occasions was not making sense. Some witnesses at the scene doubted whether she accepted that her husband was dead. Her case was that she wanted to speak to her husband before saying anything to the police. It was in that context that the jury had to consider what she said. The evidence about what she said in the immediate aftermath of the killing clearly contradicted what she said later that morning but this was a credibility issue for the jury to determine. Her evidence that the assailants were unmasked was consistent with the case she had made from 5.30 am on the morning of the murder and which she continued to make over six days of evidence. The evidence of masked men in the street after the murder damaging the deceased's car was helpful to the appellants but not necessarily inconsistent. The prosecution case was that these members of the travelling community may be content to have their faces seen by other members of that community but not by members of the public living in the vicinity where they were carrying out open violence. We do not consider that this evidence was so transparently unreliable that the case should have been withdrawn from the jury.

[22] The second basis up on which it is said that the case should have been withdrawn from the jury is based on the well known passage in R v Turnbull [1976] 63 Cr App R 132, [1977] 1 QB 224 where Lord Widgery stated at p138 and p229:

> "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 learned trial judge correctly identified the distinction between criticism of the reliability of the identification based upon doubts as to the credibility of the witness and that based upon the quality of the identification in the circumstances described by the witness. It is only the latter issue that need be

considered in this part of the application. In this case the observation was made over a couple of minutes at close quarters. Although there was no light in the bedroom the television was on and the witness said that there was a light on the landing. The persons identified were known to the witness. The quality of the identifying evidence was, therefore, good. It is not clear from his written remarks how the learned trial judge approached the issue and to what extent he took into account supporting evidence against each appellant in respect of this application but in any event we consider that no criticism can be made of his decision to leave the case before the jury on the identification issue.

The charge to the jury

[23] The charge to the jury commenced on the afternoon of 10 December 2009 and continued on the following morning until lunchtime. On the first afternoon the learned trial judge explained that if the jury found that Julia Mongan was or might be a dishonest witness in respect of any material aspect of her identification her evidence was worthless and incapable of receiving support from any other evidence in the case. He then gave the jury a Makanjoula warning in light of the evidence that the witness had admitted telling lies in her police statement in the extortion case. He advised them that they should exercise extreme caution before relying on her evidence. He reminded the jury that if they thought that Julia Mongan may have lied when she said that the attackers were masked that was the end of the case. He referred to the significant and sufficient body of material that the jury may think would compel them to conclude that the Crown case failed for that reason. He referred to the inference which might be drawn from the failure of each appellant to give evidence but reminded the jury that this would only arise where they were satisfied beyond reasonable doubt that she saw the faces of the attackers. He similarly referred to the phone and DNA evidence as supporting evidence only if Julia Mongan's identification evidence satisfied them beyond reasonable doubt.

[24] He examined the interviews of the appellants and indicated those matters which they might have dealt with in their evidence but again warned the jury that any reliance by way of adverse inference could only arise if they were satisfied by the evidence of Julia Mongan that she did see the attackers. He suggested that it may be easy for them to conclude that they were not so satisfied and reviewed the evidence of what she said to police in the immediate aftermath of the murder. He suggested that her explanation that she did not want to let police know who was involved because of the travellers' code rang hollow in light of the fact that she had given two names and reminded the jury about the evidence of the neighbours who saw the attackers masked.

[25] His remarks on the first afternoon undoubtedly created an impression unsympathetic to the Crown case and he started on the following morning by advising the jury that if they had any impression from his charge on the previous day they should remember that they should make their own minds up about these issues. He encouraged them, in considering the evidence of Julia Mongan, to put themselves in her shoes after witnessing these terrible events. He asked them to consider how they should treat the statements that she made in the immediate aftermath of the trauma and those at the hospital about 5.30 am when the consequences had started to sink in. He warned the jury about the possibility of contamination because Julia Mongan had been speaking to members of her family and others in the interim. He noted, however, that she had not sought to implicate the persons in the hall and that her account about seeing the attackers had been consistent since 5.30 am on the morning of the killing.

[26] He stated that the jury would need to assess the witness whom he suggested was not the brightest in determining what inferences they should draw from her inconsistencies. He referred to the evidence of the phones and DNA and the failure of any of the appellants to give evidence and suggested that this could be powerful evidence supporting recognition. He suggested that the assailants might have deliberately chosen not to wear masks in order to intimidate as part of the travellers' code and also suggested that the absence of masks made it easier to carry out the attack. He was requisitioned on those points and subsequently made clear to the jury that there was no evidence to sustain them. He told the jury that the witness undoubtedly lied in her evidence when she said that she had told police about the checked shirts and that her evidence on that issue was deeply suspect. He invited them to consider whether this was foolishness or an attempt maliciously to incriminate the appellants. He returned on a number of occasions to the subject of the appellants' failure to give evidence which he mentioned on five occasions on the first day and five occasions on the second day. He told them she was a self confessed liar and reminded them on a number of occasions that the supporting evidence could not assist them in determining whether she had seen the attackers.

[27] It was submitted that the charge was confusing, unbalanced and rhetorical because although the learned trial judge had exposed the frailties of the Crown case on the first afternoon he had changed tack on the second day and suggested to the jury how they might resolve the difficulties which he had previously indicated to them were impediments to the Crown case succeeding. The appellants also argued that the repeated references to the failure of any of the appellants to give evidence and his comparison with the fact that Julia Mongan had undergone detailed scrutiny altered the burden of proof by suggesting that the appellants had to prove their innocence.

[28] The overall purpose of a direction to the jury was helpfully set out by Lord Hailsham LC in R v Lawrence [1982] AC 510 at 519.

> "A direction to a jury should be custom built to make the jury understand their task in relation to a particular case. Of course it must include references to the burden of proof and the respective roles of jury and judge. But it should also include a succinct but accurate summary of the issues of fact as to which a decision is required, a correct but concise summary of the evidence and arguments on both sides, and a correct statement of the inferences which the jury are entitled to draw from their particular conclusions about the primary facts."

[29] The manner in which a trial judge achieves this objective will naturally vary from case to case and in looking at whether the approach of the judge gave rise to the verdict being unsafe it is necessary to examine the charge as a whole. Although the learned trial judge undoubtedly presented the defence case in a very positive light on the first day and highlighted more aspects of the Crown case on the second day it does not seem to us that the judge strayed outside the boundary of presenting the issues fairly to the jury. Where he may have done so by referring to the attackers not wearing masks because they found it easier to carry out their attack or intended to create fear he corrected that after hearing argument from counsel. This was a case with two opposing views of the facts and the credibility of the main Crown witness and it was inevitable that the presentation of the case for the defence and that for the prosecution was likely to result in considerable contrast.

[30] The single judge gave leave on the basis that there was a risk that the jury might have resolved the issue of whether the intruders were masked by relying on the supporting evidence. We do not accept that there was any such risk or that the verdict was rendered unsafe by the direction dealing with the need for the jury to be satisfied beyond reasonable doubt on the evidence of Julia Mongan that the intruders were masked. The learned trial judge warned the jury on at least ten occasions that they could not rely on the supporting evidence unless they were satisfied on the evidence of the witness that the intruders were masked. He was careful to ensure that they applied that test to each piece of supporting evidence relied upon by the Crown including the failure of any of the appellants to give evidence.

[31] It is common case that at the start of his charge the learned trial judge instructed the jury that the burden of proving the charge lay on the prosecution and that the appellants did not have to prove their innocence. During his charge the learned trial judge referred to the inferences that might be drawn from the fact that none of the appellants had given evidence. In the

course of his discussion at one point he suggested that if the appellants had anything to say which assisted them in proving their innocence they would have been anxious to go into the witness box and mention it. This was not the only reference to the inferences that might be drawn and on the other occasions the jury were correctly instructed that whether they should draw any inference was a matter for them. Any such inference was also characterised as supporting evidence. We accept that it was wrong to suggest that the appellants could prove their innocence in the passage above but we do not accept that it had the effect of misleading the jury on the burden of proof given the clear direction from the judge at the start of his charge and the way in which he dealt with this issue in other parts of his charge.

Particular issues in relation to each appellant

[32] It was submitted on behalf of Christopher Stokes that the learned trial judge was wrong to characterise the cell site analysis evidence as potentially powerful evidence in support of the recognition evidence in relation to him. In particular it was argued that although the phone number had been given to social services as a contact number it was not found at the time of his arrest at 43 Glengalliagh Park but was found later that day among the possessions of Ellen Stokes who had been absent from that address for some hours. The phone had been used on several occasions during that period.

[33] We accept that the evidence indicates that the phone was used by someone else during the period when Christopher Stokes was in custody but that does not diminish the connection that was established between him and the phone. The jury was entitled to draw an adverse inference from his failure to deal with that connection by giving evidence. In his case we see no basis for considering the conviction unsafe and we dismiss the appeal.

[34] In relation to Edward Stokes the expert evidence was that the chance of the blood found on his shirt belonging to anyone unrelated to the deceased was one in a billion. The evidence also indicated that the blood was transferred probably when wet. It was submitted that because there was no evidence of the familial relationship if any between Edward Stokes and the deceased this evidence should be discounted. The learned trial judge put the issue before the jury as a result of a requisition at the end of his charge but in our view in the absence of any evidence of a familial relationship the jury was entitled to rely on this evidence as powerful evidence tending to suggest that this was the blood of the deceased which was found on Edward's shirt on the morning of the murder. The weight of this supporting evidence was increased by the unchallenged evidence that Edward and the deceased had not met for more than a year. We do not accept that there is anything to suggest that the learned trial judge misunderstood this evidence or misled the jury about it. We do not consider his conviction unsafe and dismiss his appeal.

[35] Martin Stokes gave an account at interview that he was at home watching a DVD and then went to bed on the night of the murder. He could not, of course, be expected to offer any explanation for the phone evidence or the presence of the blood found on the shirt of Edwards Stokes. The only supporting evidence in respect of him was the failure to give evidence and the learned trial judge recognised that there was a distinction between him and the other appellants on the first day of his charge. He repeated this after the requisitions.

[36] The learned trial judge did, however, instruct the jury that the supporting evidence against one accused could be evidence against another accused. We accept that in a recognition case such as this the fact that there was supporting evidence for the identification of one of the participants could be supporting evidence for the quality of the circumstances in which the identification was made and would thereby be relevant to others (see R v Castle [1989] Crim LR 567). The learned trial judge expressly excluded the possibility that the supporting evidence would be relevant to credibility. He did not, however, expressly indicate to the jury how the supporting evidence assisted in the recognition of Martin Stokes.

[37] There were other matters upon which this appellant relied on the issue of whether the recognition identification was reliable. At a consultation on 20 August 2008 Julia Mongan referred to the third person as Tom Stokes. She repeated this in a further consultation on 8 October 2008. When this was pointed out to her later that day she said that she had been mistaken and that it definitely was Martin who was there. She put her mistake down to the consumption of alcohol.

[38] She gave three descriptions of the third person whom she identified as Martin. The first was at the hospital on the morning of the murder when she said that the attacker was 5'9'' and fat. The second was in her statement of 10 February 2008 when she described Martin as over 6' tall and fat. In a police note of 8 October 2008 she identified him as well over 6', broad and heavy. In her evidence she said that he was 18 stone. At the time of his arrest Martin Stokes was just sixteen. His custody record shows that he was approximately 5'6'' in height and 15 stone in weight.

[39] Although counsel drew to the attention of the learned trial judge the failure to mention Julia Mongan's description of the third man as Tom and the judge thereafter included that in his charge he did not draw to the jury's attention the potentially conflicting descriptions of his appearance all of which conflicted with the custody record. In fairness to the learned trial judge this was not raised with him in requisitions but it was in our view important for the jury to consider not only the reference to Tom but also to have in their minds these varying descriptions when analysing the weight that they should give to the recognition evidence. The danger of an honest mistake must

always be addressed in a case of this kind and the risk is compounded by the fact that the jury may not have understood the limitations of the assistance they should derive from the supporting evidence relating to the phones and DNA.

[40] In light of the evidential maters arising in the case of Martin Stokes we consider that a direction dealing with the possibility of honest mistake was necessary in his case. Such a direction needed to reflect the fact that this case had proceeded over a number of weeks and the jury needed to be reminded of those discrepancies on which the defence relied. The differing descriptions formed part of the defence case but were not mentioned in the charge. It is not necessary for a judge to mention every aspect of the case for the defence or the prosecution but considerable care has to be taken in long trials where issues of honest mistake arise to make sure that the jury consider all of the relevant evidence. We are left with a sense of unease about the safety of the conviction of Martin Stokes. We, therefore, allow his appeal and order a retrial.