

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 9/08

BEFORE: THE HON. MR JUSTICE PANTON, P.
THE HON. MR JUSTICE MORRISON, J.A.
THE HON. MR JUSTICE BROOKS, J.A. (Ag.)

GREGORY CROSS v R

Hugh Wilson for the applicant

Miss Paula Llewellyn, Q.C., Director of Public Prosecutions and Mrs Nadine Atkinson-Flowers for the Crown

27 July 2010

ORAL JUDGMENT

BROOKS, J.A. (Ag.)

[1] This is an application by Mr Gregory Cross for leave to appeal his conviction and sentence which occurred in the High Court Division of the Gun Court sitting in Kingston. He was sentenced on 22 June 2007. For the offence of illegal possession of firearm, he was sentenced to 4 years imprisonment at hard labour and for the offence of robbery with aggravation, 6 years imprisonment at hard labour. The sentences were ordered to run concurrently.

[2] The basic facts which were found to have been proved by the learned trial judge were that on 20 October 2006, the virtual complainant Miss Claudette Fisher was held up and robbed by 2 men at her home in St Catherine. One of the men sported dreadlocks and one of the locks, which he had protruding from a tam, had red, green and gold beads on it.

[3] The men escaped with Miss Fisher's vehicle, a Toyota van, with goods in it, they also took from her money amounting to some Three Thousand Dollars (\$3,000.00). It was one of these men who produced a handgun in taking Miss Fisher's property from her.

[4] Reports were made to the police and acting on her own initiative and with the assistance of her common-law husband who is, himself, a policeman, Miss Fisher went to the parish of St. Mary. There she saw the applicant and identified him as one of the 2 men who had robbed her and particularly, the man who sported the dreadlocks. He was taken to the Waterford Police Station in St. Catherine where he was arrested and charged.

[5] The issue which the learned trial judge had to resolve was one of identification, as the applicant denied that he was one of the persons involved in the robbery. The learned trial judge adequately dealt with the issue, she gave herself the correct warnings concerning identification and

came to the conclusion that the accused man was properly identified by Miss Fisher. This is so, despite the aspect of confrontation looming in the case, since Miss Fisher had gone to St. Mary to find the applicant. However, we find that there is no difficulty with the aspect of confrontation. The learned trial judge quite correctly found that this was not confrontation in the classic sense, since Miss Fisher and her common-law husband were acting on their own initiatives.

[6] Mr Hugh Wilson who appeared for the applicant had indicated to us that he found no basis on which to fault the reasoning and verdict of the learned trial judge. So did Mrs Atkinson-Flowers who appeared for the Crown. We too, find no basis to fault the reasoning and conclusion of the learned trial judge and accordingly, the application is refused and the sentences are ordered to be reckoned as having commenced on 22 September 2007.