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JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 63/97

**BEFORE: THE HON. MR. JUSTICE RATTRAY, P
THE HON. MR. JUSTICE GORDON, J.A.
THE HON. MR. JUSTICE BINGHAM, J.A.**

BETWEEN	RORY GORDON	APPLICANT/APPELLANT
AND	THE DIRECTOR OF PUBLIC PROSECUTIONS	1ST RESPONDENT
AND	THE DIRECTOR OF CORRECTIONAL SERVICES	2ND RESPONDENT

Ian Ramsay and Miss Carolyn Reid for Appellant

Lloyd Hibbert Q.C. and Miss Lorna Shelly for Director of Public Prosecutions

Lackston Robinson for Director of State Proceedings

December 8, 1997 & January 16, 1998

RATTRAY, P.

By virtue of an Authority to Proceed signed by the Minister of National Security and Justice Hon. K. D. Knight on the 8th August, 1994 consequent upon a request made to him on behalf of the United States of America for the surrender of one Rory Gordon in respect of charges relating to armed robbery, armed kidnapping, robbery with a deadly weapon, armed sexual battery and armed sexual battery in the first degree allegedly committed by Gordon in the United States of America, an extradition warrant was issued for the arrest of the

said Rory Gordon. The appellant Rory Gordon was arrested on the warrant by Detective Superintendent Lewis Burchell on the 24th August, 1994.

At the conclusion of a hearing before Her Honour Miss Marcia Hughes, Resident Magistrate for the parish of Saint Andrew the aforesaid Resident Magistrate issued her Warrant of Committal and ordered that Rory Gordon be held for the purpose of extradition in accordance with the Extradition Act 1991.

The appellant applied to the Full Court of the Supreme Court for a writ of Habeas Corpus to issue for his release from the Order of Committal.

In a judgment delivered on May 15, 1997 the Full Court (Ellis, Langrin & Beckford JJ) dismissed the application for Habeas Corpus. It is this decision of the Full Court which has come before us on appeal.

The main focus of the appellant's complaint relates to whether there was admissible evidence sufficient to identify the appellant with the Rory Gordon for whom a request for extradition had been made by the relevant authorities in the United States of America and in respect of which the Minister had issued his Authority to Proceed. The Full Court of the Supreme Court supported the finding of the Committing Resident Magistrate in this regard. The identification was based upon an exhibited photograph of the appellant purported to be identified in the affidavit of the complainant Kara King as being that of the perpetrator of the crimes charged, as well as the evidence of Detective Sergeant Mitchell McLean who having received photographs from Det. Reid of Fort Lauderdale, saw the appellant at Burger King, Half-Way-Tree on the 10th of September, 1996 and noticing the resemblance to the photographs he had been sent asked him if he was Rory Gordon. The appellant replied "yes". He informed the appellant that he had a warrant for his arrest under the Extradition

Act. The appellant replied - "I know the time would come". When requested the appellant took the police officer, to his home address and there handed over to him two (2) Jamaican Passports. Detective Sergeant McLean then took the appellant to the Half-Way-Tree lock-up.

On that very day Detective Superintendent Lewis Burchell received a telephone call from Detective Sergeant McLean. He then attended at the Half-Way-Tree lock-up where he saw the appellant who, on enquiry, admitted that his name was Rory Gordon, and identified a photograph shown to him (Ex. 6) by Detective Superintendent Burchell as a photograph of himself. Detective Superintendent Burchell then cautioned the appellant and arrested him on the warrant issued by the Resident Magistrate for St. Andrew.

Among the documents sent with the request was an affidavit by Kara Lynn King, the complainant to which, was attached a copy of a photograph of Rory Gordon, the alleged perpetrator of the criminal acts against her the subject of the charges. The photograph was signed and dated by Miss King. Paragraph 29 of Miss King's affidavit reads:

"29. Attached hereto as Exhibit 'A' is an accurate reproduction of the photograph I identified from a photographic line-up that was shown to me on December 21, 1993. Said photograph has been identified to me as RORY GORDON. RORY GORDON was one of the individuals responsible for abducting me from inside my house, threatening me verbally with a knife, raping me twice and making me perform fellatio on him. I have initialled and dated said reproduction."

Miss King's affidavit with the photograph attached is a duly authenticated document being certified in support of the request for the extradition of Rory Gordon from Jamaica by Thomas G. Snow, Deputy Director of Operations,

Office of International Affairs Criminal Division, U.S Department of Justice, Washington, such person being an "Officer of the Diplomatic Consular Service of that State ..." (See SCCA No. 44/96 *Walter Gilbert Byles vs. The Director of Public Prosecutions and the Director of Correctional Services* delivered on the 13th October, 1997).

The thrust of Mr. Ramsay's submission in fact challenges the admissibility of the evidence. He maintains that there is nothing known as identification by photograph which is sufficient to create the establishment of a case to answer. Someone has to identify the person.

In my view for the purposes of extradition and in respect of the hearing before the Committing Magistrate this submission is mistaken. Miss King's affidavit identifies her assailant by virtue of the photograph which she has annexed to her affidavit. Detective Sergeant McLean had a photograph which led him to approach the appellant. The appellant admitted that he was Rory Gordon. At the Half-Way-Tree lock-up he further admitted to Detective Superintendent Lewis Burchell that he was Rory Gordon and that the photograph shown to him by Detective Superintendent Burchell was his own. The Committing Resident Magistrate had before her the photograph identified by Miss King as being that of the perpetrator of the offences against her. She also had the photograph in the possession of Deputy Superintendent Lewis Burchell shown to the appellant by him and which the appellant identified as a photograph of himself. There is also the fact that the appellant identified his name as being Rory Gordon. This was sufficient prima facie evidence on which the Committing Magistrate could and did conclude that the Rory Gordon before her and indeed viewed by her was in fact the same Rory Gordon the subject of

the Extradition request. Mr. Ramsay has further submitted that the admission by the appellant of who he was to Detective Superintendent Burchell and his admission that the photograph was his was tainted evidence because he was not cautioned.

I agree with the submission of Mr. Lloyd Hibbert, Q.C. for the Director of Public Prosecutions that what was sought to be obtained by Det. Supt. Burchell from Gordon was not an admission as to whether Gordon had committed the offence but for the purpose of establishing that he was in fact the Rory Gordon for whom a warrant of arrest was in the possession of the Detective Superintendent. Consequently, the Full Court was correct in dismissing the application for Habeas Corpus and the appeal therefore fails.

GORDON, J.A.

I agree.

BINGHAM, J.A.

I entirely agree and have nothing to add.