

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 81/2007

BEFORE: THE HON. MR JUSTICE PANTON P
THE HON. MRS JUSTICE HARRIS JA
THE HON. MRS JUSTICE McINTOSH JA

KERRON HENRY v R

Delano Harrison, QC for the appellant

Miss Meridian Kohler and Leighton Morris for the Crown

25 October 2010

ORAL JUDGMENT

PANTON P

[1] In this matter the appellant Mr Kerron Henry was indicted in an indictment containing three counts. The first count charged him with inflicting grievous bodily harm on 29 June 2004, the second charged him with carnal abuse on the said day in the parish of Kingston, in respect of the complainant who was under 12 years old, and the third count charged him with buggery in respect of the same complainant. He was convicted in the Home Circuit Court and sentenced on 25 May 2007 to

concurrent terms of imprisonment for two years, 15 years and eight years respectively, in respect of the counts listed earlier.

[2] A single judge of this court granted him leave to appeal. Before us today, learned Queen's Counsel Mr Delano Harrison sought and was granted permission to argue two supplementary grounds of appeal.

[3] These grounds are as follow:

- "1. In two instances at trial the learned trial judge erred in her failure to prevent the admission of inadmissible evidence identifying the Applicant as the Complainant's offender:

In the first instance, the evidence was inadmissible hearsay coming from prosecution witness, Rosemarie Pratt.

In the second instance, it was the result of a leading question, asked of the Complainant by the same witness, naming the Applicant.

In neither instance did the learned trial judge caution the jury against considering the evidence here complained of in their deliberations.

2. In a context where the Complainant's credibility as to the identity of her offender was the live issue at Applicant's trial it is submitted that there was an incalculable danger that, from the mere [fact] that they heard, not only the two portions of evidence complained of at (1) above, but also heard a third piece of evidence from Complainant's (sic) mother on the same issue, the jury might well have found,

without more, that Complainant was telling the truth as to her assailant's identity."

[4] Mr Harrison, QC gave a summary of the facts, which we need not go into. He highlighted the respective portions of the evidence which support the complaints that he has advanced in respect of the convictions.

[5] Miss Kohler for the prosecution has quite properly, we think, conceded that the convictions cannot stand due to the flaws which have surfaced, particularly, the admission of the inadmissible evidence as to the identity of the attacker and an absence of direction from the learned trial judge to the jury in relation to recent complaint and how that ought to be treated in a case of this nature.

[6] In light of the complaint and the proper concession, we have no choice but to allow the appeal, quash the convictions and set aside the sentences. In the interests of justice we order that there be a new trial of this matter to take place as soon as possible.