

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 57/2009

**BEFORE: THE HON. MR JUSTICE HARRISON, JA
THE HON. MISS JUSTICE PHILLIPS, JA
THE HON. MR JUSTICE BROOKS, JA (Ag)**

DELGADO HESLOP v R

Applicant unrepresented

Miss Claudette Thompson for the Crown

12 May 2010

ORAL JUDGMENT

HARRISON, JA

[1] In the High Court Division of the Gun Court held at King Street, Kingston, on 5 June 2009, the applicant was convicted on an indictment which charged him for illegal possession of a firearm and robbery with aggravation. He was sentenced to concurrent terms of eight years and 10 years imprisonment at hard labour respectively. The single judge refused his application seeking leave to appeal so he now applies to the court for leave to appeal his conviction and sentence.

[2] The short facts which gave rise to his conviction are that on 9 September 2008, the complainant, Mr Lebert Walker, was driving a bus owned by the Jamaica Urban Transit Company when he was held up and robbed at gun point by a man who he identified as the applicant. He was travelling from August Town to North Parade when on reaching a point along Windward Road, three male persons boarded the bus. There was no conductor on board the bus so he was performing his duties as a single operator. He collected fares as the persons boarded the bus at the front door. The applicant was one of the three males who had boarded the bus. He had paid his fare and took his seat behind the area where the complainant sat around the steering. The bus then proceeded and on reaching a community called "Bower Bank" the bell rang. The complainant brought the bus to a stop. A lady alighted from the bus. He checked his rear view mirror and saw the applicant walking towards the front door. He waited on him to get off the bus. The applicant then went and stood on the front doorstep and spun around. He faced the complainant, held a gun in his right hand and pointed it at him. The complainant was about an arm's length away from the applicant. The applicant had a plastic bag in his left hand and told him to put all of the money in it. The complainant said he was afraid so he threw the money he had collected into the bag. The applicant eventually stepped off the bus and went away. The money which was taken from the complainant amounted to a little over \$2000.00.

[3] A report was made by the complainant to the police at Elleston Road Police Station.

[4] The applicant was subsequently apprehended and on 21 October 2008, the complainant attended an identification parade held at Half Way Tree Police Station and identified the applicant as the man who had robbed him at gunpoint on 9 September 2008. He was arrested and charged for the offences of illegal possession of firearm and robbery with aggravation. When cautioned he made no response.

[5] At the close of the Crown's case a no case submission was made. It was contended that the quality of the identification evidence was poor and unsupported. The learned trial judge rejected this submission however and called upon the applicant to answer the charges.

[6] In his defence, the applicant made an unsworn statement from the dock. He said that he had nothing to do with this robbery and it must have been a mistake that the complainant made. He maintained that he was innocent of the charges.

[7] The applicant has relied on four grounds of appeal: (1) misidentity by the witness (2) lack of evidence (3) unfair trial and (4) miscarriage of justice.

[8] Miss Thompson for the Crown informed us that she could not find any useful point which could be urged on behalf of the applicant. We too have carefully examined the transcript and are not convinced that there is any merit in the grounds of appeal. The correctness of the identification was the main issue for consideration and we are of the view that the learned trial judge had dealt with this issue adequately.

[9] There was ample evidence before the learned trial judge with regard to the identification of the applicant and on which he could come to a conclusion adverse to this applicant. He was not known to the complainant before but we are satisfied that there was sufficient opportunity for the identification to be made. The learned judge highlighted three instances in which the complainant would have been in a position to recall the person who had robbed him. The first was when the applicant entered the bus. The second opportunity arose when the applicant got up from his seat and approached the complainant from behind. He was able to observe the applicant by using the interior rear view mirror. The third opportunity was when the applicant was descending the steps and he spun around to face him and thereafter demanded the money. The bus was well lit. Light was provided by six florescent bulbs to the side, one of which was in close proximity to the complainant. There was also light in the roof of the bus and the entire incident lasted for about a minute and a half. We can find no reason to disagree with the learned judge.

[10] Issue was raised by the defence at the trial as to the fairness of the identification parade but the learned judge found nothing unfair about this parade. We are certainly not in a position to find otherwise.

[11] The learned judge did warn himself of the dangers of convicting on identification evidence. He had also found that there was no real or important inconsistency or discrepancy that arose in the case.

[12] The learned trial judge had also considered the unsworn statement made by the applicant and at the end of the day he found him guilty as charged.

[13] We are of the view that the learned judge cannot be faulted for the manner in which he dealt with the case. We must commend him for his excellent summation. His analysis of the evidence and findings of fact certainly demonstrate an awareness of the legal principles which were involved in the case.

[14] In the circumstances, the application for leave to appeal is refused. Sentence is to commence as of 6 August 2009.