

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 119/89

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

REGINA

VS.

ALBERT SHAW

C.J. Mitchell for Appellant

Miss C. Reid for Crown

July 18, 1990

ROWE P.:

On the 14th of February 1988, a police constable was robbed at about 10 o'clock in the morning while he was travelling on a bus along the Spanish Town Road in Kingston. One of the robbers had a firearm which appeared to be a .22 revolver in his right hand and this robber used his left hand to remove from the finger of the constable a ring which he was then wearing. The robbers having completed their deed fled from the bus and the constable went along and made a report to the police.

Four months later in June of 1988, an identification parade was held and on that parade the appellant was pointed out by the constable as one of the men who robbed him and as

the particular person who stood in front of him, held the gun at him and used his left hand to remove the ring from his finger.

The defence was that the appellant was not in Kingston on the day of the robbery and that the constable was mistaken in his identification. The defence was precise when it came to the question as to the mistake which the police constable must have made. The appellant gave evidence and called a medical witness to say that prior to the 14th of February 1988 the appellant had received a severe injury to his left hand which had left the hand in a state which was almost spastic. The only digit on that hand over which the appellant had controlled movement was the thumb. The fingers were such that they could not close and make a fist. The doctor said it would be with extreme difficulty that the appellant could hold anything and the impression which he clearly gave was that if the object was a small one he did not think that the appellant, using his thumb as best he could, could ever grasp that small object.

The learned trial judge directed himself as to the dangers of acting upon the visual identification evidence of a witness and he said he would have to be satisfied that the witness giving the evidence was not mistaken. When however he came to analyse the evidence for the defence he made no finding in respect of the doctor's evidence which was unchallenged; he made no finding as to whether or not this appellant could, having regard to the physical state of his hand, be able to do the grabbing; or to enact "the one swift motion" with which the trial judge found the ring was grabbed, with the use of this spastic hand. The trial judge never made any attempt to analyse and explain that portion of the medical evidence.

There is something also which is of importance in the case and it is this: If the appellant had stretched his deformed left hand towards the constable in order to remove the ring from

the finger, is it likely that the policeman could have failed to observe the deformed condition of the hand? And if he did fail to observe this deformed condition was it that he was demonstrating, contrary to what the learned trial judge found, that he was not an observant person on that occasion? If he had observed the deformed condition of the hand would it not be fair to expect him to have put that in his statement as a description of his assailant? Nothing of that seemed to have happened, otherwise the prosecution and the defence would have been alert to the fact that the policeman was looking for an assailant with a deformed left hand. All in all, it appeared that the learned trial judge did not consider or did not heed the warning which he gave himself that he should be astute to discover from the evidence whether the witness was mistaken or not and he simply used a blanket brush approach in order to arrive at his conclusions.

We think that the arguments of Mr. Mitchell that the verdict was unreasonable and not supported by the evidence has full merit and consequently the appeal is allowed and the conviction quashed and the sentence set aside. A verdict of acquittal will be entered.