JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 136/65

BEFORE: The Hon. Mr. Justice Duffus, President
The Hon. Mr. Justice Waddington
The Hon. Mr. Justice Shelley (Acting)

R. v. BARRINGTON REDWOOD

Mr. H.G. Edwards appeared for the applicant
Mr. A.G. Gilman appeared for the Crown.

23rd March, 1966.

WADDINGTON, J.A.,

This is an application for leave to appeal against the conviction of the applicant on a charge of robbery with aggravation in the Home Circuit Court on the 22nd of June, 1965.

The facts of the case as led by the prosecution were, briefly, that the complainant, one Sang, was attacked in a gully at Four Roads by a gang of some five or six men including the applicant, and certain articles stolen from his person. The defence was an alibi. The applicant stated that he was not one of the men who attacked the complainant, if indeed, the complainant had been attacked at all.

Two main grounds of appeal have been taken by learned Counsel for the applicant. The first was, that the learned trial judge had inadequately directed the jury on the Law as to Common Design, in that he made no distinction between a common design to rob and a common design to assault and commit a battery.

It was submitted by learned Counsel for the applicant that the evidence showed that all the applicant was doing, was to hold the complainant, and that that evidence was as consistent with a mere intention on the part of the applicant to beat or to assault the complainant, as with an intention to rob in a common design with the others.

/We have....

We have considered this submission very carefully and it seems to us that on the evidence there was an inescapable inference - the only inference to be drawn from that evidence - that all the parties who were taking part in the attack on the complainant, were doing so with an intent to rob. It is our view, bearing in mind the defence which was run,namely, that the applicant was not one of those who were assaulting the complainant, that there was no obligation on the learned trial judge to direct the jury as to any question of a common design to assault as distinct from a common design to rob.

The evidence was all one way, and it is our view that no reasonable jury could have come to any other verdict than that the applicant was taking part along with the other men in a common design to rob the complainant, that is, if they were satisfied that the applicant was one of the men taking part in the attack.

The second main ground of appeal was that the learned trial judge failed to direct the jury properly on the manner in which they should treat the evidence of Neville Windross and Louise Markland, who had made previous statements inconsistent with their evidence at the trial. Learned Counsel for the Crown conceded that the learned trial judge did not give the jury any directions as to how they should treat these inconsistent statements.

On reading the summing-up, however, it is clear that the learned trial judge had told the jury that it was a question for them to say what evidence they accepted, and it was left to them to say whether or not they accepted the evidence of these witnesses. The reasons for making these inconsistent statements were stated by the witnesses, and the

/explanations given by.....

explanations given by the witnesses were clearly left by the learned trial judge to the jury, and it was a matter for the jury to say whether in view of the explanations they were prepared to accept these witnesses as witnesses of truth. There was no question in this case of the jury accepting what the witnesses had said in their depositions to supplement the evidence they gave at the trial, and in our view the absence of a specific direction on this aspect of the case, could have caused no miscarriage of justice. If the Court thought that there was any possibility of a miscarriage of justice in respect of this submission, then in wiew of the other overwhelming evidence in the case, the Court would be minded to apply the proviso. It is not necessary to do so.

We see no reason in the circumstances to interfere with the conviction and the application is, therefore, refused.