NMCS

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 41/92

COR: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE PATTERSON, J.A. (AG.)

R. vs. CARLTON CARTER

Application for leave to appeal

Miss Cheryl Richards for the Crown

8th February, 1993

CAREY, J.A.

In the High Court Division of the Gun Court held on the 8th of April, 1992 before Morris J, (Ag.) this 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 5 years imprisonment at hard labour and 8 years imprisonment at hard labour. He now applies for leave to appeal that conviction and the sentences imposed upon him.

The facts in this case upon which the conviction is based are as follows. On the 6th of March 1991, about 11:25 p.m. a Mr. Burnett Whyte was riding his motorcycle, a C50 Honda, along Connolley Avenue in the parish of St. Andrew and he intended to go towards Cross Roads. When he came along to the intersection of the junction with Marescaux Road, he saw a man whom he later identified as this applicant, run from behind a light post with a stick and he received a hit in his head. (Two men in fact had emerged from behind the light post). He began wrestling with one of them that is the applicant, and he was holding on to the stick endeavouring to take that stick away from the applicant who drew a gun from his waist and ordered him to leave his motorcycle and

run. He complied dutifully with that order and ran off. He testified that he had known the accused for a long time, some three years; that the man was quite close to him and the light post, on which there was a light, was a matter of two feet away, so that the lighting was adequate for the purposes of identification.

He made a report to the police station at Allman Town the same night. The following morning he said he went to the applicant's premises and saw him pushing his motor cycle from the yard. He called to him but ignoring that call, the applicant rode off. He returned to the police station. Later on he saw the applicant with the police. The applicant denied stealing the motor cycle but did tell the police where it could be found.

The police officer, Constable Ruel Francis said on the morning of the 7th of March about 8:00 a report was made to him and subsequent to that, while he was walking along Water Street which, I believe is in Allman Town, he saw this applicant riding a motorcycle. He signalled him to stop. His signal was ignored and the applicant rode away. Subsequently, the applicant turned up at the police station with an attorney-at-law. The officer said that he asked the applicant for the motorcycle and he was taken to Admiral Pen Lane which is off Slipe Road to certain premises where he was shown the motorcycle. The motorcycle then was without its licence plate. He was asked for the licence plate and when he was shown the licence plate he duly arrested this applicant.

The applicant's case was that at the material time he never left home nor did he rob Mr. Whyte of the motorcycle. He said that his employer, one Brown, had asked him to purchase a tin of spray and allowed him the use of his motorcycle. That he did ride his motorcycle and in the course of that ride he was

accosted by two men who asked him for it. He told them that the motorcycle belonged to Mr. Brown. He strangely denied going to the police station with any lawyer.

The learned trial judge was faced with these two starked stories. On the Crown's case, he had the evidence of visual identification by the victim and he duly warned himself of the caution with which he should approach that evidence. That visual identification was supported by evidence of recent possession of that cycle on the part of the applicant. The learned trial judge, in our view, considered the issues that were before him. It should be noted that the witness, Mr. Whyte, admitted that he had not told the police in his statement that the applicant had a gun and that he was saying that for the first time at the trial. But he had always maintained that the other assailant was armed with a gun and that would allow the charge of robbery with aggravation nevertheless, to be maintained. However, it did reflect on the credit and the reliability of the witness Whyte. But as we have said there was supporting evidence of recent possession which made the case against the applicant quite strong. So that on the totality of the evidence, the learned trial judge was entitled to come to the decision at which he arrived.

We can see no reason whatever for disagreeing with his approach or the conclusions at which he arrived. In the result, the application for leave to appeal is refused and the Court directs sentence to commence on the 8th of July 1992.