

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 123/89

BEFORE: THE HON. MR. JUSTICE ROWE - PRESIDENT  
THE HON. MR. JUSTICE FORTE, J.A.  
THE HON. MR. JUSTICE DOWNER, J.A.

R. V. COURTNEY GREY

Applicant unrepresented

Miss Paula Llewellyn, Ag. Deputy Director  
of Public Prosecutions for Crown

JANUARY 14, 1991

ROWE P.:

On July 28, 1979 the applicant herein was convicted in the High Court Division of the Gun Court, holden in Montego Bay, St. James, on a three count indictment charging him with illegal possession of a firearm, robbery with aggravation and assault at common law. He was sentenced to concurrent imprisonment for five years, seven years and twelve months on the respective counts.

Evidence was led before Theobalds J., sitting alone, from Carl Williams, a shopkeeper of Felicity Road, Montego Bay, that on the 9th June, 1988 at about 4:00 p.m. two men, each armed with a gun, held him up in his cashier's cage of his mini-market, and at gunpoint stole money about \$2,000.00 and twenty packs of assorted cigarettes. These men spent 3 - 4 minutes in the shop. One man who stood near the door had attempted to disguise his face by partly covering his head with a portion of a cloak. The other man's face could be clearly seen. Mr. Williams did not attend any identification parades for either of the two men who were charged for the

offences and his purported identification of the applicant during the trial was discredited by the learned trial judge as "valueless."

Herval Love was sitting on a motor car parked outside Mr. Williams' shop. He observed two men leaving the shop. As they approached him, both men pulled firearms and pointed one to his neck and the other to his stomach. One man had a mask over his face so that only his eyes were discernible. The trial judge rejected the claim by Mr. Love that he could identify the person simply by an observation of his eyes notwithstanding the peculiarities which Mr. Love described. Mr. Love said he had seen the applicant on four previous occasions at parties where the applicant was "around the D.J." Nine days later, i.e. on June 18, Mr. Love pointed out the applicant to the police on St. James Street, Montego Bay and he was arrested.

The applicant stoutly denied that he participated in the robbery of Mr. Williams or in the assault upon Mr. Love. A witness on his behalf testified that he and the applicant were playing dominoes from 12 noon to 6:00 p.m. on June 9, 1988.

Theobalds J. identified the live issue in the case to be visual identification and he gave himself the classic warning demanded by the decided cases. He rejected the denial and alibi defence of Grey. We fully appreciate the careful manner in which Theobalds J. approached the evidence in the case and his criticisms of the investigation especially the failure of the police to hold identification parades at which Mr. Williams could be fairly tested and Mr. Love too, in respect of the other person charged with the applicant.

There was evidence that the applicant remained with Mr. Love for 6 - 7 minutes, that there was nothing obscuring

his features and that Mr. Love had seen the applicant at least four times previously. In those circumstances, this application for leave to appeal is refused.

Sentences will commence to run from October 26, 1989.