

CA: Criminal Law - Robbery with Aggravation - Trial - Evidence
read it - was then verdict consistent with evidence - with judge
submission to jury fact. Applicant failed to appear refused
to come before the court

JAMAICA

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IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 193/88

Evidence

Principles of Law

BEFORE: The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Wright, J.A.
The Hon. Miss Justice Morgan, J.A.

R. v. DAVID RICHARDS

Application for leave to appeal

Miss Paulette Williams for the Crown

3rd April, 1989

CAMPBELL, J.A.

The applicant appeared on 14th and 15th March, 1988 before Mr. Justice Edwards and a jury in the Home Circuit Court on an indictment charging him with robbery with aggravation of some \$147,000.00 in cash and approximately \$9,000.00 in cheques. The offence was committed on August 7, 1987 in the parish of Kingston, the applicant was found guilty and sentenced to imprisonment at hard labour for seven years.

The brief facts adduced in evidence by the Crown are that on the day in question Everton Gordon was in possession of a box containing the money, he was being driven by the applicant in a truck belonging to their common employer. Everton Gordon's instruction was to take the money to the bank for deposit. On their way to the bank the applicant blew the horn of the truck several times and stopped the truck at a strategic point where a man appeared and entered the truck. On entering

the truck this man proceeded to pull a gun from his waist while the applicant said "Boss I want the money, a don't want to kill you so a going to let you off." Everton Gordon, struck with fear, jumped from the truck leaving the box behind. The applicant's version was that four men halted the truck and menaced he and Gordon with guns. Gordon he said, jumped out of the truck with the box containing the money and fled. He the applicant was blindfolded and taken to some remote area after being ordered to drive the truck to Cross Road. He was kept at this remote area for some days before being released. This defence which was manifestly weak was completely dented under cross-examination and was rejected by the jury and rightly so, because for one thing the cheques comprising the lodgment which were supposed to be in the box which Everton Gordon on the applicant's version had taken away with him were actually found in the pocket of the cab of the truck when this truck was found parked near to Cross Road Police Station. This was inconsistent with Gordon having jumped from the truck with the box followed by two gunmen. There is nothing that can be faulted in the learned trial judge's summation to the jury. The verdict of the jury is absolutely consistent with the evidence adduced as summarised to them by the learned trial judge. There is no merit in the application which is accordingly refused. The learned trial judge with respect to sentence was in our view on the lenient side having regard to the sum of money involved which on the evidence appears not to have been recovered. In view of our feeling that the sentence was on the lenient side, we will not make its commencement retroactive but will order that the sentence do commence to run from this date namely the 3rd of April, 1989, which is the date on which the application has been refused by us.