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JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 198/87

BEFORE: THE HON. MR. JUSTICE CAREY, P.(Ag.)  
THE HON. MR. JUSTICE FORTE, J.A.  
THE HON. MISS JUSTICE MORGAN, J.A.

REGINA vs. DEVON McDONALD

Application for leave to appeal

Brian Sykes for Crown

September 26, 1988

CAREY, P. (Ag.):

In the High Court Division of the Gun Court on the 28th day of October, 1987 this applicant, Devon McDonald was convicted before Clarke, J. (Ag.) sitting without a jury, on charges of Illegal Possession of firearm and Robbery with Aggravation. He was sentenced to four (4) and six (6) years hard labour, respectively. He now applies for leave to appeal his conviction and sentence.

The facts shortly stated are that on the 21st March, 1987, the pump operator at a gas station at Maxfield Terrace in the parish of Saint Andrew was held up and robbed by two men, one of whom was armed with a firearm which the learned trial judge found to be an "imitation firearm". It is not quite clear why he took that view on the facts before him. The operator identified this applicant as being the one armed with a gun. He was relieved of some \$5,000.00 which he had in the breast pocket of his shirt. The robbers were constrained to make off when another worker espied them and raised an alarm. The police were quickly summoned. The pump

operator went in a van with the owner of the gas station to a location close to the gas station where a pipe crosses a gully. There he spotted the two men who had taken part in the robbery, crossing on the pipe and pointed them out to the police officers. At that point, the applicant was 2½ chains away. According to the police officer, he had heard shouts of "Police" at the material time and two men were pointed out to him. He went after these persons and in the event this applicant was held and taken to the police station. When the applicant was arrested and charged, he said to the officer, "A mi and Derrick do it sah." When he was asked where is the money, his response was "Derrick gone with it, sir." The officer also required to be advised where the guns were. He answered, "Derrick gone with them, sir."

The defence was that the applicant was an innocent man walking on the road when he was held and taken to the police station where he saw the victim for the very first time. He emphatically denied any participation in the crime charged against him.

This was a simple question of fact for the learned trial judge. The first question was that of identification. The crime took place in broad daylight in circumstances where victim and assailants were in close proximity to each other. There was ample opportunity in the circumstances of making out the features of the applicant. Then the applicant was spotted shortly after by the victim and was pointed out to the police officers who effected the arrest. The events took place within a very short compass of time.

There was ample evidence, in our view, upon which the learned trial judge could come to the conclusion at which he arrived.

In the circumstances, the application for leave is refused and the Court directs sentence begin to run at the date of conviction.