Judgment Book

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS. 133 & 142 of 1989

BEFORE: THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.
THE HON. MR. JUSTICE BINGHAM, J.A. (Ag.)

REGINA
vs.
ELLESTON BLAKE
DESMOND WAUGH

No appearance for the applicants

Bryan Sykes for the Crown

May 13 and June 24, 1991

MORGAN, J.A.:

These are applications for leave to appeal the convictions and sentences imposed on the applicants in the High Court Division of the Gun Court, Montego Bay, before Patterson, J. on the 6th October, 1989.

The indictment contained six counts as follows:

Counts 1 & 3 for Illegal Possession of Firearm

Counts 2 & 4 for Robbery with Aggravation

Counts 5 & 6 for Rape.

The applicant Blake pleaded guilty to counts 1 and 2 and was sentenced to five and eight years imprisonment respectively. He was convicted on counts 3, 4 and 5 and sentenced to five, eight and eight years imprisonment respectively. He was not charged on count 6. The applicant Waugh pleaded not guilty to counts 1, 2, 3, 4 and 6. He was not charged on count 5 and was acquitted on counts 1 and 6. He was remitted to the Resident

Magistrate's Court on count 2, convicted on counts 3 and 4 and sentenced to eight years imprisonment on each.

These applications are with respect to Blake: counts 1 and 2 - sentence; and counts 3, 4 and 5 - conviction and sentence. In respect of Waugh: counts 3 and 4 - which charge both applicants for illegal possession of a firearm and robbery with aggravation on 4th March, 1988, of a pair of shoes valued at $150 the property of one Christopher Malcolm. Count 5 on which applicant Blake is charged, is for rape, he having had unlawful sexual intercourse with J. S. without her consent.

The matter came before us for hearing on the 13th May, 1991. We refused the applications, directed the sentences to begin as from January 6, 1990, and promised to put our reasons in writing, which we now do.

The short facts are that about 8:00 p.m. on that night Christopher Malcolm, one Miss J. S. and others were walking on the road at Norwood in Saint James when they came upon the applicants and another. The applicant Waugh had a gun which he banged into the head of Malcolm, held him by the throat and, with the others, relieved him of $150 from his pocket and his new pair of shoes from his feet.

J. S., a school girl of nineteen years, saw Waugh pull a gun. He ordered her to lie on the ground and kicked her. The applicant Blake then took her away. She saw Blake's face as he undressed her, and used her blouse to bandage her face. He raped her and told her to run but she pulled the blouse from her face, took a good look at him and then ran.

The defence of each, made in unsworn statements, was an alibi and the issue common to both was that of visual identification.

The learned trial judge warned himself as to the dangers inherent in the issue and proceeded to identify the pertinent areas.

J. S. knew the applicant Waugh for some five years before. She saw him frequently and had seen him the Monday preceding that Friday. It was 8:30 p.m. and there was moonlight which assisted her as he came within three yards of her, face to face, when he first spoke to her. The learned trial judge found her an honest and straightforward person and was impressed with her demeanour.

The applicant Waugh was also known by Christopher Malcolm who had seen him at least twice per week over a six-month period and this applicant came close to him during the robbery.

J. S. also knew the applicant Blake before for some four years; would see him at times - as much as three times for the week. She had last seen him two weeks before the incident. She saw his face before and after the assault and knew his walk and his talk which she also recognized.

The judge expressed himself as being satisfied that J. S. had ample opportunity to see her assailants both of whom she knew before.

We are satisfied that his treatment of the evidence was both correct and adequate and that the evidence, which he accepted, justifies the verdicts found.

As to sentences, both applicants have previously served terms of imprisonment for offences of dishonesty and on this occasion a firearm was involved. For these reasons we find the sentences adequate and ought not to be disturbed.