

C.A. CRIMINAL APPEAL - Gun Court - Trial (Illegal possession of firearm, robbery with aggravation) Evidence - identification - identification parade.
Application for leave to JAMAICA appeal refused

IN THE COURT OF APPEAL

No cases referred to

SUPREME COURT CRIMINAL APPEAL NO: 171/88

Comp

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

EVIDENCE

R. v. GREGORY POWELL

Criminal Appeal

Application for leave to appeal

Ms. Paula Llewellyn for Crown

13th March, 1989

CAMPBELL, J.A.

The charges against the applicant are illegal possession of firearm and robbery with aggravation committed in Clarendon on April 9, 1987. The complainant is one Fay Lyew Sin Peow. The evidence of Miss Peow is that about 1.00 p.m., on the 9th of April, 1987 she was at work typing in the office of Chin's Haulage Contractors Company at Muirhead Avenue in the parish of Clarendon. She was then accosted by two men one of whom was armed with a gun the other with a knife. She was robbed of \$8,000.00 and three gold rings all of which were in her handbag.

The evidence amply supported the robbery with aggravation. It also supported the view that one of the men had a gun. The critical issue was identification of the applicant as one of these two men who committed the offences. The learned trial judge reminded himself that he had to approach the issue of visual identification with caution. He reminded himself that Miss Peow did not know the applicant before. Her evidence is that he was the man with the gun. The learned trial judge found that it was not a fleeting glance case as Miss Peow viewed the applicant for about 5 minutes from a distance of about 6 feet in broad

daylight. She had full view of him and he actually stopped and spoke to her before leaving, advising her not to make any noise. At that time he was only about 3 - 4 feet away. A little over 2 months later she identified the applicant on a properly conducted identification parade. The applicant gave sworn testimony raising an alibi. This was rejected. In our view the evidence of the Crown fully supported the conclusion of the learned trial judge that the applicant had been positively identified as one of the men who staged the armed robbery. The application for leave to appeal is refused, the sentences are ordered to commence from 25th October, 1988.