

NO report 031

J A M A I C A

IN THE COURT OF APPEAL

CIRCUIT COURT APPEALS NO. 33/65, 35/65 & 36/65

BEFORE: The Hon. Mr. Justice Duffus (President)
 The Hon. Mr. Justice Waddington
 The Hon. Mr. Justice Moody (Ag.)

R. vs. OTHNIEL JAMES, ALFRED BURKE
 &
 ROY HANSON

Mr. E. G. Green appeared for the Crown.
Mr. H. Hamilton appeared for Othniel James.
Mr. K. Douglas appeared for Alfred Burke.
Mr. S. G. Beresford appeared for Roy Hanson.

12th October, 1965.

DUFFUS, P.:

These are three appeals, by Othniel James, Alfred Burke and Roy Hanson, which have been argued together. The three appellants - Burke, James and Hanson, were found guilty in the Home Circuit Court, Kingston, on the 18th of February, this year, on a charge of robbery with aggravation. The indictment charged that the three of them on the 17th of December, 1963, being together, robbed Inez Campbell of £156 and certain other small articles.

The case for the Crown, shortly, was as follows: The complainant, Inez Campbell, in her evidence in chief, stated that she was proceeding on a street in Kingston early in the morning of the 17th of December, and she had the sum of £156 in a pocket of an apron she was wearing, together with these other small articles, when she was attacked by two men. One man held her from behind, drew her back against a wall and the other man threatened her with a knife and proceeded to use the knife to cut her apron pocket and to remove the money and

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articles. In her evidence in chief, she stated that she saw two men only and that she did not see any gun there.

After a detective named Corporal Green had given evidence implicating the three appellants, he stated that he had received information from the complainant that three persons were involved in this attack. He stated this in answer to questions put to him in cross-examination by two of the appellants. One of the appellants, namely, Burke, requested the learned judge to have the witness Campbell recalled for further cross-examination and on her recall she stated that there were three persons present at the time of the attack and that the third person was standing by with a gun but he had not actively participated in attacking her, but he was, nonetheless, present there holding this gun.

Campbell was unable to identify any of the three appellants. She attended an identification parade and failed to point out any of them. The police in the course of their investigation, seemed to have received certain information which led them to the three appellants, and each of the three appellants made a confession.

The appellant, James, in addition to making an oral confession to the police, gave a statement in writing in which he admitted that he was present and had taken part in the attack on Campbell; but in that statement he said that the other two appellants were pointing a gun on the woman while he took out the money and he also stated that he had participated in the matter because one of the appellants had "shaped to lick him" and had pointed the gun on him and at the time he was asking him to join in attacking this woman and that he had told the other two appellants, "Alright, me nuh wan't you to beat me up and things," and that that was his reason for participating. In short, he was setting up that he did not act as a free agent in the matter but that he acted under threats of violence and duress.

The appellant, Hanson, in his confession, admitted /that.....

that he had been involved in the attack on the complainant but he, likewise, set up duress and said that it was the other two appellants who had stuck him up with a gun and forced him to take the woman's money.

The appellant, Burke, in his confession, said: "Tell you the truth, Sir, me involve but a not me one. A me, Big Dirt and Joe," Big Dirt being the accused Hanson and Joe being the accused James. He did not say that he had been forced by anyone to take part in this crime.

The learned trial judge heard evidence in the absence of the jury, from the Crown's witnesses and from the appellants before he decided to admit the evidence of these confessions. After having decided to admit the evidence of the confessions, the jury were recalled and the Crown's witnesses, Police witnesses, gave evidence as to the confessions and they were cross-examined.

It was the defence of all three appellants that they had not made any confessions to the Police and that the Police had lied on them and had maliciously "framed" them. James admitted signing certain papers but stated that the Police had thrust these papers on him to sign and he did not know what they were but that he most certainly had not confessed to taking part in the attack on the woman Campbell.

The learned trial judge in the course of his summing up to the jury, gave correct and adequate directions on how the jury were to regard the confession evidence; and no complaint has been taken before This Court, of the directions given by the learned trial judge, but all three appellants submit that the verdict of the jury was unreasonable having regard to the evidence, and submissions have been made to us by each of the counsel on behalf of each appellant in support of this ground. It has been pointed out to this Court that the evidence of the complainant, Campbell, was unsatisfactory to say the least

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of it, that having first of all stated that there were only two persons engaged in the attack on her, that after she had heard the evidence given by Corporal Green that she had made a complaint to the Police that three persons were involved, that she then in her evidence after her recall, for the first time made reference to a third person taking part.

Crown Counsel, in the course of examining Campbell asked her whether she had observed any persons other than the two that she had spoken of, who had actually physically attacked her and she said no, and she also said that there was no gun there. Undoubtedly, this was not a happy position but it was essentially a matter for the jury to decide on and the learned trial judge was at great pains to deal very fully with this evidence by Campbell.

It has been submitted to us that if Campbell's first account was the correct account, that only two persons were there taking part in the crime, then one of the three charged must be innocent and in those circumstances, all three appellants should have been found not guilty.

The position was made clear by the learned trial judge to the jury. The learned judge as I say, dealt adequately with the confessions and if the jury accepted that the complainant perhaps had forgotten the presence of the third person when giving her evidence in chief as this third person had taken no part in the physical attack upon her, then the jury might have been justified in accepting her as being a witness of truth when she stated subsequently that the third man was there standing by with a revolver taking no active physical part and that it was the other two who took part in the actual physical assault on her, namely, the one that held her around the neck and the other who cut her apron pocket and removed the money.

It is clear that the three appellants confessed to

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taking part in the crime and if the jury accepted that these confessions were voluntary confessions, freely given and were not improperly obtained by the Police, then the jury were entitled to act on them and it is clear that they did so.

We are grateful to counsel for their arguments presented in this matter, but we are unable to say that the verdict of the jury was unreasonable. There was evidence there on which they could act and we are, in the circumstances, dismissing all three appeals.

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