

M1 rep 761

J A M A I C A

IN THE COURT OF APPEAL

R.M. COURT CRIMINAL APPEAL No. 1/66

BEFORE: The Hon. Mr. Justice Henriques (Presiding)
 The Hon. Mr. Justice Waddington
 The Hon. Mr. Justice Shelley (Acting)

R. vs K E I T H G O R D O N

Mr. F. M. Phipps for the Crown

Appellant appeared in person

21st January, 1966.

HENRIQUES, J.A.,

The appellant in this matter was convicted before the learned Resident Magistrate for Kingston on the 29th of November, last year, of one offence of robbery and two offences of larceny from the person and sentenced on the conviction for robbery to 18 months hard labour and to be once privately whipped by the imposition of 12 strokes. On the counts for larceny from the person he was sentenced to nine months hard labour on count 2 to run consecutively to the sentence on count 1 and 9 months hard labour to run concurrently with the sentence on count 2.

The facts were, that on the 30th of October a young lady, a clerk at the Ministry of Communication & Works was proceeding along North Avenue when she stopped to talk to a child whom she met, and while doing so she felt someone hold her around the neck and that person thumped her and grabbed the pendant from her neck. She was then facing the person and observed that it was the appellant. She held on to the chain and the appellant went off with the pendant leaving the chain in her hand. She made a report at the police station, and on the 18th of November she attended an Identification Parade at which she identified the appellant as the man who had attacked her.

Emelyn Price gave evidence in relation to the second count against the appellant, that she on the 11th of November was walking along Vauxhall Avenue when she saw a man crouching by a wall and as

/ she....

she passed she felt someone hold both her hands from behind and at the time she was wearing a pair of gold bangles and he demanded these. They struggled and he managed to get them off her wrist and he ran away over the wall of school premises.

Linden Lawrence, a hairdresser, who lived at 5 Vauxhall Avenue gave evidence that she had seen this struggle between the lady and the man. She was attracted to it by the call of 'thief', and that she went outside and she saw the appellant holding on to the old lady and wrestling with her, and that the appellant ran away, jumped the wall of the premises of the school and went back into Vauxhall Avenue. She subsequently, on the 20th of November attended an Identification Parade and pointed out the appellant as the man who had attacked Emelyn Price.

Violet Derby gave evidence that on the 13th of November she was at bakery on Windward Road standing up waiting to be served and she felt someone come from behind and touch her around her neck. She had a gold chain with a pendant. She turned around and saw the appellant, he then had her chain in his hand. He had pulled the catch on the chain. He turned and ran out of the premises. On the 18th of November she attended an Identification Parade and there she said she saw a line of eight men on parade. "I picked out the man but not at first. I noticed that they had all had tapes on their noses. I asked why they had tapes. Sergeant asked me why I wanted to know I told him when the man grabbed the chain I saw a mark running along his nose. I identified the accused as the man who took away the chain. I valued the chain and pendant about £20. I have not got it back."

When the accused was subsequently arrested by Detective Sergeant Hanson and just prior to his arrest and after cautioning him Hanson questioned him with regard to the reports that he had received, and in relation to the report regarding Violet Derby, the appellant was alleged to have said 'ah that de one. No more me tek. Me give it to Selo my sellaman and him give me £4.'

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He was asked for the money and he said he had twenty-eight shillings left of the money. He was searched and in his wallet was found twenty-eight shillings. This was tendered in evidence.

The appellant has appealed alleging that the Identification Parade was unsatisfactory. Well, it appears from the evidence of Sergeant Morrison who conducted this parade that so far as the instances in relation to Wright and Price, (in relation to Price it was Linden Lawrence who had seen the appellant and who had attended the parade and pointed him out) it would seem that those identifications were satisfactory.

It does appear, however, that in relation to the identification of the appellant as the man who attacked Derby that it was unsatisfactory because the witness at first, according to the evidence, failed to point out the appellant directly and in fact selected three men out of whom eventually after the tapes had been removed from their noses she pointed out the appellant as being the man. But it must be remembered that in relation to that particular offence - the offence in relation to Derby that the appellant had admitted, if Hanson's evidence is to be accepted that he was, in fact, the man who had attacked Derby, and also, stole the necklace from her. In the circumstances, therefore, we see no reason at all to interfere with the convictions and the appeals are therefore dismissed.