

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 63/88

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

R. v. MICHAEL THORPE

Appellant absent and unrepresented

Miss Paulette Williams for the Crown

3rd April, 1989

CAMPBELL, J.A.

Michael Thorpe the sole appellant together with Peter White and Gemorita Forbes appeared before Mr. Justice Panton in the High Court Division of the Gun Court on various dates between the 23rd of February and 16th March, 1988, in answer to an indictment containing one count of illegal possession of firearm and three counts of robbery with aggravation. The offences were allegedly committed in the parish of Saint Andrew on June 27, 1986. Peter White was found not guilty and was discharged, Michael Thorpe and Gemorita Forbes were each found guilty. However as earlier mentioned this appeal relates only to Michael Thorpe who was granted leave to appeal by the single judge. The reason given by the single judge for granting leave to appeal was that the appellant was not represented by counsel at his trial. The peculiar circumstances were that Mr. C.J. Mitchell had been assigned as Counsel but on the date of trial he indicated that he could not properly represent the appellant because one of the complainants was a neighbour of his and he felt that there would be some personal difficulty. The learned trial judge then

intimated to Mr. Thorpe that the case was one of the older cases which had to be dealt with on that date because it dated from the 27th of June, 1986 i.e. nearly two years previously. It is significant that Mr. Mitchell in open court indicated to His Lordship that Mr. Thorpe being left to defend himself would not in the opinion of Mr. Mitchell be prejudiced thereby. It is true the appellant did thereafter say that he would not be capable of representing himself but to the contrary the record is most revealing of the capacity of Mr. Thorpe to represent himself. He revealed such ability and astuteness in cross-examination that it is doubtful if any attorney with the experience of Mr. Mitchell or even with more years of experience could have cross-examined more incisively and in such detail as Mr. Thorpe did. He was also fully assisted by the learned trial judge who read over the evidence to him and in the few instances which escaped Mr. Thorpe guided him as to matters on which he could cross-examine.

We appreciate the significance of the learned trial judge granting leave to appeal so that the matter could be considered by the full court. We have carefully scrutinised the record and after careful consideration we are of the view that it would have been more appropriate for the learned trial judge to have adjourned the matter for another counsel to be assigned but it cannot be said that he exercised his discretion improperly in not doing so having regard to the fact that it was an old case which ought to be disposed of as expeditiously as possible. Further, counsel for the appellant had himself indicated that the appellant could in his opinion properly defend himself, no doubt on the basis of having previously properly advised him how he should present his defence. Were we in any doubt that the appellant was in any way prejudiced in presenting his case, we would have had no hesitation in having full argument addressed to us on the issue of prejudice, but as there is manifestly none revealed by the record we have not delayed the hearing of this appeal.

either for counsel to be assigned or to have the appellant before us. We have found no prejudice to the appellant by the course adopted by the learned trial Judge. We now proceed to consider the matter on its merit.

The facts are briefly that a beautician by the name of Ester Stoddart and some others being assistants and customers were held up at her workplace at No. 10 Ruthven Road at about 6.30 p.m., on June 27, 1986. One Gemorita Forbes, under the pretext that she wanted to have her hair fixed, entered the beauty parlour accompanied by the appellant. On being told by Miss Stoddart that it was too late, the companion of Forbes namely the said Michael Thorpe drew a gun and informed Miss Stoddart that it was a hold up. Miss Stoddart, her two assistants and a few customers were herded into an inner room by the gunmen who relieved them of money and jewellery which he threw into the outer parlour for collection by another man who had entered later. Mr. Thorpe also took the bunch of keys from Miss Stoddart on which was the keys to her Honda motor car. Among the other persons who were herded into the room was one June Matthews who was a customer. She also was held up, she positively identified the appellant as the person who came in with Gemorita Forbes and who pulled the gun from a plastic bag which he had with him. She, Miss Matthews, had been sitting under a dryer four to five feet away but opposite to the appellant and Forbes at the time when Forbes was being chided as to why she had come so late to have her hair done. There was fluorescent lighting which was adequate. She said in the course of the incident, when the appellant took the jewellery from her he was an arms length from her. She said when they were herded into the inner room, she was with the appellant for about six minutes, this was the time when the appellant was plundering their personal effects. She admitted that it was the first time that she was seeing the appellant. No identification parade had been held, the reason being that the appellant had been exposed to the public on an earlier occasion when he appeared in the Resident Magistrate's Court in respect of another offence related to but not identical to the offence for

which he was in the Gun Court. Further, when an Identification parade was held in respect of Gemonita Forbes, Miss Matthews was off the Island. One Miss Charm Campbell also gave evidence that she was in the kitchen when the appellant grabbed her therefrom and placed her with the others in the inner room. She was the person who had earlier let in Gemonita Forbes and the appellant into the parlour. Of course, her Identification of him was in court.

Detective Corporal Michael Scott testified that on July 1, 1986 about four days after this incident at about 7.15 p.m., he saw a Honda Civic motor car parked at Fourth Dimension Club on August Town Road, the appellant entered and started the car, he was then apprehended. This car was identified as owned by Miss Stoddart and it was the car which on the evidence was driven away by the hold-up men on June 27, 1986. The appellant then told the police that he was asked by telephone to pick up the car but he does not know the name or the whereabouts of the person who so instructed him. Under cross-examination of this witness the appellant astutely suggested to him that there never was any such statement made by him and further that he was never in the car, that he was rather innocently passing the car to a bus stop when he was apprehended. We mention this aspect of the cross-examination incidentally to highlight the astuteness with which the appellant conducted his cross-examination. The co-accused Gemonita Forbes by her sworn testimony sought to establish the defence of duress. In doing so, she gave evidence against the appellant that he the appellant was the person who held up Miss Stoddart. The defence of the appellant was an alibi namely that he was in Montego Bay at the time and on the date of the incident.

The learned trial judge having expressly warned himself to approach the visual identification evidence with caution found that June Matthews was not mistaken when she pointed out the appellant in court as the person who held her up on the 27th of June, 1986. He adverted to the positive factors conducive to a sufficient observation by Miss Matthews of the appellant, he accepted the evidence of Detective Corporal Scott that the

appellant was in possession of Miss Stoddart's car within four days of it having been stolen at the time of the hold-up. He impliedly found corroboration of Miss Matthews' visual identification evidence, even though such corroboration is not necessary either as a matter of law or as a rule of practice. We do not interpret the recent Privy Council decision in Winston Barnes v. R. and Richard Scott v. R., (No. 32 of 1986 and No. 2 of 1987 consolidated) dated 13th March, 1989 as laying down such a principle. The learned trial judge did not rely on the evidence of the co-accused Forbes, hence he avoided the necessity of directing himself on the danger of acting on the evidence of an accomplice, on the assumption that the possession by the appellant of Miss Stoddart's car was not capable of being corroborative circumstantial evidence supporting the visual identification evidence of Miss Stoddart. Having considered the evidence which was before the learned trial judge, his review of the same and his warning as to the dangers relative to visual identification evidence, we are completely in agreement with him that the evidence against the appellant, once Miss Matthews was considered as a credible witness, was overwhelming. For this reason we consider that insofar as the merit of the appeal is concerned, there is no basis on which the conclusion of the learned trial judge could be faulted. Accordingly the appeal is dismissed, the conviction and sentence affirmed. We however order that the sentence of imprisonment commence from the 16th of June, 1988.