

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 45/87

BEFORE: The Hon. Mr. Justice Carberry, J.A.
The Hon. Mr. Justice White, J.A.
The Hon. Mr. Justice Bingham, J.A. (Ag.)

R. v. PATRICK PERRY

W. Charles for Appellant

W. Douglas for Crown

24th, 27th July & 21st September, 1987

CARBERRY, J.A.

The appellant was tried on the 11th and 12th March, 1987 in the Portland Circuit Court before Theobalds J., and a jury on a charge of rape of Carla Neumann. He was found guilty and a sentence of 10 years imprisonment to be followed by 2 years police supervision was imposed.

We heard his appeal and dismissed it, affirming the conviction and sentence. We promised to put our reasons in writing and do so now.

Carla Neumann was a young tourist from Germany. She did not spend her vacation in hotels, but preferred to pitch her tent at appropriate places along the North Coast. She eventually wound up pitching her tent on the grounds of the Cunningham's residence at Long Bay. This was beside the sea and on the same grounds as the Bamboo Lawn Lounge, run by the Cunninghams.

On Friday night, the 30th January 1987, at about 11.00 o'clock while alone in her tent, she heard a strange noise outside. Coming out to investigate, she was held by the neck and a knife presented to her throat by a man. He dragged her, with the knife at her throat, some 500 meters from her tent, to the top of the cliffs. He stifled her screams by putting his hand over her mouth and threatening to kill her if she made any noise. He then stripped off her pants and underwear and raped her. His mission completed he led her back to her tent, in the same manner as he had taken her out, knife at throat and holding her by the neck, pushed her into the tent and walked off into the night.

She then ran from her tent to the Bamboo Lawn Lounge where she met two Americans and screamed that she had been raped. One of them, called Sonny, (proper name William Blake) gave evidence; he was known locally as Selassie. He assisted her by helping her take down her tent and she spent the rest of the night at his house. In the morning she went to the Port Antonio Police and made a report. She was then taken to the Port Antonio Hospital where she was examined by Dr. Neville Graham. The doctor gave evidence to the effect that her condition was consistent with that of a rape victim. He saw injuries to her neck and thighs which indicated that there had been a struggle, and she was nervous and angry about the incident. He had taken swabs but had not yet got a report from the Laboratory on them.

Later that Saturday afternoon Carla Neumann was walking along the road with Princess Cunningham, the house keeper of the guest house on whose grounds she had pitched her tent at Long Bay. As they walked Carla saw her attacker of the night before. She spoke to Princess and was told his name. Clearly this chance meeting was crucial. At the trial Carla admitted that at the preliminary examination when she had been asked what she had said to Princess she had said "that looks like the one." In her evidence at the trial however she said that she told Princess "he is the one who raped me." This discrepancy was left fully to the jury and was again explored before us in argument. There is a difference in the two comments, but what we do not know (and which the jury may have appreciated) is the extent of Carla's command of the English language.

Princess Cunningham when she gave her evidence, said that Carla said to her "This is the man who raped me," and she said that Carla began to tremble and to say that she was nervous and scared to death. Princess recognized and knew the man, the accused, she had known him from childhood and told the complainant that his name was Patrick Perry.

On the occasion of this encounter it appears that the accused decided to bluff it out. He went and sat on a bridge while the complainant and Princess passed, and even engaged in conversation with a young woman who had been walking behind them.

Counsel for the appellant noted that though recognizing her attacker and receiving a name for him, Carla did not at once set off for the police station with this information. She did not do so until next day. The encounter took place at about five to six p.m. It had been an exhausting day for the victim: she had made her report to the police, been examined by the Doctor, and apparently the police while taking her statement had brought in a suspect and confronted her with this man. She had made it clear that this was not her attacker, and seems to have been puzzled as to why they had arrested him. Counsel for the appellant suggested that this somehow threw doubt on her identification of the appellant. If the police brought in the wrong man, it must be on the basis of the description that Carla had given them. The argument does not take us anywhere, for one thing we do not know how closely the man brought in resembled the appellant, nor what features they had in common.

Further, after the encounter Carla ended a busy day by picking up her gear at Sonny's house and moving into the main guest house at The Bamboo Lounge.

There was a sequel to this: Sonny, or William Blake, (otherwise called Selassie) when he gave evidence first of all narrated how the complainant had come screaming to the lounge the previous evening that she had been raped. So far as this went, it was at most a fresh complaint and did not furnish corroboration of the complainant's story, though it showed some consistency in her conduct. He described how he had helped her take down her tent and given her shelter at his house for the rest of that night.

However at 11.00 p.m. that Saturday night Sonny saw the appellant at the Bamboo Lounge. Appellant begged him a cigarette. He replied that he had none, and then pointed to the complainant who was some distance away and said to the appellant that "lady say you rape her." The accused man then said in reply "Selassie, is really me do it," and laughed and turned away to the beach. The witness then saw and spoke to Sgt. Rose, who it transpired was already looking for the appellant in connection with the crime.

Sonny's evidence then amounts to a confession by the appellant, made to someone whom he did not think would repeat it. A somewhat similar incident took place in connection with Princess Cunningham, who said that after the encounter had taken place between Carla and the appellant at the bridge, the appellant had come to her and asked her "Did the woman say is me?" She had not answered him, and explained that if she had told him "yes" the appellant would have gone into hiding, or to use her own phrase "take soft."

It is one of the striking features of this case that two of the principal witnesses against the accused should have been people who knew him well, and with whom he was on speaking terms. It would be fair to say that they appeared to have been so upset by his rape of Carla Neumann that they thought it right to give evidence against him.

The appellant made an unsworn statement from the dock in his defence. In brief, he first of all described his arrest, and then denied the charge. Oddly enough he confirmed the evidence against him to a considerable extent. He admitted the encounter with the complainant and Princess on the Saturday evening, and confirmed that subsequently he had spoken to Princess, and that he had gathered that the complainant had complained of being raped and that he was suspected. He had dismissed this as an idle rumour until he was in fact arrested. He also confirmed that he had had a conversation with "Selassie" who accused him of having raped the complainant. But "I pay him no mind, I leave and go away." He

noted that the police had seized some of his underwear, presumably to have it examined for semen, but that it was never tendered in evidence. He also claimed that Selassie had told him that the complainant said she did not know who raped her because the person held her backway and her glasses drop off. (This incidentally was never put to the complainant, and there is no evidence as to whether or not she wore glasses).

Ultimately the real issue in this case was the reliability of the identification made by Carla Neumann of the appellant Perry as being the person who attacked and raped her. The trial judge pointed out to the jury that in this case there was no corroboration of her evidence as to the rape and secondly as to the identity of the rapist. He warned them of the danger of acting on her evidence in the absence of corroboration, and he explored with them the difficulties attending identification evidence in general and in this particular case: See pages 15-16 of the summing up. There was the question of lighting, the opportunity to see and identify (accused was not known to Carla before the incident), and of course the proximity of the encounter.

In the event the jury seems to have had no difficulty in accepting the evidence, they were out for 4 minutes before returning their verdict.

We carefully considered the arguments put forward on behalf of the appellant, and came to the conclusion that there was no valid reason for intervention. We dismissed the appeal and confirmed the conviction and sentence. Sentence to run from 12th March, 1987.