

NMLS

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 38/90

BEFORE: THE HON. MR. JUSTICE CAREY, P. (AG.)
THE HON. MISS JUSTICE MORGAN, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

R. v. PRESLEY ANDERSON

Delroy Chuck and J.V. Ricketts for Applicant

Lancellot Clarke for Crown

11th November, 1991

GORDON, J.A.

The applicant was convicted in the High Court Division of the Gun Court sitting in Westmoreland on the 27th February 1990 for the offences of illegal possession of firearm and robbery with aggravation. He was sentenced to concurrent terms of imprisonment at hard labour for twelve years on each count.

His conviction is based on these facts:

Mrs. Dora Ford, a Jamaican who had resided in the United States of America for over 9 years visited her homeland and stayed with relatives in Westmoreland. On the 4th of August 1989, she went with her sister to enjoy the sights of the parish of Westmoreland. They went club-crawling. They first went to the Cancer Club in Savanna-la-mar and from the Cancer Club they moved to Keith Club. Before they reached Cancer Club, they stopped to have a tyre repaired at a service station where they observed that a blue Mini Minor motor car had been following their car. When they reached the Cancer Club, the Mini Minor had followed them there. While they were inside enjoying the Jamaican music a particular tune called "Healthy Body" was being

played. The applicant who had been in the Mini-Minor found himself on the dance floor and very close to Mrs. Ford. Their bodies made contact, deliberately on the part of the applicant. She moved from this club to the Keith Club which is in Grange Hill some twelve miles away and there they were followed again by this blue Mini Minor motor car which contained the applicant among the passengers. Here again the applicant came inside and was very close to her. During both her stay at Cancer Club and at Keith Club, she observed the features of the applicant. Apparently he had some interest in her and he did not stray far from her. She left the Keith Club sometime after midnight to return home and again the blue Mini Minor followed, they stopped at Crowder to let off a friend; the blue Mini Minor was with them. When she reached her home at Fuller's Field, she drove inside the premises. As she was not properly parked, she reversed and while she was making an attempt to park properly, the blue Mini Minor turned up. It disgorged three passengers. She decided to run to get to the safety of her home but was alerted by the scream of her sister Suzette Tathan and when she looked she saw that Tathan was held at gun point by one of the occupants of the car. She then turned back and offered herself as a sacrifice. She was held at gun-point by this applicant. Mrs. Ford and her sister were bundled into her car and were taken to Roaring River. On the way, they were stripped of the jewellery they had and eventually at Roaring River the assailants left them. They finally returned to their home. Throughout this entire period, she had ample opportunity of seeing the features of her assailant and also the assailant of her sister who was charged jointly with this applicant on the indictment. Reports were made to the police who commenced investigations.

On the 10th of August, 1989 she went with the police to Callaloo Bed in St. Andrew, and there she saw the applicant. She identified him to the police as her assailant and he was taken into custody. When he was arrested and charged, he said he had a drug deal and it busted. As is customary in these cases the defence of the applicant was an alibi; he claimed he was in Kingston at the material time.

The learned trial judge in a very careful review of the law and of the facts discounted the alibi. He accepted the evidence of the witnesses for the Crown and having dealt fully with the issue of identification and warned himself of the dangers of acting on the evidence of visual identification, accepted the evidence of the witness for the Crown and found the applicant guilty.

Before us this morning, Mr. Chuck has, with his usual candour, admitted that having scrutinized the record he can find no ground on which to impeach the reasons of the learned trial judge or his verdict. With this approach, we entirely agree. There is nothing on which the findings of the learned trial judge can be faulted. We therefore concur in refusing this application for leave to appeal. The sentences will commence on the 27th of May 1990.