JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 149/88

BEFORE: THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

R. v. STEVE DAYE

No appearance for Applicant

Mrs. Lorna Errar-Gayle for Crown

5th November, 1990

FORTE, J.A.:

The applicant was tried and convicted on the 22nd of June, 1988 in the Gun Court Division of the St. Elizabeth Circuit Court for the offences of illegal possession of a firearm and two counts of robbery with aggravation and sentenced to 7 years and 12 years respectively.

Skifton DeCordova on the 17th of February, 1988 was at home in Mandeville at about 1:00 o'clock in the morning when he awoke to see three men in his room. The co-accused Simpson whom he later identified at an identification parade turned on his light and they all came over to him on the bed. At this time Simpson was armed with a knife and a machete and the applicant Daye was armed with a gun. DeCordova did not know them before, but he was able to identify them by the lights from the ceiling in his room i.e. an electric fitting containing two bulbs. In short they held him up, demanded money, searched his trousers which was hanging in the room as also the room and took from him the jewellery he was wearing.

In the end he was robbed of a sum of money $700.00, his chaperita, his chain, a pair of shoes, a handbag, video, his T.V. set and a tape recorder. During all of this, they were still armed. He was questioned as to who lived in the rest of the building. They then tied his hands behind him, left him in his room and went to the room of the other complainant which was nearby. They later returned to DeCordova's room where he engaged them in a conversation hoping that he could convince them to refrain from taking his television set which was brand new. His reward was that he was then relieved of his two rings which he was wearing at the time. They then took him and locked him in another room in the building.

Miss Wisdom also testified as to what occurred in her room. At about 1.00 a.m. she was awakened to hear footsteps coming up the passage towards her room. Her door was opened and the light turned on. A man whom she later identified as the co-accused Simpson (unexplainably he was not charged in this count,) came into her room. He came at herwith a knife. She screamed and he cut her with the knife. Two other men then came in, one armed with a gun, that is the applicant Daye. Daye then told Simpson to stop attacking her. While Daye stood there with the gun pointed at her, Simpson removed her jewellery i.e. her necklace and her bracelet. As they did in DeCordova's room, they searched her room; in the end, apart from the necklace and the bracelets, they took from her earings and money about $170.00. This witness subsequently attended an identification parade and identified the applicant Daye while the witness DeCordova identified him at an identification parade held at a separate time in the month of May 1988.

Through Constable Harold Cover, the prosecution also led evidence that a tape recorder was found in the possession of the applicant Daye on the 24th of April, 1988 when the Constable attended at his home about 3.00 a.m. in the morning

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and found it in his room. This tape-recorder was subsequently identified by DeCordova as having been the one taken from his home by the men who invaded it on the morning of the robbery. The applicant denied that he was present at the time of the robberies. The applicant maintained in his sworn testimony that a tape recorder was taken from him on Luke Lane in Kingston where he had come from his home in Mandeville and that the tape recorder presented in court and identified by the complainant DeCordova was not the one taken from him. He admitted however, to being taken back to Mandeville Police Station by the police from Luke Lane. He also maintained that there was some impropriety in the holding of the identification parades as an officer was sent out of the parade room to call the witnesses after the men had been assembled. The allegation was denied by the officer who conducted the parade, who testified that the witnesses were called on to the parade by means of "shouting" that is calling in a loud voice to another officer who was not inside the parade room who then sent the witnesses in to the parade.

The issue therefore in this case was one of identification, visual identification having been made by the witnesses DeCordova and Wisdom. In addition, the question of recent possession was considered. The learned trial judge in giving his judgment was quite expressive in demonstrating that he was aware of all the issues that were involved and in particular that he was aware of the cautious approach that he should take in acting upon the evidence of visual identification. On an examination of all the issues in this case and the facts that were alleged, we find that there was ample evidence upon which the applicant could have been convicted and that the learned trial judge dealt with the legal and factual issues very satisfactorily.

In the event the application for leave to appeal is refused. We however order that the sentences should commence on the 22nd day of November, 1988.