

CA. CRIMINAL LAW - Gun Court (Illegal possession of firearm robbery
with aggravation) - Identi-fication - Section 2
American Police to arrest refused
No case referred to JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 31/88

EVERETT
CRIMINAL PRISON

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

R. v. VIVIAN ROBINSON

Application for leave to appeal

Miss Paula Llewellyn for Crown

March 13, 1989

Campbell, J.A.

On January 28, 1988 the applicant was convicted in the High Court Division of the Gun Court by Mr. Justice Malcolm for the offences of illegal possession of firearm and robbery with aggravation. He was sentenced on each count to 15 years at hard labour. The sentences were ordered to run concurrently, the offences were committed in Kingston on June 10, 1987. The main complainant was one Eldora Aitkin a betting clerk employed at 96 Oxford Street, Rollington Town, Kingston. She was at her workplace at about 12.15 p.m. when two men entered the betting shop, one of the men was armed with a gun, he pointed the gun at her and another clerk and ordered them to open the inner door stating that it was a hold-up. They opened the door and the applicant who was the one without a gun was sent in by the gunman to collect the cash. The applicant went inside, opened the door and took cash, he put the money, later assessed as \$334.00 in a brown and white tam that he was wearing. He put the tam back on his head and both men left. The applicant was about 4 feet from this witness and she had a clear view of his face for about 10 minutes while he was searching the drawers and the

handbags of four employees who were in the shop. On the departure of these men she went outside the shop and solicited help to call the police, while standing outside she saw a jeep passing with soldiers and police, she stopped the jeep made a report and described the two men. The jeep left and about half-an-hour later it returned with the applicant. On being asked if the applicant was one of the men she answered in the affirmative but the applicant immediately denied.

Constable Givans gave evidence that he and a soldier were on joint police military patrol in the Oxford Street area. A crowd at the betting shop attracted his attention, he proceeded thereto and a report was made to him by a lady who pointed to two men who were walking down Oxford Street, he followed these two men in the jeep and saw them embark on a bus, the jeep followed the bus and signalled it to stop, it stopped and the two men alighted and ran in different directions. He gave chase to the applicant held him and brought him back to the jeep. He searched him and found in his pocket a white and brown tam inside of which was over three hundred dollars. He took the applicant back to the Betting Shop and Miss Aitkin said "Officer that is the man that just hold up the Betting Shop. The applicant made an unsworn statement in which he denied being on any bus, he said he was returning from country when he was stopped on Spanish Town Road, he had a bag in which he had \$1,200.00. He denied ever being at the Betting Shop or that money was taken from any tam in his pocket. The learned trial judge expressed the opinion that he was in no doubt that Miss Aitkin saw the applicant in the Betting Shop. He adverted to the discrepancies as to where the money was found, but said it did not destroy the Crown's case. He found the witnesses for the Crown to be truthful on the essential elements of the case. In our view this was substantially a case of hot pursuit and identification of the pursued by Miss Aitkin within half-an-hour of the incident. With regard to the sentence the learned trial judge no doubt took cognizance of the fact that the applicant had previous convictions for similar offences in 1976, and had been serving a life sentence until

3.

the same had been commuted to effect his release on March 30, 1987. A little over two years had elapsed and the applicant had committed similar offences, the sentence imposed by the learned trial judge is therefore in our view appropriate. The application for leave to appeal is refused, the sentence is ordered to commence on April 28, 1988.