J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL Nos. 115, 117 and 120 of 1972

Before: The Hon. Mr. Justice Fox
The Hon. Mr. Justice Grannum, (Ag.)
The Hon. Mr. Justice Robinson, (Ag.)

R. v. Winston Bambury
Carnegie Smith
Romeo Dennis

Mr. L. H. McLean for the Applicant Winston Bambury
Mr. F. M. G. Phipps, Q. C. for the Applicant Romeo Dennis
Mr. Chester Orr for the Crown

5th June, 1973

FOX, J:

Around midday on 19th July, 1971, armed men entered the Adelaide Street branch of the Bank of Nova Scotia, Spanish Town and robbed four tellers in the bank of money totalling over $32,000. At a trial in the St. Catherine Circuit Court in June and July, 1972, on four counts of an indictment charging robbery with aggravation, the applicants Smith and Dennis were identified as two of the robbers by several bank employees who were present in the bank at the time of the robbery. The evidence of these witnesses, if believed, was entirely sufficient to show a joint participation in the robbery by the applicants Smith and Dennis and a third person alleged to have been with them at that time. The Crown's case against Smith was further strenghtened by a statement which he gave to the police amounting to a full confession of guilt. In this evidential situation, it

would have been surprising if either by way of the alibi advanced from the dock by Smith or by deficiencies in the evidence for the prosecution, the jury had found themselves unable to be convinced of Smith's guilt. The directions on identification were adequate, and with the exception of the point to be noticed immediately, the verdict of the jury is not open to any real objection on this ground.

The only point which we have thought deserving of any consideration was described by Mr. Phipps who appeared for the applicant Dennis. The learned trial judge told the jury that they could find the applicants guilty on all four counts of the indictment if they were satisfied that the applicants were present in the bank taking part in the robbery in the manner described by the witnesses for the prosecution. Mr. Phipps contended that this direction was wrong in that it was not made clear to the jury that they must be satisfied that each of the four tellers had in fact been robbed, but instead were told, in effect, that if they found the accused guilty on any one count they should find them guilty on all the other counts.

We have carefully considered this submission and are satisfied that it is without substance. If the jury were satisfied that the applicants were present in the bank taking part in the robbery in the manner described by the witnesses, a conviction on all four counts was inevitable. It is beyond the realms of all rational probability to conceive that a verdict of not guilty would have been returned on all counts if the direction for which Mr. Phipps contends had in fact been given. It is equally inconceivable that such a direction could have resulted in verdicts of guilty on some counts and not guilty on other counts. Having regard to the evidence, such markedly inconsistent verdicts would have been unrealistic and unacceptable.

In his statement to the police, Smith described the

manner in which the robbery was planned and executed. This involved the use of a get-away car driven by a man who remained in the car which was parked along a street close to the bank. The Crown alleged that the appellant Bambury was the driver of that car. He too was charged in all four counts of the indictment. The Crown's case against him was that with full knowledge that the robbery was going to be committed and was being committed, he waited at a point which was conveniently near to assist them in this enterprise by enabling their escape immediately after the commission of the robbery.

Several grounds of appeal were argued by Mr. McLean who appeared on behalf of the appellant. All these grounds, with the exception of one, are without substance. The ground which has required consideration was canvassed from several directions but may be concisely described in terms of the capability of the evidence for the prosecution to sustain a verdict of guilty. Bambury was not identified by any of the employees at the bank. The statement of Smith to the police making reference to the driver of a get-away car was, of course, irrelevant to the question of Bambury's guilt. The jury were correctly told that this statement could not in any way be taken into account in considering the Crown's case against Bambury. The pith and the substance of the Crown's case against Bambury lay in a statement which he gave to the police on the 1st of August, 1971. As a result of investigations, the police located Bambury at a house at Mount Rosser in St.Catherine. The police told Bambury that they were making investigations in the bank robbery committed at the Spanish Town branch of the Bank of Nova Scotia on the 19th July. Bambury was cautioned and said, "I did not go to the bank, is only some fellows get me fe drive the car fe dem." Bambury was taken to the Constant Spring Police Station where he was interviewed by Superintendent Robertson. Superintendent Robertson cautioned him and told him that he had

information that he had driven a car with Carnegie Smith on the 19th of July, 1971, to Spanish Town and robbed the bank there. Bambury then said: "I will give a statement about all I know about the bank robbery." Supt. Robertson then took Bambury to Inspector Green who was also at the Constant Spring Police Station. In the presence of Bambury, Supt. Robertson said: "Inspector, this is Winston Bambury. He said he wants to give a statement about what he knows of the bank robbery in Spanish Town." Inspector Green cautioned Bambury and asked him if that was correct, Bambury replied in the affirmative and in due course gave the statement which was eventually tendered by the prosecution at the trial. The gist of the statement is ignorance in Bambury of the commission of the robbery. He admitted that on 19th July, 1971, he had driven a car from Kingston to Spanish Town with male passengers including one Carnegie, that he had parked the car on Peel Lane in Spanish Town, which is close to the bank, that the men told him to wait, that he waited, that the men went away and after a short interval returned, that they entered the car, that they were in possession of a bag, (this could have been the bag referred to by the bank employees into which the money taken from the bank had been put) that he drove the car from Spanish Town towards the Hellshire Hills where after other alarums and excursions the men dispersed. He alone then drove the car back to his home in Kingston. Later that day, a man came to him and gave him a parcel and told him that "Carnegie said to give you." He opened the parcel and found that it contained money to the amount of $200 in ten-dollar bills.

Concerning this statement, the learned trial judge correctly told the jury that if they believed that this account by Bambury of his activities on that day was the truth, they would be obliged to acquit him because in that event, he would have had no knowledge of the robbery either before, at the time of,

or after its commission. But the learned trial judge went on to tell the jury, in effect, that it was open to them to believe that the statement revealed only a part of the truth, in which event it would be permissible for them to infer that with full knowledge, Bambury had participated in the robbery to the extent and in the manner alleged by the Crown.

Mr. McLean questioned this direction. In his submission, it was not open to the jury to accept a part of the statement and to reject a part. They must believe the statement in toto or reject it in toto. We found this submission of Mr. McLean somewhat startling and invited him to provide authority for the proposition. Mr. McLean confessed his inability to accept our invitation. Such research in this respect as he had undertaken had been fruitless. We are not surprised. The submission is obviously without merit.

The next point argued by Mr. McLean was, we regret to say, even more strange. There was no evidence identifying in a positive way the passengers in the car with the robbers. Mr. McLean suggested that the jury should have been alerted to what he said was a significant matter, namely, the possibility that those men were not the bank robbers but were mistakenly thought to have been the bank robbers by Bambury at the time he gave the statement to the police. Such a direction, if it had been given would have been unrealistic and without foundation. Bambury's defence was an alibi advanced from the dock. He said that the statement was forced from him. It was written up by the police and he was compelled to sign it by threats and promises. He did not say that he was labouring under such a mistaken belief as learned counsel described, and there is no material from which such a mistaken belief could have been inferred.

Two other matters must be noticed in connection with the capability of the evidence. The first is in relation to a ten-dollar

bill which was alleged to have been taken from Bambury, either at Mount Rosser when he was first apprehended or at his bar in Kingston which was subsequently searched. The learned trial judge took the view that having regard to the rapidity with which money should be expected to change hands, and bearing in mind the vocation of Bambury, no incriminating consideration could be attached to Bambury by way of the doctrine of recent possession, and he so told the jury. Mr. McLean drew attention to an aspect of the evidence concerning this ten-dollar bill, namely, that although tendered at the preliminary examination as part of money taken from Bambury, at the trial the relevant witness was absent and there was no evidence before the jury that the money did in fact come from Bambury. There was some evidence identifying this ten-dollar bill as money taken from the bank at the time of the robbery, and Mr. McLean submitted that in the particular circumstances its reception in evidence was prejudicial to Bambury to a degree not capable of being cured by the direction given by the judge to disregard the evidence. This contention too, is without merit. The jury were told to ignore the evidence. It must be assumed that they faithfully complied with that direction. We are satisfied that the charge of unfair prejudice is without substance.

The second matter which must be noticed is evidence in the prosecution's case which placed Bambury sitting in a parked car on Peel Lane at about the time when the robbery could have been committed. The inherent inferiority of evidence by way of a statement from the dock which Bambury relied upon to suggest his alibi was highlighted by this evidence placing him in Spanish Town at the relevant time.

We are satisfied that the evidence led by the prosecution was entirely capable of sustaining the case against Bambury. His appeal is dismissed and his convictions and sentences affirmed. The applications of Smith and Dennis are refused. Their convictions and sentences are affirmed.