

CA. Criminal Law (i) Illegal Possession of firearms (ii) Robbery with
aggravation - Statement by accused - Identification.

Appeal dismissed.

JAMAICA

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IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 24/86

BEFORE: THE HON. MR. JUSTICE KERR, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE DOWNER, J.A. (AG.)

REGINA VS. ANTHONY ROSE

Mr. L. McLean for the Appellant

Mr. Garth McBean for the Crown

February 24, 1987

WRIGHT J.A.:

This is an appeal by Anthony Rose against conviction and sentence on an indictment charging him with illegal possession of firearm and robbery with aggravation. These counts arose out of the fact that on the 30th of April, 1982 the Crown Motors Office on Oxford Road, was entered by two gunmen who robbed the Office of \$100,000.00 in cash, travellers cheques and jewellery.

Subsequently, the appellant who was identified by two of the witnesses, as one of the intruders, was found about to leave the island from Montego Bay on a passport in the name of one Dennis. He was interviewed by police; he was cautioned, in which he was alerted to the fact that he did not have to say anything, but whatever he said would be taken down in writing. He insisted that he would talk even in the absence of a justice of the peace or anyone else because he was talking the truth.

Thereafter, he gave a statement which was recorded, in which he gave a detailed account of the planning and the execution of the robbery and what seemed to have goaded him into making this full disclosure is the fact that the other partner in the crime, Danny, had gone with all the money, that is the reason he gave.

The witnesses Panton and Rhooms described the incident and they subsequently went to an identification parade at Central Police Station, where they identified the accused. It transpired from their evidence, that after they had been to the parade and identified the appellant, they were in a room and there was some conversation during which a policeman alluded to the fact that the man was trying to leave the island, apparently they had not known about that, in another person's name and at their request the passport with the photograph in it was shown to them.

Mr. McLean for the appellant confesses that because of some over-writing on his record, he had overlooked the fact that the offer of the appellant to give a statement had been preceded by a caution and so he felt that when Det. Asst/Supt. Dwyer told the appellant that he intended to make a written record of what he had to say, that statement carried with it the sense of a compulsion that the appellant had to speak - he had reached the point of no return. He has not urged this point very strongly before us because of the strength of the statement, the very detailed account of the planning and the execution of it.

He had filed six Grounds of Appeal but he finds that having regard to the strength of the evidence the Grounds are unavailing. The strongest Ground had to do with the caution statement and that has not really stood up. He had sought to impeach the identification parade, on the basis that the passport containing the photograph of the appellant had been in the room from which the witnesses had gone to the parade and to which they had returned after the parade. But what is clear from the evidence of the witness who admitted seeing the photograph in the passport was that it happened after the identification on the parade and there is nothing to suggest the contrary. Accordingly, that Ground, Ground 1 as well as Ground 2 dealing with the admissibility of the statement, failed. Ground 3 which dealt with the rejection by the trial judge of the defence of alibi was not pursued. The question of conflicts in the evidence appeared as subject-matter of Ground 4 and that also has fallen by the wayside from lack of supportive material. Ground 5 deals with the question of the judge not believing the appellant

because contained in the caution statement are facts "within the peculiar knowledge of the appellant". This is just another aspect of Ground 3, in connection with the rejection of the alibi, and was not pursued. Abandoned also was Ground 6 which had to do with giving due weight to the evidence.

It is our view that the evidence in the case was sufficient to support the conviction and no impropriety has been shown to have taken place as regards the taking of the statement or the subsequent reference to the passport with the photograph. In the circumstances therefore, since the Grounds argued have all failed, the appeal will be dismissed. The conviction will be affirmed. Sentence will run from date of conviction.