

CRIMINAL LAW - Gun Court - Trial - @ 11/11/11 possession of firearms
(2) robbery with aggravation - Identification - Sentence
Publications for leave to appeal refused

JAMAICA

Its Courtroom 7
comp

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 2/88

Criminal Justice
Criminal Justice
and Justice

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.

REGINA

VS.

BRYAN GOODEN

Applicant unrepresented

Miss Carol Malcolm for Crown

January 30, 1989

ROWE P.:

On the 17th of December, 1987, the applicant Bryan Gooden was convicted before Mr. Justice Smith in the High Court Division of the Gun Court on two counts of an indictment charging him with illegal possession of firearm and robbery with aggravation and he was sentenced to five years imprisonment at hard labour on the first count and seven years imprisonment at hard labour on the second count, both sentences to run concurrently.

The applicant has sought leave to appeal from his convictions and sentences. The matter came up before the single judge and the applications were refused. He has however set out no grounds on which he wishes that the conviction should be overturned. He has simply said: "The grounds

"of appeal will be forwarded by my attorney," but no such grounds have ever been filed.

The single judge in commenting upon the evidence and the judge's summary said:

"The sole issue was identification. It was carefully reviewed by the learned trial judge and the factors for and against identification were weighed and given a proper assessment."

and the application was therefore refused.

As I said earlier, the applicant has renewed his application for leave to appeal before us and we too have had to go through the evidence to determine whether the issues in the case were properly considered by the learned trial judge, so that he could have come to the conclusion which he did.

The Crown's case was that on the 3rd of July, 1967, at about 7:35 p.m. Delroy Bonner, who described himself as a Security Guard, was walking on the road in the vicinity of Payne Avenue when he was pounced upon. He said that one man held him from behind, put a gun to his forehead and then spun him around. When that man spun him around, he was able to see the man's face and he was able to see the man's general build and the man's general physical configuration. He said that he had about six minutes within which to do this observation, but the learned trial judge quite rightly said that having regard to the speed with which the witness demonstrated that the incident happened, that part of the episode was over in probably six seconds, rather than six minutes. The witness said that the light at the time was poor. He described the time of day as 'brown dusk', 'dark but not so dark', but he maintained that there was sufficient light there

for him to be able to see the features of the man who held him up.

Delroy Bonner further said that he was taken directly into a broken down building and in that building there were two other men, one of whom had a firearm and the other one had a knife. He said that he was searched and articles were stolen from him including a pouch containing one hundred and fifty dollars cash, and a wrist watch. He said that he was able to discern the kind of firearm which the man who held him up was carrying. It was an automatic Smith and Wesson revolver. Mr. Bonner said that he is very very familiar with firearms. He has practised on the firing range with firearms. In his present job he does not carry a firearm but over a long period of time he has worked with police officers who regularly carry firearms.

Bonner said that after he had been robbed two of the men whom he didn't and couldn't identify left the building and the third man whom he said is the applicant, remained with him in this broken down building and they had a conversation of sorts. He, the witness, described himself as a sufferer similar to the applicant and said he could not help the applicant who was then complaining that he hadn't had food for some extended period of time. This little conversation being completed, Delroy Bonner said that the applicant told him to run and he ran to the Station and made a report. The witness Delroy Bonner told the Court that some three days later he went to the Police Station where he gave a written report. That statement was put in evidence at trial.

The question at issue, therefore, was identification. The applicant in his statement from the dock denied any knowledge whatsoever about the robbery and said that he was

shot and injured by the police in circumstances which showed that the police were assaulting him without reason and that this charge was added on out of malice.

The learned trial judge was impressed with the witness Bonner who said that he had been working in that area for some considerable period of time as a watchman and over that long period he had seen the accused as he passed and re-passed along the road. He heard people call him 'Tall man'. He said that he knew the applicant as 'Tall man'. It appears that the applicant was of considerable height although no direct evidence of measurements were given, as the witness said it was easy for his assailant (this man) "he was so tall", to stand behind him, holding him in the back of his collar and still be able to put the gun into his forehead. So this man once stood over him although for most of the time the man was standing behind him. Bonner said because of his long acquaintance with this person he was in no doubt at all that the applicant was the man who held him up and robbed him on that particular night.

Much of the discussion at the trial turned upon whether the description given to the police was the same as that which the witness was giving in Court because in the warrant which was issued by the police before the arrest of the accused and in the statement which the witness gave to the police the assailant was described as 'Longie' and yet in his evidence, or rather, in the greater part of his evidence, the witness said that he knew the assailant as 'Tall man'. At the end of the trial however, the witness did say that he knew the applicant by both names - 'Longie' and 'Tall man'.

The learned trial judge faced with this attack on the veracity of the witness considered that it was not a very important point because the man was of such outstanding appearance and the witness had known him for a period of time.

On mature consideration, we are of the view that the learned trial judge was in the best position to determine the veracity of the witness for the Crown and he had the opportunity to see and observe the dimensions of the applicant and could therefore best determine whether in all the circumstances the description 'Longie' or 'Tall man' would be an appropriate descriptive name for the applicant.

We do not think that there is any point at which we could fault the learned trial judge's reasoning and in those circumstances the applications for leave to appeal are refused, the sentences are confirmed and they will begin to run three months from the date of conviction.