

ST. PETER'S COLLEGE  
KINGSTON  
JAMAICA  
1348

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 71/89

BEFORE: THE HON. MR. JUSTICE CAREY, PRESIDENT (AG.)  
THE HON. MR. JUSTICE FORTE, J.A.  
THE HON. MISS JUSTICE MORGAN, J.A.

REGINA

VS.

CHARLES LOWE

Appellant appeared in person

Miss Marcia Hughes for Crown

October 17, 1989

CAREY P. (AG.):

On the 23rd of August, 1989 before His Honour Mr. J.H. Moodie, one of the Resident Magistrates at Sutton Street, this appellant Charles Lowe, was convicted of the offence of robbery with violence of money \$168.00 and sentenced to nine months imprisonment at hard labour.

The short facts in the case are that a Mr. Oswald Stephenson, a Security Guard, was at the corner of East Queen Street and Johns Lane at about 1:15 in the morning, when he was set upon by two men. He testified that one of them punched him on the right side of his mouth twice and then put his hand in his pocket from which he extracted this amount.

He identified this appellant as being one of the assailants and he was able to do so because of two factors which struck him:

- (i) His manner of dress. He was wearing a pair of white track shoes and a 3/4 length pair of pants "with the foot frill out" and also a red ganzie shirt, and
- (ii) He had a scar on the left side of his jaw.

After this robbery, the men made off. The victim of the robbery made a report at the Central Police Station which is not too far distant from where this event took place. While Mr. Stephenson was engaged in making his report, he saw this appellant passing. He pointed him out to the officer who arrested him.

The appellant made a vehement denial of the charge. He said that he was not dressed in the manner in which the witness testified. He said that in fact he knew the victim before and he pointed out that it is hardly likely that having committed such a dastardly crime he would then so brazenly walk pass the Police Station.

These points were made before the learned Resident Magistrate and he did not accept them. He found, as we said, this appellant guilty.

We have looked at this case very carefully and considered very carefully the evidence of visual identification because of course, that was the crucial issue in this case. It depended not only upon the credit of the witness.

The learned Resident Magistrate must bear in mind that honest witnesses are often mistaken. We note that in his findings he did not state that he had it in mind but he did say that the identification was the main issue and that he looked very carefully in the circumstances in which the identification took place. In those circumstances we must assume that he had plainly in mind what he is required to do

by the case of R. v. Whyllie (25 W.I.R.) p. 430 which is the authority here with regard to viewing evidence with care. That case still has full force and effect as regards the approach of a trial judge to identification evidence.

Having reviewed the evidence ourselves, we are unable to say that the verdict should be disturbed. So far as sentence is concerned however, the appellant had no previous conviction and we think the sentence of nine months imprisonment could be described as manifestly excessive. What we propose to do therefore, is to impose such sentence as would allow this appellant to be released tomorrow and we so order.

The appeal against conviction is dismissed and the sentence is varied in the manner we have stated so that the appeal against sentence would be allowed.

